

CAUSE NO. \_\_\_\_\_

LTC TEXAS LLC,

Plaintiff,

v.

TEXAS LOTTERY COMMISSION AND  
SERGIO REY IN HIS OFFICIAL  
CAPACITY AS ACTING DEPUTY  
EXECUTIVE DIRECTOR OF THE TEXAS  
LOTTERY COMMISSION,

Defendant.

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IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**ORIGINAL PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

LTC Texas LLC (“Plaintiff” or “LTC”) files this Original Petition seeking declaratory and injunctive relief against the Texas Lottery Commission (the “Commission”) and its Acting Deputy Executive Director Sergio Rey, in his official capacity only.

**I. INTRODUCTION**

LTC operates the digital Lotto.com platform in Texas for ordering official state lottery draw games and scratch tickets. LTC’s mission is to modernize the lottery and make it more beneficial to the public whom the lottery ultimately serves.

Texas often boasts that it is the best state for business. LTC took Texas at its word when it brought its business here in 2022. And LTC went above and beyond to ensure compliance with any applicable state law and the state regulatory scheme, relying on guidance from the Commission’s former and current leadership in the process. In return, the Commission changed rules on the fly and without due process; has made up other new “rules” illegally and unconstitutionally targeting LTC’s business; and has all but hounded LTC and other responsible lottery couriers out of business in the state.

The Commission's recent conduct comes as a complete about-face regarding LTC. Over the years, the Commission (through its executive director, employees, and contractors) repeatedly confirmed that it lacked any regulatory authority over LTC; authorized LTC to use the Commission's official logos in LTC's marketing and branding efforts; made specific and detailed changes to its QR code software so that LTC and other lottery couriers could utilize QR code technology for their customers; offered equipment and assistance to LTC; and even solicited LTC's assistance in helping the Commission brainstorm ways to avoid "ensured jackpots" that have been of great concern to the Texas Legislature this session. The Commission's accusatory and self-serving statements to the Legislature and to the public in furtherance of their recent extra-statutory and *ultra vires* acts simply do not square with their prior years of support, cooperation, and assistance to LTC.

Accordingly, LTC brings this action to set the story straight and vindicate its legal rights as Texas law provides.

## II. PARTIES AND SERVICE

1. LTC is a Texas limited liability company with a primary address of 7801 North Lamar Boulevard, Suite E216, Austin, Texas 78752.

2. The Commission is an agency of the State of Texas. TEX. GOV. CODE § 466.014(a). Its purpose is to generate revenue by facilitating the sale of lottery tickets. TEX. GOV. CODE § 466.351. The Commission may be served with process at its headquarters at 1801 Congress Ave., Austin, Texas 78701.

3. Rey is sued in his official capacity as Acting Deputy Executive Director of the Commission. Rey may be served with process at the Commission's headquarters at 1801 Congress Ave., Austin, Texas 78701.

### III. JURISDICTION AND VENUE

4. The subject matter in controversy is in excess of the minimum jurisdictional limits of this Court. This is an action under the Administrative Procedure Act, TEX. GOV'T CODE, SEC. 2001.001 *et seq.*

5. Discovery will be conducted under Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

6. Pursuant to the Texas Government Code and Texas Local Government Code, Defendants are subject to personal jurisdiction in this Court because each is located, has its principal office, committed the acts at issue in this suit, or is domiciled within Travis County, Texas.

7. LTC seeks only non-monetary relief. *See* TEX. R. CIV. P. 47.

8. All conditions precedent to LTC's claim for relief either have been performed or have occurred.

9. Venue in Travis County is proper in this cause under Section 15.002 of the Texas Civil Practice and Remedies Code because Travis County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

10. The Commission is not entitled to governmental immunity because Section 2001.038(a) of the Texas Government Code provides: "The validity or applicability of a rule, including an emergency rule adopted under Section 2001.034, may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff." Section 2001.038(b) further provides: "The state agency must be made a party to the action."

11. In addition, a suit against a government official can proceed even in the absence of a waiver of immunity if the official's actions are *ultra vires*, both of which are at issue in this lawsuit. *See Matzen v. McLane*, 659 S.W.3d 381, 388 (Tex. 2021) (“[I]f the [government] official is engaging in ultra vires conduct,” then “a claim may proceed against a government official in his official capacity[.]”).

#### IV. BACKGROUND

12. Lotto.com operates a secure digital platform allowing adults physically located within a state to order official state lottery draw games and scratch tickets. Lotto.com Inc. subsidiaries – like LTC Texas LLC – hold licenses to provide courier services in New York and New Jersey, the only two jurisdictions that offer such licenses.

13. LTC Texas LLC has operated without issue in Texas since 2022. Lotto.com also provides courier services in Arkansas, Arizona, Colorado, Maine, Massachusetts, Minnesota, Nebraska, Ohio, and Oregon, and plans to expand to additional jurisdictions in the near future.

14. As a lottery courier enabling user participation in U.S. state lotteries, Lotto.com helps the lottery contribute incremental funds to state-run programs across education, parks, emergency responders, veterans' health, and other important services.

15. Lottery couriers collectively contributed in excess of \$250 million dollars in Texas lottery sales in Fiscal Year 2024, with proceeds supporting the Texas Foundation School Fund and the Texas Veterans' Commission Fund for Veterans' Assistance.

16. LTC's services are offered through Lotto.com's cutting-edge e-commerce platform, which allows for users 18 years of age and older to place orders for available lottery games. Once adults are geolocated to be physically within the jurisdiction where the order is to be placed, and outside of federally recognized tribal grounds, a lottery ticket order can be processed.

17. LTC subsequently purchases a physical ticket consistent with the customer's order from an authorized Texas Lottery retailer. Once purchased, the official Texas Lottery ticket is digitally scanned and transferred electronically to the user, who becomes its rightful owner.

18. LTC strictly deals with official state lottery tickets, ensuring that winnings are paid out directly by the Texas Lottery.

19. LTC takes its legal and regulatory obligations seriously. Both before and after it launched its business in Texas, LTC opened the door to discussion with the Commission, and repeatedly sought the Commission's guidance and feedback on its operations to ensure that, at every step, LTC's operations complied with all applicable law.

**A. The Commission approves and facilitates LTC's operation as a courier in Texas.**

20. On several occasions, the Texas Lottery's former Executive Director Ryan Mindell<sup>1</sup> has claimed (under oath) that the Texas Lottery was and is "neutral" on the operation of lottery couriers in the State of Texas, including recently in February 12, 2025 testimony before the Senate Finance Committee that the Lottery had no "bias one way or the other whether they exist or not" and asserting that the Lottery had not taken steps to "facilitate" couriers.

21. Contrary to Mindell's assertions, the Texas Lottery actively assisted in the setup and operation of Lotto.com and other couriers in Texas.

22. Over four years ago, on February 25, 2021, following a meeting between then-Lottery Operations Director Ryan Mindell and Lotto.com CEO Tom Metzger, Mindell forwarded Metzger correspondence between the Texas Lottery and the Cammack and Strong law firm regarding another courier company. *See* Exhibit A, TLC Letter to Cammack and Strong.

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<sup>1</sup> Mr. Mindell resigned on April 21, 2025. *See* Lissette Lopez, *Texas Lottery executive director resigns following investigation of recent winning tickets*, FOX7 Austin, April 21, 2025, <https://www.fox7austin.com/news/texas-lottery-executive-director-resigns-following-investigation-recent-winning-tickets>.

23. By providing the Cammack and Strong correspondence to Metzger, Mindell informed Lotto.com of exactly what steps it needed to take to get certification from the Texas Lottery that its business model was not inconsistent with Texas law.

24. Using the template provided by Mindell, in July 2021, Lotto.com submitted a request for a legal opinion from the Texas Lottery that its courier operations would not violate Texas law. Mindell replied on July 19, 2021, confirming that Lotto.com as a courier was not required to “obtain a license or other authorization from the Commission,” and concluding that “the form of the described transactions does not appear to involve a regulated sale of lottery tickets under the State Lottery Act.” *See* Exhibit B, Mindell Letter to LTC.

25. After confirming that the Texas Lottery had no authority to regulate couriers, Mindell and others at the Texas Lottery continued to provide input and assistance to Lotto.com and other couriers. For example, on April 27, 2022, Lotto.com employees demonstrated a prototype system for allowing courier customers to electronically receive physical state scratch tickets. Texas Lottery Executive Director Gary Grief, General Counsel Bob Biard, and Director of Operations Ryan Mindell attended the demonstrations, and offered advice and input that ultimately went into the development of the Lotto.com digital scratch product.

26. In early 2023, with the knowledge and permission of the Texas Lottery leadership, Texas became the first state for the Lotto.com digital scratch product.

27. Now, over two years later, the Lottery is attempting to rewrite the history of its involvement. Testifying before the House Appropriations Committee on February 24, 2025, Ryan Mindell claimed that a policy banning lottery couriers was necessary due to information resulting from investigations into retailers affiliated with couriers he ordered. Mindell testified under oath

that “we also had information, credible information, from our investigations that said we need to take action now.”

28. With respect to LTC, the referenced “investigation” was nothing more than a five-minute visit on February 24, 2025, by Lottery security staff to a retail location operated by Players Café TX, LLC, a retailer affiliated with Lotto.com, where staff asked questions about the use of QR codes for processing player orders.

29. Following that visit, on February 26, 2025, the Texas Lottery issued a show cause letter to Players Café TX, LLC, claiming that “Players Café has endangered the security and integrity of the lottery games operated by the Commission ... [by] intentionally or knowingly [selling] Texas Lottery draw game tickets that were generated using a selection method not approved by the Commission.”

30. But the Texas Lottery knew—or should have known—that the QR codes in use by LTC and Players Café in Texas are the exact same IGT QR codes that the Texas Lottery itself uses and makes available to the public for use through the official Texas Lottery app.

31. Both the Texas Lottery Commission and International Game Technology (“IGT”), the Commission’s private vendor that assists in day-to-day system management on the Commission’s behalf, provided LTC with the authorization, equipment, and assistance necessary to implement the Commission-approved QR technologies used by LTC in Texas.

