

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #8

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2002 FEB -6 A 11:10

WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

Feb. 7, 2002

**NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE**

AGENCY: The West Virginia State Lottery Commission TITLE NUMBER: 179

DATE EMERGENCY RULE WAS ORIGINALLY FILED: June 21, 2001

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

DATE OF FIRST EMERGENCY AMENDMENT: August 1, 2001

SERIES NUMBER OF RULE: 5

TITLE OF RULE: AMENDED EMERGENCY LIMITED VIDEO LOTTERY RULE

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

One of the five tests for residency necessary for obtaining a limited video lottery retailer or operator license is that the applicant filed timely West Virginia personal income tax returns for the four tax years preceeding applying for a license. This amendment (No. 5) lengthens the time for filing a "timely" return in certain circumstances where extenuating circumstances prevented the timely filing of a return. This change is found specifically at 179-5-2.5.d.

  
Authorized Signature

Use additional sheets if necessary

**EMERGENCY  
WEST VIRGINIA LEGISLATIVE REGULATIONS  
WEST VIRGINIA LOTTERY  
TITLE 179  
SERIES 5 - New  
2002**

**LIMITED VIDEO LOTTERY RULE**

A STATEMENT of CIRCUMSTANCES WHICH REQUIRE THIS EMERGENCY RULE:

The First Extraordinary Session of the 2001 Legislature enacted House Bill 102 to reduce, restrict and regulate video poker machines in the state. Section 402 [W.Va. Code §29-22B-402] permits the West Virginia Lottery Commission to propose a legislative rule to provide implementation and enforcement of new article 22B. Section 402, subsection 3 provides that "...proposed legislative rules for this article filed in the state register by the first day of August, 2001, may be filed as emergency rules."

The West Virginia State Lottery Commission has amended this emergency rule by adopting new subdivision 2.5.d and two subparts. Section 179-5-2.5 is the definition of the term "filed timely personal income tax returns." The change gives the Commission the right to confirm an applicant's residency for purposes of license eligibility when the applicant did not file a "timely" personal income tax return for one or more of the four years prior to applying for a limited video lottery operator or retailer license.

**EMERGENCY  
WEST VIRGINIA  
LEGISLATIVE RULE  
WEST VIRGINIA LOTTERY  
TITLE 179  
SERIES 5  
2002**

**FILED**

2002 FEB -6 AM 11:10

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

**LIMITED VIDEO LOTTERY RULE**

**A BRIEF SUMMARY of the EMERGENCY RULE:**

The first Extraordinary Session of the 2001 West Virginia Legislature enacted new article §§29-22B to restrict, reduce and regulate the illegal use of video poker machines in the state. The Limited Video Lottery Emergency Rule is proposed to regulate this issue.

“Video gambling machines” are illegal contraband subject to seizure and destruction as of January 1, 2002. This rule provides due process for the seizure and destruction of these devices.

Video lottery terminals are limited to a total of 9,000, statewide. Video lottery terminals of the kind initially used by the racetracks [ticket-printing machines; not coin drop] will now be available in a limited number of adult environment locations: ABCC licensees for “private clubs” [liquor by the drink] and Class A Beer licensees [beer by the drink] would qualify if they also met certain other conditions. On or before August 1, 2001, persons who were licensed by ABCC for a private club liquor license or a Class A beer license may apply to the Lottery for a license. At that time, they must say how many video lottery terminals they wish to operate, and whether they wish to purchase or lease video lottery terminals from a manufacturer or whether they will contract with a licensed Operator for the video lottery terminals. This rule regulates the application for video lottery terminals.

The bill creates four license categories: Manufacturer; Operator; Limited Video Lottery Retailer; Service Technician. No person or entity is allowed to have more than one kind of these licenses except that Operators and Retailers may also be Service Technicians. This rule regulates the application for licenses.

Operators and Retailers that can own video lottery terminals are called Permittees because they receive, in addition to their annual licenses, a ten-year PERMIT. Permittees must meet a 4-year state residency requirement. This rule regulates the application for permits.

ABCA license holders may own up to two video lottery terminals, or an operator may supply up to five video lottery terminals to them. ABCA license holders that are fraternal clubs or veterans organizations may own up to seven video lottery terminals, or an

operator may supply up to ten video lottery terminals to them. Reserved video lottery terminals under this part of the law require the permittees to pay \$1,000-per-video-lottery-terminal "permit fee" initially and again every May first. When applicants have qualified, the total of all video lottery terminals reserved, including those to come from Operators, will be deducted from the 9,000 total, and the remainder will be bid by Operators. Operators can have no more than 675 video lottery terminals at any one time. The Lottery will set the minimum per-terminal bid amount. This rule regulates the bidding process.

Cash-in less cash-out is "Gross Terminal Income." From Gross Terminal Income, the Lottery takes 2% for administrative costs. The remainder is called "Net Terminal Income." Net terminal income from this bill [wagers-less-prizes] is divided as follows:

1. Until at least June 30, 2002, the state share is 30%
2. Beginning June 1, 2002, the Lottery will calculate the aggregate average per-terminal daily gross terminal income.
3. If the rate changes because of the calculation, the rate will be in effect for the new calendar quarter.
4. So long as the average daily rate does not exceed \$60, the rate stays at 30%;
5. If the rate exceeds \$60, but is not more than \$80, the rate is 34%;
6. If the rate exceeds \$80, but is not more than \$100, the rate is 38%;
7. If the rate exceeds \$100, but is not more than \$120, the rate is 42%;
8. If the rate exceeds \$120, but is not more than \$140, the rate is 46%;
9. If the rate exceeds \$140, the rate is 50%;
10. From the state rate, 2% of net terminal income is divided on a population basis among all municipalities and counties.

The State's share, less payments to counties and cities, is deposited into the State Excess Lottery Revenue Fund created by new section 29-22-18a. This rule regulates the collection and deposit of gross terminal income and net terminal income.

Certain "mini-casinos" prevention measures are in the bill. Locations that acquire their ABCC licenses after January 1, 2001 [a date now past] cannot qualify as a video lottery location if they are nearer than 150 feet to an existing location [measured by the closest outside walls], and only one location may be in a single structure under a single roof. This is designed to prevent using a 30-room former motel or shopping mall from being used as a casino, five machines per room. Also, no two licensees may occupy the same building under a single roof. This rule regulates the location of retailer facilities.

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: February 6, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) THE WEST VIRGINIA STATE LOTTERY COMMISSION  
P.O. BOX 2067  
CHARLESTON WV 25327

LEGISLATIVE RULE TITLE: 179 - 5 LIMITED VIDEO LOTTERY RULE

1. Authorizing statute(s) citation 29-22B402

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
JUNE 19, 2001

b. What other notice, including advertising, did you give of the hearing?  
STATEWIDE LEGAL ADVERTISEMENTS; COMMERCIAL NEWSPAPER  
ADVERTISEMENTS; POSTING OF NOTICE AND RULE TEXT ON HTE  
LOTTERY'S WEB SITE; PRESS RELEASES

c. Date of Public Hearing(s) or Public Comment Period ended:  
COMMENT PERIOD ENDED AT THE CLOSE OF BUSINESS, JULY 19, 2001

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached     X     No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

JULY 26, 2001.

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

JOHN C. MUSGRAVE, DIRECTOR OF THE LOTTERY  
P.O. BOX 2067, CHARLESTON WV 25327-2067  
PHONE 304-558-0500 FAX 304-558-3321

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

JOHN MELTON, IN-HOUSE ATTORNEY FOR THE LOTTERY  
P.O. BOX 2067, CHARLESTON WV 25327-2067  
PHONE 304-558-1845 FAX 304-558-3321

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 179 CSR 5 -- LIMITED VIDEO LOTTERY RULE

Type of Rule:  Legislative     Interpretive     Procedural

Agency: THE WEST VIRGINIA STATE LOTTERY COMMISSION

Address: P.O. BOX 2067

CHARLESTON WV 25327-2067

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$2,911,164		-- 0 --	\$2,911,164	\$2,475,472
PERSONAL SERVICES	1,698,164			1,698,164	1,698,164
CURRENT EXPENSE	542,400			542,400	542,400
REPAIRS & ALTERATIONS					
EQUIPMENT	520,600			520,600	
OTHER	150,000			150,000	150,000

2. Explanation of Above Estimates:  
 47 new employees: 1 new program manager, 24 investigators II, 2 licensing clerks, 2 accountant II's, 6 auditors II, 2 information services coordinators II 6 computer operators II, 1 attorney II, 1 payroll assistant, 1 internal auditor III and 1 marketing program specialist. "Other" is for the mandatory contribution to a compulsive gambling program.

