



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: Tyler Vance, Assistant General Counsel *TV*

Date: October 12, 2023

Re: Consideration of and possible discussion and/or action, including adoption, 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 draft rule submission to the *Texas Register* to adopt amendments to the above-referenced rules without changes to the proposed text as published in the September 1, 2023 issue of the *Texas Register* (48 TexReg 4744) (also attached).

- The amendment to §401.152 defines the term "director" throughout the rules to mean the lottery operations director.
- The 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 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 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 Commission received no written comments on the proposed amendments during the public comment period.

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

1 The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §§ 401.152
2 (Application for License), 401.302 (Scratch Ticket Game Rules), 401.362 (Retailer’s Financial
3 Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable,
4 for Winning Lottery Tickets Paid and for Lottery-Related Property), and 401.370 (Retailer’s
5 Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost) without
6 changes to the proposed text as published in the September 1, 2023 issue of the *Texas Register* (48
7 TexReg 4744).

8 The amendment to §401.152 defines the term “director” throughout the rules to mean the
9 lottery operations director.

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

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

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

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

20 These amendments are adopted under Texas Government Code §466.015(c), which
21 authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102,
22 which authorizes the Commission to adopt rules for the enforcement and administration of the
23 laws under the Commission’s jurisdiction.

1 §401.152. Application for License.

2 (a) An applicant for a license under this subchapter must apply to the Commission using forms
3 provided by the Commission.

4 (b) The executive director or his/her designee shall develop all forms and related documents
5 including, but not limited to, an application form, release form to obtain a credit report, and/or any
6 other background information relating to the applicant required to determine the applicant's
7 eligibility for a license and whether the granting of a license to the applicant will best serve the
8 public convenience. An applicant must disclose all criminal convictions for those individuals of
9 whom an investigation is authorized under the Government Code, §466.201, and which are
10 requested in the application.

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

16 (d) Every application for a license submitted under this subchapter shall be accompanied by a
17 license application fee in an amount to be established by the director. If the director denies an
18 application for a license based on a factor listed in §401.153(a) of this title (relating to
19 Qualifications for License), the director shall refund one half of the application fee to the applicant.
20 If the director denies an application based on another factor, the director may not refund any part
21 of the application fee. If an applicant fails to provide all forms and related information and
22 documents required as part of the application, the director may cancel the application without

1 making a determination to deny. If the director cancels an application, the director shall not refund
2 any part of the application fee.

3 (e) Every license application submitted to the director under this subchapter shall be accompanied
4 by security as authorized by the Government Code, §466.156(a), in a form and amount determined
5 by the director. The director may reduce or waive the amount of security required, if feasible, after
6 consideration of the possible loss to the state from the operation of the applicant in connection
7 with the lottery, whether the applicant is a minority business as defined by Government Code,
8 §466.107, or any other factor the director finds relevant. If the director determines that the purposes
9 of the Act would be best served through establishment and maintenance of a pooled fund for
10 purposes of reimbursing the division for losses arising from the operation of licensed sales agents,
11 the director may require security in the form of a mandatory contribution by each applicant. Any
12 amount so contributed may not be refunded. Depending upon the losses required to be reimbursed
13 by such a fund, the director may require additional contributions to such a fund as a condition of
14 any license application, including a license renewal application.

15 (f) All applications submitted under this subchapter shall be available for public inspection during
16 business hours, provided that criminal history information and other information confidential by
17 law shall not be available for inspection. Any person seeking to inspect any application shall
18 furnish a written request to the director specifically stating the information sought to be inspected.
19 The director may respond to such requests orally or in writing in order to arrange for the inspection
20 of the requested documents after a reasonable time is allowed for the division to review the
21 documents and delete confidential information.

22 §401.302. Scratch Ticket Game Rules.

23 (a) Sale of scratch tickets.

1 (1) Only retailers who have been licensed by the commission are authorized to sell scratch
2 tickets, and tickets may be sold only at a licensed location.

3 (2) Each scratch ticket shall sell for the retail sales price authorized by the executive
4 director and stated in the individual game procedures; provided that, the purchase price for
5 promotional groups of tickets shall be determined by the executive director.

6 (3) Each scratch ticket shall state the overall estimated odds of winning a prize of any kind,
7 including a break-even prize.

8 (b) Game procedures.

