

CHAPTER 31

GOVERNMENT - STATE

HOUSE BILL 09-1002

BY REPRESENTATIVE(S) McFadyen, Green, Pace, Pommer, Priola, Ryden, Schafer S., Lambert, Middleton, Vigil, Waller;
also SENATOR(S) Tapia.

AN ACT**CONCERNING THE OPERATION OF THE STATE LOTTERY.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 24-35-201 (5) and (6), Colorado Revised Statutes, are amended, and the said 24-35-201 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-35-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1.7) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

(5) "Lottery" means any and all lotteries created and operated pursuant to this part 2, including, without limitation, the game commonly known as lotto, in which prizes are awarded on the basis of designated numbers conforming to numbers selected at random, electronically or otherwise, by or at the direction of the commission, and any multistate lottery or game that is authorized by a multistate agreement to which the ~~commission~~ DIVISION is party. All references in this article to "the lottery" shall be construed to include any or all lotteries within the meaning of this subsection (5). "Lottery" shall not include a promotional drawing as defined in subsection (8) of this section.

(6) "Multistate agreement" means an agreement entered into by the ~~commission~~ DIVISION and at least one other state's lottery authority that authorizes the ~~commission~~ DIVISION to allow Colorado residents to participate in one or more multistate lotteries pursuant to rules promulgated by the commission.

SECTION 2. 24-35-204 (2.5), (3) (i), and (3) (l), Colorado Revised Statutes, are

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

amended to read:

24-35-204. Director - qualifications - powers and duties. (2.5) The director may promote the lottery by:

(a) Establishing promotional drawings. The general assembly hereby finds and declares that promotional drawings shall not be subject to regulation under this part 2. No award of prizes through a promotional drawing shall be deemed a lottery or game of chance.

(b) SELLING MEMORABILIA OR OTHER PROMOTIONAL ITEMS. ANY REVENUE GENERATED FROM THE SALE OF SUCH ITEMS SHALL BE TRANSMITTED TO THE STATE TREASURER TO BE CREDITED TO THE LOTTERY FUND CREATED IN SECTION 24-35-210 (1).

(3) The director, as administrative head of the division, shall direct and supervise all its administrative and technical activities. In addition to the duties imposed upon the director elsewhere in this part 2, it shall be the director's duty:

~~(i) With the concurrence of the commission or pursuant to commission requirements and procedures, to enter into contracts for materials, equipment, and supplies to be used in the operation of the lottery, for the design and installation of games or lotteries, and for promotion of the lottery. No contract shall be legal or enforceable that provides for the management of the lottery or for the entire operation of its games by any private person, firm, or corporation, because management of the lottery and control over the operation of its games shall remain with the state; except that management of and control over the operation of a multistate lottery shall be determined by the terms of a multistate agreement. Except for advertising and promotional contracts, when a contract other than a multistate agreement is awarded, a performance bond satisfactory to the commission, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the state, in an amount set annually by the commission shall be delivered to the state and shall become binding on the parties upon execution of the contract.~~

~~(l) To annually prepare and submit to the commission, for its approval, a proposed budget for the ensuing fiscal year, which budget shall present a complete financial plan setting forth all proposed expenditures and anticipated revenues of the division. The fiscal year of the division shall commence on July 1 and end on June 30 of each year.~~

SECTION 3. Part 2 of article 35 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-35-204.5. Executive director - powers and duties. (1) IT SHALL BE THE EXECUTIVE DIRECTOR'S DUTY:

(a) TO ENTER INTO CONTRACTS FOR MATERIALS, EQUIPMENT, AND SUPPLIES TO BE USED IN THE OPERATION OF THE LOTTERY, FOR THE DESIGN AND INSTALLATION OF GAMES OR LOTTERIES, AND FOR PROMOTION OF THE LOTTERY. NO CONTRACT SHALL BE LEGAL OR ENFORCEABLE THAT PROVIDES FOR THE MANAGEMENT OF THE LOTTERY

