

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-357
HOUSE BILL 205

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA STATE
LOTTERY ACT.

The General Assembly of North Carolina enacts:

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

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

...

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

...

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

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

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

...."

SECTION 2. The title of Article 6 of Chapter 18C of the General Statutes reads as rewritten:

"Article 6.

Lottery ~~Vendors~~ Potential Contractors and Lottery Contractors."

SECTION 3. G.S. 18C-151 reads as rewritten:

"§ 18C-151. Contracts.

(a) Except as otherwise specifically provided in this subsection for contracts for the purchase of services, apparatus, supplies, materials, or equipment, Article 8 of Chapter 143 of



the General Statutes, including the provisions relating to minority participation goals, shall apply to contracts entered into by the Commission. If this subsection and Article 8 of Chapter 143 are in conflict, the provisions of this subsection shall control. In recognition of the particularly sensitive nature of the Lottery and the competence, quality of product, experience, and timeliness, fairness, and integrity in the operation and administration of the Lottery and maximization of the objective of raising revenues, a contract for the purchase of services, apparatus, supplies, materials, or equipment requiring an estimated aggregate expenditure of ninety thousand dollars (\$90,000) or more may be awarded by the Commission only after the following have occurred:

- (1) The Commission has invited proposals to be submitted by advertisement by electronic means or advertisement in a newspaper having general circulation in the State of North Carolina and containing the following information:
 - a. The time and place where a complete description of the services, apparatus, supplies, materials, or equipment may be had.
 - b. The time and place for opening of the proposals.
 - c. A statement reserving to the Commission the right to reject any or all proposals.
 - (2) Proposals may be rejected for any reason determined by the Commission to be in the best interest of the Lottery.
 - (3) All proposals shall be accompanied by a bond or letter of credit in an amount equal to not less than five percent (5%) of the proposal and the fee to cover the cost of the criminal record check conducted under G.S. 114-19.6.
 - (4) The Commission has complied with the minority participation goals of G.S. 143-128.2 and G.S. 143-128.3.
 - (5) The Commission may not award a contract to a lottery ~~vendor~~ potential contractor who has been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract, or employs officers and directors who have been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract.
 - (6) The Commission shall investigate and compare the overall business practices, ethical reputation, criminal record, civil litigation, competence, integrity, background, and regulatory compliance record of lottery ~~vendors~~ potential contractors.
 - (7) The Commission may engage an independent firm experienced in evaluating government procurement proposals to aid in evaluating proposals for a major procurement.
 - (8) The Commission shall award the contract to the responsible lottery ~~vendor~~ potential contractor or lottery supplier who submits the best proposal that maximizes the benefits to the State.
- (b) Upon the completion of the bidding process, a contract may be awarded to a lottery contractor or lottery supplier with whom the Commission has previously contracted for the same purposes.
- (c) Before a contract is awarded, the Director shall conduct a thorough background investigation of all of the following:
- (1) The ~~vendor~~ potential contractor to whom the contract is to be awarded.
 - (2) Any parent or subsidiary corporation of the ~~vendor~~ potential contractor to whom the contract is to be awarded.
 - (3) All shareholders with a five percent (5%) or more interest in the ~~vendor~~ potential contractor or parent or subsidiary corporation of the ~~vendor~~ potential contractor to whom the contract is to be awarded.

- (4) All officers and directors of the ~~vendor~~-potential contractor or parent or subsidiary corporation of the ~~vendor~~-potential contractor to whom the contract is to be awarded.

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

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

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

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

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

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

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

- (1) If the ~~vendor~~-potential contractor is a corporation, the officers, directors, and each stockholder in that corporation; however, 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 the securities need be disclosed.
- (2) If the ~~vendor~~-potential contractor is a trust, the trustee and all persons entitled to receive income or benefits from the trust.
- (3) If the ~~vendor~~-potential contractor is an association, the members, officers, and directors.
- (4) If the ~~vendor~~-potential contractor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.
- (5) For any ~~vendor~~-potential contractor, any person who can exercise control or authority, or both, on behalf of the ~~vendor~~-potential contractor. For any ~~vendor~~-potential contractor, any person who can exercise control or authority, or both, on behalf of the ~~vendor~~-potential contractor.

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

- (1) Disclose the ~~vendor~~'spotential contractor's name, phone number, and address.

