

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

HOUSE BILL 205
PROPOSED COMMITTEE SUBSTITUTE H205-PCS10559-SU-3

Short Title: Lottery Act Changes.

(Public)

Sponsors:

Referred to:

February 18, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA STATE
3 LOTTERY ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 18C-114(a)(8), (10), and (11) read as rewritten:

6 ...

7 "(a) The Commission shall have the following powers and duties:

8 (8) To charge a fee of lottery ~~vendors~~potential contractors and contractors not
9 to exceed the cost of the criminal record check of the lottery ~~vendor~~potential
10 contractors and contractors.

11 ...

12 (10) To determine the incentives, if any, for any lottery employees, lottery
13 ~~vendors, retailers,~~ lottery contractors, or electronic computer terminal
14 operators.

15 (11) To specify the authority, compensation, and role of the Director, and to
16 specify the authority, selection, and role of the other employees of the
17 Commission. All of the following apply to all employees of the
18 Commission:

- 19 a. No employee of the Commission may have a financial interest in any
20 lottery ~~vendor~~potential contractor or lottery contractor, other than an
21 interest as part of a mutual fund.
- 22 b. No employee of the Commission with decision-making authority
23 shall participate in any decision involving the retailer or ~~vendor~~
24 potential contractor with whom the employee has a financial interest.
- 25 c. No employee of the Commission who leaves the employment of the
26 Commission may represent any ~~vendor~~contractor, potential
27 contractor, or retailer before the Commission for a period of one year
28 following termination of employment with the Commission.
- 29 d. A background investigation shall be conducted on each applicant for
30 employment with the Commission.
- 31 e. The Commission shall bond all employees with access to lottery
32 funds or revenue or security.

33"



* H 2 0 5 - P C S 1 0 5 5 9 - C S S U - 3 *

1 (c) Before a contract is awarded, the Director shall conduct a thorough background
2 investigation of all of the following:

- 3 (1) The ~~vendor~~ potential contractor to whom the contract is to be awarded.
4 (2) Any parent or subsidiary corporation of the ~~vendor~~ potential contractor to
5 whom the contract is to be awarded.
6 (3) All shareholders with a five percent (5%) or more interest in the ~~vendor~~
7 potential contractor or parent or subsidiary corporation of the ~~vendor~~
8 potential contractor to whom the contract is to be awarded.
9 (4) All officers and directors of the ~~vendor~~ potential contractor or parent or
10 subsidiary corporation of the ~~vendor~~ potential contractor to whom the
11 contract is to be awarded.

12 (d) The Commission may terminate the contract, without penalty, of a lottery contractor
13 that fails to comply with the Commission's instruction to implement the recommendations of
14 the State Auditor or an independent auditor in an audit conducted of Lottery security or
15 operations.

16 (e) After entering into a contract with a lottery contractor, the Commission shall require
17 the lottery contractor to periodically update the information required to be disclosed under
18 G.S. 18C-152(c). Any contract with a lottery contractor who does not periodically update the
19 required disclosures may be terminated by the Commission.

20 (f) No lottery system ~~vendor nor any applicant for a contract~~ contractor, potential
21 contractor, or lottery supplier may pay, give, or make any economic opportunity, gift, loan,
22 gratuity, special discount, favor, hospitality, or service, excluding food and beverages having
23 an aggregate value not exceeding one hundred dollars (\$100.00) in any calendar year, to the
24 Director, any member or employee of the corporation, or a member of the immediate family
25 residing in the same household as any of these individuals."

26 **SECTION 4.** G.S. 18C-152 reads as rewritten:

27 **"§ 18C-152. Investigation of lottery ~~vendors~~ potential contractors.**

28 (a) Lottery ~~vendors~~ potential contractors shall cooperate with the Director in
29 completing any investigation required under G.S. 18C-151(c), including any appropriate
30 investigation authorizations needed to facilitate these investigations.

31 (b) The Commission shall adopt rules that provide for disclosures of information
32 required to be disclosed under subsection (c) of this section by lottery ~~vendors~~ potential
33 contractors to ensure that the ~~vendors~~ potential contractors provide all the information
34 necessary to allow for a full and complete evaluation by the Director and Commission of the
35 competence, integrity, background, and character of the lottery ~~vendors~~ potential contractors.
36 Information shall be disclosed for the following:

- 37 (1) If the ~~vendor~~ potential contractor is a corporation, the officers, directors, and
38 each stockholder in that corporation; however, in the case of owners of
39 equity securities of a publicly traded corporation, only the names and
40 addresses of those known to the corporation to own beneficially five percent
41 (5%) or more of the securities need be disclosed.
42 (2) If the ~~vendor~~ potential contractor is a trust, the trustee and all persons
43 entitled to receive income or benefits from the trust.
44 (3) If the ~~vendor~~ potential contractor is an association, the members, officers,
45 and directors.
46 (4) If the ~~vendor~~ potential contractor is a partnership or joint venture, all of the
47 general partners, limited partners, or joint venturers.
48 (5) For any ~~vendor~~ potential contractor, any person who can exercise control or
49 authority, or both, on behalf of the ~~vendor~~ potential contractor. For any
50 ~~vendor~~ potential contractor, any person who can exercise control or
51 authority, or both, on behalf of the ~~vendor~~ potential contractor.

