

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1278

By: Kirby

COMMITTEE SUBSTITUTE

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; subjecting records of Commission to Oklahoma Open Records Act; 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; creating certain shortfall reserve account; 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 competitive bidding of contracts; providing for appeal of board decisions; allowing Commission to borrow certain funds and purchase or lease property; 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; 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.

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 this 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 this 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 revenues, 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 receipt of proceeds of a debt issuance, to be 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 held as a fidelity 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. "Casino gambling" means a location or business for the purpose of conducting illegal gambling activities, but excluding the sale and purchase of lottery tickets or shares as authorized by this act;

5. "Commission" means the Oklahoma Lottery Commission;

6. "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 State 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;

7. "Educational purposes and programs" means:

- 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 State Department of Career and Technology Education,

- b. construction of educational facilities for schools and institutions of common education, higher education, and career and technology education,
- c. capital outlay projects for schools and institutions of common education, higher education, and career and technology education,
- d. technology for common education, higher education, and career and technology education facilities which shall include costs of providing to teachers at accredited public institutions who teach levels K-12, 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. early childhood development programs which shall include costs associated with pre-kindergarten and full-day kindergarten programs,
- f. endowed chairs for professors at institutions of high education operated by The Oklahoma State System of Higher Education, and
- g. teacher compensation which may include salary increases, stipends and benefit increases;

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

9. "Lottery", "lotteries", "lottery game", or "lottery games" means any game of chance approved by the board and operated pursuant to the Oklahoma Education Lottery Act, including, but not limited to, instant tickets, on-line games, and games using mechanical or electronic devices but excluding charity bingo and games conducted pursuant to the Oklahoma Charity Games Act, video poker, slot machines, video 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, or electronic or video forms of these gambling activities, pari-mutuel betting conducted pursuant to the Oklahoma Horse Racing Act and casino gambling as defined in this section. Provided this shall not prevent the offering of lottery games through on-line, video, electronic or mechanical means;

10. "Major procurement contract" means any gaming product or service costing in excess of Seventy-five Thousand Dollars (\$75,000.00), 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 the state;

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 such 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. "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, depreciation of property and equipment, funds for compulsive gambling education and treatment, amounts held in or paid from a fidelity fund pursuant to Section 20 of this act, debt service payments for the payment of the initial expenses of startup, administration, and operation of the Commission and the lottery, and other operating costs;

16. "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;

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

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

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

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

21. "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, and not a state agency, and a public corporation. The principal office of the Commission shall be located in Oklahoma County, and the venue of any action against the Commission shall also be Oklahoma County. The records of the Oklahoma Lottery Commission shall be subject to the Oklahoma Open Records Act.

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 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. 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, three shall be appointed for initial terms of two (2) 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 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 bylaws 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, 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 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. The advisory board shall establish its own rules and internal operating procedures. 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 34 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 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 this 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 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 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 without limiting, the generality of the foregoing, the following powers:

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 adopt, amend, and repeal bylaws, regulations, rules and policies and procedures for the regulation of its affairs and the conduct of its business, to elect and prescribe the duties of officers and employees of the Commission, and to perform such other matters as the Commission may determine. In the adoption of rules, the Commission shall be subject to the Administrative Procedures Act;

4. To procure or to provide insurance;

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

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

7. 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;

8. To conduct 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;

9. 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, mechanical, electronic, and on-line equipment and terminals, and intangible property, including, but not limited to, computer programs, systems, and software;

10. 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. The maximum amount which may be borrowed shall be Ten Million Dollars (\$10,000,000.00). Any such debt must be approved by the Attorney General as to legal form. Also, 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;

11. To be authorized 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;

12. To appoint and select officers, agents, and employees, including professional and administrative staff and personnel and hearing officers to conduct hearings required by the Oklahoma Education Lottery Act, and to fix their compensation, pay their expenses, and provide a benefit program, including, but not limited to, a retirement plan and a group insurance plan;

13. To select and contract with vendors and retailers;

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

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

16. To establish and maintain banking relationships, including, but not limited to, establishment of depository accounts, which accounts and deposits shall be collateralized in the same manner as state funds pursuant to the Security for Public Deposits Act;

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

18. 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; and

19. To adopt and amend such regulations, 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.

B. The powers enumerated in subsection A 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 Commission.

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 may promulgate rules regulating the conduct of lottery games in general, including, but not limited to, rules specifying:

1. The type of games to be conducted, including, but not limited to, instant lotteries, on-line games, and other games traditional to the lottery. Such games may include the selling of tickets or shares or the use of electronic or mechanical devices;

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 such 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, which may include the use of electronic or mechanical devices, but such devices may be placed only in locations on the premises of the lottery retailer which are within the view of the retailer or an employee of the retailer. All electronic or mechanical devices shall bear a conspicuous label prohibiting the use of the device by persons under eighteen (18) years of age. A lottery retailer who knowingly allows a person under eighteen (18) years of age to purchase a lottery ticket or share from an electronic or mechanical device shall be subject to the penalties provided in Section 27 of this act;

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

11. Any and all other matters necessary, desirable, or convenient toward ensuring the efficient and effective operation of lottery games, the continued entertainment and convenience of the public, and the integrity of the lottery.

