

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

Name of Agency: Arkansas Lottery Commission

Rule Title: Arkansas Lottery Commission Rules of Practice and Procedure

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

Basis for  
Emergency  
Promulgation:

The Arkansas Lottery Commission finds that a delay in beginning 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 Rules of Practice and Procedure is immediately necessary.

# **ARKANSAS LOTTERY COMMISSION**

## **RULES OF PRACTICE AND PROCEDURE**

## **I. STATEMENT OF ORGANIZATION AND OPERATIONS**

### **A. Operations**

The Arkansas Lottery Commission is an agency of state government created by Act 606 of 2009, Ark. Code Ann. §23-115-201 et seq. The legislature has delegated to the Commission regulatory authority over the establishment and operation of one or more lotteries for the benefit of funding and providing for scholarships and grants to citizens of the State of Arkansas enrolled in public and private nonprofit two-year and four-year colleges and universities located within the State. The Commission staff, which may consist of a director, internal auditor, chief operating officer, information technology director, administrative and operations director, chief legal counsel, chief fiscal officer, marketing and product development director, sales/retail relations director, procurement director and others, acts as administrator and operating entity of the Commission. This staff, or members thereof, may make office administrative procedure, act as spokesperson for the Commission, receive correspondence and correspond on behalf of the Commission, provide legal and other research to the Commission, investigate allegations of violations of laws under the Commission's jurisdiction, and perform such other functions as the Commission deems appropriate. Unless otherwise provided for in these rules or in the Act, these rules of practice and procedure shall govern all proceedings before the Commission and shall be applicable to any complaints filed or initiated after the effective date hereof. In accordance with Ark. Code Ann. §25-15-204(c), any person may petition the Commission for the issuance, amendment, or repeal of any rule.

### **B. Commission Organization**

1. The Commission shall consist of nine (9) Commissioners who shall be appointed as follows:

- a. three (3) members by the Governor of the State of Arkansas;
- b. three (3) members by the Speaker of the Arkansas House of Representatives; and
- c. three (3) members by the President Pro Tempore of the Arkansas Senate.

2. Of the initial appointees to the Commission, each appointing authority shall designate one appointee to serve a term of two (2) years; one appointee to serve a term of four (4) years; and one appointee to serve a term of (6) years. All succeeding appointees to the Commission shall be appointed for terms of six (6) years. All Commissioners shall continue to serve until their successors have been appointed and have taken the official oath. No person shall serve more than two (2) terms on the Commission.

### **C. Staff Organization**

#### 1. Director

a. The Commission shall employ a Director who shall serve at the will and pleasure of the Commission.

b. The Director shall employ a staff to assist in the administration of the Commission's office.

c. The Director shall be responsible to the full Commission and shall not be answerable to any member thereof. The Director shall ensure, however, that the Chairperson of the Commission is advised of the progress and conduct of the employees and operation of the Commission office.

#### 2. Internal Auditor

a. The Commission shall employ an Internal Auditor who shall serve at the will and pleasure of the Commission.

b. The Internal Auditor shall establish internal controls and procedures to prevent and detect fraud, including without limitation a system of internal audits.

c. The Internal Auditor shall be responsible to the full Commission and shall not be answerable to any member thereof.

### **C. Conflicts of Interest**

Members of the Commission and the Commission's staff shall maintain constant vigilance against conflicts of interest and against the appearance of conflicts of interest. Applicable provisions of the Arkansas Scholarship Lottery Act and the Disclosure Act for Lobbyists and State and Local Officials, Ark. Code Ann. § 21-8-401 through -407, -601 through -607, and -801 through -804 shall be in full force.

## **II. INFORMATION FOR PUBLIC GUIDANCE**

The Commission shall make available a list of persons holding certain responsibilities for handling Freedom of Information Act requests, responding to licensing questions, and addressing complaints against licensees so that the public may obtain information about the Commission or make submissions or requests. The names, mailing addresses, telephone numbers, and electronic addresses can be obtained from the Commission's office or Web site.

The Commission shall maintain a list of official forms used by the Commission and a list of all formal, written statements of policy and written interpretative memoranda, and orders, decisions and opinions resulting from adjudications may be obtained from the Commission's office or Web site.

Copies of all forms used by the Commission, written statements of policy and written interpretive memoranda, and all orders issued by the Commission may be obtained from the Commission's office or Web site.

### **III. GENERAL ORGANIZATION**

#### **A. Officers**

The officers of the Commission shall be the Chairperson, Vice-Chairperson, Secretary/Treasurer, and such other officers as a majority of the Commissioners choose. The Commission shall elect at its first meeting following May 1 of each year a chairperson, vice chairperson, and secretary/treasurer.

1. The Chairperson shall be a member of the Commission and (1) shall preside at the meetings of the Commission with the authority to vote, (2) shall call special meetings as required, (3) shall appoint or provide for the election of all committees; and (4) shall perform such other duties as may be prescribed by law or by action of the Commission.

