

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1278

By: Kirby and Cox of the House

and

Hobson of the Senate

An Act relating to amusements and sports; ordering a legislative referendum pursuant to the Oklahoma Constitution; creating the Oklahoma Education Lottery Act; providing short title; stating intent; defining terms; creating Oklahoma Lottery Commission; providing for status and location thereof; providing for governance by board of trustees; providing for membership, terms, conflicts of interest, travel reimbursement, officers and conducting of business thereof; subjecting meetings of board to Oklahoma Open Meeting Act; providing for appointment of Lottery Retailer Advisory Board; specifying duties of board of trustees; providing for appointment and compensation of executive director; specifying powers of Commission; specifying rules which may be promulgated by board of trustees subject to Administrative Procedures Act; specifying duties of executive director; providing for employees of Commission and specifying certain provisions related thereto; providing for apportionment of lottery proceeds; creating the Oklahoma Education Lottery Trust Fund and providing for deposits thereto and expenditures therefrom; specifying certain duties of Office of State Finance; requiring the Legislature to appropriate the net lottery proceeds for certain specific purposes; prohibiting expenditure of nonlottery funds for certain purposes; stating intent and provisions relating to participation by minority businesses; specifying certain requirements relating to lottery system vendors; requiring disclosure of certain information; prohibiting entry into major procurement contracts with certain persons; prohibiting gifts or payments under certain circumstances; requiring vendors to meet certain requirements; requiring competitive bid of certain contracts; providing for compensation and qualification of lottery retailers; prohibiting transfer or assignment of retailer contracts and sale of tickets by persons other than stated retailers; allowing Commission to establish fidelity fund and reserve accounts; allowing Commission to require retailers to post bond or maintain securities; providing for termination of retail contracts; providing that lottery sales constitute trust fund and providing for deposit of lottery proceeds; specifying certain restrictions with respect to lottery retailer rental payments; prohibiting sale of lottery ticket at price other than that established by Commission; providing exception; specifying

certain restrictions on sale or gift of lottery tickets; subjecting proceeds of lottery prize to state income tax; providing for withholding of certain amounts from lottery prizes; specifying duties of Commission to establish system of verification of validity of tickets or shares; specifying certain restrictions on payment of prizes; prohibiting sale of tickets to certain persons; providing for unclaimed prize money; providing for availability of records of Commission; specifying duties of Commission with respect to criminal background investigations and violations of act; prohibiting certain acts and providing penalties; providing for enforcement; providing for appeal of board decisions; allowing Commission to purchase or lease property; authorizing the Commission to issue bonds or notes; providing procedures relating to the issuance of bonds or notes; specifying duties of board of trustees with respect to financial integrity of lottery; creating Oklahoma Lottery Commission Legislative Oversight Committee; providing for membership and duties thereof; specifying condition under which the Oklahoma Education Lottery Act shall cease to have the force of law; amending 21 O.S. 2001, Section 1051, which relates to crimes and punishments; providing that conduct of lottery under act not violation of criminal provisions; providing for codification; providing ballot title; and directing filing.

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"An Act relating to amusements and sports; ordering a legislative referendum pursuant to the Oklahoma Constitution; creating the Oklahoma Education Lottery Act; providing short title; stating intent; defining terms; creating Oklahoma Lottery Commission; providing for status and location thereof; providing for governance by board of trustees; providing for membership, terms, conflicts of interest, travel reimbursement, officers and conducting of business thereof; subjecting meetings of board to Oklahoma Open Meeting Act; providing for appointment, duties and procedures of Lottery Retailer Advisory Board; specifying duties of board of trustees; providing for appointment and compensation of executive director; specifying powers of Commission and board of trustees; specifying rules which may be promulgated by board of trustees subject to Administrative Procedures Act; specifying duties of executive director; providing for employees of Commission and specifying certain provisions related thereto; requiring certain investigations; prohibiting employment of certain persons; requiring certain bonds; providing for apportionment and appropriation of lottery proceeds; creating the Oklahoma Education Lottery Trust Fund and providing for deposits thereto and expenditures therefrom; specifying certain duties of Office of State Finance; requiring the Legislature to appropriate the net lottery proceeds for certain

specific purposes; prohibiting expenditure of nonlottery funds for certain purposes; stating intent and provisions relating to participation by minority businesses; specifying certain requirements relating to lottery system vendors; requiring disclosure of certain information; prohibiting entry into major procurement contracts with certain persons; prohibiting gifts or payments under certain circumstances; requiring vendors to meet certain requirements; requiring competitive bid of certain contracts; providing for compensation and qualification of lottery retailers; prohibiting transfer or assignment of retailer contracts and sale of tickets by persons other than stated retailers; creating certain revolving funds; requiring Commission to establish reserve accounts; requiring retailers to post bond or maintain securities; providing for cancellation, suspension, revocation or termination of retail contracts; providing that lottery sales constitute trust fund and providing for deposit of lottery proceeds; specifying certain restrictions with respect to lottery retailer rental payments; prohibiting sale of lottery ticket at price other than that established by Commission; providing for certain construction of act; specifying certain restrictions on sale or gift of lottery tickets; subjecting proceeds of lottery prize to state income tax; providing for withholding of certain amounts from lottery prizes; specifying duties of Commission to establish system of verification of validity of tickets or shares; specifying certain restrictions on payment of prizes; prohibiting sale of tickets to certain persons; providing for unclaimed prize money; providing for availability of records of Commission; specifying duties of Commission with respect to criminal background investigations and violations of act; prohibiting certain acts and providing penalties; providing for enforcement; allowing Commission to enter into certain agreements; providing for appeal of board decisions; prohibiting use of monies in General Revenue Fund for certain purposes; allowing Commission to purchase or lease property; authorizing the Commission to issue bonds or notes; providing procedures relating to the issuance of bonds or notes; specifying duties of board of trustees with respect to financial integrity of lottery; creating Oklahoma Lottery Commission Legislative Oversight Committee; providing for membership and duties thereof; specifying condition under which the Oklahoma Education Lottery Act shall cease to have the force of law; amending 21 O.S. 2001, Section 1051, which relates to crimes and punishments; providing that conduct of lottery under act not violation of criminal provisions; providing for codification; providing ballot title; and directing filing.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma Constitution, there is hereby ordered the following legislative referendum which shall be filed with the Secretary of State and addressed to the Governor of the state, who shall submit the same to the people for their approval or rejection at a special election on a day set by the Governor.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 701 of Title 3A, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Education Lottery Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 702 of Title 3A, unless there is created a duplication in numbering, reads as follows:

It is the intent of the people of the State of Oklahoma:

1. That net proceeds of lottery games conducted pursuant to the Oklahoma Education Lottery Act shall be used to support improvements and enhancements for educational purposes and programs and that such net proceeds shall be used to supplement rather than replace existing resources for educational purposes and programs;

2. That there shall be created a public body, corporate and politic, known as the Oklahoma Lottery Commission, with powers as defined in the Oklahoma Education Lottery Act which shall be exercised for the benefit of the State of Oklahoma, and with requirements for full public disclosure of its operations and finances;

3. That lottery games shall be operated and managed in a manner which provides full and complete public disclosure of lottery operations, provides continuing entertainment to the public, maximizes net proceeds available for educational purposes and programs and ensures that the lottery is operated with integrity and dignity and free of political influence;

4. That the Oklahoma Lottery Commission be operated in such a manner that, after debt issued pursuant to the provisions of Section 33 of this act is repaid, it is self-sustaining and self-funded; and

5. That the Oklahoma Lottery Commission shall be accountable to the Legislature and to the people of this state through availability to the public of its records pursuant to the Oklahoma Open Records Act, access to meetings pursuant to the Oklahoma Open Meeting Act, and development and monitoring of a comprehensive system of public audits and reports.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 703 of Title 3A, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Education Lottery Act:

1. "Administrative expenses" means operating expenses, excluding amounts set aside for prizes, regardless of whether such prizes are claimed and excluding amounts deposited to the Fidelity Revolving Fund pursuant to Section 20 of this act;

2. "Board" means the board of trustees of the Oklahoma Lottery Commission;

3. "Capital outlay projects" means the acquisition, construction, installation, modification, renovation, repair, extension, renewal, replacement, or rehabilitation of land, interests in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or furnishing of fixtures, machinery, equipment, computers, software, laboratories, furniture, textbooks, and reference material or other property of any nature whatsoever used on, in, or in connection with educational facilities;

