

CHAPTER 284

H.B. No. 1587

AN ACT

relating to the operation of the state lottery; creating the State Lottery Commission; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subtitle E, Title 4, Government Code, is amended by adding Chapter 467 to read as follows:

CHAPTER 467. TEXAS LOTTERY COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 467.001. *DEFINITIONS. In this chapter:*

(1) "Commission" means the Texas Lottery Commission.

(2) "Executive director" means the executive director of the Texas Lottery Commission.

Sec. 467.002. *APPLICATION OF SUNSET ACT. The commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this Act expires September 1, 2003.*

[Sections 467.003–467.020 reserved for expansion]

SUBCHAPTER B. COMMISSION

Sec. 467.021. *MEMBERSHIP. (a) The commission is composed of three members appointed by the governor with the advice and consent of the senate.*

(b) In making appointments to the commission, the governor shall strive to achieve representation by all the population groups of the state with regard to economic status, sex, race, and ethnicity.

(c) *One member must have experience in the bingo industry.*

Sec. 467.022. **TERM OF OFFICE.** *Members hold office for staggered terms of six years with one member's term expiring February 1 of each odd-numbered year.*

Sec. 467.023. **RESIDENCE REQUIREMENT.** *An individual is not eligible to be a member of the commission unless the individual has been a resident of this state for at least 10 consecutive years immediately before appointment.*

Sec. 467.024. **ELIGIBILITY.** (a) *An individual is not eligible to be an appointed member of the commission if the individual:*

(1) *owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission;*

(2) *is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;*

(3) *uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses;*

(4) *is an officer, employee, or paid consultant of a Texas trade association in the field of bingo or lottery;*

(5) *is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission;*

(6) *is married to an individual described by Subdivision (1)–(5);*

(7) *has been convicted of a felony or of any crime involving moral turpitude; or*

(8) *is not a citizen of the United States.*

(b) *In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.*

Sec. 467.025. **PROHIBITED CONDUCT.** (a) *A commission member may not:*

(1) *accept any employment or remuneration from:*

(A) *a person that has a significant financial interest in the lottery; or*

(B) *a bingo commercial lessor, bingo distributor, or bingo manufacturer;*

(2) *play any lottery or bingo game conducted in this state;*

(3) *accept or be entitled to accept any part of the winnings to be paid from a lottery or bingo game conducted in this state;*

(4) *use the member's official authority to affect the result of an election or nomination for public office; or*

(5) *directly or indirectly coerce, attempt to coerce, command, or advise a person to pay, lend, or contribute anything of value to another person for political purposes.*

(b) *A commission member or former commission member or the spouse of a commission member or former commission member may not solicit or accept employment from a person regulated by the commission before the second anniversary of the date on which the commission member's service on the commission ends.*

(c) *In this section, "person that has a significant financial interest in the lottery" has the meaning assigned by Section 4.06, State Lottery Act (Article 179g, Vernon's Texas Civil Statutes).*

Sec. 467.026. **REMOVAL OF COMMISSION MEMBER.** (a) *The governor may remove a commission member if the member:*

(1) *does not have at the time of appointment the qualifications required for appointment to the commission;*

(2) does not maintain during service on the commission the qualifications required for appointment to the commission;

(3) violates a prohibition established by Section 467.025;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the presiding officer has knowledge that a potential ground for removal exists, the presiding officer shall notify the governor.

Sec. 467.027. COMPENSATION AND EXPENSES. (a) A commission member is not entitled to compensation for serving on the commission.

(b) A commission member is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties, subject to any applicable limitation in the General Appropriations Act.

Sec. 467.028. OFFICES. The commission shall maintain its general office in the city of Austin. The commission may also establish branch offices.

Sec. 467.029. PRESIDING OFFICER. The governor shall designate one member of the commission as presiding officer of the commission to serve in that capacity at the pleasure of the governor.

Sec. 467.030. MEETINGS. The commission shall hold at least six regular meetings each year on dates fixed by the commission. The commission may meet at other times at the call of the presiding officer or as provided by commission rule.

Sec. 467.031. DIVISIONS. The commission shall establish separate divisions to oversee bingo and the state lottery.

Sec. 467.032. EXECUTIVE DIRECTOR. (a) The commission shall employ an executive director to administer this chapter.

(b) The executive director holds office at the will of the commission and is specifically exempted from the Position Classification Act of 1961 (Article 6252-11, Vernon's Texas Civil Statutes).

(c) The executive director or an acting executive director shall be appointed by the commission no later than November 1, 1993.

Sec. 467.033. DIVISION DIRECTORS. The executive director shall employ a director to oversee each division. A division director serves at the will of the executive director and is specifically exempted from the Position Classification Act of 1961 (Article 6252-11, Vernon's Texas Civil Statutes).

Sec. 467.034. EMPLOYEES. The executive director shall employ other personnel necessary to administer the laws under the commission's jurisdiction. Commission employees serve at the will of the executive director.

Sec. 467.035. RESTRICTIONS ON EMPLOYMENT. (a) The commission may not employ or continue to employ a person who owns a financial interest in:

(1) a bingo commercial lessor, bingo distributor, or bingo manufacturer; or

(2) a lottery sales agency or a lottery operator.

(b) The commission may not employ or continue to employ a person who is a spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of a person who is subject to a disqualification prescribed by Subsection (a).

(c) In employing the executive director and other employees, the commission shall strive to reflect the diversity of the population of the state as regards race, color, handicap, sex, religion, age, and national origin.

Sec. 467.036. ACCESS TO CRIMINAL HISTORY RECORDS. (a) The governor shall conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency relating to an individual the governor intends to appoint to the commission.

(b) The commission shall conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency relating to an individual the commission intends to employ.

[Sections 467.037–467.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 467.101. POWERS AND DUTIES OF COMMISSION. (a) The commission has broad authority and shall exercise strict control and close supervision over all activities authorized and conducted in this state under:

- (1) the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes); and*
- (2) the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes).*

(b) The commission shall ensure that games are conducted fairly and in compliance with the law.

(c) The commission also has the powers and duties granted under:

- (1) the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes); and*
- (2) the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes).*

Sec. 467.102. RULES. The commission may adopt rules for the enforcement and administration of this chapter and the laws under the commission's jurisdiction.

Sec. 467.103. DUTIES OF EXECUTIVE DIRECTOR. (a) The executive director shall perform all duties required by the commission to administer this chapter and the laws under the commission's jurisdiction. The executive director may not hold other employment.

(b) The executive director may create, abolish, transfer, and consolidate bureaus and other units that are part of the commission and that are not expressly established by law as the executive director determines to be necessary for the efficient operation of the commission.

Sec. 467.104. RECORDS. (a) All commission records that are not made confidential by other law are open to inspection by the public during regular office hours.

(b) The executive director shall keep the records of the commission.

Sec. 467.105. LEGAL REPRESENTATION. (a) The attorney general shall designate at least one member of the attorney general's staff to counsel and advise the commission and to represent the commission in legal proceedings. The attorney general shall make available to the appropriate prosecuting attorneys any information obtained regarding a violation of a law under the commission's jurisdiction.

(b) The attorney general may apply for injunctive or declaratory relief to enforce a law under the commission's jurisdiction or a rule adopted by the commission. Action by the attorney general under this subsection does not limit the authority of the attorney general or a prosecuting attorney to bring a criminal proceeding.

SECTION 2. Section 1.02, State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended by amending Subdivision (2) and adding Subdivisions (9) and (10) to read as follows:

(2) "Division" means the lottery division established by the Texas Lottery Commission under Chapter 467, Government Code, and its subsequent amendments [in the office of the comptroller under this Act].

(9) "Commission" means the Texas Lottery Commission.

(10) "Executive director" means the executive director of the Texas Lottery Commission.

SECTION 3. Section 2.01(l), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended to read as follows:

(l) The legislature intends that advertisements or promotions sponsored by the *commission* [comptroller's office] or the division for the lottery not be of a nature that unduly influences any person to purchase a lottery ticket or number.

SECTION 4. Section 2.02, State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.02. POWERS AND DUTIES OF EXECUTIVE [COMPTROLLER,] DIRECTOR[,] AND COMMISSION [DIVISION]. (a) The *commission* [comptroller] and *executive* director have broad authority and shall exercise strict control and close supervision over all lottery games conducted in this state to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery.

