

## **STATEMENT OF NECESSITY FOR EMERGENCY PROMULGATION**

Name of Agency: Arkansas Lottery Commission

Rule Title: Arkansas Lottery Commission Retailer Rules

Statutory Authority: Ark. Code Ann. §§ 23-115-207 and 23-115-612 (Act 606 of 2009)

Basis for  
Emergency  
Promulgation:

The Arkansas Lottery Commission finds that a delay in beginning the retailer licensing process and the start up of the Arkansas Lottery Commission will result in a subsequent delay in the selling of lottery tickets, causing a loss of revenue for higher education scholarships and grants resulting in imminent peril to the public health, safety, or welfare of the citizens of Arkansas, and as such emergency promulgation of the Arkansas Lottery Commission Retailer Rules is immediately necessary.

# **ARKANSAS LOTTERY COMMISSION**

## **RETAILER RULES**

**Section 1. Purpose.**

The Purpose of these Rules is to proscribe the process for licensing and administration of the statewide network of lottery retailers by the Arkansas Lottery Commission.

**Section 2. Authority.**

This Rule is issued pursuant to the authority vested in the Commission under Ark. Code Ann. §§ 23-115-207 and 23-115-612, and the Arkansas Administrative Procedures Act, §§ 25-15-201, *et seq.*

**Section 3. Scope.**

This Rule shall apply to the administration of the statewide network of lottery retailers as licensed and regulated by the Arkansas Lottery Commission. In any decision made under these rules, the Commission shall take into account the particularly sensitive nature of the state lottery and shall act to promote and ensure security, honesty, fairness, and integrity in the operation and administration of the lottery and the objectives of raising net lottery proceeds for the benefit of educational programs and purposes.

**Section 4. Definitions.**

- A. “Act” means the Arkansas Scholarship Lottery Act.
- B. “Commission” means the Arkansas Lottery Commission.
- C. “Director” means the director of the Arkansas Lottery Commission.

D. "Game" means any individual or particular type of lottery authorized by the Commission pursuant to the Act including without limitation instant tickets and online game tickets.

E. "Instant Game" means a game in which a ticket is purchased and upon removal of a latex covering or other covering on the front of the ticket or the opening of the sealed ticket, the ticket bearer determines his or her winnings, if any, which are payable upon presentation to a retailer or to the Arkansas Scholarship Lottery for payment.

F. "Instant Ticket" means a printed card or slip purchased for participation in an instant game.

G. "License" means authorization granted by the Commission to an individual to operate as a retailer, including without limitation the execution of a contract between the Commission and the individual relating to obligations and terms for operating as a retailer.

H. "Lottery Proceeds" includes without limitation:

- i. Unsold instant tickets received by a retailer;
- ii. Cash proceeds of the sale of any lottery products;
- iii. Net of allowable sales commissions; and
- iv. Credit for lottery prizes paid to winners by retailers.

I. "Online Game" means a lottery game in which a player pays a fee to a retailer and selects or requests a randomly generated (Quick Pick) combination of digits, numbers, or symbols, the type and amount of play, and the drawing date, and receives a computer-generated ticket with those selections printed on it.

J. "Online Terminal" means the electronic computer terminal through which a retailer enters manually or by play slip the combination of digits, numbers, or symbols selected by a player or by random number generator (Quick Pick).

K. "Online Ticket" means a computer-generated ticket issued by a retailer to a player as a receipt for the combination of digits, numbers, or symbols a player has selected.

L. "Person" or "Applicant" means any individual, corporation, partnership, unincorporated association, or other legal entity.

M. "Prize" means any award, financial or otherwise, awarded by the Commission.

N. "Retailer" means a person who sells tickets or shares on behalf of the Commission under a license.

O. "Share" means any intangible evidence of participation in a lottery.

P. "Ticket" means any tangible evidence issued by a lottery to prove participation in a lottery.

**Section 5. Licensing.**

A. General. Pursuant to Arkansas Code § 23-115-601 *et seq.*, the Arkansas Lottery Commission is authorized to establish and maintain a statewide network of retailers. Retailers must meet the security and integrity standards of the Commission, the statutory and regulatory requirements for licensing, promote the sale of lottery games, and promote the best interest of the Arkansas Scholarship Lottery.

B. Application. An applicant interested in obtaining a license as a retailer must submit an application with the Commission on a form supplied for that purpose by the Commission. The retail sales application shall be designed to solicit sufficient relevant information from an applicant to permit the Commission to evaluate the applicant and the sales location as required by the Act and regulations for issuance of a license by the Commission.