2. The Vice-Chairperson shall be a member of the Commission and shall perform the duties and have the powers of the Chair during the absence or disability of the Chairperson.

3. The Secretary/Treasurer shall be a member of the Commission and shall attest the official actions of the Commission.

#### **B. Meetings**

The business of the Commission shall be conducted in public meetings pursuant to the Arkansas Freedom of Information Act and guided by Robert's Rules of Order. Regular meetings will be held quarterly. Special meetings will be held on the call of the Chairperson or (4) four Commission members.

#### **C. Quorum**

A majority of the total membership of the Commission, whether present in the meeting room, via telephone, teleconference or similar technology, constitutes a quorum for the transaction of business.

#### **D. Committees**

The Commission may create standing and ad hoc committees. The Chairperson will select members of committees. A quorum for the transaction of committee business is a majority of the number of voting members of the committee.

#### **E. Agenda**

The Chairperson shall prepare a proposed agenda for each regular meeting, and the proposed agenda shall be distributed to the Commission members and made available to the

public in advance of the meeting. Any Commissioner may add items to the agenda by notification to the Chairperson before the scheduled meeting date time. Any item may be added to the agenda during the meeting upon the majority vote of the Commissioners present at the meeting.

#### **IV. RULE-MAKING**

##### **A. Authority**

Pursuant to Ark. Code Ann. §23-115-207, the Commission has been authorized by the Legislature to promulgate rules. The Commission follows the procedural requirements of the Arkansas Administrative Procedure Act, Ark. Code Ann. §25-15-201 et seq. except that the Commission shall not be required to file rules under Ark. Code Ann. §10-3-309 but the Commission shall file its rules with the Arkansas Lottery Commission Legislative Oversight Committee at least thirty (30) days prior to the expiration of the public comment period.

##### **B. Initiation of rule-making**

The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to “rule-making”) may be initiated by request of the Commission that the staff submit proposed drafts. Additionally, staff of the Commission may request permission of the Commission to initiate rule-making. Third persons outside the Commission may petition for the issuance, amendment, or repeal of any rule.

##### **C. Petition to initiate rule-making**

1. Third parties may initiate a rule-making proceeding to adopt, amend, or repeal a rule by filing a petition with the Commission to initiate rule-making. The petition must contain the name, address, and telephone number of the petitioner, the specific rule or action requested, the reasons for the rule or action requested, and facts showing that the petitioner is regulated by the Commission or has a substantial interest in the rule or action requested.

2. The petition to initiate rule-making shall be filed with the Director.

3. Within thirty (30) days after submission of the petition, the Commission shall either deny the petition, stating its reasons in writing, or initiate rule-making. A special meeting will be called if necessary to meet this time frame.

##### **D. Public Input**

1. Before finalizing language of a proposed new rule or an amendment to, or repeal of, an existing rule, the Commission shall receive public input through written comments and/or oral submissions. The Commission shall designate in its public notice the format and timing of public comment.

2. Any public hearing will provide affected persons and other members of the

public a reasonable opportunity for presentation of evidence, arguments, and oral statements within reasonable conditions and limitations imposed by the Commission to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceedings.

3. The Chairperson, any member of the Commission, or any person designated by the Commission may preside at the public hearing. The Commission must ensure that the Commission personnel responsible for preparing the proposed rule or amendment are available, and will notify third parties initiating rule changes to be available to explain the proposal and to respond to questions or comments regarding the proposed rule.

4. The Commission shall preserve the comments made at the public hearing by a certified court reporter or by recording instruments.

5. Any person may submit written statements within the specified period of time. All timely, written statements will be considered by the Commission and be made a part of the rule-making record.

**E. Notice of rule-making**

The Commission shall give notice of proposed rule-making pursuant to Ark. Code Ann. §25-15-204. The notice will set any written comment period and will specify the time, date, and place of any public hearing.

**F. The decision to adopt a rule**

1. The Commission shall not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired.

2. Before acting on a proposed rule, the Commission shall consider all of the written submissions and/or oral submissions received in the rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in the rule-making proceedings.

3. The Commission may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

**G. Variance between adopted rule and published notice of a proposed rule.**

1. The Commission shall not adopt a rule that differs from the rule proposed in the published notice of the intended rule-making on which the rule is based unless:

a. the final rule is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule; or

b. the notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment.

2. In determining whether the final rule is in character with the original

scheme and was a logical outgrowth of the notice and comments, and that the notice of intended rule- making provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the Commission must consider the following factors:

a. the extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests; and

b. the extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of intended rule-making; and

c. the extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intended rule-making.