4. "Commission" means the Oklahoma Lottery Commission;

5. "Educational facilities" means land, structures, and buildings owned or operated by and through the Oklahoma State

Regents for Higher Education, the State Board of Education, the Oklahoma Department of Career and Technology Education, or by any school district within this state. A public road or highway leading to an educational facility shall not be considered an educational facility;

6. "Executive director" means the chief executive officer and administrator of the Oklahoma Lottery Commission;

7. "Gross proceeds" means all revenue derived from the sale of lottery tickets or shares and all other monies derived from the lottery;

8. "Instant ticket" means a lottery ticket that requires the player to remove a coating to determine if an prize has been won;

9. "Lottery", "lotteries", "lottery game", or "lottery games" means an activity conducted by the Commission under the Oklahoma Education Lottery Act through which prizes are awarded or distributed by chance among persons who have paid for a chance or other opportunity to receive a prize, including, but not limited to, instant tickets and on-line games, but excluding charity bingo and games conducted pursuant to the Oklahoma Charity Games Act, poker, blackjack, slot machines, pulltab machines, card games, dice, dominos, roulette wheels, or other similar forms of gambling, or electronic or video forms of these gambling activities, or games where winners are determined by the outcome of a sports contest, or pari-mutuel betting conducted pursuant to the Oklahoma Horse Racing Act;

10. "Major procurement contract" means any gaming product or service costing in excess of Twenty-five Thousand Dollars (\$25,000.00), including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets, and other products and services unique to the Oklahoma lottery, but not including materials, supplies,

equipment, and services common to the ordinary operations of the Commission;

11. "Member" or "members" means a trustee or trustees of the board of trustees of the Oklahoma Lottery Commission;

12. "Member of a minority" means an individual who is a member of a race which comprises less than fifty percent (50%) of the total population of Oklahoma;

13. "Minority business" means any business which is owned by:

- a. an individual who is a member of a minority who reports as the personal income of the individual for Oklahoma income tax purposes the income of the business,
- b. a partnership in which a majority of the ownership interest is owned by one or more members of a minority who report as their personal income for Oklahoma income tax purposes more than fifty percent (50%) of the income of the partnership, or
- c. a corporation organized under the laws of this state in which a majority of the common stock is owned by one or more members of a minority who report as their personal income for Oklahoma income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation;

14. "Net proceeds" means all revenue derived from the sale of lottery tickets or shares and all other monies derived from the lottery less operating expenses;

15. "On-line games" means a game where tickets or shares are purchased through a network of computer terminals located at retail outlets, and such terminals are linked to a central computer that records the purchases;

16. "Operating expenses" means all costs of doing business, including but not limited to, prizes, commissions, and other

compensation paid to retailers, advertising and marketing costs, personnel costs, capital costs, amounts held in or paid from the Fidelity Revolving Fund pursuant to Section 20 of this act, debt service payments for the payment of the initial expenses of start-up, administration, and operation of the Commission and the lottery, and other operating costs;

17. "Pari-mutuel betting" means the pari-mutuel system of wagering as defined in Section 200.1 of Title 3A of the Oklahoma Statutes. Such term shall not include a lottery game which may be predicated on a horse-racing scheme that does not involve actual track events or traditional lottery games which may involve the distribution of winnings by pools;

18. "Person" means any individual, corporation, partnership, unincorporated association, limited liability company, or other legal entity;

19. "Retailer" means a person who sells lottery tickets or shares on behalf of the Commission pursuant to a contract;

20. "Share" means any intangible evidence of participation in a lottery game;

21. "Ticket" means any tangible evidence issued by the lottery to provide participation in a lottery game; and

22. "Vendor" means a person who provides or proposes to provide goods or services to the Commission pursuant to a major procurement contract, but does not include an employee of the Commission, a retailer, or a state agency or instrumentality thereof. Such term does not include any corporation whose shares are publicly traded and which is the parent company of the contracting party in a major procurement contract.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 704 of Title 3A, unless there is created a duplication in numbering, reads as follows:

There is hereby created a body corporate and politic to be known as the Oklahoma Lottery Commission which shall be deemed to be an instrumentality of the state. The principal office of the Commission shall be located in Oklahoma County, and the venue of any action against the Commission shall be Oklahoma County.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 705 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Lottery Commission shall be governed by a board of trustees composed of seven (7) members to be appointed by the Governor with the advice and consent of the Senate. Not more than two members shall be appointed from any single congressional district.

B. Members shall be residents of the State of Oklahoma, shall be prominent persons in their businesses or professions, and shall not have been convicted of any felony offense, and shall not be awaiting sentencing on a plea of guilt or nolo contendere to a felony offense. At least one member of the board shall be engaged in the practice of law, at least one member shall be engaged in the practice of accounting, and at least one member shall have expertise in marketing.

C. Members shall serve terms of five (5) years, except that of the initial members appointed, one shall be appointed for an initial term of one (1) year, one shall be appointed for an initial term of two (2) years, one shall be appointed for an initial term of three (3) years, two shall be appointed for initial terms of four (4) years, and two shall be appointed for initial terms of five (5) years. Any vacancy occurring on the board shall be filled by the Governor by appointment with the advice and consent of the Senate for the remainder of the unexpired term.

D. Members of the board shall not have any direct or indirect interest in an undertaking that puts their personal interest in

conflict with that of the Commission, including, but not limited to, an interest in a major procurement contract or a participating retailer.

E. Members of the board shall be reimbursed for travel expenses pursuant to the State Travel Reimbursement Act.

F. The members shall elect from their membership a chair, vice-chair, secretary, and treasurer. Such officers shall serve for such terms as shall be prescribed by the rules of the Commission or until their respective successors are elected and qualified. No member of the board shall hold more than any one office of the Commission at the same time, except that the same person may serve as secretary and treasurer.

G. The board of trustees shall employ an executive director of the Commission.

H. A majority of members in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the Commission.

I. All meetings of the board shall be subject to the Oklahoma Open Meeting Act. Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of a majority of present and voting board members.

J. No vacancy in the membership of the board shall impair the right of the members to exercise all the powers and perform all the duties of the board.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 706 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The chair of the board of trustees of the Oklahoma Lottery Commission shall appoint a Lottery Retailer Advisory Board to be composed of ten (10) lottery retailers representing the broadest possible spectrum of geographical, racial, and business characteristics of lottery retailers. The function of the advisory

board shall be to advise the board of trustees on retail aspects of the lottery and to present the concerns of lottery retailers throughout the state.

B. Members appointed to the Lottery Retailer Advisory Board shall serve terms of two (2) years. Five of the initial appointees shall serve initial terms of one (1) year.

C. Meetings of the advisory board shall be subject to the Oklahoma Open Meeting Act. Members of the advisory board shall serve without compensation or reimbursement of expenses. The advisory board may report to the board of trustees or to the oversight committee created in Section 35 of this act in writing at any time. The board of trustees may invite the advisory board to make an oral presentation to the board of trustees at regular meetings of the board.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 707 of Title 3A, unless there is created a duplication in numbering, reads as follows:

The board of trustees of the Oklahoma Lottery Commission shall:

1. Approve, disapprove, amend, or modify the budget recommended by the executive director for the operation of the Commission;
 2. Approve, disapprove, amend, or modify the terms of major lottery procurements recommended by the executive director;
 3. Hear appeals of hearings required by the Oklahoma Education Lottery Act;
 4. Promulgate rules relating to the conduct of lottery games;
- and
5. Perform such other functions as specified by the Oklahoma Education Lottery Act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 708 of Title 3A, unless there is created a duplication in numbering, reads as follows:

The board of trustees of the Oklahoma Lottery Commission shall appoint and shall provide for the compensation of an executive director who shall be an employee of the Commission and who shall direct the day-to-day operations and management of the Commission and shall be vested with those powers and duties specified by the board and by law. The executive director shall serve at the pleasure of the board.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 709 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Lottery Commission shall have any and all powers necessary or convenient to its usefulness in carrying out and effectuating the purposes and provisions of the Oklahoma Education Lottery Act which are not in conflict with the Oklahoma Constitution and laws of this state including, but not limited to, the following:

1. To sue and be sued in contract, equity, mandamus, and similar actions in its own name and to complain and defend in all courts;

2. To adopt and alter a seal;

3. To hold copyrights, trademarks, and service marks and enforce its rights with respect thereto;

4. To acquire or lease real property and make improvements thereon and acquire by lease or by purchase personal property, including, but not limited to, computers and intangible property, including, but not limited to, computer programs, systems, and software;

5. To enter into contracts to incur debt in its own name and enter into financing agreements with the state, agencies or instrumentalities of the state, or with any commercial financial institution or credit provider as provided in Section 33 of this act;

6. To select and contract with vendors and retailers;

7. To enter into contracts or agreements with state or local law enforcement agencies for the performance of law enforcement, background investigations, and security checks;

8. To administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence relative to any investigation or proceeding conducted by the Commission;

9. To enter into contracts of any and all types on such terms and conditions as the Commission may determine;

10. To advertise and promote the lottery and lottery games; and

11. To act as a retailer, to conduct promotions which involve the dispensing of lottery tickets or shares, and to establish and operate a sales facility to sell lottery tickets or shares and any related merchandise.