32. Since the nearly monthly meetings between Mindell and Metzger in advance of the LTC launch in Texas, the Texas Lottery knew of and provided support to LTC to use a paperless solution to process orders from Texas courier customers.

33. Initially, Lotto.com sought to process paperless orders through an industry API under development at the time and piloted by Texas retailer H-E-B. And, in April 2021, the Texas

Lottery and IGT helped Metzger become a member of a lottery industry API committee co-chaired by the Texas Lottery Commission's general counsel, Bob Biard, to further that effort.

34. IGT Texas head Joseph Lapinski, Biard, and Metzger, held an in-person meeting on this and other courier issues on June 14, 2021 (and, while Mindell did not attend, correspondence indicated that Biard was to update Mindell on the discussion the following day). During that meeting, the Commission approved LTC's continued efforts to adopt a paperless ordering solution.

35. When the H-E-B-piloted API subsequently became a less viable solution, the focus shifted to providing this paperless ordering solution through the QR codes already available in Texas.

36. During the week of June 28, 2021, Mindell provided Metzger approval for Lotto.com and Players Café to use QR codes. Below is correspondence from Metzger to John Riley at IGT documenting Mindell's approval:

**From:** Tom Metzger <tom@lotto.com>  
**Date:** July 1, 2021 at 2:34:11 PM EDT  
**To:** "Riley, Paul" <John.Riley@igt.com>  
**Subject:** Texas API

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Hey Riles-

Hope all is well with you. I got some good news from Ryan last week and caught up with Joe today. Please let me know some convenient times for us to catch up and map this out.

Looking forward to it and have a very happy 4th!

Best,

Tom

Thomas Metzger  
CEO



Lotto.com Inc.  
111 Town Square Place  
Suite 203

37. Then, between September 14 and 16, 2021, IGT-head Lapinski, with ultimate responsibility for Texas operations, shipped a test terminal to LTC, along with the peripheral



lottery equipment necessary for LTC to implement the IGT QR-code playslips utilized by the Texas Lottery Commission for LTC courier orders in Texas.

38. Consistent with testimony that Lapinski has since provided to the Texas Senate, IGT sends such terminals and equipment only where the Commission instructs IGT to send them.

39. LTC went live with QR use in Texas in April 2022. This was LTC's first use of QR codes for ticket order fulfillment in any state. QR codes were in use in Texas by LTC on day one.

40. Texas Lottery Commission leadership visited LTC premises at least three times prior to February 2025. QR codes were in transparent use throughout. The Commission raised no concerns.

41. Even after launch, prompts in the gaming system run by IGT slowed down the ability of couriers to efficiently process orders through QR codes. In particular, a "yes/no" prompt was intended to remind retailers to collect payment for tickets sold after the QR code was scanned by a lottery-issued terminal.

42. Between February 2022 and October 2022, Tom Metzger had numerous written and verbal discussions with Commission leadership and IGT leadership requesting that the prompt be removed.

43. Following those conversations, IGT removed the prompt. IGT acts at the Commission's direction. The Commission again evidenced its support and approval of lottery couriers and their use of QR codes and other technology to facilitate lottery ticket orders in Texas.

**B. After facilitating LTC starting business in Texas, the Commission authorizes LTC to use the Commission's official logos.**

44. On July 25, 2022, Metzger asked Mindell for copies of Commission logos for the LTC courier website.

45. Consistent with Commission practices, Mindell directed Metzger to contact Lapinski and seek the assistance of IGT Texas. Shortly afterwards, Lapinski provided high-quality logo images for LTC's use, further demonstrating the trust and support that the Commission had for lottery couriers like LTC in Texas.

46. Despite the Commission's having provided its logos to LTC for LTC's use in marketing and advertising Texas Lottery products in the state almost three years ago, the Commission recently informed LTC that it cease and desist the allegedly unauthorized use of the Commission's intellectual property. The Commission made this baseless demand notwithstanding its having specifically granted LTC permission to use that very intellectual property.

**C. The Commission repeatedly confirms it has no regulatory jurisdiction over LTC.**

47. According to the Sunset Commission, the Texas Lottery Commission has taken the position that it does not regulate courier operations since at least 2016.

48. And, on several occasions between 2016 and February 2025, the Commission made clear to LTC that it had no regulatory jurisdiction over couriers.

49. On page 44 of the Commission's 2020 annual report,<sup>2</sup> the Commission described the operation of courier services in Texas. The Commission wrote that "[c]ourier service is a private business activity that occurs outside the regulated ticket purchase process. Couriers have no business relationship with the Texas Lottery and the relationships a courier maintains to obtain tickets are with individual retailers in Texas with whom it has its own private working arrangement. Although the Texas Lottery has no authority over couriers, couriers independently publicize the lottery via their websites and advertising and have the potential to generate

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<sup>2</sup> Texas Lottery Commission, 2020 Annual Report and 2021 – 2022 Comprehensive Business Plan, at p. 44, [https://www.texaslottery.com/export/sites/lottery/Documents/legal/meetings/2021/comm\\_meeting\\_08122021\\_SectionIX.pdf](https://www.texaslottery.com/export/sites/lottery/Documents/legal/meetings/2021/comm_meeting_08122021_SectionIX.pdf).

incremental sales. Licensed retailers associated with couriers have emerged as some of the top-selling sales agents in Texas.”

50. The Texas Lottery Commission repeated this position in its 2021 Annual Report and the 2022-2023 Comprehensive Business Plan.<sup>3</sup>

51. The Commission’s former executive director, Gary Grief, and current executive director Ryan Mindell, have each reiterated on numerous occasions that the Commission lacks regulatory jurisdiction over couriers, including under oath. For example:

52. On July 12, 2021, counsel for LTC sent a letter to the Commission requesting confirmation that “no license or other authorization from the Texas Lottery Commission will be required for LTC to provide its lottery courier services in Texas.”

53. One week later, Mindell sent a letter (the “Confirmation Letter”) confirming that LTC would not need a license or other authorization from the Commission. Mindell further stated that “the form of the described transactions [conducted by LTC] does not appear to involve a regulated sale of lottery tickets under the State Lottery Act.”

54. In testimony before the House Appropriations Committee on February 24, 2025, one lawmaker read Mindell numerous prior quotes of Mindell’s confirming, in the lawmaker’s view, the “dogmatic certainty” with which Mindell had asserted a lack of regulatory authority over lottery couriers.

55. LTC has relied on the policy set forth in the Confirmation Letter by doing business in Texas for over three years to date. The Commission never attempted to regulate LTC or any

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<sup>3</sup> Texas Lottery Commission, 2022 Annual Report and 2023 – 2024 Comprehensive Business Plan, at p. 45-47, [https://www.texaslottery.com/export/sites/lottery/Documents/legal/meetings/2023/comm\\_meeting\\_08172023\\_SectionVIII.pdf](https://www.texaslottery.com/export/sites/lottery/Documents/legal/meetings/2023/comm_meeting_08172023_SectionVIII.pdf).

other lottery ticket courier service during that time, nor did it ever indicate it would retreat from the position clearly stated in the Confirmation Letter.

56. To date, LTC has spent millions of dollars in Texas in furtherance of setting up its operations in reliance on the Commission’s unequivocal statements, and to advertise Texas Lottery products to the public.

**D. The Commission solicits LTC’s assistance in addressing “ensured jackpots.”**

57. In April 2023, a so-called lottery syndicate bought 99% of ticket combinations ahead of a drawing held by the Texas Lottery.<sup>4</sup> The syndicate won a \$95 million jackpot.

58. LTC does not support bulk purchases that allow the sale of all or substantially all combinations for a given drawing. And LTC did not participate in the April 2023 sale of tickets to the outside entity seeking to effectively guarantee a jackpot.

59. In fact, courier service systems were not utilized at all to make the bulk purchases that occurred in April 2023. Rather, the purchases were made in-person at licensed retail locations.

60. This unprecedented “bulk purchase” was made possible by and because of the Commission itself—not LTC or any other lottery courier.<sup>5</sup>

61. Prior to April 2023, the Commission made an ill-advised decision to provide almost two dozen terminals to retailers whose sales did not support a business need for the equipment. At least one of the recipients of the additional terminals did not even have an active retailer, which required additional assistance and effort from the Commission to support equipment issuance, processing, and payment remittance.

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<sup>4</sup> See Joe Wallace and Katherine Sayre, *How a Secretive Gambler Called ‘The Joker’ Took Down the Texas Lottery*, THE WALL STREET JOURNAL, April 12, 2025, <https://www.wsj.com/us-news/texas-lottery-gamblers-jackpot-win-40e3d6fb>.

<sup>5</sup> See J. David Goodman, *How Texas Officials Invited the Rigging of the State Lottery*, THE NEW YORK TIMES, April 20, 2025, <https://www.nytimes.com/2025/04/20/us/rigged-texas-lottery.html>.

62. The bulk purchase resulting in the April 2023 ensured jackpot utilized these terminals at these retailers.

63. In subsequent self-serving testimony to the Senate Finance Committee, Mindell has described the issuance of terminals to these marginal retailers as the result of a bad decision made by a “low level” lottery employee. Mindell asserted that while it is now clear to him in hindsight that these marginal retailers were requesting and receiving terminals in order to facilitate the bulk purchase, “we” at the Commission “did not know that at the time. And so, again, the approvals at that time were at a very low staff level and . . . we hadn’t experienced this before. So we’ve learned from that.”

64. However, the process of obtaining additional terminals in any jurisdiction can be difficult. It is highly unusual for that many terminals to be requested on such a short timeframe, and even more so for decisions of that sort to be purportedly made “at a very low staff level.”

65. In April 2023, LTC learned, through its CEO, Tom Metzger, that one retailer with low sales was receiving these additional terminals from the Commission. This raised a red flag for Metzger, particularly given that Metzger had learned that the retailer intended to help the bulk purchaser attempt to effectively guarantee the Texas Lotto jackpot.

