

1 The Texas Lottery Commission (Commission) has reviewed the Commission’s rules at 16
2 Texas Administrative Code (TAC) Chapter 401 (Administration of State Lottery Act) in
3 accordance with the requirements of Texas Government Code §2001.039 (Agency Review of
4 Existing Rules), and hereby readopts the rules in Chapter 401. The Commission has determined
5 that the reasons for adopting each of the rules in Chapter 401 continue to exist, as discussed below.
6 As a result of this review, and as discussed below, the Commission has determined that some rules
7 in Chapter 401 need to be amended, actions which will be proposed in a separate rulemaking
8 proceeding.

9 Among the more significant changes, the proposed amendments will address issues
10 identified as rulemaking gaps in the May 2024 Texas Sunset Advisory Commission Staff Report
11 (Staff Report). Specifically, the Staff Report noted that there was “no clarification as to whether
12 internet sales of lottery products are prohibited” (addressed in Rules 401.153(b)(12),
13 401.158(b)(27), 401.160(h), and 401.355(a)), and “no explanation of what it means for a person
14 to ‘engage in a business exclusively as a (lottery) sales agent’ for purposes of licensure” (addressed
15 in Rule 401.153(b)(13)).

16 The proposed rule amendments will also clarify procurement procedures and the time
17 period a bidder or proposer has to respond to an appeal of certain protest decisions issued by the
18 agency in procurements; update several definitions; update a provision in the scratch ticket game
19 rule to make it more consistent with the draw game rule; update the scratch and draw ticket prize
20 claim processes; and update the language regarding lottery security to state that several divisions
21 of the Commission are responsible for developing and maintaining security plans and procedures,
22 and confirming that these plans and procedures are protected from required public disclosure as
23 allowed under the Texas Public Information Act.

1 The Chapter 401 rules consist of seven (7) subchapters with a total of sixty-seven (67)
2 rules. Subchapter A (Procurement) includes the following rules:

3 §401.101 – Lottery Procurement Procedures

4 §401.102 – Protests of the Terms of a Formal Competitive Solicitation

5 §401.103 – Protests of Contract Award

6 §401.104 – Contract Monitoring Roles and Responsibilities

7 §401.105 – Major Procurement Approval Authority, Responsibilities and Reporting

8 Because the Commission contracts for certain lottery-related goods and services, the
9 Subchapter A procurement rules are necessary for the administration and operation of the lottery;
10 thus, the reasons for these rules continue to exist.

11 The Commission, however, will propose amendments to Rule 401.101 to clarify the rules
12 governing the Invitation for Bid (IFB) procurement method by reorganizing the section and by
13 adding language that describes the process used for IFBs. The proposed amendments will also
14 clarify certain differences between the Request for Proposals (RFP) and IFB procurement methods.

15 The proposed amendments to Rule 401.102 will add language stating that the email address
16 designated by the vendor for correspondence in the procurement will also serve as the email
17 address for notice of proceedings and decisions under this section.

18 The proposed amendments to Rule 401.103(g) will clarify the time period a successful
19 bidder or proposer has to respond to an appeal of an agency determination of a vendor's protest to
20 a contract award resulting from a competitive solicitation. Also, the proposal will add language
21 stating that the email address designated by the vendor for correspondence in the procurement will
22 also serve as the email address for notice of proceedings and decisions under this section.

1 The proposed amendments to Rule 401.104 will clarify that the agency may assign
2 designated personnel to monitor contract compliance and facilitate historically underutilized
3 business participation, in addition to the existing divisions within the agency that handle these
4 matters.

5 Subchapter B (Licensing of Sales Agents) includes the following rules:

6 §401.152 – Application for License

7 §401.153 – Qualifications for License

8 §401.155 – Expiration of License

9 §401.156 – Renewal of License

10 §401.157 – Provisional License

11 §401.158 – Suspension or Revocation of License

12 §401.159 – Summary Suspension of License

13 §401.160 – Standard Penalty Chart

14 The Commission licenses approximately twenty-one thousand (21,000) lottery ticket sales
15 agents in Texas. The Subchapter B rules set forth the license application and renewal process,
16 qualification requirements, license terms, and disciplinary process applicable to lottery ticket sales
17 agents. These rules are necessary for the administration of the Commission's lottery licensing
18 program; thus, the reasons for adopting them continue to exist.

