




INTEROFFICE MEMO

Gary Grief, Executive Director Michael P. Farrell, Charitable Bingo Operations Director

To: J. Winston Krause, Chairman
Mark A. Franz, Commissioner
Robert Rivera, Commissioner
Erik C. Saenz, Commissioner

From:  Kyle Wolfe, Assistant General Counsel

Date: October 10, 2019

Re: Consideration of and possible discussion and/or action, including adoption, on amendments to 16 TAC §401.153 (Qualifications for License)

Attached is a draft rule proposal prepared for submission to the Texas Register to adopt amendments to 16 TAC §401.153 (Qualifications for License), without changes to the proposed text as published in the August 23, 2019, issue of the Texas Register 44 TexReg 4429) (also attached). The purpose of the amendments is to implement the requirements of the newly enacted Senate Bill 37 from the Regular Session of the 86th Texas Legislature. Senate Bill 37 amended the State Lottery Act, Texas Government Code Chapter 466, by removing provisions that stated the Lottery Operations Director shall deny an application for a Texas Lottery ticket sales agent license, or the Commission shall suspend or revoke a license, if the Director or Commission, as applicable, finds that the applicant or sales agent has been finally determined to be in default on either a loan made under Chapter 52 of the Texas Education Code or a loan guaranteed under Chapter 57 of the Texas Education Code. Those same requirements that Senate Bill 37 removed are set forth in Commission Rule 401.153(b)(3)(B)–(C). The amendments remove the provisions no longer required by the State Lottery Act. In addition, grammatical and organizational corrections were made to the text to increase clarity and to conform the rule to the State Lottery Act.

The Commission received no written comments on the proposed amendments during the public comment period.

Recommendation: Staff recommends the Commission adopt the attached rule amendments to 16 TAC §401.153 (Qualifications for License).

1 The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.153
2 (Qualifications for License), without changes to the proposed text as published in the August 23,
3 2019, issue of the *Texas Register* (44 TexReg 4429). The purpose of the amendments is to
4 implement the requirements of the newly enacted Senate Bill 37 from the Regular Session of the
5 86th Texas Legislature. Senate Bill 37 amended the State Lottery Act, Texas Government Code
6 Chapter 466, by removing provisions that stated the Lottery Operations Director shall deny an
7 application for a Texas Lottery ticket sales agent license, or the Commission shall suspend or
8 revoke a license, if the Director or Commission, as applicable, finds that the applicant or sales
9 agent has been finally determined to be in default on either a loan made under Chapter 52 of the
10 Texas Education Code or a loan guaranteed under Chapter 57 of the Texas Education Code. Those
11 same requirements that Senate Bill 37 removed are set forth in Commission Rule
12 401.153(b)(3)(B)–(C). The amendments remove the provisions no longer required by the State
13 Lottery Act. In addition, grammatical and organizational corrections were made to the text to
14 increase clarity and to conform the rule to the State Lottery Act.

15 The Commission received no written comments on the proposed amendments during the
16 public comment period.

17 These amendments are adopted under Texas Government Code §466.015, which
18 authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102,
19 which authorizes the Commission to adopt rules for the enforcement and administration of the
20 laws under the Commission’s jurisdiction.

21 This adoption is intended to implement Texas Government Code Chapter 466.
22 §401.153. Qualifications for License.

23 (a) Before issuing a license to any person under this subchapter, the director shall consider:

1 (1) the financial responsibility and security of the applicant and the business or activity in
2 which the applicant is engaged. Consideration of this factor may include the analysis of the
3 applicant's credit record, compliance with tax laws of other jurisdictions, status of permits and
4 licenses, results of criminal background check, adequacy of security procedures against theft,
5 whether the location is fixed and permanent, whether the applicant can provide appropriate
6 security, and any other factor that may assist the director in such evaluation;

7 (2) the public accessibility of the applicant's place of business or activity. Consideration of
8 this factor may include analysis of the applicant's hours of operation, proximity to major transit
9 routes, proximity to large employers, public parking availability, and any other factor that may
10 assist the director in such evaluation;

11 (3) the sufficiency of existing sales agents to serve the public convenience. Consideration
12 of this factor may include analysis of number and proximity of other sales agents in a given market
13 area, and/or number of "minority businesses" (as that term is defined in the Government Code,
14 §466.107(b)) licensed in a given market area, with the possibility that additional licenses for any
15 given market area may be denied if the area is determined to be adequately served by existing
16 licensees;

17 (4) whether individuals under 18 years of age constitute a majority of the applicant's
18 customers or as customers provide a majority of the applicant's sales volume;

19 (5) the volume of expected lottery sales at the applicant's place of business or activity; and

20 (6) any other factor that is helpful in determining whether the applicant's experience,
21 character, and general fitness are such that the applicant's participation as a sales agent will not
22 detract from the integrity, security, honesty, or fairness of the operation of the lottery. An example

1 of the type of factor considered in this regard is the analysis of the type of product sold or form of
2 service provided by the applicant.

