

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FILED

FEB 23 2 51 PM '95

OFFICE OF THE SECRETARY OF STATE

m #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Lottery TITLE NUMBER: 179
RULE TYPE: LEGISLATIVE; CITE AUTHORITY W.Va. Code §§29-22-5, 9(B), 10 and 17
AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: SERIES 3

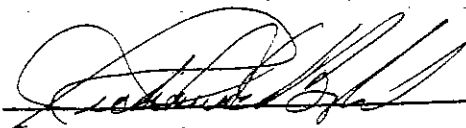
TITLE OF RULE BEING PROPOSED: _____

LICENSEES AND THE AMERICANS WITH DISABILITIES ACT

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON MARCH 27, 1995 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

THE WEST VIRGINIA STATE
LOTTERY COMMISSION
P.O. BOX 2067
Charleston, WV 25327-2067

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

440

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OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

CONSENT TO FILE RULE

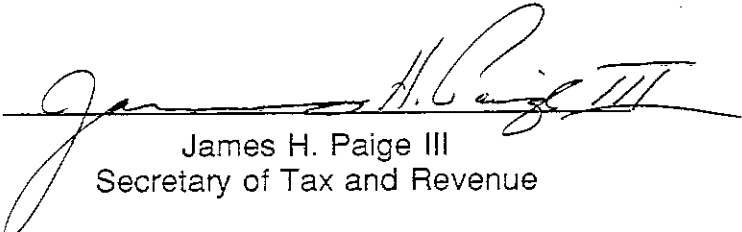
February 23, 1995

TO WHOM IT MAY CONCERN:

Title of Rule:	Lottery Operations
Title Number:	179
Series Number	3

Pursuant to West Virginia Code §§ 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this twenty-third day of February, 1995.


James H. Paige III
Secretary of Tax and Revenue

**PROPOSED
WEST VIRGINIA LEGISLATIVE REGULATIONS
WEST VIRGINIA LOTTERY
TITLE 179
SERIES 3
1995**

LICENSEES AND THE AMERICANS WITH DISABILITIES ACT

A STATEMENT of CIRCUMSTANCES WHICH REQUIRE THIS RULE:

The West Virginia Supreme Court of Appeals filed its decision on November 23, 1994 in the case of *Paxton v. State of West Virginia, Department of Tax and Revenue*. The issue was whether the West Virginia Lottery was obligated under Title II of the Americans With Disabilities Act [ADA] to license only businesses accessible to disabled customers to act as lottery retail sales locations. The West Virginia Supreme Court of Appeals concluded its decision by saying:

We conclude that the Lottery Commission has a legal duty under the ADA to require its lottery retail licensees to comply with the ADA by issuing appropriate administrative rules and regulations...and direct the Lottery Commission to promulgate administrative regulations.

The West Virginia State Lottery Commission has prepared this proposed legislative rule and has ordered the Director of the Lottery to submit it to the public for review and comment.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Licensees and the Americans With Disabilities Act

Type of Rule: Legislative Interpretive Procedural

Agency: the West Virginia State Lottery

Address: P.O. Box 2067
Charleston, WV 25327-2067

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

N/A

3. Objectives of these rules: Insure that persons with disabilities are able to purchase lottery tickets from West Virginia Lottery licensed sales locations.

Rule Title: Licenses and the Americans With Disabilities Act

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The Human Rights Commission will be afforded another compliance tool. Loss of retail sales locations may result from activities performed pursuant to the rule. Loss of locations will reduce revenues to the State Lottery Fund.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Loss of the right to sell lottery tickets will mean loss of the retailer's statutory selling commission of 5% of gross ticket sales and of certain optional bonuses.

C. Economic Impact on Citizens/Public at Large.

Disabled citizens may be aided as more businesses eliminate obstacles and barriers connected with their businesses. Non compliance by licensees in certain areas may lead to the unavailability of lottery games to all citizens in those areas.

Date: 2-23-95

Signature of Agency Head or Authorized Representative

Robert H. Boyle

**PROPOSED
WEST VIRGINIA LEGISLATIVE REGULATIONS
WEST VIRGINIA LOTTERY
TITLE 179
SERIES 3
1995**

LICENSEES AND THE AMERICANS WITH DISABILITIES ACT

A BRIEF SUMMARY of the PROPOSED RULE:

The text of this rule was constructed largely from three sources:

1. ADA provisions of the Administrative Regulations of the Texas Lottery Commission, 16 TAC §§401.401-401.408 (Jan. 18, 1994).
2. Emergency Regulation of the Florida Department of the Lottery concerning the ADA, 53ER94-28 FAC (April 1, 1994).
3. The Brief of Appellee Larry E. Paxton, September 6, 1994, at page 16 - "Conclusion."

Section two contains definitions for the rule.

Section three describes the standards of accessibility necessary to allow a disabled customer to purchase a lottery ticket from a licensed retailer. Discrimination against disabled customers concerning the sale of lottery tickets is prohibited. Readily achievable removal of architectural and communications barriers are listed by examples.

