

RULEMAKING NOTICE FORM

Notice Number _____

Rule Number Lot 7300

<p>1. Agency Name & Address:</p> <p>NH Lottery Commission 14 Integra Drive Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 287-D:3, XVI</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p style="padding-left: 20px;">Adoption <u> X </u></p> <p style="padding-left: 20px;">Amendment _____</p> <p style="padding-left: 20px;">Repeal _____</p> <p style="padding-left: 20px;">Readoption _____</p> <p style="padding-left: 20px;">Readoption w/amendment _____</p>
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5. Short Title: **Unlawful Gambling Machines**

6. (a) Summary of what the rule says and of any proposed amendments:

This rulemaking adopts a new chapter, Lot 7300, to establish the criteria for investigation and enforcement of unlawful gambling machines pursuant to RSA 287-D:26-31. This rulemaking establishes the criteria for reporting the use or possession of unlawful gambling machines, the parameters for investigating complaints, and the imposition of penalties including fines, license revocation, forfeitures, and criminal penalties.

6. (b) Brief description of the groups affected:

Charities and charitable gaming establishments may benefit from an increase of revenue that was previously being spent illegally on unlawful gambling machines. Businesses that operated unlawful gambling machines will be affected by a potential loss of revenue and possible losses associated with imposition of fines, administrative actions, or criminal penalties.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Specific State Statute the Rule Implements
Lot 7301	RSA 287-D:3, XVI; RSA 287-D:26; and RSA 287-D:27
Lot 7302	RSA 287-D:27
Lot 7303	RSA 287-D:28; and RSA 287-D:29
Lot 7304	RSA 287-D:30

RULEMAKING NOTICE FORM

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Valerie King** Title: **Division Director**
Address: **NH Lottery Commission** Phone #: **603-271-7613**
14 Integra Drive Fax#: **603-271-1160**
Concord, NH 03301 E-mail: **Valerie.King@lottery.nh.gov**

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Close of the public hearing (see #9 below for date, time, and location)**

Fax E-mail Other format (specify): **USPS**

9. Public hearing scheduled for:

Date and Time: **November 20, 2020 at 10 a.m.**

Place: **Lottery Headquarters, 14 Integra Drive, Concord, New Hampshire**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 20:075, dated 09/11/2020

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**

Not applicable, these are new rules.

2. **Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

3. **Cost and benefits of the proposed rule(s):**

There is no cost associated with the proposed rules. Any cost or benefit relative to rules governing unlawful gambling machines are attributable to RSA 287-D.

A. **To State general or State special funds:**

None.

B. **To State citizens and political subdivisions:**

None.

C. **To independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules do not mandate any fees, duties, or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the New Hampshire Constitution.

Adopt Lot 7300 to read as follows:

CHAPTER Lot 7300 UNLAWFUL GAMBLING MACHINES

PART Lot 7301 PURPOSE AND SCOPE

Lot 7301.01 Purpose. The purpose of this chapter is to set forth the investigation and enforcement criteria for regulating unlawful gambling machines.

Lot 7301.02 Scope.

(a) This chapter shall apply to unlawful gambling machines as defined by RSA 287-D:27, V.

(b) In accordance with RSA 287-D:31, this chapter shall not apply to:

(1) Dispenser devices approved by the commission which are located at the regular meeting place of, or at a facility owned, leased, or utilized by, a charitable organization licensed under RSA 287-E:20;

(2) Bona-fide redemption slot machines or redemption poker machines at a family entertainment center;

(3) Cruise ships which are equipped with gambling machines whose primary purpose is touring. Any such cruise ship shall be allowed to temporarily enter New Hampshire coastal waters and ports for up to 48 hours, provided that all gambling machines on board are not in use or capable of being used while in New Hampshire coastal waters and ports. For the purposes of this paragraph "cruise ship" means any vessel which is capable of providing overnight accommodations for 500 or more people; and

(4) An antique gambling machine in the possession of a collector which is not maintained or operated for gambling purposes.

(c) The provisions of this chapter shall not be construed to permit the licensing, maintenance, distribution, or operation of any mechanical device or apparatus which is contrary to any of the laws of the state, nor shall the provisions of this chapter be construed to permit the operation of any mechanical playing device licensed pursuant to the provisions of this chapter in such a manner as to be contrary to any of such laws.