3. Objectives of These Rules:  
 To regulate and collect state revenue from the 9,000 limited video lottery terminals in adult environments.

Rule Title: Limited Video Lottery

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

The State of West Virginia will gain \$31 million from limited video lottery in fiscal year 2002, and \$121 million in fiscal year 2003.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

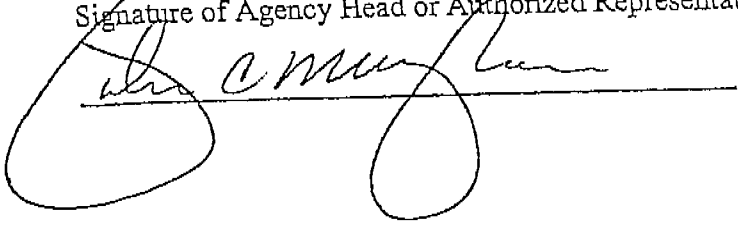
Cities and counties will share \$900,000 in fiscal year 2002, and thereafter \$5.6 million per year. Persons licensed as limited video lottery operators and limited video lottery retailers will share \$32.6 million in fiscal year 2002 and thereafter, \$163 million per year.

C. Economic Impact on Citizens/Public at Large.

Citizens will benefit from government programs funded by this new revenue source.

Date: June 12, 2001

Signature of Agency Head or Authorized Representative:



Amended Emergency Rule 179-5

TITLE 179  
AMENDED EMERGENCY RULE  
Fifth Amendment  
WEST VIRGINIA LOTTERY

SERIES 5  
LIMITED VIDEO LOTTERY RULE

§179-5-1. General.

1.1. Scope and Purpose. - The purpose of this legislative rule is to implement, clarify and explain provisions of the Limited Video Lottery Act codified in W. Va. Code § 29-22B-1 *et seq.*

1.2. Authority. - W. Va. Code - § 29-22B-402

1.3. Filing Date. -

1.4. Effective Date. -

§179-5-2 Definitions of terms and words.

2.1. "ABCC" means the office and agency known as the alcohol beverage control commissioner created in W. Va. Code § 60-2-1.

2.2. "Act" and "the act" mean the Limited Video Lottery Act codified in W. Va. Code § 29-22B-1 *et seq.*

2.3. "Central computer", "central control computer" or "central site system" means any central site computer provided to and controlled by the commission to which video lottery terminals communicate for purposes of information retrieval and terminal activation and to disable programs. "Central computer" includes the computer at the commission's hot backup site when it is functioning as the central control computer.

2.4. "Control" means the authority to direct the management and policies of an applicant for a license or a holder of a license. The following persons are considered to have control of an applicant:

2.4.a. Each person associated with a corporate applicant, including any corporate holding company, parent company or subsidiary company of the applicant, except that:

2.4.a.1 A bank or other licensed lending institution that holds a mortgage or other lien acquired in the ordinary course of business does not have control of the applicant;

2.4.a.2 An investment advisor who is registered with the United States Securities and Exchange Commission and whose beneficial interest in the applicant is held strictly for investment purposes, who has the ability to control the activities of the corporate applicant or to elect a majority of the board of directors of that corporation does not have control of the applicant; and

2.4.a.3 An institutional investor who is registered with the United States Securities and Exchange Commission and whose beneficial interest in the applicant is held strictly for

investment purposes, who has the ability to control the activities of the corporate applicant or to elect a majority of the board of directors of that corporation. The applicant or licensee has the burden of proving that the interest is held for investment and not for direct or indirect control of the applicant or licensee; and

2.4.b. Each person associated with a noncorporate applicant who directly or indirectly holds any beneficial or proprietary interest in the applicant or who the commission determines to have the ability to control the applicant; and

2.4.c. Key personnel of an applicant, including any executive, employee or agent, having the power to exercise significant influence over decisions concerning any part of the applicant's business operation.

2.5 "Filed timely personal income tax returns," only for the purpose of determining whether a person is a resident of the state of West Virginia for purposes of licensing under the Limited Video Lottery Act and for no other purpose whatsoever, means the West Virginia personal income tax return of a person who is required by subdivision 2.35.d of this rule to qualify as a four year resident of West Virginia was either filed or not filed under one of the following circumstances:

2.5.a The returns were filed for each of the four years preceding the filing of the application for licensure and for each year subsequent to licensure by the last day of the calendar or fiscal year in which the return or returns were due including any authorized extension of time;

2.5.b The person was not required to file a West Virginia personal income tax return because the low-income earned income exclusion applies (federal adjusted gross income is \$10,000 or less and earned income is \$10,000 or less). In this case, no West Virginia personal income tax return is required unless the difference between federal adjusted gross income and the amount of earned income excluded exceeds the amount of the allowable personal exemptions; or

2.5.c The person was required to file a federal income tax return for the taxable year, but the person was not required to file a West Virginia personal income tax return for the same taxable year because the person was claimed as a deduction on his or her parent's income tax return for the taxable year;

2.5.c.1 In this case, the personal exemption available to the child is \$500 and not \$2,000; and

2.5.c.2 A child with West Virginia adjusted gross income in excess of \$500 is required to file a West Virginia personal income tax annual return except when the low-income earned income exclusion reduces West Virginia adjusted gross income to \$500 or less; or

2.5.d The person was not able to comply with subdivision 'a' of subsection 2.5 of this rule due to circumstances beyond the control of the person, and the inability to comply was not, in the determination of the commission, the result of a willful act or neglect by the person;

2.5.d.1 If the commission determines that the applicant relied on a paid tax preparer, the return will be considered timely filed when filed within six months beyond the limit set forth in subdivision 2.5.a if the paid preparer submits an affidavit to the commission, on a form acceptable to the commission, stating the applicant's return was not filed within twelve months of the end of the taxable year due to an error or omission on the part of the paid preparer; or

2.5.d.2 If the commission determines that the applicant's financial records were destroyed by fire, flood or other natural or man-made disaster, the return will be considered timely filed when filed.

2.6. "Gross profits" means the portion of gross terminal income collected by the commission from the permittee that remains after the commission deducts two percent of gross terminal income for administrative expenses.

2.7. "Gross terminal income" means the total amount of cash inserted into video lottery terminals operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminals in exchange for winning redemption tickets printed by the video lottery terminals. Gross terminal income may also be determined by subtracting total credits won from total credits played. Either method will yield the same gross terminal income for the period.

2.8. "Indirect ownership" means an interest a person owns in an entity or in property solely as a result of application of constructive ownership rules without regard to any direct ownership interest (or other beneficial interest) in the entity or property. "Indirect ownership" shall be determined under the rules applicable to determining whether a gain or loss between related parties is recognized for federal income tax purposes provided in section 267 of the Internal Revenue Code and regulations of the Secretary of the United States Treasury.

2.9. "License" or "video lottery license" means the written authorization granted by the commission pursuant to the Act and this rule that permits the person named in the license to engage in the activity for which the license was issued during the period of time for which the license was issued, unless the license is surrendered by the licensee, or is cancelled or revoked by the director or the commission, before its expiration date. The activity for which the license was issued may not be engaged in during any period of time for which the license has been suspended by the director or the commission. The commission issues four types of licenses: (A) a limited video lottery retailer's license, (B) a manufacturer's license, (C) an operator's license and (D) a service technician's license.