B. The board of trustees of the Oklahoma Lottery Commission shall have any and all powers necessary or convenient to its usefulness in carrying out and effectuating the purposes and provisions of the Oklahoma Education Lottery Act which are not in conflict with the Oklahoma Constitution and laws of this state including, but not limited to, the following:

1. To adopt, amend, and repeal policies and procedures and to promulgate rules for the regulation of its affairs and the conduct of its business, to prescribe the duties of officers of the board, and to perform such other duties as may be required by law. In the promulgation of rules, the board shall be subject to the Administrative Procedures Act;

2. To procure insurance;

3. To initiate, supervise, and administer the operation of the lottery in accordance with the provisions of the Oklahoma Education Lottery Act and rules, policies, and procedures adopted pursuant thereto;

4. To enter into written agreements with one or more other states or sovereigns for the operation, participation in marketing, and promotion of a joint lottery or joint lottery games. Such an agreement may be entered into with a federally recognized Indian tribe only if a cooperative agreement authorizing the Commission to do so has been entered into by the Governor and such a tribe and has been further approved by the Joint Committee on State-Tribal Relations pursuant to the provisions of Section 1221 et seq. of Title 74 of the Oklahoma Statutes;

5. To direct the executive director to conduct or have conducted such market research as is necessary or appropriate, which may include an analysis of the demographic characteristics of the players of each lottery game and an analysis of advertising, promotion, public relations, incentives, and other aspects of communication; and

6. To adopt and amend such rules, policies, and procedures as necessary to implement its powers and duties, organize and operate the Commission, regulate the conduct of lottery games in general, and any other matters necessary or desirable for the efficient and effective operation of the lottery or the convenience of the public.

C. The powers enumerated in subsections A and B of this section are cumulative of and in addition to those powers enumerated elsewhere in the Oklahoma Education Lottery Act, and no such powers limit or restrict any other powers of the Oklahoma Lottery Commission or the board of trustees.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 710 of Title 3A, unless there is created a duplication in numbering, reads as follows:

The board of trustees of the Oklahoma Lottery Commission may promulgate rules regulating the conduct of lottery games in general, including, but not limited to, rules specifying:

1. The type of lottery games to be conducted, including but not limited to, instant lotteries and other games traditional to the lottery;

2. The sale price of tickets or shares and the manner of sale. All sales shall be for cash only and payment by checks, credit cards, charge cards, or any form of deferred payment is prohibited;

3. The number and amount of prizes;

4. The method and location of selecting or validating winning tickets or shares;

5. The manner and time of payment of prizes, which may include lump-sum payments or installments over a period of years;

6. The manner of payment of prizes to the holders of winning tickets or shares, including, without limitation, provision for payment of prizes by retailers not exceeding Six Hundred Dollars (\$600.00) after deducting the price of the ticket or share and after performing validation procedures appropriate to the game and as specified by the board. The board may provide for a limited number of retailers who can pay prizes of up to Five Thousand Dollars (\$5,000.00) after performing validation procedures appropriate to the game and as specified by the board without regard to where the ticket or share was purchased;

7. The frequency of games and drawings or selection of winning tickets or shares;

8. The means of conducting drawings;

9. The method to be used in selling tickets or shares;

10. The manner and amount of compensation to lottery retailers;
and

11. Any other matters necessary to ensure the efficient and effective operation of lottery games, the continued entertainment and convenience of the public, and the integrity of the lottery.

The board of trustees shall not permit the operation of any lottery game using a video lottery machine. "Video lottery machine"

means any electronic video game machine that, upon furnishing of consideration, is available to play or simulate the play of a video game, including but not limited to, bingo and games conducted pursuant to the Oklahoma Charity Games Act, poker, blackjack, slot machines, pulltab machines, card games, dice, dominos, roulette wheels, or other similar forms of gambling, or games where winners are determined by the outcome of a sports contest, using 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 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 711 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The executive director of the Oklahoma Lottery Commission shall direct and supervise all administrative and technical activities in accordance with the provisions of the Oklahoma Education Lottery Act and with the rules promulgated by the board of trustees of the Oklahoma Lottery Commission. It shall be the duty of the executive director to:

1. Facilitate the initiation of and supervise and administer the operation of the lottery games;

2. Employ by contract and compensate such persons and firms as deemed necessary;

3. Promote or provide for promotion of the lottery and any functions related to the Commission;

4. Prepare a budget for the approval of the board;

5. Require bond from such retailers and vendors in such amounts as required by the board;

6. Report quarterly to the State Auditor and Inspector and the board a full and complete statement of lottery revenues and expenses for the preceding quarter; and

7. Perform other duties generally associated with an executive director or a chief executive officer of a state lottery.

B. In accordance with the provisions of the Oklahoma Education Lottery Act or the rules of the board, the executive director may for good cause suspend, revoke, or refuse to renew any contract entered into.

C. The executive director or designee may conduct hearings and administer oaths to persons for the purpose of assuring the security or integrity of lottery operations or to determine the qualifications of or compliance by vendors and retailers.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 712 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The executive director of the Oklahoma Lottery Commission, with the approval of the board of trustees, shall employ such personnel as may be necessary to carry out the provisions of this act and shall set the compensation and terms of compensation of such employees. All offices, positions, and personnel of the Oklahoma Lottery Commission shall be in the unclassified service.

B. No employee of the Commission shall have a financial interest in any vendor doing business or proposing to do business with the Commission.

C. No employee of the Commission shall participate in any decision involving a retailer with whom the employee has a financial interest.

D. No employee of the Commission who leaves the employment of the Commission may represent any vendor or lottery retailer before the Commission for a period of two (2) years following termination of employment with the Commission.

E. A background investigation shall be conducted on each applicant who has reached the final selection process prior to employment by the Commission at the level of division director and

above and at any level within any division of security and as otherwise required by the board of trustees of the Oklahoma Lottery Commission. The Commission shall pay for the actual cost of the investigations and shall contract with the Oklahoma State Bureau of Investigation for the performance of the investigations. The results of a background investigation shall not be considered a record open to the public pursuant to the Oklahoma Open Records Act.

F. No person who has been convicted of any felony or a misdemeanor involving illegal gambling or involving moral turpitude shall be employed by the Commission, nor shall the Commission employ a person who is awaiting sentencing on a plea of guilt or nolo contendere to such a felony or misdemeanor.

G. The Commission shall bond Commission employees with access to Commission funds or lottery revenue in an amount specified by the board and may bond other employees as deemed necessary.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 713 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. All gross proceeds shall be the property of the Oklahoma Lottery Commission. From its gross proceeds, the Commission shall pay the operating expenses of the Commission. At least forty-five percent (45%) of gross proceeds shall be made available as prize money. However, the provisions of this subsection shall be deemed not to create any lien, entitlement, cause of action, or other private right, and any rights of holders of tickets or shares shall be determined by the Commission in setting the terms of its lottery or lotteries. For each fiscal year, net proceeds shall equal at least thirty-five percent (35%) of the gross proceeds. However, for the purpose of repaying indebtedness issued pursuant to Section 33 of this act, for the first two (2) full fiscal years and any partial first fiscal year of the Commission, net proceeds need only equal at least thirty percent (30%) of the gross proceeds. All of the net

proceeds shall be transferred to the Oklahoma Education Lottery Trust Fund as provided in subsection B of this section.