66. Metzger had concerns that such an endeavor would be at the very least inappropriate and unfair. So Metzger called Joe Lapinski with IGT (the Commission’s vendor) to suggest that the retailer should not get additional terminals to support an effort to buy out a jackpot.

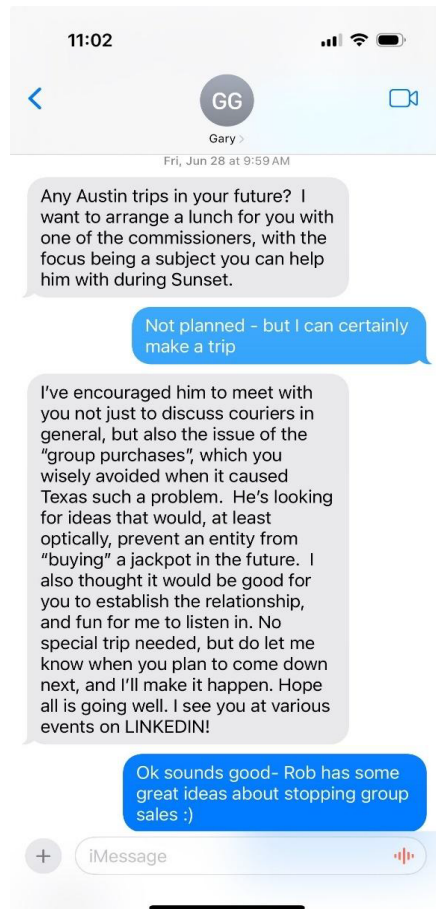
67. Lapinski told Metzger that IGT sends and installs terminals where the Texas Lottery Commission directs them to be sent and installed. Lapinski noted that if Metzger had concerns, Metzger should contact the Commission.

68. Metzger then called Gary Grief, the Executive Director of the Commission at the time. Metzger again expressed his concern that the retailer should not get additional terminals to support an effort to buy out the jackpot.

69. Grief did not act on Metzger's concerns. Instead, Grief responded by saying that he thought Metzger was a "free market guy."

70. Later, following the outside group's successful efforts to guarantee the April 2023 jackpot, Grief had come around to the wisdom of Metzger's warning. Grief effectively apologized to Metzger, noting that LTC had "wisely avoided" ensured jackpot schemes from occurring within LTC's business.

71. And Grief specifically solicited Metzger's advice about how to prevent such schemes from happening again in the future:



72. Because Grief retired, the contemplated Commission-LTC meeting to discuss how to avoid ensured jackpots never took place.

73. Rather, the Commission undertook an unprecedented campaign of effectively making it impossible for lottery courier services to operate in Texas. LTC, despite having had nothing to do with the April 2023 ensured jackpot and having been solicited by the Commission to help avoid such jackpots from reoccurring in the future, was swept up in the Commission's overreaching enforcement actions.

**E. The Commission reverses course and undertakes unprecedented regulatory activity.**

74. On February 14, 2025, the Commission, through its former Executive Director Ryan Mindell, sent a ten-page letter to Texas Attorney General Ken Paxton requesting guidance about whether the Commission could regulate couriers. *See* Exhibit C, RQ-0582-KP.

75. On February 24, 2025, before hearing back from the Attorney General's office, Mindell publicly issued a document entitled "Texas Lottery Commission Policy Statement on the Prohibition of Lottery Ticket Courier Services" (the "Policy Statement"). *See* Exhibit D.

76. The Policy Statement abruptly jettisons the nearly four-year-old policy set forth in the Confirmation Letter. Mindell's new policy, decreed without notice-and-comment rulemaking, is as follows: "[The Commission] believes couriers are not legal under Texas law and the [Commission] will exercise its discretion under the SLA to take all appropriate action to stop this activity from occurring, including identifying and investigating any licensed lottery retailer suspected of working in concert with a courier and initiating an enforcement action to revoke the retailer's sales agent license."

77. On February 25, 2025, the Commission issued a news release titled "Texas Lottery Implements Policy-Consistent Actions" (the "Implementation Actions;" together, the Policy

Statement and the Implementation Actions are the “Interim Rule”). The Implementation Actions consist of unprecedented investigations into lottery ticket courier services and a new requirement that each Texas lottery retailer operate no more than five lottery terminals. The terminal limit is meant to render the couriers’ business model infeasible, as without more than five terminals per retail location, courier services are not profitable.

78. On March 4, 2025, the Commission approved a proposal to prohibit lottery ticket courier services under the Texas Administrative Code as follows (the “New Rule”) (Exhibit E):

- a. 16 TAC § 401.158, “Suspension or Revocation of License,” would permit the Commission revoke a lottery ticket sales agent license if a sales agent “knowingly sells tickets to, works with, or otherwise assists a lottery ticket courier service.”
- b. 16 TAC § 401.160, “Standard Penalty Chart,” would list the penalty for selling to or working with a courier as license revocation.
- c. 16 TAC §401.355, “Retailer Rules,” would provide: “Retailers shall not knowingly sell tickets to, work with, or otherwise assist a lottery ticket courier service.”

79. By providing that any licensed sales agent would lose its license by working with a lottery ticket courier service, the New Rule effectively guarantees that LTC will no longer be able to operate in Texas.

80. The public comment period for the proposed amendments ends April 22, 2025, after which the Commission may adopt the proposed amendments.

## V. CAUSES OF ACTION

### **Count 1: Declaratory Judgment Pursuant to Texas Government Code Section 2001.038 Regarding Validity of the Interim Rule**

81. LTC incorporates by reference all preceding paragraphs.



82. As a commission, the Texas Lottery Commission is a state agency pursuant to the APA. TEX. GOV'T CODE § 2001.003(7).

83. The Interim Rule constitutes a state agency statement of general applicability that implements, interprets, and prescribes state law and policy and describes the procedure or practice requirements of a state agency. TEX. GOV'T CODE § 2001.003(6)(A). “The term ‘general applicability’ under the APA references ‘statements that affect the interest of the *public* at large such that they cannot be given the effect of law without public input.’” *El Paso Hosp. Dist. v. Texas Health & Human Servs. Comm'n*, 247 S.W.3d 709, 714 (Tex.2008) (emphasis added).

84. The Interim Rule included the amendment or repeal of a prior rule. TEX. GOV'T CODE § 2001.003(6)(B). Prior to issuing the Interim Rule, the Commission did not regulate couriers and represented that it lacked the authority to do so in the Confirmation Letter. The Interim Rule announces that the Commission will be regulating and investigating couriers and that it has the authority to do so. This overnight, 180-degree change is “a new interpretation of the law that the [Commission] never used previously.” *Abbott v. Doe*, 691 S.W.3d 55, 81 (Tex. App. 2024).

85. The Interim Rule does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures. TEX. GOV'T CODE § 2001.003(6)(B). Deeming couriers illegal under the State Lottery Act affects the private rights and procedures of LTC and other couriers, as do the Commission's investigations into couriers. Similarly, deeming LTC's use of IGT QR codes as illegal affects the private rights and procedures of LTC. The Interim Rule does not discuss or concern internal Commission management or organization.

86. Accordingly, the Interim Rule is a rule pursuant to Texas Government Code § 2001.003, and the Commission was required to follow the APA’s formal rulemaking procedures before adopting them.

87. Section 2001.023(a) of the Texas Government Code provides: “A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule.” This provision ensures an opportunity for public notice and comment before a state agency adopts and enforces a new rule. The Commission violated Section 2001.023(a) because it adopted the Interim Rule, began investigating couriers, and began confiscating terminals in the space of two days.

88. LTC has a legal right to pursue its chosen occupation. “Included among the [Texas Constitution’s] protected liberty interests is the right to engage in any of the common occupations of life.” *Mosley v. Texas Health & Hum. Servs. Comm’n*, 593 S.W.3d 250, 264 (Tex. 2019). The New Courier Rule interferes with and impairs LTC’s legal right to pursue its occupation as a courier service by declaring couriers illegal under the State Lottery Act and by intentionally limiting available terminals to a number that makes the lottery courier business model infeasible in Texas. “[T]he purpose of [Texas Government Code] section 2001.038 ... ‘is to obtain a final declaration of a rule's validity before the rule is applied.’” *Texas Dep’t of Pub. Safety v. Salazar*, 304 S.W.3d 896, 903 (Tex. App.—Austin 2009, no pet.).

89. Therefore, LTC has a right to a declaratory judgment determining the validity or applicability of the Interim Rule pursuant to Texas Government Code § 2001.038.

**Count 2: Declaratory Judgment Pursuant to Texas Government Code Section 2001.038  
Regarding Validity of the New Rule**

90. LTC incorporates by reference all preceding paragraphs.

91. As a commission, the Texas Lottery Commission is a state agency pursuant to the APA. TEX. GOV'T CODE § 2001.003(7).

92. Section 2001.038 of the Texas Government Code allows a person to obtain a declaratory judgment concerning the validity or applicability of an administrative agency rule if the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.

93. The New Rule interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of LTC's—namely, the LTC's legal right to pursue its chosen occupation. “Included among the [Texas Constitution's] protected liberty interests is the right to engage in any of the common occupations of life.” *Mosley v. Texas Health & Hum. Servs. Comm'n*, 593 S.W.3d 250, 264 (Tex. 2019). The New Rule interferes with and impairs LTC's legal right to pursue its occupation as a courier service by effectively prohibiting couriers from doing business in Texas altogether. By making it impossible for licensed retailers to do business with courier services like LTC, the Commission makes it impossible for LTC to purchase Texas lottery tickets—and therefore, makes LTC's business impossible.

94. As alleged herein, the Commission has publicly stated, in writing and under oath before the Texas Legislature, that it has no jurisdiction over couriers or ability to regulate them. Consistent with these admissions, the Commission has cited no existing statutory authority permitting it to regulate couriers.