2.10. "Modified terminal not approved by the commission" as used in subsection 15.1 of this rule, means a video lottery terminal whose assembly or operational functions are not identical to the video lottery terminal that was tested by the commission's independent testing laboratory and approved by the commission for sale or lease to a permittee in West Virginia

2.11. "Other act beyond the control of the permittee," as used in W.Va. Code §29-22B-1113(b), means a natural or man-made occurrence that was not caused by any person having direct or indirect ownership or control of the permittee. These occurrences include, but are not limited to, the following:

2.11.1. Failure of the electric power utility, the telephone utility, the water utility or the natural gas utility to provide electric power, telephone service, water or (if needed) natural gas to the restricted access adult-only facility;

2.11.2. The rendering of the restricted access adult-only facility uninhabitable by reason of smoke or water damage from a fire in an adjacent location of the building or structure in which the restricted access adult-only facility is located;

2.11.3. A declaration of a civil emergency that closes the premises in which the restricted access adult-only facility is located; or

2.11.4. A hardware or software malfunction in a video lottery terminal that can be corrected only by the licensed manufacturer that built the video lottery terminal, if the malfunction is registered by the manufacturer with the commission before the downtime limit expires.

2.12. "Pin ball machine" as it appears in W.Va. Code §29-22B-331 means an electro-mechanical amusement device in which a solid metal ball propelled by a plunger scores points as it rolls down a slanting surface among pins and targets. Flippers located on each side of the slanted surface

allow the person playing the machine to keep the ball in play thereby scoring more points. "Pinball machine" does not include any electronic simulation that does not use a mechanical plunger, mechanical flippers or a physical solid metal ball to operate the game.

2.13. "Restricted access adult-only facility" means and is limited to:

2.13.a. A private club licensed by the alcohol beverage control commissioner under W. Va. Code § 60-7-1 *et seq.* that is also licensed by the commission as a limited video lottery retailer to allow members and their guests to play video lottery games, subject to the following restrictions:

2.13.a.1. When a private club is frequented by minors and their parents, the private club is not a restricted access adult-only facility unless all of its video lottery terminals are located in a separate room suitable for the location of video lottery terminals with adult-only restricted access, the interior of which is not visible to persons outside the room. The commission shall determine whether the separate room is suitable for the location of video lottery terminals.

2.13.a.2. When a place of business includes a private club licensed under W. Va. Code § 60-7-1 *et seq.* and the place of business sells petroleum products, the private club may not have a limited video lottery retailer's license. This restriction applies even though the video lottery terminals would be located in a separate room, or in a building that is part of, contiguous to or adjoining a place of business that sells petroleum products. This restriction applies even though the private club or the business that sells petroleum products, or both businesses, are located in owned or leased space and even though the private club and the business that sells petroleum products are owned or operated by unrelated parties for purposes of application of section 267 of the Internal Revenue Code.

2.13.b. A place of business that (A) does not sell petroleum products, (B) has a "Class A" nonintoxicating beer license issued by the alcohol beverage control commissioner under W. Va. Code § 11-16-1 *et seq.* allowing the holder to sell nonintoxicating beer for consumption on the premises, and (C) meets all of the following:

2.13.b.1. The business derives at least 40% of its annual gross receipts at that location from sales of nonintoxicating beer to consumers and of the gross receipts from sales of nonintoxicating beer, at least 80% are from sales of nonintoxicating beer for consumption on the premises.

2.13.b.1.A. Example 1. ZXY pizza shop has a Class "A" nonintoxicating beer license. Annual gross receipts at that location from all sources is \$2 million. Of this amount, \$750,000 is from sales of nonintoxicating beer. Because gross receipts from sales of nonintoxicating beer is less than 40 percent of gross receipts from all sales of goods and services, the pizza shop is not eligible for a limited video lottery license.

2.13.b.1.B. Example 2. ZXY pizza shop has a Class "A" nonintoxicating beer license. Annual gross receipts at that location from all sources is \$2 million. Of this amount, \$850,000 is from sales of nonintoxicating beer. Annual gross receipts from sales of nonintoxicating beer for consumption on the premises is \$637,500 while annual gross receipts from sales of nonintoxicating beer for off-premises consumption is \$212,500. In this example, more than 40 percent of annual gross receipts are from sales of nonintoxicating beer. However, because annual gross receipts from sales of nonintoxicating beer for consumption on the premises is less than 80 percent of gross receipts from all sales of nonintoxicating beer, the pizza shop is not eligible for a limited video lottery license.

2.13.b.1.C. A business that has a Class "A" nonintoxicating beer license and wants to obtain or retain a limited video lottery license shall make and retain adequate records of its

sales of goods and services. At a minimum, the records shall show, for each business location, total annual gross receipts, total annual gross receipts from all sales of nonintoxicating beer and total annual gross receipts from sales of nonintoxicating beer for consumption on the premises. When the business location has a Class "A" nonintoxicating beer license, the records separately shall show for each business day gross receipts derived from sales of nonintoxicating beer for consumption on the premises and gross receipts derived from sales of nonintoxicating beer for consumption off the premises. Whether nonintoxicating beer is sold for consumption on or off the premises is determined at the time nonintoxicating beer is sold to the customer. If nonintoxicating beer is sold for consumption off the premises, the sale is to be recorded as a sale for off-premises consumption even though the customer, after receiving the nonintoxicating beer in a sealed container, opens the container and consumes the product in whole or in part on the premises.

2.13.b.1.D. In the absence of adequate records, the commission shall presume that annual gross receipts from sales of nonintoxicating beer is less than 40 percent of total annual gross receipts from all sales of goods and services at the business location.

2.13.b.1.E. When the business does not keep adequate books and records of gross receipts from sales on nonintoxicating beer for consumption on the premises and of gross receipts from sales of nonintoxicating beer for consumption off the premises, the commission shall presume that gross receipts from sales of nonintoxicating beer for consumption on the premises is less than 80 percent of all sales on nonintoxicating beer.

2.13.b.2. The business maintains a suitable kitchen and dining facility and related equipment for serving meals for on-premises consumption;

2.13.b.3. The business regularly prepares and sells meals for consumption on the premises;

2.13.b.4. The business has a separate room suitable for the location of video lottery terminals with adult-only restricted access, the interior of which is not visible to persons outside the room. The commission shall determine whether the separate room is suitable for the location of video lottery terminals; and

2.13.b.5. The business meets any additional requirement(s) or standard developed by the commission for a Class A beer licensee.

2.14. "Ten days after the date the ticket is printed," as that phrase is used in subsection 8.1 of this rule, is calculated by excluding the day the ticket was printed and including the tenth subsequent day until the close of video lottery gaming that began on the tenth subsequent day.

### **§179-5-3. Commission action on license renewals.**

The commission shall review a licensee's background prior to renewing a license by using the West Virginia information exchange (WVIX) operated by the West Virginia State Police.

### **§179-5-4. Review of continuing eligibility for license.**

4.1. The commission shall determine on a continuing basis the eligibility of licensees to hold a license by one or more of the following means:

4.1.a. The commission shall review the qualifications of each licensee on at least an annual basis;

4.1.b. The commission shall perform spot audits at retailer locations and at operator locations; and

4.1.c. The commission shall review reports of violations discovered by lottery investigators and ABCC inspectors during site visits to locations of operators, limited video lottery retailers and service technicians.

4.2. Each operator and each limited video lottery retailer shall continue to meet the residency requirements during the period for which the license is issued. If the licensee is a corporation, association, partnership, limited liability company or other legal entity, the chief executive officer and the majority of the officers, directors, partners or members of the entity, both in number and percentage of ownership interest, shall satisfy the residency requirements during the period for which the license is issued

4.3. Each limited video lottery retailer shall continue to hold either a private club license or a class A nonintoxicating beer license issued by the West Virginia alcohol beverage control commissioner;

4.3.a. If the alcohol beverage control commissioner suspends the retailer's private club license or class A nonintoxicating beer license, the director shall disable and cause not to operate the retailer's video lottery terminals at the location where the ABCC license is suspended and shall re-enable the video lottery terminals only when the suspension is lifted by the alcohol beverage control commissioner; and

4.3.b. If the alcohol beverage control commissioner revokes the retailer's private club license or class A nonintoxicating beer license, the director shall disable and cause not to operate the retailer's video lottery terminals at the licensed location and shall recommend to the commission that the limited video lottery retailer's license for that location be revoked.

