



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: August 17, 2023

Re: Consideration of and possible discussion and/or action, including proposal, on amendments to 16 TAC §§ 401.152 (Application for License), 401.302 (Scratch Ticket Game Rules), 401.362 (Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property), and 401.370 (Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost)

Attached is a rule proposal prepared for submission to the Texas Register for amendments to the above-referenced rules.

- The proposed amendment to §401.152 defines the term "director" throughout the rules to mean the lottery operations director.
- The proposed amendment to §401.302 eliminates a redundant word related to the payment of scratch ticket prizes and makes the terms identical to those of draw games.
- The proposed amendments to §401.362 provide for an additional documentation option other than a Fire Marshal's report for reporting fire damaged or destroyed lottery tickets and eliminate the \$25 administrative fee for a pack of unactivated tickets that is unsaleable due to damage or destruction.
- The proposed amendments to §401.370 eliminate the \$25 administrative fee for each unactivated pack of stolen or lost tickets and update the requirement for reporting lost or stolen tickets to the Texas Lottery Commission's enforcement division through the lottery operator hotline.

The anticipated public benefit of these amendments is more clarity in the rules, the elimination of certain fees for retailers, and a more efficient process for reporting damaged or destroyed lottery tickets.

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 §§
2 401.152 (Application for License), 401.302 (Scratch Ticket Game Rules), 401.362 (Retailer's
3 Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered
4 Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property), and 401.370
5 (Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or
6 Lost).

7 The proposed amendment to §401.152 defines the term "director" throughout the rules to
8 mean the lottery operations director.

9 The proposed amendment to §401.302 eliminates a redundant word related to the payment
10 of scratch ticket prizes and makes the terms identical to those of draw games.

11 The proposed amendments to §401.362 provide for an additional documentation option
12 other than a Fire Marshal's report for reporting fire damaged or destroyed lottery tickets and
13 eliminate the \$25 administrative fee for a pack of unactivated tickets that is unsaleable due to
14 damage or destruction.

15 The proposed amendments to §401.370 eliminate the \$25 administrative fee for each
16 unactivated pack of stolen or lost tickets and update the requirement for reporting lost or stolen
17 tickets to the Commission's enforcement division through the lottery operator hotline.

18 Robert Tirloni, Lottery Operations Director, has determined that for each year of the first
19 five years the proposed amendments will be in effect, the public benefit expected is more clarity
20 in the rules, the elimination of certain fees for retailers, and a more efficient process for reporting
21 damaged or destroyed lottery tickets.

22 Kelly Stuckey, Controller, has determined that for each year of the first five years the
23 amendments will be in effect, there will be no significant fiscal impact for state or local

1 governments as a result of the proposed amendments. There will be no adverse effect on small
2 businesses or rural communities, micro businesses, or local or state employment. There will be no
3 additional economic cost to persons required to comply with the amendments, as proposed.
4 Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required
5 because the proposed amendments will not have an adverse economic effect on small businesses
6 or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

7 Pursuant to Texas Government Code §2001.0221, the Commission provides the following
8 Government Growth Impact Statement for the proposed amendments. For each year of the first
9 five years the proposed amendments will be in effect, Kelly Stuckey, Controller, has determined
10 the following:

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

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

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

16 (4) The proposed amendments require a decrease in fees paid to the Commission as a result
17 of the elimination of a \$25 administrative fee for each unactivated pack of stolen or lost tickets or
18 unactivated tickets that are unsaleable due to damage or destruction. This reduction in fees does
19 not have a material impact.

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

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

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

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

2 The Commission requests comments on the proposed amendments from any interested
3 person. Comments on the proposed amendments may be submitted to Tyler Vance, Assistant
4 General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-
5 6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us*. Comments
6 must be received within 30 days after publication of this proposal in the *Texas Register* to be
7 considered.

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

12 This proposal is intended to implement Texas Government Code Chapter 466.
13 §401.152. Application for License.

14 (a) – (b) (No change.)