B. There is hereby created in the State Treasury a fund to be designated the "Oklahoma Education Lottery Trust Fund". On or before the fifteenth day of each calendar quarter, the Commission shall transfer to the State Treasurer, for credit to the Oklahoma Education Lottery Trust Fund, the amount of all net proceeds accruing during the preceding calendar quarter. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

Upon their deposit into the State Treasury, any monies representing a deposit of net proceeds shall then become the unencumbered property of this state, and neither the Commission nor the board of trustees shall have the power to agree or undertake otherwise. The monies shall be invested by the State Treasurer in accordance with state investment practices. All earnings attributable to such investments shall likewise be the unencumbered property of the state and shall accrue to the credit of the fund.

C. Monies in the Oklahoma Education Lottery Trust Fund shall only be appropriated as follows:

1. Forty-five percent (45%) for the following:

- a. kindergarten through twelfth grade public education, including but not limited to compensation and benefits for public school teachers and support employees, and
- b. early childhood development programs, which shall include but not be limited to costs associated with prekindergarten and full-day kindergarten programs;

2. Forty-five percent (45%) for the following:

- a. tuition grants, loans and scholarships to citizens of this state to enable such citizens to attend colleges and universities located within this state, regardless

of whether such colleges and universities are owned or operated by the Oklahoma State Regents for Higher Education, or to attend institutions operated under the authority of the Oklahoma Department of Career and Technology Education, including but not limited to such programs as the Oklahoma Higher Learning Access Program; provided such tuition grants, loans and scholarships shall not be made to a citizen of this state to attend a college or university which is not accredited by the Oklahoma State Regents for Higher Education,

- b. construction of educational facilities for elementary school districts, independent school districts, the Oklahoma State System of Higher Education, and career and technology education,
- c. capital outlay projects for elementary school districts, independent school districts, the Oklahoma State System of Higher Education, and career and technology education,
- d. technology for public elementary school district, independent school district, state higher education, and career and technology education facilities, which shall include but not be limited to costs of providing to teachers at accredited public institutions who teach levels kindergarten through twelfth grade, personnel at technology centers under the authority of the Oklahoma State Department of Career and Technology Education, and professors and instructors within the Oklahoma State System of Higher Education the necessary training in the use and application of computers and advanced electronic instructional technology to implement interactive learning

environments in the classroom and to access the state-wide distance learning network and costs associated with repairing and maintaining advanced electronic instructional technology,

e. endowed chairs for professors at institutions of higher education operated by the Oklahoma State System of Higher Education, and

f. programs and personnel of the Oklahoma School for the Deaf and the Oklahoma School for the Blind;

3. Five percent (5%) to the School Consolidation and Assistance Fund; and

4. Five percent (5%) to the Teachers' Retirement System Dedicated Revenue Revolving Fund.

D. The Legislature shall appropriate funds from the Oklahoma Education Lottery Trust Fund only for the purposes specified in subsection C of this section. Even when funds from the trust fund are used for these purposes, the Legislature shall not use funds from the trust fund to supplant or replace other state funds supporting common education, higher education, or career and technology education.

E. In order to ensure that the funds from the trust fund are used to enhance and not supplant funding for education, the State Board of Equalization shall examine and investigate appropriations from the trust fund each year. At the meeting of the State Board of Equalization held within five (5) days after the monthly apportionment in February of each year, the State Board of Equalization shall issue a finding and report which shall state whether appropriations from the trust fund were used to enhance or supplant education funding. If the State Board of Equalization finds that education funding was supplanted by funds from the trust fund, the Board shall specify the amount by which education funding was supplanted. In this event, the Legislature shall not make any

appropriations for the ensuing fiscal year until an appropriation in that amount is made to replenish the trust fund.

F. No deficiency in the Oklahoma Education Lottery Trust Fund shall be replenished by reducing any nonlottery funds, including specifically but without limitation, the General Revenue Fund, the Constitutional Reserve Fund or the Education Reform Revolving Fund of the State Department of Education. No program or project started specifically from lottery proceeds shall be continued from the General Revenue Fund, the Constitutional Reserve Fund or the Education Reform Revolving Fund of the State Department of Education. Such programs must be adjusted or discontinued according to available lottery proceeds unless the Legislature by general law establishes eligibility requirements and appropriates specific funds therefor. No surplus in the Oklahoma Education Lottery Trust Fund shall be reduced or transferred to correct any nonlottery deficiencies in sums available for general appropriations.

G. There is hereby created in the State Treasury a revolving fund to be designated the "Oklahoma Education Lottery Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Commission. The Commission shall make payments of net proceeds from the fund to the Oklahoma Education Lottery Trust Fund on or before the fifteenth day of each calendar quarter as provided in subsection B of this section. All monies accruing to the credit of the Oklahoma Education Lottery Revolving Fund are hereby appropriated and may be budgeted and expended for the payment of net proceeds, prizes, commissions to retailers, administrative expenses and all other expenses arising out of the operation of the education lottery, subject to the limitations provided in this act. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

The monies in the fund shall be invested by the State Treasurer in accordance with state investment practices. All earnings attributable to such investments shall likewise accrue to the credit of the fund.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 714 of Title 3A, unless there is created a duplication in numbering, reads as follows:

It is the intent of the people of this state that the Oklahoma Lottery Commission encourage minority businesses to participate in contracts with the Commission. Accordingly, the board of trustees of the Oklahoma Lottery Commission shall adopt a plan which achieves to the greatest extent possible a level of participation by minority businesses taking into account the total number of all retailers and vendors, including any subcontractors. The Commission shall undertake training programs and other educational activities to enable minority businesses to compete for contracts on an equal basis. The board shall monitor the results of minority business participation and shall report the results of minority business participation to the Governor and the Legislature at least on an annual basis.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 715 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Lottery Commission shall investigate the financial responsibility, security, and integrity of any lottery system vendor who is a finalist in submitting a bid, proposal, or offer as part of a major procurement. At the time of submitting such bid, proposal, or offer to the Commission, the Commission may require the following items:

1. A disclosure of the name and address of the vendor and, as applicable, the names and addresses of the following:

- a. if the vendor is a corporation, the officers, directors, and each stockholder of the corporation. In the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of such securities need be disclosed,
- b. if the vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust,
- c. if the vendor is an association, the members, officers, and directors, and
- d. if the vendor is a partnership, limited liability company or joint venture, all of the general partners, limited partners, members or joint venturers;

2. A disclosure of all the states and jurisdictions in which the vendor does business and the nature of the business for each such state or jurisdiction;

3. A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including, but not limited to, lottery goods and services, and the nature of the goods or services involved for each such state or jurisdiction;

4. A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license of any kind or had fines or penalties assessed to the license, contract, or operation of the vendor and the disposition of such in each such state or jurisdiction. If any lottery or gaming license or contract has been revoked or has not been renewed or any lottery or gaming license or application has been either denied or is pending and has remained pending for more than six (6) months,

all of the facts and circumstances underlying the failure to receive such a license shall be disclosed;

5. A disclosure of the details of any finding, conviction, or adjudication of guilt of the vendor, or a person named pursuant to the provisions of paragraph 1 of this subsection with respect to such vendor, in a state or federal court for any felony or any other criminal offense other than a traffic violation. If the vendor, or a person named pursuant to the provisions of paragraph 1 of this subsection with respect to such vendor, is awaiting sentencing on a plea of guilt or nolo contendere to a felony or any other criminal offense other than a traffic violation, disclosure of the details of any such plea shall also be made pursuant to the provisions of this paragraph;

6. A disclosure of the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the vendor, or a person named pursuant to the provisions of paragraph 1 of this subsection with respect to such vendor; and

7. Such additional disclosures and information as the Commission may determine to be appropriate for the procurement involved.

All disclosures provided by this section shall be furnished to the Oklahoma State Bureau of Investigation at least fourteen (14) days prior to the awarding of the contract and any analysis of the disclosures provided by the Oklahoma State Bureau of Investigation shall be considered by the Commission.

If at least twenty-five percent (25%) of the cost of the contract of a vendor is subcontracted, the vendor shall disclose all of the information required by this subsection for the subcontractor as if the subcontractor were itself a vendor.

B. A lottery procurement contract shall not be entered into with any lottery system vendor who has not complied with the disclosure requirements described in subsection A of this section, and any contract with such a vendor is voidable at the option of the Commission. Any contract with a vendor who does not comply with the requirements for periodically updating the disclosures during the tenure of contract as may be specified in the contract may be terminated by the Commission. The provisions of this section shall be construed broadly and liberally to achieve the ends of full disclosure of all information necessary to allow for a full and complete evaluation by the Commission of the competence, integrity, background, and character of vendors for major procurements.