C. Application Fee. An applicant for a retailer license shall be charged the following fees:

- i. Initial Application Fee – \$100;
- ii. Change of Ownership Fee -- \$100;
- iii. Additional Store Location Fee -- \$25.00;
- iv. Change of Location Fee -- \$25.00;
- v. Change of Applicant Fee -- \$50.00;
- vi. Renewal Fee -- \$50.00.

D. Qualifications/Criteria.

i. In making a determination regarding a licensing application, the Commission shall consider the following, including without limitation:

- a. The applicant's financial responsibility;
- b. Security of the applicant's place of business or activity;
- c. Accessibility to the public including compliance with the Americans with Disabilities Act;
- d. The applicant's integrity; and
- e. The applicant's reputation.

ii. The applicant for a retailer license shall be current in filing all applicable tax returns to the State of Arkansas and in payment of all taxes, interest, and penalties owed to the State of Arkansas, excluding items under formal appeal under applicable statutes. Information regarding the applicant's tax filing status will be supplied to the Commission by the Department of Finance and Administration.

iii. The Commission shall not select as a retailer any person who:

a. Has been convicted of a criminal offense related to the security or integrity of a lottery in this or any other jurisdiction;

b. Has been convicted of any illegal gambling activity, false statements, false swearing, or perjury in this or any other jurisdiction or convicted of any crime punishable by more than one (1) year of imprisonment or a fine of more than one thousand dollars (\$1,000) or both.

This subdivision 5.C.iii.b. shall not apply if the person's civil rights have been restored and at least five (5) years have elapsed from the date of the completion of the sentence without a subsequent conviction of such a crime;

c. Has been found to have violated the Act or any rule, policy, or procedure of the Commission unless:

(1) Ten (10) years have passed since the violation; or

(2) The Commission finds the violation both minor and unintentional in nature;

d. Is a vendor or an employee or agent of a vendor doing business with the Commission;

e. Is a member of the immediate family of a member of the Commission or the Arkansas Scholarship Lottery;

f. Has made a statement of material fact to the Commission knowing the statement to be false; or

g. Is engaged exclusively in the business of selling tickets or shares.

E. Criminal Background Check. An applicant for a retailer license shall apply for a state and federal criminal background check, to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation. The criminal background check form is included with the Arkansas Scholarship Lottery Retailer Application. Issuance of a retailer license is dependent on passing the criminal background checks.

The state and federal background check includes the taking of fingerprints. The applicant shall sign a consent to the release of information for the criminal background check.

F. License Term and Renewal. All retailer licenses may be renewable annually in the discretion of the Commission. To request renewal of a retailer license, on or before June 30 of each year, every licensed retailer shall file a renewal application and shall pay a renewal fee as set forth in Section 5.C. of these rules. Furthermore, each licensed retailer shall attest to its compliance with all of the applicable provisions of the Act and these Retailer Rules. Upon submission of a renewal application and payment of the renewal fee, and in the absence of a finding against renewal under the Act and these

Retailer Rules, the applicant shall have its retailer license renewed for an additional year commencing July 1 of that year.

G. Cancellation, Suspension, Revocation, or Termination.

i. If upon approval of the Commission, the Director or his or her designee determines that cancellation, denial, revocation, suspension, or rejection of renewal of a retailer license is in the best interest of the Arkansas Scholarship Lottery, the public welfare, or the State of Arkansas, the Director or his or her designee may cancel, suspend, revoke, or terminate, after notice and a right to a hearing, a retailer license issued hereunder.

ii. The retailer license may be temporarily suspended by the Director or his or her designee without Commission approval or prior notice pending a hearing.

iii. A retailer license may be suspended, revoked, or terminated by the Director or his or her designee for any one (1) or more of the following reasons:

a. Commission of a violation of the Act or a rule of the Commission;

b. Failure to accurately or timely account for tickets, lottery games, revenues, or prizes as required by the Commission;

c. Commission of any fraud, deceit, or misrepresentation;

d. Insufficient sales;

e. Conduct prejudicial to public confidence in a lottery;

f. The retailer's filing for or being placed in bankruptcy or receivership;

g. Any material change as determined in the sole discretion of the Commission in any matter considered by the Commission in executing the license with the retailer;

h. The closure of the retailer's business; or

i. Failure to meet any of the objective criteria established by the Commission.