9 (1) The director may approve and publish individual game procedures prior to each scratch
10 ticket game being introduced for sale to the public. Game procedures shall be published in the
11 Texas Register and shall be made available upon request to the public.

12 (2) At a minimum, the game procedures for each game shall contain the following
13 information:

14 (A) confirming captions;

15 (B) game name;

16 (C) game number;

17 (D) prize structure;

18 (E) play style;

19 (F) play symbols;

20 (G) ticket order quantity;

21 (H) retail sales price;

22 (I) dollar amount of prizes that may be paid by retailers; and

23 (J) eligibility requirements for a prize or promotional drawing, if any.

(3) The play style for an individual game shall be fully described in the game procedures and may take the form of one of the following methods of play:

(A) match up;

(B) add up;

(C) three in a line;

(D) key number/symbol match;

(E) yours beats theirs;

(F) prize legend;

(G) cards;

(H) bingo;

(I) directional arrows through maze;

(J) bonus game features; or

(K) any other approved play style or bonus game feature developed by the commission.

(c) Determination of prize winner.

(1) The play symbols shall be used by a player to determine eligibility for prizes. Qualifying play symbols are stated in the game procedures.

(2) A player's eligibility to win a prize is subject to the ticket validation requirements provided in subsection (d) of this section.

(3) For each individual game, the player shall reveal the play symbols according to the play instructions for the game. Eligibility to win a prize is based on the approved play style as follows.

(A) Match up. If the designated number of identical play symbols is revealed on the ticket, the player shall win the prize indicated.

1 (B) Add up. If the player adds up all of the play symbols printed on the ticket and
2 the amount is greater than or equal to the required total amount printed on the ticket, the player
3 shall win the prize indicated.

4 (C) Three in a line. If the player reveals three identical play symbols, either
5 diagonally, vertically, or horizontally, on the same ticket, the player shall win the prize indicated.

6 (D) Key number/symbol match. If the player reveals a play symbol that matches
7 the designated key play symbol, the player shall win the prize indicated.

8 (E) Yours beats theirs. If the player reveals a play symbol designated as yours that
9 is greater than the play symbol(s) designated as theirs, the player shall win the prize indicated.

10 (F) Prize legend. If the player reveals the designated number of play symbols, the
11 player wins the prize amount that corresponds to the legend.

12 (G) Cards. If the player reveals the play symbol needed for that particular card game
13 in a winning combination, the player shall win the prize indicated.

14 (H) Bingo. If the player matches their Bingo card numbers with all of the Caller's
15 Card numbers and reveals certain patterns as specified on the ticket, the player shall win the prize
16 indicated for that Bingo card and pattern.

17 (I) Directional arrows through maze. If the player follows the directional arrows to
18 make a path or paths through a maze and the path(s) leads to a prize amount, the player shall win
19 that prize.

20 (J) Bonus game features. These features are added to the game for extra play value
21 and entertainment. The specific variants, as described below, are used for a particular game and
22 are described in the individual game procedures:

1 (i) Doubler. If the player reveals the designated play symbol as part of the
2 winning combination of the game, the player doubles their prize. The player may also reveal the
3 "doubler" play symbol in a prize box, in which case the prize amount that the player won is
4 doubled.

5 (ii) Wild card. The player may use this designated play symbol as part of
6 the winning combination of the game.

7 (iii) Double and Double Doubler. If the player reveals one of these
8 designated play symbols as part of the winning combination of the game, the player either doubles
9 or quadruples their prize respectively, as stated in the game card itself. The player may also reveal
10 the "double" or "double doubler" play symbols in a prize box, in which case the prize amount that
11 the player won is either doubled or quadrupled respectively, as stated in the game card itself.

12 (iv) Tripler. If the player reveals the designated play symbol as part of the
13 winning combination of the game, the player triples their prize. The player may also reveal the
14 "trippler" play symbol in a prize box, in which case the prize amount that the player won is tripled.

15 (v) Auto win. If the player reveals the designated play symbol, the player
16 wins the corresponding prize automatically.

17 (vi) Entry ticket. If the player reveals the designated play symbol, the player
18 may use the ticket as a means of entering a drawing, subject to the game procedures for each game.

19 (K) Any other approved play style or bonus game feature developed by the
20 commission. If the player reveals the designated play symbols or bonus play features, the player
21 shall win the prize(s) as indicated.