4.4. If any condition that a licensee must meet for licensure changes after a license is granted, other than conditions in subsection 4.3 of this rule, the director shall suspend the license until the condition is corrected, and shall disable and cause not to operate during the period of suspension the licensee's video lottery terminals.

4.5. Renewal of a suspended license and the collection of the annual license fee will be held in abeyance until the reason for the underlying suspension is remedied whenever the limited video lottery license is suspended during the time when limited video licenses are renewed.

4.6. The commission may proceed to revoke the limited video lottery license whenever a suspension lasts longer than 30 days, whether the suspension is by the alcohol beverage control commissioner or by the commission.

#### **§179-5-5. Application forms and other documents.**

5.1. The commission shall approve the forms of application to be used, including, but not limited to:

5.1.a. An application form;

5.1.b. A personal data form;

5.1.c. FBI fingerprint cards; and

5.1.d. IRS form 8821 to disclose income tax filings, when necessary.

5.2. All application, registration and disclosure forms and other documents submitted to the lottery commission, by or on behalf of an applicant for purposes of determining qualification for a limited video lottery license, shall be sworn to or affirmed before an officer qualified to administer oaths.

**§179-5-6. Bonding requirements for operators and limited video lottery retailers who are permittees.**

6.1. Before any operator or limited video lottery retailer is issued a permit to own or lease video lottery terminals from a licensed manufacturer, the permittee shall post a bond executed by a surety company authorized to transact surety business in West Virginia, or an irrevocable "letter of credit," as defined in W. Va. Code §46-5-103, issued by a national or state bank or other financial institution acceptable to the commission to ensure the performance of the permittee's duties and responsibilities under the Act and this rule and indemnification of the commission.

6.1.a. For the license year beginning the October 1, 2001, the annual bond or irrevocable letter of credit posted shall be in an amount equal to \$1,500 multiplied by the number of video lottery terminal stated in the permit. When an amended permit is issued for additional video lottery terminals, the permittee shall post a supplemental bond or irrevocable letter of credit for the additional lottery terminals or, in the permittee's discretion, a replacement bond or irrevocable letter credit for the number of video lottery terminals stated in the amended permit;

6.1.b. For license years beginning after September 30, 2002, the commission shall obtain a single financial guarantee bond covering all permittees as provided in W. Va. Code §29-22B-515.;

6.1.b.1. The commission shall obtain a blanket bond covering all permittees by competitive bidding procedures through the purchasing division of the department of administration and shall apportion the cost of the bond premium among all participating permittees on a per-terminal basis;

6.1.b.2. Each permittee shall participate in the financial guarantee blanket bond program provided by the commission in the amount of at least \$2,000 for each terminal owned or leased by the permittee. The commission shall renew the blanket bond on an annual continuing basis. Bonding premium payments shall be made by electronic funds transfer from the permittee's bank accounts to the commission's revenues and transfers account each year; and

6.1.b.3. If it is determined by the director that one or more permittees should be bonded for an amount and in a form and manner different from the financial guarantee bond of at least \$2,000, or if other security should be provided by the permittee to ensure the performance of the permittee's duties and responsibilities or the indemnification of the commission, the director shall determine and impose the amount, form and manner of the coverage, and shall also report his or her determination to the commission.

6.2. The bond must be issued by a surety company authorized to transact surety business in West Virginia and the company must be approved by the West Virginia insurance commissioner as to solvency and responsibility.

6.3. A permittee who is a video lottery retailer that has permits for two or more restricted access adult-only facilities may post a blanket bond or irrevocable letter of credit for the number of video lottery terminals stated in all permits held by the permittee

6.4. Whenever a permittee has no valid bond or irrevocable letter of credit under this section, for the amount determined by this section, the commission shall disable and cause not to operate every video

lottery terminal of the permittee that is placed in a licensed retail location until the appropriate bond or irrevocable letter of credit is received by the commission and becomes effective.

**§179-5-7. Additional duties of limited video lottery retailers.**

7.1. In addition to the additional duties as listed in W.Va. Code §29-22G-702, a limited video lottery retailer shall:

7.1.a. Ensure that the computer controller/validator unit is at all times turned on, supplied with electric power, supplied with paper tape and connected to each limited video lottery terminal and to the telephone connection to the commission's central computer;

7.1.b. Acquire and install one or more security cameras, at least one video cassette recorder, memory disk or other device that will record the video feed from the security cameras, and the necessary cabling to connect the cameras to the video cassette recorder or other device in the restricted access adult-only facility on the premises of a licensed limited video lottery retailer;

7.1.c. Ensure that security cameras are placed and remain placed in the specific locations that have been approved by the commission, and are not relocated within the facility without the prior written approval of the director;

7.1.d. Ensure that security cameras are correctly aimed at the video lottery terminals and are always operating 24 hours a day;

7.1.e. Ensure that video recorders tied to the security cameras are operating 24 hours a day;

7.1.f. Ensure that videotapes or other storage media are changed when they are completely recorded, and that no tape or other storage media are reused more than the tape or media manufacturer's recommended number of times;

7.1.g. Ensure that videotapes or other storage media are retained for at least 60 days after they are recorded;

7.1.h. Pay for all credits won upon presentment of a valid winning video lottery ticket from a video lottery terminal located on the premises where it is presented for payment;

7.1.i. Clear printer paper jams and bill acceptor jams and replace paper rolls in the printer unit in a competent and timely manner based on training received from a licensed service technician;

**§179-5-8. Additional duties of limited video lottery retailer regarding payment of credits.**

8.1. A limited video lottery ticket must be presented for payment no later than ten days after the date the ticket is printed.

8.1.a. This ten-day calculation will not be extended regardless of whether the tenth day falls on a Saturday, Sunday or legal holiday; and

8.1.b. When an act of God such as a flood renders the video lottery gaming system at a retail location inoperative in the opinion of the West Virginia State Lottery Commission, the ten-day

time period will be deemed to be interrupted until such time as the video lottery gaming system is restored to operation.

**§179-5-9. Supplemental duties of manufacturers.**

9.1. In addition to the additional duties imposed on all licensees by W.Va. Code §29-22B-705, a manufacturer shall:

9.1.a. Pay no compensation or inducement of any kind to any operator or retailer, or give or transfer anything of value to any operator or retailer, beyond a nominal consideration of one dollar per year. "Anything of value" does not include the following transactions:

9.1.a.1. A lease agreement for video lottery terminals with the option to purchase the video lottery terminals at the end of the lease term, so long as the terms are reasonable and customary as determined by the commission; and

9.1.a.2. A loan for the purchase of video lottery terminals so long as the terms are reasonable and customary as determined by the commission; and

9.1.b. Prepare training courses for applicants seeking to be licensed as service technicians and prepare and administer course proficiency tests approved by the commission at the conclusion of each course;

**§179-5-10. Supplemental duties of service technicians.**

10.1. In addition to the additional duties imposed on all licensees by W.Va. Code §29-22B-707, a manufacturer shall train retailers and their employees how to clear printer paper jams and bill acceptor jams and replace paper rolls in the printer unit in a competent and timely manner; and

**§179-5-11. Additional requirements for testing of video lottery terminals and associated equipment.**

11.1. The commission shall review and approve one or more independent testing laboratories for the purpose of inspecting and testing video lottery terminals, associated equipment and software to be operated or used in West Virginia under this rule;

11.1.a. Any testing laboratory appointed by the commission for these functions shall, at the time of appointment, have a minimum of 5 years of experience testing video gaming equipment on behalf of government regulators of video gaming devices such as the video lottery terminals regulated by this rule;

11.1.b. The testing laboratories shall report all testing results to the commission, both video lottery terminals, associated equipment and software that comply with the Act and this rule, as well as video lottery terminals, associated equipment and software that do not comply; and

11.1.c. The testing laboratories shall test to assure the commission in writing that the video lottery terminals, associated equipment and software tested comply with all requirements and specifications set forth in the Act and this rule.

11.2. The commission shall require that hardware modifications and modifications of software be submitted to a designated testing laboratory by the commission. Modified hardware and software must be approved by the commission before it may be used in limited video lottery in West Virginia.

