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February 7, 2002

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

AGENCY: West Virginia State Lottery Commission

RULE: NEW RULE, 179CSR5, LIMITED VIDEO LOTTERY RULE

DATE EMERGENCY AMENDMENT FILED: FEBRUARY 6, 2002  
DATE 2ND EMERGENCY AMENDMENT FILED: NOVEMBER 9, 2001  
DATE FIRST EMERGENCY AMENDMENT FILED: JULY 26, 2001  
DATE ORIGINALLY FILED AS AN EMERGENCY RULE: JUNE 21, 2001

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

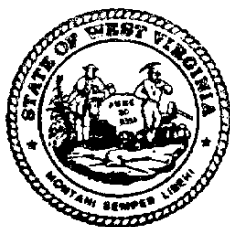
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FILED

DECISION NO. 3-02

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.

  
JOE MANCHIN, III  
Secretary of State



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**EMERGENCY RULE DECISION  
(ERD 3-02)**

**AGENCY: WEST VIRGINIA STATE LOTTERY COMMISSION**  
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- par. 1 The West Virginia State Lottery Commission (Commission) has filed the above amendment to an emergency 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 February 6, 2002 and with the LRMRC February 6, 2002.

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 §29-22B-402(3) reads:

*Notwithstanding any other provision of this code to the contrary, proposed legislative rules for this article filed in the state register by the August 1, 2001, may be filed as an 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:

Limited Video Lottery is designed to yield substantial income to the State of West Virginia that the Legislature has already appropriated for fiscal year 2002.

A new definition is being added to define the term "filed timely personal income tax return." This will allow more West Virginia residents to qualify for retailer & operator limited video lottery licenses.

One of the five tests for residency for obtaining a limited video lottery retailer or operator license is that the applicant filed timely West Virginia personal income tax returns for the 4 tax years preceeding applying for a license. This amendment 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 17-5-2.5.d.

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). . . time limitation

par. 14

This decision shall be cited as Emergency Rule Decision 3-02 or ERD 3-02 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia State Lottery Commission, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III  
Secretary of State

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