

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

Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: STATE LOTTERY COMM. TITLE NUMBER: 179

RULE TYPE: INTERPRETIVE CITE AUTHORITY: W.Va. CODE 29A-3-4

AMENDMENT TO AN EXISTING RULE: YES 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: _____

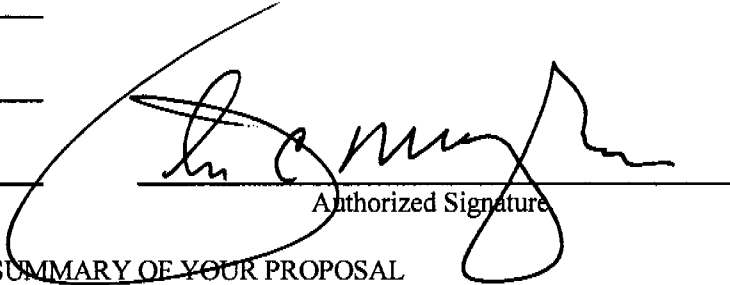
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON TUES., NOV 1, 2005 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

DIRECTOR, WV LOTTERY

P.O. BOX 2067

CHARLESTON WV 25327-2067

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$3.60

**WEST VIRGINIA
INTERPRETIVE RULE**

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**WEST VIRGINIA LOTTERY
TITLE 179
SERIES 7
2005**

**OFFICE WEST VIRGINIA
SECRETARY OF STATE**

LOTTERY INTERPRETIVE RULE

A BRIEF SUMMARY OF THE PROPOSED RULE AMENDMENTS:

1. In 2001 when the Legislature enacted the Limited Video Lottery Act, it limited the number of video lottery terminals a licensed location could operate to five in W.Va. Code §29-22B-1101(c). To this general limitation it added a restricted allowance of an additional five video lottery terminals for fraternal benefit societies, domestic fraternal societies and veterans organizations. The test for this additional restricted allowance was an exemption from federal taxes under subdivisions 501(c)(8), 501(c)(10) and 501(c)(19) of the Internal Revenue Code.

Instead of being an intended benefit to lodge-style fraternal and veteran organizations existing at the time of enactment of the Limited Video Lottery Act, this brief definition has created a loophole for bars and taverns to obtain a charter and an exemption letter to gain five additional video lottery terminals.

To close the loophole, the Commission interprets the two terms "fraternal society" and "veterans organization" to include the additional requirements as follows: "...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. To coordinate the distance requirements of the Limited Video Lottery Act and other regulatory agencies, the Commission sets forth the following minimum distances:

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

3. West Virginia Code §29-22A-6(c)(3) requires odds of at least 1-in-17 million for racetrack video lottery games. The Commission's interpretation 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. 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.

**AMENDMENT TO A
WEST VIRGINIA INTERPRETIVE RULE
WEST VIRGINIA LOTTERY
TITLE 179
SERIES 7
2005**

Lottery Interpretive Rule

**REASON FOR THE AMENDING OF THIS AMENDED INTERPRETIVE
RULE:**

1. In 2001 when the Legislature enacted the Limited Video Lottery Act, it limited the number of video lottery terminals a licensed location could operate to five in W.Va. Code §29-22B-1101(c). To this general limitation it added a restricted allowance of an additional five video lottery terminals for fraternal benefit societies, domestic fraternal societies and veterans organizations. The test for this additional restricted allowance was an exemption from federal taxes under subdivisions 501(c)(8), 501(c)(10) and 501(c)(19) of the Internal Revenue Code.

Instead of being an intended benefit to lodge-style fraternal and veteran organizations existing at the time of enactment of the Limited Video Lottery Act, this brief definition has created a loophole for bars and taverns to obtain a charter and an exemption letter to gain five additional video lottery terminals.

2. To coordinate the distance requirements of the Limited Video Lottery Act and other regulatory agencies, the Commission sets forth minimum distances from the applicant's location.

3. West Virginia Code §29-22A-6(c)(3) requires odds of at least 1-in-17 million for racetrack video lottery games. The Commission's interpretation 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. 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.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: LOTTERY INTERPRETIVE RULE

Type of Rule: Legislative Interpretive Procedural

Agency: STATE LOTTERY COMM.

Address: 312 MacCORKLE AVENUE
CHARLESTON WV 25314

Phone Number: 304 558 0500 Email: jmelton@wvlottery.com

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will be no direct effect on revenues, either positively or negatively.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

THE TERMS BEING ADDED TO THE INTERPRETIVE RULE ARE DON SO FOR THE INFORMATION AND CONVENIENCE OF LICENSEES.

THE INTERPRETATIONS WILL NOT CHANGE THE EXPENSES BORNE BY THE COMMISSION.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

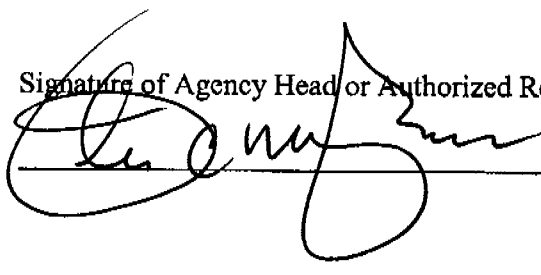
1. In 2001 when the Legislature enacted the Limited Video Lottery Act, it limited the number of video lottery terminals a licensed location could operate to five in W.Va. Code §29-22B-1101(c). To this general limitation it added a restricted allowance of an additional five video lottery terminals for fraternal benefit societies, domestic fraternal societies and veterans organizations. The test for this additional restricted allowance was an exemption from federal taxes under subdivisions 501(c)(8), 501(c)(10) and 501(c)(19) of the Internal Revenue Code.

Instead of being an intended benefit to lodge-style fraternal and veteran organizations existing at the time of enactment of the Limited Video Lottery Act, this brief definition has created a loophole for bars and taverns to obtain a charter and an exemption letter to gain five additional video lottery terminals.

To close the loophole, the Commission interprets the two terms "fraternal society" and "veterans organization" to include the additional requirements as follows: "...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. To coordinate the distance requirements of the Limited Video Lottery Act and other regulatory agencies, the Commission sets forth the following minimum distances:

Date: SEPTEMBER 28, 2005

Signature of Agency Head or Authorized Representative


TITLE 179

FILED

INTERPRETIVE RULE

2005 SEP 29 A 10:51

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. - March 24, 2005

1.4. Effective Date. - April 23, 2005

§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(1), 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.