11.3. The commission may also require that the manufacturer transport two working models of a video lottery terminal with all components as it will be set up in retail locations, including any associated equipment that may be used, to the designated testing laboratory for testing, examination and analysis. When this is required, the manufacturer shall pay the cost of transportation of one video lottery terminal to lottery headquarters and a second video lottery terminal to the commission's hot backup computer site.

**§179-5-12. Additional video lottery hardware and software specifications not found in W.Va. Code §§29-22B-901 through 912.**

12.1. A video lottery terminal shall not allow more than two dollars to be wagered on a single game; however, the following game options do not violate the two dollar wager limit on a single game because none require the insertion of more than \$2.00 to play the game:

- 12.1.a. The double-up option in poker games;
- 12.1.b. The splitting option in blackjack games;
- 12.1.c. The insurance option in blackjack games; and
- 12.1.d. The let-it-ride option in blackjack games.

12.2. A video lottery terminal may not be designed or configured to allow more than one individual to use video lottery terminal at the same time.

12.3. Each video lottery terminal must contain a single printing mechanism capable of printing an original ticket and retaining an exact legible copy within the video lottery terminal, or other means of capturing and retaining an electronic copy of the ticket data as approved by the commission for at least eleven days after the ticket is printed;

12.3.a. If an impact printer is used by the video lottery terminal, the retained audit tape must be a different color paper from the ticket paper received by the player;

12.3.b. If a thermal printer is used and the duplicate information is stored electronically in the video lottery terminal, any duplicate ticket printed by the terminal must have the prominent word "DUPLICATE" printed on the face of the ticket; and

12.3.c. In addition to the information required to be printed on the ticket by W.Va. Code §29-22B-905, the unique terminal identification number shall be recorded on the ticket when credits accrued on a video lottery terminal are redeemed for cash.

12.4. The commission shall provide a label for each video lottery prominently displaying information on how to locate and contact persons or organizations available for help, assistance or treatment for persons who may have a gambling addiction, together with the telephone number "1-800-GAMBLER" or another help line telephone number that the commission may later choose.

12.4. Each limited video lottery retailer shall conspicuously post the following printed statement provided by the commission in at least 24-pitch type size: "CAUTION - Gambling and playing this machine can be hazardous to your health, your finances, and your future."

**§179-5-13. Only licensed manufacturers may sell or lease video lottery terminals to permittees.**

13.1. Only a licensed manufacturer of video lottery terminals may sell, lease or otherwise transfer ownership or possession of video lottery terminals for use in this state to a person who possesses

at the time of delivery a valid permit to own or lease one or more video lottery terminals and a valid operator's license or a valid limited video lottery retailer's license issued by the commission.

13.2. One permittee may not sell, lease or otherwise transfer ownership or possession of a video lottery terminal to another permittee.

13.3. With the prior written approval of the commission, a licensed manufacturer may broker the sale of video lottery terminals it has manufactured from one permittee to another permittee provided the acquiring permittee is authorized by the commission to acquire the video lottery terminals.

**§179-5-14. Modifications to previously approved video lottery terminals.**

14.1. Changes to previously-approved EPROMs, the motherboard or any other hardware within the logic area of the video lottery terminal, as well as coin acceptors, bill acceptors and printers shall be approved in writing by the commission before live wagering at retail locations may occur using any modified hardware or software.

14.2. Changes to previously approved software that affects in any way the operation or payout of a video lottery terminal must be approved in writing by the commission before live wagering at retail locations may occur using any payout.

14.3. Changes to the video lottery terminal cabinet, including all printed material that appears on the cabinet or its clear glass or plastic front must be approved in writing by the director prior to use with the modification;

**§179-5-15. Unapproved video lottery terminals; action on licenses; civil penalty.**

15.1. A video lottery terminal is deemed *prima facie* to be contraband if a manufacturer or other person supplies the video lottery terminal or a video lottery terminal modification to a licensed permittee or license limited video lottery retailer and the new or modified terminal has not been approved by the commission.

15.2. When video lottery terminals have been seized and destroyed as provided in W.Va. Code §29-22B-1204, the commission shall suspend the licenses of the permittee and the licensed manufacturer for not less than one week or more than five weeks;

15.2.a. When the license of an operator is suspended, the commission shall disable and cause not to operate all video lottery terminals owned or leased by the operator in the state of West Virginia;

15.2.b. When the license of a limited video lottery retailer who is a permittee is suspended, the commission shall disable and cause not to operate all video lottery terminals owned or leased by the licensee at the retail location for which the license was suspended; and

15.2.c. When the license of a manufacturer is suspended, the commission shall disable and cause not to operate all video lottery terminals manufactured by the manufacturer and operating in the state of West Virginia.

15.3. In addition to suspension of licenses, the commission may impose a civil money penalty as provided in W. Va. Code §29-22B-1601.

**§179-5-16. Initial permit fee payment.**

16.1. For persons authorized to own or lease video lottery terminals without going through the bid process, the fee shall initially be paid at the time the permit is issued for the number of video lottery terminals stated on the permit.

16.2. For persons authorized to own or lease video lottery terminals as a result of a bidding process, the amount bid per terminal shall be paid in lieu of the initial \$1,000 per terminal fee.

**§179-5-17. Reservation of authority to have video lottery terminals on or before August 1, 2001 by persons who held a private club license or Class "A" nonintoxicating beer license on January 1, 2001.**

17.1. On or before August 1, 2001, every person who on the January 1, 2001 held a private club license issued as provided W. Va. Code §60-7-1 *et seq.*, or a class "A" nonintoxicating beer license issued as provided in W. Va. Code §11-16-1 *et seq.*, and who wants to offer video lottery terminals, as defined in this rule, for the enjoyment of the licensee's customers may file an application to be licensed as a limited video lottery retailer under this rule.

17.2. The applications shall be submitted on forms supplied by the director. Each application shall:

17.2.a. Be signed by the applicant or a person authorized to sign the application filed for a person who is not an individual; and

17.2.b. Provide all of the information requested by the commission.

17.3. The commission shall return to the applicant, for completion and re-filing an application that is incomplete in any material respect.

17.4. An application filed on or before August 1, 2001 for a limited video lottery retailer's license shall state the number of video lottery terminals to be located on the premise of the applicant. This number may not exceed 5 video lottery terminals, except that eligible fraternal societies and veterans' organizations may have up to 10 video lottery terminals on the premises for which the limited video lottery license is issued.

17.5. The application shall also elect and state whether the applicant intends to own or lease up to 2 video lottery terminals (up to 7 in the case of eligible fraternal and veterans' organizations) from a licensed manufacturer or obtain them from a licensed operator.

17.6. A licensee who elects to own 2 video lottery terminals (or 7 in the case of certain fraternal and veteran organizations) may obtain additional video lottery terminals from an operator or by being a successful bidder under W.Va. Code §29-22B- 1107 provided the total number of video lottery terminals on the licensee's premises does not exceed the number specified in subsection 17.4 of this section.

17.7. An applicant, upon payment of \$1,000 per video lottery terminal the applicant intends to own or lease, shall be issued a permit to purchase or lease from a licensed manufacturer the number of video lottery terminals stated in the permit if the applicant held a private club license on January 1, 2001, and the applicant elects to own or lease up to 2 video lottery terminals from a licensed manufacturer (or up to 7 video lottery terminals in the case of an eligible fraternal or veterans' organization), and the applicant qualifies as a private club for a limited video lottery license

17.8. An applicant who intends to own or lease video lottery terminals, upon payment of \$1,000 per video lottery terminal, shall be issued a permit to purchase or lease from a licensed manufacturer the number of video lottery terminals stated in the permit if the applicant held a Class "A" nonintoxicating

beer license on January 1, 2001, but did not also hold a private club license on that date for the location for which the application for a limited video lottery retailer's license is submitted.

17.9. The commission, when issuing a limited video lottery retailer's license to an applicant who qualifies as a private club for a limited video lottery license, shall also issue the applicant a certificate reserving up to 2 video lottery terminal authorizations (or up to 7 video lottery terminals authorizations in the case of an eligible fraternal or veterans' organization) as requested in the application filed on or before August 1, 2001 if the applicant held a private club license on January 1, 2001, and the applicant does not elect to own or lease up to 2 video lottery terminals from a licensed manufacturer (or up to 7 video lottery terminal authorizations in the case of an eligible fraternal or veterans' organization);

17.9.a. The applicant may then contract with an operator for video lottery terminals and give the certificate of reservation to the operator; and.