C. A major procurement contract shall not be entered into with any vendor if the vendor or a person associated with the vendor named pursuant to the provisions of paragraph 1 of subsection A of this section has been found guilty of a felony related to the security or integrity of the lottery in this or any other jurisdiction, or is awaiting sentencing on a plea of guilt or nolo contendere to the same type of felony.

D. A major procurement contract shall not be entered into with any vendor that has an ownership interest in an entity that had supplied consultation services under contract to the Commission regarding the request for proposals pertaining to those particular goods or services.

E. No lottery system vendor nor any applicant for a major procurement contract may pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, to the executive director, any member of the board of trustees of the Oklahoma Lottery Commission, or any employee of the Commission, or to any person related to any such person within the third degree of consanguinity or affinity.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 716 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Each vendor shall, at the execution of the contract with the Oklahoma Lottery Commission, post a performance bond or letter of credit from a bank or credit provider acceptable to the Commission in an amount as deemed necessary by the Commission for that particular bid or contract. In lieu of the bond, a vendor may, to assure the faithful performance of its obligations, deposit and maintain with the Commission securities that are interest bearing or accruing and that are rated in one of the three highest classifications by an established nationally recognized investment rating service. Securities eligible under this subsection are limited to:

1. Certificates of deposit issued by solvent banks or savings associations approved by the Commission and which are organized and existing under the laws of this state or under the laws of the United States;

2. United States bonds, notes, and bills for which the full faith and credit of the government of the United States is pledged for the payment of principal and interest; and

3. Corporate bonds approved by the State Treasurer. The corporation which issued the bonds shall not be an affiliate or subsidiary of the depositor.

The securities shall be held in trust and shall have at all times a market value at least equal to the full amount estimated to be paid annually to the lottery vendor under contract.

B. Each vendor shall be qualified to do business in this state and shall file appropriate tax returns as provided by the laws of this state. All contracts under this section shall be governed by the laws of this state.

C. No contract shall be let with any vendor in which a state elected official has a substantial financial interest. A substantial financial interest includes, but is not limited to, an ownership interest of five percent (5%) or more in a business enterprise.

D. All major procurement contracts must be competitively bid pursuant to the Oklahoma Central Purchasing Act. On all such contracts, the Director of Central Purchasing shall cooperate with the Commission in the drafting of bid specifications and the selection of vendors to allow the selection of vendors that provide the greatest long-term benefit to the state, the greatest integrity for the Commission, and the best service and products for the public.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 717 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The people of this state recognize that to conduct a successful lottery, the Oklahoma Lottery Commission must develop and maintain a statewide network of lottery retailers that will serve the public convenience and promote the sale of tickets or shares and the playing of lottery games while ensuring the integrity of the lottery operations, games, and activities.

B. The Commission shall make every effort to provide small retailers a chance to participate in the sales of lottery tickets or shares.

C. The Commission shall provide for compensation to lottery retailers in the form of commissions in an amount of not less than two percent (2%) of gross sales and may provide for other forms of compensation for services rendered in the sale or cashing of lottery tickets or shares.

D. The Commission shall issue a certificate of authority to each person with whom it contracts as a retailer for purposes of

display for each location at which tickets or shares are offered for sale. Every lottery retailer shall post and keep conspicuously displayed in a location on the premises accessible to the public its certificate of authority. No certificate of authority shall be assignable or transferable.

E. The board of trustees of the Oklahoma Lottery Commission shall develop a list of objective criteria upon which the qualification of lottery retailers shall be based. Separate criteria shall be developed to govern the selection of retailers of instant tickets. In developing these criteria, the board shall consider such factors as the financial responsibility of the applicant, security of the place of business or activity of the applicant, accessibility to the public, integrity, and reputation. The board shall not consider political affiliation, activities, or contributions to political committees or candidates for any public office. The criteria shall include, but not be limited to, the following:

1. The applicant shall be current in filing all applicable tax returns to the State of Oklahoma and in payment of all taxes, interest, and penalties owed to the State of Oklahoma, excluding items under formal appeal pursuant to applicable statutes. An applicant who has entered into and is abiding by a payment agreement with the Oklahoma Tax Commission shall be deemed current in payment of such taxes, penalties and interest. Notwithstanding the provisions of Section 205 of Title 68 of the Oklahoma Statutes, the Oklahoma Tax Commission shall provide this information to the Commission;

2. No person, partnership, unincorporated association, corporation, or other business entity or principal, officer or director of a corporation or other business entity shall be selected as a lottery retailer who:

- a. has been convicted of or is awaiting sentencing on a plea of guilt or nolo contendere to a criminal offense related to the security or integrity of the lottery in this or any other jurisdiction,
- b. has been convicted of or is awaiting sentencing on a plea of guilt or nolo contendere to any illegal gambling activity, false statements, false swearing, or perjury in this or any other jurisdiction or convicted of or is awaiting sentencing on a plea of guilt or nolo contendere to any crime punishable by more than one (1) year of imprisonment or a fine of more than One Thousand Dollars (\$1,000.00) or both, unless the civil rights of the person have been restored and at least five (5) years have elapsed from the date of the completion of the sentence without a subsequent conviction of a crime described in this subparagraph,
- c. has been found to have violated the provisions of the Oklahoma Education Lottery Act or any rule, policy, or procedure of the Commission unless either ten (10) years have passed since the violation or the board finds the violation both minor and unintentional in nature,
- d. is a vendor or any employee or agent of any vendor doing business with the Commission,
- e. resides in the same household as the executive director, any board member, or any employee of the Commission,
- f. has made a statement of material fact to the Commission knowing such statement to be false, or
- g. is engaged exclusively in the business of selling lottery tickets or shares. This subparagraph shall

not preclude the Commission from selling or giving away lottery tickets or shares for promotional purposes;

3. Persons applying to become lottery retailers shall be charged a uniform application fee for each lottery outlet;

4. Any lottery retailer contract executed pursuant to this section may, for good cause, be suspended, revoked, or terminated by the executive director or designee if the retailer is found to have violated any provisions of the Oklahoma Education Lottery Act or objective criteria established by the board. Review of such activities shall be in accordance with the procedures outlined in the Oklahoma Education Lottery Act and shall not be subject to the Administrative Procedures Act; and

5. All lottery retailer contracts may be renewable annually in the discretion of the Commission unless sooner canceled or terminated.

F. No lottery retailer or applicant to be a lottery retailer shall pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, to the executive director, any board member, or any employee of the Commission, or to any person related to any such person within the third degree of consanguinity or affinity.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 718 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. No lottery retailer contract shall be transferable or assignable. No lottery retailer shall contract with any person for lottery goods or services except with the approval of the board of trustees of the Oklahoma Lottery Commission.

B. Lottery tickets and shares shall only be sold by the retailer stated on the lottery retailer certificate.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 719 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a revolving fund for the Oklahoma Lottery Commission to be designated the "Fidelity Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Commission as provided in this section. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment. The Commission shall assess each retailer an annual fee not to exceed One Hundred Dollars (\$100.00) per sales location, to be deposited to the Fidelity Revolving Fund. The monies in the fund shall be invested by the State Treasurer in accordance with state investment practices. All earnings attributable to such investments shall likewise accrue to the credit of the fund. Monies deposited to the fund shall be used to contract with the Oklahoma State Bureau of Investigation and the State Auditor and Inspector for the investigations, reviews and audits provided for herein. Any full-time employees retained by the Oklahoma State Bureau of Investigation or the State Auditor and Inspector for the purpose of performing duties pursuant to such contracts shall not be counted against any limits on full-time employees for such agencies. Monies deposited to the fund may also be used to cover losses the Commission experiences due to nonfeasance, misfeasance, or malfeasance of a lottery retailer. In addition, the funds may be used to purchase blanket bonds covering the Commission against losses from all retailers. At the end of each fiscal year, the Commission shall pay to the Oklahoma Education Lottery Trust Fund any amount in the Fidelity Revolving Fund which exceeds the budgeted

expenses from the fund for the next fiscal year plus Five Hundred Thousand Dollars (\$500,000.00), and such funds shall be commingled with and treated as net proceeds from the lottery.

B. A reserve account may be established as a general operating expense to cover amounts deemed uncollectible. The Commission shall establish procedures for minimizing any losses that may be experienced for the foregoing reason and shall exercise and exhaust all available options in such procedures prior to amounts being written off to this account.