(b) The *commission* [comptroller] shall adopt all rules necessary to administer this Act. The *executive* director may propose rules to be adopted by the *commission* [comptroller], but the *executive* director's proposed rules have no effect until adopted by the *commission* [comptroller].

(c) The *commission* [comptroller] shall adopt rules to the extent they are not inconsistent with the Open Meetings Act (Article 6252-17, Vernon's Texas Civil Statutes) and the Open Records Act (Article 6252-17a, Vernon's Texas Civil Statutes) governing the:

(1) security for the lottery and the *commission* [division], including the development of an internal security plan;

(2) apportionment of the total revenues from the sale of tickets and from all other sources in the amounts provided by this Act;

(3) enforcement of prohibitions on the sale of tickets to or by an individual younger than 18 years of age; and

(4) enforcement of prohibitions on a person playing a lottery game or activity by telephone.

(d) The *commission* [comptroller] may adopt rules governing the establishment and operation of the lottery, including rules governing:

(1) the type of lottery games or activities to be conducted;

(2) the price of each ticket;

(3) the number of winning tickets and amount of the prize paid on each winning ticket;

(4) the frequency of the drawing or selection of a winning ticket;

(5) the number and types of locations at which a ticket may be sold;

(6) the method to be used in selling a ticket;

(7) the use of vending machines or electronic or mechanical devices of any kind, other than machines or devices that dispense currency or coins as prizes;

(8) the manner of paying a prize to the holder of a winning ticket;

(9) the investigation of possible violations of this Act or any rule adopted under this Act;

(10) the means of advertising to be used for the lottery;

(11) the qualifications of vendors of lottery services or equipment;

(12) the confidentiality of information relating to the operation of the lottery, including:

(A) trade secrets;

(B) security measures, systems, or procedures;

(C) security reports;

(D) bids or other information regarding the *commission's* [division's] contracts, if disclosure of the information would impair the *commission's* [division's] ability to contract for facilities, goods, or services on terms favorable to the *commission* [division];

(E) personnel information unrelated to compensation, duties, qualifications, or responsibilities; and

(F) information obtained by *commission* [division] security officers or investigators;

(13) the development and availability of a model agreement governing the division of a prize among multiple purchasers of a winning ticket purchased through a group purchase or pooling arrangement;

(14) the criteria to be used in evaluating bids for contracts for lottery facilities, goods, and services; or

(15) any other matter necessary or desirable as determined by the *commission* [~~comptroller~~], to promote and ensure:

(A) the integrity, security, honesty, and fairness of the operation and administration of the lottery; and

(B) the convenience of players and holders of winning tickets.

(e) If the *executive* director authorizes a person who is not an employee of the *commission* [~~division~~] to sell tickets, the person must be licensed as a sales agent by the *commission* [~~division~~]. The *executive* director may establish a *provisional license* or other classes of licenses necessary to regulate and administer the quantity and type of lottery games or activities provided at each licensed location. Each sales agent shall post a cash bond, surety bond, letter of credit, certificate of deposit, or other security approved by the *executive* director, *including the contribution of cash to a pooled bond fund established by the executive director to protect the state from possible losses*. The amount of the security shall be determined by the *executive* director and shall reflect the possible losses to the state from the operation of the sales agent. The *executive* director may also require a sales agent to maintain insurance if necessary to protect the interests of the state. As prescribed by *rule* [~~division rules~~], each sales agent shall prominently display the license in each place of business or activity at which the sales agent sells tickets.

(f) The *commission* [~~comptroller~~] shall make an annual report to the governor and the legislature that provides a summary of lottery revenues, prize disbursements, and other expenses for the fiscal year preceding the report. The report must be in the form and reported in the time provided by the General Appropriations Act.

(g) The *executive* director may contract with or employ a person to perform a function, activity, or service in connection with the operation of the lottery as prescribed by the *executive* director. A person with whom the *executive* director contracts to operate a lottery must be eligible for a sales agent license under Section 3.02 of this Act.

(h) [~~A contract for independent consulting, management services, or activities related to the establishment or implementation of lottery operations is not subject to:~~

~~(1) the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes);~~

~~(2) the Professional Services Procurement Act (Article 664-4, Vernon's Texas Civil Statutes);~~

~~(3) Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes); or~~

~~(4) the Information Resources Management Act (Article 4413(32j), Revised Statutes).~~

~~(i) This subsection and Subsection (h) of this section expire September 1, 1993.~~

~~(j) Each lottery operator's and sales agent's records are subject to audit by the *commission* [~~division, the comptroller,~~] and the state auditor. For the purpose of carrying out this Act, the *executive* director [~~, comptroller,~~] or state auditor may examine all books, records, papers, or other objects that the *executive* director [~~, comptroller,~~] or state auditor determines are necessary for conducting a complete examination under this Act and may also examine under oath any officer, director, or employee of a lottery operator or sales agent. The *executive* director [~~, comptroller,~~] or state auditor may conduct an examination at the principal office or any other office of the lottery operator or sales agent or may require the lottery operator or sales agent to produce the records at the office of the *commission* [~~division, comptroller,~~] or state auditor. If a sales agent refuses to permit an examination or to answer any question authorized by this subsection, the *executive* director [~~comptroller~~] may summarily suspend the license of the sales agent under Section 3.03 of this Act until the examination is completed as required. Section 321.013(h), Government Code, does not apply to an audit of a lottery operator or sales agent.~~

(i) [(k)] The *commission* [comptroller] shall adopt rules prohibiting the operation of any game using a video lottery machine or machine. As used in this subsection “video lottery machine” or “machine” means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, keno, and blackjack, utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash, coins or tokens, or that directly dispenses cash, coins, or tokens.

SECTION 5. Article 2, State Lottery Act (Article 179g, Vernon’s Texas Civil Statutes), is amended by adding Section 2.021 to read as follows:

Sec. 2.021. REVIEW BY COMPTROLLER. The *comptroller shall perform an annual review of the management and operations of the lottery and may examine such books, records, documents, things, or persons as may be necessary for that purpose. The comptroller shall report the results of his review to the governor, lieutenant governor, and the speaker of the house of representatives.*

SECTION 6. Section 2.03(a), State Lottery Act (Article 179g, Vernon’s Texas Civil Statutes), is amended to read as follows:

(a) The *executive* director or a lottery operator may not establish or operate a lottery game or activity in which the winner is chosen on the basis of the outcome of a sports event.

SECTION 7. Sections 2.04(a)–(f), (h), and (k), State Lottery Act (Article 179g, Vernon’s Texas Civil Statutes), are amended to read as follows:

(a) The *executive* director may establish procedures for the purchase or lease of facilities, goods, and services and make any purchases, leases, or contracts that are necessary for carrying out the purposes of this Act. The procedures shall, as determined feasible and appropriate by the *executive* director, promote competition to the maximum extent possible. In all procurement decisions, the *executive* director shall take into account the particularly sensitive nature of the lottery and shall act to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery and the objective of producing revenues for the state treasury.

(b) The *executive* director may not award a contract for the purchase or lease of facilities, goods, or services related to lottery operations to a person who would be denied a license as a sales agent under Section 3.02 of this Act.

(c) The procurement procedures adopted by the *executive* director shall, as determined feasible and appropriate by the *executive* director, afford any party who is aggrieved by the terms of a solicitation or the award of a contract an opportunity to protest the *executive* director’s action to the *commission* [comptroller]. The protest procedures shall provide for an expedient resolution of the protest in order to avoid substantially delaying a solicitation or contract award that is necessary for the timely implementation of a lottery game. A protest must be in writing and be filed with the *commission* [comptroller] not later than 72 hours after receipt of notice of the *executive* director’s action.

(d) A party who is aggrieved by the *commission’s* [comptroller’s] resolution of a protest under Subsection (c) of this section may file an action in the district court of Travis County. The court shall give preference to hearings and trials of actions under this section. If the party filing the action seeks to enjoin the implementation of a solicitation or contract, the party shall post a bond that is payable to the state if the party does not prevail in the appeal, and is in an amount sufficient to compensate the state for the revenue that would be lost due to the delay in lottery operations.