19 The Commission, however, has determined that proposed amendments to Rule
20 401.153(b)(12) are necessary to clarify that an application for a sales agent license will be denied
21 if the applicant intends to sell lottery tickets via the internet, and proposed amendments to Rule
22 401.153(b)(13) are needed to reiterate the prohibition in the State Lottery Act that an application
23 for a sales agent license will be denied if the applicant intends to engage in business exclusively

1 as a Texas Lottery ticket sales agent (as defined in the proposed amendments). This change will
2 address gaps that were identified by the Staff Report.

3 Proposed amendments to Rule 401.153 will also add a provision that, based upon
4 consideration of the factors in Rule 401.160(g), the director may determine a person or
5 organization whose license has been revoked, surrendered or denied is not eligible to apply for
6 another license for one year.

7 The proposed amendments to Rule 401.158(b)(23) will make it an express violation to
8 require a purchaser to buy additional items when paying for lottery tickets with a debit card and
9 the proposed amendments to Rule 401.158(b)(27) will make it an express violation to sell lottery
10 tickets over the internet.

11 The proposed amendments to Rule 401.160 will update the penalty chart and correspond
12 with the proposed amendments to Rules 401.158(b)(23) and (27) referenced above.

13 Subchapter C (Practice and Procedure) includes the following rules:

14 §401.201 – Intent and Scope of Rules

15 §401.202 – Construction of Rules

16 §401.203 – Contested Cases

17 §401.205 – Initiation of a Hearing

18 §401.207 – Written Answer; Default Proceedings

19 §401.211 – Law Governing Contested Cases

20 §401.216 – Subpoenas, Depositions, and Orders to Allow Entry

21 §401.220 – Motion for Rehearing

22 §401.227 – Definitions

1 Subchapter C includes rules applicable to enforcement matters and other contested
2 proceedings involving a lottery or bingo licensee or applicant under the State Lottery Act or the
3 Bingo Enabling Act, respectively. In addition, the Texas Administrative Procedure Act at
4 §2001.004 requires state agencies to adopt such rules of practice. Thus, the reasons for adopting
5 the Subchapter C rules continue to exist. No substantive amendment or repeal of these rules is
6 recommended at this time.

7 Subchapter D (Lottery Game Rules) includes the following rules:

8 §401.301 – General Definitions

9 §401.302 – Scratch Ticket Game Rules

10 §401.303 – Grand Prize Drawing Rule

11 §401.304 – Draw Game Rules (General)

12 §401.305 – “Lotto Texas” Draw Game Rule

13 §401.306 – Video Lottery Games

14 §401.307 – “Pick 3” Draw Game Rule

15 §401.308 – “Cash Five” Draw Game Rule

16 §401.309 – Assignability of Prizes

17 §401.310 – Payment of Prize Payments Upon Death of Prize Winner

18 §401.312 – “Texas Two Step” Draw Game Rule

19 §401.313 – Promotional Drawings

20 §401.314 – Retailer Bonus Programs

21 §401.315 – “Mega Millions” Draw Game Rule

22 §401.316 – “Daily 4” Draw Game Rule

23 §401.317 – “Powerball” Draw Game Rule

1 §401.318 – Withholding of Delinquent Child-Support Payments from Lump-sum and Periodic
2 Installment Payments of Lottery Winnings in Excess of Six Hundred Dollars

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4 §401.319 – Withholding of Child-Support Payments from Periodic Installment Payments of
5 Lottery Winnings

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7 §401.320 – “All or Nothing” Draw Game Rule

8 §401.321 – Scratch Tickets Containing Non-English Words

9 §401.324 – Prize Winner Election to Remain Anonymous

10 Subchapter D includes the Commission’s lottery game rules. These rules provide
11 information regarding how Texas Lottery scratch ticket and draw games are played, the prizes that
12 can be won, the methods by which lottery tickets may be claimed and validated, as well as
13 information relating to debt set-off for child-support payments, retailer bonus programs, payment
14 of prize money to the estate of a deceased prize winner, and statements to be included in court
15 orders involving assignments of prize payments. Because the Commission generates revenue for
16 the state through the sale of lottery game tickets, the reasons for adopting each of these rules
17 continue to exist.

18 The Commission, however, has determined that amendments to Rule 401.301(1), (4), (51),
19 and (55) are necessary to make minor updates to multiple definitions to increase the clarity of those
20 definitions. The proposed amendments will also add a definition of “Present at the terminal” that
21 was deleted in a non-substantive rule amendment in August 2020. The purpose of re-inserting the
22 definition, in combination with the related proposed amendment to Rule 401.304(b)(3), is to dispel
23 any misconception that the deletion was substantive and make clear that all aspects of a sales
24 transaction under Rule 401.304 must take place at the retail location.

