

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

Form #2

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2004 NOV 10 P 2:16

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: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 7

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 December 15, 2004 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

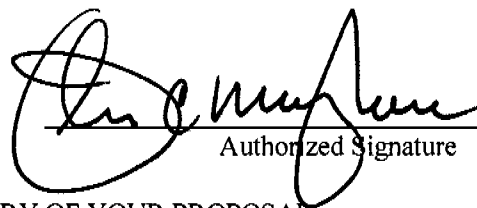
John C. Musgrave, Director

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

**WEST VIRGINIA
INTERPRETIVE RULE**

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

OFFICE WEST VIRGINIA
SECRETARY OF STATE

LOTTERY INTERPRETIVE RULE

A BRIEF SUMMARY OF THE PROPOSED 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.

One of the duties of a limited video lottery licensed retailer is to “monitor” 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). After passage of the Act and legislative approval of the Limited Video Lottery Rule, certain retailers commenced the practice of having a bar and a grocery store back-to-back in the same building and using only one sales clerk to tend both facilities. This interpretive rule would have the effect of requiring all limited video lottery retail establishments to be manned on site and not “monitored” from an outside location. 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.”

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 First Extraordinary Session of the 2001 Legislature enacted House Bill 102 to reduce, restrict and regulate video poker machines in the state. One of the duties of a limited video lottery licensed retailer is to "monitor" 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). After passage of the Act and legislative approval of the Limited Video Lottery Rule, certain retailers commenced the practice of having a bar and a grocery store back-to-back in the same building and using only one sales clerk to tend both facilities. This interpretive rule would have the effect of requiring all limited video lottery retail establishments to be manned on site and not "monitored" from an outside location. 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

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: 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 IS DONE SO FOR THE INFORMATION AND CONVENIENCE OF LICENSEES AND LICENSE APPLICANTS.

THE INTERPRETATION WILL NOT CHANGE THE EXPENSES BORN BY THE COMMISSION.

THERE IS NO WAY TO QUANTIFY ANY CHANGE TO STATE REVENUES, EITHER PLUS OR MINUS.

MEMORANDUM

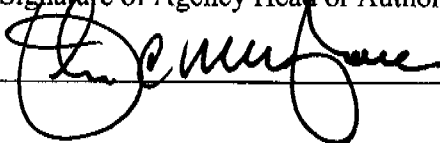
Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

One of the duties of a limited video lottery licensed retailer is to "monitor" 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). After passage of the Act and legislative approval of the Limited Video Lottery Rule, certain retailers commenced the practice of having a bar and a grocery store back-to-back in the same building and using only one sales clerk to tend both facilities. This interpretive rule would have the effect of requiring all limited video lottery retail establishments to be manned on site and not "monitored" from an outside location. 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."

If this rule had any impact on revenues of the State, it would be because a retailer determined he or she could not profitably operate a limited video lottery location if he or she was forced to ensure that someone was always on site in the limited video lottery licensed premises.

Date: November 9, 2004

Signature of Agency Head or Authorized Representative



TITLE 179
INTERPRETIVE RULE
WEST VIRGINIA LOTTERY
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 the Limited Video Lottery Act codified in W.Va. Code §29-22B-101 et seq.

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

1.3. Filing Date. -

1.4. Effective Date. -

§179-6-2 Interpretation of terms and words found in the 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."