(e) A contract for the acquisition or provision of facilities, supplies, equipment, materials, or services related to the operation of the lottery shall provide for liquidated damages and a performance bond in an amount equal to the *executive* director’s best available estimate of the revenue that would be lost if the contractor fails to meet deadlines specified in the contract.

(f) On request of the *executive* director, the [~~State Purchasing and~~] General Services Commission shall assist the *executive* director in:

(1) acquiring facilities, supplies, materials, equipment, and services under the State Purchasing and General Services Act (Article 601b, Vernon’s Texas Civil Statutes); or

(2) establishing procedures for the *executive* director's accelerated acquisition of facilities, supplies, materials, equipment, and services for the operation of the lottery.

(h) Notwithstanding the provisions of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), the *commission* [~~comptroller~~] may negotiate rates and execute contracts with telecommunications service providers for the interexchange services necessary for the operation of the lottery. The *commission* [~~comptroller~~] may acquire transmission facilities by lease, purchase, or lease-purchase. The acquisition of transmission facilities shall be done on a competitive bid basis if possible.

(k) The *commission* [~~comptroller~~] shall require any person seeking to contract for goods or services relating to the implementation and administration of this Act to submit to competitive bidding procedures in accordance with rules established by the *commission* [~~comptroller~~]. Such procedures shall be for the purpose of insuring fairness and integrity.

SECTION 8. Section 2.05(a), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) In all contracts for lottery equipment, supplies, services, and advertising, the *commission* [division] and each lottery operator shall give preference to equipment or supplies produced in this state or services or advertising offered by bidders from this state, the cost to the state and quality being equal.

SECTION 9. Sections 2.06(a) and (c), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The *executive* director [~~the division~~] and each lottery operator shall take positive steps to:

- (1) inform minority businesses of opportunities to:
 - (A) provide lottery equipment and supplies to the *commission* [division];
 - (B) provide services, including advertising, to the *commission* [division] for the operation of the lottery; or
 - (C) obtain a license to sell lottery tickets;
- (2) waive or modify bond requirements, if feasible;
- (3) award contracts for lottery equipment or supplies to minority businesses when possible;
- (4) award contracts for lottery services, including advertising, to minority businesses when possible;
- (5) license minority businesses as sales agents;
- (6) monitor the effectiveness of the efforts to increase the ability of minority businesses to do business with the *commission* [division]; and
- (7) require all bidders or contractors, when appropriate, to include specific plans or arrangements to utilize subcontracts with minority businesses.

(c) The *commission* [~~comptroller~~] shall annually report to the legislature and the governor on the level of minority business participation as pertains to both the *commission's* [division's] contracts and the licensure of sales agents. The report shall include recommendations for the improvement of minority business opportunities in lottery-related business.

SECTION 10. Sections 2.07–2.11, State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2.07. TELEVISION CONTRACTS. If the drawing or selection of winning tickets is televised under a contract with the *commission* [division], the contract must be awarded by competitive bid. The *commission* [~~comptroller~~] shall adopt rules governing the competitive bidding process. Money received under the contract shall be deposited in the state lottery account established under Section 5.02 of this Act.

Sec. 2.08. PUBLICITY OF INDIVIDUALS PROHIBITED. A state officer [~~or employee~~], including a *commission member* or [~~the comptroller~~] the *executive* director, or an officer or employee of the *commission* [~~comptroller's office or the division~~], may not appear in an advertisement or promotion for the lottery that is sponsored by the *commission* [~~comptroller's office or the division~~] or in a televised lottery drawing. An advertisement or promotion for the lottery may not contain the likeness or name of a state officer [~~or employee~~], including

a commission member or ~~[the comptroller]~~ the executive director, or an officer or employee of the commission ~~[comptroller's office or the division]~~. In connection with providing security for the lottery, this section shall not prohibit a security officer or investigator employed by the commission ~~[division]~~ from appearing in a televised lottery drawing or other promotion for the lottery that is sponsored by the commission ~~[comptroller's office or the division]~~. Notwithstanding the provisions of this section, the executive director may designate an employee of the commission ~~[division]~~ to participate in a promotional event~~[, the purpose of which is to award a prize]~~.

Sec. 2.09. AUDIT. The executive director shall provide for a certified public accountant to conduct an independent audit for each fiscal year of all accounts and transactions of the lottery. The certified public accountant may not have, as determined by the executive director, a significant financial interest in a sales agent, lottery vendor, or lottery operator. The certified public accountant shall present an audit report to the executive director, the commission ~~[comptroller]~~, the governor, and the legislature not later than April 1 of the year following the fiscal year for which the audit was performed. The report must contain recommendations to enhance the earnings capability of the lottery and improve the efficiency of lottery operations. The state auditor may review the results of and working papers related to the audit.

Sec. 2.10. INVESTIGATIONS. The attorney general, the district attorney for Travis County, or the district attorney, criminal district attorney, or county attorney performing the duties of district attorney for the county in which the violation or alleged violation occurred may investigate a violation or alleged violation of this Act and of the penal laws of this state by the commission ~~[division]~~ or its employees, a sales agent, a lottery vendor, or a lottery operator.

Sec. 2.11. ENFORCEMENT. (a) The executive director ~~[comptroller]~~ or designated personnel of the commission ~~[division]~~ may investigate violations of this Act and violations of the rules adopted under this Act. After conducting investigations, the executive director ~~[comptroller]~~, a person designated by the commission ~~[comptroller]~~, or any law enforcement agency may file a complaint with the district attorney of Travis County or with the district attorney of the county in which a violation is alleged to have occurred.

(b) The executive director ~~[comptroller]~~ has the administrative, enforcement, and collection powers provided by Subtitle B, Title 2, Tax Code, in regard to the lottery. For purposes of the application of Title 2 of the Tax Code:

(1)~~[,]~~ the state's share of proceeds from the sale of lottery tickets is treated as if it were a tax; and

(2) a power granted to the comptroller may be exercised by the commission.

SECTION 11. Article 2, State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended by adding Section 2.111 to read as follows:

Sec. 2.111. VENUE. Venue is proper in Travis County or any county in which venue is proper under Chapter 13, Code of Criminal Procedure, and its subsequent amendments for:

(1) an offense under this Act;

(2) an offense under the Penal Code, if the accused:

(A) is a lottery operator, lottery vendor, sales agent, or employee of the division; and

(B) is alleged to have committed the offense while engaged in lottery activities; or

(3) an offense that involves property consisting of or including lottery tickets under Title 7 or 11, Penal Code, and its subsequent amendments.

SECTION 12. Sections 2.12(a)–(f), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The executive director shall maintain a department of security in the commission ~~[division]~~. The executive director shall appoint a deputy to administer the department. The deputy must be qualified by training and experience in law enforcement or security to supervise, direct, and administer the activities of the department.

(b) The executive director may employ security officers or investigators as the executive director considers necessary and may commission security officers or investigators as peace

officers. The deputy and all investigators employed by the department of security as peace officers must meet the requirements under Chapter 415, Government Code, for employment and commission as peace officers.

(c) A security officer or investigator employed by the department of security or a peace officer who is working in conjunction with the *commission* [~~comptroller~~] or the Department of Public Safety in the enforcement of this Act, without a search warrant, may search and seize a lottery vending machine, lottery computer terminal, or other lottery equipment that is located on premises for which a person holds a sales agent license issued under this Act.

(d) The Department of Public Safety, at the *commission's* [~~comptroller's~~] request, shall perform a full criminal background investigation of a prospective deputy or investigator of the department of security. The *commission* [~~comptroller~~] shall reimburse the Department of Public Safety for the actual costs of an investigation.

(e) At least once every two years, the *executive* director shall employ an independent firm that is experienced in security, including computer security and systems security, to conduct a comprehensive study of all aspects of lottery security, including:

- (1) lottery personnel security;
- (2) sales agent security;
- (3) lottery operator and vendor security;
- (4) security against ticket counterfeiting and alteration and other means of fraudulent winning;
- (5) security of lottery drawings;
- (6) lottery computer, data communications, database, and systems security;
- (7) lottery premises and warehouse security;
- (8) security of distribution of tickets;
- (9) security of validation and payment procedures;
- (10) security involving unclaimed prizes;
- (11) security aspects of each lottery game;
- (12) security against the deliberate placement of winning tickets in lottery games that involve preprinted winning tickets by persons involved in the production, storage, transportation, or distribution of tickets; and
- (13) other security aspects of lottery operations.

