

Message from the Secretary



John C. Musgrave

The success of West Virginia's Limited Video Lottery Program has garnered national attention. Feature articles about Limited Video Lottery have appeared in some of the Gaming Industry's largest and most prestigious publications. I am continuously receiving requests for information from my US and Canadian peers who find our position of having the most diverse product line of any lottery in the United States, enviable.

By the end of April 2004, our Limited Video Lottery sales were \$197.6 million for just ten months of the fiscal year. For that period, sales are 42 percent ahead of those realized last fiscal year.

Earlier, I projected limited video lottery sales to reach \$219 million by the end of fiscal year 2004. Now, I find that actual sales are tracking at approximately nine percent above that level. The conclusion of the fiscal year should realize sales in the range of \$235 to \$240 million.

Over 7,700 permits for Limited Video Lottery terminals have been issued, or are pending issuance, with over 6,750 terminals fully operating in over 1,540 retail locations throughout West Virginia. After the next permit bid opening, scheduled for August 13, I imagine that our program will be close to capacity.

This stellar success is the result of extraordinary cooperation among the owners of West Virginia businesses, the West Virginia Lottery and the many other State Government agencies that play a vital role in the program's success.

To you, the business owners, I extend my sincere gratitude and appreciation. Your endeavors have built an admirable program and raised revenues to fund college scholarships, tax exemptions and a number of economic development projects that will help our state in many ways.

You have helped your communities by raising nearly \$4 million in revenues for your cities and counties, as of the week ending May 8. This is over \$600,000 more than your cities and counties received for the entirety of fiscal year 2003. As Operators and Retailers of the Limited Video Lottery program, you personally earned \$116 million in this same time period.

The members of the Limited Video Lottery Advisory Board have worked hard to ensure the continued flow of communications and have served as a voice of advocacy for all of you. The cooperation shown by Limited Video Lottery retailers in assuring that gambling-related signage and advertising stopped before January 1, 2004 was commendable and highly recognized by the media.

We have worked hard for the success of the Limited Video Lottery program, and I have tried to balance the needs of West Virginia's businesses with the regulatory mandates entrusted to me as Cabinet Secretary of the State Department of Revenue. I am pleased to announce that the Amended Rules and Regulations for Limited Video Lottery were approved in the 2004 Legislative Session. You will find a separate article in this issue of *VideoLine* that provides details concerning modifications to the Rules and Regulations.

Again, I extend my sincere appreciation to all of you who have worked with the West Virginia Lottery to make the Limited Video Lottery program successful in terms of revenue and in terms of cooperation between West Virginia's business community and State government.

Respectfully,

John C. Musgrave
Cabinet Secretary, West Virginia Department of Revenue
Director, West Virginia Lottery

VideoLine

West Virginia
Limited Adult
Video Lottery
Newsletter

Fall, 2003

Bob Wise
Governor

John C. Musgrave
Director



Lottery Hosts LVL Operators Meeting at Stonewall Resort

West Virginia's Stonewall Jackson Resort State Park was the site of a statewide Lottery-sponsored Limited Video Lottery (LVL) Operators meeting on April 27.

Lottery Director and Cabinet Secretary of the State Department of Revenue, John Musgrave, held the meeting to inform LVL Operators of the results of new policies, rules, regulations and technologies that have come into effect since 2003.

Program Success

Secretary Musgrave opened the meeting with introductions of Lottery staff members and of those Operators in attendance. Musgrave cited the extraordinary endeavors of all involved in the Limited Video Lottery Program that has produced over \$408 million since the first terminals began operating. According to Musgrave, LVL gross terminal revenues are currently 42 percent ahead of revenues produced by the same time in fiscal year 2003. Musgrave noted that the number of operating terminals had increased 23 percent during the same time.



Patty Pope and Butch Pennington

"West Virginia is on the cutting edge of Lottery-regulated video lottery programs in the nation, and in the world," Musgrave noted. "According to a recent industry comparison, the West Virginia Lottery ranked first in the world for video lottery performance."

"The majority of states and countries that are interested in creating video lottery programs have called upon us as a model for what they would like to have in their own jurisdictions," Musgrave said. He cited a long list of government representatives from Maryland, Pennsylvania, Michigan, Florida, Israel and other jurisdictions that had contacted or met with the West Virginia Lottery in search of information related to regulation of video lottery gaming.

"We are unique in the fact that we, as a Lottery, own and operate a central gaming computer system," he added. "I am convinced that our operational process has resulted in our outstanding success."

Musgrave called upon his staff members to address various issues of interest to LVL Operators. The following informational highlights were presented:

LVL Advertising and Signage

Deputy Director for Marketing Libby White reviewed examples of advertising that violated State Rules and Regulations and Lottery policies. She reiterated the prohibition of promoting and advertising of limited video lottery. The audience was informed that the temporary signage "fixes" in response to the Governor's Executive Order,

effective January 1, 2004 need to be made permanent. Operators were asked to inform their retailers to permanently correct all exterior and visible signage.

IGT Super Keno Payouts

There was discussion related to auditing actions that had taken place with respect to retailers' concerns with the *IGT Super Keno* game's payouts. Video Lottery Deputy Director Eliza Hall reported that the game had undergone vigorous testing by top experts in the industry, and that all evidence concluded that the game was performing accurately with an average payout of 91.67 percent. Hall noted that the game's payout specifications were approximately 91.94 percent. To date, over 188 million plays have been made on the Super Keno Game in the West Virginia market.

