



INTEROFFICE MEMO

Gary Grief, Executive Director LaDonna Castañuela, Charitable Bingo Operations Director

To: Robert G. Rivera, Chairman
Cindy Fields, Commissioner
Mark A. Franz, Commissioner
Erik C. Saenz, Commissioner
Jamey Steen, Commissioner

Approved

Denied

From: Kyle Wolfe, Assistant General Counsel *KW*

Date: August 12, 2021

Re: Consideration of and possible discussion and/or action, including proposal, on amendments to 16 TAC §401.153 (Qualifications for License)

Attached is a draft rule proposal prepared for submission to the *Texas Register* for amendments to the above-referenced rule. The purpose of the proposed amendments is to update the language concerning lottery retailer eligibility requirements to reflect amendments to Tex. Gov't Code §466.155(a)(4)(C) by House Bill 1545 from the Regular Session of the 86th Texas Legislature that become effective later this year. Specifically, House Bill 1545 amended the State Lottery Act, Texas Government Code Chapter 466, by updating the names of certain alcoholic beverage permits corresponding to prohibited retailer locations to conform to the Alcoholic Beverage Code. Those permit names also need to be updated in Commission Rule 401.153(c)(3).

Recommendation: Staff recommends the Commission initiate the rulemaking process by publishing the attached proposed rule amendments in the *Texas Register* in order to receive public comments for a period of thirty (30) days.

1 The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.153
2 (Qualifications for License). The purpose of the proposed amendments is to update the language
3 concerning lottery retailer eligibility requirements to reflect amendments to Tex. Gov't Code
4 §466.155(a)(4)(C) by House Bill 1545 from the Regular Session of the 86th Texas Legislature that
5 become effective later this year. Specifically, House Bill 1545 amended the State Lottery Act,
6 Texas Government Code Chapter 466, by updating the names of certain alcoholic beverage permits
7 corresponding to prohibited retailer locations to conform to the Alcoholic Beverage Code. Those
8 permit names also need to be updated in Commission Rule 401.153(c)(3).

9 Kathy Pyka, Controller, has determined that for each year of the first five years the
10 amendments will be in effect, there will be no significant fiscal impact for state or local
11 governments as a result of the proposed amendments. There will be no adverse effect on small
12 businesses or rural communities, micro businesses, or local or state employment. There will be no
13 additional economic cost to persons required to comply with the amendments, as proposed.
14 Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required
15 because the proposed amendments will not have an adverse economic effect on small businesses
16 or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

17 Ryan Mindell, Lottery Operations Director, has determined that for each year of the first
18 five years the proposed amendments will be in effect, the public benefit expected is greater clarity
19 and understanding of lottery retailer eligibility requirements by aligning the language in the
20 Commission's rule with current law.

21 Pursuant to Texas Government Code §2001.0221, the Commission provides the following
22 Government Growth Impact Statement for the proposed amendments. For each year of the first

1 five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the
2 following:

3 (1) The proposed amendments do not create or eliminate a government program.

4 (2) Implementation of the proposed amendments does not require the creation of new
5 employee positions or the elimination of existing employee positions.

6 (3) Implementation of the proposed amendments does not require an increase or decrease
7 in future legislative appropriations to the Commission.

8 (4) The proposed amendments do not require an increase or decrease in fees paid to the
9 Commission.

10 (5) The proposed amendments do not create a new regulation.

11 (6) The proposed amendments do not expand or limit an existing regulation.

12 (7) The proposed amendments do not increase or decrease the number of individuals
13 subject to the rule's applicability.

14 (8) The proposed amendments do not positively or adversely affect this state's economy.

15 The Commission requests comments on the proposed amendments from any interested
16 person. Comments on the proposed amendments may be submitted to Kyle Wolfe, Assistant
17 General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-
18 6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us*. Comments
19 must be received within 30 days after publication of this proposal in the Texas Register to be
20 considered.

21 These amendments are proposed under Texas Government Code §466.015(c), which
22 authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102,

1 which authorizes the Commission to adopt rules for the enforcement and administration of the
2 laws under the Commission's jurisdiction.

3 This proposal is intended to implement Texas Government Code Chapter 466.

4 §401.153. Qualification for License.

5 (a) – (b) (No change.)

6 (c) Without limiting the foregoing grounds for denial of a license under this subchapter, the director
7 shall deny a license to any person whose location for the sales agency is either:

8 (1) – (2) (No change.)

9 (3) a location for which a person holds a wine and malt beverage ~~[beer]~~ retailer's permit,
10 mixed beverage permit, mixed beverage permit with a retailer late hours certificate ~~[permit]~~,
11 private club registration permit, or private club registration permit with a retailer late hours
12 certificate ~~[permit]~~ issued under the Alcoholic Beverage Code, Chapter 25, 28, 29, or 32, ~~[or 33,]~~
13 other than a location for which a person holds a wine and malt beverage ~~[beer]~~ retailer's permit
14 issued under Chapter 25, Alcoholic Beverage Code, that derives less than 30 percent of the
15 location's gross receipts from the sale or service of alcoholic beverages.

16 (d) – (e) (No change.)