STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1431 By: Balkman

COMMITTEE SUBSTITUTE

An Act relating to amusements and sports; amending Section 4, Chapter 58, O.S.L. 2003, Section 10, Chapter 58, O.S.L. 2003, Section 14, Chapter 58, O.S.L. 2003 and Section 25, Chapter 58, O.S.L. 2003 (3A O.S. Supp. 2004, Sections 703, 709, 713 and 724), which relate to the Oklahoma Education Lottery Act; modifying definition; clarifying advertising powers of the Oklahoma Lottery Commission; modifying authorized use of gross proceeds of the lottery; modifying use of proceeds from unclaimed tickets; requiring the Oklahoma Lottery Commission to disclose certain information; requiring certain report; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 4, Chapter 58, O.S.L. 2003 (3A O.S. Supp. 2004, Section 703), is amended to read as follows:

Section 703. 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~~ 719 of this ~~act~~ title;

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 a 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 and funding for the treatment of compulsive gambling disorder and educational programs related to such disorder as provided for in Section 713 of this title;

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 2. AMENDATORY Section 10, Chapter 58, O.S.L. 2003 (3A O.S. Supp. 2004, Section 709), is amended to read as follows:

Section 709. 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~~ 732 of this ~~act~~ title;

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. Promotional advertising shall not contain a representation that a person has won or shall be the winner of a lottery game unless:

a. the person has actually won a lottery game,

b. the representation is not false, deceptive, or misleading, and

c. the lottery prize and its value are clearly and conspicuously disclosed in the representation.

All promotional advertising for the Oklahoma Education Lottery shall contain a statement warning of the harmful effects of playing the lottery. The statement shall include a toll-free hot-line number for problem and compulsive gamblers funded by the Commission; 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 3. AMENDATORY Section 14, Chapter 58, O.S.L. 2003 (3A O.S. Supp. 2004, Section 713), is amended to read as follows:

Section 713. 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 and annually shall transfer Five Hundred Thousand Dollars ($500,000.00) to the Department of Mental Health and Substance Abuse Services for the treatment of compulsive gambling disorder and educational programs related to such disorder. In addition to this amount, an amount equal to one percent (1%) of the annual expenditures for advertising the lottery shall be transferred by the Oklahoma Lottery Commission to the Department of Mental Health and Substance Abuse Services each year for the treatment of compulsive gambling disorder. 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~~ 732 of this ~~act~~ title, 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~~ The Oklahoma State System of Higher Education, and career and technology education,

c. capital outlay projects for elementary school districts, independent school districts, ~~the~~ 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~~ 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~~ 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~~ the Oklahoma Education Lottery 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 4. AMENDATORY Section 25, Chapter 58, O.S.L. 2003 (3A O.S. Supp. 2004, Section 724), is amended to read as follows:

Section 724. 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 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 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~~ Unclaimed prize money shall be added to the pool from which future prizes are to be awarded or used for special prize promotions.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 724.1 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Lottery Commission shall disclose the odds of winning with respect to each lottery game by stating the odds in lottery game advertisements or by posting the odds at each place in which lottery tickets are sold by a lottery retailer.

B. For each lottery game, after the last date on which a prize may be claimed, the Commission shall prepare a report that states the total number of tickets sold, the amount of revenue generated from the sale of such tickets, and the number and amounts of prizes awarded in the game. The report shall be available for public inspection.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

50-1-6523 SCE 02/17/05