PART Lot 7302 DEFINITIONS

Lot 7302.01 Definitions.

(a) "Agent" means a sales outlet authorized by the commission to sell lottery tickets.

(b) "Antique gambling machine" means "antique gambling machine" as defined by RSA 287-D:27, I namely, "any device or equipment at least 25 years old which is in the possession of a collector and which is not maintained or operated for gambling purposes."

(c) "Collector" means "collector" as defined by RSA 287-D:27, II namely, "a person who for nostalgic reasons, monetary investment, or personal interest acquires antique gambling machines as defined in paragraph I for personal display or retention."

(d) "Commission" means the New Hampshire Lottery Commission established pursuant to RSA 284:21-a, or its designated staff having authority to perform administrative and clerical functions for the commission.

(e) "Family entertainment center" means "family entertainment center" as defined by RSA 287-D:27, III namely, "a place of business having at least 50 games or devices designed and manufactured only for bona fide amusement purposes on premises which are operated for the entertainment of the general public and tourists as a bona fide entertainment facility and not having more than 15 percent of the total games or machines being redemption slot machines or redemption poker machines."

(f) "Gambling" means "gambling" as defined by RSA 287-D:27, IV namely, "to risk something of value upon a future contingent event not under one's control or influence, upon an agreement or understanding that something of value will be received in the event of a certain outcome. For the purposes of this paragraph, the phrase "something of value" shall include a sweepstakes ticket or other item obtained in conjunction with the purchase of goods or services that entitles the holder to a share or chance in a sweepstakes where, but for the opportunity to enter the sweepstakes, the value of purchased goods or services is insufficient to justify the purchase or the inducement to purchase the goods or services."

(g) "Gambling machine" means "gambling machine" as defined by RSA 287-D:27, V namely, "any device or equipment that is capable of being used to play sweepstakes or games of chance and which discharges money, or anything that may be exchanged for money, cash equivalent, debit card, merchandise credit card, or opportunities to enter sweepstakes or play games of chance, or displays any symbol entitling a person to receive such a prize."

(h) "Redemption slot machine" or "redemption poker machine" means "redemption slot machine" or "redemption poker machine as defined by RSA 287-D:27, VI namely, "any device or equipment that operates by means of the insertion of a coin or token and that may entitle the person playing or operating the game or machine to additional chances or free plays, or to receive points or coupons which may be exchanged for merchandise only, excluding alcoholic beverages, money, cash equivalent, debit card, merchandise credit card, or opportunities to enter sweepstakes or play games of chance, and provided the value for such points or coupons does not exceed 2- 1/2 cents for each credit on the game or machine."

(i) "Sweepstakes" means "sweepstakes" as defined by RSA 287-D:27, VII namely, "any game, advertising scheme or plan, or other promotion which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which is based upon chance. For purposes of this chapter, the term includes only those sweepstakes that an entrant can enter, play, or otherwise interact with using a gambling machine furnished by the sweepstakes operator or an affiliate or person under contract with the operator, in an establishment controlled by, affiliated with, or contracting with the operator."

PART Lot 7303 COMPLAINTS, INVESTIGATIONS AND ENFORCEMENT

Lot 7303.01 Possession of Unlawful Gambling Machines.

(a) Pursuant to RSA 287-D:29, a person shall be guilty of illegal possession of a gambling machine if such person conducts, finances, manages, supervises, directs, or owns all or part of a business, and such person or business possesses or promotes gambling on a gambling machine.

(b) A person shall not be considered in violation of this chapter if the person owned, manufactured, transferred, or possessed the gambling machine, equipment, or paraphernalia for the sole purpose of shipping it to another jurisdiction where the possession or use of the machine, equipment, or paraphernalia was legal.

(c) Pursuant to RSA 287-D:23, I, any person who violates this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Lot 7303.02 Reporting Criteria.

(a) Any licensee or agent of the commission shall promptly report the use or possession of any unlawful gambling machines at the licensed premises or retail facility by submitting the information specified in (c) below to the commission

(b) Any person or entity other than a licensee or agent may report the use or possession of an unlawful gambling machines by submitting the information specified in (c) below to the commission

(c) When practicable, complaints regarding the use or possession of an unlawful gambling machine, shall be submitted to the commission in writing and contain a minimum of the information:

- (1) The name of business or owner of the property where the machine is located
- (2) The physical location of the machine, including the physical address and specific location within the premises where the machine can be found;
- (3) A description and the number of gambling machines observed on the premises; and
- (4) A description of the situation that supports the complaint and the alleged violation(s) of RSA 287-D:26-31 or this chapter.