15 (c) An applicant shall, under penalty of perjury, complete, sign, date, and submit all forms and
16 related information and documents required. By signing and submitting the application form, the
17 applicant agrees to allow the director of the Lottery Operations Division (hereinafter "director")
18 to investigate the credit, criminal, and tax background of the applicant and other matters as
19 authorized under the State Lottery Act, Government Code, Chapter 466.

20 (d) – (f) (No change.)

21 §401.302. Scratch Ticket Game Rules.

22 (a) – (d) (No change.)

23 (e) Payment of low-tier and mid-tier prizes.

1 (1) (No change.)

2 (2) Retailers may pay [~~cash~~] prizes in cash. If acceptable to the claimant, retailers may also
3 pay cash prizes by business check, certified check, cashier's check, money order, gift card, stored-
4 value card, or store merchandise. If a retailer decides to pay with anything other than cash, it is the
5 responsibility of the retailer to ensure the claimant has voluntarily agreed to the non-cash prize
6 payment.

7 (3) – (6) (No change.)

8 (f) – (k) (No change.)

9 §401.362. Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently
10 Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related
11 Property.

12 (a) Responsibility for Lottery Tickets Received.

13 (1) – (3) (No change.)

14 (4) Under the circumstances set out in this paragraph, the director may credit a retailer for
15 activated tickets that are damaged or destroyed.

16 (A) The director may credit a retailer's account for a range of activated tickets in a
17 pack reported as damaged or destroyed providing:

18 (i) – (ii) (No change.)

19 (iii) if the tickets were damaged or destroyed by fire, the retailer made a
20 formal report of the fire to appropriate fire department authorities within 24 hours of the discovery
21 of the fire, and has provided to the commission's lottery operations division a copy of a report by
22 a Fire Marshal [~~Marshall~~] that identifies the location and the cause of the fire or the commission's

lottery operations division has obtained written documentation from lottery operator field staff
verifying the reported fire damage; or

(iv) (No change.)

(B) (No change.)

~~[(5) There is an administrative fee of \$25 for a pack of unactivated tickets that is unsaleable.
The director may waive the administrative fee of \$25 if the tickets are unsaleable because of
damage or destruction caused by an overwhelming, unpreventable event caused exclusively by
forces of nature and the retailer complied with the reporting requirements under paragraph (4)(A)
of this subsection, as applicable.]~~

(b) – (d) (No change.)

§401.370. Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently
Stolen or Lost.

(a) (No change.)

(b) Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost.

(1) – (2) (No change.)

(3) Notwithstanding paragraph (1) of this subsection, the director may charge a retailer full
face value of an activated pack of tickets if prizes have been paid from the pack. The director may
credit a retailer's account for a range of activated tickets in a pack reported as stolen or lost provided
that no validations have occurred on tickets in the range reported as stolen or lost if:

(A) the pack has been stolen and the retailer, within 24 hours of the discovery of
the theft, has made a formal report of such theft to both:

(i) appropriate local law enforcement authorities; and

1 (ii) the commission's enforcement [~~security~~] division through the lottery
2 operator [~~retailer~~] hotline;

3 (B) the pack has been lost and cannot be located by the retailer and the retailer,
4 within 24 hours of discovery of the loss, has made a formal report of the loss to the commission's
5 enforcement [~~security~~] division through the lottery operator [~~retailer~~] hotline. [~~hotline; or~~]

6 [(4) Notwithstanding paragraph (1) of this subsection, the director may charge a retailer an
7 administrative fee of \$25 for each unactivated pack of tickets if:

8 (A) the pack has been stolen and the retailer, within 24 hours of the discovery of
9 the theft, has made a formal report of such theft to both:

10 (i) appropriate local law enforcement authorities; and

11 (ii) the commission's security division through the retailer hotline;

12 (B) the pack has been lost and cannot be located by the retailer and the retailer,
13 within 24 hours of discovery of the loss, has made a formal report of the loss to the commission's
14 security division through the retailer hotline.]

15 (4) [(5)] A retailer shall report each stolen or lost pack of tickets to the commission's
16 enforcement [~~security~~] division through the lottery operator [~~retailer~~] hotline within 24 hours of
17 the discovery of the theft or loss.