

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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FILED

MAR 26 11 41 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Lottery TITLE NUMBER: 179

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 & the Americans with Disabilities Act

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 171

SECTION Section 64-7-4(a), PASSED ON March 7, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 15, 1996



AUTHORIZED SIGNATURE

CONSENT TO FILE RULE

March 26, 1996

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), the undersigned hereby consents to the final filing of the foregoing rule.

Signed this twenty-sixth day of March, 1996.


James H. Paige III
Secretary of Tax and Revenue

WEST VIRGINIA LEGISLATIVE REGULATIONS
WEST VIRGINIA LOTTERY
TITLE 179
SERIES 3
1996

LICENSEES AND THE AMERICANS WITH DISABILITIES ACT

PROMULGATION HISTORY

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 prepared this proposed legislative rule and ordered the Director of the Lottery to submit it to the public for review and comment. This amended legislative rule was filed in the State Register on February 23, 1995. The accompanying notice called for written comments only. At the close of the thirty day comment period [March 27, 1995], the West Virginia State Lottery Commission reviewed the single comment received and ordered the proposed rule filed with the Legislative Rule-Making Review Committee.

The agency-approved proposed rule was filed in the State Register and with the Legislative Rule-Making Review Committee on May 26, 1995. On June 1, 1995, Counsel for the Legislative Rule-Making Review Committee contacted the West Virginia Lottery with a list of drafting style changes. Those changes were made and Committee Counsel was notified.

On June 11, 1995, the Legislative Rule-Making Review Committee considered the agency-approved rule and approved it with counsel's technical changes and one substance change required by the Committee and agreed to by the agency.

The proposed rule was made part of Senate Bill 171 which was passed by the Legislature on March 7, 1996, effective from passage and signed by the Governor on March 25, 1996.

The rule, with Cabinet Secretary approval, was final-filed in the State Register on March 26, 1996, and was effective April 15, 1996.

**WEST VIRGINIA LEGISLATIVE REGULATIONS
WEST VIRGINIA LOTTERY
TITLE 179
SERIES 3
1996**

FILED

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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), 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 - March 26, 1996

1.4. Effective Date - April 15, 1996

§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 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.

6924

H. B. 4269

(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)

(Introduced January 29, 1996 ; referred to the
Committee on the Judiciary.)

A BILL to amend article seven, chapter sixty-four of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new
section, designated section five, relating to
authorizing the lottery commission to promulgate
legislative rules relating to licensees and the
Americans with disabilities act.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter sixty-four of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be amended by adding thereto a new section,
designated section five, to read as follows:

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE
TO PROMULGATE LEGISLATIVE RULES.**

§64-7-5. Lottery commission.

179-3

4269

1 The legislative rules filed in the state register on
2 the twenty-sixth day of May, one thousand nine hundred
3 ninety-five, under the authority of section ten, article
4 twenty-two, chapter twenty-nine, of this code, modified by
5 the lottery commission to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the fifteenth day of June, one thousand
8 nine hundred ninety-five, relating to the lottery
9 commission (licensees and the Americans with disabilities
10 act, 179 CSR 3), are authorized.

11

12 NOTE: The purpose of this bill is to authorize the
13 Lottery Commission to promulgate legislative rules relating
14 to licensees and the Americans with Disabilities Act.

15

16 This section is new; therefore, strike-throughs and
17 underscoring have been omitted.

1 SENATE BILL NO. 199

2 (By Senators Ross, Anderson, Boley,
3 Buckalew, Grubb and Macnaughtan)

4 [Introduced January 29, 1996; referred
5 to the Committee on

6 THE JUDICIARY

7 179-3

8
9
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11 code of West Virginia, one thousand nine hundred
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23 TO PROMULGATE LEGISLATIVE RULES.

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KEN HECHLER
Secretary of State

WILLIAM H. HARRINGTON
Chief of Staff

MARY P. RATLIFF
Deputy Secretary of State

JUDY COOPER
Director, Administrative Law

STEPHEN N. REED
Deputy Secretary of State

PENNEY BARKER
Supervisor, Corporations

CATHERINE FREROTTE
Executive Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

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1900 Kanawha Blvd., East
Charleston, WV 25305-0770

Telephone: (304) 558-6000
Corporations: (304) 558-8000
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Tom Melton
TO: ~~John Montgomery~~

AGENCY: West Virginia Lottery

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: April 9, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 3 TITLE: 179 West Virginia Lottery

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: *Tom Melton*

TITLE OF PERSON SIGNING: Lottery Counsel

DATE: April 16, 1996

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

FILED
APR 16 2 20 PM '96
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

March 12, 1996

Richard E Boyle Jr
Lottery
PO Box 2067
Charleston, WV 25327-2067

SB 171 authorizing, Title 179, Series 03, Licensees & the Americans with Disabilities Act passed the Legislature on **March 7, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **SB 171** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 171 Section 64-7-4(a)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division