



STATE OF WEST VIRGINIA

LOTTERY POLICY STATEMENT 11-08/LVL

AUDITS, OPERATOR-RETAILER CONTRACTS: PERCENTAGE SHARES of REVENUE AND SHARING EXPENSES

[Adopted March 27, 2012]

§1. Situation.

During 2011, the Commission received complaints concerning the percentage sharing provisions of the operator-retailer contracts on file with the Lottery [and in several cases not on file]. Some operators appear to be charging their respective retailers an extra weekly or monthly fee. In many cases, there is no contractual basis for the charges. In other cases, the operator and retailer apparently have agreed to a sharing of expenses. Upon review of this issue, the Lottery also realized the necessity of creating a uniform one (1) page Settlement Report that accounts for distributions of the agreed percentage shares made pursuant to these operator/retailer contracts that can be retained by the Operator as the official record of these transactions for audit purposes. The current lack of settlement records precludes the Lottery from conducting an accurate and thorough audit of these transactions as required by law.

§ 2. Laws and Rules.

West Virginia Code §29-22B-706 reads in part as follows:

In addition to the general duties imposed on all licensees in section 22B-701 of this article, an operator shall: ...

(4) Pay no compensation of any kind to any limited video lottery retailer or give or transfer anything of value to any limited video lottery retailer, that is in addition to the consideration stated in the written agreement between the operator and the limited video lottery retailer, which may be not less than forty percent nor more than fifty percent of the amount of net terminal income received by the operator in connection with the video lottery terminals at that location;

The limited video lottery Legislative Rule 179 CSR 5-19.2.c reads as follows:

The operator shall provide to the commission an affidavit stapled to each contract, which is signed and attested to by the operator's chief executive stating that this contract is the only contract, agreement or understanding, written or oral, between the operator and the licensed video lottery retailer concerning the placement and operation of limited video lottery terminals, and that the operator will execute no further limited video lottery agreements with the retailer so long as this attached agreement is in force for video lottery terminals on the premise of the retailer stated in the contract. Any other agreements between the operator and the limited video lottery retailer shall be identified by the operator and are subject to review by the commission. Those agreements shall be arms length and for fair market consideration, and shall not be for excess or unreasonable consideration designed to circumvent the requirement of this subdivision 19.2.c of this subsection.

W.Va. Code §29-22B-1402(d) further requires that "(e)ach limited video lottery retailer's periodic distribution from the appropriate operator shall be paid by check or by electronic funds transfer to the limited video lottery retailer's designated bank account."

Additionally, 179 C.S.R. 179-5-3.1. reads in pertinent part:

3.1. The commission shall determine on a continuing basis the eligibility of licensees to hold a

License by one or more of the following means...

3.1.b. The commission shall perform spot audits at retailer locations and at operator locations;

Finally, W.Va. Code §29-22B-701(5) requires all licensees to maintain all records required by the Commission.

§ 3. Policy.

(a) The State Lottery Commission policy for the ten-year permit period beginning on July 1, 2011, in compliance with State law, requires all periodic contract sharing payments made by operators to retailers to be by check or electronic transfer and paid in an amount equal to the retailer's contracted percentage times the remainder of gross profits after the state's percentage share of 30% to 50% has been deducted. ("Gross Profits" is "Gross Terminal Income" minus the Lottery's 2% administrative deduction.)

(b) The operator shall document all periodic distributions to a retailer by completing a WV Lottery Settlement Report each time a distribution is made. **WV**

Lottery Settlement Reports shall be retained by the operator for two (2) years and shall be the official record reviewed by the WV Lottery when conducting an audit of the periodic distributions made between an operator and retailer. If an operator fails to complete and retain the WV Lottery Settlement Reports required by the Commission for the requisite two (2) years then the operator's eligibility to continue holding a license will be subject to review by the Commission.