(f) The *executive* director shall provide the *commission* [~~comptroller~~] with a complete report of the security study conducted under Subsection (e) of this section. The *commission* [~~comptroller~~] shall provide the governor and the legislature, before the convening of each regular legislative session, with a summary of the security study that shows the overall evaluation of the lottery's security.

SECTION 13. Sections 2.13 and 2.14, State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2.13. DEMOGRAPHIC STUDIES. (a) The *executive* director shall, every two years, employ an independent firm experienced in demographic analysis to conduct a demographic study of lottery players. The study shall include the income, age, sex, *race*, education, and frequency of participation of players.

(b) The *executive* director shall report the results of the demographic study conducted under Subsection (a) of this section to the *commission* [~~comptroller~~], the governor, and the legislature before the convening of each regular legislative session.

Sec. 2.14. CONFIDENTIAL INFORMATION. The following information is confidential and is exempt from disclosure under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes):

- (1) security plans and procedures of the *commission* [~~division or the office of the comptroller~~] designed to ensure the integrity and security of the operation of the lottery;

(2) information of a nature that is designed to ensure the integrity and security of the selection of winning tickets or numbers in the lottery, other than information describing the general procedures for selecting winning tickets or numbers; and

(3) the street address and telephone number of a prize winner, if the prize winner has not consented to the release of the information.

SECTION 14. Section 2.15(b), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An investigation report or other document submitted by the Department of Public Safety to the *commission* [~~division~~] becomes part of the investigative files of the *commission* [~~division~~] and is subject to discovery by a person that is the subject of the investigation report or other document.

SECTION 15. Sections 3.01(c), (f), and (h), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) An applicant for a license under this section must apply to the division under rules prescribed by the *commission* [~~comptroller~~], provide information necessary to determine the applicant's eligibility for a license under Section 3.02 of this Act, and provide other information considered necessary by the *commission* [~~comptroller~~]. The applicant must include an application fee with each application. The director shall set the application fee in an amount that is at least sufficient to cover the costs incurred by the division and by the Department of Public Safety to process the application. The director shall determine from information provided by the Department of Public Safety the amount required for costs incurred by the department and shall allocate those amounts to the department at least monthly. If the director denies an application for a license based on a factor listed in Subsection (f) of this section, the director shall refund one-half of the application fee to the applicant. If the director denies an application based on another factor, the director may not refund any part of the application fee. Applications for licenses must be available for public inspection during regular office hours.

(f) The *commission* [~~comptroller~~] shall adopt rules under which, before issuing a license to an applicant, the director shall consider:

- (1) the financial responsibility and security of the applicant and the business or activity in which the applicant is engaged;
- (2) the public accessibility of the applicant's place of business or activity;
- (3) the sufficiency of existing sales agents to serve the public convenience;
- (4) whether individuals under 18 years of age constitute a majority of the applicant's customers or as customers provide a majority of the applicant's sales volume;
- (5) the volume of expected sales; and
- (6) any other factor that the director considers appropriate.

(h) Unless suspended or revoked, a license expires on the date specified in the license, which may not be later than the second anniversary of its date of issuance. The *commission* [~~comptroller~~] shall adopt rules for the renewal of licenses. The director shall set the fee for a renewal of a license in an amount at least sufficient to cover the cost of processing the renewal. A sales agent must file a renewal application and pay the renewal fee before the sales agent's license expires.

SECTION 16. Sections 3.02(a), (d), and (f), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) After a hearing, the director shall deny an application for a license or the *commission* [~~comptroller~~] shall suspend or revoke a license if the director or *commission* [~~comptroller~~], as applicable, finds that the applicant or sales agent:

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

(B) is or has been a professional gambler; [~~or~~]

(C) is married to [~~or related in the first degree of consanguinity or affinity to~~] an individual:

(i) described in Paragraph (A) or (B) of this subdivision; or
 (ii) who is currently delinquent in the payment of any state tax; *or*
 (D) is an officer or employee of the commission or a lottery operator; *or*
 (E) is a spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of a person described by Paragraph (D) of this subdivision;

(2) is not an individual, and an individual described in Subdivision (1) of this subsection:
 (A) is an officer or director of the applicant or sales agent;
 (B) holds more than 10 percent of the stock in the applicant or sales agent;
 (C) holds an equitable interest greater than 10 percent in the applicant or sales agent;
 (D) is a creditor of the applicant or sales agent who holds more than 10 percent of the applicant's or sales agent's outstanding debt;

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

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

(G) participates in managing the affairs of the applicant or sales agent; [~~or~~

~~(H) is an employee of the applicant or sales agent who is or will be involved in:~~

~~(i) selling tickets; or~~

~~(ii) handling money from the sale of tickets;]~~

(3) is currently delinquent in the payment of any state tax;

(4) is a person whose location for the sales agency is:

(A) a racetrack at which wagering is authorized under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes);

(B) a location licensed for games of bingo under the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes);

(C) on land that is owned by:

(i) this state; *or*

(ii) a political subdivision of this state, other than land used as a mass transportation facility that is used by commercial carriers; *or*

(D) a location for which a person holds a wine and beer retailer's permit, mixed beverage permit, mixed beverage late hours permit, private club registration permit, or private club late hours permit issued under Chapter 25, 28, 29, 32, or 33, Alcoholic Beverage Code; *or*

(5) has violated this Act or a rule adopted under this Act.

(d) If the director proposes to deny an application for a license or the *commission* [~~comptroller~~] proposes to suspend or revoke a license under this section, the applicant or sales agent is entitled to written notice of the time and place of the hearing. A notice may be served on an applicant or sales agent personally or sent by certified or registered mail, return receipt requested, to the person's mailing address as it appears on the *commission's* [~~division's~~] records. A notice must be served or mailed not later than the 20th day before the date of the hearing.

(f) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to a hearing under this section. *The commission shall provide for a formal administrative hearings process.*

SECTION 17. Section 3.03, State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.03. SUMMARY SUSPENSION OF LICENSE. (a) The *commission* [~~comptroller~~] may suspend a sales agent's license summarily without notice or hearing if the *commission* [~~comptroller~~] finds that the action is necessary to maintain the integrity, security,

honesty, or fairness of the operation or administration of the lottery or to prevent financial loss to the state and:

(1) the sales agent fails to deposit money received from ticket sales under Section 5.01 of this Act;

(2) an event occurs that would render the sales agent ineligible for a license under Section 3.02 of this Act;

(3) the sales agent refuses to permit the *executive director*, the director, the *commission* [~~comptroller~~], or the state auditor to examine the agent's books, records, papers, or other objects under Section 2.02(h) [~~2.02(j)~~] of this Act; or

(4) the *executive director* learns the sales agent has failed to disclose information that would, if disclosed, render the sales agent ineligible for a license under Section 3.02 of this Act.

(b) The *commission* [~~comptroller~~] may summarily suspend a sales agent's license if proceedings for a preliminary hearing before *the commission or the commission's representative* [~~the comptroller or the comptroller's representative~~] are initiated simultaneously with the summary suspension. The preliminary hearing shall be set for a date not later than 10 days after the date of the summary suspension, unless the parties agree to a later date.

(c) At the preliminary hearing, the sales agent must show cause why the license should not remain suspended pending a final hearing on suspension or revocation. The Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) does not apply [~~to the comptroller~~] in the administration and enforcement of the summary suspension of a license under this section. The rules governing a hearing on any other license suspension or revocation under this Act govern a final administrative hearing under this subsection.