Hall added that Secretary Musgrave had allowed officers of retail establishments to make written requests that the game be turned off, and that operators are contacted and informed when such requests are received.

Deadline for Terminal Disables

Deputy Hall reiterated the need for timely requests concerning disabling/enabling video lottery terminals (VLT's) in the Lottery's computer room. She noted that the deadline was 4:00 p.m., and that it is imperative that



Herk Sparchane

this deadline be met on Fridays.

Representative of Operator to be Present During Audits

Deputy Hall requested that Operators have a presence whenever members of her auditing team were working in a retail establishment. The Operators may assign a representative to help oversee the opening of machines and auditing work conducted. Hall explained that the presence of both parties assured the integrity of the audit.

Financial Obligations and Fiscal Reporting

The Lottery's Chief Financial Officer and Deputy Director for Finance and Administration Virgil Helton gave an overview of the video lottery program's financial performance. Helton addressed the daily gross aggregate averages upon which the State Rate was assessed for the future quarters. According to Helton, performance is greater than what was previously projected, and instead of seeing declining averages with more machines, the Lottery was finding that averages were increasing proportionally with the number of machines in the field.

He reviewed the procedures for the financial review component of the October 1, 2004 re-licensing stating that Operators who had been

issued 200 or more permits (as of December 31, 2003) will be required to submit *reviewed* financial statements, with footnotes, from a CPA for the year ended December 31, 2003.

He added that Operators that own less than 200 permits (also as of December 31, 2003) will only be required to submit *compiled* financial statements, also with footnotes, from a CPA for the year ended December 31, 2003.

In addition, regardless of the number of permits issued, Operator's will also be required to submit compiled financial statements, *without* footnotes from a CPA for the period ending June 30, 2004.

Helton provided Operators with a handout detailing the above information.

Backup Withholding Taxes

Helton provided a handout regarding tax reporting requirements for players who won prizes greater than \$1,200. He noted that retailers were to complete a W2-G for any player winning an amount greater than \$1,200, and added that if for some reason the player were to refuse to provide his or her Social Security number, the retailer bore the responsibility of withholding 28 percent of the winning amount. Helton referred Operators to the IRS website at www.irs.gov for information concerning tax withholding and reporting requirements.

State's Share and Calculation

Deputy Helton shared copies of letters sent to all LVL Operators regarding the determination of the State's percentage share for the fourth quarter of the fiscal year. Later in the meeting, Libby White read the language from the Amended Rules and Regulations under *Operating Video Lottery Terminal Defined*: "Operating video lottery terminals" as the term is used in subsection 27.1 of this rule means terminals that are accepting and processing limited video lottery wagers in a day. A video lottery terminal that does not accept and process any limited video lottery wagers during a day will not be counted as operating on that day."

The group discussed several aspects of determining the State's share and expressed concern regarding potential increases.

Operator Contracts

Lottery Finance and Administration Accountant Lisa Jehlicka announced that changes had been made to the *Contract Elements Form* and referred to handouts as a source of the new form. Jehlicka stated that the Lottery no longer required an FEIN number and had reformatted the area used by Notary Publics.

Jehlicka asked that Operators use new forms when preparing contracts due to illegibility of those that had been reproduced by photocopying and faxing. Contracts that are not legible cannot be accepted by the Lottery.

Bids for Terminal Permits

Jehlicka announced that the Lottery would no longer accept checks or money orders with bids for terminal permits. Checks and money orders must be deposited with the State Treasurer's Office and the receipt enclosed in an envelope with the bid. (See related story in this issue of VideoLine) May 3 was the deadline for permit renewal fees, and Jehlicka stated that if the number of permits had changed, she would refund overpayments after that date. She also stated that terminals must be placed 90 days after the issuance of a permit, and that Operators now had 60 days after the date of bid ac-

ceptance in addition to the 90-day limit.

New M.E.A.L. Books to be Issued

Video Lottery Field Supervisor Frank Stemple announced that the Lottery was revamping and standardizing the M.E.A.L. books used to records machine meters. The new books, with simplified meter records and codes should be available by late May or early June. Stemple requested that technicians or others sign the recorded entries with a legible last name.

Stemple stated that LVL retail locations were experiencing breaking and entering crimes that appeared similar in nature. He informed Operators of the modes of operation and requested that anyone with information concerning these crimes or possible suspects contact him or local law enforcement.

Live-Scan Fingerprinting

Lottery Deputy Director for Traditional Security David Bradley reported on the progress of the Lottery's new technology for scanning fingerprints. Bradley stated that a large number of LVL licensees had been successfully scanned and he requested that those who had not yet made an appointment with his office do so in the near future. Licensing Supervisor Roberta Somerville informed the group that all scanned fingerprints must be captured by September.

Revised Retailer Application Form

Lottery Licensing Supervisor Roberta Somerville informed the Operators that a new Retailer Application Form was available from her office and from the Lottery's web site at www.wvlottery.com. Changes made to the application packet include a statement regarding local zoning compliance, revised instructions for fraternal organizations, and instructions regarding the scheduling for live scan fingerprinting.

Re-licensing Requirements

Somerville informed Operators that all licensing renewals for LVL retailers and operators must be completed prior to October. She stated that a letter of notification would be sent to all licensees in July, and she encouraged early participation. Somerville requested that any LVL retailer that also held a traditional license provide both limited video lottery license number and traditional license numbers on renewal forms. The traditional retailers will be re-licensed prior to July.