(c) If a separate written, arms-length contractual agreement is made between the operator and retailer that contains cost or expense sharing agreement(s) that do not violate any restrictions on such agreements found in 179 CSR 5-19.2.c, settlement for these agreed expenses shall be a separate transaction(s) after the percentage shares are distributed to the operator and retailer.

(d) The West Virginia Lottery is not party to the agreements made between operators and retailers and does not approve contracts. Contract disputes between operators and retailers have not been, and will not be, decided by the West Virginia Lottery. The West Virginia Lottery only reviews the contracts to determine the parties, term, number of machines, and that the contract contains a lawful revenue percentage split.

§4. - Adoption.

This policy statement was adopted by the State Lottery Commission at its March 27, 2012 meeting after fair and frank discussion.

LOTTERY COMMISSION POLICY STATEMENTS PERTAINING TO LIMITED VIDEO LOTTERY LICENSEES

LOTTERY COMMISSION POLICY STATEMENT NO. 03-02. STANDARD ESTABLISHED BY THE STATE LOTTERY COMMISSION FOR APPROVAL OF SOFTWARE AMENDMENTS TO APPROVED VIDEO LOTTERY TERMINAL BILL ACCEPTORS.

THE TREASURY DEPARTMENT IN 2003 BEGAN A PROGRAM TO REDESIGN ALL PAPER CURRENCY. THIS REDESIGN WILL NECESSITATE REPROGRAMMING OF BILL ACCEPTORS IN ALL WEST VIRGINIA VIDEO LOTTERY TERMINALS. THE INTRODUCTION OF NEW TWENTY-DOLLAR BILLS HAS DEMONSTRATED HOW QUICKLY OLD-DESIGN BILLS CAN BE PULLED FROM CIRCULATION AND HOW TIME-SENSITIVE THE REPROGRAMMING OF BILL ACCEPTORS CAN BE TO THE FISCAL VITALITY OF THE RACETRACK VIDEO LOTTERY PROGRAM AND THE LIMITED VIDEO LOTTERY PROGRAM. IN ADDITION, BILL ACCEPTOR COMPANIES ARE CONSTANTLY UPDATING THEIR SOFTWARE TO THWART THE USE OF MORE SOPHISTICATED COUNTERFEIT BILLS. FOR THESE REASONS, THE COMMISSION HEREBY DELEGATES ITS AUTHORITY TO APPROVE BILL ACCEPTOR SOFTWARE CHANGES TO THE DIRECTOR. NEW BILL ACCEPTORS (HARDWARE/INITIAL SOFTWARE) WILL STILL BE APPROVED BY COMMISSION VOTE. OCTOBER 29, 2003.

LOTTERY COMMISSION POLICY STATEMENT NO. 04-01. APPROVAL OF NON-TESTED VIDEO LOTTERY TERMINALS AND GAMES FOR SPECIFIC NON-GAMING PURPOSES AND FOR LIMITED PERIODS OF TIME.

PRIOR TO PASSAGE OF THE LIMITED VIDEO LOTTERY ACT IN 2001, THE LOTTERY ALLOWED MANUFACTURERS TO BRING VIDEO LOTTERY TERMINALS INTO WEST VIRGINIA FOR THE PROPOSE OF TRADE SHOWS AND SALES DEMONSTRATIONS WITHOUT THOSE VIDEO LOTTERY TERMINALS AND/OR VIDEO LOTTERY GAMES BEING LABORATORY TESTED AND SUBSEQUENTLY COMMISSION-APPROVED. ALL THAT CHANGED WITH PASSAGE OF THE LIMITED VIDEO LOTTERY ACT OF 2001.