22 (d) Ticket validation requirements.

1 (1) Each scratch ticket shall be validated according to validation procedures prior to
2 payment of a prize.

3 (2) A scratch ticket shall comply with all of the following.

4 (A) The ticket shall not be stolen or appear on any list of omitted tickets on file with
5 the commission.

6 (B) The ticket shall not be counterfeit or forged, in whole or in part.

7 (C) The ticket shall not be mutilated, altered, unreadable, reconstituted, or tampered
8 with in any manner.

9 (D) The ticket shall have been issued by the commission in an authorized manner.

10 (E) The ticket shall have been received or recorded by the commission by
11 applicable deadlines.

12 (F) The ticket shall pass all the confidential validation and security tests appropriate
13 to the applicable play style.

14 (G) The validation number of an apparent winning ticket shall appear on the
15 commission's official list of validation numbers of winning tickets for the particular game and
16 pack. A ticket with that validation number shall not have been paid previously.

17 (3) The commission may pay the prize for a ticket that is partially mutilated or not intact if
18 the ticket can still be verified as a valid ticket and validated by the other validation requirements
19 and procedures.

20 (4) Any ticket not passing all of the validation tests and requirements is void and ineligible
21 for any prize and shall not be paid. The executive director may, at his/her exclusive determination,
22 reimburse the player for the cost of the void ticket.

1 (5) If a defective ticket is purchased and is void, the sole remedy available against the
2 commission and the commission's sole liability shall be, at the executive director's sole discretion,
3 reimbursement for the cost of the void ticket, or replacement of the defective ticket with another
4 unplayed ticket in that scratch ticket game (or a ticket of equivalent sales price from any other
5 current scratch ticket game).

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

7 (1) Any prize less than \$600 may be paid by any retailer.

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

13 (3) Retailers may pay claims for prizes, if the commission's validation system is
14 operational.

15 (4) Before paying a prize, retailers shall validate the winning ticket according to established
16 validation requirements and procedures.

17 (5) Payment of a prize by a retailer will be made to the bearer of the validated winning
18 ticket for that prize upon presentation of proper identification, if appropriate.

19 (6) If a low- or mid-tier claim is presented to the commission, the claimant shall follow all
20 procedures of the commission related to claiming a prize, including but not limited to filling out a
21 claim form, presenting appropriate identification if required, completing the back of the ticket, and
22 submitting these items including the apparent winning ticket to the commission by mail or in

1 person. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the
2 claimant shall be promptly notified. Tickets will not be returned to the claimant.

3 (f) Payment of high-tier prizes.

4 (1) High-tier prizes must be presented for payment to the commission. For purposes of this
5 provision, the term "commission" includes claim centers located throughout Texas. In connection
6 with certain scratch ticket games, the top-level prizes must be claimed at commission headquarters.

7 (2) If a high-tier claim is presented to the commission, the claimant shall follow all
8 procedures of the commission related to claiming a prize, including but not limited to filling out a
9 claim form, presenting appropriate identification as required, completing the back of the ticket,
10 and submitting these items including the apparent winning ticket to the commission by mail or in
11 person. Upon validation of the ticket as a winning ticket, the commission shall pay the claimant
12 the amount due in accordance with commission procedures. If the ticket is determined to be a non-
13 winning ticket, the claim shall be denied and the claimant shall be promptly notified. Tickets will
14 not be returned to the claimant.

15 (3) Before paying any prize, claim center personnel shall validate the winning ticket
16 according to established validation requirements and procedures.

17 (4) All prizes shall be subject to tax withholding, offsets, and other withholdings as
18 provided by law.

19 (5) If a person is indebted or owes delinquent taxes to the state, other than those specified
20 in paragraph (4) of this subsection, the winnings of a person shall be withheld until the debt or
21 taxes are paid.

22 (6) When paying a prize of \$600 or more, the commission shall file the appropriate income
23 reporting form with the Internal Revenue Service.

1 (7) Payment of a prize will be made to the bearer of the validated winning ticket for that
2 prize upon presentation of proper identification.