17.9.b. The operator, upon submitting to the commission a true copy of its contract with the licensed video lottery retailer along with the certificate of reservation issued to the retailer by the commission and payment of \$1,000 per video lottery terminal stated in the certificate of reservation shall be issued a permit or an amended permit.

17.10. When the commission issues a limited video lottery retailer's license to an applicant who held a Class "A" nonintoxicating beer license on January 1, 2001, but did not also hold a private club license on that date for the location for which the application for a limited video lottery retailer's license is submitted, and the applicant does not elect to own or lease up to 2 video lottery terminals from a licensed manufacturer (or up to 7 video lottery terminal authorizations in the case of an eligible fraternal or veterans' organization), the commission shall also issue the applicant a certificate reserving up to 2 video lottery terminal authorizations (or up to 7 video lottery terminals authorizations in the case of an eligible fraternal or veterans' organization) as requested in the application if it was filed on or before August 1, 2001;

17.10.a. The licensee may then contract with an operator for video lottery terminals and may give the certificate of reservation to the operator; and

17.10.b. The operator, upon submitting to the commission a true copy of its contract with the licensed video lottery retailer along with the certificate of reservation issued to the retailer by the commission and payment of \$1,000 per video lottery terminal stated in the certificate of reservation shall be issued a permit or an amended permit.

17.11. An applicant shall not be issued a permit to purchase or lease video lottery terminals from a licensed manufacturer or a certificate of reservation if the applicant held a private club license or class "A" nonintoxicating beer license on January 1, 2001, and if on August 1, 2001, the person does not qualify for issuance of a limited video lottery license. The person shall be required to obtain all video lottery terminals from a licensed operator or be a successful bidder under W.Va. Code §29-22B-1107 if the person qualify in the future for a limited video lottery retailer's license.

17.12. An applicant shall not be issued a permit to purchase or lease video lottery terminals from a licensed manufacturer or a certificate of reservation if the applicant held a class "A" nonintoxicating beer license on January 1, 2001 but not a private club license as of that date, and if on August 1, 2001, the person does not qualify for issuance of a limited video lottery license as a holder of a class "A" nonintoxicating beer license. The person shall obtain all video lottery terminals from a licensed operator or be a successful bidder under W.Va. Code §29-22B-1107 for authorization to purchase or lease video lottery terminals from a licensed manufacturer if the person is issued a private club license after December 31, 2000, and qualifies for a limited video lottery retailer's license.

17.13. The commission shall issue an amended permit which shall expire at 12:00 a.m. in this state on July 1, 2011 when the number of video lottery terminals a permittee is allowed to own or lease increases or decreases .

17.14. A permit to own or lease video lottery terminals issued after July 1, 2011 for the 10-year period that ends June 30, 2021, expires at 12:00 a.m. in this state on July 1, 2021, unless it is surrendered or revoked before that time. When the number of video lottery terminals a permittee is allowed to own or lease increases or decreases, the commission shall issue an amended permit which shall expire at 12:00 a.m. in this state on July 1, 2021.

17.15. A person licensed as a limited video lottery retail shall continuously meet the qualifications for issuance of that license. If the limited video lottery license is surrendered or revoked by the commission, the licensee's permit to own or lease video lottery terminals shall also be surrendered or revoked.

17.16. A licensee's permit expires at 12:00 a.m. on the 31<sup>st</sup> day if the person's license as a limited video lottery retailer expires and the license is not renewed within 30 days after the expiration date. The person shall then obtain all video lottery terminals on the premises for which the license is issued from a licensed operator or as a result of a successful under W.Va. Code §29-22B-1107 if the person subsequently reapplies for a limited video lottery retailer's license and the license is issued.

17.17. A permit to own or lease video lottery terminals is a revocable privilege granted pursuant to the provision of the Act and this rule. Issuance of a permit or a license under the Act does not create (A) any property in the permit or the license, (B) any right to transfer or encumber the permit or license, (C) any vested right in the permit or license, or (D) the accrual of any value to the privilege of participating in any limited video lottery activity.

17.18. An application for a limited video lottery retailer's license may not include more than one physical location. A separate application shall be submitted for each location at which the applicant wants to offer video lottery terminals if a person owns or operates two or more physical locations licensed by the alcohol beverage control commissioner.

#### **§179-5-18. The bidding process.**

18.1. Mailed and courier-delivered bids shall be addressed as follows:

Submit one (1) original bid to:

State of West Virginia  
Department of Administration  
Purchasing Division  
2019 Washington Street, East  
P.O. Box 50130  
Charleston, WV 25305-0130

Submit one (1) copy of the bid to:

State Auditor's Office  
Bid Observer  
State of West Virginia  
1900 Kanawha Blvd., East  
Bldg. 1, Room W116  
Charleston, WV 25305-0230

18.2. The outside envelope/package(s) should be clearly marked:

18.2.a. Buyer: \_\_\_\_\_, Director;

18.2.b. Req.: Video Lottery Permit Bids;

18.2.c. Date: (opening) \_\_\_\_\_; and

18.2.d. Time: (opening) \_\_\_\_\_ .

18.3. Bids submitted to either office by facsimile shall be rejected.

18.4. Failure of the United States Postal Service or a courier service to make timely delivery of any bid shall not act to validate any bid not in the hands of the Purchasing Division or the State Auditor's Bid Observer's Office by the time and date specified in the class II-O advertisement.

18.3. Each bid shall indicate both the number of video lottery terminals for which the permit is sought and the per-terminal bid for which the permit is sought.

18.4. No bid may be altered or withdrawn after the appointed hour for the opening of the bids.

18.5. The Auditor's representatives and Purchasing Division officials will open all received bids in the same room and will match bids to each duplicate;

18.5.a. The Lottery's representatives shall reject any bid for which there is no duplicate, or where the original and copy differ in amount or in any other material way;

18.5.b. The Lottery's representatives will next determine whether the original bid sent to the Purchasing Division contains a bid bond equal to 100 percent of the per-terminal bid amount multiplied by the number of video lottery terminal authorizations requested by the bid;

18.5.b.1. If no bond or State Treasurer's receipt is found, the bid shall be rejected; or

18.5.b.2. If the amount of the bond is less than 100 percent of the per-terminal bid amount multiplied by the number of video lottery terminal authorizations requested, the bid shall be rejected; and

18.5.c. The Lottery's representatives shall next reject any bid as non-responsive if the per terminal bid amount is less than the minimum per-terminal bid amount established by the West Virginia State Lottery Commission prior to the first publication and included in the published notice;

18.5.d. The Lottery's representatives shall reduce the number of terminal authorizations requested in the bid if a successful bid would grant to the bidder a total number of video lottery terminals greater than 7½% of the total available terminals authorized by the Act if the bidder is an operator, 10 if the bidder is a retailer that is a fraternal or veterans organization, or 5 if the bidder is a retailer who is not a fraternal or veterans organization with a single licensed retail location. When the bidder is a video lottery retailer who has more than one licensed retail location, the number of video lottery terminal authorizations may not exceed 5 multiplied by the number of retail locations for which the bidder holds a limited video lottery retail license;

18.8.e. Whenever there are two or more bids of the same dollar amount and the number of authorizations for which the bids were submitted exceeds the number of authorizations still available to fill the bids, the commission shall award the permit based upon the drawing of lots among the bidders; and

18.8.f. Once all bids are opened, those bids that have passed all qualitative checks will be arranged in per-terminal amount from highest bid to lowest bid and the results posted by representatives of the Lottery in a spreadsheet or on a marker board. Each listing shall show the following information:

18.8.f.1. Name of the Bidder;

18.8.f.2. Per terminal amount bid in US dollars;

18.8.f.3. Number of terminal authorizations requested; and

18.8.f.4. Number of terminal authorizations remaining after this bid opening is completed.