Alterations to Licenses

Roberta Somerville informed the group that the Lottery's licensing unit could not process licenses until applicants obtained an ABCC license number. She stated that the licensing unit needed to be informed of any changes regarding a licensee including, but not limited to, changes of ownership, changes of location and changes in officers.

Legal Issues

Secretary Musgrave reviewed several issues that were related to the revised Rules and Regulations passed by the Legislature this Spring. (See related story in this issue of VideoLine).

Musgrave addressed the issue of county and city zoning ordinances stating that the Lottery would honor such, placing the burden of obtaining variances upon the retail locations. He added that the Lottery would not deny a new retail location a license, but that video

Top Limited Video Lottery Retailers

November

Fraternal/Veterans

Improved Order of Redmen, Williamstown
 VFW Post 6450, Chester
 VFW Post 6452, Ridgeley
 Owls Nest 1230, Parkersburg
 Owls Nest 3030, Parkersburg

Regular

Keno & Casino, Weirton
 Twin Taverns, Westover
 Mimi's, Charleston
 Blazzin' 7's, Clarksburg
 Mimi's, St. Albans

December

Fraternal/Veterans

Improved Order of Redmen, Williamstown
 VFW Post 6450, Chester
 Owls Nest 3030, Parkersburg
 Owls Nest 1230, Parkersburg
 VFW Post 3522, Charles Town

Regular

Mimi's, Winfield
 Keno & Casino, Weirton
 High Life Lounge I, Fairmont
 Blazin' 7's, Clarksburg
 Keno & Casino, Weirton

January

Fraternal/Veterans

Improved Order of Redmen,
 Williamstown
 Owl's Nest 3030, Parkersburg
 VFW Post 6450, Chester
 Moose Lodge #56, Nitro
 VFW Post 1212, Parkersburg

Regular

Mimi's, Winfield
 Boss's, Ranson
 Torlone's Pizza, Harpers
 Ferry
 Mimi's, St. Albans
 High Rollers, Morgantown

February

Fraternal/Veterans

Improved Order of Redmen, Williamstown
 Owl's Nest 3030, Parkersburg
 VFW Post 6450, Chester
 Owl's Nest 1230, Parkersburg
 Moose Lodge # 56, Nitr

Regular

Mimi's, Dunbar
 Keno & Casino, Weirton
 Mimi's, Charleston
 Boss's, Ranson
 Keno & Casino, Weirton

March

Fraternal/Veterans

Improved Order of Redmen, Williamstown
 VFW Post # 6450, Chester
 Owls Nest 3030, Parkersburg
 Owls Nest 1230, Parkersburg
 Moose Lodge #56, Nitro

Regular

Mimi's, Winfield
 Hot Spot Lounge, Clarksburg
 Mimi's, St. Albans
 Keno & Casino, Weirton
 Royal Palace Café, Milton

Advisory Board Meeting Held In Charleston

The West Virginia Lottery hosted the February 18 meeting of the Limited Video Lottery Advisory Board at Lottery headquarters in Charleston. Advisory Board members Joe C. Ferrell, Jerry Derrick, Tom Fittro, Randy Kiser, Lee Wesson, Anthony Sparchane, Kenny Price and Bryan Woodward joined Cabinet Secretary of Revenue John Musgrave in welcoming Patty Pope, the new Executive Director of the West Virginia Amusement & Limited Video Lottery Operator's Association (WVA&LVLOA).

Secretary Musgrave provided members with updates and reports concerning several issues related to limited video lottery including an explanation of local and county zoning ordinances and new requirements for Limited Video Lottery (LVL) applicants to certify compliance with zoning. A copy of W.Va. Code Section 8-24-1, related to zoning, was provided to members for their review.

Musgrave highlighted the contents of the amended LVL Rules and Regulations slated for legislative review and approval, and John Melton, the Lottery's in-house legal counsel, distributed handouts concerning all LVL-related bills introduced in the 2004 Legislative Session. (See related article in this issue of *VideoLine*)

Advisory Board Member Delegate Joe C. Ferrell updated the membership concerning the status of various bills in the House and Senate.

Secretary Musgrave discussed the minimum bid amount set for permits in a recent bid opening, and Operators expressed their interest in lowering the minimum bid amount.

Musgrave stated his concerns with ATMs and ATM-like devices appearing near LVL gaming areas. Musgrave cautioned members that providing credit to players was a violation of the law regardless of the device used. Operators were warned that the Lottery was actively auditing retail locations, both upon request and at random.

David Bradley, deputy director for Lottery Security, reported on the status of the Lottery's digital fingerprinting system and emphasized the mandate that fingerprinting appointments were required. Bradley asked that those seeking fingerprints contact his employee Jonie DeBruyn at 304-558-0500, ext. 231 to schedule sessions.

Lottery Licensing Supervisor Roberta Somerville reported procedures for DBA names, location changes and the new LVL application packet, in addition to procedures for surrendering a license. Somerville introduced Wilma Pile, a new member of the Licensing Unit who will work with LVL applicants.

