





# INTEROFFICE MEMO

Gary Grief, Executive Director

Alfonso D. Royal III, Charitable Bingo Operations Director

	Approved	Denied
<b>To:</b> J. Winston Krause, Chairman Carmen Arrieta-Candelaria, Commissioner Peggy A. Heeg, Commissioner Doug Lowe, Commissioner Robert Rivera, Commissioner		
<b>From:</b> Ryan S. Mindell, Assistant General Counsel <i>RM</i>		
<b>Date:</b> August 8, 2017		
<b>Re:</b> Consideration of and possible discussion and/or action, including proposal, on amendments to §401.153 (Qualifications for License)		

Attached for your consideration is Commission staff's proposal for amendments to §401.153 (Qualifications for License). The purpose of the proposed amendments is to add language required by newly-enacted HB 1555 concerning certain locations licensed to sell alcoholic beverages. Specifically, the statute permits the Commission to license these locations if they derive less than 30 percent of their gross receipts from the sale or service of alcoholic beverages.

**Recommendation:** Staff recommends the Commission initiate the rulemaking process by publishing the attached proposal in the *Texas Register* to receive public comment for a period of 30 days.

1           The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.153  
2 (Qualifications for License). The purpose of the proposed amendments is to add language required  
3 by newly-enacted HB 1555 concerning certain locations licensed to sell alcoholic  
4 beverages. Specifically, the statute permits the Commission to license these locations if they  
5 derive less than 30 percent of their gross receipts from the sale or service of alcoholic beverages.

6           Kathy Pyka, Controller, has determined that for each year of the first five years the  
7 amendments will be in effect, there will be no significant fiscal impact for state or local  
8 governments as a result of the proposed amendments. There will be no adverse effect on small  
9 businesses, micro businesses, or local or state employment. There will be no additional economic  
10 cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic  
11 Impact Statement and Regulatory Flexibility Analysis is not required because the amendments will  
12 not have an adverse economic effect on small businesses as defined in Texas Government Code  
13 §2006.001(2).

14           Michael Anger, Director of Lottery Operations, has determined that for each year of the  
15 first five years the proposed amendments will be in effect, the public benefit is reflecting the  
16 statutory change which allows the licensing of certain locations permitted to sell alcoholic  
17 beverages.

18           The Commission requests comments on the proposed amendments from any interested  
19 person. Comments on the proposed amendments may be submitted to Ryan Mindell, Assistant  
20 General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-  
21 6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us*. Comments  
22 must be received within 30 days after publication of this proposal in the Texas Register in order to  
23 be considered.

1           These amendments are proposed under Texas Government Code §466.015, which  
2 authorizes the Commission to adopt rules governing the operation of the lottery and §467.102,  
3 which authorizes the Commission to adopt rules for the enforcement and administration of the  
4 laws under the Commission’s jurisdiction.

5           This proposal is intended to implement Texas Government Code, Chapter 466.  
6 §401.153. Qualifications for License.

7 (a) – (b) (No change.)

8 (c) Without limiting the foregoing grounds for denial of a license under this subchapter, the director  
9 shall deny a license to any person whose location for the sales agency is either:

10           (1) a location licensed for games of bingo under the Bingo Enabling Act (Occupations  
11 Code, Chapter 2001);

12           (2) on land owned by the State of Texas; or a political subdivision of this state and on  
13 which is located a public primary or secondary school, an institution of higher education, or an  
14 agency of the state; or

15           (3) a location for which a person holds a wine and beer retailer's permit, mixed beverage  
16 permit, mixed beverage late hours permit, private club registration permit, or private club late  
17 hours permit issued under the Alcoholic Beverage Code, Chapter 25, 28, 29, 32, or 33, other than  
18 a location for which a person holds a wine and beer retailer's permit issued under Chapter 25,  
19 Alcoholic Beverage Code, that derives less than 30 percent of the location's gross receipts from  
20 the sale or service of alcoholic beverages.

21 (d) – (e) (No change.)