95. Moreover, the Commission's prior conduct with regard to LTC—authorizing LTC to use the Commission's official logos in LTC's marketing and branding efforts; changing its internal QR code software so that LTC could utilize QR code technology for its customers; offering equipment and assistance to LTC; and soliciting LTC's assistance in helping the Commission

avoid “ensured jackpots”—confirm that *responsible* courier operators, like LTC, could not conceivably have any impact on “integrity, security, honesty, and fairness in the operation and administration of the Texas Lottery,” which is the legal justification the Commission offers to support the enactment of the New Rule.

96. “[T]he purpose of [Texas Government Code] section 2001.038 ... ‘is to obtain a final declaration of a rule's validity before the rule is applied.’” *Texas Dep't of Pub. Safety v. Salazar*, 304 S.W.3d 896, 903 (Tex. App.—Austin 2009, no pet.). The New Rule will interfere with LTC’s rights to operate its business in Texas by making it impossible for LTC to purchase lottery tickets from licensed retailers.

97. Therefore, LTC has a right to a declaratory judgment determining the validity or applicability of the New Rule pursuant to Texas Government Code § 2001.038.

**Count 3: Declaratory Judgment Pursuant to Chapter 37 of the  
Texas Civil Practice & Remedies Code**

98. LTC incorporates by reference all preceding paragraphs.

99. LTC seeks the declarations listed in the following paragraphs of this section in connection with the ultra vires conduct of the Commission’s executive director—formerly Mindell, now Rey.

100. Rey serves as the Commission’s Acting Deputy Executive Director, making him a government official. “[A] suit against a state official can proceed even in the absence of a waiver of immunity if the official's actions are ultra vires.” *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017).

101. Until issuing the Policy Statement, Rey and the Commission never regulated couriers like LTC. To the contrary, the Confirmation Letter represented to LTC that the Commission lacks authority to regulate LTC under the SLA: “[T]he form of the described

transactions [conducted by LTC] does not appear to involve a regulated sale of lottery tickets under the State Lottery Act.”

102. The Executive Director acted outside the scope of his authority by exercising a power the SLA did not grant to him or to the Commission. “An officer acts without legal authority if he *exceeds the bounds of his granted authority* or if his acts conflict with the law itself.” *Matzen v. McLane*, 659 S.W.3d 381, 388 (Tex. 2021) (internal quotations omitted) (emphasis added). Therefore, the executive director at the time performed an ultra vires act when he issued the Policy Statement.

103. “[A] plaintiff bringing an ultra vires claim must affirmatively allege facts to support a finding that he or she faces an ongoing violation of their rights.” *Id.* In Count 1, *supra*, LTC alleges that the Policy Statement is an ongoing violation of LTC’s right to pursue an occupation of its choosing.

104. Therefore, the Court should issue a declaratory judgment that the Executive Director performed an ultra vires act when he issued the Policy Statement, and such ultra vires acts continue while the Policy Statement continues to be enforced.

105. LTC has no other avenue to obtain a remedy for this unlawful conduct because, outside the context of an ultra vires claim, the Executive Director is immune from suit due to governmental immunity.

106. LTC requests that the Court enter a judgment declaring that (i) as executive director of the Commission, the issuance of the Policy Statement is without legal authority and in violation of the Government Code, and (ii) Rey, as the current acting deputy executive director of the Commission, may not order the regulation or investigation of lottery couriers pursuant to the Texas Government Code.

#### **Count 4: Application for Temporary Injunction and Permanent Injunctive Relief**

107. LTC incorporates by reference all preceding paragraphs.

108. LTC seeks injunctive relief pursuant to Section 65.011(5) of the Texas Civil Practice and Remedies Code because the Commission's affirmative actions post a threat of imminent and irreparable harm to LTC.

109. If the Commission is not restrained and enjoined, LTC will suffer damages that will be incapable of being measured by any certain pecuniary standard before notice is given and a hearing is held on Plaintiff's Application for Temporary Injunction. To the extent that LTC could be adequately compensated (which it disputes) it would be exceedingly difficult, if not impossible, to estimate the amount of damages caused by the Commission's affirmative actions.

110. The harm to LTC is imminent because the Commission may take action on the New Rule as soon as its next regular meeting on April 29, 2025. By proposing and imminently enacting the New Rule, the Commission has made clear its intent to prevent lottery ticket courier services from operating in the State of Texas. By effectively making it impossible for licensed retailers to sell tickets to LTC, the Commission will make LTC's business model infeasible and force LTC to cease operations in Texas.

111. Moreover, enforcement of the New Rule—as an illegal rulemaking under the APA—must be enjoined as to LTC. As set forth above and herein, LTC is likely to succeed on its claim that the New Rule is invalid for interfering with LTC's legal rights and privileges. The court is empowered to issue an injunctive order in this case, because LTC has raised a valid claim for relief under Section 2001.038 of the Texas Government Code. *See Tex. Dep't of Public Safety v. Salazar*, 304 S.W.3d 896, 903 (Tex. App.—Austin 2009, no pet.).

112. LTC stands ready, willing, and able to post a bond as contemplated by the Texas Rules of Civil Procedure if deemed necessary by this Court. LTC would further show that, given that the Commission and Mindell have taken affirmative actions to violate the APA, a bond in an amount not more than \$1000 will be sufficient to protect Defendants.

113. LTC has alleged causes of action against the Defendants, as indicated in this Petition, and has demonstrated a probable right of recovery and likelihood of success on the merits. LTC requests that the Court issue a temporary restraining order, a temporary injunction, and a permanent injunction enjoining the Commission and Rey from:

- a. Enforcing the New Rule;
- b. Continuing its investigations into lottery ticket courier services;
- c. Regulating lottery ticket courier services absent any statutory authority to do so;
- d. Limiting each lottery ticket retailer to no more than five lottery terminals without first following the notice-and-comment rulemaking procedures set forth by Section 2001.023 of the Texas Government Code;
- e. Engaging in further ultra vires conduct outside the scope of authority conferred upon the Commission and Rey by the SLA.

#### **VI. ATTORNEYS' FEES**

114. LTC is entitled to recover attorneys' fees and costs for this action pursuant to Texas Civil Practice & Remedies Code § 37.009.

#### **VII. PRAYER**

Lotto.com Inc. respectfully prays that Defendants, the Texas Lottery Commission and Ryan Mindell, in his official capacity as executive director, be cited to appear and answer herein, and that upon final trial, Plaintiff have judgment against Defendants for the following relief:

- a. Declaratory and injunctive relief as set forth herein;
- b. Attorneys' fees and costs; and
- c. All other relief that law and equity may require.

Date: April 24, 2025

Respectfully submitted,

/s/ Lynn Hamilton Butler

Lynn Hamilton Butler

Texas Bar No. 03527350

[Lynn.Butler@huschblackwell.com](mailto:Lynn.Butler@huschblackwell.com)

Tim P. Ribelin

Texas Bar No. 24091055

[Tim.Ribelin@huschblackwell.com](mailto:Tim.Ribelin@huschblackwell.com)

HUSCH BLACKWELL LLP

111 Congress Avenue, Suite 1400

Austin, Texas 78701

T (512) 472-5456

F (512) 479-1101

Ben Stephens

Texas Bar No. 24098472

[Ben.Stephens@huschblackwell.com](mailto:Ben.Stephens@huschblackwell.com)

HUSCH BLACKWELL LLP

600 Travis St., Suite 2350

Houston, Texas 77002

T (713) 647-6800

F (713) 647-6884

**COUNSEL FOR LTC TEXAS, LLC**



**VERIFICATION**


STATE OF NEW JERSEY §  
  §  
COUNTY OF HUDSON §

My name is Thomas Metzger. I am over 18 years of age, of sound mind, and capable of making this verification.

I am the President of LTC Texas, LLC, and as such am authorized to make this verification in support of LTC Texas, LLC's application for temporary injunction.

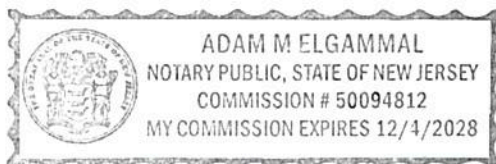
The factual statements contained in the foregoing petition are true and correct to the best of my knowledge.

Executed in Hudson County, State of New Jersey, on the 23rd day of April, 2025.

  
\_\_\_\_\_  
Thomas Metzger

Subscribed and sworn to before me, the undersigned authority, on this 24 day of April, 2025, to certify which witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public



# **EXHIBIT A**

*Commissioners:*

J. Winston Krause,  
*Chairman*

Carmen Arrieta-Candelaria

Doug Lowe

Robert Rivera



# TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

Michael P. Farrell, *Charitable Bingo Operations Director*

October 12, 2018

Kerry N. Cammack  
Cammack & Strong, P.C.  
919 Congress Avenue, Suite 1400  
Austin, TX 78701

RE: Jackpocket, Inc. request for confirmation from the Texas Lottery Commission

Mr. Cammack:

Gary Grief, Executive Director of the Texas Lottery Commission (the "Commission"), asked me to respond to your October 8, 2018 letter asking for confirmation on behalf of Jackpocket, Inc. ("Jackpocket") that "no license or other authorization from the Texas Lottery Commission will be required in order for Jackpocket to provide its services in Texas".

The Commission is mandated by statute to exercise strict control and close supervision over all lottery games conducted in Texas to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery. In furtherance of that directive, under the State Lottery Act, any non-employee of the Commission authorized to sell lottery tickets in Texas must be licensed as a sales agent by the TLC. Therefore, if Jackpocket were selling Texas Lottery tickets, then Jackpocket would be required to apply for and obtain a sales agent license. The Commission does not provide any other type of "authorization" with regard to selling lottery tickets. Accordingly, if Jackpocket does not sell lottery tickets, then no sales agent license would be required.

Please note certain statutory prohibitions apply to the licensing of sales agents and sale of Texas lottery tickets. Specifically, the Commission may not issue a license to a person engaged in business exclusively as a sales agent, nor may a license be transferred to a different location. Each sales license issued acts as authorization to sell lottery tickets at one specific location only. These are only a few of the requirements Jackpocket would have to satisfy if it applied for a license to sell lottery tickets in Texas.

