





# INTEROFFICE MEMO

Gary Grief, Executive Director      Michael P. Farrell, Charitable Bingo Operations Director

	Approved	Denied
<b>To:</b> J. Winston Krause, Chairman Mark Franz, Commissioner Robert Rivera, Commissioner		
<b>From:</b> Kyle Wolfe, Assistant General Counsel <i>KW</i>		
<b>Date:</b> August 7, 2019		
<b>Re:</b> Consideration of and possible discussion and/or action, including proposal, on amendments to 16 TAC §401.153 (Qualifications for License)		

Attached is a draft rule proposal prepared for submission to the *Texas Register* for amendments to 16 TAC §401.153 (Qualifications for License). The purpose of the proposed amendments is to implement the requirements of the newly enacted Senate Bill 37 from the Regular Session of the 86th Texas Legislature. Senate Bill 37 amended the State Lottery Act by removing provisions that stated the Lottery Operations Director shall deny an application for a Texas Lottery ticket sales agent license, or the Commission shall suspend or revoke a license, if the Director or Commission, as applicable, finds that the applicant or sales agent has been finally determined to be in default on either a loan made under Chapter 52 of the Texas Education Code or a loan guaranteed under Chapter 57 of the Texas Education Code. Those same requirements that Senate Bill 37 removed are set forth in Commission Rule 401.153(b)(3)(B)–(C). The proposed amendments remove the provisions no longer required by the State Lottery Act. In addition, grammatical and organizational corrections were made to the text to increase clarity and to conform the rule to the State Lottery Act.

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 implement the  
3 requirements of the newly enacted Senate Bill 37 from the Regular Session of the 86th Texas  
4 Legislature. Senate Bill 37 amended the State Lottery Act, Texas Government Code Chapter 466,  
5 by removing provisions that stated the Lottery Operations Director shall deny an application for a  
6 Texas Lottery ticket sales agent license, or the Commission shall suspend or revoke a license, if  
7 the Director or Commission, as applicable, finds that the applicant or sales agent has been finally  
8 determined to be in default on either a loan made under Chapter 52 of the Texas Education Code  
9 or a loan guaranteed under Chapter 57 of the Texas Education Code. Those same requirements  
10 that Senate Bill 37 removed are set forth in Commission Rule 401.153(b)(3)(B)–(C). The proposed  
11 amendments remove the provisions no longer required by the State Lottery Act. In addition,  
12 grammatical and organizational corrections were made to the text to increase clarity and to  
13 conform the rule to the State Lottery Act.

14           Kathy Pyka, Controller, has determined that for each year of the first five years the  
15 amendments will be in effect, there will be no significant fiscal impact for state or local  
16 governments as a result of the proposed amendments. There will be no adverse effect on small  
17 businesses or rural communities, micro businesses, or local or state employment. There will be no  
18 additional economic cost to persons required to comply with the amendments, as proposed.  
19 Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required  
20 because the proposed amendments will not have an adverse economic effect on small businesses  
21 or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

22           Ryan Mindell, Lottery Operations Director, has determined that for each year of the first  
23 five years the proposed amendments will be in effect, the anticipated public benefit expected is

1 aligning Commission policy to recently passed legislation as well as an increase in the number of  
2 applicants that will be eligible for a Texas Lottery ticket sales agent license.

3 Pursuant to Texas Government Code §2001.0221, the Commission provides the following  
4 Government Growth Impact Statement for the proposed amendments to 16 TAC §401.153  
5 (Qualifications for License). For each year of the first five years the proposed amendments will be  
6 in effect, Kathy Pyka, Controller, has determined the following:

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

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

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

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

14 (5) The proposed amendments do not create a new regulation.

15 (6) The proposed amendments do not expand or limit an existing regulation.

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

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

19 The Commission requests comments on the proposed amendments from any interested  
20 person. Comments may be submitted to Kyle Wolfe, Assistant General Counsel, by mail at Texas  
21 Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189;  
22 or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). Comments must be received within 30 days after  
23 publication of this proposal in the Texas Register to 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) (No change.)

8 (b) The director may grant or deny an application for a license under this subchapter based on any  
9 one or more factors listed in subsection (a) of this section. In addition, the director shall deny an  
10 application for a license under this subchapter upon a finding that the applicant:

11           (1) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense,  
12 or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination  
13 of the sentence, parole, mandatory supervision, or probation served for the offense;

14           (2) is or has been a professional gambler. A “professional gambler” is a person whose  
15 profession is, or whose major source of income derives from, playing games of chance for profit;

16           (3) has been finally determined to be[:]

17           ~~[(A)] delinquent in the payment of a tax or other money collected by the~~  
18 ~~comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;~~

19           ~~[(B) in default on a loan made under Chapter 52, Education Code;~~

20           ~~[(C) in default on a loan guaranteed under Chapter 57, Education Code; or~~

21           ~~[(D) any reasons listed in Chapter 232, Family Code as cause for license~~  
22 ~~suspension;]~~

1 (4) [~~has a spouse, child, brother, sister or parent residing as a member of the same~~  
2 household in the principal place of residence of] is married to a person described in paragraph (1),  
3 (2), or (3) of this subsection;

4 (5) has violated the Act or a rule adopted by the commission in furtherance of the State  
5 Lottery Act;

6 (6) is not an individual, and an individual described in one or more of paragraphs (1) – (5)  
7 of this subsection:

8 (A) is an officer or director of the applicant;

9 (B) holds more than 10% of any class of issued and outstanding stock in the  
10 applicant;

11 (C) holds an equitable ownership interest greater than 10% in the applicant;

12 (D) is a creditor of the applicant to the extent of more than 10% of the applicant's  
13 outstanding debt at any time after the application is filed but before the director acts to grant or  
14 deny the license;

15 (E) is the owner or lessee of a business that the applicant conducts or through which  
16 the applicant will conduct a ticket sales agency;

17 (F) shares or will share in the profits, other than stock dividends, of the applicant  
18 or sales agent;

19 (G) participates in managing the affairs of the applicant; or

20 (H) is an employee of the applicant who is or will be involved in selling tickets or  
21 handling money from the sale of tickets;

22 (7) provided false or misleading information on the application form, or failed to provide  
23 information required as part of the application;

1 (8) failed to provide fingerprint identification for individuals for which such identification  
2 is requested in a form acceptable to the division following the division's request for such  
3 identification;

4 (9) has previously had a sales agent's license revoked, unless the director is satisfied the  
5 person will comply with the State Lottery Act and the rules under this chapter;~~[-or]~~

6 (10) failed to certify to the director the applicant's compliance with the federal Americans  
7 With Disabilities Act~~[-];~~ or

8 (11) is the subject of a license suspension or decision issued under Chapter 232, Family  
9 Code.

10 (c) – (e) (No change.)

DRAFT