OR FOR THE ENTIRE OPERATION OF ITS GAMES BY ANY PRIVATE PERSON, FIRM, OR CORPORATION, BECAUSE MANAGEMENT OF THE LOTTERY AND CONTROL OVER THE OPERATION OF ITS GAMES SHALL REMAIN WITH THE STATE; EXCEPT THAT MANAGEMENT OF AND CONTROL OVER THE OPERATION OF A MULTISTATE LOTTERY SHALL BE DETERMINED BY THE TERMS OF A MULTISTATE AGREEMENT. EXCEPT FOR ADVERTISING AND PROMOTIONAL CONTRACTS, WHEN A CONTRACT OTHER THAN A MULTISTATE AGREEMENT IS AWARDED, A PERFORMANCE BOND SATISFACTORY TO THE EXECUTIVE DIRECTOR, EXECUTED BY A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE OR OTHERWISE SECURED IN A MANNER SATISFACTORY TO THE STATE, IN AN AMOUNT SET ANNUALLY BY THE EXECUTIVE DIRECTOR SHALL BE DELIVERED TO THE STATE AND SHALL BECOME BINDING ON THE PARTIES UPON EXECUTION OF THE CONTRACT.

(b) TO ANNUALLY PREPARE AND SUBMIT TO THE COMMISSION A PROPOSED BUDGET FOR THE ENSUING FISCAL YEAR, WHICH BUDGET SHALL PRESENT A COMPLETE FINANCIAL PLAN SETTING FORTH ALL PROPOSED EXPENDITURES AND ANTICIPATED REVENUES OF THE DIVISION. THE FISCAL YEAR OF THE DIVISION SHALL COMMENCE ON JULY 1 AND END ON JUNE 30 OF EACH YEAR.

SECTION 4. The introductory portion to 24-35-205 (1) and 24-35-205 (3), (8) (a), (8) (c) (I), (8) (c) (II), and (10) (a), Colorado Revised Statutes, are amended to read:

24-35-205. Contractors supplying services, equipment, or materials - gaming equipment - disclosures. (1) Any person, firm, association, or corporation, referred to in this section as "supplier", that enters into a contract to supply services, equipment, or materials or gaming materials or equipment for use in the operation of the state lottery shall first disclose to the ~~commission~~ DIVISION:

(3) The costs of any investigation into the background of the apparent successful bidder shall be assessed against the bidder and shall be paid by the bidder at the time of billing by the state. Such investigation may be conducted by the ~~commission~~ DEPARTMENT or the attorney general, and no contract may be signed until the investigation is completed. Investigators shall have peace officer authority during the period of investigation.

(8) (a) Any contractor ~~which~~ THAT has entered into a contract to supply gaming materials or equipment to the lottery shall report to the ~~commission~~ DIVISION any change in, addition to, or deletion from the information disclosed to the ~~commission~~ DIVISION in accordance with the provisions of subsections (1) (a), (1) (d), (1) (e), (2), and (7) of this section. Such report shall be written and addressed to the division and shall be mailed or delivered to the division within thirty days of the date such change in, addition to, or deletion from the information takes place or becomes effective.

(c) (I) If such report contains any information, or if the ~~commission~~ DIVISION receives any information from any source other than the contractor, which information would have prohibited the director from awarding the contract to the contractor if the information had been provided or had been effective before the director awarded the contract, the director may terminate the contract ~~with the concurrence of the commission~~ following an investigation.

(II) If such report contains any information, or if any information is discovered by the ~~commission~~ DIVISION from any source other than the contractor, which information would have given the director discretion to refuse to enter the contract had the information been provided or been effective before the director awarded the contract, the director, ~~with the concurrence of the commission and~~ following an investigation, may terminate the contract.

(10)(a) Each supplier, prior to entering into a contract to supply gaming materials or equipment, shall submit a set of fingerprints to the ~~commission~~ DIVISION. The ~~commission~~ DIVISION shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Only the actual costs of such record check shall be borne by the supplier. Nothing in this subsection (10) shall preclude the ~~commission~~ DIVISION from making further inquiries into the background of the supplier.