1 (c) For purposes of this subsection, the term "~~vendor~~"-"potential contractor" shall
2 include the ~~vendor~~potential contractor and each of the persons applicable under subsection (b)
3 of this section. At a minimum, the ~~vendor~~potential contractor required to disclose information
4 for a thorough background investigation under G.S. 18C-151 shall do all of the following:

- 5 (1) Disclose the ~~vendor's~~potential contractor's name, phone number, and
6 address.
- 7 (2) Disclose all the states and jurisdictions in which the ~~vendor~~potential
8 contractor does business and the nature of the business for each state or
9 jurisdiction.
- 10 (3) Disclose all the states and jurisdictions in which the ~~vendor~~potential
11 contractor has contracts to supply gaming goods or services, including
12 lottery goods and services, and the nature of the goods or services involved
13 for each state or jurisdiction.
- 14 (4) Disclose all the states and jurisdictions in which the ~~vendor~~potential
15 contractor has applied for, has sought renewal of, has received, has been
16 denied, has pending, or has had revoked a lottery or gaming license or
17 permit of any kind or had fines or penalties assessed on a license, permit,
18 contract, or operation and the disposition of such in each such state or
19 jurisdiction. If any lottery or gaming license, permit, or contract has been
20 revoked or has not been renewed or any lottery or gaming license, permit, or
21 application has been either denied or is pending and has remained pending
22 for more than six months, all of the facts and circumstances underlying the
23 failure to receive that license shall be disclosed.
- 24 (5) Disclose the details of any finding or plea, conviction, or adjudication of
25 guilt in a state or federal court of the ~~vendor~~potential contractor for any
26 felony or any other criminal offense other than a minor traffic violation.
- 27 (6) Disclose the details of any bankruptcy, insolvency, reorganization, or
28 corporate or individual purchase or takeover of another corporation,
29 including bonded indebtedness, or any pending litigation of the ~~vendor~~potential
30 contractor.
- 31 (7) If at least twenty-five percent (25%) of the cost of a ~~vendor's~~potential
32 contractor's contract is subcontracted, the ~~vendor~~potential contractor shall
33 disclose all of the information required by this section for the subcontractor
34 as if the subcontractor were itself a ~~vendor~~potential contractor.
- 35 (8) Make any additional disclosures and information the Commission
36 determines to be appropriate for the contract involved.

37 (d) All documents compiled by the Director in conducting the investigation of the
38 lottery ~~vendors~~potential contractors shall be held as confidential information under Chapter
39 132 of the General Statutes."

40 **SECTION 5.** G.S. 18C-103 reads as rewritten:

41 "**§ 18C-103. Definitions.**

42 As used in this Chapter, unless the context requires otherwise:

- 43 (1) "Commission" means the North Carolina State Lottery Commission.
- 44 (2) "Commissioner" means a member of the Commission.
- 45 (3) "Director" means the person selected by the Commission to be the chief
46 administrator of the North Carolina State Lottery.
- 47 (4) "Game" or "lottery game" means any procedure or amusement authorized by
48 the Commission where prizes are distributed among persons who have paid,
49 or unconditionally agreed to pay, for tickets or shares that provide the
50 opportunity to win those prizes and does not utilize a video gaming machine
51 as defined in G.S. 14-306.1(c).

- 1 (5) "Lottery" means any lottery game or series of games established and
2 operated pursuant to this Chapter.
- 3 (6) "Lottery contractor" means a person other than a lottery retailer with whom
4 the Commission has contracted for the purpose of providing goods or
5 services to the ~~Commission~~Commission on an ongoing basis.
- 6 (6a) "Lottery supplier" means a person, other than a lottery retailer, with whom
7 the Commission has contracted for the purpose of providing goods or
8 services to the Commission for an individual purchase which may include a
9 maintenance program.
- 10 (7) "Person" means any natural person or corporation, limited liability company,
11 trust, association, partnership, joint venture, subsidiary, or other business
12 entity.
- 13 (7a) "Potential contractor" means any person other than a lottery retailer who
14 submits a bid, proposal, or offer to procure a contract for goods or services
15 for the Commission on an ongoing basis.
- 16 (8) "Retailer", "lottery retailer", or "lottery game retailer" means a person with
17 whom the Commission has contracted to sell tickets or shares in lottery
18 games.
- 19 (9) "Share" means any method of participation in a lottery game, other than by a
20 ticket purchased on an equivalent basis with a ticket.
- 21 (10) "Ticket" means any tangible evidence authorized by the Commission to
22 demonstrate participation in a lottery game.
- 23 ~~(11) "Vendor" or "lottery vendor" means any person other than a lottery retailer~~
24 ~~who submits a bid, proposal, or offer to procure a contract for goods or~~
25 ~~services for the Commission."~~