In summary, based on our understanding of the description of services Jackpocket has indicated it will provide, as stated in your October 8 letter, the State Lottery Act does not require Jackpocket to obtain a license or other authorization from the Commission. This conclusion is based on the fact that the form of the described transactions does not appear to involve a regulated sale of lottery tickets under the State Lottery Act.

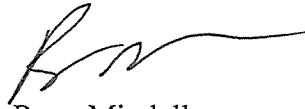
P.O. Box 16630 • Austin, Texas 78761-6630

Phone (512) 344-5000 • FAX (512) 478-3682 • Bingo FAX (512) 344-5142

txlottery.org • txbingo.org

Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'RM', with a long horizontal flourish extending to the right.

Ryan Mindell  
Lottery Operations Director

cc: Gary Grief, Executive Director  
Bob Biard, General Counsel

# **EXHIBIT B**

*Commissioners:*

Robert G. Rivera,

*Chairman*

Cindy Fields

Mark A. Franz

Erik C. Saenz

Jamey Steen



# TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

LaDonna Castañuela, *Charitable Bingo Operations Director*

July 19, 2021

Lynn Butler  
Husch Blackwell  
111 Congress Avenue, Suite 1400  
Austin, TX 78701

*via email: [lynn.butler@huschblackwell.com](mailto:lynn.butler@huschblackwell.com)*

RE: LTC Texas LLC request for confirmation from the Texas Lottery Commission

Mr. Butler:

Gary Grief, Executive Director of the Texas Lottery Commission (the "Commission"), asked me to respond to your July 12, 2021 letter asking for confirmation on behalf of LTC Texas LLC ("LTC") that "no license or other authorization from the Texas Lottery Commission will be required for LTC to provide its lottery courier services in Texas."

The Commission is mandated by statute to exercise strict control and close supervision over all lottery games conducted in Texas to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery. In furtherance of that directive, under the State Lottery Act, any non-employee of the Commission authorized to sell lottery tickets in Texas must be licensed as a sales agent by the Commission. Therefore, if LTC were selling Texas Lottery tickets, then LTC would be required to apply for and obtain a sales agent license. The Commission does not provide any other type of authorization with regard to selling lottery tickets. Accordingly, if LTC does not sell lottery tickets, then no sales agent license would be required.

Please note certain statutory prohibitions apply to the licensing of sales agents and sale of Texas Lottery tickets. Specifically, the Commission may not issue a license to a person engaged in business exclusively as a sales agent, nor may a license be transferred to a different location. Each sales agent license issued acts as authorization to sell lottery tickets at one specific location only. These are only a few of the requirements LTC would have to satisfy if it applied for a license to sell lottery tickets in Texas.

In summary, based on our understanding of the description of services LTC has indicated it will provide, as stated in your July 12 letter, the State Lottery Act does not require LTC to obtain a license or other authorization from the Commission. This conclusion is based on the fact that the form of the described transactions does not appear to involve a regulated sale of lottery tickets under the State Lottery Act.

P.O. Box 16630 • Austin, Texas 78761-6630

Phone (512) 344-5000 • FAX (512) 478-3682 • Bingo FAX (512) 344-5142

[texaslottery.com](http://texaslottery.com) • [txbingo.org](http://txbingo.org)

Please let me know if I can be of further assistance.

Sincerely,



Ryan Mindell  
Lottery Operations Director

cc: Gary Grief, Executive Director  
Bob Biard, General Counsel

# **EXHIBIT C**



Commissioners:  
Robert G. Rivera,  
*Chairman*  
Cindy Fields  
Mark A. Franz  
Clark E. Smith  
Jamey Steen



**RECEIVED**

By Opinion Committee at 1:32 pm, Feb 14, 2025

# TEXAS LOTTERY COMMISSION

Ryan Mindell, *Executive Director*

LaDonna Castañuela, *Charitable Bingo Operations Director*

**RQ-0582-KP**

February 14, 2025

The Honorable Ken Paxton  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

Dear General Paxton:

Pursuant to Section 402.042 of the Texas Government Code, I respectfully request an official opinion on several questions relating to the Texas Lottery Commission's (TLC's) authority over lottery ticket courier companies (couriers) whose business involves commercial transactions where a person purchases a lottery ticket on behalf of a different person.

A brief discussion of the background regarding courier services and the TLC's relevant jurisdiction under the State Lottery Act, Chapter 466, Texas Government Code (SLA), may provide useful context for the questions on which I seek your opinion.

## **Courier Services in Texas**

Couriers are service providers that take orders from customers online, either through an Internet website on a computer, or by using an application on a mobile device. Upon receipt of funds from a customer, the courier sends a representative to purchase lottery tickets in person from a licensed brick-and-mortar lottery retailer with whom the courier has a private business arrangement. The courier transmits a scanned image of the ticket to the customer and retains the ticket until it is determined to be a winning or non-winning ticket. By law, winning tickets with prizes of \$600 or more must be claimed at a Texas Lottery claim center<sup>1</sup> and the courier will arrange to deliver those tickets to the customer to be claimed.

Our understanding is that most courier transactions involve the purchase of draw game tickets where a drawing to determine a winner occurs at a later time. But some couriers also sell scratch ticket games where winners (and non-winners) are pre-determined and a ticket's winning status can be determined at the time of purchase. The courier will sometimes offer a "digital play" experience for scratch tickets where the customer can remove a digital representation of latex from the picture of the scratch ticket.

We understand that couriers differ in operational details. For instance, we are aware of some couriers who purchase tickets from established Texas Lottery retailers with whom the courier does

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<sup>1</sup> SLA §466.402.

not have any special affiliation. Other couriers have created their own separate legal entities that can obtain a retailer's license; in this arrangement, the courier and the retailer are under common ownership. Some couriers accept customer orders exclusively via an application on a mobile phone/device, while others accept orders via a (non-telephone) computer. Some couriers may take orders both ways. Regardless of the potential differences, all couriers charge a fee for their service to purchase and manage their customers' tickets. Some media articles have described this service as analogous to an "Uber Eats" service for lottery tickets.<sup>2</sup> Accordingly, in many scenarios a retailer may have no idea whether the individual who purchases a lottery ticket in person at the point of sale is buying the ticket for himself, a relative, a neighbor, or a courier's customer.

Couriers began operating in Texas sometime between 2015 and 2019. The TLC has noted this development in both its Agency Strategic Plan and Agency Business Plan for the last several years. The TLC also noted the burgeoning industry and the TLC's lack of clarity on whether it could regulate couriers in several open meetings<sup>3</sup> and as the agency's sole Major Issue in its Sunset Self-Evaluation Report as it started Sunset review.<sup>4</sup> The Legislative Budget Board estimated couriers in Texas accounted for about \$173 million in fiscal year 2023, which represents more than 9 percent of TLC's total draw game sales.

Some couriers, prior to starting operations, have asked whether they need to obtain licenses or other forms of permission before performing their contemplated services in Texas. Based on the couriers' descriptions of their services (described above), the TLC determined the SLA does not require a courier to obtain a license or other authorization from the TLC. This conclusion is based on the TLC's determination that the downstream transaction between a courier and a customer does not appear to involve a regulated sale of lottery tickets like the courier's original purchase of a ticket from a retailer at the point of sale. Accordingly, there appears to be no existing statutory authority for the agency to regulate couriers as if they were lottery sales agents. Just as the TLC cannot regulate a father buying scratch-off lottery tickets for his children's Christmas stockings<sup>5</sup> or an office creating a pool to purchase tickets,<sup>6</sup> the TLC has concluded it cannot regulate individuals purchasing tickets in person on behalf of another individual with effective consent.

### **The TLC's Authority Under the State Lottery Act**

The TLC is charged with generating revenue for the State of Texas to fund public education and veterans' services through the responsible management and sale of lottery tickets. Thus, the TLC has both an operational role with respect to running the lottery, and a regulatory role focused on the licensing and regulation of retailers who sell lottery tickets and the payment of prizes to holders of winning tickets.

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<sup>2</sup> See Susanna Sudborough, *Jackpocket Bets on Becoming Uber Eats of Lottery Tickets*, AUSTIN AMERICAN STATESMAN (June 27, 2019) at A1.

<sup>3</sup> See TLC Commission Meeting Transcript, April 13, 2023 at 25-26; TLC Commission Meeting Transcript, June 21, 2023 at 22-28; TLC Commission Meeting Transcript, August 17, 2023 at 45-47; TLC Commission Meeting Transcript, August 7, 2024 at 34; TLC Commission Meeting Transcript, October 29, 2024 at 17 and 42.

<sup>4</sup> See Texas Lottery Commission Sunset Self-Evaluation Report, September 2023 at 115-17.

<sup>5</sup> See SLA §466.405 (establishing that minors may be entitled to prize money on winning tickets).

<sup>6</sup> See SLA §466.015 (authorizing the TLC to adopt rules to govern the division of a prize among members of a group purchase pool).

