

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2012 MAY 29 PM 3:12

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Lottery Commission TITLE NUMBER: 179

CITE AUTHORITY: W. Va. Code §§29-22-5, 10, 16, and 17

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: State Lottery Rules

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: May 25, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV Lottery Commission  
PO Box 2067  
Charleston, WV 25327  
Attn: John C. Musgrave  
Tel: 304-558-0427

LEGISLATIVE RULE TITLE: \_\_\_\_\_  
State Lottery Rules

1. Authorizing statute(s) citation \_\_\_\_\_  
W. Va. Code §§29-22-5, 10, 16, and 17

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
March 27, 2012

b. What other notice, including advertising, did you give of the hearing?  
The rule was posted on the Lottery's website at www.wvlottery.com.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
April 30, 2012

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached 3 comments No comments received \_\_\_\_\_

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

Tuesday, May 29, 2012

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- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Kim Lamb

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Legal Division

PO Box 2067

Charleston, WV 25327

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304-58-0500 x 255

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klamb@wvlottery.com

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Danielle Boyd, Counsel

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Kathy Lawson, General Counsel

PO Box 2067

Charleston, WV 25327

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304-558-0500 x 255

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

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not applicable

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b. Date of hearing or comment period:

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

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d. Attach findings and determinations and reasons:

Attached 

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## Brief Summary of Proposed Rule Amendment

### West Virginia Lottery

#### Title 179 Series 1

The Lottery proposes to remove the restriction that requires the Lottery Prize Disbursement Account to remain a zero balance demand deposit account so that the Lottery may maintain a modest cushion to prevent any future overdrafts from prize payments. The Lottery will continue to maintain its primary revenue accounts in the Treasury. Both the Auditor's office and Treasurer's office have been consulted in crafting a solution to this issue and support the effort.

## Statement of Circumstances

### West Virginia Lottery

#### Title 179 Series 1

The proposed amendment is critical for the Lottery to continue distributing prize winnings to its players in a timely manner. Under the current rule, the Prize Disbursement Account must be a zero balance demand deposit account. This restriction has resulted in over 200 overdraft items since January 1, 2011, a quarter of which occurred in the last quarter alone. Because of FDIC regulatory scrutiny, the bank informed the Lottery that effective February 1, 2012, it would charge a fee for each overdraft and has since refused to cash any more checks from the Prize Disbursement Account without a carrying balance in the account. The Lottery maintains adequate funds in its Treasury account; however, the overly restrictive rule prevents a transfer for payment until a check is actually written. This practice is counter to any reasonable or responsible banking practice. Even though the total prize payout percentage over the life of a game is predetermined, no monies may be transferred until a player comes to Lottery headquarters to claim a prize. The same applies to on-line games, such as Powerball and MegaMillions, with rapidly rising jackpots that often result in multi-million dollar payouts. This situation presents serious and potentially devastating customer service issues for the Lottery and poses a threat to ongoing sales of Lottery products.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

State Lottery Rules

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV Lottery Commission

Address: PO Box 2067  
Charleston, WV 25327

Phone Number: (304) 558-0500 Email: klamb@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.

Amending this legislative rule will decrease expenses by eliminating potential overdraft charges that are being assessed beginning February 1, 2012, and will preserve the Lottery revenue distributions that the State relies on to fund many important initiatives. The rule change will also permit the Lottery to maintain a modest cushion in its prize disbursement account to permanently prevent overdrafts.

The reputation of the Lottery brand, consumer trust in Lottery games, and, ultimately, the sale of Lottery products (and revenue generated from sales) have been immediately threatened by the Bank's refusal to cash checks for prize winning players because of current rule language.

**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          | Current Increase/Decrease<br>(use "-") | Next Increase/Decrease<br>(use "-") | Fiscal Year<br>(Upon Full Implementation) |
| 1. Estimated Total Cost     | 0.00                                   | 0.00                                | 0.00                                      |
| Personal Services           | 0.00                                   | 0.00                                | 0.00                                      |
| Current Expenses            | - 4,500.00                             | - 9,100.00                          | - 9,100.00                                |
| Repairs & Alterations       | 0.00                                   | 0.00                                | 0.00                                      |
| Assets                      | 0.00                                   | 0.00                                | 0.00                                      |
| Other                       | 0.00                                   | 0.00                                | 0.00                                      |
| 2. Estimated Total Revenues | 0.00                                   | 0.00                                | 0.00                                      |

State Lottery Rules

Rule Title: \_\_\_\_\_

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 above estimate reflects the projected costs to the Lottery's administrative account for the current fiscal year if it incurs overdraft expenses based on historical activity in the account. The projected savings in each subsequent full fiscal year is a projection based upon a full year's historical overdraft activity.

More importantly, the Lottery is unable to quantify the potential effect on its players and revenue should no change be made to the rule. Currently, if the prize disbursement account cannot be adequately funded in advance, customers (prize winners) may be turned away should they present a prize check for payment. This eventuality only serves to erode customer confidence in the product, the Lottery, and the State. A rule change will prevent such an issue.

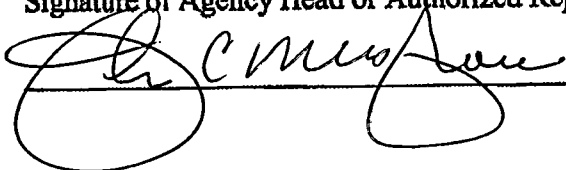
**MEMORANDUM**

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.

[Empty box for identifying 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.]

Date: 5/29/2012

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_

**WEST VIRGINIA  
LEGISLATIVE RULE**

**WEST VIRGINIA LOTTERY  
TITLE 179  
SERIES 1  
2012**

**STATE LOTTERY RULES**

**FILED**  
2012 MAY 29 PM 3:12  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§179-1-1. General**

1.1. Scope and Purpose. - The purpose of this rule is to provide for the organization and structure of the operation of the West Virginia Lottery, provide for licensing of agents for the sale and dispensing of lottery tickets and materials and lottery games, and the operation of computer terminals for lottery games.

1.2. Authority - W. Va. Code - 29-22-5, 9(b), 10, 16 and 17

1.3. Filing Date - ~~April 20, 2004~~

1.4. Effective Date - ~~April 21, 2004~~

**§179-1-2. Definitions**

2.1. "Act" or "State Act" means the State Lottery Act, West Virginia Code §29-22-1 et seq.

2.2. "Agency" and "Lottery" mean the State Lottery, its Director and the State Lottery Commission and its Commissioners which operate and administer the West Virginia State Lottery, pursuant to authority granted under the Act.

2.3. "Certification" means a multi-state lottery association declaration of the number of winners and authorization of the payment of prizes for the PowerBall® game and winners of any other game offered through a multi-state lottery association of which the West Virginia Lottery is a member.

2.4. "Bank" means and includes all commercial banks, mutual savings banks, savings and loan associations, credit unions, trust companies, and any other type or form of banking institution organized under the authority of the State of West Virginia or the United States of America whose principal place of business is within the State of West Virginia and which is designated to perform banking institution functions, activities, or service in connection with the operations of the Lottery for the deposit and handling of lottery funds, the accounting of the funds and the safekeeping of records.

2.5. "Certified Drawing" means a number selection event about which the Lottery and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination occurred.

2.6. "Commission" or "State Lottery Commission" means the State Lottery Commission created by

the State Lottery Act.

2.7. "Depository" means any person, including a bank or state agency, performing activities or services in connection with the operation of the Lottery for the deposit and handling of lottery funds, the accounting for lottery funds, and the safekeeping of tickets.

2.8. "Director" means the individual appointed by the Governor to provide management and administration necessary to direct the Lottery office or any other person to whom the Director's authority is lawfully delegated.