Lot 7303.03 Investigations.

(a) The commission shall accept written complaints that allege that an individual or entity:

- (1) Possesses an unlawful gambling machine; or
- (2) Is promoting gambling on an unlawful gambling machine.

(b) The commission shall investigate any complaints that have a factual basis.

(c) If the investigation concludes that the devices in question are unlawful gambling machines the commission shall:

- (1) Immediately confiscate the device(s);
- (2) Initiate appropriate administrative action including:
 - a. Issuing administrative fine in accordance with Lot 7400 below;

b. Revoking the license or agreement if the individual or entity in possession of the unlawful gambling machine is a licensee or agent of the commission; and

(3) Refer the case to the New Hampshire state police for further action.

Lot 7303.04 Subpoenas.

(a) In accordance with RSA 287-D:25, the commission shall issue subpoenas for witnesses and for documents relative to investigations by the commission pursuant to (b) below.

(b) The commission shall issue a subpoena for the attendance of witnesses or the production of evidence upon a showing that:

- (1) The testimony or evidence is necessary, relevant and non-repetitive; and
- (2) The witness or evidence cannot be voluntarily obtained.

PART Lot 7304 PENALTIES

Lot 7304.01 Administrative Fines.

(a) Pursuant to RSA 287-E:14, I, when the commission imposes an administrative order or fine upon a person or entity for a violation of RSA 287-D:26-31 or this chapter, the order shall be scaled to reflect the scope of the violation for each offense.

(b) When the commission has determined that a violation or violations have occurred, the commission shall send a written notice of the proposed fine(s), by certified mail or hand delivery, to the person, entity, applicant or licensee of the commission's intent to assess a fine.

(c) The written notice required under (b) above shall contain the following information:

- (1) The violation(s) alleged by the commission and the facts on which the allegations are based;
- (2) The statutory section(s) that authorize(s) the commissioner to impose a fine;
- (3) The amount of the fine for each violation cited and the total amount of fine(s) being sought; and
- (4) The respondent's right to request an adjudicative hearing prior to the imposition of the fine.

(d) Pursuant to RSA 287-D:23,I any administrative fine imposed under this section shall not preclude the imposition of further penalties or administrative actions.

(e) Administrative fines shall be imposed as follows:

- (1) Pursuant to RSA 287-D:30, any person who violates this section shall be subject to a fine of no less than \$5,000 per day, and not more than \$10,000 per day for each gambling machine used or intended for use;
 - (2) Any person who provides false or misleading information to the commission in connection with an investigation of unlawful gambling machines shall be subject to a fine of \$5,000;
 - (3) Any licensee or agent of the commission who knowingly fails to report the presence of an unlawful gambling machine on the premises where their charitable games are played or lottery products are sold shall be subject to a fine of \$5,000 for each day the machines are unreported;
 - (4) If a licensee corrects and then subsequently repeats a violation for which a fine was previously issued in accordance with (1)-(3) above, the fine shall be doubled from that of the previous fine such that, for example, an original fine of \$5,000 shall become \$10,000 for the first time the offense is repeated, \$20,000 for the second time the offense is repeated, \$40,000 for the third time the offense is repeated, and so on.
- (f) Except as otherwise noted, the administrative fines prescribed in (e) above shall be imposed for each day that the person, entity, applicant, or licensee is not in compliance, beginning with the date that the notification under (b) above is issued and continuing for each day of non-compliance, or until the date of compliance.
- (g) In determining the actual amount of a fine, the commission shall consider:
- (1) The degree of non-compliance;
 - (2) Prior history of violations of the same or similar nature;
 - (3) The consequences of the violation, including the economic impact to the state and other affected parties;
 - (4) The nature and persistence of the violation;
 - (5) The extent of any remedial or corrective action taken;
 - (6) The good or bad faith exhibited by the cited individual(s);
 - (7) Evidence that the violation was willful;
 - (8) The extent to which the individual cooperated with the board's investigation;
 - (9) The cost of any investigation or hearing conducted by the commission;
 - (10) The licensee's ability to pay a fine assessed by the commission; and
 - (11) Any other mitigating or aggravating factors.
- (i) Payment of any imposed administrative fine to the commission shall meet the following requirements:

- (1) If the recipient of a notice described in (b) above waives or is deemed to have waived his or her right to an adjudicative hearing, the respondent shall pay the fine by the date specified in the notice, which shall not be less than 25 days from the date of the notice of the proposed fine;
 - (2) If an adjudicative hearing is conducted and the commission's decision to assess a fine is upheld, the fine shall be due and payable within 10 calendar days of the date of the decision, or such longer time period as is specified in the decision;
 - (3) Payment shall be made in the form of personal check or money order which is made payable to "Treasurer, State of New Hampshire," or cash in the exact amount due;
 - (4) Any payment submitted to the treasury department in the form of a check or money order and returned to the state for any reason shall be processed in accordance with RSA 6:11-a; and
 - (5) Cash, money order, or certified check shall be required when any past payment to the commission by personal check has been returned for insufficient funds.
- (j) Nonpayment of a fine by a licensee or respondent in contravention of an order, agreement or promise to pay, shall be a separate ground for discipline by the commission, a basis for denying a subsequent license, renewal or agreement, and a basis for judicial action seeking to collect the fine.
- (k) If a licensee or respondent fails to pay a fine in accordance with (l) above, the fine shall be \$5,000 per day for each day for which the commission does not receive payment in full.

Lot 7304.02 License Revocation.

- (a) Any licensee or agent found in possession of an unlawful gambling machine shall be subject to the revocation of their license or agreement with the commission for at least 12-months from the effective date of the revocation.
- (b) Upon the effective date of the revocation, the licensee or agent shall immediately cease holding itself out to the public as a licensee or agent of the commission, and cease engaging in any act for which licensing or an agreement is required.
- (c) Failure to comply with (b) above shall constitute separate grounds for further disciplinary action.

Lot 7304.03 Forfeiture.

- (a) Pursuant to RSA 287-D:31, and in addition to any other remedy provided by law, all unlawful gambling machines, including any monetary contents and any associated proceeds, implements, equipment, and apparatus used in violation of any provision of this chapter shall be forfeited
- (b) Any or all money, coin or currency used in violation of any provision of this chapter and seized pursuant to this section shall be deposited in the education trust fund established under RSA 198:39.

(c) All unlawful gambling machines that have been confiscated for violation of this chapter shall be destroyed. Such destruction shall be overseen by the commission.

Lot 7304.02 Criminal Penalties. In addition to the penalties described in this part, individuals shall also be subject to the criminal penalties set forth in RSA 287-D:23, a copy of which is included in Appendix B.

APPENDIX A

Rule	Specific State Statute the Rule Implements
Lot 7301	RSA 287-D:3, XVI; RSA 287-D:26; and RSA 287-D:27
Lot 7302	RSA 287-D:27
Lot 7303	RSA 287-D:28; and RSA 287-D:29
Lot 7304	RSA 287-D:30

APPENDIX B**Section 287-D:23****287-D:23 Penalties. –**

- I. In addition to any other penalties provided by law, any person who violates RSA 287-D shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.
- II. Each day on which a game of chance is played in violation of RSA 287-D shall constitute a separate offense.
- III. The lottery commission may suspend or revoke the license of any licensee who violates any provision of this chapter or for just cause shown. Any licensee whose license is revoked shall not be eligible for licensure for a period of up to one year from the date of revocation.
- IV. (a) Any person who purposely or knowingly makes a false entry in any report required under this chapter which results in a reduction of revenues due to a charitable organization shall be guilty of a class A felony.
- (b) Any person who recklessly or negligently makes a false entry on any report required under this chapter which results in a reduction of revenues due to a charitable organization shall be guilty of a class A misdemeanor.
- (c) Any game operator employer or game operator who fails to remit to a charitable organization all revenues due under this chapter shall be guilty of a class A felony.
- V. Any game operator employer or game operator who fails to pay the charitable organization all moneys required by this chapter shall be guilty of a class B felony for any amount less than \$500, and a class A felony for any amount equal to or greater than \$500.
- VI. Any person who violates any provision of RSA 637 in a manner that deprives the charitable organization of any moneys required by this chapter, notwithstanding the penalties set forth in RSA 637:11, shall be guilty of a class B felony for any amount less than \$500, and a class A felony for any amount equal to or greater than \$500.
- VII. In addition to any other penalty imposed under this chapter, a charitable organization that suffers a loss caused by the violation of any provision of this chapter may bring a civil action for actual damages suffered. If the court finds that the violation was committed purposefully or knowingly, it shall award enhanced compensatory damages of not less than 2 times the amount of actual damages suffered, and may award up to 3 times the amount of actual damages suffered. In any civil action, the prevailing party shall be awarded court costs and reasonable attorney's fees. No waiver of the provisions of this paragraph shall be enforceable.
- VIII. The lottery commission may issue an order requiring any person or organization to comply