26 **SECTION 6.** G.S. 18C-113 is amended by adding a new subsection to read:

27 "(d) Only the following information concerning a lottery winner is a public record: (i)
28 name, (ii) city and state of residence, (iii) game played, (iv) amount won, and (v) date won. For
29 purposes of this subsection, amount won means the nominal prize amount, the cash payment if
30 different from the nominal prize amount, and the cash payment after taxes are withheld."

31 **SECTION 7.** G.S. 18C-120(b) reads as rewritten:

32 "(b) The Director shall have the following powers and duties, under the supervision of
33 the Commission:

- 34 (1) To provide for the reporting of payment of lottery game prizes to State and
35 federal tax authorities and for the withholding of State and federal income
36 taxes from lottery game prizes as provided in State and federal law.
- 37 (2) To conduct a background investigation, including a criminal history record
38 check, of applicants for employment with the Commission, lottery retailers,
39 and lottery potential contractors, which may include a search of the State and
40 National Repositories of Criminal Histories based on the fingerprints of
41 applicants.
- 42 (3) To set the salaries of all Commission employees, subject to the approval of
43 the Commission. Except for the provisions of Articles 6 and 7 of Chapter
44 126 of the General Statutes, all employees of the Commission shall be
45 exempt from the State Personnel Act.
- 46 (4) To enter into contracts with lottery ~~retailers and~~retailers, lottery contractors
47 contractors, or lottery suppliers upon approval by the Commission.
- 48 (5) To provide for the security and accuracy in the operation and administration
49 of the Commission and the Lottery, including examining the background of
50 all prospective employees, ~~lottery vendors, lottery potential contractors,~~
51 lottery contractors and lottery retailers.

- 1 (6) To coordinate and collaborate with the appropriate law enforcement
2 authorities regarding investigations of violations of the laws relating to the
3 operation of the Lottery and make reports to the Commission regarding
4 those investigations.
- 5 (7) To confer with the Commission on the operation and administration of the
6 Lottery and make available for inspection by the Commission all books,
7 records, files, documents, and other information of the Lottery.
- 8 (8) To study the operation and administration of other lotteries and to collect
9 demographic and other information concerning the Lottery and make
10 recommendations to improve the operation and administration of the Lottery
11 to the Commission, to the Governor, and to the General Assembly.
- 12 (9) To provide monthly financial reports to the Commission of all lottery
13 revenues, prize disbursements, expenses, net revenues, and all other
14 financial transactions involving lottery funds.
- 15 (10) To enter into agreements with other states to operate and promote multistate
16 lotteries consistent with the purposes set forth in this Chapter and upon the
17 approval of the Commission."

18 **SECTION 8.** G.S. 18C-132(h) reads as rewritten:

19 "(h) The right of any person to a prize shall not be assignable. Payment of any prize may
20 be paid ~~to the estate of a deceased prizewinner or to a person designated pursuant to a court~~
21 order. Any prize or portion of a prize remaining unpaid at the death of a prize winner shall be
22 paid to the estate of the deceased prize winner or to the trustee of a trust established by the
23 prize winner or as designated in the deceased prize winner's will, living trust, or other prepared
24 legal instrument if a copy of the trust document or instrument has been filed with the lottery,
25 and no written notice of revocation has been received by the lottery prior to the prize winner's
26 death."

27 **SECTION 9.** G.S. 18C-134(b) reads as rewritten:

28 "(b) Notification. – A claimant agency ~~seeking to attempt collection of a debt through~~
29 ~~setoff must notify the Commission in writing and supply information necessary to identify the~~
30 ~~debtor. The claimant agency may include with the notification the date, if any, that the debt is~~
31 ~~expected to expire. The agency must notify the Commission in writing when a debt has been~~
32 ~~paid or is no longer owed the agency. A local agency may not submit a debt for collection~~
33 ~~under this section until it has met the requirements of G.S. 105A-5, and it must submit the debt~~
34 ~~to the Commission through one of the entities listed in G.S. 105A-3(b1); is automatically~~
35 enrolled in the Commission's debt set-off program if it is enrolled in the Department of
36 Revenue debt set-off program. To provide for more efficient operations, the Department of
37 Revenue shall provide to the Commission on a periodic basis all updates to its debt set-off
38 program as soon as practicable."