2.9. "Drawing" means the procedure determined by the Director by which the Lottery selects the winning combination in accordance with the game rules of the particular lottery game.

2.10. "Employee of the Agency" means a person who is an employee of the agency and the commission unless the context clearly indicates otherwise.

2.11. "Game" means any individual or particular type of lottery authorized by the agency.

2.12. "Instant Game" means a game in which a ticket is purchased and upon removal of a latex covering on the front of the ticket or the opening of the sealed ticket, the ticket bearer determines his or her winnings, if any, which are payable upon presentation to a lottery retailer or to the Lottery for payment.

2.13. "Instant Ticket" means a printed card or slip purchased for participation in an instant game.

2.14. "Lottery Game" means the public gaming system or games established and operated by the Lottery office.

2.15. "Lottery Retailer" or "Retailer" means any person licensed by the Commission to sell and dispense instant tickets and materials or lottery games, not to include operation of electronic computer terminals in lottery sales and dispensing, unless otherwise authorized.

2.16. "Licensed Lottery Sales Agent" means any person licensed by the Commission to sell and dispense lottery tickets and materials, and to operate electronic terminals and lottery games for sales and dispensing.

2.17. "Lottery Ticket" or "Tickets" means tickets or other tangible evidence of participation used in lottery games or gaming systems.

2.18. "On-Line Game" means a lottery game in which a player pays a fee to a lottery agent and selects a combination of digits, numbers, or symbols, the type and amount of play, and the drawing date, and receives a computer-generated ticket with those selections printed on it.

2.19. "On-Line Ticket" means a computer-generated ticket issued by a licensed lottery sales agent to a player as a receipt for the combination of digits, numbers, or symbols a player has selected.

2.20. "Person" means a human being, association, corporation, club, trust, estate, society, governmental entity, company, joint stock company, receiver, trustee, assignee, referee, and anyone acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any

combination of human beings.

2.21. "Play Numbers" means the numbers or symbols appearing in the designated areas as under the removable covering on the front of the ticket.

2.22. "Prize" means any award, financial or otherwise, awarded by the Commission.

2.23. "Provisional License" means a license issued by the Commission which temporarily authorizes a person to act as a lottery retailer or lottery sales agent pending processing of the annual license or renewal.

2.24. "On-line Terminal" means the electronic computer terminal through which a licensed lottery sales agent enters the combination of digits, numbers, or symbols selected by a player and by which on-line tickets are generated and claims are validated.

2.25. "Ticket Bearer" means the person who has signed the ticket or has possession of the unsigned ticket.

2.26. "Ticket Number" means the preprinted number found on the back of each ticket which identifies that particular ticket as one (1) of a series of tickets.

2.27. "Ticket Stock Number" means the printed number or numbers appearing on the back of each ticket.

2.28. "TRAVEL" means an on-line lottery game based on the keno theme. The game matrix for TRAVEL is the same as for other on-line lotto-type games, an "X-Y-Z" game, where "X" equals the numbers picked by a lottery player, "Y" equals the numbers drawn by the lottery and "Z" equals the field of numbers from which "X" and "Y" are drawn by the minute, day or week.

2.29. "Unclaimed Prize" means the prize on a winning ticket for which no claim is made within 180 days after the drawing or winner selection event which made the ticket a winning ticket or 180 days after the announced end of an instant game.

2.30. "Unclaimed Prize Account" means the West Virginia Lottery account to which all unclaimed prizes are transferred after the 180 day period specified in subsection 2.29 of this rule.

2.31. "Validation" means the process of determining whether an instant or on-line ticket presented for payment is a winning ticket.

2.32. "Validation Number" means the multi-digit number found on the face of the ticket. There must be a validation number on each ticket.

2.33. "Winner of an instant game" means the holder of an instant lottery ticket determined to have the required match or the specific alignment of the play numbers, digits or symbols or the required sum of the play numbers or digits in accordance with the game rules for the specific game.

2.34. "Winner selection" means the drawing process used by the West Virginia State Lottery Commission to select the winning numbers in on-line games with live drawings offered to the public by the Lottery Commission, except for the on-line game called TRAVEL which is authorized by West Virginia Code §29-22-9.

2.35. "Winning Combination" means numbers or symbols chosen during the drawing process used

by the West Virginia State Lottery Commission to select the winning numbers in on-line games with live drawings offered to the public by the Lottery Commission, except for the on-line game called TRAVEL which is authorized by West Virginia Code §29-22-9.

2.36. "Bonus-Incentive Plan" means one or more incentive plans the Commission may develop as additional compensation for the agents and retailers. The bonuses and incentives combined may not exceed one percent (1%) of annual gross sales from lotteries authorized pursuant to W.Va. Code §29-22-1 et seq.

2.37. "Bar code validation" means a system which allows any winning lottery ticket, printed with computer readable bar codes, for a prize of up to \$600, to be read electronically at any Lottery location and paid by the retailer or licensed sales agent regardless of where the player purchased the ticket.

### **§179-1-3. Financial Administration**

3.1. Collection of Accounts - Agents and retailers shall establish private banking accounts in which to deposit payments for the purchase of instant tickets or receipts from on-line sales.

3.1.a. The funds in each of the accounts established under this section shall be swept by electronic funds transfer ("wire transfers") to an account of the State Treasurer as provided for in paragraph 3.2.b.1 of this section.

3.1.b. The Director may authorize other methods of collection such as intra-governmental transfers in the case of other state agencies.

3.2. State Lottery Fund - The Director shall implement the State Lottery Fund which shall consist of a group of accounts within the State Treasury.

3.2.a. The accounts shall be established in accordance with applicable provisions of state law, and any applicable rules of the State Treasurer.

3.2.b. In implementing the State Lottery Fund, the following accounts shall be used:

3.2.b.1. Revenues and Transfers Account - This account shall consist of all revenue received from the sale of lottery tickets. Transfers shall be made from this account for prizes, net profit, and operation and administration expenses, in amounts and for the purposes established by W.Va. Code §29-22-18. Net profits shall be transferred to the accounts to which the Legislature has appropriated them. If net profits for any particular year exceed the amount appropriated by the Legislature, the excess funds shall be held in this account until such time as they are appropriated. The funds in this account shall be invested in the State Consolidated Fund until the point of transfer and are interest bearing.

3.2.b.2. Operation and Administration Expenses Account - This account shall consist of transfers made from the Revenues and Transfers Account not to exceed fifteen percent (15%) of net lottery revenue. In the event that the balance of this account is equal to or greater than two hundred fifty thousand dollars (\$250,000), any excess over that amount shall be considered and allocated as net profit.

3.2.b.3. Jackpot Prize Trust Account - This account shall consist of jackpot prizes accumulated for the purpose of buying annuities for the payment of prizes due the winners over a period of years. Also, as the annuities mature, the funds shall be held in this account until payment is made to the winners.

3.3. Prize Disbursement Account - The Director shall establish a Prize Disbursement Account, in a private banking institution, which shall permit the immediate payment of lottery prizes, by check, to the winners.

3.3.a. The total expenditures from the Prize Disbursement Account and the Jackpot Prize Trust Account combined with any prizes paid by the sales agents and retailers, shall be a minimum annual average of forty-five percent (45%) of gross amount received.

3.3.b. The Prize Disbursement Account shall be a ~~zero balance~~ demand deposit account established by the Director in accordance with applicable law and rules of the State Treasurer funded daily by transfers from the Revenue and Transfers Account. ~~in an amount equal to the preceding day's demand.~~

3.3.c. Access to the account for purposes of drawing checks shall be limited to those persons expressly authorized by the Director to operate secure check writing machines and who are provided security keys and computer keys for their operation incident to their official duties.

3.3.d. All checks issued from the Prize Disbursement Account shall prominently display the logo of the West Virginia Lottery.

