

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
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 COMMISSION TITLE NUMBER: 179

RULE TYPE: INTERPRETIVE CITE AUTHORITY: 29A-1-2(c)

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 MARCH 6, 2005 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

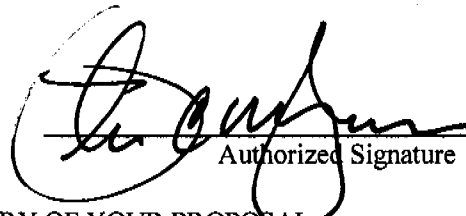
John C. Musgrave, Director

State Lottery Commission

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

#3.00

**WEST VIRGINIA  
INTERPRETIVE RULE**

**WEST VIRGINIA LOTTERY  
TITLE 179  
SERIES 7  
2004**

**LOTTERY INTERPRETIVE RULE**

**A BRIEF SUMMARY OF THE PROPOSED RULE AMENDMENT:**

West Virginia Code 29-22A-8(l) 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.*

This provision, in the opinion of the Commission, exists to prevent criminals from participating in Racetrack Video Lottery Act activities. At the same time, regulated institutional investors such as banks, mutual funds and pension systems may from time to time acquire positions greater than 5% in one or more of the publicly traded license or permit holder corporations in pursuit of financial returns rather than to control the permit or license holder. Such positions may be short term or of longer duration. The regulated licensee or permit holder may not even realize the stock acquisition occurred before part of the stock was re-sold and the 5% position of the stockholder no longer existed. In addition, the automatic void language in the subsection does not provide a licensee or permit holder with any legal due process.

The interpretation of this part of W.Va. Code §29-22A-8(l) is intended to exclude regulated institutional investors from the calculation of a 5% stock acquisition and to afford any licensee or permit holder standard due process before its license or permit becomes void.

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: 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.

The interpretation of part of W.Va. Code §29-22A-8(l) involving the transfer of 5% or more of the common stock of a regulated racetrack or video lottery terminal manufacturer is intended to exclude regulated institutional investors from the calculation of a 5% stock acquisition and to afford any licensee or permit holder standard due process before its license or permit becomes void.

This interpretation has 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<br>Increase/Decrease<br>(use "-") | 2006<br>Increase/Decrease<br>(use "-") | Fiscal Year<br>(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: 179 CSR 7 - LOTTERY INTERPRETIVE RULE

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The term being interpreted in the amended rule is done so forhte information and convenience of licensees and permit holders.

The interpretation will not change the expenses born by the Commission.

**MEMORANDUM**

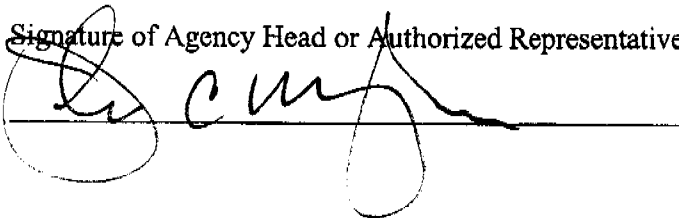
Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

West Virginia Code 29-22A-8(l) 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. This provision, in the opinion of the Commission, exists to prevent criminals from participating in Racetrack Video Lottery Act activities. At the same time, regulated institutional investors such as banks, mutual funds and pension systems may from time to time acquire positions greater than 5% in one or more of the publicly traded license or permit holder corporations in pursuit of financial returns rather than to control the permit or license holder. Such positions may be short term or of longer duration. The regulated licensee or permit holder may not even realize the stock acquisition occurred before part of the stock was re-sold and the 5% position of the stockholder no longer existed. In addition, the automatic void language in the subsection does not provide a licensee or permit holder with any legal due process.

The interpretation of this part of W.Va. Code §29-22A-8(l) is intended to exclude regulated institutional investors from the calculation of a 5% stock acquisition and to afford any licensee or permit holder standard due process before its license or permit becomes void.

Date: February 4, 2005

Signature of Agency Head or Authorized Representative



TITLE 179

FILED

INTERPRETIVE RULE

2005 FEB -3 P 2:19

WEST VIRGINIA LOTTERY

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 7

LOTTERY INTERPRETIVE RULE

**§179-6-1. 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. -

**§179-6-2 Interpretation of terms and words found in the Limited Video Lottery Act.**

2.1. "Monitor," as the term 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."

**§179-6-3. 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 that is holding the stock only as an investment and not for purposes of control of the licensee or permit holder.