C. Except as otherwise provided in subsection D of this section, the Commission shall require all retailers to post an appropriate bond, as determined by the Commission, using an insurance company acceptable to the Commission.

D. 1. In its discretion, in lieu of the bond required in subsection C of this section, the Commission may allow a retailer to deposit and maintain with the Commission securities that are interest bearing or accruing. Securities eligible under this paragraph shall be limited to:

- a. certificates of deposit issued by solvent banks or savings associations organized and existing under the laws of this state or under the laws of the United States,
- b. United States bonds, notes, and bills for which the full faith and credit of the United States is pledged for the payment of principal and interest, and
- c. federal agency securities issued by an agency or instrumentality of the United States government.

2. The securities shall be held in trust in the name of the Oklahoma Lottery Commission.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 720 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Any retail contract executed by the Oklahoma Lottery Commission pursuant to the Oklahoma Education Lottery Act shall specify the reasons for which a contract may be canceled, suspended, revoked, or terminated by the Commission, which reasons shall include but not be limited to:

1. Commission of a violation of the Oklahoma Education Lottery Act, a rule, or a policy or procedure of the Commission;

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

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

4. Insufficient sales;

5. Conduct prejudicial to public confidence in the lottery;

6. The retailer filing for or being placed in bankruptcy or receivership;

7. Any material change in any matter considered by the Commission in executing the contract with the retailer, as determined in the sole discretion of the Commission; or

8. Failure to meet any of the objective criteria established by the Commission pursuant to the Oklahoma Education Lottery Act.

B. If, in the discretion of the executive director or designee, cancellation, denial, revocation, suspension, or rejection of renewal of a lottery retailer contract is in the best interest of the lottery, the public welfare, or the State of Oklahoma, the executive director or designee may cancel, suspend, revoke, or terminate, after notice and a right to a hearing, any contract issued pursuant to the Oklahoma Education Lottery Act. A contract may be temporarily suspended by the executive director or designee without prior notice pending any prosecution, hearing, or investigation, whether by a third party or by the executive director. A contract may be suspended, revoked, or terminated by the executive director or designee for any one or more of the reasons enumerated in this section. Any hearing held shall be

conducted by the executive director or designee. A party to the contract aggrieved by the decision of the executive director or designee may appeal the adverse decision to the board of trustees of the Oklahoma Lottery Commission. The appeal shall be pursuant to the rules set by the board and is not subject to Article II of the Administrative Procedures Act.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 721 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. All proceeds from the sale of the lottery tickets or shares shall constitute a trust fund until paid to the Oklahoma Lottery Commission either directly or through the authorized collection representative of the Commission. A lottery retailer and officers of the business of a lottery retailer shall have a fiduciary duty to preserve and account for lottery proceeds, and lottery retailers shall be personally liable for all proceeds. Proceeds shall include unsold instant tickets received by a lottery retailer and cash proceeds of the sale of any lottery products, net of allowable sales commissions and credit for lottery prizes, sold to or paid to winners by lottery retailers. Sales proceeds and unused instant tickets shall be delivered to the Commission or its authorized collection representative upon demand.

B. All lottery proceeds due to the Commission shall be considered state funds. The Commission shall require retailers to place all lottery proceeds due the Commission in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date they are paid over to the Commission. At the time of the deposit, lottery proceeds shall be deemed to be the property of the Commission. The Commission may require a retailer to establish a single separate electronic funds transfer account, where available, for the purpose

of receiving monies from ticket or share sales, making payments to the Commission, and receiving payments for the Commission. Unless otherwise authorized in writing by the Commission, each lottery retailer shall establish a separate bank account for lottery proceeds which shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.

C. Whenever a person who receives proceeds from the sale of lottery tickets or shares in the capacity of a lottery retailer becomes insolvent or dies insolvent, the proceeds in any account established pursuant to the provisions of subsection B of this section due to the Commission from the person or the estate of the person shall have preference over all debts or demands.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 722 of Title 3A, unless there is created a duplication in numbering, reads as follows:

If the rental payments for the business premises of a lottery retailer are contractually computed, in whole or in part, on the basis of a percentage of retail sales and such computation of retail sales is not explicitly defined to include sales of tickets or shares in a state-operated or state-managed lottery, only the compensation received by the lottery retailer from the Oklahoma Lottery Commission may be considered the amount of the lottery retail sale for purposes of computing the rental payment.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 723 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. No person shall sell a ticket or share at a price other than established by the Oklahoma Lottery Commission unless authorized in writing by the executive director. No person other than a duly certified lottery retailer shall sell lottery tickets or shares. This subsection shall not be construed to prevent a person who may

lawfully purchase tickets or shares from making a gift of lottery tickets or shares to another. Nothing in the Oklahoma Education Lottery Act shall be construed to prohibit the Commission from designating certain of its agents and employees to sell or give lottery tickets or shares directly to the public.

B. Lottery tickets or shares may be given by retailers as a means of promoting goods or services to customers or prospective customers eighteen (18) years of age or older subject to prior approval by the Commission.

C. No lottery retailer shall sell a lottery ticket or share except from the locations listed in the contract of the retailer and as evidenced by the certificate of authorization unless the Commission authorizes in writing any temporary location not listed in the contract.

D. No lottery tickets or shares shall be sold or given to persons under eighteen (18) years of age and no prize or any portion of a prize shall be paid upon any ticket that was purchased by a person under eighteen (18) years of age.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 724 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Proceeds of any lottery prize shall be subject to the Oklahoma state income tax.

B. Attachments, garnishments, or executions authorized and issued pursuant to law shall be withheld if timely served upon the Oklahoma Lottery Commission. This subsection shall not apply to payment of prizes by a retailer.

C. The Commission shall adopt policies and procedures to establish a system of verifying the validity of tickets or shares claimed to win prizes and to effect payment of the prizes, except that:

1. No prize, any portion of a prize, or any right of any person to a prize awarded shall be assignable. Any prize or any portion of a prize remaining unpaid at the death of a prize winner shall be paid to the estate of the deceased prize winner or to the trustee of a trust established by the deceased prize winner as settlor if a copy of the trust document or instrument has been filed with the Commission along with a notarized letter of direction from the settlor and no written notice of revocation has been received by the Commission prior to the death of the settlor. Following the death of a settlor and prior to any payment to a successor trustee, the Commission shall obtain from the trustee a written agreement to indemnify and hold the Commission harmless with respect to any claims that may be asserted against the Commission arising from payment to or through the trust. Notwithstanding any other provisions of this section, any person, pursuant to an appropriate judicial order, shall be paid the prize to which a winner is entitled;

2. No prize shall be paid arising from claimed tickets that are:

- a. stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received, or not recorded by the Commission within applicable deadlines,
- b. lacking in captions that conform and agree with the play symbols as appropriate to the particular lottery game involved, or
- c. not in compliance with such additional public or confidential validation and security tests of the Commission appropriate to the particular lottery game involved;

3. No particular prize in any lottery game shall be paid more than once, and in the event of a determination that more than one

claimant is entitled to a particular prize, the sole remedy of the claimants is the award to each of them of an equal share in the prize; and

4. A holder of a winning cash ticket or share from a lottery game shall claim a cash prize within one hundred eighty (180) days, or for a multistate or multisoovereign lottery game within one hundred eighty (180) days, after the drawing in which the cash prize was won. In any Oklahoma lottery game in which the player may determine instantly if the player has won or lost, the player shall claim a cash prize within ninety (90) days, or for a multistate lottery game within one hundred eighty (180) days, after the end of the lottery game. If a valid claim is not made for a cash prize within the applicable period, the cash prize shall constitute an unclaimed prize for purposes of the Oklahoma Education Lottery Act.

D. No prize shall be paid upon a ticket or share purchased or sold in violation of the Oklahoma Education Lottery Act. Any such prize shall constitute an unclaimed prize for purposes of the Oklahoma Education Lottery Act.

E. The Commission is discharged of all liability upon payment of a prize.

F. No ticket or share shall be purchased by and no prize shall be paid to any member of the board of trustees of the Oklahoma Lottery Commission, any officer or employee of the Commission, or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of any such person. No ticket or share shall be purchased by and no prize shall be paid to any officer, employee, agent, or subcontractor of any vendor or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of any such person if the officer, employee, agent, or subcontractor has access to confidential information which may compromise the integrity of the lottery.