3.3.e. Checks in payment of prizes drawn upon the Prize Disbursement Account may be issued under the signature of the Director or the authorized facsimile of his or her signature.

3.3.f. The Director may also cause checks to be issued from the Prize Disbursement Account to lottery sales agents and lottery retailers to fulfill obligations of a bonus-incentive plan.

3.3.g. The agency shall settle retailer and agent accounts no less frequently than weekly, unless the Director specifies a different time.

3.3.h. The Director may make payments from the Prize Disbursement Account to sales agents and retailers for purposes of refund or credit for unsold tickets, other ticket sales adjustments or instant game account adjustments.

#### **§179-1-4. Licensing**

4.1. The Commission shall license as lottery sales agents and as lottery retailers those persons who will, in the judgment of the Commission, meet the statutory requirements for licensing, promote the sale of lottery tickets and materials, promote the best interest of the Lottery and of the State, and achieve the goals of the statute.

4.1.a. Any person interested in obtaining a license as a lottery retailer or licensed lottery sales agent shall first file an application with the Director on a form supplied for that purpose by the Director. The application form shall be designed to solicit sufficient relevant information from an applicant to permit the Director to make the determination required by the Lottery Act and this rule for issuance of a license by the Commission.

4.1.b. The license of a licensed lottery sales agent or lottery retailer in any capacity is a

privilege personal to that person and is not a legal right. The license is revocable by the Director. A licensed lottery sales agent or lottery retailer may surrender the license to the Director.

4.2. Eligibility for licensing. Any person may submit an application for licensing as a lottery agent or retailer, except:

4.2.a. No person may submit an application who will engage in business solely as a licensed lottery sales agent or lottery retailer;

4.2.b. No person under the age of twenty-one (21) may submit an application for licensing as a lottery sales agent or lottery retailer;

4.2.c. No person may submit an application who is a member of the Commission or an employee of the agency, or who is the spouse, child, brother, sister or parent, by blood or marriage, residing as a member of the same household or in the principal place of abode of a member of the Commission or employee of the agency;

4.2.d. No person may submit an application who is a vendor of lottery tickets or material or data processing services, or, which is owned by, controlled by, or affiliated with a vendor of lottery tickets or materials or data processing services;

4.2.e. No foreign corporation may submit an application unless it is currently registered to do business within the State of West Virginia; and,

4.2.f. No establishment may qualify to receive an additional endorsement to sell the TRAVEL game unless that establishment complies with general law relating to the game TRAVEL.

4.3. Disqualification, grounds of refusal of a license.

4.3.a. The Commission shall require all new applicants for licenses to furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation.

4.3.b. The Commission may require any applicant seeking the renewal of a license to furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The West Virginia Lottery may require all or any part of the persons required to be named in an application to provide fingerprints and the fingerprints shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation.

4.3.c. The Commission shall refuse to grant a license to any person who is subject to an exception to subsection 4.2. of this rule or to any applicant who has been convicted of a violation of:

4.3.c.1. W. Va. Code §29-22-1 et seq.;

4.3.c.2. Any felony; or

4.3.c.3. Any crime related to theft or gambling or involving moral turpitude unless within the discretion of the Commission, it is determined that an appropriate amount of time has elapsed since the conviction to ensure rehabilitation of the applicant: *Provided*, That upon conviction of the crimes enumerated in this subdivision 4.3.3 of this subsection a current licensee is disqualified from holding a license for a period of at least five years: *Provided*, however, that no applicant may be licensed if convicted of the crimes enumerated in this paragraph within the five year period immediately preceding the filing of an application for a license.

4.4. Issuance of licenses. Upon receipt, review and investigation of applications and applicant background, the Commission may issue annual licenses for sales of lottery tickets in accordance with this rule. The Commission shall license only those persons or entities which, in its opinion, will best serve the public interest and public trust in the Lottery and promote the sales of lottery tickets. Prior to issuing any license, the Commission shall consider the following factors:

- 4.4.a. The moral character and reputation of the applicant;
- 4.4.b. The financial responsibility and security of the applicant and his or her business or activity;
- 4.4.c. The accessibility of the public to the licensed premises proposed by applicant;
- 4.4.d. The number and sufficiency of existing licenses to serve the public interest;
- 4.4.e. The volume of applicant's expected lottery ticket sales;
- 4.4.f. The security and efficient operation of the Lottery;
- 4.4.g. Whether the applicant is ineligible under any provisions of the Lottery Act;
- 4.4.h. Whether the applicant has received or will hold, either as principal, entity, subsidiary agent, or subcontractor more than twenty-five percent (25%) of the licenses to act as lottery sales agent in any one (1) county or municipality, or more than five percent (5%) of the licenses issued statewide, unless eligible for consideration for an exception under the Act;
- 4.4.i. Whether the applicant has provided false or misleading information or has misrepresented information regarding qualifications or fitness for licensure;
- 4.4.j. Whether the applicant is a West Virginia corporation or is currently licensed to do business within the State of West Virginia and whether the applicant's state taxes are current; and
- 4.4.k. Whether any person listed on the application owes an unpaid debt to the West Virginia Lottery other than a debt extinguished by bankruptcy discharge.

4.5. Revocation; grounds for removal or suspension of license or non-renewal of license.

4.5.a. The Commission may, for any reason outlined in this section, or for other cause shown revoke, suspend, or decline to renew a license of a lottery sales agent or lottery retailer.

4.5.b. If at any time after issuance of a license, it is determined by the Director that a licensed lottery sales agent or lottery retailer would no longer meet the standards for the issuance of

a license provided in this rule, he or she may immediately suspend the license. The suspension shall remain in effect until the reason for suspension has abated, or in the alternative, he or she may ask the Commission to revoke the license.

4.5.c. If the licensed lottery sales agent or lottery retailer fails to observe and comply with the procedures and the rules of the Commission or with the provisions of the Lottery Act, or orders or instructions of the Director, the Commission may suspend or revoke the license of that person.

4.5.d. Additional grounds for suspension or revocation of license.

4.5.d.1. Non-compliance with Lottery Act or Rules. The Director may suspend or recommend to the Commission that it revoke the license of a licensed lottery sales agent or lottery retailer who does not comply with the Lottery Act and all rules, conditions, standards and other policies adopted, promulgated or issued under the Lottery Act, by the Commission or the Director.

4.5.d.2. Violation of prohibitions. The Commission may suspend or revoke the license of any licensed lottery sales agent or lottery retailer who violates one of the prohibitions set out in the subparagraphs of this paragraph.

4.5.d.2.A. A licensed lottery sales agent or lottery retailer shall not sell a ticket at a price greater than or less than that stated by the Commission. No ticket may be sold on a credit basis by an agent or retailer.

4.5.d.2.B. A licensed lottery sales agent or lottery retailer shall not sell a ticket at a location or premises different than that shown on the license certificate.

4.5.d.2.C. A licensed lottery sales agent or lottery retailer shall not permit any other person to sell tickets consigned to him or her; provided that a licensed lottery sales agent or lottery retailer may sell tickets through his or her employees.

4.5.d.2.D. No licensed lottery sales agent or lottery retailer shall sell a ticket to any person under eighteen (18) years of age.

4.5.d.2.E. No licensed lottery sales agent or lottery retailer, directly or indirectly, on behalf of himself or herself, or another, nor any organization, shall invite, solicit, demand, or offer or accept any payment, contribution, favor, or other consideration to influence the award, renewal or retention of a license.

4.5.d.2.F. A ticket shall not be purchased with food stamps or other government food subsidy coupons and the licensed lottery sales agent or lottery retailer shall not accept as consideration for a ticket food stamps or other government food subsidy coupons nor any other coupons whatsoever unless specifically sanctioned and/or offered by the West Virginia Lottery Commission and securely identified as sanctioned.