SECTION 5. 24-35-206 (5), (7), and (10) (a), Colorado Revised Statutes, are amended to read:

24-35-206. Licenses. (5) Each licensed sales agent shall keep a complete set of books of account, correspondence, and all other records necessary to show fully the lottery transactions of the licensee, all of which shall be open at all times during business hours for the inspection and examination of the division or its duly authorized representatives. The division may require any licensed sales agent to furnish such information as the division considers necessary for the proper administration of this part 2 and may require an audit to be made of such books of account and records on such occasions as the division considers necessary by an auditor, selected by the ~~commission or the~~ director, who shall likewise have access to all such books and records of the licensee, and the licensee may be required to pay the expense thereof.

(7) The costs of any investigation into the background of an applicant seeking a license for a lottery sales agent shall be assessed against the applicant and shall be paid by the applicant at the time of billing by the state. Such investigation may be conducted by the ~~commission~~ DIVISION or the attorney general. Investigators shall have peace officer authority during the period of investigation.

(10) (a) Each applicant for a lottery sales agent license, with the submission of such application, shall submit a set of fingerprints to the ~~commission~~ DIVISION. The ~~commission~~ DIVISION shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Only the actual costs of such record check shall be borne by the applicant. Nothing in this subsection (10) shall preclude the ~~commission~~ DIVISION from making further inquiries into the background of the applicant.

SECTION 6. 24-35-208 (1) (i), the introductory portion to 24-35-208 (2), and 24-35-208 (2) (a), (2) (b), (2) (c), (2) (d), (2) (j), and (2) (k), Colorado Revised Statutes, are amended, and the said 24-35-208 is further amended BY THE

ADDITION OF A NEW SUBSECTION, to read:

24-35-208. Commission - powers and duties - rules. (1) In addition to any other powers and duties set forth in this part 2, the commission shall have the following powers and duties:

(i) To investigate ~~negotiate, enter into, revise from time to time,~~ and participate in multistate agreements and to ~~operate, supervise, advertise, and~~ regulate multistate lotteries. The director shall act as the commission's agent in such investigations ~~and negotiations~~ if the commission so directs.

(2) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, rules promulgated pursuant to subsection (1) of this section shall include, but shall not be limited to, the following:

(a) The types of lotteries to be conducted, but no lottery conducted under this part 2 other than instant scratch ~~lotteries~~ GAMES shall be based upon the game of chance commonly known as bingo, nor shall any lottery be conducted that depends upon the outcome of any athletic contest except races at state-licensed dog or horse tracks if approved by the Colorado racing commission;

(b) The price of tickets or shares in the lottery; ~~but no ticket or share in any instant lottery shall be less than one dollar;~~

(c) The numbers, ~~and~~ sizes, AND PAYMENT of the prizes on the winning tickets or shares;

(d) The manner of selecting the winning tickets or shares. ~~however,~~ All drawings shall be held in public ~~and the actual selection of winning tickets or shares shall not be performed by an employee of the lottery or a member of the commission. All drawings shall be~~ AND witnessed by an independent ~~certified public accountant~~ AUDITOR EMPLOYED BY A CERTIFIED PUBLIC ACCOUNTANT FIRM, and all drawing equipment used in such public drawings must be examined prior to and after each public drawing by an independent ~~certified public accountant~~ AUDITOR EMPLOYED BY A CERTIFIED PUBLIC ACCOUNTANT FIRM.

(j) ~~The allocation of the total revenues accruing from the sale of lottery tickets or shares and from all other sources among:~~

~~(f) The payment of prizes to the holders of winning tickets or shares; and~~

~~(H) The payment of costs incurred in the operation and administration of the lottery, including the expenses of the division, and the costs resulting from any contract or contracts entered into for promotional, advertising, or operational services or for the purchase or lease of lottery equipment and materials.~~

~~(III) Repealed.~~

~~(k) The payment of costs incurred for investigation or background checks, which shall be paid by the suppliers or licensees pursuant to sections 24-35-205 and 24-35-206.~~

(3) (a) THE COMMISSION SHALL PROMULGATE RULES PURSUANT TO SUBSECTION (1) OF THIS SECTION FOR THE GENERAL ADMINISTRATION OF ALL INSTANT SCRATCH GAMES. THE RULES SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO:

(I) THE METHOD TO BE USED IN SELLING INSTANT SCRATCH GAME TICKETS, BUT ALL SALES SHALL BE ON A CASH-ONLY BASIS;

(II) THE METHOD OF PAYING PRIZES ON WINNING INSTANT SCRATCH GAME TICKETS; AND

(III) THE MANNER AND AMOUNT OF COMPENSATION, IF ANY, TO BE PAID TO LICENSED SALES AGENTS NECESSARY TO PROVIDE FOR THE ADEQUATE AVAILABILITY OF INSTANT SCRATCH GAME TICKETS TO PROSPECTIVE BUYERS AND FOR THE CONVENIENCE OF THE PUBLIC.