UNDER THE LIMITED VIDEO LOTTERY ACT, MERE POSSESSION OF A VIDEO GAMBLING MACHINE IS PER SE A FELONY UNDER PROVISIONS OF W.VA. CODE §29-22B-1705. IN THE STATUTORY DEFINITION OF A VIDEO GAMBLING MACHINE AS FOUND IN W.VA. CODE §29-22B-331, SUBDIVISION (A)(1) SAYS A MACHINE THAT IS "APPROVED AND REGISTERED BY THE COMMISSION" UNDER THE RACETRACK VIDEO LOTTERY ACT AND/OR THE LIMITED VIDEO LOTTERY ACT IS NOT A "VIDEO GAMBLING MACHINE."

FOR THE LIMITED PURPOSE OF ALLOWING AN UN-TESTED VIDEO LOTTERY TERMINAL OR VIDEO LOTTERY GAME INTO WEST VIRGINIA FOR NON-GAMING FUNCTIONS SUCH AS TRADE SHOWS, DEMONSTRATIONS FOR THE LOTTERY AND LIKE FUNCTIONS, THE STATE LOTTERY COMMISSION HEREBY DELEGATES TO THE DIRECTOR THE POWER TO APPROVE SUCH A VIDEO LOTTERY TERMINAL OR GAME PROVIDED THAT THE TIME FRAME FOR SUCH APPROVAL IS NEVER MORE THAN THIRTY DAYS. OCTOBER 29, 2004.

LOTTERY COMMISSION POLICY STATEMENT NO. 05-01. CERTIFICATE-OF-RESERVATION TERMINALS.

UNTIL THE CALENDAR YEAR 2005, THE STATE LOTTERY COMMISSION HELD BIDDING EVENTS FOR THE DISTRIBUTION OF LIMITED VIDEO LOTTERY TERMINAL PERMITS EVERY THREE MONTHS. WHEN THE MAXIMUM NUMBER OF VIDEO LOTTERY TERMINALS PERMITS WAS REACHED AS A RESULT OF THE FEBRUARY 2005 BID OPENING, THE PRACTICE OF BIDDING HAS BEEN SUSPENDED, AND NO

FUTURE BID OPENING EVENT HAS BEEN SCHEDULED. AS A RESULT, THIS LOTTERY COMMISSION POLICY STATEMENT WILL REDEFINE ONE OF THE ADMINISTRATIVE PROCEDURES PREVIOUSLY APPROVED BY THE COMMISSION.

A RETAILER WHOSE LOCATION HAD A PRIVATE CLUB LIQUOR LICENSE OR A CLASS A BEER LICENSE ON OR BEFORE JANUARY 1, 2001 COULD REQUEST A CERTIFICATE OF RESERVATION IF HE OR SHE APPLIED FOR A LIMITED VIDEO LOTTERY RETAILER LICENSE ON OR BEFORE AUGUST 1, 2001. ONE OF THE OPTIONS OPEN TO A RETAILER WITH A CERTIFICATE OF RESERVATION WAS TO ASSIGN IT TO AN OPERATOR WHO WOULD THEN EXCHANGE THE CERTIFICATE FOR VIDEO LOTTERY TERMINAL PERMITS UP TO THE CERTIFICATE'S NUMBER LIMIT. THIS ACTION WOULD SAVE THE OPERATOR THOUSANDS OF DOLLARS IN THE ACQUISITION OF PERMITS. A DRAWBACK OCCURS WHEN THE RETAILER WHOSE CERTIFICATES WERE ASSIGNED LOSES ITS LIMITED VIDEO LOTTERY LICENSE AND THE UNDERLYING CERTIFICATE IS VOIDED. TO PROVIDE FOR A SMOOTH TRANSITION FOR THE OPERATOR WHO HAS PURCHASED VIDEO LOTTERY TERMINALS USING THE CERTIFICATE-BASED PERMIT, THE STATE LOTTERY COMMISSION HAS HERETOFORE ALLOWED THE CONTINUANCE OF THE PERMIT FOR UP TO 100 DAYS OR UNTIL THE NEXT BID IS OPENED.