Interpreting the TLC’s statutory authority. As a state agency, the TLC is mindful that its authority comes from the Legislature. In interpreting the scope of its authority, the TLC is keenly aware that gambling is a sensitive topic. It is a primary aim of the TLC to be respectful of the opinions of Texans who are opposed to gambling and the expansion of gambling. Accordingly, in the absence of express statutory authority, the TLC interprets its authority (including any “implied powers”)<sup>7</sup> narrowly, without seeking to expand its jurisdiction beyond the plain meaning of the language in the SLA. We understand this to be the appropriate approach for construing statutes as stated by Texas courts.<sup>8</sup>

For instance, the SLA contains no reference to the Internet and does not expressly prohibit the sale of lottery tickets via the Internet. However, the TLC understands the Legislature’s concern regarding the use of the Internet in connection with the lottery and has publicly stated its position on several occasions: The sale of tickets over the Internet is a significant policy decision best determined by the Legislature. In the absence of express statutory authority, the TLC has no intention of pursuing Internet lottery ticket sales.<sup>9</sup>

The TLC has taken a similar approach to courier services. As with the Internet, the SLA does not address the activities of third-party courier services. This determination was confirmed in the last legislative session by the Senate Research Center in its analysis of the committee substitute for S.B. 1820 (relating to the prohibited play and facilitation of play of a lottery game by telephone or through the Internet).<sup>10</sup>

Courier activities involve entities other than, and in addition to, a licensed retailer. A courier’s activities occur prior to and following the purchase of a lottery ticket in person at a licensed brick-and-mortar retail location, activities not expressly addressed in the SLA. Thus, as with the issue of the TLC selling lottery tickets via the Internet, the TLC believes that the regulation or prohibition of courier service is a significant policy decision best determined by the Legislature. The TLC is concerned that, if it asserted jurisdiction over courier service without express authority,

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<sup>7</sup> The TLC understands that “when the Legislature expressly confers a power on an agency, it also impliedly intends that the agency have whatever powers are reasonably necessary to fulfill its express functions or duties,” but, in determining the TLC’s implied powers under the SLA, we are mindful of the admonition of Texas courts that “an agency has no authority to ‘exercise what is effectively a new power, or a power contradictory to the statute, on the theory such as the [sic] power is expedient for administrative purposes.’” *Liberty Mut. Ins. Co. v. Adcock*, 412 S.W.3d 492, 494 (Tex. 2013) (citing *Pub. Util. Comm’n of Tex. v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 316 (Tex.2001)).

<sup>8</sup> See *Liberty Mut. Ins. Co.*, 412 S.W.3d at 494 (“The plain meaning of the text, given the context of the statute as a whole, provides the best expression of legislative intent”); *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009) (“The meaning of a statute is a legal question..... Where text is clear, text is determinative of that intent....”) (internal citations omitted).

<sup>9</sup> “The TLC strongly believes that conducting lottery drawings via the Internet and the sale of lottery tickets via the Internet are both policy decisions best determined by the Texas Legislature. In the absence of express authority, the TLC has no intention of pursuing Internet lottery sales or conducting drawings via the Internet.” TLC Brief to the Attorney General of Texas in Opinion Request RQ-1037-GA at 2-3 (Feb. 22, 2012). “[W]e have concluded that, since the State Lottery Act neither expressly authorizes nor prohibits the Internet sell [sic] of lottery tickets, that the sale of Texas Lottery tickets over the internet is a significant policy decision best determined by the Legislature. As a result, in the absence of such express authority, we have no intention of pursuing internet lottery sales.” TLC Commission Meeting Transcript, Feb. 2, 2012 at 54 (Statement of Gary Grief).

<sup>10</sup> See Senate Research Center Bill Analysis of C.S.S.B. 1820 of the 88<sup>th</sup> Legislature at 1 (“Third-party couriers are not comprehended in current law....”).

it would be interpreting its implied powers too broadly, contrary to the Legislature’s expectations, by exercising “what is effectively a new power . . . on the theory such . . . [a] power is expedient for administrative purposes,”<sup>11</sup> contrary to Texas law.

The TLC closely follows the directives of the Texas Legislature and would promptly implement the regulation or prohibition of courier services, should it be authorized by the legislature, either explicitly or implicitly in statute. But the TLC is also mindful of the limits on its authority, and does not seek to expand its powers without legislative directive. The TLC is uncertain what authority exists with respect to courier services and is hesitant to assume jurisdiction without clear direction. The TLC is also concerned about giving the appearance of arbitrary enforcement by selectively asserting jurisdiction on some—but not all—persons that purchase tickets for another person.

Licensing retailers. The TLC interprets its jurisdiction over the sale and redemption of lottery tickets, as it is relevant to a discussion of couriers, as encompassing two “windows” of activities: (1) the licensing and oversight of Texas Lottery ticket sales agents (retailers), including enforcing requirements governing the in-person sale of lottery tickets at a physical, licensed location, and (2) the payment of prizes, either by a licensed retailer (for prizes under \$600) or at a TLC claim center (for any prize). This discussion will focus on the licensing and regulation of retailers as it relates to their relationship with couriers.

Two SLA provisions address the standards for the TLC to approve, suspend, or revoke a retailer’s license. SLA §466.155(a)<sup>12</sup> is the more detailed of the two statutes, essentially setting forth a checklist of eligibility criteria (see Attachment 1 hereto). The other licensing statute, SLA §466.151(e),<sup>13</sup> provides that the Lottery Operation Director may license a person only if “the director finds that the person’s experience, character, and general fitness are such that the person’s participation as a sales agent will not detract from the integrity, security, honesty, and fairness of the operation of the lottery.” While the SLA elsewhere contains several criminal offense statutes enforced by law enforcement agencies, the TLC’s enforcement authority as set forth in §466.155 is limited to the suspension or revocation of a retailer’s license. The SLA does not specify that the sale of a lottery ticket to a person other than the person who is playing that lottery game is a basis for suspension or revocation.

Prohibition of playing a lottery game/selling tickets by telephone. As noted above, the SLA contains no reference to courier services, nor to use of the Internet in connection with the purchase and sale of lottery tickets. However, the SLA does contain a single reference to the TLC’s duty under its rulemaking authority to adopt rules “governing the . . . enforcement of prohibitions on a person playing a lottery game by telephone.”<sup>14</sup> The SLA does not further address such prohibitions, their scope, or what they entail. Pursuant to that statutory authority, for decades the TLC by rule has prohibited licensed retailers from selling tickets by telephone.<sup>15</sup> From time to time, the TLC

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<sup>11</sup> *Liberty Mut. Ins. Co.*, 412 S.W.3d at 494.

<sup>12</sup> (Denial of Application or Suspension or Revocation of License.)

<sup>13</sup> (License Required.)

<sup>14</sup> SLA §466.015(b)(4).

<sup>15</sup> 16 Tex. Admin. Code §§401.158(b)(28) (Suspension or Revocation of License) (the TLC may suspend or revoke a license if a licensee “sells tickets over the telephone”); 401.160 (Standard Penalty Chart); and 401.355(a) (Restricted Sales) (“Retailers shall not sell lottery tickets by mail, phone, fax, or other similar method of communications...”).

has suspended retailer licenses when TLC investigators established that a licensed retailer (or their employee) arranged to sell tickets over the telephone.

Prohibition of minors purchasing lottery tickets. The SLA prohibits the sale of a lottery ticket to a minor.<sup>16</sup> The TLC has suspended retailer licenses when TLC investigators established that a licensed retailer sold a ticket to a minor. In a specially called meeting in September 2024, the TLC proposed amending its rule to reflect a zero tolerance policy for any retailer selling lottery tickets to minors.<sup>17</sup> Those rules were adopted in October 2024.<sup>18</sup> While lottery retailers are held to a high standard based on the SLA prohibition, the agency currently has no information on whether couriers are selling to minors, including what, if any, age verification measures are in place for courier transactions.

### **The TLC's 2015, 2020, and 2024 Rules Changes**

In 2015 and 2020, the TLC made a series of rules changes to add additional entries of play options for players (including a QR code on the official TLC app) and generally standardized the rules governing its games. These rules were not intended to facilitate or legalize courier activity in any way. In a question-and-answer session during the proposal of the 2015 rules, staff made clear that the changes were not intended to facilitate or allow the purchase or play of lottery tickets online (see Attachment 2 hereto). In its 2020 rule changes, the TLC removed certain duplicative language regarding being present at the terminal along with other clarifying changes (see Attachment 3 hereto). Notably, neither rules change modified the prohibition on a lottery retailer selling by phone.

In 2024, the TLC proposed changes to its lottery rules to revert some of the 2020 rules changes and otherwise address what the Sunset Advisory Commission had identified as rulemaking gaps. This included clarifying whether internet sales of lottery products are prohibited and an explanation of what it means for a person to engage in business exclusively as a sales agent. As made clear during the proposal of these rules, staff stated that the TLC did not intend to facilitate courier services with its earlier rulemaking.<sup>19</sup> In reverting some of the 2020 rules changes, the TLC did not change how it applied any of the rules with regard to couriers and retailers that work with couriers.

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<sup>16</sup> SLA §466.015(b)(3).& §466.3051.

<sup>17</sup> TLC Commission Meeting Transcript, Sept. 11, 2024 at 5 (Statement of Robert Rivera).

<sup>18</sup> TLC Commission Meeting Transcript, Oct. 29, 2024 at 11.

<sup>19</sup> TLC Commission Meeting Transcript, October 29, 2024 at 16-17 (Statement of Ryan Mindell).

## Questions

I request your opinion on several questions regarding the TLC's authority, if any, to regulate courier services and/or to take action against retailers working with couriers.