Tacy Donovan, audit manger of the Lottery's Video Lottery Division, presented an update on the MEAL book revisions undertaken to help standardize recording. Donovan informed members that there had been problems with LVL retailers who did not report for scheduled audits, and asked for assistance in assuring compliance with the Lottery's auditing procedures. It was agreed that the presence of a representative from an Operator's company would help

prevent exposure for Lottery auditors. Donovan also alerted members to the possible presence of non-approved ticket stock contained in certain new machines, and requested that such ticket stock be destroyed.

Advisory Board Member Jerry Derrick requested that alterations be made to forms for entry into LVL terminals to expedite service processes. The group discussed security procedures related to accessing terminals.



Secretary Musgrave greeted those in attendance to the Advisory Board Meeting

Video Lottery Security Supervisor Bruce Adkins presented information concerning the need for good interior lighting and clean camera lenses to produce adequate surveillance recording and the retailers' responsibility for W2G tax forms. Adkins told members that all LVL retailers must issue W2G's to the persons who actually won monetary prizes and to not allow proxies to claim winnings. A new LVL Installation Procedure Form was provided to operators to use to help ensure appropriate communication and documentation before and during installs.

Lisa Jehlicka, Lottery Finance & Administration accountant, reiterated the need for adherence to format requirements in the permit bidding process. Jehlicka informed Board Members that all negotiable securities must be deposited with the State Treasurer's Office and the receipt from such must be included in the bid package. Jehlicka stated that bids containing checks and money orders

would no longer be accepted by the Lottery or Purchasing, and that such bids would be rejected.

Jehlicka reminded Board Members of the March invoice for a \$46 fee to cover blanket bonds and of the May 1 permit renewals of \$1,000 per permit. She emphasized that permit renewal fees were due no later than close of business on May 3, 2004.

While Board Members had been informed of procedures related to business structure changes as related to licensing, Jehlicka reminded them that retailer-operator contracts must be amended or renewed to reflect changes among the parties.

Advisory Board Members Lee Wesson and Tom Fittro requested information concerning game chips, hard meters, and CVT's. Lottery employees Tacy Donovan and Frank Stemple, a Video Lottery Security Supervisor led discussions related to new technologies and recent delays related to a manufacturer's game chip failing laboratory-testing standards.

On another matter, Advisory Board Member Tom Fittro reported that LVL retailers in the Parkersburg area had been the victims of five armed robberies. Fittro reiterated his interest in the IGT "EZ Safe" product and requested that West Virginia Lottery staff review the possibility of its use in this market.

The meeting concluded with the announcement that a meeting of Limited Video Lottery Operator's would be held in April.

State Rate to Remain at 42 Percent

The State's share of gross profits on limited video lottery will remain at 42 percent for the period of April 1 through June 30, 2004. The rate was calculated as a result of the per-terminal/per day average for the months of December 2003 and January and February 2004.

For the three-month period ending February 29, 2004, the statewide average gross terminal income from video lottery games per terminal/per day was \$112.38. Gross terminal income is defined by the Limited Video Lottery Act as gross wagers, less prizes paid.

For more information on how the State calculates the quarterly rate, see our website at www.wvlottery.com - and link to the limited video lottery page that contains the complete, indexed Limited Video Lottery Act. Calculation of the rate may be found in Section 1408(a)(3).

Make the Change!

Change is good. Paying your customers the appropriate amount of their winnings is required by law – and that includes the nickels and dimes that go along with the dollars.

Limited Video Lottery retailers cannot keep players' winnings, and keeping even a small amount for yourself, is a violation of several laws. If a player wins \$8.25, and you keep the 25 cents, you're taking money that isn't yours. Furthermore, any source of income is subject to a variety of taxes.

Keeping players' winnings is theft. Making money off of players' winnings, even if the player gives you a tip, is income that is subject to State and Federal taxes.

Video Lottery Security Personnel

The Lottery welcomes the return of John Jackson, Video Lottery Field Investigator Supervisor for the Northern Panhandle area. Jackson, a member of West Virginia's National Guard, has returned from a tour of active combat duty in Iraq.

Two additional video lottery field investigators have been added to accommodate the growing Limited Video Lottery market. Tom Grimm, a former Deputy Sheriff in Marshall County, is assigned to the Northern Panhandle area. Greg Stevens, a former State Trooper, is assigned to the Eastern Panhandle area.

May 7 Bid

The West Virginia Lottery held its May 7th bid opening for Limited Video Lottery terminals resulting in an additional 489 terminal permits awarded to operators and retailers.

Initially, the Lottery rejected three bids that contained checks for the amount of the required bid bond instead of receipts from the State's Treasurer's Office. The rejection of the bids was protested on grounds that the Lottery did not provide adequate notification to bidders concerning acceptable forms of bid bonds. In response, State Department of Revenue Cabinet Secretary and Lottery Director John Musgrave deemed the bids acceptable for the May 7th bid date.

According to Musgrave, the Class II legal notice, published statewide by the Lottery, states: *If the bid bond is furnished in cash or negotiable securities, the principal shall be deposited without restriction in the West Virginia State Treasurer's Office ...and a true copy of the receipt issued by the State Treasurer shall be included in the sealed bid sent to the Purchasing Division.*

Musgrave ordered letters emphasizing this requirement to be sent by certified mail to operators and retailers who had placed bids with cash and negotiable securities since the inception of the Limited Video Lottery Program. According to Musgrave, the Lottery will reject any and all received bids that include bonds in the form of cash, checks and negotiable securities at future bid openings. The next scheduled bid opening is set for August 13, 2004 at 2:00 p.m.