TO ELIMINATE THE COMMISSION'S LIMITATION OF 100 DAYS, IN SITUATIONS DESCRIBED IN THIS POLICY STATEMENT, THE OPERATOR WILL RETAIN ITS PERMIT AND VIDEO LOTTERY TERMINALS OBTAINED BY ASSIGNMENT OF CERTIFICATE UNTIL THE COMMISSION'S NEXT BID OPENING FOR PERMITS. JUNE 21, 2005.

LOTTERY COMMISSION POLICY STATEMENT NO. 05-02. NO LIMITED VIDEO LOTTERY PROMOTIONS.

§1. - SITUATION.

IT HAS COME TO THE COMMISSION'S ATTENTION THAT AN INCREASING NUMBER OF LICENSED LIMITED VIDEO LOTTERY RETAILERS ARE ENGAGING IN PROMOTIONAL ACTIVITIES IN A MANNER THAT IN THE OPINION OF THE COMMISSION DIRECTLY OR INDIRECTLY VIOLATES THE STATUTORY PROHIBITION AGAINST PROMOTIONS BY LIMITED VIDEO LOTTERY RETAILERS AS PROVIDED BY THE LIMITED VIDEO LOTTERY ACT [W.VA. CODE §29-22B-702(13)]. THE COMMISSION NOTES THAT THE TERM "PROMOTIONAL ACTIVITIES" IS NOT DEFINED WITHIN THE AFORESAID ACT.

§2.- SOLUTION.

IN ORDER TO CURTAIL WHAT THE COMMISSION BELIEVES TO BE IMPROPER PROMOTIONAL ACTIVITIES, THE STATE LOTTERY COMMISSION HAS INSTRUCTED THE DIRECTOR TO GIVE NOTICE TO ALL LIMITED VIDEO LOTTERY RETAILERS AND OPERATORS THAT THE FOLLOWING POLICY WILL BE EFFECTIVE NOVEMBER 1, 2005.

A. A. NO LICENSED VIDEO LOTTERY RETAILER SHALL ENGAGE IN PROMOTIONAL ACTIVITIES IN WHICH THE OFFERING OF LIMITED VIDEO LOTTERY IS REFERRED TO BY NAME OR LOCATION OF A LICENSED VIDEO RETAILER. AS USED IN THIS CONTEXT, THE COMMISSION HAS DETERMINED THAT THE TERMS "PROMOTIONAL ACTIVITY" OR "PROMOTIONAL ACTIVITIES " MEANS ANY MARKETING OR ADVERTISING ACT OR ACTION THAT, BY IDENTIFICATION OF THE NAME OR LOCATION OF A LICENSED LIMITED VIDEO RETAILER, ENCOURAGES VIDEO LOTTERY WAGERING AT SUCH RETAILER OR LICENSED LOCATION, INCLUDING, BUT NOT LIMITED TO GIVE-A-WAYS OF MONEY, COUPONS, GIFT CERTIFICATES, MERCHANDISE, TICKETS TO EVENTS, TRIPS OR FREQUENT PLAYER INCENTIVES. NOTHING HEREIN SHALL BE CONSTRUED TO MEAN THAT LICENSED VIDEO LOTTERY RETAILERS ARE PROHIBITED FROM PROVIDING COMPLEMENTARY COFFEE, SOFT DRINKS, SNACKS OR APPETIZERS FOR CONSUMPTION ON THE PREMISES; *PROVIDED*, THAT THE PROVISION OF SAID BEVERAGES OR FOOD IS NOT LIMITED TO THE PLAYERS OF LICENSED VIDEO LOTTERY TERMINALS.

