

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In this Box

2008 SEP -8 PM 12: 27

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Lottery Commission TITLE NUMBER: 179

RULE TYPE: Interpretive CITE AUTHORITY 29A-3-4

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: LOTTERY INTERPRETIVE RULE

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 10, 2008 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

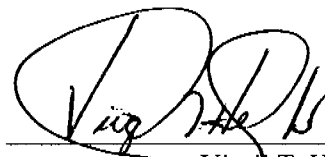
John C. Musgrave, Director

West Virginia Lottery

P.O. Box 2067

Charleston WV 25327

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Virgil T. Helton
Cabinet Secretary, Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#3.40

**AMENDMENT TO A
WEST VIRGINIA INTERPRETIVE RULE
WEST VIRGINIA LOTTERY
TITLE 179
SERIES 7
2008**

Lottery Interpretive Rule

REASON FOR THE AMENDING OF THIS AMENDED INTERPRETIVE RULE:

In 1996, the West Virginia Supreme Court of Appeals ruled that the sale of lottery tickets was a 'government service' within the meaning of the Americans with Disabilities Act ["ADA"], and that since the Lottery sold its products through licensed retail stores, those stores could only be used if they were accessible to persons whose disabilities were covered by ADA. The same party who prevailed before the Supreme Court of Appeals sought clarification as to whether the Rule applied to only the sale of scratch off tickets and games such as PowerBall®, or to all licensed lottery locations. New section four to the Lottery Interpretive Rule makes it clear that the provisions of 179 CSR 3 apply to all lottery locations, including limited video lottery and racetrack locations.

**WEST VIRGINIA
INTERPRETIVE RULE**

**WEST VIRGINIA LOTTERY
TITLE 179
SERIES 7
2008**

LOTTERY INTERPRETIVE RULE

A BRIEF SUMMARY OF THE PROPOSED RULE:

The State Lottery Commission's *Lottery Interpretive Rule* was first adopted in 2004 and amended in 2006. The State Lottery Commission proposes to amend the rule a second time by adding a new section four that interprets the application of the Commission's legislative rule 179 CSR 3 pertaining to lottery licensees and the federal **Americans with Disabilities Act** ["ADA"]. The interpretation makes it clear that the procedures in 179 CSR 3 pertain to all Lottery licensed locations and not just locations that sell scratch off tickets and computerized games such as PowerBall®.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 179 CSR 7 - Lottery Interpretive Rule

Type of Rule: _____ Legislative Interpretive _____ Procedural

Agency: State Lottery Commission

Address: P.O. Box 2067

Charleston WV 25327

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

The Lottery does not know whether anyone will complain to the Human Rights Commission about ADA accessibility and trigger the process. The Lottery may lose small amounts of revenue if a mandated alteration is required and not accomplished within 30 days of the Lottery's notice to the retailer to do so.

3. Objectives of These Rules:

To interpret existing legislative rule 179 CSR 3 - Licensees and the Americans with Disabilities Act - as applying to all lottery licensed locations and not just locations that sell Powerball and scratch-off tickets. The clarification affects limited video lottery retailers whose law was created five years after 179 CSR 3 was adopted by the Legislature, unless the limited video lottery retailer also has a regular lottery license to sell PowerBall and Scratch-off tickets. Racetracks also sell Powerball and scratch-off tickets and are already covered.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Revenues to the Excess Lottery Revenue Fund may be affected in some negative way if a licensee cannot respond to the Human Rights Commission's assessment within 30 days of notification. The Human Rights Commission may receive additional complaints to investigate.

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

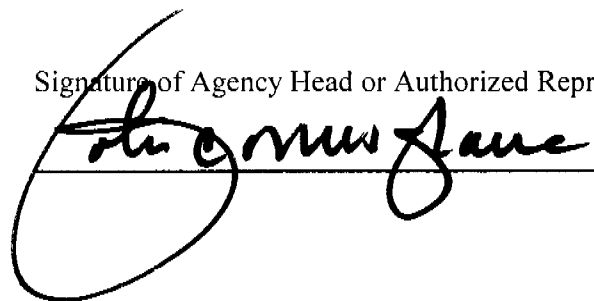
Municipal building officials have a role in the rule being interpreted. Holders of limited video lottery retailer licenses may be financially, although ADA is a federal law that has covered almost every business in West Virginia since 1994. Citizens with disabilities covered by ADA who wish to play limited video lottery

C. Economic Impact on Citizens/Public at Large.

Minimal impact to no impact.

Date: September 8, 2008

Signature of Agency Head or Authorized Representative:



A handwritten signature in black ink, appearing to read "John M. Lane", is written over a horizontal line. The signature is stylized and cursive.

FILED

2008 SEP -8 PM 12: 27

TITLE 179
INTERPRETIVE RULE
WEST VIRGINIA LOTTERY

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 7

LOTTERY INTERPRETIVE RULE

§179-7-1. General.

1.1. Scope and Purpose. - The purpose of this interpretive rule is to disclose how the State Lottery Commission will interpret, clarify and explain provisions of either the Racetrack Video Lottery Act codified in W.Va. Code §29-22A-1 et seq., or the Limited Video Lottery Act codified in W.Va. Code §29-22B-101 et seq., or in both acts.

1.2. Authority. - W. Va. Code - §29A-3-4

1.3. Filing Date. -

1.4. Effective Date. -

§179-7-2 Interpretation of terms and words found in the Limited Video Lottery Act.