3 (b) The director may grant or deny an application for a license under this subchapter based on any
4 one or more factors listed in subsection (a) of this section. In addition, the director shall deny an
5 application for a license under this subchapter upon a finding that the applicant:

6 (1) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense,
7 or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination
8 of the sentence, parole, mandatory supervision, or probation served for the offense;

9 (2) is or has been a professional gambler. A "professional gambler" is a person whose
10 profession is, or whose major source of income derives from, playing games of chance for profit;

11 (3) has been finally determined to be delinquent in the payment of a tax or other money
12 collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage
13 Commission;

14 (4) is married to a person described in paragraph (1), (2), or (3) of this subsection;

15 (5) has violated the Act or a rule adopted by the commission in furtherance of the State
16 Lottery Act;

17 (6) is not an individual, and an individual described in one or more of paragraphs (1) - (5)
18 of this subsection:

19 (A) is an officer or director of the applicant;

20 (B) holds more than 10% of any class of issued and outstanding stock in the
21 applicant;

22 (C) holds an equitable ownership interest greater than 10% in the applicant;

1 (D) is a creditor of the applicant to the extent of more than 10% of the applicant's
2 outstanding debt at any time after the application is filed but before the director acts to grant or
3 deny the license;

4 (E) is the owner or lessee of a business that the applicant conducts or through which
5 the applicant will conduct a ticket sales agency;

6 (F) shares or will share in the profits, other than stock dividends, of the applicant
7 or sales agent;

8 (G) participates in managing the affairs of the applicant; or

9 (H) is an employee of the applicant who is or will be involved in selling tickets or
10 handling money from the sale of tickets;

11 (7) provided false or misleading information on the application form, or failed to provide
12 information required as part of the application;

13 (8) failed to provide fingerprint identification for individuals for which such identification
14 is requested in a form acceptable to the division following the division's request for such
15 identification;

16 (9) has previously had a sales agent's license revoked, unless the director is satisfied the
17 person will comply with the State Lottery Act and the rules under this chapter;

18 (10) failed to certify to the director the applicant's compliance with the federal Americans
19 With Disabilities Act; or

20 (11) is the subject of a license suspension or decision issued under Chapter 232, Family
21 Code.

22 (c) Without limiting the foregoing grounds for denial of a license under this subchapter, the director
23 shall deny a license to any person whose location for the sales agency is either:

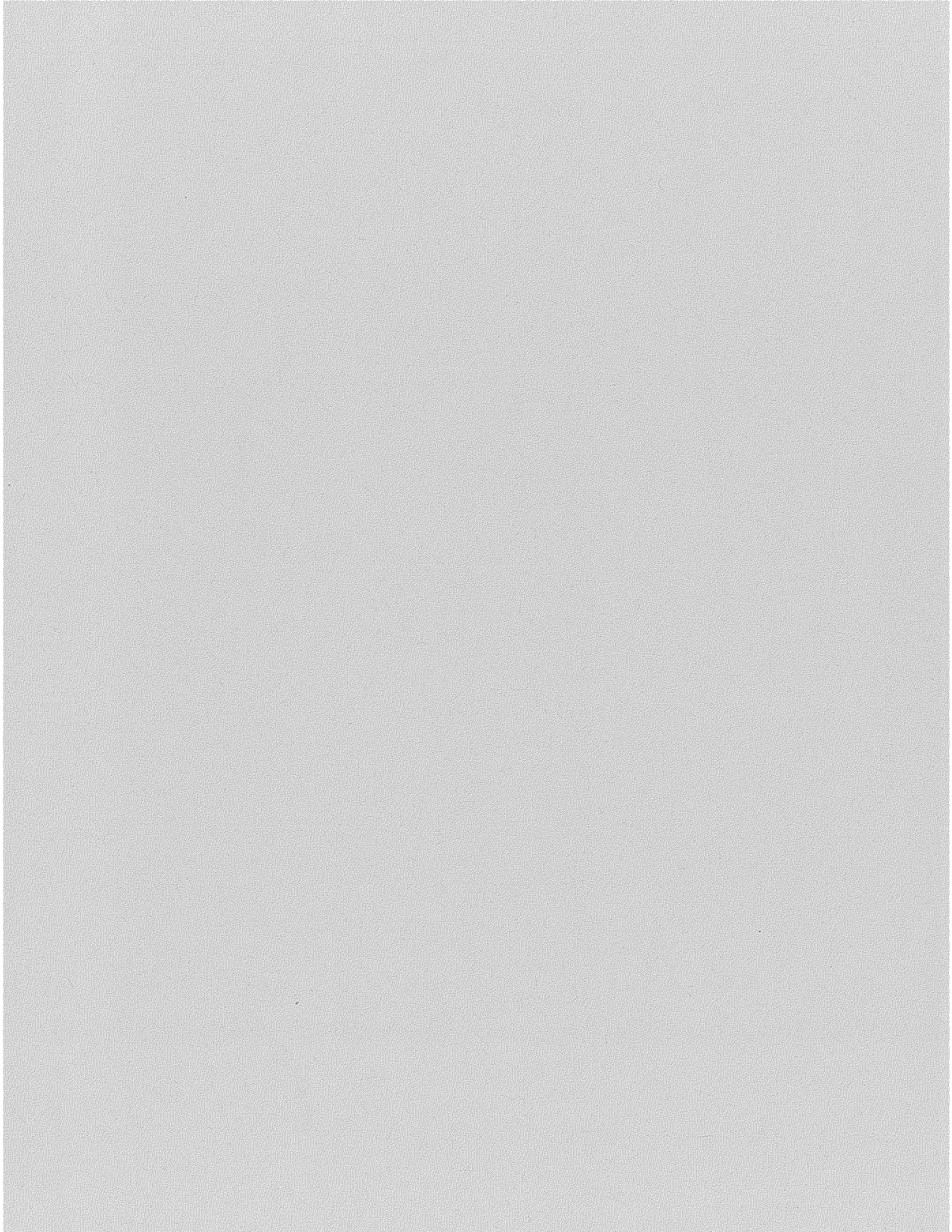
1 (1) a location licensed for games of bingo under the Bingo Enabling Act (Occupations
2 Code, Chapter 2001);

3 (2) on land owned by the State of Texas; or a political subdivision of this state and on
4 which is located a public primary or secondary school, an institution of higher education, or an
5 agency of the state; or

6 (3) a location for which a person holds a wine and beer retailer's permit, mixed beverage
7 permit, mixed beverage late hours permit, private club registration permit, or private club late
8 hours permit issued under the Alcoholic Beverage Code, Chapter 25, 28, 29, 32, or 33, other than
9 a location for which a person holds a wine and beer retailer's permit issued under Chapter 25,
10 Alcoholic Beverage Code, that derives less than 30 percent of the location's gross receipts from
11 the sale or service of alcoholic beverages.

12 (d) Any applicant whose application is denied under this subchapter, or who is granted a license
13 the terms of which are more restricted than those applied for, shall be notified by the director in
14 writing of the denial or restriction and of the reasons therefore. The applicant may appeal the
15 director's decision in accordance with rules adopted by the commission for that purpose.

16 (e) A license issued under this chapter may by its terms limit the type of games and/or method of
17 sales authorized by the license. A determination of appropriate limitations on any license are within
18 the director's sole discretion, provided that the director shall furnish the licensee with a written
19 explanation or the reasons for any such limitations.



§12.823. *Disposition of Reclaimed Lands.*

(a) If land acquired under §12.819 of this title (relating to Land Eligible for Acquisition) is considered suitable for industrial, commercial, residential, or recreational development, this state may sell the land by public sale under a system of competitive bidding at not less than fair market value and under any rules adopted to ensure that the land is put to proper use consistent with local plans, if any, as determined by the Commission [eommission].

(b) The land may be sold only when authorized by the Secretary of the Interior if federal money was involved in the acquisition of the land to be sold.

(c) The Commission [eommission] may transfer administrative responsibility for land acquired under this subchapter (relating to Texas Abandoned Mine Land Reclamation Program) to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

(1) the purposes for which the land may be used consistent with the authorization under which the land was acquired; and

(2) that the administrative responsibility for the land shall revert to the Commission [eommission] if, at any time in the future, the land is not used for the purposes specified.

(d) The Commission [eommission], after appropriate public notice and on request, shall hold a public hearing in the county or counties in which land acquired under §12.819 of this title [(relating to Land Eligible for Acquisition)] is located. Prior to the disposition of any land acquired under this subchapter, the Commission [eommission] shall publish a notice of the proposed land disposition.

