

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #3

DO NOT WRITE IN THIS SPACE  
**FILED**  
MAY 26 1 00 PM '95  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: West Virginia Lottery TITLE NUMBER: 179

CITE AUTHORITY W.Va. Code §§29-22-5,9(b), 10 and 17

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

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

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

Licensees and the Americans With Disabilities Act

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



\_\_\_\_\_

6.20

FILED

**CONSENT TO FILE RULE** No. 00 PH '95

May 25, 1995

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TO WHOM IT MAY CONCERN:

**Title of Rule:** Licensees and the Americans  
With Disabilities Act

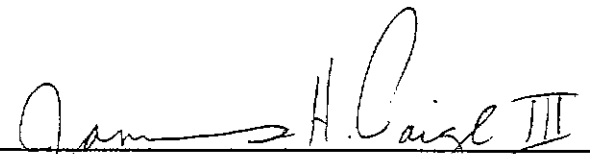
**Title Number:** 179

**Series Number** 3

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

Signed this twenty-fifth day of May, 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: Licenses 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: Licensees 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: \_\_\_\_\_

Signature of Agency Head or Authorized Representative

\_\_\_\_\_

DATE: May 26, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia State Lottery Commission

LEGISLATIVE RULE TITLE: Licensees and the Americans With Disabilities Act

1. Authorizing statute(s) citation \_\_\_\_\_  
W.Va. Code §§29-22-5, 9(B), 10 and 17

2. a. Date filed in State Register with Notice of Hearing  
February 23, 1995 at 2:52 p.m.

b. What other notice, including advertising, did you give  
of the hearing?

\_\_\_\_\_  
Notice List Attached

c. Date of Hearing(s) \_\_\_\_\_  
Comment period 2-23-95 through 3-27-95 at 5:00 p.m.

d. Attach list of persons who appeared at hearing,  
comments received, amendments, reasons for amendments.

Attached   X   No comments received \_\_\_\_\_

e. Date you filed in State Register the agency approved  
proposed Legislative Rule following public hearing:  
(be exact)

May 26, 1995

f. Name and phone number(s) of agency person(s) to  
contact for additional information:

Richard E. Boyle, Jr. 304-558-0500

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing:

N/A

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

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d. Attach findings and determinations and reasons:

Attached

N/A

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**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.

**PROPOSED  
WEST VIRGINIA LEGISLATIVE REGULATIONS  
WEST VIRGINIA LOTTERY  
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FILED

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**LICENSEES AND THE AMERICANS WITH DISABILITIES ACT**

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**§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.

FILED

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

May 26 1 00 PM '95  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**LICENSEES AND THE AMERICANS WITH DISABILITIES ACT**

**PUBLIC COMMENT PERIOD FEBRUARY 23 -  
MARCH 27, 1995**

On February 23, 1995, copies of the proposed legislative regulations captioned as above were filed with the office of the West Virginia Secretary of State and with the Legislative Rule-Making Review Committee [LRMRC]. During the advertised thirty-day period for receiving written comments from the public, the West Virginia Lottery received one personally delivered comment and no mail-delivered comments. The attached mailing lists were used to mail direct invitations to comment to those persons known or believed to have an interest in commenting. The mailing attempted to balance the availability of supplemental notice between lottery retailers and individuals who might comment from the prospective of persons with various forms of disability.

**COMMENT OF WEST VIRGINIA ADVOCATES, INC.  
AND  
REPLY OF THE West Virginia Lottery**

**COMMENT:**

Section 179-3-5 limits enforcement to complaints filed by "enforcement authorities," which are defined in Section 179-3-2.9 to include only the United States Department of Justice, the West Virginia Human Rights Commission, and local building inspectors. This language improperly limits the enforcement authority granted to individuals to bring private actions by the ADA and Human Rights Act, see West Virginia Code Section 5-11-12 and Title 29 [sic], Code of Federal Regulations, Section 36.501, and improperly delegates the Lottery's responsibility to enforce the ADA as described in Paxton.

As a practical matter, requiring complainants to obtain a finding from either the Department of Justice or the Human Rights Commission prior to enforcement is redundant because both of those authorities have the ability to require accommodations independently. This requirement also will seriously impede enforcement of these

regulations because both the Department of Justice and the Human Rights Commission are seriously overburdened with investigation of discrimination complaints, and our experience indicates that many localities do not consider ADA enforcement to be part of their responsibilities.

The Texas Lottery conducts affirmative inspections of lottery outlets under agreement with the state's protection and advocacy agency. While that approach is the ideal solution, WVA acknowledges that resources necessary to conduct such inspections are hard to come by. WVA therefore recommends, at the very minimum, that private individuals be given standing to challenge accessibility of lottery outlets by filing Certifications of Non-compliance with the Lottery directly. WVA suggests the following change:

179-3-2.9 'Enforcement Authority' means the United States Department of Justice; or, the West Virginia Human Rights Commission, W. Va. Code Sec. 5-11-1 et seq.; or, any West Virginia municipal or county building code inspection officer; or any individual or organization authorized to bring private actions under the Americans with Disabilities Act or the West Virginia Human Rights Act."

## **RESPONSE**

By adopting the Florida regulatory standard for enforcement rather than the Texas plan, the West Virginia State Lottery Commission recognizes the limitations on its own resources. The West Virginia Lottery recognizes the standing of the Department of Justice under 28 CFR §35.190(b)(6), and the standing of the West Virginia Human Rights Commission, with the filing of its administrative regulation regarding discrimination against individuals with disabilities, 77 CSR 1, as an equivalent agency to the Department of Justice concerning the intervening on behalf of a complainant under ADA.