2.1. "Fraternal society," as the term is found in W.Va. Code §29-22B-1101(c), means a retail licensee that is either a fraternal beneficiary society that is exempt from federal income tax under section 501(c)(8) of the Internal Revenue Code of 1986, as amended, or a domestic fraternal society that is exempt from federal income tax under section 501(c)(10) of the Internal Revenue Code, and was an existing chapter or local unit of a national tax exempt fraternal benefit society or a domestic fraternal society organized under the lodge system on the first day of January two thousand one.

2.2 "Licensed limited video lottery location approved by the commission," as the term is found in W.Va. Code §29-22B-1201(a), means the location in excess of the following straight-line distances from any of the following places:

2.2.a. The location is at least one hundred fifty feet from, or has an external structural connection not amounting to a common internal wall to, a premises that already has a retail license for video lottery terminals;

2.2.b. The location is at least three hundred feet from a church, school, daycare center, or the perimeter of a public park; or

2.2.c. The location is at least three hundred feet from a business that sells petroleum products capable of being used as fuel in an internal combustion engine.

2.3. "Monitor," as the word is found in W.Va. Code §29-22B-702, means that the licensed premises must be staffed at all times when limited video lottery games are being played. This interpretation means that a person who views the video lottery licensed premises on a video screen in a place outside the premises described in the licensee's license from the Alcohol Beverage Control Administration and the license from the State Lottery Commission is not monitoring "...video lottery terminals to prevent access or play by persons who are under the age of twenty-one years or who are visibly intoxicated," as required by section 702(8) of the Act. This interpretation is also in keeping with W.Va. Code §29-22B-1201(c) that says, "Personnel of the limited video lottery retailer shall be present during all hours of operation at each video lottery terminal location. These personnel shall make periodic inspections of the restricted access adult-only

facility in order to provide for the safe and approved operation of the video lottery terminals and the safety and well-being of the players.”

2.4 “Veterans organization,” as the term is found in W.Va. Code §29-22B-1101(c), means a retail licensee that is exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code and was an existing chapter, post or local unit of a national tax exempt veterans organization organized under the lodge system on the first day of January two thousand one.

§179-7-3. Interpretation of terms and words found in the Racetrack Video Lottery Act.

3.1. As used in W.Va. Code §29-22A-8(l), the word “voids” in the sentence that says, *The sale of more than five percent of a license or permit holder's voting stock, or more than five percent of the voting stock of a corporation which controls the license or permit holder or the sale of a license or permit holder's assets, other than those bought and sold in the ordinary course of business, or any interest therein, to any person not already determined to have met the qualifications of section seven of this article voids the license unless the sale has been approved in advance by the commission,* means that the license is void after due process has been afforded to the licensee or permit holder and a final order has been entered. In that same sentence, the word “person” does not include acquisition of common stock of a licensee or permit holder by a state or federally licensed banking institution, nor does it include acquisition of licensee or permit holder’s stock by an institutional investor such as a pension fund or a mutual fund registered with the United States Securities and Exchange Commission, as well as a registered investment company, a registered investment advisor, a collective trust fund or a qualified insurance company as those entities are defined in the Investment Company Act of 1940 and the Investment Advisors Act of 1940, that is holding the stock only as an investment and not for purposes of control of the licensee or permit holder.

3.2 W.Va. Code §29-22A-6(c)(3) now reads in part as follows:

- (c) Each video lottery terminal shall meet the following maximum and minimum theoretical percentage payout during the expected lifetime of said terminal: ...*
- (3) Each terminal shall have a probability greater than one in seventeen million of obtaining the maximum payout for each play.*

The Commission’s interpretation of W.Va. Code §29-22A-6(c)(3) is that the word “play” means the initial time a video lottery terminal’s play button is pushed, or its play lever is pulled, or the initial spin of its reels after the video lottery terminals receive a base wager. When there are several “plays” within a game as the term “game” is defined by W.Va. Code §29-22A-3(y), only the initial play is used to determine the 1-in-17 million odds calculation. Odds for subsequent optional selections such as bonus features are not used in determining compliance with W.Va. Code §29-22A-6(c)(3). In addition, where the game being played is an interstate or international lottery game authorized under W.Va. Code §29-22-5(a)(5), the odds of the interstate or international game shall be set by the participating government lotteries by contract or agreement.

§179-7-4. Interpretation of the application of procedures found in 179 CSR 3 pertaining to lottery licensees and the Americans with Disabilities Act.

In definition section 179 CSR 3; §2.2, the word “Act” means the State Lottery Act, West Virginia Code §§29-22-1. It is the interpretation of the State Lottery Commission that the rule should apply to all licensees of the Commission. This is also to include licensees under the Racetrack Video Lottery Act, West Virginia Code §29-22A-1 et seq.; the Limited Video Lottery Act, W.Va. Code §29-22B-101 et seq.; the Racetrack Table Games Act, W.Va. Code §29-22-C-1 et seq.; and the Limited Gaming Facility Act, W.Va. Code §29-25-1 et seq. Under this interpretation, the procedures of 179 CSR 3 apply to any finding by a building official or the West Virginia Human Rights Commission that a licensed lottery location is not in compliance with the ADA, and the accessibility barrier prevents a person from playing a West Virginia Lottery game.