As of May 10, the Lottery had issued a total of 1,733 permits with an additional 43 permits pending and 153 unexercised Certificates of Reservation. There were 1,542 licensed retailers, and 80 retail license applications were in pending status. The number of licensed operators remains 35.

Of the 6,753 terminals operating on May 8, 2004, 1,284 resided in 183 fraternal and veterans' organizations (allowed up to 10 machines) and 5,469 were located in 1,282 regular retail locations with maximum of 5 machines each allowed.

Questions about bidding for permits to own your own machines may be directed to Lisa Jehlicka of the West Virginia Lottery at 304-558-0500, ext. 207.

NOTICE:

If your CVT is not printing properly, call the West Virginia Lottery's Video Lottery Unit at 304-558-0500. The following people can help resolve this problem: Angie Milam at ext. 227; Sandy Hayne at ext. 221; or Anne Keller at ext. 351.

Civil Penalties and Warnings

Video Lottery Advertising/Promotional Activity:

MIR, LLC, dba *Mimi's*, South Charleston – first offense (promotion) \$100 penalty (11-03)
 Liberty Restaurants, LLC, dba *Mimi's*, Dunbar – first offense \$100 penalty (12-03)
 Riverwalk Restaurants, LLC dba *Patty's*, Beckley Crossing- first offense \$100 penalty (12-03)
 Nitro Food Service, LLC dba, *Patty's*, Beckley Plaza –first offense \$100 penalty (12-03)
 Royal Italian, LLC dba *Patty's*, Princeton – first offense \$100 penalty (12-03)
 Shooter Luke's, LLC dba *LGM Grand*, Fairmont – first offense \$100 penalty (12-03)
 Hollywood Gaming Inc., dba *Dick's Swiss Burgers*, Bluefield- second offense \$1,000 penalty (12-03)
 L.E.O. Inc., dba *Jokers Wild*, Bluefield – first offense \$100 penalty (12-03)
 Connections, Williamstown – first offense \$100 penalty (12-03)
 Gabby's of Ripley #One, dba *Gabby's Ripley* – first offense \$100 penalty (12-03)
The Tree Stand LLC, Wheeling – first offense \$100 (12-03)
 Game Tyme LLC, dba *Game Tyme Café*, Parkersburg – first offense \$100 penalty (1-04)
 Magnolia Associates, LLC. Dba *Henry Flesher's*, Weirton – first offense \$100 penalty (1-04)
 T.G.S., LLC, dba *T.G.'s Casino 47*, Parkersburg – first offense \$100 penalty (1-04)
 Lotto Luck, Inc., dba *Opportunity Knocks #4*, Mullens – first offense \$100 penalty (1-04)
 The Front Row Sports Bar & Grill, Inc., dba *Front Row Sports Bar & Casino*, Parkersburg – first offense \$100 penalty (1-04)
 Lucky's Palace LLC, Parkersburg – first offense \$100 penalty (1-04)
 Underground Casino & Lounge LLC, Kearneysville – first offense \$100 penalty (1-04)
 Wilderness Plantation Inn, LLC, Jane Lew – first offense \$100 penalty (1-04)
 Gabby's of Ripley #One DBA *Gabby's Ripley* - second offense \$1,000 penalty (1-04)
 Ken-Den, Inc., DBA *Crickets Too*, Huntington – first offense \$100 penalty (2-04)
 Mazza's Sports Bar, Inc., DBA *Caddy Shack*, Fairmont – first offense \$100 penalty (3-04)
 Taste of Heaven, Inc., Spencer – first offense \$100 penalty (4-04)
 Truck Stop 67, Inc., DBA *Truck Stop 67*, Sutton – first offense \$100 penalty (4-04)
 La Belle Pomme, Ltd., Paw Paw – first offense \$100 penalty (4-04)
 D and B Casino and Lounge, LLC, DBA *The Hot Spot*, Bridgeport – first offense \$100 penalty (4-04)

Warnings:

Carter Enterprises, Inc., dba, *Tobacco Hut #3*, Barboursville (1-04)
 VFW Post #1589, Masontown (3-04)
 Phil Incorporated, DBA *Phil's Diner*, Parkersburg (3-04)
 Doug's Billiards & Lounge, Keyser (4-04)
 Imperial Lanes, Inc., Huntington (4-04)

Underage Person(s) in Limited Video Lottery Area:

Dog Tech Land Company, LLC, DBA *Bank Bar & Grill*, Montgomery – first offense \$100 penalty (3-04)
 Dorothy's Night Moves, Inc., Alloy – first offense \$100 penalty (3-04)
 Fraternal Order of Eagles #1040, Montgomery – first offense \$100 penalty (3-04)
 Fort Ashby Corner Club, LLC, Fort Ashby – first offense \$100 penalty (3-04)
 JR's Lounge & Casino, Inc., Martinsburg – first offense \$100 penalty (3-04)
 Emma's Restaurant and Lounge, Wiley Ford – first offense \$100 penalty (4-04)

Warnings:

Krauts Creek Corp., DBA *Spring Valley Golf Club*, Huntington (4-04)

Non-Compliance with Surveillance Equipment:

Raven Pines, Murraysville – first offense \$100 penalty (11-03)
 G&B Woodland Inn I, Ridgeley – first offense \$100 penalty (12-03)
 238 Capitol Street, Inc., dba *Dollar Bills*, Charleston – first offense \$100 penalty (1-04)
 Wild Cats Tavern, Inc., Fort Gay – first offense \$100 penalty (2-04)
 Carter Enterprises, Inc., DBA *Tobacco Hut #3*, Barboursville – first offense \$100 penalty (4-04)
 Station Grill of Martinsburg, LLC, DBA *Station Grill*, Martinsburg – first offense \$100 penalty (4-04)
 JC' Pizza, Hedgesville – first offense \$100 penalty (4-04)
 M & A Enterprises, LLC, DBA *Pines Restaurant*, Keyser – first offense \$100 penalty (4-04)

Warnings:

Mt. Nebo Bar & Tractor Inc. dba *The Tractor Bar*, Mt. Nebo (11-03)
 Apple Inc., dba *Piggy's Club*, Bunker Hill (11-03)
 Lucky Sevens Grill 4, Bluefield (11-03)
 S Bridge Hoagie King Bar & Grill, Triadelphia (11-03)
 Riverfront Development Corp., dba *Mark's Coffee & Brew Too*, Wellsburg

(11-03)
 Clay Music Corporation, Belle (11-03)
 Underground Casino & Lounge, LLC, Kearneysville (12-03)
 VFW Post 896, Martinsburg (4-04)
 Emma's Restaurant and Lounge, Wiley Ford (4-04)
 Loyal Order of Moose Lodge 120, Martinsburg (4-04)
 WV AMVETS Post 38, Falling Waters (4-04)
 D'Ann LTD., DBA *The Anvil*, Harpers Ferry (4-04)
 James C. Shepherd Enterprises, Inc., DBA *Doodles Place*, Augusta (4-04)
 Geno's Bar & Grille, Inc., DBA *Geno's Bar & Grille*, Inwood (4-04)
 Poplar Park Drive Inn, Scott Depot (4-04)
 Rock 'N' Zack's Overtime Saloon, Inc., Parkersburg (4-04)

Incomplete Maintenance Logbooks:

Barbour Recreation, Inc., dba *Barbour Lanes*, Philippi – first offense \$100 penalty (11-03)
 Jass Video Investments, LLC, dba *High Rollers Club*, Bridgeport – first offense \$100 penalty (12-03)
 G and S Tobacco Dealers, LLC, dba *High Rollers Club V*, Weston – first offense \$100 penalty (12-03)
 Dropp's Pub, LLC, Fairmont – first offense \$100 penalty (2-04)
 Big Dogs Café, Fairmont – first offense \$100 penalty (2-04)
 Fairmont Moose Lodge No. 9, Fairmont – first offense \$100 penalty (2-04)
 Hot Dog Hut, Martinsburg – first offense \$100 penalty (4-04)

LVL Terminals Visible:

Ren, Inc., dba *Ren-Dor Lanes*, Parkersburg – first offense \$100 penalty (11-03)
 Dimitri's Inc., dba Dimitri's Seafood & Steak Restaurant, Morgantown – first offense \$100 penalty (11-03)
 Game Tyme LLC, Parkersburg – first offense \$100 penalty (1-04)
 Hoagie King Bar & Grill, Wheeling – first offense \$100 penalty (1-04)
 D.C. Carryout, Inc., DBA *D.C.'s Lucky Roll #3*, Huntington – first offense \$100 penalty (4-04)
 Krauts Creek Corp., DBA *Spring Valley Golf Club*, Huntington – second offense \$300 penalty (4-04)
 Stogie's Tobacco & Beverage, Inc., DBA *Dog Pound*, Branchland – first offense \$100 penalty (4-04)
 Fun Times, Inc., DBA *Rags*, Huntington – first offense \$100 penalty (4-04)
 J & C Gaming, LLC, DBA *Texas Joe #3*, Huntington – first offense \$100 penalty (4-04)

Warnings

S Bridge Hoagie King Bar & Grill, Triadelphia (11-03)
 VFW Capon post 2102, Wardensville (11-03)
 VFW Risinger-Stotler Post 4019, Inc., dba *VFW Post 4019*, Berkeley Springs (11-03)
 Steve Marris, Jr., dba *Fat Man's Pub*, Morgantown (11-03)
 Loyal Order of Moose Lodge 598, Buckhannon (12-03)
 Winners World LLC, Poca (12-03)

Off-Contract Inducement:

Derrick Video, LLC, Charleston – first offense \$300 penalty (11-03)

ATM in LVL Terminals area:

Full House Tobacco Outlet, LLC DBA *Full House Grille*, Ravenswood - first offense \$100 penalty (1-04)
 Shepherdstown Beverage Company, Inc., DBA *Alto's Club*, Martinsburg – first offense \$100 penalty (3-04)
 Berkeley Co. Order of Orioles, DBA *Ladder House Bar & Grill*, Kearneysville – first offense \$100 penalty (4-04)

Miscellaneous Infractions:

River City Tavern & Grill, LLC, Parkersburg – unauthorized move of video lottery terminals – first offense \$100 penalty (11-03)
 Cheaper Cigs, Inc., dba, Bailey's, Huntington – unauthorized placement of signage on video lottery terminal – first offense \$100 (12-03)
 Welch LVL Video Service, Parkersburg – NSF – second offense, \$5,000 penalty (1-04)