3 (8) The director shall recognize only one person as claimant of a particular prize. A claim
4 may be made in the name of a person other than an individual only if the person possesses a federal
5 employer identification number (FEIN) issued by the Internal Revenue Service and such number
6 is shown on the claim form. Groups, family units, clubs, organizations, or other persons without
7 an FEIN shall designate one individual in whose name the claim is to be filed. If a claim is
8 erroneously entered with multiple claimants, the claimants shall designate one of them as the
9 individual recipient of the prize, or, if they fail to designate an individual recipient, the director
10 may designate any one of the claimants as the sole recipient. In either case, the claim shall then be
11 considered as if it were originally entered in the name of the designated individual and payment of
12 any prizes won shall be made to that single individual. Once a ticket is submitted as a claim, it will
13 not be returned to the winner.

14 (9) The executive director has discretion to set a maximum total cash amount or maximum
15 payment time period for each prize level.

16 (g) Payment of prize awarded to minor.

17 (1) A person 18 years of age or older may purchase a ticket to give as a gift to another
18 person, including a minor.

19 (2) If a minor is entitled to a cash prize of less than \$600, the commission shall deliver to
20 an adult member of the minor's family or to the minor's guardian a check or warrant in the amount
21 of the prize payable to the order of the minor.

(3) If a minor is entitled to a cash prize of \$600 or more, the commission shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

(4) If a minor is entitled to a prize other than money, the commission shall pay the cash equivalent of such prize in the manner provided by paragraphs (2) and (3) of this subsection.

(5) A retailer is not authorized to pay a prize claimed by a minor.

(h) Ticket responsibility.

(1) A ticket is a bearer instrument until signed on the back by the ticket holder.

(2) The commission shall not be responsible for lost, stolen, or destroyed tickets.

(3) The commission shall not be responsible for erroneous or mutilated tickets.

(4) The commission shall not be responsible for tickets claimed by a player in error for a lower prize at a retailer.

(5) The commission shall not be responsible for tickets delivered to any address other than that designated by the commission for such purpose.

(i) Disputed ticket. If a dispute arises between the commission and a ticket claimant concerning whether the ticket is a winning ticket and if the ticket prize has not been paid, the executive director may, exclusively at his/her determination, reimburse the claimant for the cost of the disputed ticket. This shall be the claimant's exclusive remedy.

(j) Game closing.

(1) The executive director or his/her designee shall determine the closing date for an individual scratch ticket game in accordance with a scratch ticket game closing procedure that defines the criteria used to monitor scratch ticket sales performance and that identifies when scratch ticket games should be closed.

1 (A) The procedure shall provide for the timely closing of a scratch ticket game after
2 all top-level prizes in the game have been claimed or on an earlier date as determined by the
3 executive director.

4 (B) The procedure shall provide for ending ticket sales in a scratch ticket game
5 within 45 days after game closing procedures have been initiated.

6 (2) No tickets in a scratch ticket game may be sold after the scratch ticket game closing
7 date.

8 (k) Governing law. In purchasing a scratch ticket, the lottery player agrees to comply with and
9 abide by Texas law, all rules, procedures, and final decisions of the commission, and all procedures
10 and instructions established by the executive director for the conduct of the scratch ticket game.

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

14 (a) Responsibility for Lottery Tickets Received.

15 (1) Except as otherwise expressly provided by this subsection or by §401.370 of this title
16 (relating to Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently
17 Stolen or Lost), each retailer shall bear the risk of loss for all lottery tickets received. Receipt of
18 tickets by a retailer shall constitute a purchase of such tickets, and each retailer shall be liable to
19 the commission for the retail sales price of such tickets, less any applicable commission or credit.

20 (2) A retailer may return full and complete packs of unactivated tickets in original condition
21 and receive an accounting indicating that the packs have been removed from the retailer's
22 inventory. Nothing in this subsection waives the requirements of §401.361 of this title (relating to
23 Required Sales of Lottery Tickets).

1 (3) A retailer must report damage to or destruction of tickets to the commission's lottery
2 operations division through the retailer hotline as soon as reasonably practicable under the
3 circumstances, but no later than three (3) weeks from the occurrence or event. A ticket is
4 considered "damaged" or "destroyed" if rendered unsaleable through circumstances or events not
5 the fault of the retailer.

