



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR
A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY **Lottery Commission**

RULE TYPE **Interpretive** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **179-**

RULE NAME **Lottery Interpretive Rule** **07**

CITE AUTHORITY **29A-3-4**

RULE IS LEGISLATIVE EXEMPT

Yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

Interpretive rule is valid and exempt from legislative review pursuant to W.Va. Code 29A-3-4.

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE, THE
EFFECTIVE DATE OF THIS RULE IS

Saturday, November 04, 2017

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

**Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in
accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



Title-Series: 179-07



Rule Id: 16625



Document: 49916

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TITLE 179
INTERPRETIVE RULE
WEST VIRGINIA LOTTERY

SERIES 7
LOTTERY INTERPRETIVE RULE

§179-7-1. General.

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

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

1.3. Filing Date. - October 4, 2017

1.4. Effective Date. - November 4, 2017

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

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

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

2.2.a. The location is at least one hundred fifty feet from, or has an external structural connection not amounting to a common internal wall to, a premises that already has a retail license for video lottery terminals, a business that sells petroleum products capable of being used as fuel in an internal combustion engine¹, or the perimeter of a public park²;

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

2.2.c. The location is an Authorized West Virginia Truck Stop pursuant to W.Va. Code of State Rules § 179-5-2.12.a.

2.3. "Monitor," as the word is found in W.Va. Code §29-22B-702, means that the licensed premises must be staffed at all times when limited video lottery games are being played. This interpretation means that a person who views the video lottery licensed premises on a video screen in a place outside the

¹ *KoKochak v. W.Va. State Lottery Comm.*, 25 W.Va. 614, 695 S.E.2d 185, April 26, 2010; W.Va. C.S.R. 179-5-2.12.

² *BPO Elks Lodge #198 v. W.Va. State Lottery Comm.*, 225 W.Va. 614, 695 S.E.2d 185, April 26, 2010.

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premises described in the licensee's license from the Alcohol Beverage Control Administration and the license from the State Lottery Commission is not monitoring "...video lottery terminals to prevent access or play by persons who are under the age of twenty-one years or who are visibly intoxicated," as required by section 702(8) of the Act. This interpretation is also in keeping with W.Va. Code §29-22B-1201(c) that says, Personnel of the limited video lottery retailer shall be present during all hours of operation at each video lottery terminal location. These personnel shall make periodic inspections of the restricted access adult-only facility in order to provide for the safe and approved operation of the video lottery terminals and the safety and well-being of the players.

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

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

3.1. As used in W.Va. Code §29-22A-8(1), the word "voids" in the sentence that says, *The sale of more than five percent of a license or permit holder's voting stock, or more than five percent of the voting stock of a corporation which controls the license or permit holder or the sale of a license or permit holder's assets, other than those bought and sold in the ordinary course of business, or any interest therein, to any person not already determined to have met the qualifications of section seven of this article voids the license unless the sale has been approved in advance by the commission,* means that the license is void after due process has been afforded to the licensee or permit holder and a final order has been entered. In that same sentence, the word "person" does not include acquisition of common stock of a licensee or permit holder by a state or federally licensed banking institution, nor does it include acquisition of licensee or permit holder's stock by an institutional investor such as a pension fund or a mutual fund registered with the United States Securities and Exchange Commission, as well as a registered investment company, a registered investment advisor, a collective trust fund or a qualified insurance company as those entities are defined in the Investment Company Act of 1940 and the Investment Advisors Act of 1940, that is holding the stock only as an investment and not for purposes of control of the licensee or permit holder.

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

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

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

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

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