

1 The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §§ 401.158
2 (Suspension or Revocation of License) and 401.160 (Standard Penalty Chart) without changes to
3 the proposed text as published in the September 27, 2024 issue of the *Texas Register* (49 TexReg
4 7703). The purpose of the amendments is to reinforce the Commission’s zero tolerance policy
5 regarding a Texas Lottery sales agent (retailer) selling lottery tickets to a minor by requiring
6 revocation of the retailer’s license in all cases involving a violation of a law or Commission rule
7 where the licensee intentionally or knowingly sells or offers to sell a lottery ticket to a person that
8 the licensee knows is younger than 18 years of age. See Texas Government Code §466.3051(a)
9 (Sale of Ticket to or Purchase of Ticket by Person Younger Than 18 Years of Age).

10 The Commission received one comment opposing the proposed amendments from the
11 Texas Food & Fuel Association (TFFA), which represents the wholesale and retail levels of the
12 food and petroleum industries in Texas and whose members own, operate, or supply more than
13 16,500 retail convenience stores in Texas.

14 COMMENT: While TFFA does not condone sales to minors, it asserts the proposed
15 amendments are excessively punitive by mandating the automatic revocation of a retailer’s license
16 for a first violation. TFFA notes the proposed amendments eliminate the Commission’s discretion
17 to issue an alternative penalty or consider mitigating circumstances, including the history of the
18 retailer. TFFA also asserts that, because the Sunset Advisory Commission’s review of the
19 Commission is still in progress, this rulemaking is premature and should be placed on hold until
20 legislation is passed to continue the Commission’s operations.

21 RESPONSE: The prohibition of lottery ticket sales to minors is vitally important to
22 maintaining the public’s trust and ensuring the integrity of the Texas Lottery. While the
23 Commission appreciates TFFA’s comments, it is important to send a strong message to lottery

1 retailers that preventing sales to minors must be a top priority for them, and the Commission
2 believes that its zero tolerance policy and license revocation for a first violation is an appropriate
3 measure to accomplish that.

4 These amendments are adopted under Texas Government Code §466.015(b)(3), which
5 requires the Commission to adopt rules governing the enforcement of prohibitions on the sale of
6 tickets to or by an individual younger than 18 years of age, and §467.102, which authorizes the
7 Commission to adopt rules for the enforcement and administration of the laws under the
8 Commission's jurisdiction.

9 §401.158. Suspension or Revocation of License.

10 (a) The commission may suspend or revoke any license issued under this subchapter if the
11 commission finds that any factor listed as grounds for denial of a license under §401.153(b) of this
12 title (relating to Qualifications for License) or any factor listed in subsection (b) of this section
13 apply to the licensee. The commission shall inform the sales agent in writing of the decision to
14 suspend or revoke a license for any of these reasons. In addition, in the event of a license
15 suspension under this section, the director of the Lottery Operations Division shall also inform the
16 licensee of the terms under which the suspended license may be reissued.

17 (b) Without limiting the commission's ability to consider factors listed in §401.153(b) of this title
18 as grounds for suspension or revocation of a license issued under this subchapter, the commission
19 may also suspend or revoke a license for reasons including, but not limited to, any of the following:

20 (1) licensee engages in telecommunication or printed advertising that the director
21 determines to have been false, deceptive or misleading;

22 (2) licensee conditions redemption of a lottery prize upon the purchase of any other item
23 or service;

1 (3) licensee imposes a restriction upon the redemption of a lottery prize not specifically
2 authorized by the director;

3 (4) licensee fails to follow instructions and procedures for the conduct of any lottery game,
4 lottery special event or promotion;

5 (5) licensee and/or its employee(s) exhibit discourteous treatment including, but not limited
6 to, abusive language toward customers, commission employees or commission vendors;

7 (6) licensee fails to establish or maintain reasonable security precautions regarding the
8 handling of lottery tickets and other materials;

9 (7) licensee fails to deface a validated ticket;

10 (8) licensee sells a draw game ticket for a draw that has already taken place;

11 (9) licensee fails to follow validation procedures, including, but not limited to, paying a
12 claim without validating the ticket, failing to pay a valid prize after validating a customer's winning
13 ticket, or retaining a customer's winning ticket that has not been validated;

14 (10) licensee violates any directive or instruction issued by the director of the Lottery
15 Operations Division;