(d) To initiate a proceeding to summarily suspend a sales agent's license, the *commission* [~~comptroller~~] must serve notice to the sales agent informing the agent of the right to a preliminary hearing [~~before the comptroller or the comptroller's representative~~] and of the time and place of the preliminary hearing. The notice must be personally served on the sales agent or an officer, employee, or agent of the sales agent or sent by certified or registered mail, return receipt requested, to the sales agent's mailing address as it appears on the *commission's* [~~division's~~] records. The notice must state the alleged violations that constitute grounds for summary suspension. The suspension is effective at the time the notice is served. If notice is served in person, the sales agent shall immediately surrender the license to the *commission* [~~comptroller or to the comptroller's representative~~]. If notice is served by mail, the sales agent shall immediately return the license to the *commission* [~~comptroller~~]. If the sales agent uses an on-line electronic terminal to sell tickets, the director or a lottery operator on the instructions of the director may terminate the connection of the terminal to the *commission's* [~~division's~~] lottery computer at the time:

(1) the proceeding to summarily suspend the license is initiated; or

(2) *the division discovers the sales agent has failed to deposit money received from ticket sales, if the sales agent's license is being summarily suspended under Subsection (a)(1) of this section.*

SECTION 18. Section 3.06, State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.06. ACCESS TO CRIMINAL HISTORY AND FEDERAL TAX INFORMATION.

(a) The *commission* [~~comptroller~~] is entitled to conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency to assist in the investigation of:

(1) a sales agent or an applicant for a sales agent license;

(2) a person required to be named in a license application;

(3) a lottery operator or prospective lottery operator;

(4) an employee of a lottery operator or prospective lottery operator, if the employee is or will be directly involved in lottery operations;

(5) a person who manufactures or distributes lottery equipment or supplies, or a representative of a person who manufactures or distributes lottery equipment or supplies offered to the lottery;

(6) a person who has submitted a written bid or proposal to the *commission* [division] in connection with the procurement of goods or services by the *commission* [division], if the amount of the bid or proposal exceeds \$500;

(7) an employee or other person who works for or will work for a sales agent or an applicant for a sales agent license;

(8) a person who proposes to enter into or who has a contract with the *commission* [division] to supply goods or services to the *commission* [division]; or

(9) if a person described in Subdivisions (1) through (8) of this subsection is not an individual, an individual who:

(A) is an officer or director of the person;

(B) holds more than 10 percent of the stock in the person;

(C) holds an equitable interest greater than 10 percent in the person;

(D) is a creditor of the person who holds more than 10 percent of the person's outstanding debt;

(E) is the owner or lessee of a business that the person conducts or through which the person will conduct lottery-related activities;

(F) shares or will share in the profits, other than stock dividends, of the person;

(G) participates in managing the affairs of the person; or

(H) is an employee of the person who is or will be involved in:

(i) selling tickets; or

(ii) handling money from the sale of tickets.

(b) The *commission* [comptroller] shall conduct an investigation of and obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency to assist in the investigation of:

(1) the *executive* director or a prospective *executive* director [~~of the division~~]; or

(2) an employee or prospective employee of the *commission* [division].

(c) Not later than one year after the date of each renewal, the *commission* [comptroller] shall obtain criminal history record information maintained by the Department of Public Safety on a sales agent whose license is renewed under Section 3.01(h) of this Act.

(d) The *executive* director may discharge from employment an employee of the *commission* [division] who fails to provide a complete legible set of fingerprints on request. The *executive* director may refuse to consider a prospective employee of the *commission* [division] who fails to provide a complete legible set of fingerprints on request.

(e) The *executive* director may deny an application for a license or the *commission* [comptroller] may suspend or revoke a license if the applicant or sales agent fails on request to provide a complete legible set of fingerprints off:

~~[(1)] a person required to be named in a license application[; or~~

~~[(2) an employee or other person who works or will work for the applicant or sales agent, if the person:~~

~~[(A) is or will be involved in the sale of tickets; or~~

~~[(B) handles or will handle money from the sale of tickets].~~

(f) All criminal history record information received by the *executive* director is privileged information and is for the exclusive use of the *executive* director and employees of the *commission* [division] designated by the *executive* director. Except on court order or as provided by Subsection (h) of this section, the information may not be released or otherwise disclosed to any other person or agency.

(g) All information received by the *executive* director from the Internal Revenue Service is confidential and may only be used as provided by the contract between the comptroller and the Internal Revenue Service under which the information was obtained.

(h) The *executive* director or an employee of the *commission* [division] may not provide any person being investigated under this section with a copy of the person's criminal history record obtained from the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency. This subsection does not prevent the *executive* director from disclosing to the person the dates and places of arrests, offenses, and dispositions contained in the criminal history records.

(i) A person commits an offense if the person releases or discloses information received by the *commission* [comptroller] under this section except on court order or as provided by Subsection (h) of this section. An offense under this subsection is a Class A misdemeanor.

(j) The *executive* director may request the cooperation of the Department of Public Safety to perform a background investigation of a person listed in Subsection (a) or (b) of this section. The *executive* director shall reimburse the Department of Public Safety for the actual cost of an investigation. The *executive* director may require a person who is subject to investigation to pay all costs of the investigation and to provide any information, including fingerprints, necessary to carry out the investigation or facilitate access to state or federal criminal history record information. Payments made to the *executive* director under this subsection shall be deposited in the general revenue fund and may be used to reimburse the Department of Public Safety for the actual costs of an investigation.

(k) Unless otherwise prohibited by law, the Department of Public Safety may retain any record or information submitted to it under this section. The Department of Public Safety shall notify the *executive* director of any change in information provided to the *executive* director when the Department of Public Safety learns of the change.

(l) *The commission shall adopt rules governing the custody and use of criminal history record information obtained under this section.* The comptroller shall adopt necessary rules governing the custody and use of information obtained from the *Internal Revenue Service* under this section.

(m) The *executive* director may obtain information relating to a person's qualification for licensing, employment, or contracting under this Act from the Internal Revenue Service under a contract between the comptroller and the Internal Revenue Service on:

- (1) a sales agent or an applicant for a sales agent license;
- (2) an employee or prospective employee of the *commission* [division];
- (3) a person required to be named in a license application;
- (4) a lottery operator or prospective lottery operator;
- (5) an employee of a lottery operator or prospective lottery operator, if the employee is or will be directly involved in lottery operations;
- (6) a person who manufactures or distributes lottery equipment or supplies, or a representative of a person who manufactures or distributes lottery equipment or supplies offered to the lottery;
- (7) a person who has submitted a written bid or proposal to the *commission* [division] in connection with the procurement of goods or services by the *commission* [division];
- (8) an employee or other person who works for or will work for a sales agent or an applicant for a sales agent license; or
- (9) a person who proposes to enter into or who has a contract with the *commission* [division] to supply goods or services to the *commission* [division].

(n) The *executive* director may award a contract for lottery supplies or services, including a contract under Section 2.02(g) of this Act, pending the completion of any investigation authorized by this Act. A contract awarded under this subsection must include a provision permitting the *executive* director to terminate the contract without penalty if the investigation reveals that the person to whom the contract is awarded would not be eligible for a sales agent license under Section 3.02 of this Act. ~~The director's authority to award a contract under this subsection expires September 1, 1993. This subsection expires January 1, 1995.]~~

(o) ~~The comptroller shall obtain criminal history record information maintained by the Department of Public Safety on any person receiving a temporary license under Section 3.04 of this Act not later than one year after the date of issuance of the temporary license. This subsection expires September 1, 1993.~~

[p] All fingerprints submitted to the Department of Public Safety must be on a form prescribed by the Department of Public Safety.

SECTION 19. Section 4.01, State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.01. TICKETS. (a) The *executive* director shall prescribe the form of tickets. The toll-free "800" telephone number established by the Texas Commission on Alcohol and Drug Abuse under Section 461.018, Health and Safety Code, must be printed on each ticket. The overall estimated odds of winning a prize in a given game or activity must be printed on each ticket and prominently displayed in association with the sale of lottery products. The estimate must be based on reasonable projections and past experience.

(b) By purchasing a ticket in a particular lottery game or activity, a player agrees to abide by and be bound by the *commission's* ~~[division's]~~ rules, including the rules applicable to the particular lottery game or activity involved. The player also acknowledges that the determination of whether the player is a valid winner is subject to the *commission's* ~~[division's]~~ rules and claims procedures, including those developed for the particular lottery game or activity involved, and subject to any validation tests established by the *commission* ~~[division]~~ for the particular lottery game or activity involved. If the lottery uses tickets, an abbreviated form of the rules or a reference to the rules may appear on the tickets.