4.5.d.2.G. A licensed lottery sales agent or lottery retailer shall not transfer ticket stock, used for on-line terminals, between stores in the same chain unless the transfer is consented to in writing by a person authorized by the Director to consent.

4.5.d.2.H. A licensed lottery sales agent or lottery retailer shall not

transfer instant tickets between individual stores in the same chain unless the licensed lottery sales agent or lottery retailer verbally or in written form notifies the Director, or a person authorized by the Director to grant written consent, that it intends to transfer instant tickets between individual stores within the same chain. Notification shall occur prior to the transfer of tickets.

4.5.d.2.I. A licensed lottery sales agent or lottery retailer shall not sell any lottery ticket, lottery chance or lottery product unless the game being sold is approved by the Commission.

4.5.d.3. Grounds relating to the honest and efficient conduct of the Lottery. The Director may suspend or recommend to the Commission the revocation of a licensed lottery sales agent's or lottery retailer's license for any of the following:

4.5.d.3.A. The licensed lottery sales agent or lottery retailer has made a fraudulent misrepresentation in connection with his or her application for a license, in any of his or her reports, or to any person in connection with a lottery transaction;

4.5.d.3.B. The licensed lottery sales agent or lottery retailer has failed to maintain the sales levels set for him or her by the Director;

4.5.d.3.C. The licensed lottery sales agent or lottery retailer has begun to engage in the sale of lottery tickets as his or her sole business, occupation or activity;

4.5.d.3.D. The licensed lottery sales agent or lottery retailer has failed to take adequate security precautions for the safe handling of tickets, lottery materials or ticket sales proceeds due from the licensed lottery sales agent's or lottery retailer's ticket sales;

4.5.d.3.E. The licensed lottery sales agent or lottery retailer has failed to regularly, promptly and accurately settle the accounts of his or her lottery transactions and pay the amounts due from the licensed lottery sales agent's or lottery retailer's ticket sales;

4.5.d.3.F. The licensed lottery sales agent or lottery retailer has failed to notify the Director of any change in ownership;

4.5.d.3.G. The licensed lottery sales agent or lottery retailer has failed to open his or her books or records for reasonable inspection by the Lottery Commission or Director;

4.5.d.3.I. The licensed lottery sales agent or lottery retailer has failed to display his or her license or required advertising and display material; or

4.5.d.3.J. The licensed lottery sales agent or lottery retailer has failed to make a report of a violation of this rule or the retailer's conviction of any felony or crime related to theft or gambling or involving moral turpitude. At any time during the term of his or her license, if a lottery retailer or a licensed lottery sales agent is convicted of a felony or a gambling related offense, the lottery retailer or licensed lottery sales agent or licensee shall within fourteen (14) days, notify the Director, in writing, of the conviction and the offense. For purposes of this section, a licensed lottery sales agent or lottery retailer includes any natural person or in the case of other persons, as defined in subsections 2.14 and 2.15 of this rule, any person who holds ownership or a controlling interest in the entity.

4.6. Transfers of licenses; licensed premises.

4.6.a. Licenses nontransferable. Each license shall authorize a specified person to sell tickets at a specified location. No license may be transferred to another person. If the control of a licensed lottery sales agent or lottery retailer changes hands, the licensed lottery sales agent or lottery retailer may not sell any more tickets until he or she has submitted a new license application and the Director has issued a new license.

4.6.b. Change of location. If a licensed lottery sales agent or lottery retailer changes the location of his or her place of business, he or she shall not sell tickets at the new location until the Director has authorized the transfer of lottery sales agent's or lottery retailer's license to the lottery sales agent's or lottery retailer's new location. The Director shall consider all information concerning the licensed lottery sales agent's or lottery retailer's new location in the manner which would be required were the licensed lottery sales agent or lottery retailer making an initial application for a license at that location.

4.7. License term and renewal, fees.

4.7.a. Provisional licenses. Pending a final resolution of any question arising in respect of a licensing decision, the Director may issue a license subject to any terms and conditions he or she considers appropriate. Any provisional license expires on the expiration date shown on its face which in any case shall not be more than one (1) year from the date the provisional license is issued.

4.7.b. Annual license. Every holder of a license, other than a provisional license, shall renew the license annually, by July 1.

4.7.c. Temporary license. For specific events and activities or under special conditions and for limited duration the Director may issue to organizations or other persons a temporary license for the duration of the event or conditions with special terms the Director considers desirable.

4.7.d. License fees.

4.7.d.1. Upon initial application for licensing as a lottery retailer, the applicant shall pay to the Commission a non-transferable non-refundable license fee of twenty-five dollars (\$25.00).

4.7.d.2. Upon initial application for installation of an on-line terminal, the applicant shall submit a fee of five hundred dollars (\$500.00), which shall be a deposit refundable only under certain terms to be set out in the Lottery contract for on-line sales agents.

4.7.d.3. Upon application for renewal of licensing as a lottery retailer or licensed lottery sales agent, all lottery retailers shall submit a uniform annual fee of five dollars (\$5.00).

4.7.d.4. After the initial year of operation as an on-line sales agent, the agent may be charged a uniform weekly service fee of five dollars (\$5.00) as long as the agent weekly average sales of online games meet or exceed three hundred fifty dollars (\$350) for a ten-week period. When any agent's weekly average sales of online lottery games is less than three hundred fifty dollars (\$350), the agent may be required to reimburse the Commission for the Commission's estimated cost of telecommunications service between the agent's business and the central computer at Lottery headquarters.

4.7.d.5. In the event that a business changes ownership and an on-line terminal is in place and operating and the new owner meets all other requirements for licensing as a lottery retailer, there shall be no initial installation fee and the agent may be charged the uniform weekly service fee of up to five dollars (\$5.00) effective from the first day of operation.

#### 4.8. Bonds

4.8.a. Each lottery sales agent shall participate in the Financial Guarantee Bond program provided by the Lottery in the amount of at least ten thousand dollars (\$10,000) for each terminal on the premises. The bond shall be renewed on an annual continuing basis. Payment for bonding shall be made by Electronic Funds Transfer from the sales agents' bank accounts to the lottery's Revenues and Transfers Account each year.

4.8.b. If it is determined by the Director that the lottery sales agent should be bonded for an amount and in a form and manner different from the Financial Guarantee Bond of at least ten thousand dollars (\$10,000), or if other security should be provided by the agent to ensure the performance of the agent's duties and responsibilities as a licensed lottery agent or the indemnification of the Commission, the Director shall determine the amount, form and manner of the coverage.

#### 4.9. Contract

4.9.a. The Director shall enter into a contract with each lottery retailer and licensed lottery sales agent. The contract shall set out the duties, responsibilities, and obligations pertaining to the parties to the contract. The contract shall continue in effect during the period which the retailer or agent complies with applicable statutes, rules, fee requirements, and any other duties or requirements under the terms of the contract.

### **§179-1-5. Instant Games**

5.1. The Director may select, operate and contract to and for the operation of instant games which meet the criteria generally set forth in this section.

5.2. Instant game criteria.

5.2.a. The price of an instant game ticket shall not be more than five dollars (\$5.00) except by special promotions authorized by the Director.

5.2.b. Winners of an instant game are determined by the matching or specified alignment of the play numbers, digits and symbols on the tickets. The ticket bearer shall notify the Lottery of the win and submit the winning ticket to the Lottery as specified by the Director. The winning ticket shall be validated by the Lottery through the use of the validation number and any other means as specified by the Director.

5.2.c. The instant game shall be designed to pay out prizes in amounts on a numerical frequency to be determined by the Director.

5.2.d. The duration of ticket sales for an instant game shall be determined by the Director. The start date and closing date of the instant game shall be publicly announced.