(e) The hearing shall be held at a time that gives residents and local governments maximum opportunity to participate in the decision about the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(f) All moneys received from disposal of land under this title shall be returned to OSMRE pursuant to 30 CFR §879.15 [deposited in the Texas Abandoned Mine Reclamation Fund].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2019.

TRD-201902528

Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: September 22, 2019

For further information, please call: (512) 475-1295



PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §401.153

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.153 (Qualifications for License). The purpose of the proposed amendments is to implement the requirements of the newly enacted Senate Bill 37 from the Regular Session of the 86th Texas Legislature. Senate Bill 37 amended the State Lottery Act, Texas Government Code Chapter 466, by removing provisions that stated the Lottery Operations Director shall deny an application for a Texas Lottery ticket sales agent license, or the Commission shall suspend or revoke a license, if the Director or Commission, as applicable, finds that the applicant or sales agent has been finally determined to be in default on either a loan made under Chapter 52 of the Texas Education Code or a loan guaranteed under Chapter 57 of the Texas Education Code. Those same requirements that Senate Bill 37 removed are set forth in Commission Rule §401.153(b)(3)(B) - (C). The proposed amendments remove the provisions no longer required by the State Lottery Act. In addition, grammatical and organizational corrections were made to the text to increase clarity and to conform the rule to the State Lottery Act.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Ryan Mindell, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit expected is aligning Commission policy to recently passed legislation as well as an increase in the number of applicants that will be eligible for a Texas Lottery ticket sales agent license.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments to 16 TAC §401.153 (Qualifications for License). For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.

(5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand or limit an existing regulation.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Kyle Wolfe, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* to be considered.

These amendments are proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code Chapter 466.

§401.153. Qualifications for License.

(a) (No change.)

(b) The director may grant or deny an application for a license under this subchapter based on any one or more factors listed in subsection (a) of this section. In addition, the director shall deny an application for a license under this subchapter upon a finding that the applicant:

(1) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense;

(2) is or has been a professional gambler. A "professional gambler" is a person whose profession is, or whose major source of income derives from, playing games of chance for profit;

(3) has been finally determined to be[?]

[{(A)} delinquent in the payment of a tax or other money collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

[{(B)} in default on a loan made under Chapter 52, Education Code;]

[{(C)} in default on a loan guaranteed under Chapter 57, Education Code; or]

[{(D)} any reasons listed in Chapter 232, Family Code as cause for license suspension;]

(4) is married to [has a spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of] a person described in paragraph (1), (2), or (3) of this subsection;

(5) has violated the Act or a rule adopted by the commission in furtherance of the State Lottery Act;

(6) is not an individual, and an individual described in one or more of paragraphs (1) - (5) of this subsection:

(A) is an officer or director of the applicant;

(B) holds more than 10% of any class of issued and outstanding stock in the applicant;

(C) holds an equitable ownership interest greater than 10% in the applicant;

(D) is a creditor of the applicant to the extent of more than 10% of the applicant's outstanding debt at any time after the application is filed but before the director acts to grant or deny the license;

(E) is the owner or lessee of a business that the applicant conducts or through which the applicant will conduct a ticket sales agency;

(F) shares or will share in the profits, other than stock dividends, of the applicant or sales agent;

(G) participates in managing the affairs of the applicant;

or

(H) is an employee of the applicant who is or will be involved in selling tickets or handling money from the sale of tickets;

(7) provided false or misleading information on the application form, or failed to provide information required as part of the application;

(8) failed to provide fingerprint identification for individuals for which such identification is requested in a form acceptable to the division following the division's request for such identification;

(9) has previously had a sales agent's license revoked, unless the director is satisfied the person will comply with the State Lottery Act and the rules under this chapter;[or]

(10) failed to certify to the director the applicant's compliance with the federal Americans With Disabilities Act[-]; or

(11) is the subject of a license suspension or decision issued under Chapter 232, Family Code.

(c) - (e) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 9, 2019.

TRD-201902566

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 22, 2019

For further information, please call: (512) 344-5392



CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.401, 402.413, 402.422

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.401 (Temporary License), §402.413 (Military Service Members, Military Veterans, and Military Spouses), and §402.422 (Amendment to a Regular License to Conduct Charitable Bingo). The purpose of the proposed amendments is to implement statutory changes required by newly-enacted House Bill 882 and Senate Bill 1200 from the Regular Session of the 86th Texas Legislature. The proposed amendments extend the maximum length of time for a bingo occasion from four to six hours and create a process for recognition of out-state-licenses held by military spouses residing in Texas.