(c) *A person claiming or attempting to claim a lottery prize or a share of a lottery prize represents that the ticket or other item showing that the person is entitled to the prize or share was lawfully obtained, is not stolen, forged, or altered, and has not previously been redeemed.*

SECTION 20. Section 4.02, State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.02. CERTAIN SALES OF TICKETS PROHIBITED. (a) A person commits an offense if the person intentionally or knowingly sells a ticket at a price the person knows is greater than that fixed by the *commission* ~~[division]~~ or by the lottery operator authorized to set that price. An offense under this subsection is a Class A misdemeanor.

(b) Except as provided by this subsection, a person who is not a sales agent or an employee of a sales agent commits an offense if the person intentionally or knowingly sells a ticket. An offense under this subsection is a felony of the third degree. A lottery operator may sell tickets to a licensed sales agent. A person who is not a sales agent may distribute tickets as premiums to customers, employees, or other persons who deal with the person if no purchase ~~[or service]~~ is required to entitle the recipient to the ticket. *A qualified organization as defined in Section 2, Charitable Raffle Enabling Act (Article 179f, Revised Statutes, as added by Chapter 957, Acts of the 71st Legislature, Regular Session, 1989), may distribute tickets as a prize in a raffle authorized by the Charitable Raffle Enabling Act.*

(c) A person commits an offense if the person sells a ticket at a location other than the location of a sales agency. An offense under this subsection is a Class A misdemeanor.

(d) A sales agent or an employee of a sales agent *commits an offense if the person* ~~[may not]~~ intentionally or knowingly *sells or offers* ~~[sell or offer]~~ to sell a ticket to an individual that the person knows is younger than 18 years of age. *An offense under this subsection is a Class C misdemeanor.*

(e) A person may not *purchase* ~~[sell]~~ a ticket or *claim, collect, or receive* ~~[pay]~~ a lottery prize or a share of a lottery prize if ~~[to another person that]~~ the person ~~[knows]~~ is:

(1) a member, officer, or employee of a person that has a contract with the *commission* ~~[division]~~ to sell or lease goods or services used in the lottery;

(2) a member, officer, or employee of a lottery operator;

(3) an officer or employee of the *commission* ~~[comptroller]~~; or

(4) a spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of a person described by Subdivision (1), (2), or (3) of this subsection.

(f) A person 18 years of age or older may purchase a ticket to give as a gift to another person, including an individual younger than 18 years of age.

(g) If an individual listed in Subsection (e) of this section purchases a ticket or claims or otherwise attempts to collect or receive a lottery prize or a share of a lottery prize or an individual younger than 18 years of age directly purchases a ticket, the individual is not eligible to receive a prize or share of a prize, and the prize or share of a prize otherwise payable on the ticket is treated as an unclaimed prize as provided by Section 5.05 of this Act.

(h) ~~(g)~~ A sales agent or an employee of a sales agent commits an offense if the person intentionally or knowingly sells a ticket to another person by extending credit or lending money to the person to enable the person to purchase the ticket. An offense under this subsection is a Class C misdemeanor.

(i) ~~(h)~~ A person commits an offense if the person intentionally or knowingly sells ~~may not purchase~~ a ticket and:

(1) accepts ~~with~~ a food stamp coupon issued under the food stamp program administered under Chapter 33, Human Resources Code, as payment;

(2) accepts ~~with~~ a credit card or a debit card as a source of payment;

(3) the sale is made over the telephone; or

(4) the sale is made by mail-order sales.

(j) ~~(i)~~ A person commits an offense if the person intentionally or knowingly purchases ~~may not pay~~ for a ticket with:

(1) a food stamp coupon issued under the food stamp program administered under Chapter 33, Human Resources Code; or

(2) the proceeds of a check issued as a payment under the Aid to Families with Dependent Children program administered under Chapter 31, Human Resources Code.

(k) An offense under Subsection (i) or (j) of this section is a Class C misdemeanor.

(l) A person commits an offense if, for financial gain, the person establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the person intentionally or knowingly:

(1) uses any part of the funds solicited or accepted for a purpose other than purchasing tickets on behalf of the group or pool; or

(2) retains a share of any prize awarded as compensation for establishing or promoting the group purchase or pooling arrangement.

(m) An offense under Subsection (l) of this section is a felony of the third degree.

SECTION 21. Section 4.03, State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended by amending Subsection (d) and adding Subsection (h) to read as follows:

(d) An offense under Subsection (c) of this section is a Class A misdemeanor unless it is shown on the trial of the offense that:

(1) the amount claimed ~~[or attempted to be claimed]~~ is greater than \$200 but not more than \$10,000, in which event the offense is a felony of the third degree;

(2) the amount claimed ~~[or attempted to be claimed]~~ is greater than \$10,000, in which event the offense is a felony of the second degree; or

(3) the person has previously been convicted of an offense under this section, in which event the offense is a felony of the third degree, unless the offense is designated as a felony of the second degree under Subdivision (2) of this subsection.

(h) In this section, "claim" includes an attempt to claim, without regard to whether the attempt is successful.

SECTION 22. Section 4.04(b), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) A person commits an offense if the person knowingly refuses to produce for inspection by the *director*, *executive director*, *commission* [~~comptroller~~], or state auditor a book, record, or document required to be maintained or made by this Act or a rule adopted under this Act.

SECTION 23. Section 4.045(a), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person commits an offense if the person intentionally *or*[,] knowingly[, ~~recklessly, or with criminal negligence~~] makes a material and false, incorrect, or deceptive statement to a person conducting an investigation or exercising discretion under this Act or a rule adopted under this Act.

SECTION 24. Sections 4.06(a)–(e), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A *commission member* [~~The comptroller, the state treasurer~~], the *executive director*, *the director*, or an employee of the division may not knowingly accept a gift or political contribution from:

- (1) a person that has a significant financial interest in the lottery;
- (2) a person related in the first degree of consanguinity or affinity to a person that has a significant financial interest in the lottery;
- (3) a person that owns more than a 10 percent interest in an entity that has a significant financial interest in the lottery;
- (4) a political committee that is directly established, administered, or controlled, in whole or in part, by a person that has a significant financial interest in the lottery; or
- (5) a person who, within the two years preceding the date of the gift or contribution, won a lottery prize exceeding \$600 in amount or value.

(b) A former *commission member*, *former executive director*, [~~comptroller, former state treasurer~~] or former director may not:

- (1) for compensation, represent a person that has made or intends to make a bid to operate the lottery before the *commission* [~~comptroller~~] before the second anniversary of the date that the person's service in office or employment with the division ceases;
- (2) represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of service or employment with the division, either through personal involvement or because the matter was within the scope of the officer's or employee's official responsibility; or
- (3) for compensation, communicate directly with a member of the legislative branch to influence legislation on behalf of a person that has a significant financial interest in the lottery, before the second anniversary of the date that the person's service in office or employment with the division ceases.

(c) A former *commission member* [~~comptroller, former state treasurer~~], former *executive director*, *former director*, or former employee of the division may not, before the second anniversary of the date that the person's service in office or employment with the division ceases, knowingly accept a gift or political contribution from:

- (1) a person that has a significant financial interest in the lottery;
- (2) a person related in the first degree of consanguinity or affinity to a person that has a significant financial interest in the lottery;
- (3) a person that owns more than a 10 percent interest in an entity that has a significant financial interest in the lottery;
- (4) a political committee that is directly established, administered, or controlled, in whole or in part, by a person that has a significant financial interest in the lottery; or
- (5) a person who, within the two years preceding the date of the gift or contribution, won a lottery prize exceeding \$600 in amount or value.

(d) A person may not knowingly make a gift or political contribution to a *commission member* [~~the comptroller, the state treasurer~~], the *executive director*, *the director*, or an employee of the division if the person:

- (1) has a significant financial interest in the lottery;
- (2) is related in the first degree of consanguinity or affinity to a person that has a significant financial interest in the lottery;
- (3) owns more than a 10 percent interest in an entity that has a significant financial interest in the lottery;
- (4) is a political committee that is directly established, administered, or controlled, in whole or in part, by a person that has a significant financial interest in the lottery; or
- (5) within the two years preceding the date of the gift or contribution, won a lottery prize exceeding \$600 in amount or value.