5.2.e. The frequency of drawing and the method of selection of a winner in any instant game shall be determined by the Director in specific game rules.

5.2.f. At the Director's discretion, an instant game may include a special prize drawing or drawings as well as other methods of awarding the moneys accumulated in the unclaimed prize fund which will also stimulate the broad variety of games offered by the West Virginia Lottery. The Director shall follow Commission procedure for the payment of additional prizes from the unclaimed prize fund within the game rules structure.

5.2.g. The procedures for claiming instant prizes are as follows:

5.2.g.1. A claimant shall present the winning ticket for a prize of \$600 or less to any lottery retailer or licensed lottery sales agent or mail the signed ticket to the Director. The lottery retailer or licensed lottery sales agent shall verify the claim and, if the claim is a valid winner, make payment of the amount due the claimant. In the event the lottery retailer or licensed lottery sales agent cannot verify the claim, the claimant shall fill out a claim form, as provided by the Director, which may be obtained from any lottery retailer or licensed lottery sales agent and present or mail the completed form, together with the disputed ticket to the Director. A check shall be forwarded to the claimant in payment of the amount due if the claim is validated by the Director. In the event that the claim is not validated by the Director, the claimant shall be promptly notified that his or her claim is denied.

5.2.g.2. The claimant of a prize of more than \$600 shall complete a claim form and mail or present the form together with the winning ticket to the Director. Upon validation by the Director, a check shall be forwarded to the claimant in payment of the amount due, less any applicable federal and state income tax withholdings and less any withholding requested by the child support enforcement division. In the event that the claim is not validated by the Director, the claim shall be denied and the claimant shall be notified within five (5) days of the determination.

5.2.g.3. Any ticket not passing all the validation checks specified by the Director is invalid and ineligible for any prize and shall not be paid. However, the Director may, solely at his or her option, replace an invalid ticket with an unplayed ticket or tickets of equivalent sales price from any other current game or issue a refund of the sales price. In the event a defective ticket is purchased, the only responsibility or liability of the Director is the replacement of the defective ticket with another unplayed ticket or tickets of equivalent sale price from any other current game.

5.3. Confidentiality of tickets. No licensed lottery sales agent or lottery retailer or its employees or agents shall attempt to ascertain the numbers or symbols appearing in the designated areas under the removable latex coverings or otherwise attempt to identify winning tickets by any means.

5.4. The Director is not required to provide Commission members with copies of specific rules for instant games.

5.5. Official end of game.

5.5.a. The Director shall announce the official end of each instant game. A player may submit a winning ticket of \$600 or less to the licensed lottery sales agent or lottery retailer from whom the ticket was purchased or to the Lottery's administrative office or other designated site and a winning ticket of more than \$600 to the Lottery's administrative office or other designated site for prize payment up to one hundred eighty (180) days after the official end of game. In order to participate in a special prize drawing, a player shall redeem a ticket which qualifies for entry into that special prize drawing within the time limits set forth by the Director governing the conduct of that specific game.

5.5.b. A lottery retailer or licensed lottery sales agent may continue to sell tickets for each instant game up to one hundred eighty (180) days after the official end of that game.

5.5.c. A licensed lottery sales agent or lottery retailer shall return to the Lottery full packs of unsold and unopened lottery tickets for each game within thirty (30) days of the official end of that game in order to receive credit from the Lottery as provided for in the licensed lottery sales agent or lottery retailer contract. The Lottery has no obligation to grant credit for tickets returned more than thirty (30) days after the official end of that game.

5.6. Ticket validation requirements. Any ticket not passing all the validation requirements in this subsection and the specific validation requirements contained in the rules for its specific game is invalid and ineligible for any prize. To be a valid West Virginia Lottery instant game ticket, a ticket shall meet all of the following validation requirements:

5.6.a. The ticket was issued by the Director in an authorized manner;

5.6.b. The ticket is not be altered, mutilated, unreadable, reconstructed, or tampered with in any manner;

5.6.c. The ticket is not counterfeit in whole or in part;

5.6.d. The ticket is not stolen nor appears in any list of omitted tickets on file with the Lottery;

5.6.e. The ticket is complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error;

5.6.f. The ticket has the correct number of play symbols and exactly one (1) caption under each of the rub-off spots, exactly one (1) pack-ticket number, exactly one (1) agent verification code, exactly one (1) validation number and exactly one (1) readable bar code. The symbols must be present in their entirety, legible, right-side up, and not reversed in any manner;

5.6.g. The validation number of an apparent winning ticket appears on the Lottery's official list of validation numbers of winning tickets; and a ticket with that validation number has not been previously paid; and,

5.6.h. The ticket passes all additional confidential validation requirements established by the Director.

5.7. Any ticket not passing all the validation requirements in subsection 5.6 of this section and the specific validation requirements contained in the rules for its specific game is invalid and ineligible for any prize.

#### **§179-1-6. On-line games**

6.1. The Director may select, operate and contract for the operation of on-line games which meet the criteria generally set forth in this subsection.

6.1.a. The base price of an on-line ticket shall not be less than fifty cents (.50).

6.1.b. The manner and frequency of drawings may vary with the type of on-line games.

6.1.c. The times, locations, and drawing procedures shall be determined by the Director.

6.1.d. A ticket bearer entitled to a prize shall submit the winning ticket as specified by the Director. The winning ticket shall be validated by the Lottery's administrative staff or by a licensed lottery sales agent through use of the validation number and any other means as specified by the Director.

6.1.e. At the Director's discretion, an on-line game may include a special prize drawing or drawings as well as other methods of awarding the moneys accumulated in the unclaimed prize fund which will also stimulate the broad variety of games offered by the West Virginia Lottery. The Director shall follow Commission procedure for the payment of additional prizes from the unclaimed prize fund within the game rules structure.

6.1.f. Procedures for claiming on-line prizes are as follows:

6.1.f.1. To claim an on-line game prize of six hundred dollars (\$600.00) or less within one hundred eighty (180) days of the drawing the, claimant shall present the winning on-line ticket to any lottery sales agent or to the Lottery.

6.1.f.1.A. If the claim is presented to a licensed lottery sales agent, the licensed lottery sales agent shall validate the claim. If the ticket is determined to be a winning ticket, the licensed lottery sales agent shall make payment of the amount due the claimant. If the licensed lottery sales agent cannot validate the claim, the claimant may obtain and complete a claim form and submit it with the disputed ticket to the Lottery by mail or in person. Upon determination that the ticket is a winning ticket, the Lottery shall present or mail a check to the claimant in payment of the amount due. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. Nonwinning tickets shall not be returned to the claimant.

6.1.f.1.B. If the claim is presented to the Lottery, the claimant shall complete a claim form, as provided by the Director, and submit it with the winning ticket to the Lottery by mail or in person. Upon determination that the ticket is a winning ticket, the Lottery shall present or mail a check to the claimant in payment of the amount due, less any applicable federal and state income tax withholdings and less any withholding requested by the child support enforcement division. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. Non-winning tickets shall not be returned to the claimant.

6.1.f.2. To claim an on-line prize of more than six hundred dollars (\$600), within the limit of one hundred eighty (180) days after the date of the drawing, the claimant shall obtain and complete a claim form, as provided by the Director, and submit it with the winning ticket to the Lottery by mail or in person. Upon determination that the ticket is a winning ticket, the Lottery shall present or mail a check to the claimant in payment of the amount due, less any applicable federal and state income tax withholdings and less any delinquent child or spousal support obligation claimed by the bureau for child support enforcement. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. Non-winning tickets shall not be returned to the claimant.

6.2. Drawing and end of sales prior to drawings.

6.2.a. Drawings shall be conducted in a location and at days and times designated by the Director.

