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SECRETARY OF STATE

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August 24, 2009

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State Lottery Commission

RULE: Amendment, 179CSR4, Limited Gaming Facility Rule

DATE FILED AS AN EMERGENCY RULE: July 27, 2009

DECISION NO. 16-09

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

A handwritten signature in black ink, appearing to read "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 16-09)

AGENCY: State Lottery Commission
RULE: Amendment, 179CSR4, Limited Gaming Facility Rule
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- par. 1 The State Lottery Commission (Commission) has filed the above amendment to an existing rule as an emergency rule.
- par. 2 W. Va. Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Commission filed this emergency rule with supporting documents with the Secretary of State July 27, 2009 and with the LRMRC July 27, 2009.
- par. 7 It is the determination of the Secretary of State that the Commission has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority – W. Va. Code §29-25-5 reads:

§29-25-5. Rules.
The commission shall propose for promulgation legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as are necessary to provide for implementation and enforcement of the provisions of this article. Any legislative rules proposed by the commission before September 1, 2009, may be by emergency rule.
- par. 9 It is the determination of the Secretary of State that the Commission has not

exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency – W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Commission are as follows:

The 2009 WV Legislature repealed, added or amended & re-enacted most sections of §29-25 which controls the licensing, regulation & oversight of one limited gaming facility at one historic resort hotel. Since the voters of Greenbrier County have voted to permit a gaming facility in its county, it is possible that a limited gaming facility license may be granted. Given the drastic changes made to WV Code 29-25 et seq, there will be a substantial disconnect between the newly amended Act & the rules unless the rules are immediately changed. The purpose of the proposed emergency rule & the identical legislative rule is to ensure consistency between the Act & the rule, so as to better regulate the limited gaming facility & all licensees associated with it.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare" and "prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 16-09 or ERD 16-09 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Lottery Commission, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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