



INTEROFFICE MEMO

Gary Grief, Executive Director

Alfonso D. Royal III, Charitable Bingo Operations Director

	Approved	Denied
To: J. Winston Krause, Chairman Carmen Arrieta-Candelaria, Commissioner Peggy A. Heeg, Commissioner Doug Lowe, Commissioner Robert Rivera, Commissioner		
From: Deanne Rienstra, Assistant General Counsel <i>DRR</i>		
Date: June 1, 2017		
Re: Consideration of and possible discussion and/or action, including proposal, on amendments to 16 TAC §401.371 (Collection of Delinquent Obligations for Lottery Retailer Related Accounts)		

Attached for your consideration are proposed amendments to 16 TAC §401.371 (Collection of Delinquent Obligations for Lottery Retailer Related Accounts). The purpose of the proposed amendments is to update the existing procedure regarding mailing demand letters, and to update the referenced citation to the Texas Comptroller of Public Accounts' Accounting Policy Statement 28.

Recommendation: Staff recommends the Commission initiate the rulemaking process by publishing the attached proposed rule amendments in the *Texas Register* in order to receive public comments for a period of 30 days.

1 The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.371
2 (Collection of Delinquent Obligations for Lottery Retailer Related Accounts). The purpose of the
3 proposed amendments is to update the existing procedure regarding mailing demand letters and to
4 update the referenced citation to the Texas Comptroller of Public Accounts' Accounting Policy
5 Statement 28.

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 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 benefits are anticipated to be
16 that the Commission's procedural rule for debt collection of retailer delinquent accounts will
17 accurately reflect the mailing requirements of demand letters and update the referenced citation
18 for the Texas Comptroller of Public Accounts Policy Statement 28, "Reporting of State Debts and
19 Hold Offset Procedures."

20 The Commission requests comments on the proposed amendments from any interested
21 person. Comments on the proposed amendments may be submitted to Deanne Rienstra, Assistant
22 General Counsel, by mail, at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-

1 6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us*. Comments
2 must be received within 30 days after publication of this proposal in order to be considered.

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

7 This proposal is intended to implement Texas Government Code, Chapter 466.
8 §401.371. Collection of Delinquent Obligations for Lottery Retailer Related Accounts.

9 (a) Definitions. The following words and terms, when used in this section, shall have the following
10 meanings, unless the context clearly indicates otherwise.

11 (1) Debtor--Any person or entity liable or potentially liable for an obligation owed to the
12 commission or against whom a claim or demand for payment has been made, for Lottery Retailer
13 related obligations.

14 (2) Delinquent--Payment is past due by law or by customary business practice, and all
15 conditions precedent to payment have occurred or been performed.

16 (3) Make demand--To deliver or cause to be delivered by United States mail, first class, a
17 writing setting forth the nature and amount of the obligation owed to the commission. A writing
18 making demand is a "demand letter."

19 (4) Obligation--Any debt, judgment, claim, account, fee, fine, tax, penalty, interest.

20 (5) Security--Any right to have property owned by an entity with an obligation to the
21 commission, for Lottery Retailer related obligations, sold or forfeited in satisfaction of the
22 obligation; and any instrument granting a cause of action in favor of the State of Texas and/or the
23 commission against another entity and/or that entity's property, typically, certificates of deposits

1 and agency agreements pursuant to assignments of certificates of deposit, but, could include other
2 security such as a bond, letter of credit, or other collateral that has been pledged to the commission
3 to secure an obligation.

4 (b) Before referring any obligation to the attorney general, the commission will:

5 (1) Attempt to determine the liability of each person responsible for the obligation, whether
6 that liability can be established by statutory or common law. Provide the attorney general with the
7 name of the registered agent, and the address of the registered office of any business organization
8 for which a registered agent is required, and, if known, the name and address of the principal
9 officers of the business entity. If the debtor is an individual, the commission will provide the
10 attorney general with the name and last known business address and residence address of the
11 individual.

12 (2) All demand letters will be mailed in an envelope bearing the notation "Return Service
13 Requested," in conformity with ~~39 Code of Federal Regulations, Chapter III, Subchapter A, Part~~
14 ~~3001, Subpart C, Appendix A, §911.~~ If an address correction is provided by the United States
15 Postal Service, the demand letter will be re-sent to that address prior to the referral to the attorney
16 general. Demand will be made upon every debtor prior to referral of the account to the attorney
17 general. The final demand letter will include a statement, where practical, that the debt, if not paid,
18 will be referred to the attorney general.

19 (3) If state law allows the commission to record a lien securing the obligation, the
20 commission will file the lien in the appropriate records of the county where the debtor's principal
21 place of business, or, where appropriate, the debtor's residence, is located or in such county as may
22 be required by law. The lien will be filed as soon as practicable after determining that the account
23 is delinquent. After referral of the delinquency to the attorney general, any lien securing the

1 indebtedness will not be released, except on full payment of the obligation, without the approval
2 of the assistant attorney general representing the commission in the matter.

3 (4) Where practicable, the commission will maintain individual collection histories of each
4 account in order to document attempted contacts with the debtor, the substance of communications
5 with the debtor, efforts to locate the debtor and his assets, and other information pertinent to
6 collection of the delinquent account.