(e) A person may not knowingly make a gift or political contribution to a former *commission member* [~~comptroller, former state treasurer~~], former *executive director*, former *director*, or former employee of the division before the second anniversary of the date that the person's service in office or employment with the division ceases, if the person:

- (1) has a significant financial interest in the lottery;
- (2) is related in the first degree of consanguinity or affinity to a person that has a significant financial interest in the lottery;
- (3) owns more than a 10 percent interest in an entity that has a significant financial interest in the lottery;
- (4) is a political committee that is directly established, administered, or controlled, in whole or in part, by a person that has a significant financial interest in the lottery; or
- (5) within the two years preceding the date of the gift or contribution, won a lottery prize exceeding \$600 in amount or value.

SECTION 25. Article 4, State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended by adding Section 4.07 to read as follows:

Sec. 4.07. AGGREGATION OF AMOUNTS INVOLVED. When amounts are claimed, attempted to be claimed, or obtained in violation of this Act pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

SECTION 26. Section 5.01(b), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The director may require sales agents to establish separate electronic funds transfer accounts for the purposes of depositing money from ticket sales, making payments to the division, and receiving payments from the division. The *commission* [~~comptroller~~] by rule shall establish the procedures for depositing money from ticket sales into electronic funds transfer accounts, as well as other procedures regarding the handling of money from ticket sales. The director may not permit a sales agent to make payments to the division or a lottery operator in cash.

SECTION 27. Sections 5.02(b), (f), and (j), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Money in the state lottery account shall be used only for the following purposes and shall be distributed as follows:

- (1) the payment of prizes to the holders of winning tickets;
- (2) the payment of costs incurred in the operation and administration of the lottery, including any fees received by a lottery operator, provided that the costs incurred in a fiscal biennium may not exceed an amount equal to 15 percent of the gross revenue accruing from the sale of tickets in that biennium;
- (3) *the establishment of a pooled bond fund, lottery prize reserve fund, unclaimed prize fund, and prize payment account;*
- (4) the transfer of amounts to the state lottery stabilization fund as provided by Subsections (c), (d), and (e) of this section; and
- (5) [(4)] the balance, after creation of a reserve sufficient to pay the amounts *needed or estimated to be needed under* [~~provided by~~] Subdivisions (1) through (3) [~~and (2)~~] of this

subsection, to be transferred to the unobligated portion of the general revenue fund, on or before the 15th day of each month.

(f) The state treasurer periodically shall file reports with the *executive* director providing information regarding the revenue credited to the state lottery account, the investments of the money in the account, and the distributions made from the account.

(j) Notwithstanding Subsection (b)(5) [(b)(4)] and Subsection (d) of this section, the initial transfer of revenue from the state lottery account to the unobligated portion of the general revenue fund and the state lottery stabilization fund under those subsections shall be made on the 15th day of the month following the month in which the earlier of the following occurs:

- (1) the first ticket is sold to a player under this Act; or
- (2) the *executive* director receives liquidated damages or a payment under a performance bond under a contract with a lottery operator.

SECTION 28. Section 5.02(h)(4), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), is amended to read as follows:

(4) "Net lottery revenue" means the gross lottery revenue minus the amounts distributed or obligated for a purpose described by Subsections (b)(1) through (b)(3) [~~and (b)(2)~~] of this section.

SECTION 29. Sections 5.03(j) and (l), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), are amended to read as follows:

(j) The *executive* director shall deduct the amount of a delinquent tax or other money from the winnings of a person who has been finally determined to be:

- (1) delinquent in the payment of a tax or other money collected by the comptroller, the state treasurer, or the Texas Alcoholic Beverage Commission;
- (2) delinquent in making child support payments administered or collected by the attorney general; [~~or~~]
- (3) *in default on a loan made under Chapter 52, Education Code; or*
- (4) *in default on a loan guaranteed under Chapter 57, Education Code.*

(l) The attorney general, *comptroller*, state treasurer, Texas Alcoholic Beverage Commission, *Texas Higher Education Coordinating Board*, and Texas Guaranteed Student Loan Corporation shall each provide the *executive* director with a report of persons who have been finally determined to be delinquent in the payment of a tax or other money collected by the agency. The *commission* [~~comptroller~~] shall adopt rules regarding the form and frequency of reports under this subsection.

SECTION 30. Section 47.06(g), Penal Code, is amended to read as follows:

(g) It is a defense to prosecution for an offense under this chapter that the conduct was authorized, directly or indirectly, by the State Lottery Act, the lottery division of [~~in~~] the *Texas Lottery Commission* [~~office of the comptroller~~], the *Texas Lottery Commission* [~~comptroller~~], the *executive director of the Texas Lottery Commission*, or the director of the lottery division.

SECTION 31. Section 47.14, Penal Code, is amended to read as follows:

Sec. 47.14: STATE LOTTERY. It is a defense to prosecution for an offense under this chapter that the conduct:

- (1) consisted entirely of participation in the state lottery authorized by the State Lottery Act; or
- (2) was a necessary incident to the operation of the state lottery and was authorized, directly or indirectly, by the State Lottery Act, the lottery division of [~~in~~] the *Texas Lottery Commission* [~~office of the comptroller~~], the *Texas Lottery Commission* [~~comptroller~~], the *executive director of the Texas Lottery Commission*, or the director of the lottery division.

SECTION 32. Section 111.0047(a), Tax Code, is amended to read as follows:

(a) If a person fails to comply with any provision of this title [~~with any provision of the State Lottery Act~~], or with a rule of the comptroller adopted under this title [~~or the State Lottery Act~~], the comptroller, after a hearing, may revoke or suspend any permit or license issued to the person.

SECTION 33. Section 111.0048(a), Tax Code, is amended to read as follows:

(a) A new permit or license may not be issued to a former holder of a revoked permit or license unless the comptroller is satisfied that the person will comply with the provisions of this title [~~and the State Lottery Act~~] and the rules of the comptroller relating to this title [~~and the State Lottery Act~~].

SECTION 34. Section 2(5)(A), Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(A) "Appointed officer of a major state agency" means any of the following:

- (i) a member of the Public Utility Commission of Texas;
- (ii) a member of the Texas Department of Commerce;
- (iii) a member of the Texas Board of Aviation;
- (iv) a member of the Texas Air Control Board;
- (v) a member of the Texas Alcoholic Beverage Commission;
- (vi) a member of the Finance Commission of Texas;
- (vii) a member of the [~~State Purchasing and~~] General Services Commission;
- (viii) a member of the Texas Board of Criminal Justice;
- (ix) a member of the Board of Trustees of the Employees Retirement System of Texas;
- (x) a member of the State Highway and Public Transportation Commission;
- (xi) a member of the Texas Workers' Compensation Commission;
- (xii) a member of the State Board of Insurance;
- (xiii) a member of the Parks and Wildlife Commission;
- (xiv) a member of the Public Safety Commission;
- (xv) the Secretary of State;
- (xvi) a member of the State Securities Board;
- (xvii) a member of the Texas Amusement Machine Commission;
- (xviii) a member of the Texas Water Development Board;
- (xix) a member of the Texas Water Commission;
- (xx) a member of the governing board of a state senior college or university as defined by Section 61.003, Education Code, including The University of Texas at Arlington; The University of Texas at Austin; The University of Texas at Dallas; The University of Texas at El Paso; The University of Texas—Pan American; The University of Texas—Pan American—Brownsville; The University of Texas of the Permian Basin; The University of Texas at San Antonio; The University of Texas at Tyler; The University of Texas Southwestern Medical Center at Dallas; The University of Texas Medical Branch at Galveston; The University of Texas Health Science Center at Houston; The University of Texas Health Science Center at San Antonio; The University of Texas System Cancer Center; The University of Texas Health Science Center at Tyler; Texas A&M University; Texas A&M University at Galveston; Prairie View A&M University; Tarleton State University; Corpus Christi State University; Texas A&I University; Laredo State University; East Texas State University; East Texas State University at Texarkana; University of Houston; University of Houston—Clear Lake; University of Houston—Downtown; University of Houston—Victoria; Lamar University at Beaumont; Lamar University at Orange; Lamar University at Port Arthur; Midwestern State University; University of North Texas; Texas College of Osteopathic Medicine; Stephen F. Austin State University; Texas Southern University; Texas Tech University; Texas Tech University Health Sciences Center; Texas Woman's University; West Texas State University; Angelo State University; Sam Houston State University; Southwest Texas State University; Sul Ross State University; Sul Ross State University—Uvalde Center; Texas State Technical Institute—Amarillo; Texas State Technical Institute—Harlingen; Texas State Technical Institute—Sweetwater; and Texas State Technical Institute—Waco;
- (xxi) a member of the Texas Higher Education Coordinating Board;