G. Unclaimed prize money shall not constitute net lottery proceeds. The first Five Hundred Thousand Dollars (\$500,000.00) of unclaimed prize money accruing annually shall be transferred to the Department of Human Services for the treatment of compulsive gambling disorder and educational programs related to such disorder. All other unclaimed prize money shall be added to the pool from which future prizes are to be awarded or used for special prize promotions.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 725 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Except as authorized in the Oklahoma Education Lottery Act, the Oklahoma Lottery Commission is subject to the provisions of the Oklahoma Open Records Act. The Commission may determine which information relating to the operation of the lottery is confidential as provided in the Oklahoma Open Records Act. Such information includes trade secrets, security measures, systems, or procedures, security reports, information concerning bids or other contractual data, the disclosure of which would impair the efforts of the Commission to contract for goods or services on favorable terms, employee personnel information unrelated to compensation, duties, qualifications, or responsibilities, and information obtained pursuant to investigations which is otherwise confidential. Information deemed confidential pursuant to this section is exempt from the provisions of the Oklahoma Open Records Act, but the Attorney General may review any such determination by the Commission and require the disclosure of the information if the Attorney General determines that the Commission has not established that the information should be deemed confidential pursuant to the provisions of this subsection. Meetings or portions of meetings devoted to discussing information deemed confidential pursuant to this section

may be held in executive session pursuant to the Oklahoma Open Meeting Act.

B. Full criminal background investigations of vendors shall be conducted prior to the execution of any major procurement contract, including investigation of principal, officer or director of a corporation or other business entity. The Commission shall pay for the actual cost of the investigations and shall contract with the Oklahoma State Bureau of Investigation for the performance of the investigations.

C. The Commission or its authorized agent shall:

1. Conduct criminal background investigations and credit investigations on all potential retailers, including investigation of principal, officer or director of a corporation or other business entity;

2. Supervise ticket or share validation and lottery drawings;

3. Inspect at times determined solely by the Commission the facilities of any vendor or lottery retailer in order to determine the integrity of the product of the vendor or the operations of the retailer in order to determine whether the vendor or the retailer is in compliance with its contract;

4. Report any suspected violations of the Oklahoma Education Lottery Act to the appropriate district attorney or the Attorney General and to any law enforcement agencies having jurisdiction over the violation; and

5. Upon request, provide assistance to any district attorney, the Attorney General, the State Auditor and Inspector or a law enforcement agency investigating a violation of the Oklahoma Education Lottery Act which shall include, but not be limited to, immediate and unfettered access to any books, records, contracts, funds, or files, regardless of format. Refusal to provide such access shall constitute obstruction of justice.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 726 of Title 3A, unless there is created a duplication in numbering, reads as follows:

Any person who sells a lottery ticket or share to a person under eighteen (18) years of age or permits a person under eighteen (18) years of age to play any lottery games shall, upon conviction, be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for the first offense and for each subsequent offense not less than Two Hundred Dollars (\$200.00) nor more than One Thousand Dollars (\$1,000.00) and imprisonment for up to one (1) year in the county jail.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 727 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Any person who, with intent to defraud, falsely makes, alters, forges, utters, passes, or counterfeits a state lottery ticket shall, upon conviction, be punished by a fine not to exceed Fifty Thousand Dollars (\$50,000.00), by imprisonment for not longer than five (5) years, or by both such fine and imprisonment.

B. Any person who influences or attempts to influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials shall, upon conviction, be punished by a fine not to exceed Fifty Thousand Dollars (\$50,000.00), by imprisonment for not longer than five (5) years, or by both such fine and imprisonment.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 728 of Title 3A, unless there is created a duplication in numbering, reads as follows:

No person shall knowingly or intentionally make a material false statement in any application for a license or proposal to conduct lottery activities or make a material false entry in any book or

record which is compiled or maintained or submitted to the board of trustees of the Oklahoma Lottery Commission pursuant to the provisions of the Oklahoma Education Lottery Act. Any person who violates the provisions of this section shall, upon conviction, be punished by a fine not to exceed Twenty-five Thousand Dollars (\$25,000.00) or the dollar amount of the false entry or statement, whichever is greater, by imprisonment for not longer than five (5) years, or by both such fine and imprisonment.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 729 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Lottery Commission may enter into intelligence-sharing, reciprocal use, or restricted use agreements with the federal government, law enforcement agencies, lottery regulation agencies, and gaming enforcement agencies of other jurisdictions which provide for and regulate the use of information provided and received pursuant to the agreement.

B. Records, documents, and information in the possession of the Commission received pursuant to an intelligence-sharing, reciprocal use, or restricted use agreement entered into by the Commission with a federal department or agency, any law enforcement agency, or the lottery regulation or gaming enforcement agency of any jurisdiction shall be considered investigative records of a law enforcement agency and are not subject to the Oklahoma Open Records Act and shall not be released under any condition without the permission of the person or agency providing the record or information.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 730 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Any retailer, vendor, or applicant for a retailer or vendor contract aggrieved by an action of the board of trustees of the

Oklahoma Lottery Commission may appeal that decision to the district court of Oklahoma County.

B. The district court of Oklahoma County shall hear appeals from decisions of the board and based upon the record of the proceedings before the board may reverse the decision of the board only if the appellant proves the decision to be:

1. Clearly erroneous;
2. Arbitrary and capricious;
3. Procured by fraud;
4. A result of substantial misconduct by the board; or
5. Contrary to the United States Constitution or the Oklahoma

Constitution or the provisions of the Oklahoma Education Lottery Act.

C. The court may remand an appeal to the board to conduct further hearings.

D. Any person who appeals the award of a major procurement contract for the supply of a lottery ticket system, share system, or an on-line or other mechanical or electronic system shall be liable for all costs of appeal and defense in the event the appeal is denied or the contract award upheld. Cost of appeal and defense shall specifically include, but not be limited to, court costs, bond, legal fees, and loss of income to the Commission resulting from institution of the appeal if, upon the motion of the Commission, the court finds the appeal to have been frivolous.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 731 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Lottery Commission shall be self-sustaining and self-funded. Monies in the General Revenue Fund shall not be used or obligated to pay the expenses of the Commission or prizes of the lottery, and no claim for the payment of an expense of the lottery

or prizes of the lottery may be made against any monies other than monies credited to the Oklahoma Education Lottery Revolving Fund.

B. The Commission may purchase, lease, or lease-purchase such goods or services as are necessary for effectuating the purposes of the Oklahoma Education Lottery Act. The Commission may make procurements which integrate functions such as lottery game design, lottery ticket distribution to retailers, supply of goods and services, and advertising. In all procurement decisions, the Commission shall take into account the particularly sensitive nature of the state lottery and shall act to promote and ensure security, honesty, fairness, and integrity in the operation and administration of the lottery and the objectives of raising net proceeds for the benefit of educational programs and purposes.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 732 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Lottery Commission is authorized to issue negotiable bonds or a promissory note in anticipation of the collection of all or any part of its revenues, not to exceed Ten Million Dollars (\$10,000,000.00) for the payment of the initial expenses of start-up, administration and operation of the Commission and the lottery. Any such debt shall be approved by the Council on Bond Oversight and shall further be approved by the Attorney General as to legal form. Any such debt shall not constitute a debt of the state and under no circumstances shall the general funds of the state be used in order to satisfy any obligation of the Commission. Any such debt shall be repaid solely from future lottery revenue and under no circumstances shall it be repaid from other state funds or appropriations. The Commission may pledge, to the payment of the interest and principal on such bonds or notes, all or any part of the revenues derived from the operation of the lottery.

B. The bonds or notes authorized pursuant to this section shall be authorized by resolution of the Commission and may, as provided in such resolution:

1. Be issued in one or more series;
2. Bear such date or dates and may mature at such time not exceeding five (5) years from their respective dates;
3. Bear interest at such rate or rates which shall be consistent with prevailing market rates; and
4. Contain such terms, covenants and conditions as may be necessary to effectively market the bonds or place the notes as the Commission shall determine.

C. Any resolution authorizing the issuance of bonds or notes pursuant to this section may contain covenants, including, but not limited to:

1. The purpose or purposes to which the proceeds of the sale of bonds or notes may be applied, and the deposit, use and disposition thereof;
2. The use, deposit, securing of deposits and disposition of the revenues of the Commission, including the creating and maintenance of reserves; and
3. The ability to refinance or refund any of the bonds or notes issued.