16 (11) licensee violates any express term or condition of its license not specifically set forth
17 in this subchapter;

18 (12) licensee sells a scratch ticket from a game that has closed after the date designated for
19 the end of the game;

20 (13) licensee refuses to refund or properly cancel a Pick 3 or Daily 4 ticket;

21 (14) licensee fails to return an exchange ticket to a prize claimant claiming a prize on a
22 multi-draw ticket if an exchange ticket is produced by the licensee's terminal;

1 (15) licensee fails to keep accurate and complete records of all tickets that have not been
2 sold from confirmed, active, and settled packs;

3 (16) licensee fails to meet any requirement under §401.368 of this title (relating to Lottery
4 Ticket Vending Machines), if the licensee has been supplied with a self-service lottery ticket
5 vending machine by the commission;

6 (17) licensee fails to take readily achievable measures within the allowed time period to
7 comply with the barrier removal requirements regarding the ADA;

8 (18) licensee fails to prominently post license;

9 (19) licensee sells tickets that were assigned to another licensed location;

10 (20) licensee knowingly sells a ticket or pays a lottery prize to another person who is:

11 (A) an officer or an employee of the commission;

12 (B) an officer, member, or employee of a lottery operator;

13 (C) an officer, member, or employee of a contractor or subcontractor that is
14 excluded by the terms of its contract from playing lottery games;

15 (D) the spouse, child, brother, sister, or parent of a person described by
16 subparagraph (A), (B), or (C) of this paragraph who resides within the same household as that
17 person;

18 (21) licensee endangers the security and/or integrity of the lottery games operated by the
19 commission;

20 (22) licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater
21 than the price set by the executive director;

22 (23) licensee charges a fee for lottery ticket purchases using a debit card and/or requires a
23 minimum dollar amount for debit card purchases of only lottery tickets.

1 (24) licensee sells tickets at a location that is not licensed;

2 (25) licensee intentionally or knowingly sells a ticket by extending credit or lends money
3 to enable a person to buy a ticket;

4 (26) licensee intentionally or knowingly sells a ticket and accepts anything for payment not
5 specifically allowed under the State Lottery Act;

6 (27) licensee sells tickets over the telephone or via mail order sales, establishes or promotes
7 a group purchase or pooling arrangement under which tickets are purchased on behalf of the group
8 or pool and any prize is divided among the members of the group or pool, and the licensee
9 intentionally or knowingly:

10 (A) uses any part of the funds solicited or accepted for a purpose other than
11 purchasing tickets on behalf of the group or pool; or

12 (B) retains a share of any prize awarded as compensation for establishing or
13 promoting the group purchase or pooling arrangement;

14 (28) licensee intentionally or knowingly alters or forges a ticket;

15 (29) licensee intentionally or knowingly influences or attempts to influence the selection
16 of a winner of a lottery game;

17 (30) licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize
18 by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons
19 to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation;

20 (31) licensee intentionally or knowingly tampers with, damages, defaces, or renders
21 inoperable any vending machine, electronic computer terminal, or other mechanical device used
22 in a lottery game, or fails to exercise due care in the treatment of commission property;

23 (32) licensee:

1 (A) induces another person to assign or transfer a right to claim a prize;
2 (B) initiates or accepts an offer to sell the right to claim a prize;
3 (C) initiates or accepts an offer of compensation from another person to claim a
4 lottery prize; or
5 (D) purchases, for anything of value, a lottery ticket from a person who is not a
6 licensed lottery retailer;

7 (33) licensee intentionally or knowingly makes a statement or entry that the person knows
8 to be false or misleading on a required report;

9 (34) licensee fails to maintain or make an entry the licensee knows is required to be
10 maintained or made for a required report;

11 (35) licensee knowingly refuses to permit the director of the Lottery Operations Division,
12 the executive director, commission, the lottery operator, the employees or agents of the lottery
13 operator, or the state auditor to examine the agent's books, records, papers or other objects, or
14 refuses to answer any question authorized under the State Lottery Act;

15 (36) licensee intentionally or knowingly makes a material and false or incorrect, or
16 deceptive statement, written or oral, to a person conducting an investigation under the State Lottery
17 Act or a commission rule;

18 (37) licensee commits an offense of conspiracy as defined in the State Lottery Act;

19 (38) licensee sells or offers for sale any interest in a lottery of another state or state
20 government or an Indian tribe or tribal government, including an interest in an actual lottery ticket,
21 receipt, contingent promise to pay, order to purchase, or other record of the interest;

22 (39) licensee intentionally or knowingly sells or offers to sell a ticket to a person that the
23 licensee knows is younger than 18 years (revocation only);

(40) licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period;

(41) licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account; or

(42) licensee has violated a provision of the State Lottery Act, Government Code, Chapter 466, or a commission rule adopted under the State Lottery Act.