- (xxii) a member of the Texas Employment Commission;
- (xxiii) a member of the State Banking Board;
- (xxiv) a member of the board of trustees of the Teachers Retirement System of Texas;
- (xxv) a member of the Credit Union Commission;
- (xxvi) a member of the School Land Board;
- (xxvii) a member of the board of the Texas Department of Housing and Community Affairs;
- (xxviii) a member of the Texas Racing Commission;
- (xxix) a member of the State Board of Dental Examiners;
- (xxx) a member of the Texas Board of Licensure for Nursing Home Administrators;
- (xxxi) a member of the Texas State Board of Medical Examiners;
- (xxxii) a member of the Board of Pardons and Paroles;
- (xxxiii) a member of the Texas State Board of Pharmacy;
- (xxxiv) the Banking Commissioner of the Banking Department of Texas;
- (xxxv) a member of the Department of Information Resources Governing Board;
- (xxxvi) the fire fighters' pension commissioner;
- (xxxvii) a member of the Texas Motor Vehicle Commission;
- (xxxviii) the director of the Office of Court Administration of the Texas Judicial System;
- (xxxix) the chief executive of the Office of Public Utility Counsel;
- (xl) a member of the Texas Real Estate Commission;
- (xli) a member of the board of directors and the executive director of the State Bar of Texas;
- (xlii) a member of the Bond Review Board;
- (xliii) a member of the Texas Board of Health;
- (xliv) a member of the Texas Board of Mental Health and Mental Retardation;
- (xlv) a member of the Texas Board on Aging;
- (xlvi) a member of the Texas Board of Human Services;
- (xlvii) a member of the Texas Funeral Service Commission;
- (xlviii) a member of the board of directors of a river authority created under the constitution or laws of this state;
- (xlix) the director of the lottery division of *the Texas Lottery Commission* [~~in the office of the comptroller~~]; [~~or~~]
- (l) the deputy in charge of the department of security in the lottery division of *the Texas Lottery Commission*;
- (li) *the director of the bingo division of the Texas Lottery Commission*;
- (lii) *the executive director of the Texas Lottery Commission*; or
- (liii) *a member of the Texas Lottery Commission* [~~in the office of the comptroller~~].

SECTION 35. Section 3, Charitable Raffle Enabling Act (Article 179f, Revised Statutes, as added by Chapter 957, Acts of the 71st Legislature, Regular Session, 1989), is amended by amending Subsection (g) and adding Subsection (k) to read as follows:

(g) A prize offered or awarded at the raffle may not be money. *Except as provided by Subsection (k) of this section, the [The] value of a prize that is offered or awarded at the raffle and that is purchased by the organization or for which the organization provides any consideration may not exceed \$25,000.*

(k) *A prize may consist of one or more tickets in the state lottery authorized by the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), and its subsequent amendments, with a face value of \$25,000 or less, without regard to whether a prize in the lottery game to which the ticket or tickets relate exceeds \$25,000.*

SECTION 36. Sections 2.01(a)–(i), 2.04(j), and 4.06(g), State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), are repealed.

SECTION 37. (a) Except as provided by Subsections (b) and (d) of this section, this Act takes effect September 1, 1993.

(b) Except as provided by Subsection (d) of this section, Section 36 of this Act takes effect August 31, 1993.

(c) The Texas Lottery Commission is created on September 1, 1993. In making the initial appointments to the commission, the governor shall designate one member for a term expiring in 1995, one member for a term expiring in 1997, and one member for a term expiring in 1999. The initial appointments to the commission shall be made not later than September 15, 1993.

(d) This Act takes effect only if S.B. No. 768, 73rd Legislature, Regular Session, 1993, or H.B. No. 2771, 73rd Legislature, Regular Session, 1993, is enacted and becomes law. If neither S.B. No. 768, 73rd Legislature, Regular Session, 1993, nor H.B. No. 2771, 73rd Legislature, Regular Session, 1993, is enacted and becomes law, this Act has no effect.

SECTION 38. (a) As soon as practicable after the commission appoints an executive director or acting executive director, but not later than April 1, 1994:

(1) all powers, duties, rights, and obligations of the comptroller relating to the administration, operation, and regulation of the state lottery are transferred to the Texas Lottery Commission;

(2) except as provided by Subsection (b) of this section, all assets, liabilities, personnel, equipment, data, documents, facilities, and other items of the comptroller relating to the administration, operation, and regulation of the state lottery are transferred to the Texas Lottery Commission; and

(3) any appropriation to the comptroller relating to the administration, operation, and regulation of the state lottery is transferred to the Texas Lottery Commission.

(b) The comptroller may decide whether to transfer to the Texas Lottery Commission:

(1) personnel who perform both duties that relate to lottery operations and duties that do not relate to lottery operations; and

(2) assets used both in lottery operations and operations other than lottery operations.

(c) The officers and employees of the office of the comptroller shall cooperate fully with the reorganization.

(d) A transfer of functions under Subsection (a) of this section shall occur on the date specified in an interagency contract between the Texas Lottery Commission and the comptroller.

(e) Notwithstanding the changes made by this Act to the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes), the comptroller retains all powers and duties relating to the operation of the state lottery until the effective date of the transfer under Subsection (a) of this section, and a reference in the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes) to the Texas Lottery Commission is considered to be a reference to the comptroller until that date, but the comptroller shall not be considered a member of the commission, and a reference to the director of the lottery division of the Texas Lottery Commission is considered to be a reference to the director of the lottery division of the comptroller's office until that date, and to the extent necessary for the continued administration of the state lottery, a reference in the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes) to the executive director of the Texas Lottery Commission is considered to be reference to the director of the lottery division of the comptroller's office until that date.

(f) The Texas Lottery Commission, the executive director or acting executive director, or other employees of the commission may utilize the Austin office of the Texas Lottery prior to the transfer of functions under Subsection (a) of this section and lawful expenses incurred by the commission prior to the transfer of functions under Subsection (a) of this section shall be payable from appropriations subject to transfer under that subsection.

SECTION 39. (a) A change in law made by this Act does not affect:

(1) the validity of any action taken by the comptroller or the lottery division in the office of the comptroller under the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes) before the effective date of the change in law; or

(2) a civil, criminal, or administrative proceeding completed before the effective date of this Act.

(b) A change in law made by this Act does not affect the validity of a civil, criminal, or administrative proceeding, including licensing or rulemaking, in progress on the effective date of the change in law. A civil, criminal, or administrative proceeding under the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes) that is in progress on the effective date of a transfer of functions under Section 38 of this Act continues as if it had been initiated by the Texas Lottery Commission under the law in effect on the effective date of the transfer.

(c) All forms, rules, and procedures adopted by the comptroller for the administration and enforcement of the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes) and in effect on the effective date of a transfer of functions under Section 38 of this Act remain in effect on or after that date as if adopted by the Texas Lottery Commission until amended, repealed, withdrawn, or otherwise superseded by the Texas Lottery Commission. A license issued under the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes) and in effect on the effective date of a transfer of functions under Section 38 of this Act remains in effect according to its terms as if issued by the Texas Lottery Commission until the license expires or is revoked or surrendered.

(d) A change in law made by this Act applies only to an offense committed on or after September 1, 1993. For the purposes of this subsection, an offense is committed before September 1, 1993, if any element of the offense occurs before that date.

(e) An offense committed before September 1, 1993, is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 40. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 23, 1993: Yeas 64, Nays 37, 1 present, not voting; the House concurred in Senate amendments to H.B. No. 1587 on May 11, 1993, by a non-record vote; passed by the Senate, with amendments, on May 6, 1993: Yeas 31, Nays 0.

Approved May 25, 1993.

Effective September 1, 1993, except § 36 effective August 31, 1993.