

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Lottery TITLE NUMBER: 179

CITE AUTHORITY W.Va. Code §§29-22-5 and 10

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

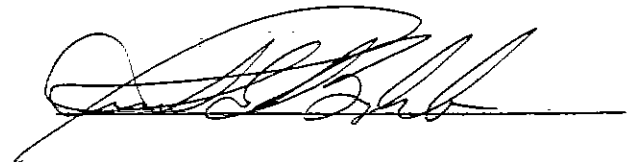
TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING PROPOSED: _____

Licensees and the Americans With Disabilities Act

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



3.40



STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE

GASTON CAPERTON
GOVERNOR

Charleston, West Virginia

JAMES H. PAIGE III
SECRETARY

CONSENT TO FILE RULE

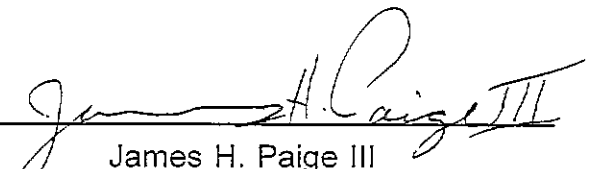
June 12, 1995

TO WHOM IT MAY CONCERN:

Title of Rule:	Licensees and the Americans With Disabilities Act
Title Number:	179
Series Number	3

Pursuant to West Virginia Code §§ 5F-2-2(a) and 64-7-4(c), the undersigned hereby consents to the filing of the foregoing rule.

Signed this fifteenth day of August, 1994.


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

§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), 42 United States Code, §§12101-12213 and 47 United States Code, §225 and §611.

1.2. Authority - W. Va. Code - 29-22-5 and 10; and *Paxton v. State of West Virginia, Department of Tax and Revenue*, 451 S.E. 2d 779 (W.Va. 1994).

1.3. Filing Date -

1.4. Effective Date -

§179-3-2. Definitions

For the purposes of this rule, the following words and phrases have the meaning ascribed to them in this Section unless the context of the rule clearly indicates otherwise.

2.1. "Accessibility of the public to the licensed premises proposed by applicant" means the ability of a significant number of customers to frequent a business location and to thereby be exposed to the availability of lottery games; and it also means the ability of a person with a disability covered by the Americans With Disabilities Act 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 that the individual has a physical or mental impairment that substantially limits one or more of the major life activities of the individual; or, that the individual has had a record of such an impairment; or, that the individual is 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 state lottery office.

2.11. "Lottery licensed facility" means a place of public accommodation operated by a licensed lottery sales agent or a 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.

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 and materials, and to operate electronic terminals, and lottery games in the sales and dispensing of lottery tickets and materials.

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;

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.

§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.

3.3.2.8. Modifying certain exclusionary policies such as:

3.3.2.8.1. Allowing service animals to enter the facility.

3.3.2.8.2. Communicating with hearing-impaired Lottery players to the best of the ability of the Lottery retailer or the retailer's employees.

3.4 Alternatives to barrier removal. Where an applicant, a lottery retailer or a licensed lottery sales agent can assert that barrier removal in its lottery licensed facility is not readily achievable in conjunction with federal guidelines, the applicant, lottery retailer or licensed lottery sales agent shall make lottery tickets and related services available through alternative methods, if those methods are readily achievable. Examples of alternatives to barrier removal include the following actions:

- 3.4.1 Providing curb services.
- 3.4.2 Relocating activities to accessible licensed locations.

§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 the appropriate form, the licensee or applicant shall 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 are 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 license renewal form, will not charge the \$25 fee, and will not issue a new license to a licensee who checks the "no" box.

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

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

§179-3-5. Enforcement Provisions.

5.1. Enforcement of this provision is pursuant to W.Va. Code §§5-11-8(c) and the ADA. If it is determined that a lottery retailer or licensed lottery sales agent 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 enforcement authority shall forward the original completed copy of that Certification 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 the 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. Appeals.

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. 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 are in every case governed by the West Virginia State Lottery Commission's procedural rule, Procedures, Appeals and Other Procedures, 179 CSR 2. The Commission shall supply a copy of this procedural rule and forms to any person upon request and without charge. The Commission shall supply a copy of this procedural rule and forms to any licensee or license applicant who files an appeal with the West Virginia State Lottery Commission.



FILE

JUN 13 2 23 PM '95

West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vickie Douglas, Co-Chair

June 12, 1995

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEWCOMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. James H. Paige III, Secretary
Dept. of Tax and Revenue
State Capitol
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Licensees and the Americans with Disabilities Act

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
(a) as originally filed
(b) as modified by the agency [X]
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Richard E. Boyle, Jr.