(b) (I) THE COMMISSION SHALL ESTABLISH AND APPROVE ALL INSTRUCTIONS GOVERNING INSTANT SCRATCH GAMES. THE INSTRUCTIONS SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO:

(A) THE METHOD FOR DETERMINING INSTANT SCRATCH GAME WINNERS;

(B) THE ESTABLISHMENT OF CLAIM PERIODS;

(C) THE PRICE OF INSTANT SCRATCH GAME TICKETS;

(D) THE NUMBERS AND SIZES OF PRIZES; AND

(E) THE METHOD FOR SELECTING AND VALIDATING WINNING INSTANT SCRATCH GAME TICKETS.

(II) THE COMMISSION SHALL PUBLISH ALL APPROVED INSTRUCTIONS GOVERNING INSTANT SCRATCH GAMES IN A CLEARLY IDENTIFIABLE SECTION ON THE OFFICIAL WEB SITE OF THE STATE LOTTERY. THE PUBLISHED INSTRUCTIONS SHALL BE BINDING ON PURCHASERS AND CLAIMANTS OF INSTANT SCRATCH GAME TICKETS.

(III) THE PROCEDURAL RULE-MAKING REQUIREMENTS OF SECTION 24-4-103 SHALL NOT APPLY TO THE COMMISSION'S DUTIES SPECIFIED IN THIS PARAGRAPH (b).

SECTION 7. 24-35-212 (1.5) (a), the introductory portion to 24-35-212 (1.5) (c), and 24-35-212 (1.5) (d), (1.5) (f), and (1.6), Colorado Revised Statutes, are amended to read:

24-35-212. Prizes. (1.5) (a) A copy of the petition for an order described in paragraph (b) of subsection (1) of this section and of all notices of any hearing in the matter shall be served on the ~~commission~~ EXECUTIVE DIRECTOR no later than ten days prior to any hearing or entry of any order.

(c) The court receiving the petition is authorized to issue an order approving the assignment and directing the ~~commission~~ EXECUTIVE DIRECTOR to pay to the assignee all future prize payments so assigned upon finding that all of the following conditions have been met:

(d) Within ten days of receipt of a certified copy of a court order granted pursuant to this subsection (1.5), the ~~commission~~ EXECUTIVE DIRECTOR shall acknowledge in writing to both the assignor and the assignee its agreement to make the payments in accordance with the provisions of the order. The ~~commission~~ EXECUTIVE DIRECTOR shall make such payments pursuant to said order.

(f) The ~~commission~~ EXECUTIVE DIRECTOR is authorized to establish a reasonable fee to defray any administrative expenses of the ~~commission~~ EXECUTIVE DIRECTOR associated with assignments made pursuant to this section. The fee amounts shall reflect the direct and indirect costs associated with processing the assignments.

~~(1.6) No voluntary assignment under this section shall be effective unless and until the national office of the federal internal revenue service advises the chairman of the Colorado lottery commission that the voluntary assignment of prizes pursuant to appropriate judicial order will not affect the federal income tax treatment of prizewinners who do not assign their prizes.~~

SECTION 8. 24-35-216, Colorado Revised Statutes, is amended to read:

24-35-216. Advertising. Any promotional advertising regarding the lottery shall set forth the odds of winning and the average return on the dollar in prize money to the public. All promotional advertising expenses shall be paid from the lottery fund. ~~Within eighteen months of May 4, 1990, all lotto tickets shall include a statement, in bold or clear type, that lotto jackpot winners will be paid by means of an annuity.~~

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 20, 2009