





# 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

**From:** Kyle Wolfe, Assistant General Counsel *KW*

**Date:** October 21, 2021

**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 the above-referenced rule without changes to the proposed text as published in the August 27, 2021 issue of the *Texas Register* (46 TexReg 5337) (also attached).

The purpose of the proposed amendments is to update the language concerning lottery retailer eligibility requirements to reflect amendments to Tex. Gov't Code §466.155(a)(4)(C) by House Bill 1545 from the Regular Session of the 86th Texas Legislature. Specifically, House Bill 1545 amended the State Lottery Act, Texas Government Code Chapter 466, by updating the names of certain alcoholic beverage permits corresponding to prohibited retailer locations to conform to the Alcoholic Beverage Code. Those permit names also need to be updated in Commission Rule 401.153(c)(3).

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

Recommendation: Staff recommends that the Commission adopt amendments to the referenced rule.



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 27,  
3 2021 issue of the *Texas Register* (46 TexReg 5337).

4           The purpose of the proposed amendments is to update the language concerning lottery  
5 retailer eligibility requirements to reflect amendments to Tex. Gov't Code §466.155(a)(4)(C) by  
6 House Bill 1545 from the Regular Session of the 86th Texas Legislature. Specifically, House Bill  
7 1545 amended the State Lottery Act, Texas Government Code Chapter 466, by updating the names  
8 of certain alcoholic beverage permits corresponding to prohibited retailer locations to conform to  
9 the Alcoholic Beverage Code. Those permit names also need to be updated in Commission Rule  
10 401.153(c)(3).

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

13           These amendments are adopted under Texas Government Code §466.015(c), which  
14 authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102,  
15 which authorizes the Commission to adopt rules for the enforcement and administration of the  
16 laws under the Commission's jurisdiction.

17 §401.153. Qualification for License.

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

19           (1) the financial responsibility and security of the applicant and the business or activity in  
20 which the applicant is engaged. Consideration of this factor may include the analysis of the  
21 applicant's credit record, compliance with tax laws of other jurisdictions, status of permits and  
22 licenses, results of criminal background check, adequacy of security procedures against theft,

1 whether the location is fixed and permanent, whether the applicant can provide appropriate  
2 security, and any other factor that may assist the director in such evaluation;

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

7 (3) the sufficiency of existing sales agents to serve the public convenience. Consideration  
8 of this factor may include analysis of number and proximity of other sales agents in a given market  
9 area, and/or number of "minority businesses" (as that term is defined in the Government Code,  
10 §466.107(b)) licensed in a given market area, with the possibility that additional licenses for any  
11 given market area may be denied if the area is determined to be adequately served by existing  
12 licensees;

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

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

16 (6) any other factor that is helpful in determining whether the applicant's experience,  
17 character, and general fitness are such that the applicant's participation as a sales agent will not  
18 detract from the integrity, security, honesty, or fairness of the operation of the lottery. An example  
19 of the type of factor considered in this regard is the analysis of the type of product sold or form of  
20 service provided by the applicant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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





(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 on the proposed amendments may be submitted to Lea Garey, Senior Contracts Attorney, 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](mailto: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.

#### Statutory Authority

These amendments are proposed under Texas Government Code §466.015(c), 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.

#### §401.101. *Lottery Procurement Procedures.*

(a) - (b) (No change.)

(c) Procurement method.

(1) For the purchase or lease of goods and services not expected to exceed \$10,000 [~~\$5,000~~], or for the purchase or lease of goods and services available under a state contract, a competitive solicitation, whether formal or informal, may be conducted, but is not required.

(2) - (4) (No Change.)

(5) Emergency procurement. Notwithstanding paragraphs (1) - (4) of this subsection, the agency may make an emergency purchase or lease of goods or services. Prior to making an emergency purchase or lease of goods or services, the existence of an emergency should be documented. For emergency purchases in excess of \$10,000 [~~\$5,000~~], the agency may conduct an informal competitive solicitation in an attempt to obtain at least three competitive bids, whenever possible. For emergency purchases in excess of \$25,000, the procurement will be posted on the Electronic State Business Daily; however, the minimum posting requirements do not apply. Posting of the advertisement and/or the award notice satisfies this requirement. In response to an emergency, the agency may procure goods or services in the most expeditious manner deemed appropriate, including from a sole source.

(6) Proprietary purchase. When the agency believes that a purchase of goods or services over \$10,000 [~~\$5,000~~] is proprietary to one vendor or one manufacturer, a written proprietary purchase justification

will be included in the procurement file. If the estimated purchase price exceeds \$25,000, the procurement will be posted on the Electronic State Business Daily prior to a purchase order or contract being issued.

(7) (No Change.)

(d) - (i) (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 13, 2021.

TRD-202103197

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 26, 2021

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



## 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 update the language concerning lottery retailer eligibility requirements to reflect amendments to Tex. Gov't Code §466.155(a)(4)(C) by House Bill 1545 from the Regular Session of the 86th Texas Legislature that become effective later this year. Specifically, House Bill 1545 amended the State Lottery Act, Texas Government Code Chapter 466, by updating the names of certain alcoholic beverage permits corresponding to prohibited retailer locations to conform to the Alcoholic Beverage Code. Those permit names also need to be updated in Commission Rule 401.153(c)(3).

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 public benefit expected is greater clarity and understanding of lottery retailer eligibility requirements by aligning the language in the Commission's rule with current law.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. 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 on the proposed amendments 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](mailto: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.

#### Statutory Authority

These amendments are proposed under Texas Government Code §466.015(c), 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. *Qualification for License.*

(a) - (b) (No change.)

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

(1) - (2) (No change.)

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

(d) - (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 13, 2021.

TRD-202103198

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 26, 2021

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



## TITLE 22. EXAMINING BOARDS

### PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

#### CHAPTER 322. PRACTICE

##### 22 TAC §322.1

The Texas Board of Physical Therapy Examiners proposes amending §322.1(a), concerning Initiation of physical therapy services, pursuant to HB 1363 amendments to Sec. 453.301, Occupations Code during the 87th Legislative Session.

The amendment is proposed in order to include physical therapists who have a doctoral degree in physical therapy and are certified by an entity approved by the PT Board in the group that can treat patients for fifteen (15) consecutive business days before requiring a referral from a qualified healthcare practitioner.

#### Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period these amendments are in effect there would be no increase or loss of revenue to the state. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

#### Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period these amendments are in effect the public benefit will be increasing consumer access to physical therapy services without a referral. There will be no economic cost to physical therapists who will provide treatment without a referral as no new fee will be imposed.

#### Local Employment Economic Impact Statement

The amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

#### Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

#### Government Growth Impact Statement

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule amendments. For each year of the first five years the proposed amendment will be in effect, Mr. Harper has determined the following:

(1) The proposed rule amendment will neither create nor eliminate a government program.