Riverfront Development Corporation, dba *Marks Coffee & Brew Too*, Wellsburg issued five LVL terminal permits, 6 found on premises – first offense \$100 penalty (1-04)

Gold and Blue Restaurant, Inc., DBA *Classic's 3 Casino Lounge*, Morgantown – Excess number of LVL terminals authorized at retailer location – first offense \$100 penalty (3-04)
 Shepherdstown Beverage Company, Inc., DBA *Alto's Club*, Martinsburg – ATM in LVL area – first offense, \$100 penalty (3-04)

Legislature Approves Amended Rules for Limited Video Lottery

The 2004 Legislative Session approved the West Virginia Lottery's Series 5 Limited Video Lottery Rule in Title 179 Amendment, with an expected effective date of June 10. While most Limited Video Lottery retailers and operators were aware of the proposed rule changes, having reviewed and been given comment opportunity, the following information covers those elements of recommended amendments that were passed in the Legislative Session.

One important area in any set of rules or regulations is that which sets forth the definitions of terms and words used throughout the document. In the Title 179 Amendment, Section 179-5-2 *Definitions of terms and words*, clarification was provided for the following:

2.1 Advertising Defined

“Advertising” as used in West Virginia Code 299-22B-702 (13) and 29-22B-706(12) means a media advertisement, an outdoor sign, or a sign inside the licensee’s premises that may be seen from the outside of the premise, that conveys to the average reader or hearer that limited video lottery gaming is available at the retail establishment or from the licensed operator.

2.9 Incomplete Application Defined:

“Incomplete applications” as used in W.Va. Code 29-22B-509(b) means applications that have not included one or more of the required elements for licensure:

- 2.9.a. Fingerprint information;*
- 2.9.b. All lottery forms completely filled in;*
- 2.9.c. Payment of the non-refundable fee for a license; and*
- 2.9.d. An ABCC private club liquor license number or class ‘A’ nonintoxicating beer license number.**

2.13 Operating Video Lottery Terminal Defined

“Operating video lottery terminals” as the term is used in subsection 27.1 of this rule means terminals that are accepting and processing limited video lottery wagers in a day. A video lottery terminal that does not accept and process any limited video lottery wagers during a day will not be counted as operating on that day.

2.15 Petroleum Products Defined

“Petroleum products” as used in W. Va. Code 29-22B-331 and elsewhere in this rule means

gasoline and special fuels as those termed by W.Va. Code 11-14C-2
(The reference given pertains to fuels used to power internal combustion engines)

Language relating to ABCC licenses was amended in Section 179-5-3, subsection 3.3.a. to include the words, “cancel” and “cancellation.” The new subsection reads: If the alcohol beverage control commissioner suspends or cancels the retailer’s private club license or class A nonintoxicating beer license, the (lottery) director shall disable and cause not to operate the retailer’s video lottery terminals at the location where the ABCC license is suspended and shall re-enable the video lottery terminals only when the suspension or cancellation is lifted by the alcohol beverage control commissioner....

The Amended Rule now allows electronic fingerprint capture as set forth in Section 179-5-4, subsection 4.3. This amendment waives the requirement for submission of fingerprint cards for initial application and license renewal IF the persons whose fingerprints are on file with the commission are already on file in electronic format.

In Section 179-5-5 related to bonding, some language was altered to allow the Lottery to charge for and to provide a blanket bond for permittees.

The Amended Rule addresses Certificates of Reservation in Section 16. Of note is a change that will make Certificates of Reservation (CORs) that is not converted to a permit by December 31, 2004 void. Retailers who are holding on to Certificates will forfeit their CORs unless they convert them to terminal permits by the end of this calendar year. The Amended Rule addresses the transfer of CORs in subsection 16.9.c: When a retailer that received a certificate of reservation, and has transferred that certificate of reservation to an operator, loses its limited video lottery retailer license, the underlying permit received in exchange for the retailer’s certificate of reservation is void after the passage of 100 days for the number of terminals represented by the certificate of reservation.

For retail locations concerned with the original 150-foot distance requirement, and the waiving of the rule when a nearby retailer closes, the Amended Rule strengthens the time period required for closure. In sub-section 20.2, the last sentence reads: Until the 180-day period (the time the former retailer must be closed) has passed, no new limited video lottery retailer license shall be granted for a premises closer than 150 feet to the previously-licensed premise.

The greatest number of changes found in the Amended Rule fall within Section 179-5-33 Prohibition on retailer and operator advertising and promotion activities; restriction on retailer corporation and doing-business-as names of retail license locations.

Throughout the subsections of 179-5-33, the prohibition related to advertising and promotion is reiterated. The use of the words "video lottery" is prohibited, no gambling themes or symbols may be used in exterior signage or advertising and limited video lottery retailers who offer traditional lottery games as well as video lottery may continue to promote those games.

However, in subsection 33.3., the Amended Rule allows limited video lottery retailers to post a Lottery-issued sign on the exterior of the retail establishment. A limited video lottery licensed retailer shall not conduct video lottery advertising or video lottery promotional activities: Provided, That a limited video lottery retailer may display a sign on the exterior of the establishment that states 'West Virginia Lottery Products available here,' which sign is of uniform size and design, no greater than twelve inches by twelve inches, produced and distributed to retailers by the lottery commission.

The Amended Rule is specific in the fact that retailers may not create or post their own signs, even if the wording and the size meet the requirements set forth, above. The Lottery will develop signs for use and will distribute the signs through its Video Lottery Security field staff.