18.9. All permits shall be signed by the director of the lottery in the name of the state of West Virginia and shall state number of video lottery terminals the permit authorizes the holder to own or lease from licensed manufacturers.

#### **§179-5-19. Examples of the preference for current permit holders in year 2011.**

19.1. The preference for current permit holders allowed by W.Va. Code §29-22B-1108 shall be computed by adding 5 percent of the bid price submitted by the current permit holder to the amount of the bid submitted by that holder;

19.1.a. Example for year 2011. Operator "A" holds a current permit to own or lease 500 video lottery terminals. Operator "A" submits a bid of \$3,000 per terminal for authorization to own or lease 500 terminals during the 10-year period that begins July 1, 2011. The minimum bid amount set by the commission is \$3,000 per terminal authorization. When the bids are opened and the amounts of the per terminal bids are arrayed from highest to lowest, it is apparent that operator "A" is not a successful bidder for some or all of the sought operator "A." Before the permits are awarded, the commission will apply the 5 percent preference to bids submitted by a current permittee whose bids equal or exceed the minimum per terminal bid authorization amount set by the commission. With this preference added, operator "A's" bid of \$3,000 per terminal authorization is effectively \$3,150 per terminal authorization. Because of this preference, operator "A" is a successful bidder for 500 video lottery terminal authorizations. The amount due from operator "A" will be \$1.5 million plus applicable license fees. The amount due shall be paid to the commission on or before the dated set by the commission; and

19.1.b. Example for year 2021. Operator "A" holds a current permit to own or lease 500 video lottery terminals. Operator "A" submits a bid of \$4,000 per terminal for authorization to own or lease 500 terminals during the 10-year period that begins July 1, 2021. The minimum bid amount set by the commission is \$4,000 per terminal authorization. When the bids are opened and the amounts of the per terminal bids are arrayed from highest to lowest, it is apparent that operator "A" is not a successful bidder for some or all of the sought operator "A." Before the permits are awarded, the commission will apply the 5 percent preference to bids submitted by current permittee whose bids equal or exceed the minimum per terminal bid authorization amount set by the commission. With this preference added, operator "A's" bid of \$4,000 per terminal authorization is effectively \$4,200 per terminal authorization. Because of this preference, operator "A" is a successful bidder for 500 video lottery terminal authorizations. The amount due from operator "A" will be \$2 million plus applicable license fees. The amount due shall be paid to the commission on or before the dated set by the commission.

19.2. The preference may not be calculated on any bid that is for less than the minimum per terminal authorization bid price set by the commission.

#### **§179-5-20. Operator –retailer contracts.**

20.1. A true copy of all contracts the applicant has entered into with persons who hold a limited video lottery retailer's license issued under the Act for placement of video lottery terminals in the premises of the limited video lottery retailer for whom authorizations were reserved shall be attached to

the application along with a true copy of the certificate of reservation issued by the commission to that video lottery retailer.

20.2. The contract between the operator and the limited video lottery retailer shall be in writing and be signed by the parties, or their duly authorized representative when the party is a person who is not an individual;

20.2.a. The commission shall supply a contract elements form to provide quick and easy review of the important terms and elements of each contract;

20.2.b. The operator submitting each contract shall list the required information and contract terms from the signed contract onto the commission-supplied form and shall staple the form onto the appropriate contract prior to filing the contract with the commission; and

20.2.c. The operator shall provide to the commission an affidavit stapled to each contract, which is signed and attested to by the operator's chief executive stating that this contract is the only contract, agreement or understanding, written or oral, between the operator and the licensed video lottery retailer concerning the placement and operation of limited video lottery terminals, and that the operator will execute no further limited video lottery agreements with the retailer so long as this attached agreement is in force for video lottery terminals on the premise of the retailer stated in the contract. Any other agreements between the operator and the limited video lottery retailer shall be identified by the operator and are subject to review by the commission. Those agreements shall be arms length and for fair market consideration, and shall not be for excess or unreasonable consideration designed to circumvent the requirement of this subdivision 20.2.c of this subsection.

**§179-5-21. Additional requirements regarding the 150-foot requirement for location of a limited video lottery retailer license.**

21.1. A retailer license will not be denied based solely on the proposed establishment being closer than 150 feet to an existing limited video lottery retail licensee or in a structure where another limited video lottery licensee was already licensed to conduct video lottery games so long as the initial application for a limited video lottery retailer license for the premises was applied for on or before July 1, 2002 if an applicant applies for a limited video lottery license for a specific premise which was a licensed ABCC location under a valid and continuing private club liquor license or a class "A" nonintoxicating beer license on or before January 1, 2001, and if an ABCC license for that premises is still in effect at the time of the filing of the application for a limited video lottery license for the same premise.

21.2. After July 1, 2002, the initial exemption from the 150-foot restriction and the single structure under one roof restriction as stated in subsection 21.1 of this rule shall be considered waived for the premises whenever a premises that has initially been licensed by the commission as a limited video lottery retail location ceases to offer limited video lottery gaming for at least 180 consecutive days.

21.3. The award of the license shall be determined based on the date the applications were received in the state lottery office when two or more applications for a limited video lottery retailer's license are pending at the same time, if the proposed premise of each applicant would be in the same structure under one roof, and each applicant meets all other requirements for a retailer license;

21.3.a. The license shall be awarded to the applicant who first filed a complete application; and

21.3.b. The license shall be issued by the commission by lots when the applications were received on the same day.

21.4. The award of a retailer license shall be determined based on the date the applications were received in the state lottery office when two applications for limited video lottery retailer's licenses are pending at the same time for premises that are within 150 feet of each other, and neither premise is within 150 feet of an existing licensee;

21.4.a. The license shall be awarded to the applicant who first filed a complete application; and

21.4.b. The license shall be issued by the commission by lots when the applications were received on the same day.

21.5. The award of a retailer license shall be determined based on the date the applications were received in the state lottery office when more than two applicants for limited video lottery retailer's license are pending at the same time for premises that are within 150 feet of one or more other applicants;

21.5.a. The license shall be awarded to the applicant who first filed a complete application if complete applications were received on the same day, the commission shall first eliminate one or more applicants if by doing so, the remaining applicants would comply with the 150-foot restriction; and

21.5.b. The award of the license shall be determined by the commission by lots when elimination of one or more applicants will not make other applicants eligible.

**§179-5-22. Testing and installation of approved lottery terminals.**

22.1. The request for original approval or subsequent modification shall be made directly to one of the commission's designated independent testing laboratories.

22.2. The request for modification shall contain a detailed description of the type of change, the reasons for the change and technical documentation of the change.

22.3. Each video lottery terminal approved for placement at a licensed location shall conform to the exact specifications of the video lottery terminal prototype tested and approved by the independent testing laboratory, and approved by the commission.

22.4. The director shall disable and cause not to operate during the suspension period every video lottery terminal supplied by the operator to all licensed video lottery retailers when an operator's license is suspended.

22.5. The director shall disable and cause not to operate during a license suspension period every video lottery terminal owned or leased by the permittee when a the license of a video lottery retailer who is also a permittee is suspended.

22.5. The director shall disable and cause not to operate during the suspension period every video lottery terminal supplied by the manufacturer to permittees that are placed in licensed video lottery retailer locations when a manufacturer's license is suspended.

**§179-5-23. Transportation from manufacturer and registration of video lottery terminals.**

23.1. A manufacturer transporting or arranging for the transportation of one or more video lottery terminals into this state shall, prior to shipment, provide the commission with the number or other identification mark that identifies the security seal on the container within the cargo compartment of the carrier delivering one or more video lottery terminals to a permittee.

23.2. Notices required by this section twenty-three and W.Va. Code §29-22B-1205 shall be either by United States mail, by courier service, by facsimile or by Internet electronic mail using the format prescribed by the commission.

23.3. No operator or limited video lottery retailer who holds a permit to own or lease a video lottery terminal may transport, or arrange for the transportation of, a video lottery terminal to a non-licensed retail location, or to a licensed limited access adult-only location if the transported terminal or terminals will result in more video lottery terminals in the new location than has been authorized by the commission.

**§179-5-24. Training for service technician licensees and license applicants.**

24.1. Instructors for service technician training classes shall be employed by the manufacturer or be retained by the manufacturer under contract.