6.2.b. The Director shall announce the time for the end of sales prior to the drawings for each type of on-line game. Licensed lottery sales agents and on-line terminals shall not process orders for on-line tickets for that drawing after the time established by the Director.

6.2.c. The Director shall designate the type of equipment to be used, shall establish procedures to randomly select the winning combinations for each type of on-line game, and shall require the presence of an independent accountant to witness all pre- and post-drawing tests, and the drawing or winner selection.

6.2.d. The Director shall test the equipment used to determine the winning combination prior to and after each drawing to assure proper operation and lack of tampering or fraud. Drawings shall not be certified until all validation checks are completed. No prizes shall be paid until after the drawing is certified.

6.2.e. All on-line drawings shall be broadcast live on television provided the facilities for broadcasts are available and operational.

6.2.f. The Director shall establish procedures governing the conduct of drawings for each type of on-line game. The procedures shall include provisions for deviations which include but are not limited to:

6.2.f.1. A drawing equipment malfunction before validation of the winning combination;

6.2.f.2. A video and/or audio malfunction during the taping of the drawing;

6.2.f.3. A fouled drawing;

6.2.f.4. A delayed drawing; or

6.2.f.5. Other equipment, facility and/or personnel difficulties.

6.2.g. The drawing shall be completed under Lottery supervision whenever a deviation occurs. The drawing shall be video taped for later broadcast, if broadcast time is available. The drawing shall be certified and the deviation documented on the certification form. The winning combination shall be provided to the media for dissemination to the public.

6.2.h. If, during any live-broadcast drawing for a game, a mechanical failure or operator error causes an interruption in the selection of all digits or symbols, a "Foul" shall be called by the Lottery Drawing Official. Any digit or symbol drawn prior to a "Foul" being called shall stand and be declared official after passing lottery validation tests.

6.2.i. The Director shall delay payment of all prizes if any evidence exists, or there are grounds for suspicion, that tampering or fraud has occurred. Payment shall be made after an investigation is completed and the drawing certified. If the drawing is not certified, another drawing shall be conducted to determine the actual winner.

### 6.3 Validation requirements.

6.3.a. To be a valid winning on-line ticket, all of the following conditions shall be met:

6.3.a.1. All printing on the ticket shall be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and date printed on the ticket. The

ticket is not valid unless the ticket number and other information is recorded in the Lottery computer and transaction master file;

6.3.a.2. The ticket shall be intact;

6.3.a.3. The ticket shall not be altered, mutilated, unreadable, reconstructed, or tampered with in any manner;

6.3.a.4. The ticket shall not be counterfeit or an exact duplicate of another winning ticket;

6.3.a.5. The ticket shall have been issued by an authorized licensed lottery sales agent in an authorized manner;

6.3.a.6. The ticket shall not have been stolen or canceled;

6.3.a.7. The ticket shall not have been previously paid; and

6.3.a.8. The ticket shall pass all other confidential security checks of the Lottery.

6.3.b. Any ticket failing any validation requirements listed in subdivision 6.3.1 of this rule is invalid and ineligible for a prize subject to the condition of subdivisions 5.10.3 and 5.10.4 of this rule.

6.3.c. The Director may replace an invalid on-line ticket with an on-line ticket for a future drawing of the same game. The Director may pay the prize for a ticket that is partially mutilated or is not intact if the on-line ticket can still be validated by the other validation requirements, at his or her discretion.

6.3.d. In the event a defective on-line ticket is purchased, the only responsibility or liability of the Lottery or the lottery sales agent is the replacement of the defective on-line ticket with another on-line ticket for a future drawing of the same game.

6.4. Payment of prizes by licensed lottery sales agents.

6.4.a. A licensed lottery sales agent shall pay to the ticket bearer prizes of six hundred dollars (\$600) or less for any validated claims presented within the claim limit of one hundred eighty (180) days of the drawing to that licensed lottery sales agent. These prizes shall be paid during all normal business hours of that licensed lottery sales agent, provided, the on-line system is operational and claims can be validated.

6.4.b. A licensed lottery sales agent may pay prizes in cash or by business check, certified check, money order or a combination thereof. A licensed lottery sales agent that pays a prize with a check which is dishonored, in addition to full payment of the amount of the check and all nonsufficient funds charges and any other legitimate banking charge, may be subject to suspension or revocation of its license.

6.5. Notification to Commission. The Director shall provide Commission members with copies of specific game rules for on-line games. The Chairman or a quorum of the Commission may ask for

review of the on-line game rules at the next scheduled meeting of the Commission following receipt of draft rules, and shall adopt or refer rules to lottery staff for revision at that meeting.

**§179-1-7. Payment of prizes - general provisions for instant and on-line games.**

7.1. Each lottery retailer or licensed lottery sales agent shall pay all prizes authorized to be paid by the lottery retailer or licensed lottery sales agent by this rule during its normal business hours at the location designated on its license.

7.2. A claim shall be entered in the name of a single natural person. Groups, family units, organizations, clubs or other organizations shall designate one individual in whose name the claim is to be entered.

7.3. Unless otherwise provided in the rules for a specific type of game, a claimant shall sign the back of the ticket and complete and sign a claim form provided by the Director. The claimant shall submit the claim form and claimant's ticket to the Lottery in accordance with the instructions as stated on the claim form and on the back of the ticket. In the event of a difference or conflict in the name appearing on the ticket and the claim form, the name which appears on the ticket controls. The claimant, by submitting the claim, agrees to the following provisions as a prerequisite to payment of the prize:

7.3.a. The discharge of the State, the Lottery Commissioners, its officials, officers and employees of all further liability upon payment of the prize; and

7.3.b. The authorization to use the claimant's name and the taking and use of photographs for any reasonable publicity purposes the Director considers desirable upon award of the prize.

7.4. A prize must be claimed within the time limits prescribed by the Director in the instructions for the conduct of a specific game, but in no case shall a prize be claimed later than one hundred eighty (180) days after the official end of that instant game or the on-line drawing for which that on-line ticket was purchased.

7.5. The Director or Commission may deny awarding a prize to a claimant if the ticket is stolen, unissued, mutilated, altered, unreadable, counterfeit in whole or in part, mis-cut, mis-registered, defective, printed or produced in error, multiply printed, or blank or partially blank.

7.6. No person entitled to a prize may assign the right to claim it, except:

7.6.a. That payment of a prize may be made to any court-appointed legal representative, including, but not limited to, guardians, executors, administrators, receivers, or other court-appointed assignees; or

7.6.b. For the purpose of paying federal, state or local tax; or to satisfy executions, judgments, or orders or other processes legitimately obtained from federal or state courts; or

7.6.c. Transfers of remaining lottery annuity prize payments may be assigned pursuant to W.Va. Code §46A-6H-1 et seq.

7.7. In the event that there is a dispute or it appears that a dispute may occur relative to any prize, the Commission or Director may refrain from making payment of the prize pending a final determination of the dispute by the Commission or by a court of competent jurisdiction.

7.8. A ticket that has been legally issued by a licensed lottery sales agent or lottery retailer is a bearer instrument until signed. The person who signs the ticket is considered the bearer of the ticket.

Payment of any prize may be made to the bearer, and all liability of the State, its officials, officers, commission, and employees of the agency terminates upon payment.

7.9. All prizes shall be paid within a reasonable time after the claims are verified by the Director and a winner is determined. The date of the first installment payment of each prize to be paid in installment payments shall be the date the prize event is validated and certified. Subsequent installment payments shall be made annually from the date of the event in accordance with the type of prize awarded.

7.10. The Director may, at any time, delay any payment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that may have come to the Director's attention. All delayed payments shall be brought up to date immediately upon the Director's confirmation and continue to be paid on each originally scheduled payment date thereafter. If any prize is payable for the life of the claimant, only an individual may claim that prize, and if the individual is claiming on behalf of a group, a corporation, or the like, the life of the claim shall not exceed twenty (20) years.