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 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. 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 and direct such personnel as deemed necessary;
3. Employ by contract and compensate such persons and firms as deemed necessary;
4. Promote or provide for promotion of the lottery and any functions related to the Commission;
5. Prepare a budget for the approval of the board;
6. Require bond from such retailers and vendors in such amounts as required by the board;
7. 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
8. Perform other duties generally associated with an executive director or a chief executive director of a state lottery.

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

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 Commission shall establish and maintain a personnel program for its employees and fix the compensation and terms of compensation of its employees, including, but not limited to, production incentive payments.

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 with decision-making authority 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. The Commission may pay for the actual cost of the investigations and may contract with the Oklahoma State Bureau of Investigation for the performance of the investigations. The results of such 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 a felony or bookmaking or other forms of illegal gambling or of a crime involving moral turpitude shall be employed by the Commission.

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 lottery proceeds shall be the property of the Commission. From its lottery proceeds, the Commission shall pay the operating expenses of the Commission. As nearly as practical, at least forty-five percent (45%) of the amount of money from the actual sale of lottery tickets or shares 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. As nearly as practical, for each fiscal year, net proceeds shall equal at least thirty-five percent (35%) of the lottery proceeds. However, for the first two full fiscal years and any partial first fiscal year of the Commission, net proceeds need only equal thirty percent (30%) of the proceeds as nearly as practical.

B. There is hereby created in the State Treasury a revolving fund to be designated the "Oklahoma Education Lottery Trust Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the State Treasurer as provided in this subsection. 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 during the preceding calendar quarter. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended as provided in subsection E of 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.

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 the Commission shall have no 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. A scholarship shortfall reserve account shall be maintained within the fund. An amount equal to ten percent (10%) of the total amount of lottery proceeds appropriated and disbursed during the preceding fiscal year in the form of scholarships and grants for higher education from the fund shall be deposited from lottery proceeds each year until such amount equals fifty percent (50%) of such sum. Thereafter, only an amount necessary to maintain the scholarship shortfall reserve account in an amount equal to fifty percent (50%) of the amount of lottery proceeds appropriated and disbursed for scholarships during the preceding fiscal year shall be deposited into the account. If the net proceeds paid into the fund in any year are not sufficient to meet the amount appropriated for higher education scholarships, the shortfall reserve account may be used and appropriated to meet the deficiency. If it becomes necessary to use the reserve account in any fiscal year, the scholarship program shall be reviewed and shall be reduced to accommodate available lottery proceeds, exclusive of the scholarship shortfall reserve account, through such methods as reducing the family income cap qualification, reducing or eliminating grants for student fees and books, and reducing the academic years funded.

D. On or before February 1 of each year, the Office of State Finance shall estimate and report to the Governor and the Legislature the amount of net proceeds and treasury earnings thereon to be credited to the fund during the following fiscal year and the amount of unappropriated surplus estimated to be accrued in the fund at the beginning of the following fiscal year. The sum of estimated net proceeds, treasury earnings thereon, and unappropriated surplus shall be designated lottery proceeds.

E. The Legislature shall appropriate the net proceeds in the Oklahoma Education Lottery Trust Fund, plus any earnings thereon for the following educational purposes and programs:

1. Tuition grants, loans and scholarships for postsecondary students;

2. Construction of educational facilities for schools and institutions of common education, higher education, and career and technology education;

3. Capital outlay projects for schools and institutions of common education, higher education, and career and technology education;

4. Technology for common education, higher education, and career and technology education facilities;

5. Early childhood development programs;

6. Endowed chairs for professors at institutions of higher education operated by The Oklahoma State System of Higher Education; and

7. Teacher compensation and benefits.

F. The Legislature shall appropriate funds from the Oklahoma Education Lottery Trust Fund, only for the purposes specified in subsection E 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.

G. 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 or the Constitutional Reserve Fund. No program or project started specifically from lottery proceeds shall be continued from the General Revenue Fund or the Constitutional Reserve Fund. 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.

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 Commission encourages participation in contracts with the Commission by minority businesses. Accordingly, the board of trustees 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 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 in such corporation; provided, however, that 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 or joint venture, all of the general partners, limited partners, or joint ventures;

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 vendor's license, contract, or operation 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 or plea, conviction, or adjudication of guilt in a state or federal court of the vendor for any felony or any other criminal offense other than a traffic violation;

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; and

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

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 section 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 such requirements for periodically updating such disclosures during the tenure of contract as may be specified in such 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 who has been found guilty of a felony related to the security or integrity of the lottery in this or any other jurisdiction.