24.2. No individual may act as an instructor who is an officer, principal or employee of a person that holds a limited video lottery license as an operator, retailer or service technician.

**§179-5-25. Master keys.**

25.1. Each licensed manufacturer shall provide the commission with 40 copies of the master key for access into the logic area door of the manufacturer's video lottery terminals placed in operation.

25.2. No manufacturer may provide any copies of the logic area access key to any operator, retailer, service technician or to any other person other than the commission.

25.3. The object of subsections 25.1 and 25.2 of this section is that one master key shall be capable of opening all video lottery terminals the manufacturer sells or leases to permittees for use in locations governed by the Act and this rule.

**§179-5-26. Sealing the logic area of the video lottery terminal and the controller unit.**

26.1. The commission shall provide logic box and controller unit security seals for each video lottery terminal and controller unit in operation.

26.2. The seal shall be affixed by commission personnel to prevent unauthorized access to the video lottery terminal logic unit or tampering with the controller unit.

26.3. Any licensee that discovers a broken or torn seal shall immediately report the incident to the lottery commission by telephone and shall also report to the commission in writing within thirty-six hours by facsimile or Internet electronic mail;

26.3.a. The reporting licensee shall identify himself or herself by name and by license number;

26.3.b. The reporting licensee shall identify the video lottery terminal by location, license number and decal number;

26.3.c. The reporting licensee shall report the date and time when the broken or torn seal was discovered; and

26.3.d. The reporting licensee shall state the hard meter reading of the video lottery

terminal at the time the broken or torn seal was discovered.

26.4. Upon receipt of a report that a seal has been broken or torn, the commission shall disable the video lottery terminal.

26.5. The video lottery terminal shall remain disabled until completion by the commission of an investigation of the seal damage.

**§179-5-27. Repairs to logic board or circuitry.**

27.1. Reports required by W.Va. Code §29-22B-1304 may be delivered by United States mail, by courier service, by facsimile or by Internet electronic mail using the format prescribed by the commission.

**§179-5-28. Accounting for the state's share of gross terminal income.**

28.1. The gross terminal income from all operating video lottery terminals of a permittee shall be calculated monthly by the commission based on the calendar month.

28.2. The commission shall send a statement to each permittee of the following information for each machine covered by the permittee's permit that was in service for any portion of the calendar month covered by the calculations:

28.2.a. Credits played;

28.2.b. Credits won;

28.2.c. Gross terminal income;

28.2.d. Two percent of gross terminal income for the commission's administrative expenses;

28.2.e. Gross profits;

28.2.f. The commission's share rate applicable to gross profits for the current quarter;  
and

28.2.g. The commission's two percent of gross terminal income plus the commission's net terminal income to be swept from the permittee's account by electronic fund transfer.

28.3. Each licensed permittee shall maintain in its bank account an amount equal to or greater than the commission's two percent of gross terminal income plus the commission's net terminal income from its operation of video lottery machines, to be electronically transferred by the lottery commission on the tenth day of the month that follows the month for which the report is made. If the tenth day of the month falls on a Saturday, Sunday or legal holiday, as that term is defined in W. Va. Code §2-2-1, the due date shall be the next day that is not a Saturday, Sunday or legal holiday.

28.4. If a permittee fails to maintain the bank account balance required in W.Va. Code §29-22B-1401(b), the commission may disable all of a permittee's video lottery terminals until full payment of all amounts due is made;

28.4.a. If the commission receives a non-sufficient funds message from the permittee's depository bank:

28.4.a.1. The director shall suspend the permittee's license until the permittee has paid the full amount owed to the Lottery by cashier's check, or certified check, or money order, or cash, and also has paid the one hundred percent civil penalty provided for in W.Va. Code §29-22B-1407(a); and

28.4.a.2. The director shall issue a warning letter containing an explanation the consequences of a future non-sufficient funds message; and

28.4.b. If the permittee does not settle for all moneys and penalties due to the commission within thirty days after the commission's demand for payment of non-sufficient funds amounts, the director shall recommend to the commission that the permittee's license and ten-year permit be revoked; and

28.4.c. If the commission receives three non-sufficient funds messages within any twelve consecutive month period, the director shall recommend to the commission that the permittee's license and ten-year permit be revoked.

28.5. Interest shall accrue on any unpaid balance due the commission at the rates charged for state tax delinquency under W.Va. Code §11-10-17a;

28.5.a. The interest shall begin to accrue on the date payment is due to the commission and shall continue to accrue until the amount due, including applicable interest, is paid; and

28.5.b. Payments shall be applied first to interest and then to the balance of the amount due the commission.

28.6. The statement required in this section may be transmitted to the permittee by United States mail, facsimile or Internet e-mail.

#### **§179-5-29. Resolution of discrepancies.**

29.1. The commission will not withhold from money it owes to an operator and pay that money to a retailer unless directed to do so by a state court of record.

#### **§179-5-30. Pay over of state's share of gross terminal income when electronic funds transfer is inoperative.**

30.1. The commission shall monthly transfer from each permittee's bank account the state's share of gross terminal income as calculated under subdivision 63.2.g of this rule.

30.2. The permittee shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies the permittee that remittance by this method is required.

30.3. Using the commission's statement under W.Va. Code §29-22B-1408, the permittee shall report, for each video lottery terminal operated by a licensee, the following information on forms prepared and supplied by the commission:

30.3.a. Credits played;

30.3.b. Credits won;

30.3.c. Gross terminal income;

30.3.d. Two percent of gross terminal income for the commission's administrative expenses;

30.3.e. Gross profits;

30.3.f. The commission's share rate applicable to gross profits for the current quarter; and

30.3.g. The lottery commission's two percent of gross terminal income plus the commission's net terminal income to be swept from the permittee's account by electronic fund transfer.

30.4. The permittee shall remit to the commission the amount calculated in subdivision 30.3.g of this rule;

30.4.a. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the tenth day of the month that follows the month for which the report is made; and

30.4.b. If the tenth day of the month falls on a Saturday, Sunday or legal holiday, the due date shall be the next day that is not a Saturday, Sunday or legal holiday.

30.5. The rule regarding non-sufficient funds messages from the permittee's depository bank contained in subsection 28.4 and subdivisions 28.4.a through 28.4.c of this rule also apply to payments made by check to the commission under provisions of this section.

**§179-5-31. Examination of permittee and retailer books and records.**

31.1. The commission has the right to examine all accounts, bank accounts, financial statements and records in a retailer licensee's possession, under its control or in which it has an interest, when the retailer is not also a permittee, and the licensed retailer shall authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

**§179-5-32. Additional requirements concerning appeal of an order.**

32.1. A petition for hearing shall be served on the commission by delivery in one of the following ways:

32.1.a. Personal delivery to the West Virginia lottery's central office at the address stated in the order, during regular business hours and excluding Saturdays, Sundays and legal holidays;

32.1.b. United States mail, postage prepaid, addressed to the post office box stated in the order;

32.1.c. Delivery to the West Virginia lottery's central office by private companies such as Airborne, DHL, Federal Express and United Parcel Service; or

32.1.d. Facsimile transmission to telephone number stated in the order. When the petition is delivered by facsimile transmission, the original of the petition and required security shall immediately be delivered to the commission using one of the delivery methods set forth in subdivisions 32.1.a, 32.1.b or 32.1.c.

32.3. Filing of the petition and subsequent documents is in each case effective upon delivery to the West Virginia lottery's central office and is not effective upon mailing or pickup by a private delivery company.

32.4. Copies of all documents filed in an appeal under this section must be served upon all other parties.

**§179-5-35. Judicial review.**

35.1. The petition for appeal shall be filed in conformity with the requirements of W. Va. Code §29A-5-4.

35.2. Any party to the proceeding in circuit court may appeal an adverse decision of the circuit court to the West Virginia supreme court of appeals as provided in W. Va. Code §29A-5-4(h).

33.3. The application for appeal to the supreme court of appeals shall be filed within the time provided by law for civil appeals generally in W. Va. Rules of Appellate Procedure, West Virginia Supreme Court of Appeals.