If a retailer fails to meet any of the objective criteria established by the Commission, the Executive Director or his or her designee, may request authorization from the Commission to remove Instant Tickets, Online Ticket Stock, and any and all property of the Arkansas Scholarship Lottery from the retail location.

iv. A retailer license issued by the Commission shall specify the reasons, as set out in subdivision 5.G.3. of this section, for which the retailer license may be canceled, suspended, revoked, or terminated by the Commission.

H. Transfer or Assignment. A retailer license is not assignable or transferable.

I. Display of License. For purposes of display, the Commission shall issue a license to each person that it licenses as a retailer. A retailer shall post its retailer license and keep the license conspicuously displayed in a location on the premises accessible to the public.

J. Sale of Tickets of Shares. Tickets and shares shall be sold only by the retailer at the location address stated on the retailer license issued by the Commission.

**Section 6. Contracting for Goods or Services.**

A retailer shall not contract with any person other than the Arkansas Scholarship Lottery or the Commission for Arkansas Scholarship Lottery products or services except with the approval of the Commission.

**Section 7. Retailer Bond.**

A retailer is required to post an appropriate bond in an amount determined by the Commission, using an insurance company acceptable to the Commission.

**Section 8. Use of Lottery Trademarks.**

Retailers may use and display the Arkansas Scholarship Lottery logo, trademark, and other advertising materials without charge to the user or compensation to the Commission for its use.

Any use of the logo, other trademarked or copyrighted materials, other intellectual property, or copy in advertising or production of consumer articles requires a prior written request and approval.

**Section 9. Fidelity Fund – Retailer Fee.**

Each retailer licensed under the Act and these rules shall be assessed an annual fee of one hundred dollars (\$100) per sales location to be deposited into the Commission's fidelity fund, as established under Arkansas Code § 23-115-603.

**Section 10. Lottery Proceeds – Retailer Responsibilities.**

A. Fiduciary Duty. All proceeds from the sale of tickets or shares constitute a trust fund until paid to the Commission either directly or through the Commission's authorized representative.

A retailer and officers of a retailer's business have a fiduciary duty to preserve and account for retail lottery proceeds, and retailers are personally liable for all lottery proceeds.

Sales proceeds and unused instant tickets shall be delivered to the Commission or its authorized collection representative upon demand.

B. Deposits/Accounts. All retailers are required to place all lottery proceeds due to the Commission in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date they are paid to the Commission. At the time of the deposit, lottery proceeds are the property of the Commission.

Retailers shall establish a single separate electronic funds transfer account for the purpose of:

- i. Receiving moneys from ticket or share sales;
- ii. Making payments to the Commission; and
- iii. Receiving payments for the Commission.

Unless authorized in writing by the Commission, each retailer shall establish a separate bank account for lottery proceeds that shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.

C. Failure to Comply. If the Commission determines that a retailer failed to comply with subsection 10.B. of this section three (3) times within any consecutive

twenty-four-month period, the Commission may pursue business closure against the retailer under Section 13 of these rules.

**Section 11. Retailer Commissions.**

A retailer shall receive commissions as compensation from the Commission as follows:

A. Base Instant and Online Games Commission: Five percent (5%) of each one dollar (\$1.00) sold.

B. Cashing Commission: One percent (1%) of each one dollar (\$1.00) redeemed.

C. Selling Commission: One percent (1%) of the prize amount on each ticket validated and paid to a player, with a ticket prize amount of ten thousand dollars (\$10,000) or more. The Selling Commission shall not exceed twenty five thousand dollars (\$25,000).

D. Other Commission: Up to ten percent (10%) on special games, as designated by the Commission.

**Section 12. Conflicts of Interest.**

A retailer or an applicant to be a retailer shall not provide a gift or compensation to:

i. The Director, a Commission member, or a Commission employee;

or

ii. A member of the immediate family of the Director, a Commission member, or a Commission employee.

Any person who knowingly violates this Section 12 is guilty of a Class A misdemeanor.

**Section 13. Business Closure.**

A. Authority—Notice. Arkansas Code § 23-115-607 authorizes the Director to close the business of a retailer if the retailer fails to comply with § 23-115-605 (b) and Section 10 of these rules, regarding deposits of lottery proceeds, three (3) times within any consecutive twenty-four-month period.

The Director shall give notice to the retailer that the third delinquency in complying with Section 10 may result in the closure of the business. The notice shall be in writing and delivered to the retailer by either U.S. Postal Service or hand delivery.