#### **H. Concise statement of reasons**

1. When requested by an interested person, either prior to the adoption of a rule or within thirty (30) days after its adoption, the Commission shall issue a concise statement of the principal reasons for and against its adoption of the rule. Requests for such a statement must be in writing and be delivered to the Director. The request should indicate whether the statement is sought for all or only a specified part of a rule. A request will be considered to have been submitted on the date on which it is received by the Commission.

2. The concise statement of reasons must contain:

a. the Commission's reasons for adopting the rule;

b. an indication of any change between the text of the proposed rule and the text of the rule as finally adopted, with explanations for any such change; and

c. the principal reasons urged in the rule-making procedure for and against the rule, and the Commission's reasons for overruling the arguments made against the rule.

#### **I. Contents**

The Commission shall cause its rules to be published and made available to interested persons. The publication must include:

1. the text of the rule; and

2. a note containing the following:

a. the date(s) the Commission adopted or amended the rule;

b. the effective date(s) of the rule;

c. any findings required by any provisions of law as a prerequisite to adoption for effectiveness of the rule; and

d. citation to the entire specific statutory or other authority authorizing the adoption of the rule;

3. The publication of the rule(s) must state the date of publication.

#### **J. Incorporation by reference**

By reference in a rule, the Commission may incorporate all or any part of a code, standard, rule, or other matter if the Commission finds that copying the matter in the Commission's rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the Commission rule shall fully and precisely identify the incorporated matter by title, citation, date, and edition, if any; briefly indicate the precise subject and general contents of the incorporated matter; and state that the rule does not include any later amendments or editions of the incorporated matter. The Commission may incorporate such a matter by reference in a proposed or adopted rule only if the Commission makes copies of the incorporated matter readily available to the public. The rules must state how and where copies of the incorporated matter may be obtained at cost from this Commission, and how and where copies may be obtained from an Commission of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The Commission must retain permanently a copy of any materials incorporated by reference in a rule of the Commission.

#### **K. Filing**

1. After the Commission formally adopts a new rule or amends a current rule or repeals an existing rule, and after the rule has been reviewed by the Arkansas Lottery Commission Legislative Oversight Committee, the staff shall file final copies of the rule with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research, or as otherwise provided by Ark. Code Ann. §25-15-204(d).

2. Proof of filing a copy of the rule, amendment, or repeal with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research will be kept in a file maintained by Chief Legal Counsel of the Commission.

3. Notice of the rule change will be posted on the Commission's Web page.

### **V. EMERGENCY RULE-MAKING**

#### **A. Request for emergency rule-making**

The proponent of a rule may request the Commission to adopt an emergency rule. In addition to the text of the proposed rule or amendment to an existing rule and any other information required by Rule IV (C), the proponent will provide a written statement setting out the facts or circumstances that would support a finding of imminent peril to the public

health, safety, or welfare.

**B. Finding of an Emergency**

Upon receipt of the written statement requesting an emergency rule-making and documents or other evidence submitted in support of the assertion that an emergency exists, the Commission shall make an independent judgment as to whether the circumstances and facts constitute an imminent peril to the public health, safety, or welfare requiring adoption of the rule upon fewer than 30 days notice. If the Commission determines that the circumstances warrant emergency rule-making, it will make a written determination that sets out the reasons for the Commission's finding that an emergency exists. Upon making this finding, the Commission may proceed to adopt the rule without any prior notice or hearing, or it may determine to provide an abbreviated notice and hearing.

**C. Effective date of emergency rule**

The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the Commission finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The Commission will file with the rule its written findings justifying the determination that emergency rule-making is appropriate and, if applicable, the basis for the effective date of the emergency rule being less than ten days after the filing of the rule pursuant to Ark. Code Ann. §25-15-204(e). The Commission shall take appropriate measures to make emergency rules known to persons who may be affected by them.

**VI. DECLARATORY ORDERS**

**A. Purpose and use of declaratory orders**

A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the Commission has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from the Commission. A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

**B. The Petition**

The process to obtain a declaratory order is begun by filing with the Director a petition that provides the following information:

1. The caption shall read: Petition for Declaratory Order Before The Arkansas Lottery Commission.
2. The name, address, telephone number, and facsimile number of the

petitioner.

3. The name, address, telephone number, and facsimile number of the attorney of the petitioner.

4. The statutory provision(s), Commission rule(s), or Commission order(s) on which the declaratory order is sought.

5. A description of how the statutes, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which petitioner seeks a declaratory order.

6. The signature of the petitioner or petitioner's attorney.

7. The date.

8. Request for a hearing, if desired.

### **C. Commission Disposition**

1. The Commission may hold a hearing to consider a petition for declaratory order. If a hearing is held, it shall be conducted in accordance with Ark. Code Ann. §25-15-208 and §25-15-213.

2. The Commission may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90) days of the filing of the petition, the Commission will render a final order denying the petition or issuing a declaratory order.