39 **SECTION 10.** G.S. 18C-134(e) reads as rewritten:

40 "(e) Confidentiality. – Notwithstanding any confidentiality statute of a claimant agency,
41 the exchange of information among the Commission, the Department of Revenue, the claimant
42 agency, the organization submitting debts on behalf of a local agency, and the debtor necessary
43 to implement this section is lawful. The information an agency or organization obtains from the
44 Commission in accordance with the exemption in this subsection may be used by the agency or
45 organization only in the pursuit of its debt collection duties and practices."

46 **SECTION 11.** G.S. 18C-141(a) reads as rewritten:

47 "(a) The Director shall recommend to the Commission those persons with whom to
48 contract as lottery game retailers. To the extent practicable, the Director shall meet the minority
49 participation goals under Article 8 of Chapter 143 of the General Statutes. Documents compiled
50 by the Director in conducting investigations of lottery retailers are confidential."

51 **SECTION 12.** G.S. 18C-142 reads as rewritten:

1 **"§ 18C-142. Compensation for lottery game retailers.**

2 The amount of compensation paid to lottery game retailers for their sales of lottery tickets
3 or shares shall be seven percent (7%) of the ~~retail price~~ face value of the tickets or shares sold
4 for each lottery game. The Commission shall require submission of reports and remission of
5 lottery revenues to the Commission on a timely basis."

6 **SECTION 13.** G.S. 18C-162(a)(4) reads as rewritten:

7 "(a) The Commission shall allocate revenues to the North Carolina State Lottery Fund in
8 order to increase and maximize the available revenues for education purposes, and to the extent
9 practicable, shall adhere to the following guidelines:

10 ...

11 (4) No more than seven percent (7%) of the ~~total annual revenues~~, face value of
12 tickets or shares, as described in this Chapter, shall be allocated for
13 compensation paid to lottery game retailers."

14 **SECTION 14.** G.S. 18C-143 is amended by adding a new subsection to read:

15 "(f) All lottery proceeds minus applicable retailer commissions are held in trust by
16 lottery retailers until such time as they are received by the Commission. A lottery retailer shall
17 have a fiduciary duty to preserve and account for lottery proceeds including any unsold
18 tickets."

19 **SECTION 15.** G.S. 18C-132(a) reads as rewritten:

20 "(a) If a lottery game uses a daily or less frequent drawing of winning numbers, a
21 drawing among ~~entries~~, entries including second chance drawings where the value of the prize is
22 five thousand dollars (\$5,000) or more, or a drawing among finalists, all of the following
23 conditions shall be met:

24 (1) The drawings shall be open to the public.

25 (2) The drawings shall be witnessed by an independent certified public
26 ~~accountant~~ accountant or by an auditor employed by a certified public
27 accounting firm.

28 (3) Any equipment used in the drawings shall be inspected by the independent
29 certified public accountant or auditor employed by a certified public
30 accounting firm and an employee of the Commission both before and after
31 the drawings.

32 (4) Audio and visual records of the drawings and inspections shall be made.

33 If a lottery game uses a drawing among entries for (i) a second chance drawing or (ii) any
34 other promotion conducted by the lottery, where the value of the prize is less than five thousand
35 dollars (\$5,000) in value, the requirements of subdivisions (2) and (3) of this subsection do not
36 apply."

37 **SECTION 16.** G.S. 18C-122 reads as rewritten:

38 **"§ 18C-122. Independent audits.**

39 (a) ~~At the beginning of each Biennially,~~ at the beginning of the calendar year, the
40 Commission shall engage an independent firm experienced in security procedures, including
41 computer security and systems security, to conduct a comprehensive study and evaluation of all
42 aspects of security in the operation of the Commission and of the Lottery. At a minimum, such
43 a security assessment should include a review of network vulnerability, application
44 vulnerability, application code review, wireless security, security policy and processes,
45 security/privacy program management, technology infrastructure and security controls, security
46 organization and governance, and operational effectiveness.

47 (b) The portion of the security audit report containing the overall evaluation of the
48 Commission and of lottery games in terms of each aspect of security shall be presented to the
49 Commission, to the Governor, and to the General Assembly.

50 (c) The portion of the security audit report containing specific recommendations shall
51 be confidential, shall be presented only to the Director and to the Commission, and shall be

1 exempt from Chapter 132 of the General Statutes. The Commission may hear the report of such
2 an audit, discuss, and take action on any recommendations to address that audit under
3 G.S. 143-318.11(a)(1).

4 (d) ~~Biennially at the end of the fiscal~~ Every fourth year, the Commission shall engage
5 an independent auditing firm that has experience in evaluating the operation of lotteries to
6 perform an audit of the Lottery. The results of this audit shall be presented to the Commission,
7 to the Governor, and to the General Assembly."

8 **SECTION 17.** This act is effective when it becomes law