1. *Does the TLC have regulatory authority over downstream transactions between a courier and its customer?*
2. *If so, what is the basis for and extent of that authority? For instance, can the TLC revoke the license of or deny an application from a point-of-sale retailer based the interactions of a courier with a downstream third party? Can the TLC take any action against a courier directly for actions taken after the original sale of a lottery ticket?*
3. *Would the business activities undertaken by a courier to convey a lottery ticket already purchased in a sale from a retailer constitute an independent "sale" of a lottery ticket? If so, would the similar actions of a family member who conveys a lottery ticket to a relative likewise constitute a "sale"?*

Respectfully submitted,



Ryan Mindell  
Executive Director

Attachments

cc: Robert Rivera, Chairman, Texas Lottery Commission

## ATTACHMENT 1

### **Sec. 466.155. DENIAL OF APPLICATION OR SUSPENSION OR REVOCATION OF**

**LICENSE.** (a) After a hearing, the director shall deny an application for a license or the commission shall suspend or revoke a license if the director or commission, as applicable, finds that the applicant or sales agent:

- (1) is an individual who:
  - (A) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense;
  - (B) is or has been a professional gambler;
  - (C) is married to an individual:
    - (i) described in Paragraph (A) or (B); or
    - (ii) who is currently delinquent in the payment of any state tax;
  - (D) is an officer or employee of the commission or a lottery operator; or
  - (E) is a spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of a person described by Paragraph (D);
- (2) is not an individual, and an individual described in Subdivision (1):
  - (A) is an officer or director of the applicant or sales agent;
  - (B) holds more than 10 percent of the stock in the applicant or sales agent;
  - (C) holds an equitable interest greater than 10 percent in the applicant or sales agent;
  - (D) is a creditor of the applicant or sales agent who holds more than 10 percent of the applicant's or sales agent's outstanding debt;
  - (E) is the owner or lessee of a business that the applicant or sales agent conducts or through which the applicant will conduct a ticket sales agency;
  - (F) shares or will share in the profits, other than stock dividends, of the applicant or sales agent;or
  - (G) participates in managing the affairs of the applicant or sales agent;
- (3) has been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;
- (4) is a person whose location for the sales agency is:
  - (A) a location licensed for games of bingo under Chapter 2001, Occupations Code;
  - (B) on land that is owned by:
    - (i) this state; or
    - (ii) a political subdivision of this state and on which is located a public primary or secondary school, an institution of higher education, or an agency of the state; or (C) a location for which a person holds a wine and malt beverage retailer's permit, mixed beverage permit, mixed beverage permit with a retailer late hours certificate, private club registration permit, or private club registration permit with a retailer late hours certificate issued under Chapter 25, 28, 29, or 32, Alcoholic Beverage Code, other than a location for which a person holds a wine and malt beverage retailer's permit issued under Chapter 25, Alcoholic Beverage Code, that derives less than 30 percent of the location's gross receipts from the sale or service of alcoholic beverages; or
- (5) has violated this chapter or a rule adopted under this chapter.

## ATTACHMENT 2

### TEXAS LOTTERY COMMISSION 2015 RULE CHANGES REGARDING THE WAYS PLAYERS MAY SELECT DRAW GAME NUMBERS

**The 2015 rule amendments provided players two additional ways to provide their draw ticket game numbers to a licensed brick-and-mortar retailer.**

On May 28<sup>th</sup>, 2015, the TLC voted to publish proposed changes to the agency's draw game rules "to enhance and clarify the methods by which a lottery player may communicate numbers and play selections to a lottery retailer in order to purchase a Texas Lottery draw game ticket."

- The proposal added two methods for a player to select the numbers they want to play:
  - Using a previously-generated draw game ticket (for players using the same numbers); and
  - Generating a QR code of their numbers using the official Texas Lottery mobile app, which allows the licensed lottery retailer to scan the code to get the numbers.
- The Commission adopted the rule changes on August 27<sup>th</sup>, 2015.

**The primary reason for the amendments was to improve the overall experience of lottery players and licensed lottery retailers by increasing convenience.**

- The Commission is authorized under Texas Government Code §466.015(c)(15)(B) to adopt rules regarding the operation of the lottery for "the convenience of players...."

**The Commission addressed potential concerns regarding generation of a QR code on the Texas Lottery app in the rule preamble, and clarified there would be no ability for players to purchase lottery tickets or play lottery games on a mobile device or the Internet:**

The Texas Lottery understands that the introduction of new technology for use with lottery games is a sensitive topic with many members of the public, and is very mindful it is the Texas Legislature who provides the policy framework to administer the lottery. The Texas Lottery, therefore, wishes in its proposal to be very clear that **the amendments proposed here will in no way enable lottery players to purchase lottery tickets or to play lottery games solely using mobile devices, or through the Internet.** The Texas Lottery strongly believes that any questions regarding the sale of lottery tickets via mobile devices or the Internet are policy decisions to be determined by the Texas Legislature. In the absence of clear, express authority delegated to the Commission by the Texas Legislature, the Texas Lottery has no intention to pursue mobile-based or Internet-based lottery ticket sales. Accordingly, the Texas Lottery states here: **Nothing contained within this proposal enables the sales of Texas Lottery tickets over mobile devices or the Internet. Apart from the Texas Lottery itself, licensed Texas Lottery retailers are the only source for purchase of valid Texas Lottery tickets, and those tickets must be purchased in-person at a licensed retail location using one of the approved methods of play.**

**The public discussion prior to the vote at the May 28th meeting addressed this issue:**

COMM. LOWE: So as I understand it, what you're going to do is have some -- are you going to have some communication between a cell phone or some mobile device? Is that--

MS. BURNETT: What would happen with the Texas Lottery mobile application is the individual would on their phone, not communicating with the system itself but could at another location or anywhere that they were wishing to do so generate play selections for a particular game.... A QR code could then be generated on your telephone. You would still have to take



the telephone to a retailer whose system would then scan the code that's on your phone. Now, the code is not stored in the phone. It's generated at the time you make your purchase. It is scanned by a scanner similar to how groceries are scanned across the scanner, and then you would purchase the ticket with those selections.

COMM. LOWE: So there's no communication. There's no -- I can't sit here and buy a lottery ticket on my cell phone.

MS. BURNETT: No. This is not intended to enable someone on their phone to purchase tickets, which would be something that we believe we do not have authority to do from the Texas Legislature.

\*\*\*\*\*

MR. ANGER: ... So to the question that you asked, Commissioner Lowe, there will be no sales taking place via the mobile application. The sales transaction is exactly the same as it is today. The player has to interact with the retailer or one of our retail sales devices, our Gemini sales machines, in order to conduct the sales transaction to purchase their tickets. So that's not a change. It's really just the difference between providing a paper play slip or presenting their phone with the QR code that will allow them to submit their play selections to the retailer.

\* \* \* \* \*

**From the Commission's understanding of how the lottery ticket courier process works, the Commission's rules (including these 2015 changes) do not in any way authorize or condone lottery ticket courier services in Texas.**

**Legislative Oversight Committees.**

A standard practice for the agency is to provide written notifications on all TLC proposed and adopted rulemaking to the members of the House Committee on Licensing and Administrative Procedures and the members of the Senate State Affairs Committee.

### ATTACHMENT 3

#### **TEXAS LOTTERY COMMISSION 2020 RULE CHANGES RESULTING FROM THE STATUTORILY-REQUIRED RULE REVIEW**

The 2020 Texas Lottery Commission (TLC) lottery rule amendments were the result of the TLC's rule review conducted every four years in accordance with Texas Government Code §2001.039. The purpose of the amendments was to simplify and update the rules.

#### **There were no proposed or adopted rule changes regarding selling lottery tickets by phone.**

The 2020 rule amendments made no change to the prohibition on selling tickets by phone. The TLC rules address this prohibition three places: Rule 401.158(b)(28) (Suspension or Revocation of License), Rule 401.160(h)(28) (Standard Penalty Chart), and Rule 401.355(a) (Restricted Sales).

#### **There were non-substantive changes to the lottery rule definitions regarding a player being "present at the terminal" and a related provision in the general draw game rule.**

"Present at the terminal" was formerly a definition at Rule 401.301(33), but the term only appeared one other place in the rules to address customer service requirements and thus was deleted because the matter was adequately addressed in the other rule. The definition formerly read as follows:

Present at the terminal--A player remains physically present at the terminal from the time the player's order for the purchase of draw game tickets is paid for and accepted by the retailer until the processing of the order is completed and the tickets are delivered to the player at the retailer terminal location.

The only place this term appeared was in the general draw game rule at 401.304(b)(1) (now 401.304(b)(2)) that addressed customer service requirements. The text below shows this section and the following section (now 401.304(b)(3)), which is also relevant, and how they were amended to eliminate redundant language:

Except to the extent that sales in draw games are impeded by draw breaks, draw game tickets may be sold [~~during all normal business hours of the lottery retailer~~] during draw game operating hours. Retailers must give prompt service to lottery customers present and waiting at the terminal to purchase tickets for draw games. [~~Prompt service includes interrupting processing of draw game ticket orders for which the customer is not present at the terminal.~~]

Draw game tickets shall be sold only at the location listed on each retailer's license from the commission. For purposes of this section, the sale of a draw game lottery ticket at the licensed location means a lottery transaction in which all elements of the sale between the retailer and the purchaser must take place at the retailer location using their terminal, including the exchange of consideration, the exchange of the playslip if one is used, and the exchange of the draw game ticket. [~~No part of the sale may take place away from the terminal.~~]

**These amendments were non-substantive and did not change the requirement that all lottery tickets must be purchased in person at a brick and mortar licensed lottery location.**

# **EXHIBIT D**

# TEXAS LOTTERY COMMISSION POLICY STATEMENT ON THE PROHIBITION OF LOTTERY TICKET COURIER SERVICES

**EFFECTIVE FEBRUARY 24, 2025**

The Texas Lottery Commission (TLC) is issuing this policy statement to advise the public how it will exercise its discretionary authority under the State Lottery Act (SLA)<sup>1</sup> to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the Texas Lottery<sup>2</sup> by prohibiting lottery ticket courier services (couriers). The TLC intends to exercise this authority through administrative enforcement proceedings to revoke the lottery ticket sales agent license of a retailer that works in concert with a courier, whether under a common ownership arrangement or otherwise.

This statement is effective this date and will be followed by an administrative rulemaking proceeding initiated by the TLC board at an open meeting of the TLC in which public comment will be solicited.<sup>3</sup>

Background on couriers. Couriers are unregulated companies that take lottery ticket orders from customers online. Upon receipt of funds from a customer, the courier purchases lottery tickets from a licensed lottery retailer with whom the courier has a private business arrangement. In practice, the courier and the retailer are often located in the same building or office. The courier transmits a scanned image of the ticket to the customer and retains the ticket until it is determined to be a winning or non-winning ticket. Couriers charge a fee for their service to purchase and manage their customers' tickets. These activities all occur without the oversight of a regulating authority to ensure that the public is protected from potential crime and other harms.

Last week, a high profile Lotto Texas® jackpot win involving a courier service that purchased the winning ticket for a customer intensified discussion about whether these businesses should be permitted to operate in Texas. This jackpot win led to investigations by the agency amid continued focus by the public and our stakeholders.