with this chapter or any rule adopted pursuant to this chapter, and may require such remedial measures as may be necessary.

IX. The lottery commission may impose an administrative fine scaled to reflect a violator's prior history of noncompliance with laws pertaining to games of chance and the scope and severity of the violation, after notice and hearing, pursuant to rules adopted under RSA 541-A, for any violation of this chapter, any rule adopted under this chapter, any license issued pursuant to this chapter, or any order issued pursuant to this chapter, or upon any person who makes or certifies to a material false statement relative to any application or report required by this chapter. In determining the amount of a fine, the lottery commission may take into consideration all relevant circumstances, including: the degree of noncompliance, the extent of harm caused by the violation, the nature and persistence of the violation, the time and cost associated with the investigation by the state, and the economic impact of the violation on the state or the charitable organization conducting or sponsoring the game. No administrative fine imposed under this paragraph shall preclude the imposition of other penalties as provided by law. Rehearings and appeals from a decision of the lottery commission under this paragraph shall comply with RSA 541. Fines imposed by the lottery commission shall be as follows:

(a) The fine for a minor violation shall be not less than \$25 and not more than \$500 per violation. A minor violation shall be one where the lottery commission determines that the potential for harm to the interests of the state and the charitable organization, as well as the integrity of charitable gaming is minor and may include, but is not limited to, the failure of a game operator, a game operator employer, charitable organization, or charitable organization member to:

- (1) Wear a properly issued badge;
- (2) Post 2 copies of the laws and rules;
- (3) Have a diagram available for each table where games of chance are being played indicating the type of game being played, the bet amount, the buy-in amount, and the re-buy amounts as applicable; or
- (4) Publicly display the name of the charitable organization.

(b) The fine for a moderate violation shall be not less than \$250 and not more than \$1,500 per violation. A moderate violation shall be one where the lottery commission determines that the potential for harm to the interests of the state and the charitable organization, as well as the integrity of charitable gaming is moderate and may include, but is not limited to, a game operator, game operator employer, charitable organization, or charitable organization member:

- (1) Filing a late financial report;
- (2) Operating a game not specifically listed on the game schedule;
- (3) Operating a game on a different date than licensed without approval of the lottery commission;
- (4) Committing 3 or more minor violations within 2 years; or
- (5) Knowingly operating a game of chance without a representative of the charitable organization present as specified in RSA 287-D:14, XI.

(c) The fine for a major violation shall be not less than \$1,000 and not more than \$5,000 per violation. A major violation shall be one where the lottery commission determines that the potential for harm to the interests of the state and the charitable organization, as well as the integrity of charitable gaming is major and shall include, but is not limited to, a game operator, game operator employer, charitable organization, or charitable organization member:

- (1) Operating a game of chance without a license;
- (2) Operating a game of chance without having the personnel or officials required;

- (3) Purposely operating a game of chance without a representative of the charitable organization present as specified in RSA 287-D:14, XI;
 - (4) Operating a game of chance with game operators who are not licensed;
 - (5) Failing to establish or maintain a New Hampshire bank account; or
 - (6) Committing 5 or more minor violations or 3 or more moderate violations within 2 years.
- (d) The lottery commission may suspend any part of a fine for just cause.
- X. All fines imposed by the lottery commission shall be deposited in the special fund established pursuant to RSA 284:21-j.

Source. 2014, 329:1. 2015, 276:127, eff. July 1, 2015