The commenter's reference to W.Va. Code §5-11-12 is not understood, as this section of the West Virginia Human Rights Act permits the legislative body of a political subdivision to create by ordinance a local human relations commission. The West Virginia Lottery is an agency of state government, but it is not a political subdivision as are counties and municipalities. This should not be confused with an individual's statutory right to bring a complaint before the West Virginia Human Rights Commission under W.Va. Code §5-11-10.

In similar fashion, commenter's reference to 28 CFR §36.501 gives a person with a disability the right to bring a private suit under Title III to force a public accommodation to alter facilities to make them readily accessible to and useable by persons with disabilities. That section goes on to say, in part, "Upon timely application, the court may, in its discretion, permit the [United States] Attorney

General to intervene in the civil action if the Attorney General or his or her designee certifies that the case is of general public importance”.

The commenter implies that the West Virginia Supreme Court of Appeals' order gives the West Virginia State Lottery Commission the power to correct accessibility problems. In fact, it only pertains to who can and cannot obtain a license to sell lottery tickets.

For the foregoing reasons, the West Virginia State Lottery Commission will file its proposed legislative rule as originally filed for public comment.

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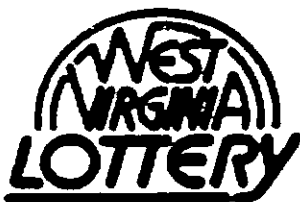
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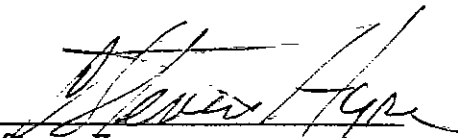
## ORDER

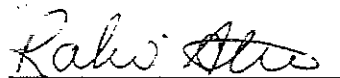
### THE WEST VIRGINIA STATE LOTTERY COMMISSION

Charleston, West Virginia

On the twenty-fifth day of May, 1995, this Commission by unanimous vote during a duly noticed public meeting, after review of the written comment concerning said proposed legislative rule and the agency's response thereto, 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 with the Legislative Rule-Making Review Committee.

It is therefore ORDERED, this twenty-fifth day of May, 1995, that the Director of the West Virginia Lottery sign and file the approved proposed legislative rule with the Office of the Secretary of State, and with the Legislative Rule-Making Review Committee.

  
C. Steven Hyre  
Chairman, West Virginia State  
Lottery Commission

  
Robin Atkins  
Recording Secretary

# WVA

## West Virginia Advocates

RECEIVED

MAR 27 1995

WV LOTTERY

March 24, 1995

HAND DELIVERY

Richard E. Boyle, Jr.  
Director, West Virginia Lottery  
P.O. Box 2067  
Charleston, WV 25327-2067

RE: Comments to Proposed West Virginia Lottery Regulations  
Concerning the Americans with Disabilities Act (ADA)

Dear Mr. Boyle:

Thank you for the opportunity to comment on your proposed ADA regulations.

West Virginia Advocates, Inc. (WVA) is a private, nonprofit corporation designated by the Governor to provide federally mandated protection and advocacy services to West Virginians with disabilities. One of WVA's priorities is improving access to public accommodations and public programs under the ADA and the state Human Rights Act. WVA and its clients take great interest in these regulations, which will undoubtedly improve access to the Lottery by many West Virginians with disabilities.

WVA lauds the thorough work of the Lottery in preparing these regulations. Our comments suggest only a change in complaint and enforcement authority to include private actions by individuals consistent with the ADA and Human Rights Act.

#### Complaint and Enforcement Authority

Section 179-3-5 limits enforcement to complaints filed by "enforcement authorities," which are defined in Section 179-3-2.9 to include only the United States Department of Justice, the West Virginia Human Rights Commission, and local building inspectors. This language improperly limits the enforcement authority granted to individuals to bring private actions by the ADA and Human Rights Act, see West Virginia Code Section 5-11-13 and Title 29, Code of Federal Regulations, Section 36.501, and improperly delegates the Lottery's responsibility to enforce the ADA as described in Paxton.

304-346-0847 or 1-800-950-5250 (V/TDD)

(Fax) 304-346-0867

Litton Building 4th Floor

1207 Quarrier Street, Charleston, West Virginia 25301-1842



Comments to Lottery Regulations  
March 24, 1995  
Page 2

As a practical matter, requiring complainants to obtain a finding from either the Department of Justice or the Human Rights Commission prior to enforcement is redundant because both of those authorities have the ability to require accommodations independently. This requirement also will seriously impede enforcement of these regulations because both the Department of Justice and the Human Rights Commission are seriously overburdened with investigation of discrimination complaints, and our experience indicates that many localities do not consider ADA enforcement to be part of their responsibilities.

The Texas Lottery conducts affirmative inspections of lottery outlets under agreement with that state's protection and advocacy agency. While that approach is the ideal solution, WVA acknowledges that resources necessary to conduct such inspections are hard to come by. WVA therefore recommends, at the very minimum, that private individuals be given standing to challenge accessibility of lottery outlets by filing Certifications of Non-Compliance with the Lottery directly. WVA suggests the following change:

"179-3-2.9 'Enforcement Authority' means the United States Department of Justice; or, the West Virginia Human Rights Commission, W.Va.Code Sec. 5-11-1 et seq.; or, any West Virginia municipal or county building code inspection officer; or, any individual or organization authorized to bring private actions under the Americans with Disabilities Act or the West Virginia Human Rights Act."

Thank you again for the opportunity to comment. Please contact me if you have any questions or wish further information.

Very truly yours,



Mark McWilliams  
Managing Advocate