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

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

10 (i) no validations have occurred on tickets in the range reported as damaged
11 or destroyed;

12 (ii) the retailer has complied with paragraph (3) of this subsection;

13 (iii) if the tickets were damaged or destroyed by fire, the retailer made a
14 formal report of the fire to appropriate fire department authorities within 24 hours of the discovery
15 of the fire, and has provided to the commission's lottery operations division a copy of a report by
16 a Fire Marshal that identifies the location and the cause of the fire or the commission's lottery
17 operations division has obtained written documentation from lottery operator field staff verifying
18 the reported fire damage; or

19 (iv) if the tickets were damaged or destroyed other than by fire, the retailer
20 has provided to the commission's lottery operations division a copy of an insurance claim or a
21 receipt for repairs that identifies damage at the retail location that is related to the damaged or
22 destroyed tickets.

1 (B) The director may not grant credit under subparagraph (A) of this paragraph
2 in connection with more than two separate incidents in a twelve-month period.

3 (b) Responsibility for Winning Lottery Tickets Paid. After a retailer has paid a prize on a winning
4 ticket, that retailer shall completely deface such ticket and render it physically incapable of being
5 subsequently presented as a winning ticket. A retailer who has failed to deface such a winning
6 ticket and render it physically incapable of being subsequently presented as a winning ticket shall
7 pay to the commission the full amount of each subsequent prize that is paid on such ticket.

8 (c) Responsibility for Lottery-Related Property. Each retailer shall be financially responsible to
9 the commission for all lottery-related property placed at the retailer's location.

10 (d) An "activated" pack of tickets is a pack of tickets that has been delivered to a retailer and that
11 is shown as "active" in the lottery management system. An "unactivated" pack of tickets is a pack
12 of tickets in "Available," "Issued" or "Confirmed" status in the lottery management system.

13 §401.370. Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently
14 Stolen or Lost.

15 (a) Definitions. In addition to the definitions provided in §401.301 of this title (relating to General
16 Definitions), and unless the context in this section otherwise requires, the following definitions
17 apply.

18 (1) Available--The status in the lottery management system for a pack of scratch tickets
19 that is stored in the scratch ticket distribution warehouse and is available to be assigned to a
20 retailer's account. Scratch tickets in a pack in this status shall not be sold to the public and prizes
21 contained in scratch tickets in the pack cannot be validated.

22 (2) Issued--The status in the lottery management system for a pack of scratch tickets that
23 has been assigned to a retailer's account and is pending confirmation of delivery to the retailer's

1 location. Scratch tickets in a pack in this status shall not be sold to the public and prizes contained
2 in scratch tickets in the pack cannot be validated.

3 (3) Confirmed--The status in the lottery management system for a pack of scratch tickets
4 that has been physically received at the retailer's location. A retailer is required to "confirm" receipt
5 of a pack of scratch tickets upon delivery to the retailer's location. Scratch tickets are confirmed
6 using the lottery terminal located in the retailer's business location and the status is recorded in the
7 lottery management system. Scratch tickets in a pack in this status shall not be sold to the public
8 and prizes contained in scratch tickets in the pack cannot be validated.

9 (4) Active--The status in the lottery management system for a pack of scratch tickets that
10 has been physically received at the retailer's location and that is being offered for sale to the public.
11 A retailer is required to "activate" a pack of scratch tickets prior to selling the tickets to the public.
12 A pack of scratch tickets is activated using the lottery terminal located in the retailer's location and
13 the status is recorded on the lottery management system. A pack of scratch tickets shall be placed
14 in this status prior to being sold to the public and prizes contained in scratch tickets in the pack
15 may be validated.

16 (5) Settled--The status in the lottery management system for a pack of scratch tickets that
17 has been physically received at the retailer's location, has been activated and the cost of the tickets
18 in the pack has been or is being charged to the retailer's account. Scratch tickets "settle" against a
19 retailer's account and the value of the settled packs are swept from the retailer's bank account
20 through an electronic funds transfer. Settled scratch tickets are recorded in the lottery management
21 system. Scratch tickets in a pack in settled status may be sold to the public and prizes contained in
22 scratch tickets in the pack may be validated.

1 (6) Unactivated Scratch Tickets--Unactivated scratch tickets are tickets in Available,
2 Issued or Confirmed status. Unactivated tickets have never been activated or settled and no prizes
3 have been validated.

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

5 (1) Except as otherwise expressly provided by this subsection, each retailer shall bear the
6 risk of loss for all lottery tickets received. Receipt of tickets by a retailer shall constitute a purchase
7 of such tickets, and each retailer shall be liable to the commission for the retail sales price of such
8 tickets, less any applicable commission or credit.