7 (5) Prior to referral of the obligation to the attorney general, the commission will (except
8 in the case where a jeopardy determination has been made):

9 (A) verify the debtor's address and telephone number;

10 (B) transmit no more than two demand letters to the debtor at the debtor's verified
11 address. The first demand letter will be sent no later than 30 days after the obligation becomes
12 delinquent. The second demand letter will be sent no sooner than 30 days, but not more than 60
13 days, after the first demand letter;

14 (C) verify that the obligation is not legally uncollectible or uncollectible as a
15 practical matter. The commission will use its ~~it~~ best efforts to ensure that referred obligations are
16 not uncollectible, including but not limited to actions in the following circumstances:

17 (i) Bankruptcy. The commission will prepare and timely file a proof of
18 claim, when appropriate, in the bankruptcy case of each debtor, subject to reasonable tolerances
19 adopted by the commission. Copies of all such proofs of claims filed should be sent to the attorney
20 general absent direction by the attorney general to the contrary. The commission will maintain
21 records of notices of bankruptcy filings, dismissals and discharge orders received from the United
22 States bankruptcy courts to enable the commission to ascertain whether the collection of the claim
23 is subject to the automatic stay provisions of the bankruptcy code or whether the debt has been

1 discharged. The commission will seek the assistance of the attorney general in bankruptcy
2 collection matters where necessary, including the filing of a notice of appearance and preparation
3 of a proof of claim.

4 (ii) Limitations. If the obligation is subject to an applicable limitations
5 provision that would prevent suit as a matter of law, the obligation will not be referred unless
6 circumstances indicate that limitations has been tolled or is otherwise inapplicable.

7 (iii) Corporations. If a corporation has been dissolved, has been in
8 liquidation under Chapter 7 of the United States Bankruptcy Code, or has forfeited its corporate
9 privileges or charter, or, in the case of a foreign corporation, had its certificate of authority revoked,
10 the obligation will be referred unless circumstances indicate that the account is clearly
11 uncollectible.

12 (iv) Out-of-state debtors. If the debtor is an individual and is located out-of-
13 state, or outside the United States, the matter will not be referred unless a determination is made
14 that the domestication of a Texas judgment in the foreign forum would more likely than not result
15 in collection of the obligation, or that the expenditure of commission funds to retain foreign
16 counsel to domesticate the judgment and proceed with collection attempts is justified.

17 (v) Deceased debtors. If the debtor is deceased, the commission will file a
18 claim in each probate proceeding administering the decedent's estate. If such probate proceeding
19 has concluded, and there are no remaining assets of the decedent available for distribution, the
20 delinquent obligation will be classified as uncollectible and will not be referred. In cases where a
21 probate administration is pending, or where no administration has been opened, all referred
22 obligations will include an explanation of any circumstances indicating that the decedent has assets
23 available to apply toward satisfaction of the obligation.

1 (6) In the case, where factors come to the attention of the commission, which indicate that
2 the collection of the debt due to the state is jeopardized, or where the property and assets of the
3 commission entrusted to the debtor are in jeopardy, the commission may issue a jeopardy
4 determination stating the amount due and that the collection is in jeopardy, and that the amount
5 due the commission is immediately due and payable.

6 (7) Not later than the 180th day after the date an obligation becomes delinquent, the
7 commission will report the uncollected and delinquent obligation to the attorney general for further
8 collection efforts as hereinafter provided.

9 (8) In the case of a jeopardy determination, the account may be referred to the attorney
10 general at any time after the expiration of 20 days after service by personal service or by mail.

11 (9) The commission will adopt reasonable tolerances, in consultation with the attorney
12 general, below which an obligation shall not be referred. Factors to be considered in establishing
13 tolerances include: the size of the debt; the existence of any security; the likelihood of collection
14 through passive means such as the filing of a lien where applicable; expense to the commission
15 and to the attorney general in attempting to collect the obligation; and the availability of resources
16 both within the commission and within the Office of the Attorney General to devote to the
17 collection of the obligation.

18 (10) The commission will utilize the "warrant hold" procedures of the Comptroller of
19 Public Accounts authorized by the Texas Government Code, §403.055, to ensure that no treasury
20 warrants are issued to debtors until the debt is paid. (See Accounting Policy Statement 28,
21 "Reporting of State Debts and Hold Offset Procedures ~~Certain Tax Delinquencies to the State,~~
22 issued November 22, 2005, April 16, 1999 and updated reissued September 18, 2015, October 6,

1 2000 and as it may be amended, available on the Comptroller of Public Accounts' website, at
2 (<https://fm.xcpa.texas.gov/fm/pubs/aps/> www.epa.state.tx.us).

3 (c) Referral to the attorney general.

4 (1) The commission will refer individual accounts to the attorney general after the
5 procedures set forth in subsection (a)(6) - (8) of this section have been exhausted and an obligation
6 remains. Individual accounts referred to the attorney general will include the following:

7 (A) copies of all correspondence between the commission and the debtor;

8 (B) a log sheet (see subsection (a)(5) of this section) documenting all attempted
9 contacts with the debtor and the result of such attempts;

10 (C) a record of all payments made by the debtor and, where practicable, copies of
11 all checks tendered as payment;

12 (D) any information pertaining to the debtor's residence and his assets; and

13 (E) copies of any permit application, security, final orders, contracts, grants, or
14 instrument giving rise to the obligation.

15 (2) Delinquent accounts upon which an uncollected bond or other security is held shall be
16 referred to the attorney general no later than 180 days after becoming delinquent. All such accounts
17 where the principal has filed for relief under federal bankruptcy laws will be referred to the attorney
18 general immediately.