





# INTEROFFICE MEMO

Gary Grief, Executive Director      LaDonna Castañuela, Charitable Bingo Operations Director

**To:** Robert G. Rivera, Chairman  
Cindy Fields, Commissioner  
Mark A. Franz, Commissioner  
Erik C. Saenz, Commissioner  
Jamey Steen, Commissioner

Approved

Denied

**From:** Tyler Vance, Assistant General Counsel TV

**Date:** October 21, 2021

**Re:** Consideration of and possible discussion and/or action, including proposal, on amendments to 16 TAC §§ 402.413 (Military Service Members, Military Veterans, and Military Spouses), 402.452 (Net Proceeds), and 402.702 (Disqualifying Convictions)

Attached is a draft rule proposal prepared for submission to the *Texas Register* for amendments to the above-referenced rules. The purpose of the proposed amendments is to conform the rules to various statutes.

The proposed amendments to Rule 402.413(a)(2) will add the space force to the definition of “Armed forces of the United States” in accordance with Texas Occupations Code §55.001(2), which was amended by House Bill 139 of the 87th Texas Legislature.

The proposed amendments to Rule 402.452(b)(3) will base the calculation of net proceeds for a two-year license on each 12-month period that ends on an anniversary of the date the license was issued, in accordance with Texas Occupations Code §2001.451(g)(2).

The proposed amendments to Rule 402.702(i) will allow license and registration applicants 30 days to provide documentation of mitigating factors upon notification of the Commission’s intent to deny the application, in accordance with Texas Occupations Code §53.0231(a)(2).

**Recommendation:** Staff recommends the Commission initiate the rulemaking process by publishing the attached proposed rule amendments in the *Texas Register* in order to receive public comments for a period of 30 days.



1           The Texas Lottery Commission (Commission) proposes amendments to 16 TAC  
2   §§ 402.413 (Military Service Members, Military Veterans, and Military Spouses), 402.452 (Net  
3   Proceeds), and 402.702 (Disqualifying Convictions). The purpose of the proposed amendments is  
4   to conform the rules to various statutes.

5           The proposed amendments to Rule 402.413(a)(2) will add the space force to the definition  
6   of “Armed forces of the United States” in accordance with Texas Occupations Code §55.001(2),  
7   which was amended by House Bill 139 of the 87th Texas Legislature.

8           The proposed amendments to Rule 402.452(b)(3) will base the calculation of net proceeds  
9   for a two-year license on each 12-month period that ends on an anniversary of the date the license  
10   was issued, in accordance with Texas Occupations Code §2001.451(g)(2).

11          The proposed amendments to Rule 402.702(i) will allow license and registration applicants  
12   30 days to provide documentation of mitigating factors upon notification of the Commission’s  
13   intent to deny the application, in accordance with Texas Occupations Code §53.0231(a)(2).

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

22          LaDonna Castañuela, Director of the Charitable Bingo Operations Division, has  
23   determined that for each year of the first five years the proposed amended rules will be in effect,

1 the anticipated public benefit will be to eliminate inconsistencies between the Commission's rules  
2 and other state laws.

3 Pursuant to Texas Government Code §2001.0221, the Commission provides the following  
4 Government Growth Impact Statement for the proposed rule. For each year of the first five years  
5 the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

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

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

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

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

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

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

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

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

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

1 The amendments are proposed under Texas Occupations Code §2001.054, which  
2 authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and  
3 Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws  
4 under the Commission's jurisdiction.

5 This proposal is intended to implement Texas Occupations Code Chapter 2001.

6 §402.413. Military Service Members, Military Veterans, and Military Spouses.

7 (a) The following terms used in this section are defined in §55.001 of the Occupations Code as  
8 follows:

9 (1) (No change.)

10 (2) "Armed forces of the United States" means the army, navy, air force, space force, coast  
11 guard, or marine corps of the United States or a reserve unit of one of those branches of the armed  
12 forces.

13 (3) – (5) (No change.)

14 (b) - (f) (No change.)

15 §402.452. Net Proceeds.

16 (a) (No change.)

17 (b) Calculation of Net Proceeds for a License Period.

18 (1) – (2) (No change.)

19 (3) Net proceeds for a two-year license will be calculated for each year of the license. The  
20 calculation of net proceeds for the first year of the license will be based on the quarterly reports  
21 for the four (4) calendar quarters immediately preceding the one year anniversary of the license  
22 beginning date. The calculation of net proceeds for the second year of the license will be based on

the quarterly reports for the four (4) calendar quarters immediately preceding the two-year anniversary of the license beginning date ~~[license end date]~~.

(4) (No change.)

(c) – (e) (No change.)

§402.702. Disqualifying Convictions.

(a) – (h) (No change.)

(i) Upon notification of the Commission's intent to deny a new or renewal application or registry listing, an applicant may provide documentation of mitigating factors that the applicant would like the Commission to consider regarding its application. Such documentation must be provided to the Commission no later than 30 ~~[20]~~ days after the Commission provides notice to an applicant of a denial, unless the deadline is extended in writing or through e-mail by authorized Commission staff.

(j) – (l) (No change.)