§401.160. Standard Penalty Chart.

(a) The commission, through the director of the Lottery Operations Division, may offer settlements to persons charged with violating the provisions of the State Lottery Act or rules of the commission. Settlement of those cases, unless otherwise provided for elsewhere in this rule, shall be in compliance with the following standard penalty chart. A settlement will be in the form of an Agreement and Consent Order of the commission.

(b) A repeat violation by a licensee justifies the penalty for a second or third violation if it occurs within 12 months of the first violation. Violations need not be the same or similar in nature to previous violations to be considered repeat violations.

(c) A penalty for an alleged repeat violation shall not be assessed unless the alleged violation occurs after the licensee has been notified, in writing, of the first alleged violation. Notwithstanding the preceding sentence, if an alleged violation is discovered during an undercover operation, then no notice of any prior alleged violations may be necessary to assess a penalty for a repeat violation. The requirement that written notice be given to a licensee shall not be interpreted to require that a notice of hearing for the violation be delivered to the licensee.

(d) The list of violations in the standard penalty chart is not an exclusive list of violations of the commission or rules of the commission. The commission is authorized to assess penalties for any

violation of any of the foregoing statutes or rules for which a penalty is not provided on the chart. Any penalty assessed for a violation not provided for on the standard penalty chart shall be approved by the director of the Lottery Operations Division or his/her designee prior to its assessment.

(e) Any person responsible for assessing a penalty for a violation may deviate from the standard penalty chart if mitigating circumstances are involved and consideration will be given to all the factors listed in subsection (g) of this section. If a recommendation deviating from the standard penalty chart is made, it must be made in writing and be filed with the case report. Final approval shall be made by the director of the Lottery Operations Division or his/her designee.

(f) The standard penalty chart does not bind an administrative law judge or the commission as to penalties for any violation determined to have occurred by the facts presented in an administrative hearing and the record of that proceeding shall be the determining factor as to the sufficiency of the penalty assessed.

(g) Based upon consideration of the following factors, the commission may impose penalties other than the penalties recommended in §401.158 of this title (relating to Suspension or Revocation of License) and/or this section:

- (1) Severity of the offense;
- (2) Danger to the public;
- (3) Number of repetition of offenses;
- (4) Number of complaints previously found justified against the licensee;
- (5) Length of time the licensee has held a license;
- (6) Actual damage, physical or otherwise, caused by the violations;
- (7) Deterrent effect of the penalty imposed;

- 1 (8) Attempts by licensee to correct or stop violations or refusal by licensee to correct or
2 stop violations;
- 3 (9) Penalties imposed for related offenses; or
- 4 (10) Any other mitigating or aggravating circumstances.
- 5 (h) Standard Penalty Chart.

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Figure: 16 TAC §401.160(h)

TEXAS LOTTERY COMMISSION RETAILER REGULATORY VIOLATIONS AND RELATED PENALTIES				
No.	DESCRIPTION OF VIOLATION	1st OCCURRENCE	2nd OCCURRENCE	3rd OCCURRENCE
1st Tier Violations				
1.	Licensee engages in telecommunication or printed advertising that the director determines to have been false, deceptive or misleading.	Warning Letter (Notification in writing to the licensee of the detected violation, including a warning that future violations will result in more severe administrative penalties including Suspension and/or revocation of the license.)	10-90 day Suspension	30-90 day Suspension to Revocation
2.	Licensee conditions redemption of a lottery prize upon the purchase of any other item or service.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
3.	Licensee imposes a restriction upon the redemption of a lottery prize not specifically authorized by the director.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
4.	Licensee fails to follow instructions and procedures for the conduct of any lottery game, lottery special event or promotion.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation

5.	Licensee and/or its employee(s) exhibit discourteous treatment including, but not limited to, abusive language toward customers, commission employees or commission vendors.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
6.	Licensee fails to establish or maintain reasonable security precautions regarding the handling of lottery tickets and other materials.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
7.	Licensee fails to deface a validated ticket.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
8.	Licensee sells a draw game ticket for a draw that has already taken place.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
9.	Licensee fails to follow validation procedures, including, but not limited to, paying a claim without validating the ticket, failing to pay a valid prize after validating a customer's winning ticket, or retaining a customer's winning ticket that has not been validated.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
10.	Licensee violates any directive or instruction issued by the director of Lottery Operations.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
11.	Licensee violates any express term or condition of its license not specifically set forth in this subchapter.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
12.	Licensee sells a scratch ticket from a game that has closed after the date designated for the end of the game.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
13.	Licensee refuses to refund or properly cancel a Pick 3 or Daily 4 ticket.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation

14.	Licensee fails to return an exchange ticket to a prize claimant claiming a prize on a multi-draw ticket if an exchange ticket is produced by the licensee's terminal.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
15.	Licensee fails to keep accurate and complete records of all tickets that have not been sold from confirmed, active, and settled packs.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
16.	Licensee fails to meet any requirement under §401.368, Lottery Ticket Vending Machines rule, if the licensee has been supplied with a self-service lottery ticket vending machine by the commission.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
17.	Licensee fails to take readily achievable measures within the allowed time period to comply with the barrier removal requirements regarding the ADA.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
18.	Licensee fails to prominently post license.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
19.	Licensee sells tickets that were assigned to another licensed location.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
20.	Licensee knowingly sells a ticket or pays a lottery prize to another person who is: (A) an officer or an employee of the commission; (B) an officer, member, or employee of a lottery operator; (C) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games; (D) the spouse, child, brother, sister, or parent of a person described by (A), (B), or (C) above who resides within the same household as that person.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
2nd Tier Violations				
21.	Licensee endangers the security and/or integrity of the lottery games operated by the commission.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation

22.	Licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater than the price set by the executive director.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
23.	Licensee charges a fee for lottery ticket purchases using a debit card and/or requires a minimum dollar amount for debit card purchases of only lottery tickets.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
24.	Licensee sells tickets at a location that is not licensed.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
25.	Licensee intentionally or knowingly sells a ticket by extending credit or lends money to enable a person to buy a ticket.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
26.	Licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
27.	Licensee sells tickets over the telephone or, via mail order sales, establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly: (A) uses any part of the funds solicited or accepted for a purpose other than purchasing tickets on behalf of the group or pool; or (B) retains a share of any prize awarded as compensation for establishing or promoting the group purchase or pooling arrangement.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
28.	Licensee intentionally or knowingly alters or forges a ticket.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
29.	Licensee intentionally or knowingly influences or attempts to influence the selection of a winner of a lottery game.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation

30.	Licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
31.	Licensee intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, or other mechanical device used in a lottery game, or fails to exercise due care in the treatment of commission property.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
32.	Licensee: (A) induces another person to assign or transfer a right to claim a prize; (B) initiates or accepts an offer to sell the right to claim a prize; (C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or (D) purchases, for anything of value, a lottery ticket from a person who is not a licensed lottery retailer.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
33.	Licensee intentionally or knowingly makes a statement or entry that the person knows to be false or misleading on a required report.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
34.	Licensee fails to maintain or make an entry the licensee knows is required to be maintained or made for a required report.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
35.	Licensee knowingly refuses to permit the director of the Lottery Operations Division, the executive director, commission, the lottery operator, the employees or agents of the lottery operator, or the state auditor to examine the agent's books, records, papers or other objects, or refuses to answer any question authorized under the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
36.	Licensee intentionally or knowingly makes a material and false or incorrect, or deceptive statement, written or oral, to a person	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation

	conducting an investigation under the State Lottery Act or a commission rule.			
37.	Licensee commits an offense of conspiracy as defined in the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
38.	Licensee sells or offers for sale any interest in a lottery of another state or state government or an Indian tribe or tribal government, including an interest in an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of the interest.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
3rd Tier Violations				
39.	Licensee intentionally or knowingly sells or offers to sell a ticket to a person that the licensee knows is younger than 18 years.	Revocation	n/a	n/a
40.	Licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period.	Revocation	n/a	n/a
41.	Licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account.	Revocation	n/a	n/a