B. NOTHING IN THIS POLICY STATEMENT SHALL BE CONSTRUED TO MEAN THAT LIMITED VIDEO LOTTERY RETAILERS ARE PRECLUDED FROM ADVERTISING OR PROMOTING OTHER LAWFUL ACTIVITIES THAT ARE CO-LOCATED ON THE SAME PREMISES AS VIDEO LOTTERY TERMINALS. THE RETAILER MAY ENGAGE IN PROMOTIONAL ACTIVITIES THAT INCLUDE OR REFER TO THOSE LAWFUL ACTIVITIES. IT SHOULD BE CLEAR, HOWEVER, THAT ADVERTISEMENTS THAT ARE SUGGESTIVE OF THE PRESENCE OF VIDEO LOTTERY TERMINALS ARE FORBIDDEN.

C. ANY LIMITED VIDEO LOTTERY RETAILER THAT DOES NOT COMPLY WITH THIS POLICY SHALL HAVE ITS LICENSE SUSPENDED PURSUANT TO WEST VIRGINIA CODE §29-22B- 702(12) UNTIL IT CHOOSES

TO COMPLY WITH THE POLICY. NON-COMPLYING LICENSEES MAY ALSO BE SUBJECT TO SEPARATE CIVIL PENALTIES, WHICH MAY BE IMPOSED FOR EACH DAY OF VIOLATION OF THE POLICY. SEPTEMBER 28, 2005.

LOTTERY COMMISSION POLICY STATEMENT NO. 05-03. FRATERNAL CLUB NAMES.

§1. - SITUATION.

IT HAS COME TO THE COMMISSION'S ATTENTION THAT AN INCREASING NUMBER OF BARS AND RESTAURANTS ARE OBTAINING CHARTERS FROM NATIONAL FRATERNAL AND VETERANS SOCIETIES AND REQUESTING TO OPERATE MORE THAN FIVE VIDEO LOTTERY TERMINALS. THE COMMISSION RECOGNIZES THAT SOME OF THOSE HERETOFORE LICENSED LIMITED VIDEO LOTTERY FRATERNAL CLUB RETAILERS ARE NOT TRUE FRATERNAL CLUBS EXEMPTED BY THE UNITED STATES INTERNAL REVENUE SERVICE AS PRIVATE CLUBS BUT ARE BUSINESSES OPEN TO THE GENERAL PUBLIC IN COMPETITION WITH OTHER LIMITED VIDEO LOTTERY RETAILERS WHO ARE LIMITED TO FIVE VIDEO LOTTERY TERMINALS AS PROVIDED BY THE LIMITED VIDEO LOTTERY ACT [W.VA. CODE §29-22B-1105(A)].

§2. - SOLUTION.

IN ORDER TO RESTRICT WHAT COULD BE UNFAIR COMPETITION NOT INTENDED BY THE LEGISLATURE, THE STATE LOTTERY COMMISSION HAS INSTRUCTED THE DIRECTOR TO GIVE NOTICE TO ALL LIMITED VIDEO LOTTERY RETAILERS NOW QUALIFIED AS FRATERNAL AND VETERAN RETAILERS, AND TO ALL LICENSED OPERATORS, THAT THE FOLLOWING POLICY WILL BE EFFECTIVE AUGUST 1, 2005:

1. 1. A LICENSEE THAT HAS PROVIDED A TAX EXEMPTION LETTER UNDER SECTIONS 501(C)(8), (C)(10) OR (C)(19) OF THE INTERNAL REVENUE CODE TO PROVE ITS STATUS AS A FRATERNAL OR VETERANS ORGANIZATION ENTITLED TO OPERATE MORE THAN FIVE VIDEO LOTTERY TERMINALS SHALL ONLY EXHIBIT OR DISPLAY TO THE PUBLIC ITS FRATERNAL OR VETERANS NAME THAT CORRESPONDS TO THE IRS EXEMPTION LETTER, AND IT SHALL NOT EXHIBIT OR DISPLAY TO THE PUBLIC ANY DOING-BUSINESS-AS NAME OR TRADE NAME WHATSOEVER.