Section four creates modifications to the West Virginia Lottery's licensing and re-licensing processing to include a mandatory yes/no check-off provision each applicant for licensing and each license holder. The check-off is used by applicants and licensees to inform the West Virginia Lottery that the retailer either is accessible or is not accessible to a customer with a recognized disability who wishes to purchase a lottery ticket. The check-off determines whether the license will be granted/continued.

Section five recognizes the United States Department of Justice, the West Virginia Human Rights Commission and West Virginia municipal and county building code officials as the enforcement authorities. When enforcement authorities notify the lottery of a licensee's noncompliance with ADA accessibility provisions relating to the sale of lottery tickets, the West Virginia Lottery notifies the licensee that (s)he has thirty days to correct the noncompliance or else the lottery license shall be suspended indefinitely until the noncompliance is corrected.

Section six outlines the appeal process for a licensee whose lottery license is suspended under provisions of the rule.

FILED

**PROPOSED
WEST VIRGINIA LEGISLATIVE REGULATIONS
WEST VIRGINIA LOTTERY
TITLE 179
SERIES 3
1995**

FEB 23 2 51 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

LICENSEES AND THE AMERICANS WITH DISABILITIES ACT

§179-3-1. General

1.1. Scope and Purpose. - The purpose of this rule is to provide procedures for lottery retailers and licensed lottery sales agents to meet their responsibilities concerning accessibility at retailer locations for disabled customers pursuant to the Americans with Disabilities Act (ADA).

1.2. Authority - W. Va. Code - 29-22-5, 9(b), 10, and 17; and
Paxton v. State of West Virginia, Department of Tax and Revenue

1.3. Filing Date -

1.4. Effective Date -

§179-3-2. Definitions

For the purposes of these regulations, the following words and phrases shall have the meaning ascribed to them in this Section unless the context of the regulations shall clearly indicate otherwise.

2.1. "Accessibility of the public to the licensed premises proposed by applicant" means a location where a significant number of customers will frequent the business and will thereby be exposed to the availability of lottery games; and it also means that a person with a disability will be able to play lottery games at that location.

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

2.3. "ADA" means the Americans with Disabilities Act of 1990, 42 United States Code, §§12101-12213 and 47 United States Code, §225 and §611.

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

2.5 "Applicant" means a person who has filed an application to become a lottery retailer or lottery sales agent.

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

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

2.8 "Disability" with respect to an individual means a physical or mental impairment that substantially limits one or more of the major life activities of such individual; or, having had a record of such an impairment; or, being regarded as having such an impairment.

2.9 "Enforcement Authority" means the United States Department of Justice; or, the West Virginia Human Rights Commission, W.Va. Code §§5-11-1 et seq.; or, any West Virginia municipal or county building code inspection officer.

2.10 "Lottery Game" means the public gaming system or games established and operated by the West Virginia Lottery.

2.11 "Lottery licensed facility" means a place of public accommodation operated by an applicant/lottery retailer, including all or any portion of buildings, structures, sites, complexes, equipment, walks, passageways, parking lots, or other real or personal property including the site where the building, property, structure, or equipment is located, to the extent used in the conduct of lottery activities.

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

2.13 "Lottery Sales Agent" or "Sales Agent" or "On-Line Agent" means any person licensed by the Commission to sell and dispense lottery tickets, materials, and to operate electronic terminals, and lottery games in such sales and dispensing.

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

2.15 "Readily achievable" means an action to be taken by a lottery retailer or lottery sales agent that is easily accomplished and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

2.15.1. The nature and cost of the action needed under this part;

2.15.2. The overall financial resources of the site or sites involved in the action; the number or persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

2.15.3. The geographic separateness and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

2.15.4. If applicable, the overall financial resources of any parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

2.15.5. If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

2.16. "Undue burden" means a modification to the premises which would involve significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include:

2.16.1. The nature and cost of the action;

2.16.2. The overall financial resources of the site or sites involved in the action; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures, or the impact otherwise of the action upon the operation of the site; and

2.16.3. If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; and the number, type and location of facilities.

§179-3-3. Accessibility of the public to the licensed premises.

3.1. Standard - The general standard for determining accessibility of lottery games to the disabled customer is the ability of that customer to buy a lottery ticket and/or to play a lottery game.

3.2. Prohibition of discrimination.

3.2.1. No lottery retailer or lottery sales agent shall discriminate against any individual on the basis of a disability in the full and equal enjoyment of lottery related goods, services, facilities, privileges, advantages, or accommodations or any lottery licensed facility.

3.2.2. Integrated accessibility. A lottery licensed facility shall afford lottery related goods, services, facilities, privileges, advantages, and accommodations to any individual with a disability in the most integrated setting appropriate to the needs of the individual.

3.3. Readily Achievable Barrier Removal.

3.3.1. General. An applicant/lottery retailer shall remove architectural and communication barriers in a lottery licensed facility, where such removal is readily achievable.