One of the primary issues addressed by the Amended Rule is that which is set forth in Section 179-5-34, Prohibition against a business selling petroleum products establishing a separate room or building which is a part of , contiguous to, or adjoining the place of business as a restricted access adult-only facility.

Subsection 34.1. allows the commission to grant a license to a retailer whose location is contiguous or adjoining a business that sells petroleum products so long as the limited video lottery retail outlet is not owned or operated directly or indirectly by the business selling petroleum products. If the limited video lottery retail location is leased from the business selling petroleum products, or the same landlord who leases the space for the business selling petroleum products, the lease must be for a fixed monthly fair market rent and may not be based upon the gross or net of video lottery gross or net profits.

The Amended Rule sets forth more detailed information concerning retailers and their relationship to businesses selling petroleum products in subsection 34.2. The (lottery) commission shall not grant a license to an applicant for a restricted access adult-

only facility that fits within one or more of the following situations:

34.2.a. A business that sells petroleum products has subdivided its building or space within a building in order to create a restricted access adult-only facility to be owned or operated either directly or indirectly by a direct or indirect owner of the lessor;

34.2.b. The owner of a commercial business facility leased to a business that sells petroleum products has subdivided the facility on or after April 21, 2001, in order to create a restricted access adult-only facility to be owned or operated either directly or indirectly by a direct or indirect owner of the lessor;

34.2.c. A business that sells petroleum products has subdivided its parcel of land in order to create a restricted access adult-only facility to be owned or operated either directly or indirectly by a direct or indirect owner of the business selling petroleum products;

34.2.d. The owner of a commercial business facility leased to a business that sells petroleum products has subdivided the parcel of land on which the business selling petroleum products operates in order to create a restricted access adult-only facility on a separate parcel to be owned or operated either directly or indirectly by a direct or indirect owner of the lessor or the business selling petroleum products ;

34.2.e. The restricted access adult-only facility is in a facility that is contiguous to, adjoining, or on a parcel of real property adjoining a business that sells petroleum products and is owned or operated either directly or indirectly by a direct or indirect owner of the business selling petroleum products ;

34.2.f. The restricted access adult-only facility is leased from an adjoining or contiguous business selling petroleum products, and the consideration for the lease is based in whole or in part on the gross or net income of the video lottery terminals or on the video lottery income of the tenant; or

34.2.g. The restricted access adult-only facility is leased from the same landlord who also leases space to an adjoining or contiguously located business selling petroleum products, and the consideration for the lease is based in whole or in part on the gross or net income of the video lottery terminals or on the video lottery income of the tenant.

34.3. For purposes of determining whether property is "directly or indirectly" owned or leased by or from a related person, the related party rules set forth in 26 U.S.C. 267 and 707, as amended, apply, including any regulations for that section issued by the United States Secretary of the Treasury, which are hereby incorporated by reference.

Meeting at Stonewall Resort (continued from page 3)

lottery machines could not be placed in a location if it were prohibited by a zoning ordinance. (See related article in this issue of *VideoLine*.)

Musgrave expressed the need for Operators and their retailers to cooperate with issues expressed by the public. He cited the signage issues faced this past Winter as an example of the public's reaction to the Limited Video Lottery program's retailers who chose to ignore the expression of their communities'.

Musgrave noted that he could foresee issues rising in response to the increased number of locations that were becoming local fraternal organizations. According to Musgrave, the Lottery has talked with representatives of the Internal Revenue Service (IRS) regarding the interpretation of which type of organization qualifies for fraternal status. Currently, Lottery policy recognizes locally organized fraternal, but ABCA policy recognizes only those fraternal that bear a national affiliation.

Deputy Director Virgil Helton discussed the timely tax filings needed to meet legal requirements proving residency. Roberta Somerville added that retailers should not submit affidavits confirming that taxes were paid, since many were often invalidated by the Tax Department thereby making the applicant guilty of false swearing. She suggested that the Lottery research tax status first, and then request information should there be issues.

Retailers Must Keep Enough Money to Pay Players

Helton addressed the situation concerning payment of players, and suggested that if cash were not available that retailers pay by check. Most Operators present cited payment of players as a major problem with the LVL program stating that retailers rarely maintain enough cash to pay their winners.

Secretary Musgrave added that the law clearly states that retailers must have enough cash on hand to pay prizes won on Limited Video Lottery terminals.

New Central Operating System for Video Lottery

The Lottery's current central operating system will need to be replaced in 2006. Currently, the central operating system is considered antiquated, leaving no room for technological advancements in gaming software or stand-alone-progressives for the LVL market. Secretary Musgrave informed Operators that a Request for Proposal was in the process of being developed for the hardware, software and maintenance services of a new system. Musgrave asked Operators for their input concerning features and attributes that they would like to see in the new system specifications.

Tax Reminder

Revenue from Limited Video Lottery is subject to both Federal and State Income Tax. The amount that you pay to the State on a monthly basis is not an income tax, but is known as the "State Share." As businesspersons, you must still claim your income from Limited Video Lottery on your Federal and State Tax forms.

Since the West Virginia Limited Video Lottery Program was started, your income has not been subjected to "sales tax" as it was in the days when "gray machines" existed. As of July 1, 2002, your Limited Video Lottery profits were no longer subject to municipality business and occupation (B&O) taxes.

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