9 (2) Notwithstanding paragraph (1) of this subsection, a retailer may return, and receive an
10 accounting indicating that the packs have been removed from the retailer's inventory for, full and
11 complete packs of unactivated tickets in original condition. Nothing in this subsection waives the
12 requirements of §401.361 of this title (relating to Required Sales of Lottery Tickets).

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

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

- 19 (i) appropriate local law enforcement authorities; and
20 (ii) the commission's enforcement division through the lottery operator
21 hotline;

1 (B) the pack has been lost and cannot be located by the retailer and the retailer,
2 within 24 hours of discovery of the loss, has made a formal report of the loss to the commission's
3 enforcement division through the lottery operator hotline.

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

DRAFT

Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 463-5460



13 TAC §3.3

The Texas State Library and Archives Commission (commission) proposes the repeal of §3.3, Standard Deposit and Reporting Requirements for State Publications in All Formats.

The proposed repeal of §3.3 corresponds with multiple improvements to the rules in 13 Texas Administrative Code, Chapter 3, State Publications Depository Program, including proposed new §3.3, also in this issue of the *Texas Register*. Due to the nature and number of amendments to §3.3, the commission finds it is simpler to repeal existing §3.3 and propose new §3.3.

FISCAL NOTE. Jelain Chubb, State Archivist and Director, Archives and Information Services, has determined that for each of the first five years the proposed repeal is in effect, there will not be a fiscal impact on state or local government.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeal; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

PUBLIC BENEFIT/COST NOTE. Ms. Chubb has also determined that for the first five-year period the repeal is in effect, the public benefit will be consistency and clarity in the commission's rules related to the State Publications Depository Program.

GOVERNMENT GROWTH IMPACT STATEMENT. Pursuant to Government Code, §2001.0221, the commission provides the following Government Growth Impact Statement for the proposed repeal.

During the first five years that the proposed repeal would be in effect, the proposed repeal: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the proposed repeal will be in effect, the proposed repeal will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed repeal may be directed to Jelain Chubb, State Archivist and Director, Archives and Information Services, via email rules@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. The repeal is proposed under Government Code, §441.102, which requires the commission by rule to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications; Government Code, §441.103, which requires a state agency to furnish copies of its state publications that exist in a physical format to the Texas State Library in the number specified by commission rules; and Government Code, §441.104, which directs

the commission to establish a program for the preservation and management of state publications.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§3.3. Standard Deposit and Reporting Requirements for State Publications in All Formats.

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

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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5460



TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

The Texas Lottery Commission (Commission) proposes 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).

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 Commission's enforcement division through the lottery operator hotline.

Robert Tirloni, 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 more clarity in the rules, the elimination of certain fees for retailers, and a more efficient process for reporting damaged or destroyed lottery tickets.

Kelly Stuckey, 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).

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, Kelly Stuckey, 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 require a decrease in fees paid to the Commission as a result of the elimination of a \$25 administrative fee for each unactivated pack of stolen or lost tickets or unactivated tickets that are unsaleable due to damage or destruction. This reduction in fees does not have a material impact.
- (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 Tyler Vance, 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.

SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §401.152

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.

§401.152. *Application for License.*

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

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

- (d) - (f) (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.

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Bob Biard

General Counsel

Texas Lottery Commission

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SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.302

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.

§401.302. *Scratch Ticket Game Rules.*

- (a) - (d) (No change.)

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

- (1) (No change.)

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

- (3) - (6) (No change.)

- (f) - (k) (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.

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SUBCHAPTER E. RETAILER RULES

16 TAC §401.362, §401.370

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.

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

(a) Responsibility for Lottery Tickets Received.

(1) - (3) (No change.)

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

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

(i) - (ii) (No change.)

(iii) if the tickets were damaged or destroyed by fire, the retailer made a formal report of the fire to appropriate fire department authorities within 24 hours of the discovery of the fire, and has provided to the commission's lottery operations division a copy of a report by 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

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

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

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

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

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

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

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

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Bob Biard

General Counsel

Texas Lottery Commission

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. BOARD FEES, LICENSE APPLICATIONS, AND RENEWALS

22 TAC §72.5

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.5 (Approved Schools and Colleges). The Board will propose a new §72.5 in a separate rulemaking. This rulemaking action will remove typographical errors in the current rule.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government.