2. 2. ANY LIMITED VIDEO LOTTERY RETAILER THAT DOES NOT COMPLY WITH THIS POLICY SHALL HAVE ITS LICENSE SUSPENDED - PURSUANT TO W.VA. CODE §29-22B-402(12) - UNTIL IT CHOOSES TO COMPLY WITH THE POLICY. NON-COMPLYING LICENSEES MAY ALSO BE SUBJECT TO SEPARATE CIVIL PENALTIES, WHICH MAY BE IMPOSED FOR EACH DAY OF VIOLATION OF THE POLICY. JULY 27, 2005.

LOTTERY COMMISSION POLICY STATEMENT NO. 05-04. TAX STATUS CLEARANCE UPON LICENSE RENEWAL FOR PERSONS WHO HAVE ALREADY QUALIFY AS WEST VIRGINIA RESIDENTS.

§1. - SITUATION.

IT HAS COME TO THE COMMISSION'S ATTENTION THAT ITS LICENSING DIVISION SPENDS AN INORDINATE AMOUNT OF TIME VERIFYING THAT PERSONS WHO HAVE PREVIOUSLY QUALIFIED AS FOUR-YEAR RESIDENTS OF WEST VIRGINIA AS PROVIDED BY THE LIMITED VIDEO LOTTERY ACT [W.VA. CODE §29-22B-512]. TO QUALIFY INITIALLY AS A FOUR-YEAR RESIDENT OF WEST VIRGINIA, A PERSON ASSOCIATED WITH AN APPLICANT MUST, AMONG OTHER TESTS, HAVE FILED TIMELY HIS OR HER WEST VIRGINIA PERSONAL INCOME TAX RETURN WITH THE STATE TAX DEPARTMENT.

§2. - SOLUTION.

IN ORDER TO "DETERMINE ON A CONTINUING BASIS THE ELIGIBILITY OF LICENSEES TO HOLD A LICENSE ..." INCLUDING "THE RESIDENCY REQUIREMENTS IN SECTIONS 22B-503 AND 22B-504 ..." THAT A PERSON "... SHALL BE A RESIDENT OF THIS STATE DURING THE PERIOD IN WHICH THE LICENSE

ISSUED FOR THE OPERATOR OR LIMITED VIDEO LOTTERY RETAILER IS IN EFFECT," THE FOLLOWING PROCEDURAL CHANGE WILL BE INITIATED AT ONCE:

1. THE LICENSING DIVISION SHALL HENCEFORTH ACCEPT AN AFFIDAVIT OR VERIFIED STATEMENT FROM PREVIOUSLY QUALIFIED RESIDENTS OF WEST VIRGINIA THAT THEY HAVE FILED THEIR WEST VIRGINIA PERSONAL INCOME TAX RETURNS BY DECEMBER 31ST OF THE YEAR SPECIFIED BY THE DIVISION AS THE MOST RECENT TAX YEAR BEING REVIEWED. SUCH VERIFICATION MAY BE EITHER ON A GROUP DOCUMENT OR ON INDIVIDUAL DOCUMENTS.

2. 2. ANY PERSON ASSOCIATED WITH THE LICENSE RENEWAL APPLICATION OF A LIMITED VIDEO LOTTERY RETAILER FOUND TO HAVE MADE A FALSE VERIFIED STATEMENT TO THE COMMISSION CONCERNING THE TIMELY FILING OF A WEST VIRGINIA PERSONAL INCOME TAX RETURN WILL IMMEDIATELY BE DISQUALIFIED FROM PARTICIPATION IN LIMITED VIDEO LOTTERY, AND THE LICENSEE SHALL HAVE ITS LICENSE SUSPENDED - PURSUANT TO W.VA. CODE §29-22B-402(12) - UNTIL IT CHOOSES TO COMPLY WITH THE SPIRIT OF THIS POLICY. NON-COMPLYING LICENSEES MAY ALSO BE SUBJECT TO SEPARATE CIVIL PENALTIES, WHICH MAY BE IMPOSED FOR EACH DAY OF VIOLATION OF THE POLICY. JULY 15, 2005