Policy Statement. The TLC has broad authority to exercise strict control and close supervision over lottery games in Texas to ensure integrity, security, honesty, and fairness in the operation of the lottery. The proliferation of couriers in the state has raised serious concerns that the integrity, security, honesty, and fairness of lottery games is being undermined by the continued activity of courier services. Furthermore, the policies and restrictions underpinning the SLA and the TLC's rules can be circumvented by the operation of these unregulated gambling operations, including the following prohibitions:

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<sup>1</sup> Chapter 466, Texas Government Code.

<sup>2</sup> SLA Sections 466.014(a) (Powers and Duties of Commission and Executive Director) ("The commission and executive director have broad authority and shall exercise strict control and close supervision over all lottery games conducted in this state to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery"), and 466.151(e) (License Required) ("The director may issue a license to a person only if the director finds that the person's experience, character, and general fitness are such that the person's participation as a sales agent will not detract from the integrity, security, honesty, and fairness of the operation of the lottery.")

<sup>3</sup> See SLA Section 466.015(c)(15)(A) (Rules).

- Prohibitions on a person playing a lottery game by telephone (SLA Section 466.015(b)(4));
- Prohibitions on advertisements that unduly influence a person to purchase a lottery ticket (SLA Section 466.110);
- Prohibitions on the purchase of a ticket by officers and employees of TLC vendors, TLC employees, and the immediate family members of those individuals (SLA Section 466.254);
- Prohibitions on selling a ticket at a price greater than that fixed by the TLC (SLA Section 466.302);
- Prohibitions on the sale of a ticket by an unauthorized person (SLA Section 466.303);
- Prohibitions on selling a ticket at an unauthorized location (SLA Section 466.304);
- Prohibitions on the sale of lottery tickets on credit or using other unauthorized methods of payment (SLA Sections 466.305, 466.3052);
- Prohibitions on the sale of lottery tickets to persons younger than 18 years of age (SLA Section 466.3051);
- Prohibitions on establishing a group purchase or pooling arrangement for financial gain (SLA Section 466.3054);
- Prohibitions on influencing the selection of a winner of a lottery game (SLA Section 466.307);
- Prohibitions on claiming a lottery prize by fraud (SLA Section 466.308);
- Prohibitions on inducing another person to assign or transfer a right to claim a prize (SLA Section 466.310); and
- Prohibitions on using an unauthorized quick response (QR) code to enter draw game plays (TLC Rule 401.304(b)(1)(F)).

In addition, unregulated courier operations provide opportunities for other illegal and fraudulent activities to flourish, including money laundering, the sale of fictitious tickets, and false representations of a courier's association with the TLC. If couriers are allowed to continue to operate, these critical safeguards will continue to be circumvented and the public will be harmed.

For all these reasons, in order to more fully promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery, the TLC believes couriers are not legal under Texas law and the TLC will exercise its discretion under the SLA to take all appropriate action to stop this activity from occurring, including identifying and investigating any licensed lottery retailer suspected of working in concert with a courier and initiating an enforcement action to revoke the retailer's sales agent license.

Ryan Mindell  
Executive Director

# **EXHIBIT E**

1           The Texas Lottery Commission (Commission or TLC) proposes amendments to 16 TAC  
2 §§ 401.158 (Suspension or Revocation of License), 401.160 (Standard Penalty Chart), and 401.355  
3 (Restricted Sales). The purpose of the proposed amendments is to promote and ensure integrity,  
4 security, honesty, and fairness in the operation and administration of the Texas Lottery by  
5 prohibiting the use of lottery ticket courier services that, by any remote means, such as telephone,  
6 Internet application, or mobile application, accept and fulfill, for a fee or compensation, orders to  
7 purchase lottery tickets on behalf of another person not present to effect an in-person sale  
8 (couriers). The TLC intends to exercise this authority through administrative enforcement  
9 proceedings to revoke the lottery ticket sales agent license of a retailer that works in concert with  
10 a courier, whether under a common ownership arrangement or otherwise.

11           Robert Tirloni, Lottery Operations Director, has determined that for each year of the first  
12 five years the proposed amendments will be in effect, the anticipated public benefits are the  
13 promotion of the integrity, security, honesty, and fairness of the Texas Lottery, and helping to  
14 ensure that Texas Lottery retailers will clearly understand that their license will be revoked for  
15 knowingly selling lottery tickets to, working with, or otherwise assisting couriers, which will result  
16 in enhanced protection of the public from potential crime and other harms.

17           Sergio Rey, Chief Financial Officer, has determined that for each year of the first five years  
18 the proposed amendments will be in effect, there will be no significant fiscal impact for state or  
19 local governments as a result of the proposed amendments. There will be no adverse effect on rural  
20 communities or local or state employment. Those retailers that are small- or micro-businesses  
21 whose licenses will be revoked for not abiding by these amendments will be negatively impacted.  
22 The Commission is aware of eight licensed retailers that are small businesses, as defined in the  
23 Texas Government Code §2006.001(2), that will be negatively impacted by the amendments (out

1 of over 21,000 retailers statewide), and has determined there is no legal and feasible alternative to  
2 reduce the negative impact on these retailers and continue to achieve the purpose of the proposed  
3 amendments. The impact to small- or micro-business retailers who properly conduct business  
4 under a retailer license will vary based on the customer response to their localities. This impact is  
5 unquantifiable.

6 Pursuant to Texas Government Code §2001.0221, the Commission provides the following  
7 Government Growth Impact Statement for the proposed amendments. For each year of the first  
8 five years the proposed amendments will be in effect, Sergio Rey, Chief Financial Officer, has  
9 determined the following:

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

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

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

15 (4) The proposed amendments do not require an increase or decrease in fees paid to the  
16 Commission.

17 (5) The proposed amendments do create new regulations.

18 (6) The proposed amendments expand an existing regulation.

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

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

22 The Commission requests comments on the proposed amendments from any interested  
23 person. Comments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery



1 Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by  
2 email at *legal.input@lottery.state.tx.us*. Comments must be received within 30 days after  
3 publication of this proposal in the *Texas Register* to be considered. The Commission will also hold  
4 a public hearing to receive comments on this proposal at 10:00 a.m. on April 3, 2025, at 1801  
5 Congress Ave., George H. W. Bush Building, 4th Floor, Board Room 4.300, Austin, Texas 78701.

6 These amendments are proposed under Texas Government Code §466.015(c)(15)(A),  
7 which authorizes the Commission to adopt rules to promote and ensure the integrity, security,  
8 honesty, and fairness of the operation and administration of the lottery; and §467.102, which  
9 authorizes the Commission to adopt rules for the enforcement and administration of the laws under  
10 the Commission’s jurisdiction.

11 This proposal is intended to implement Texas Government Code, Chapter 466.  
12 §401.158. Suspension or Revocation of License.

13 (a) (No change.)

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

17 (1) – (26) (No change.)

18 (27) licensee sells tickets over the telephone or Internet, [~~internet~~,] or via mail order sales;  
19 or establishes or promotes a group purchase or pooling arrangement under which tickets are  
20 purchased on behalf of the group or pool and any prize is divided among the members of the group  
21 or pool, and the licensee intentionally or knowingly:

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

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

(28) – (40) (No change.)

(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 only); [øf]

(42) licensee knowingly sells tickets to, works with, or otherwise assists a lottery ticket courier service (revocation only); or

(43) [(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.

(c) For purposes of this chapter, the term “lottery ticket courier service” means a service that, by any remote means, such as telephone, Internet application, or mobile application, accepts and fulfills, for a fee or compensation, orders to purchase lottery tickets on behalf of another person not present to effect an in-person sale.

§401.160. Standard Penalty Chart.

(a) – (g) (No change.)

(h) Standard Penalty Chart.

1 Figure: 16 TAC §401.160(h)

2 [Figure: 16-TAC §401.160(h)]

<b>TEXAS LOTTERY COMMISSION RETAILER REGULATORY VIOLATIONS AND RELATED PENALTIES</b>			
<b>No.</b>	<b>DESCRIPTION OF VIOLATION</b>	<b>1st OCCURRENCE</b>	<b>2nd OCCURRENCE</b>
<b>1st Tier Violations</b>			
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
2.	Licensee conditions redemption of a lottery prize upon the purchase of any other item or service.	Warning Letter	10-90 day Suspension
3.	Licensee imposes a restriction upon the redemption of a lottery prize not specifically authorized by the director.	Warning Letter	10-90 day Suspension
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
			30-90 day Suspension to Revocation
			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
<b>2nd Tier Violations</b>				
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, requires an additional purchase with 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 Internet, [ <del>Internet</del> ] or via mail order sales; or 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 conducting an investigation under the State Lottery Act or a commission rule.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
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
<b>3rd Tier Violations</b>				
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
42.	Licensee knowingly sells tickets to, works with, or otherwise assists a lottery ticket courier service.	Revocation	n/a	n/a



1 §401.355 Restricted Sales.

2 (a) Retailers shall not sell lottery tickets via the Internet [~~internet~~] or by mail, phone, fax, or other  
3 similar method of communications. Retailers shall not sell a lottery ticket or any other document  
4 evidencing a right, privilege, or share in a lottery ticket from another jurisdiction by any means.

5 (b) Retailers shall not knowingly sell tickets to, work with, or otherwise assist a lottery ticket  
6 courier service.

7 (c) [~~(b)~~] Retailers shall not sell tickets to persons under the age of 18. Any ticket purchased by or  
8 sold to an individual under the age of 18 years shall be void and the prize otherwise payable on  
9 the ticket is treated as an unclaimed prize under Texas Government Code §466.408.

10 (d) [~~(c)~~] Retailers shall not sell a ticket or pay a lottery prize to another person that the retailer  
11 knows is:

12 (1) an officer or an employee of the commission;

13 (2) an officer, member, or employee of a lottery operator;

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

16 (4) the spouse, child, brother, sister, or parent of a person described by paragraph (1), (2),  
17 or (3) of this subsection who resides within the same household as that person.

18 (e) [~~(d)~~] Retailers shall not sell tickets from a game after the game's closing date.