25 The proposed amendments to Rule 401.302(a)(1) will add language from Rule
26 401.304(b)(3) (Draw Game Rules (General)) regarding the requirement that all aspects of a ticket

1 purchase must take place at a licensed retail location, to make Rule 401.302 more consistent with
2 Rule 401.304. The proposed amendments to Rule 401.302(e)(6) and (f)(2) will update the rule by
3 requiring all scratch ticket prize claim processes to be made in accordance with Commission
4 procedures and deleting requirements that are inapplicable to mobile prize claims.

5 The proposed amendments to Rule 401.304(b)(3) will add language that was deleted in a
6 non-substantive rule amendment in 2020 to reiterate and clarify that no part of a draw game ticket
7 sale may take place away from the terminal. The proposed amendments to Rule 401.304(d)(3) will
8 update the rule by requiring all draw ticket prize claim processes to be made in accordance with
9 Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

10 Subchapter E (Retailer Rules) includes the following rules:

11 §401.351 – Proceeds from Ticket Sales

12 §401.352 – Settlement Procedures

13 §401.353 – Retailer Settlements, Financial Obligations, and Commissions

14 §401.355 – Restricted Sales

15 §401.357 – Texas Lottery as Retailer

16 §401.360 – Payment of Prizes

17 §401.361 – Required Purchases of Lottery Tickets

18 §401.362 – Retailer’s Financial Responsibility for Lottery Tickets Received and Subsequently
19 Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related
20 Property

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22 §401.363 – Retailer Record

23 §401.364 – Training

24 §401.366 – Compliance with All Applicable Laws

25 §401.368 – Lottery Ticket Vending Machines

1 §401.370 – Retailer’s Financial Responsibility for Lottery Tickets Received and Subsequently
2 Stolen or Lost

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4 §401.371 – Collection of Delinquent Obligations for Lottery Retailer Related Accounts

5 §401.372 – Display of License

6 As noted above, the Commission licenses approximately 21,000 lottery ticket sales agents.
7 The Subchapter E rules set forth the operational requirements, duties, and obligations of sales
8 agents, including their financial responsibility to the State of Texas. These rules are necessary for
9 the administration and effective oversight of Texas Lottery ticket sales; thus, the reasons for
10 adopting these rules continue to exist.

11 The Commission, however, has determined that amendments to Rule 401.355(a) are
12 necessary to clarify that retailers shall not sell lottery tickets via the internet, a gap that was
13 identified by the Staff Report, and the proposed amendments to Rule 401.355(b) will update a
14 cross-reference.

15 Subchapter F (ADA Requirements) includes the following rules:

16 §401.401 – Definitions

17 §401.402 – General Requirements

18 §401.403 – Readily Achievable Barrier Removal

19 §401.404 – Priority of ADA Compliance by Lottery Licensees

20 §401.405 – Alternatives to Barrier Removal

21 §401.406 – Future Alterations to a Lottery Licensed Facility

22 §401.407 – Complaints Relating to Non-accessibility

23 §401.408 – Requests for Hearings

24 The Subchapter F rules address the prohibition against discrimination imposed by the
25 federal Americans with Disabilities Act (ADA), compliance by licensed lottery ticket sales agents

1 with ADA accessibility requirements, and the procedure for the Commission to receive and to
2 address complaints regarding discrimination or accessibility under the ADA. Because the
3 designated location of a Texas Lottery ticket sales agent license is subject to the ADA's
4 requirements, the reasons for adopting each of these rules continue to exist. No substantive
5 amendment or repeal of these rules is recommended at this time.

6 Subchapter G (Lottery Security) includes the following rule:

7 §401.501 – Lottery Security

8 The reasons for adopting §401.501, regarding the Commission's statutory mandate to
9 ensure the security and integrity of the Texas Lottery, and to maintain a security plan and other
10 security procedures, continue to exist.

11 The Commission, however, will propose amendments to Rule 401.501 to update the
12 language regarding lottery security to state that several divisions of the Commission are
13 responsible for developing and maintaining security plans and procedures, including information
14 security, gaming security, and facility security as required by the State Lottery Act to ensure the
15 integrity and security of the lottery games, and confirming that these plans and procedures are
16 protected from required public disclosure as allowed under the Texas Public Information Act.

17 The Commission will propose amendments to the rules requiring amendments in a separate
18 rulemaking action.

19 This review and readoption has been conducted in accordance with the requirements of
20 Texas Government Code §2001.039. The Commission received no comments on the proposed
21 review, which was published in the October 27, 2023 issue of the *Texas Register* (48 TexReg
22 6393).

23 This action concludes the Commission's review of 16 TAC Chapter 401.