7.11. The Director's decisions and judgments in respect to the determination of a winning ticket or any dispute arising from the payment or awarding of prizes are final and binding upon all participants in the Lottery.

7.12. All prizes or portions of prizes which remain unpaid at the time of a prize winner's death are payable to the prize winner's estate.

7.13. The Director may rely wholly on the presentment of certified copies of a court's appointment of an administrator or executor, guardian, conservator or any other evidence of a person entitled to the payment of any prize winnings then due.

7.14. The payment to the estate of a deceased owner of any prize winnings by the Director absolves the Commission, Director and employees of the agency of any further liability for payment of the prize winnings. The Director need not look to pay the prize winnings beyond the estate or appointed representative.

7.15. The Commission or Director may petition any court of competent jurisdiction to request a determination of the payee for payment of any prize winnings which are or may become due the estate of a deceased winner or a winner under a disability because of minority, mental deficiency, or physical or mental incapacity.

7.16. Whenever the winner of a lottery prize is also a lottery sales agent or lottery retailer, or is an owner or officer of a partnership or corporation that is a lottery sales agent or lottery retailer, the Director may offset any debt due the West Virginia Lottery against the amount of the prize due to the winner of the prize.

#### **§179-1-8. Use of West Virginia Lottery Trademarks.**

8.1. Lottery sales agents and retailers may use, and display the Lottery Logo, trademark, and other advertising materials without charge to the user or compensation to the Commission for its use.

8.2. Any use of the Lottery Logo or other trademarked or copyright materials, other intellectual property, or copy in advertising or production of consumer articles requires a prior written request and execution of the Lottery's License Agreement.

- 8.3. An applicant for licensing shall submit a form provided by the Director. The form shall require information of sufficient quantity and detail to allow the determination of suitability for licensing of the applicant by the Director.
- 8.4. Any request for authorization properly submitted shall include a representative sample or samples of the materials for which authority is sought.
- 8.5. After review of the request and representative sample, the Director may issue a tentative authorization to proceed with production of proofs or samples of the merchandise.
- 8.6. The applicant may be required to submit the final proofs or samples representative of actual production items to the Director for his or her final approval before proceeding to produce the items for sale or distribution.
- 8.7. Upon receipt of notice of final approval, or upon execution of the License Agreement by both parties, if no final approval is required, the licensee may initiate production of goods or materials over the specified duration of the Licensing Agreement as set forth in this section.
- 8.8. The Director may, over the period of the License Agreement, exercise supervision over the quality of the materials produced under license, and may require as a condition to continuation of the license, changes in quality of the goods or material produced.
- 8.9. The Director and Commission may at any time terminate an agreement to license in the event that the licensee fails to meet the requirement of the agreement, or in the event that the continuation of the license is not considered to be in the best interest of the Lottery or of the State of West Virginia.

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WV LOTTERY

Law Office of

*Philip A. Reale*, PLLC

405 Capitol Street, Suite 1100  
Charleston, WV 25301-1762

Phone: (304) 342-1891  
Fax: (304) 342-1893

E-Mail: [poreale@wvreala.com](mailto:poreale@wvreala.com)  
Web site: [www.wvreala.com](http://www.wvreala.com)

April 25, 2012

John C. Musgrave, Director  
West Virginia Lottery  
P.O. Box 2067  
Charleston, West Virginia 25327

Via U. S. Mail and Email to: [klamb@wvlottery.com](mailto:klamb@wvlottery.com)

Re: Comments in Response to WV Lottery, Title 179, Series 1, Amendments to  
Legislative Rule Filed March 27, 2012

Dear Director Musgrave:

Contained in this letter are the comments offered by GTECH Corporation in relationship to the proposed amendments to Title 179, Series 1 heretofore filed with the office of the West Virginia Secretary of State and noting a return date on all comments of not later than April 30, 2012. GTECH Corporation is the current vendor for both online and instant ticket operations for the West Virginia Lottery and, as such, acts in virtual partnership with the West Virginia Lottery to execute the mandates of the State Lottery Act as provided in Article 22, Chapter 29 of the Code of West Virginia as amended.

GTECH Corporation wholly endorses the proposed amendments, the purpose of which is to remove the restriction requiring the Lottery Prize Disbursement Account to remain a zero balance demand deposit account so that the West Virginia Lottery may maintain a modest cushion to prevent overdraft situations when making prize payouts, as well as to conform to the demands and dictates of banking institutions to do so under newly adopted federal banking reforms. Otherwise the West Virginia Lottery might routinely encounter circumstances in which it would be charged overdraft fees to the detriment of the West Virginia Lottery, the State of West Virginia and all of the noble purposes and programs funded by or in part by revenues generated by the West Virginia

Lottery. Further, adoption of the proposed amendments to the rule will aid in the prevention of adverse customer service issues for West Virginia Lottery patrons.

With the opening of Title 179, Series 1 for comment, GTECH Corporation chooses to make additional comments believed to be beneficial and desirable to the West Virginia Lottery. Such comments are directed specifically at CSR §179-1-5.2.a, which states as follows: **"The price of an instant ticket shall not be more than five dollars (\$5.00) except by special promotions authorized by the Director."** This provision was adopted on April 1, 1988 and has not been modified since. More than 24 years have expired since the limitation was imposed while the West Virginia Lottery has matured considerably during that same period of time.

It should be noted that the State Lottery Act, Article 22, Chapter 29 of the Code of West Virginia as amended contains no limitation on the price of an instant ticket, although express broad authority is provided to the West Virginia Lottery Commission to establish rules for conducting lottery games. See West Virginia Code §29-22-5(a)(2). Moreover, the need for pre-approval of an instant ticket price point in excess of five dollars (\$5.00) is somewhat redundant as a logistical matter in that the Marketing Director of the West Virginia Lottery, a position with a direct reporting line to the Director of the West Virginia Lottery, would be the person generally charged with making the determination of the appropriate mix of instant ticket offerings.

While there have been special promotions from time to time as granted by the Director in which instant ticket prices have exceeded five dollars (\$5.00), there is an inherent lack of flexibility among those responsible for marketing instant tickets to routinely utilize information and data as to consumer demographics and preferences. Utilizing such to adjust pricing for certain instant ticket products at points in excess of five dollars (\$5.00) allows for consumer demand to be properly reflected in the instant ticket product mix and improve lottery revenues – while doing so in the normal course of operations as opposed to going outside the normal course of operations and through a formal bureaucratic process of obtaining determination of a special promotion and approval by the Lottery Director.

All U. S. lotteries, with the exception of California, Oklahoma and West Virginia, offer instant ticket offerings to their patrons which include tickets at price points greater than five dollars (\$5.00) on a consistent basis. Player demand for instant tickets at price points higher than five dollars (\$5.00) has proven to be substantial. In fact, they comprise approximately one-third of U.S. instant ticket sales.

To illustrate the popularity and player demand in West Virginia for instant ticket games with price points in excess of five dollars (\$5.00), one merely needs to examine two specific special promotions as follows:

1. As a special promotion commemorating the Twentieth Anniversary of the West Virginia Lottery in 2006, an instant ticket game with a price point of twenty dollars (\$20.00) was launched. Instant ticket sales for fiscal year 2006 were \$119,123,846 – a record amount of sales for instant tickets. In the subsequent fiscal year, 2007, instant ticket sales declined by eleven percent to \$106,493,081. There were no instant ticket games in 2007 with a price point of twenty dollars (\$20.00).
2. In 2011 the West Virginia Lottery launched another special promotion to celebrate the Twenty-Fifth Anniversary of the organization. This special promotion involved an instant ticket with a price point of twenty-five dollars (\$25.00). Instant ticket sales enjoyed their second highest amount on record, \$115,697,423 – a whopping sixteen percent increase over sales in 2010.