If the Director determines that the business will be closed, the Director shall notify the retailer by certified mail or hand delivery that the business will be closed within five (5) business days from the date of receipt of the notice.

B. Avoiding Closure. A retailer may avoid closure of the business by:

- i. Remitting the delinquent lottery proceeds; or
- ii. Entering into a written payment agreement approved by the Director to satisfy the lottery proceeds delinquency.

C. Administrative Hearing.

- i. A retailer may request an administrative hearing concerning the decision of the Director to close the retailer's business.

ii. Within five (5) business days after the delivery or attempted delivery of the notice required subsection 13.A. of this section, the retailer may file a written protest, signed by the retailer or his or her authorized agent, with the Director stating the reasons for opposing the closure of the business and requesting an administrative hearing.

iii. A retailer may request that an administrative hearing be held:

- a. In person;
- b. By telephone;
- c. Upon written documents furnished by the retailer; or
- d. Upon written documents and any evidence to be produced by the retailer at an administrative hearing.

The Director may determine whether an administrative hearing at which testimony is to be presented will be conducted in person or by telephone.

A retailer who requests an administrative hearing based upon written documents is not entitled to any other administrative hearing before the rendering of the administrative decision.

iv. The administrative hearing shall be conducted by a hearing officer appointed by the Director. The hearing officer shall set the time and place for a hearing and give the retailer notice of the hearing.

v. At the administrative hearing, the retailer may be represented by an authorized representative and present evidence in support of his or her position.

vi. The administrative hearing shall be held within fourteen (14) calendar days of receipt by the director of the request for hearing.

vii. The administrative hearing and determinations made by the hearing officer under this subsection 13.C. are subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

viii. The defense or defenses to the closure of a business under this Section 13 are:

a. Written proof that the retailer remitted the delinquent lottery proceeds due; or

b. That the retailer has entered into a written payment agreement, approved by the director, to satisfy the lottery proceeds delinquency.

ix. The decision of the hearing officer shall be in writing with copies delivered to the retailer and the director by the United States Postal Service or by hand delivery.

D. Judicial Relief.

i. If the decision of the hearing officer under Subsection 13.C. is to affirm the closure of the business, the decision shall be submitted in writing and delivered by the United States Postal Service or by hand to the retailer.

ii. The retailer may seek judicial relief from the decision by filing suit within twenty (20) calendar days of the date of the decision.

iii. Jurisdiction for a suit under this Section 13 to contest a determination of the director shall be in Pulaski County Circuit Court, where the matter shall be tried de novo. If the circuit court finds that the business closure order was appropriately issued by the director, the circuit court shall issue an injunction against the retailer prohibiting the further operation of the business.

If a business subject to an injunction issued by the circuit court as provided in this subchapter continues in operation, upon conviction, any person responsible for the decision to operate the business after the issuance of the injunction shall be guilty of a Class A misdemeanor.

iv. An appeal may be made from the circuit court to the appropriate appellate court, as provided by law.

v. The procedures established by this Section 13 are the sole methods for seeking relief from a written decision to close the business of a retailer for failure to comply with § 23-115-605(b) and Section 10 of these rules.

vi. The decision to close the business of a retailer shall be final either:

a. If the retailer fails to request an administrative hearing under subsection 13.C.i. or fails to seek judicial relief under this section; or

b. Upon the final decision of a circuit court or an appellate court.

vii. It is unlawful for a business to continue in operation after a business closure order is issued that is upheld on appeal under this subchapter or not appealed by the retailer under this Section 13.

viii. Upon conviction, any person responsible for the decision to operate the business in violation of Sections 10 and 13 of these rules shall be guilty of a Class A misdemeanor.

E. Procedure for Closure.

i. If a retailer fails to timely seek administrative or judicial review of a business closure decision or if the business closure decision is affirmed after

administrative or judicial review, the Director shall direct the Department of Finance and Administration to affix a written notice to all entrances of the business that:

- a. Identifies the business as being subject to a business closure order; and
  - b. States that the business is prohibited from further operation.
- ii. The Director may also direct that the business be locked or otherwise secured so that it may not be operated.

F. Revocation and Suspension of Business License. The closure of a business under this Section 13 shall be grounds for the suspension or revocation of any business license granted under the laws of the State of Arkansas, excluding professional licenses.

After the decision to close the retailer's business becomes final, the Director shall contact the appropriate administrative body responsible for granting licenses to operate the business and report the closure of the business.

**Section 14. Administrative Hearings.**

All administrative hearings held under this section shall be held in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 *et seq.*