3.3.2. Examples. Examples of readily achievable steps to remove barriers include, but are not limited to the following actions:

3.3.2.1. Installing ramps;

3.3.2.2. Making curb cuts in sidewalks and entrances;

3.3.2.3. Creating designated accessible parking spaces;

3.3.2.4. Widening doors;

3.3.2.5. Rearranging tables, chairs, vending machines, display racks, and other furniture;

3.3.2.6. Installing offset hinges to widen doorways;

3.3.2.7. Installing accessible door hardware; and/or

3.3.2.8. Modification of certain exclusionary policies such

as:

3.3.2.8.1. Allowing service animals to enter the facility; and/or,

3.3.2.8.2. Communicating with a Lottery player with a disability to the best of the ability of the Lottery retailer or the retailer's employees.

§179-3-4. Licensing and Relicensing.

4.1 When a person applies for, or seeks renewal of, a license to sell lottery tickets, the West Virginia Lottery will provide that person the appropriate form to complete and file which, among other things, will inquire whether the person's business location to be licensed or relicensed complies with the with the ADA requirements for accessibility.

4.1.1. On each of the aforementioned forms, the licensee or applicant will be asked to check the appropriate box:

Upon licensing or relicensing as the case may be, Lottery games are accessible to customers with disabilities as required by the Americans With Disabilities Act --

yes no

4.1.2. Only persons who check the "yes" box will be eligible for licensing or relicensing.

4.1.3. The West Virginia Lottery will return the application form and fee to any applicant for a license who must check the "no" box.

4.1.4. The West Virginia Lottery will return the relicense form, will not charge the \$25 fee, and will not issue a new license to a licensee who must check the "no" box.

4.2 Any applicant who modifies his/her premises to comply with ADA requirements may then reapply and check the "yes" box.

4.3 Any former licensee who modifies his/her premises to comply with ADA requirements may then resubmit the relicensing form and check the "yes" box.

§179-3-5. Enforcement Provisions.

5.1. Enforcement of this provision shall be pursuant to W.Va. Code §§5-11-8(c) and the ADA. If it is determined that a lottery retailer is not in compliance with the ADA, W.Va. Code §§5-11-1 et seq., and this rule, the enforcement authority shall complete the Certification of Non-Compliance, West Virginia Lottery Form ADA-NC which will be distributed to each enforcement authority and which may also be obtained by writing to the West Virginia Lottery, P.O. Box 2067, Charleston, West Virginia, 25327-2067. The original completed copy of that Certification is to be forwarded to the same address.

5.2. Upon receipt by the West Virginia Lottery of a completed Certification of Non-Compliance from the enforcement authority, the West Virginia Lottery shall notify the cited lottery retailer or lottery sales agent of such certification and that the retailer is within thirty days of the possible suspension of its license. The Lottery is authorized to continue sales at the cited retail location for up to thirty (30) days to

allow the retailer to bring itself into compliance with the requirements of the ADA. If a cited lottery retailer or lottery sales agent fails to comply with the requirements of the ADA within thirty (30) days, its lottery license shall be suspended by the Director and no further lottery sales shall occur at the cited location until the retailer is determined to be in compliance.

§179-3-6. Appeal.

6.1. If the Director suspends or revokes a license, or refuses to grant a license because of the provisions of this rule, the aggrieved party is entitled to a hearing by filing a written request with the West Virginia State Lottery Commission within fifteen days of the Director's notice thereof. Upon receipt of the request, the Commission shall set a hearing date within thirty (30) days and shall notify the aggrieved party in writing at least seven (7) days in advance of the time, date and place of hearing.

6.2. Procedures - The procedures and forms pertaining to an appeal of the Director's actions under this rule shall in every case be governed by the West Virginia Lottery Commission's procedural rule, 179 CSR 2. A copy of this procedural rule and forms shall be supplied to any person upon request and without charge. A copy of this procedural rule and forms shall be supplied to any licensee or license applicant who files an appeal with the West Virginia State Lottery Commission.



Gaston Caperton
Governor

Department of
Tax and Revenue
James H. Paige III
Secretary

West Virginia Lottery
Richard E. Boyle, Jr.
Director

Lottery Commission
David H. Gardner
C. Steven Hyre
William R. Laird, IV
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Lawrence Pack
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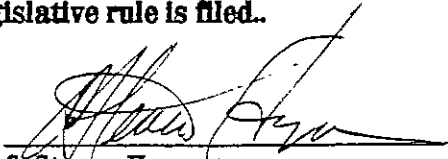
ORDER

**THE WEST VIRGINIA STATE LOTTERY
COMMISSION**

Charleston, West Virginia

On the twenty-second day of January, 1995, this Commission by unanimous vote during a duly noticed public meeting, approved a proposed legislative rule concerning compliance with the Americans With Disabilities Act by present and future West Virginia Lottery licensees and authorized the Director of the Lottery to file the proposed legislative rule with the Office of the Secretary of State, and further to provide for the receiving of written comments concerning said proposed legislative rule for a period of thirty days from the date said proposed legislative rule is filed.

It is therefore ORDERED, this twenty-second day of January, 1995, that the Director of the West Virginia Lottery file the proposed legislative rule with the Office of the Secretary of State, and provide for the receiving of written comments concerning said proposed legislative rule for a period of thirty days from the date said proposed legislative rule is filed.


C. Steven Hyre
Chairman, West Virginia State
Lottery Commission


Robin Atkins
Recording Secretary