An examination of the experience with instant ticket price points in excess of five dollars (\$5.00) in states comparable to West Virginia in terms of population demographics and instant ticket sales volumes reveals similar results.

Table 1. Fiscal year sales (in millions) before and after the introduction of higher price point tickets

| State      | Launch dates |               | \$10 price point introduction |               |          | \$20 price point introduction (\$15 ID) |               |          |
|------------|--------------|---------------|-------------------------------|---------------|----------|---|---------------|----------|
|            | Intro \$10   | Intro \$20    | Sales Pre FY                  | Sales Post FY | % Change | Sales Pre FY                            | Sales Post FY | % Change |
| Colorado   | Nov-01       | Oct-07        | 249.2                         | 257.2         | 3.21%    | 297.1                                   | 336.0         | 13.10%   |
| Idaho      |              | Feb-04 (\$15) |                               |               |          | 61.1                                    | 77.7          | 27.31%   |
| Nebraska   | Sep-04       | 2008          | 46.3                          | 56.5          | 22.11%   | 56.9                                    | 63.6          | 11.83%   |
| New Mexico | Nov-01       | May-05        | 74.9                          | 81.2          | 8.42%    | 87.0                                    | 90.8          | 4.39%    |

Source: La Fleur's Lottery Almanac

Certainly the success of the instant ticket game launches revealed in the table above and the two West Virginia special promotions described further above depend on multiple factors including marketing and price structure, but one cannot deny the impact of having within the mix of games presented to lottery instant ticket patrons, games with a price point in excess of five dollars (\$5.00).

GTECH, with its incomparable experience in lottery operations worldwide and recognized as the leader in lottery operations, modestly estimates a short term ten percent increase in West Virginia Lottery instant ticket sales with the introduction of games with price points in excess of five dollars (\$5.00). In doing so, it allows those responsible within the West Virginia Lottery for product marketing to design a strategy of instant ticket game offerings to match the varying demands of the playing public –

well-documented forecasted increase in cost to the state's Medicaid program, additional revenues – regardless of purpose to which dedicated – are needed. Increasing instant ticket sales by as much as ten percent is certainly one such way of helping. The practical implications of doing so are nil. The means by which it is accomplished is plain and simple – merely adopting the point made in these comments by modifying the final rule to be filed with the West Virginia Secretary of State by deleting the language contained in CSR §179-1-5.2.a and allow for the balance of CSR §179-1-5 remain intact for appropriate governance of instant ticket games.

Most importantly, the West Virginia Lottery Commission is mandated by law to operate the West Virginia Lottery “so as to produce the maximum amount of net revenues to benefit the public purpose described in this article consonant with the public good.” See W. Va. Code Chapter 29, Article 22, Section 9(a). With all but three states with instant ticket lotteries having the flexibility to routinely (as opposed to only for special promotions) provide instant ticket games at price points greater than five dollars (\$5.00), and with evidence that such flexibility or opportunity produces significant percentage increases in revenue, there is little merit in an argument against having such flexibility within the operations of the West Virginia Lottery. At a minimum, it would allow those responsible for marketing instant ticket products to fully use both the art and science of marketing to produce the maximum net benefit to the State Lottery as required of the West Virginia Lottery Commission.

Some would advance the argument that this is a change to be made by the West Virginia Legislature. Frankly, the legislature of West Virginia imposed no minimum or maximum price points on instant ticket games within the confines of the State Lottery Act. Rather, the legislature directed the State Lottery Commission to promulgate rules to govern the detailed operations of the Lottery. See W. Va. Code Chapter 29, Article 22, Section 5(a)(1) et seq. The subject of these comments is indeed those rules first promulgated April 1, 1988. It is the province of the West Virginia Lottery Commission to modify its rules and should do so in this instance, just as it is modifying its own rules to cure an issue associated with the maintenance of adequate funds in a bank account with which to make prize payments and not incur overdraft charges. Commissioners of the West Virginia Lottery are often called on to make decisions regarding the operation of the State Lottery and to deny itself the right to do so and the duty to do so does not serve the Commission well.

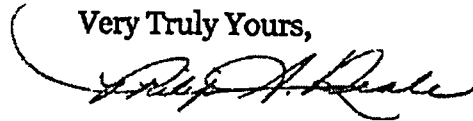
GTECH Corporation endorses the proposed changes of Series 179, Series 1 and, for all the reasons set forth above, respectfully requests and endorses the further change of the elimination of the language contained in §179-1-5.2.a, thereby providing the desired flexibility of GTECH as the vendor for the West Virginia Lottery to work collaboratively with the marketing staff of the West Virginia Lottery in designing and

of the State Lottery and to deny itself the right to do so and the duty to do so does not serve the Commission well.

GTECH Corporation endorses the proposed changes of Series 179, Series 1 and, for all the reasons set forth above, respectfully requests and endorses the further change of the elimination of the language contained in §179-1-5.2.a, thereby providing the desired flexibility of GTECH as the vendor for the West Virginia Lottery to work collaboratively with the marketing staff of the West Virginia Lottery in designing and implementing instant ticket product offerings and sales strategies to maximize revenues to and profit for the West Virginia Lottery.

Most respectfully, I remain

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Philip A. Reale", is written over a horizontal line.

GTECH Corporation by  
Philip A. Reale, WV Counsel

cc: Chairman Kenneth L. Greear  
Vice Chairman Bill Clayton  
Commissioner Michael A. Adams  
Commissioner Douglas Bicksler  
Commissioner David Lemmon  
Commissioner David McCormick  
Commissioner Roy E. Shrewsbury II

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APR 30 2012

WV LOTTERY

Comment on 179.2.17

✓  
"Lottery Ticket" or "Tickets" means tickets or other ~~tangible~~ evidence of participation used in lottery games or gaming systems.

The removal of the word tangible would help eliminate possible confusion in regards to evolving game payment methods that could include debit cards or debit accounts. Payment will grow to include direct payment to a winner's account or debit card without regard to a physical ticket, being based on player registration and play transaction solely recorded on the gaming system or drawing system. A tangible, or physical, ticket may not be produced, but the ticket play would be a digitally stored record of the play transaction and subsequent automated payment.

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**APR 30 2012**  
**WV LOTTERY**

**Comments: Amendments to WV Lottery Legislative Rule, Title 179, Series 1**

**Filed March 27, 2012**

**Language requiring payment of prizes by check is found throughout Title 179, Series 1. This language does not specifically include alternate payment methods such as prize payment by EFT or through a debit based system. Payment methods have evolved over time and allowing the customer to choose the payment method for prize winnings has become an important aspect of customer service. Amending the rule to specifically provide for alternate payment methods will prevent future confusion regarding payments.**

## Responses to Comments Received – Amendments Made and Reasons for Amendments

- (1) Comment from the Law Offices of Phil Reale: The Commission declines to make any amendments to this rule because the comment strays outside the subject matter of the original emergency as filed. While the Commission believes that Mr. Reale's comment presents many valid points, it will defer to the Legislature to determine whether the comment merits consideration during its regular session. The Commission appreciates the time and effort of Mr. Reale in contributing the comment.
- (2) Comment from Danielle Boyd, Counsel to WV Lottery: The Lottery Commission has declined to adopt the recommendation of Ms. Boyd to update the prize payment methods in the rule because her suggestion strays outside the original scope of the emergency rule as filed.
- (3) Comment from Michael Thaxton, Marketing Division: The Lottery Commission has declined to adopt the recommendation of Mr. Thaxton because his suggestion strays outside the original scope of the emergency rule as filed.