D. In the discretion of the Commission, any bonds or notes issued pursuant to the provisions of this section may be secured by a trust indenture by and between the Commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the state. Any trust indenture may pledge or assign the revenues of the Commission, but shall not convey or mortgage any properties, except such revenues. Any trust indenture or any resolution providing for the issuance of the bonds or notes may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as may be reasonable

and proper and not in violation of law, including covenants setting forth the duties of the Commission in relation to:

1. The use of funds, acquisition of property, acquisition of services and other costs, in connection with which such bonds or notes shall have been authorized; and

2. The custody, safeguarding and application of all monies.

It shall be lawful for any bank or trust company incorporated under the laws of this state, which may act as depository of the proceeds of bonds, notes or of revenues, to furnish such indemnifying bonds or to pledge such securities as may be required by the Commission. Any such trust indenture may set forth the rights and remedies of the bondholders, noteholders and of the trustee, and may restrict the individual right of action by bondholders or noteholders as is customary in trust agreements or trust indentures securing bonds, notes and debentures of corporations. Any such trust indenture may contain such other provisions as the Commission may deem reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any such trust indenture may be treated as a part of the cost of operation or acquisitions for which the bonds are authorized.

E. Monies received pursuant to the Oklahoma Education Lottery Act, whether as proceeds from the sale of bonds, notes or as revenues from the operations of the Commission, which have been identified for bonds or note repayment purposes, shall be deemed to be trust funds, to be held and applied solely as provided in the Oklahoma Education Lottery Act. The resolution authorizing the issuance of bonds or notes of any issue or the trust indenture securing such bonds or notes, shall provide that any officer to whom, or any bank or trust company to which, such monies shall be paid, shall act as trustee of such monies and shall hold and apply the same for the purpose hereof, subject to the requirements as the

Oklahoma Education Lottery Act and such resolution or trust indenture may provide.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 733 of Title 3A, unless there is created a duplication in numbering, reads as follows:

To ensure the financial integrity of the lottery, the Oklahoma Lottery Commission through its board of trustees shall:

1. Submit quarterly and annual reports to the Governor, State Auditor and Inspector, Oklahoma State Bureau of Investigation, Attorney General, and the oversight committee created by Section 35 of this act, disclosing the total lottery revenues, prize disbursements, operating expenses, and administrative expenses of the Commission during the reporting period. The annual report shall additionally describe the organizational structure of the Commission and summarize the functions performed by each organizational division within the Commission;

2. Adopt a system of internal audits;

3. Maintain weekly or more frequent records of lottery transactions, including the distribution of tickets or shares to retailers, revenues received, claims for prizes, prizes paid, prizes forfeited, and other financial transactions of the Commission;

4. Contract with a certified public accountant or firm for an annual financial audit of the Commission. The certified public accountant or firm shall have no financial interest in any vendor with whom the Commission is under contract. The certified public accountant or firm shall present an audit report not later than seven (7) months after the end of the fiscal year. The certified public accountant or firm shall evaluate the internal auditing controls in effect during the audit period. The cost of this annual financial audit shall be an operating expense of the Commission. The State Auditor and Inspector may at any time conduct an audit of

any phase of the operations of the Commission at the expense of the Commission and shall receive a copy of the annual independent financial audit. A copy of any audit performed by the certified public accountant or firm or the State Auditor and Inspector shall be transmitted to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, the State Auditor and Inspector, and the cochairs of the oversight committee created in Section 35 of this act;

5. Submit to the Office of State Finance and the State Auditor and Inspector by June 30 of each year a copy of the annual operating budget for the Commission for the next fiscal year. This annual operating budget shall be approved by the board and be on such forms as prescribed by the Office of State Finance; and

6. For informational purposes only, submit to the Office of State Finance on September 1 of each year a proposed operating budget for the Commission for the succeeding fiscal year. The budget proposal shall also be accompanied by an estimate of the net proceeds to be deposited into the Oklahoma Education Lottery Trust Fund during the succeeding fiscal year. The budget shall be on such forms as prescribed by the Office of State Finance.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 734 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created as a joint committee of the Legislature the Oklahoma Lottery Commission Legislative Oversight Committee, to be composed of the members of the House Revenue and Taxation Committee and the Senate Finance Committee. The chairs of the committees shall serve as cochairs of the oversight committee. The oversight committee shall periodically inquire into and review the operations of the Oklahoma Lottery Commission, as well as periodically review and evaluate the success with which the Commission is accomplishing its statutory duties and functions as

provided in the Oklahoma Education Lottery Act. The oversight committee may conduct any independent audit or investigation of the Commission it deems necessary.

B. The Commission shall provide the oversight committee not later than December 1 of each year with a complete report of the level of participation of minority businesses in all retail and major procurement contracts awarded by the Commission.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 735 of Title 3A, unless there is created a duplication in numbering, reads as follows:

The enactment of a lottery in Oklahoma is game-specific and shall not be construed to allow the operation of any other form of Class III gaming, as defined by the Indian Gaming Regulatory Act, 25 U.S.C., Section 2703, under Oklahoma law unless specifically allowed by law and by a cooperative agreement with a federally recognized Indian tribe in this state. If it is ever determined by a court of binding jurisdiction, in a final unappealed decision, that the enactment and operation of a lottery in Oklahoma allows the operation of other types of Class III gaming in the State of Oklahoma, the Oklahoma Education Lottery Act shall cease to have the force and effect of law.

SECTION 37. AMENDATORY 21 O.S. 2001, Section 1051, is amended to read as follows:

Section 1051. A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid, or promised, or agreed to pay any valuable consideration for the chance of obtaining such property, or a portion of it, or for any share of or interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by a lot or chance, whether called a lottery, a raffle, or a gift enterprise, or by whatever name the same may be known. Valuable consideration shall be construed to mean money or goods of actual pecuniary value.

Provided, it shall not be a violation of the lottery or gambling laws of this state for ~~(1)~~ a:

1. The Oklahoma Lottery Commission to conduct a lottery pursuant to the provisions of the Oklahoma Education Lottery Act;

2. A bona fide resident merchant or merchants of a city or town, acting in conjunction with the Chamber of Commerce or Commercial Club of this state thereof, to issue free of charge numbered tickets on sales of his merchandise, the corresponding stub of one or more of which tickets to be drawn or chosen by lot by a representative or representatives of ~~said~~ the Chamber of Commerce or of ~~said~~ the Commercial Club in the manner set forth on ~~said~~ the tickets, the numbered stub or stubs so drawn to entitle the holder of the corresponding numbered issued ticket to a valuable prize donated by ~~said~~ the merchant; ~~(2)~~ a or

3. A bona fide community chest welfare fund on a military post or reservation to issue numbered tickets in conjunction with voluntary contributions to ~~said~~ the fund, the corresponding stub or stubs of one or more of ~~said~~ the tickets to be drawn by lot under the supervision of a military commander, the stub or stubs so drawn entitling the ticket holder to a prize of some value. Provided, however, that no person shall sell tickets or receive contributions to ~~said~~ the fund off the military reservation.

SECTION 38. The Ballot Title for the proposed act shall be in the following form:

BALLOT TITLE

Legislative Referendum No. _____ State Question No. _____

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure creates the Oklahoma Education Lottery Act. It creates the Oklahoma Lottery Commission. The Commission will be governed by a board of trustees. The Commission will operate a state lottery. The board will write rules regarding the conduct of lottery games. At least 45% of the revenue from ticket sales

will be returned as prizes. The net proceeds of the lottery will be used for education purposes. Net proceeds will equal at least 35% of ticket proceeds except for the first two years. The act contains provisions relating to the selection and regulation of retailers. This act would lose the force and effect of law under certain conditions. The act contains many other provisions relating to the conduct of a state lottery.

SHALL THIS ACT BE APPROVED BY THE PEOPLE?

YES, FOR THE ACT

NO, AGAINST THE ACT

SECTION 39. The Chief Clerk of the House of Representatives, immediately after the passage of this order for legislative referendum, shall prepare and file in accordance with Section 3 of Article V of the Oklahoma Constitution, one copy of this order for legislative referendum, including the Ballot Title set forth in SECTION 38 hereof, with the Secretary of State and one copy with the Attorney General."

Passed the Senate the 26th day of March, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2003.

Presiding Officer of the House
of Representatives