D. A major procurement contract shall not be entered into with any vendor if such vendor 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 board member, or any employee of the Commission or to a member of the immediate family residing in the same household as any such person.

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 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 section 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 public official has an ownership interest of ten percent (10%) or more.

D. All major procurement contracts must be competitively bid pursuant to policies and procedures approved by the board unless there is only one qualified vendor and that vendor has an exclusive right to offer the service or product. Major procurement contracts shall be exempt from the Oklahoma Central Purchasing Act, but the purchasing policies and procedures of the Commission must be approved by the State Purchasing Director. Procedures adopted by the board shall be designed to allow the selection of proposals 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. In any bidding process, the Commission may administer its own bidding and procurement or may utilize the services of the Department of Central Services.

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 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 must 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 five percent (5%) 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. 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 shall be assignable or transferable.

E. The board 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 and on-line retailers. 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 monetary contributions to political

organizations 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. The Oklahoma Tax Commission shall provide this information to the Commission;

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

- a. has been convicted of a criminal offense related to the security or integrity of the lottery in this or any other jurisdiction,
- b. has been convicted of any illegal gambling activity, false statements, false swearing, or perjury in this or any other jurisdiction or convicted of any crime punishable by more than one (1) year of imprisonment or a fine of more than One Thousand Dollars (\$1,000.00) 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 this act or any rule, regulation, 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 an officer 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. Retailers who participate in on-line games shall be charged a uniform application fee for each on-line 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 Procedure 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 a member of the immediate family residing in the same household as any such person.

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.

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. The Commission may establish a fidelity fund separate from all other funds and shall assess each retailer a one-time fee not to exceed One Hundred Dollars (\$100.00) per sales location. The Commission may deposit the funds or place the funds in one or more interest-bearing accounts. Monies deposited to the fund may 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 Oklahoma Lottery 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 fund which exceeds 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 reasons and shall exercise and exhaust all available options in such procedures prior to amounts being written off to this account.

C. The Commission may require any retailer to post an appropriate bond, as determined by the Commission, using an

insurance company acceptable to the Commission. The amount should not exceed the applicable district sales average of lottery tickets for two billing periods.

D. 1. In its discretion, 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 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 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 as determined in the sole discretion of the Commission in any matter considered by the Commission in executing the contract with the retailer; 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, however, 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. 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 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. 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 any 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 due 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 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 Commission unless authorized in writing by the executive director. No person other than a duly certified lottery retailer shall sell lottery tickets, but 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 merchants as a means of promoting goods or services to customers or prospective customers 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 to persons under eighteen (18) years of age, but this section does not prohibit the purchase of a lottery ticket or share by a person eighteen (18) years of age or older for the purpose of making a gift to any person of any age. In such case, the Commission shall direct payment of proceeds of any lottery prize to an adult member of the family of the person or a legal representative of the person on behalf of the person.

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. Except as otherwise provided in the Oklahoma Education Lottery Act, attachments, garnishments, or executions authorized and issued pursuant to law shall be withheld if timely served upon the Commission. This subsection shall not apply to 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 stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received, or not recorded by the Commission within applicable deadlines; lacking in captions that conform and agree with the play symbols as appropriate to the particular lottery game involved; or 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 multisovereign 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, 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. No lottery game utilizing an electronic or mechanical machine may use a machine which dispenses coins or currency.

H. Unclaimed prize money shall not constitute net lottery proceeds. In addition, unclaimed prize money may 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 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. 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. The Commission shall perform full criminal background investigations prior to the execution of any vendor contract.

C. The Commission or its authorized agent shall:

1. Conduct criminal background investigations and credit investigations on all potential retailers;

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, or a law enforcement agency investigating a violation of the Oklahoma Education Lottery Act.

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 knowingly 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). It shall be an affirmative defense to a charge of a violation under this section that the retailer reasonably and in good faith relied upon representation of proof of age in making the sale.

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

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 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 731 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 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 732 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The 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 Commission operating account.

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 733 of Title 3A, unless there is created a duplication in numbering, reads as follows:

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

1. Submit quarterly and annual reports to the Governor, State Auditor and Inspector, and the oversight committee created by Section 34 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 Oklahoma Lottery Commission at the expense of the state 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 34 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;

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; and

7. Adopt the same fiscal year as that used by state government.

SECTION 34. 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 Oklahoma Lottery 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 35. 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 36. 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. The act contains many other provisions relating to the conduct of a state lottery.

SHALL THIS AMENDMENT BE APPROVED BY THE PEOPLE?

YES, FOR THE AMENDMENT

NO, AGAINST THE AMENDMENT

SECTION 37. 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 36 hereof, with the Secretary of State and one copy with the Attorney General.

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