- (2) Disclose all the states and jurisdictions in which the ~~vendor~~-potential contractor does business and the nature of the business for each state or jurisdiction.
- (3) Disclose all the states and jurisdictions in which the ~~vendor~~-potential contractor has contracts to supply gaming goods or services, including lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction.
- (4) Disclose all the states and jurisdictions in which the ~~vendor~~-potential contractor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or permit of any kind or had fines or penalties assessed on a license, permit, contract, or operation and the disposition of such in each such state or jurisdiction. If any lottery or gaming license, permit, or contract has been revoked or has not been renewed or any lottery or gaming license, permit, or application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive that license shall be disclosed.
- (5) Disclose the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the ~~vendor~~-potential contractor for any felony or any other criminal offense other than a minor traffic violation.
- (6) Disclose 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~~-potential contractor.
- (7) If at least twenty-five percent (25%) of the cost of a ~~vendor's~~potential contractor's contract is subcontracted, the ~~vendor~~-potential contractor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a ~~vendor~~-potential contractor.
- (8) Make any additional disclosures and information the Commission determines to be appropriate for the contract involved.

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

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

"§ 18C-103. Definitions.

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

- (1) "Commission" means the North Carolina State Lottery Commission.
- (2) "Commissioner" means a member of the Commission.
- (3) "Director" means the person selected by the Commission to be the chief administrator of the North Carolina State Lottery.
- (4) "Game" or "lottery game" means any procedure or amusement authorized by the Commission where prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares that provide the opportunity to win those prizes and does not utilize a video gaming machine as defined in G.S. 14-306.1(c).
- (5) "Lottery" means any lottery game or series of games established and operated pursuant to this Chapter.
- (6) "Lottery contractor" means a person other than a lottery retailer with whom the Commission has contracted for the purpose of providing goods or services to the ~~Commission~~-Commission on an ongoing basis.

- (6a) "Lottery supplier" means a person, other than a lottery retailer, with whom the Commission has contracted for the purpose of providing goods or services to the Commission for an individual purchase which may include a maintenance program.
- (7) "Person" means any natural person or corporation, limited liability company, trust, association, partnership, joint venture, subsidiary, or other business entity.
- (7a) "Potential contractor" means any person other than a lottery retailer who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission on an ongoing basis.
- (8) "Retailer", "lottery retailer", or "lottery game retailer" means a person with whom the Commission has contracted to sell tickets or shares in lottery games.
- (9) "Share" means any method of participation in a lottery game, other than by a ticket purchased on an equivalent basis with a ticket.
- (10) "Ticket" means any tangible evidence authorized by the Commission to demonstrate participation in a lottery game.
- (11) ~~"Vendor" or "lottery vendor" means any person other than a lottery retailer who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission."~~

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

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

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

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

- (1) To provide for the reporting of payment of lottery game prizes to State and federal tax authorities and for the withholding of State and federal income taxes from lottery game prizes as provided in State and federal law.
- (2) To conduct a background investigation, including a criminal history record check, of applicants for employment with the Commission, lottery retailers, and lottery potential contractors, which may include a search of the State and National Repositories of Criminal Histories based on the fingerprints of applicants.
- (3) To set the salaries of all Commission employees, subject to the approval of the Commission. Except for the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, all employees of the Commission shall be exempt from the State Personnel Act.
- (4) To enter into contracts with lottery ~~retailers and~~ retailers, ~~lottery contractors~~ contractors, or lottery suppliers upon approval by the Commission.
- (5) To provide for the security and accuracy in the operation and administration of the Commission and the Lottery, including examining the background of all prospective employees, ~~lottery vendors~~, lottery potential contractors, lottery contractors and lottery retailers.
- (6) To coordinate and collaborate with the appropriate law enforcement authorities regarding investigations of violations of the laws relating to the operation of the Lottery and make reports to the Commission regarding those investigations.

- (7) To confer with the Commission on the operation and administration of the Lottery and make available for inspection by the Commission all books, records, files, documents, and other information of the Lottery.
- (8) To study the operation and administration of other lotteries and to collect demographic and other information concerning the Lottery and make recommendations to improve the operation and administration of the Lottery to the Commission, to the Governor, and to the General Assembly.
- (9) To provide monthly financial reports to the Commission of all lottery revenues, prize disbursements, expenses, net revenues, and all other financial transactions involving lottery funds.
- (10) To enter into agreements with other states to operate and promote multistate lotteries consistent with the purposes set forth in this Chapter and upon the approval of the Commission."

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

"(h) The right of any person to a prize shall not be assignable. Payment of any prize may be paid to the estate of a deceased prizewinner or to a person designated pursuant to a court order. Any prize or 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 prize winner or as designated in the deceased prize winner's will, living trust, or other prepared legal instrument if a copy of the trust document or instrument has been filed with the Director, and no written notice of revocation has been received by the Director prior to the prize winner's death."

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

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

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

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

SECTION 11. G.S. 18C-142 reads as rewritten:

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

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

SECTION 12. G.S. 18C-162(a)(4) reads as rewritten:

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

...

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

SECTION 13. G.S. 18C-143 is amended by adding a new subsection to read:

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

SECTION 14. G.S. 18C-132(a) reads as rewritten:

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

- (1) The drawings shall be open to the public.
- (2) The drawings shall be witnessed by an independent certified public ~~accountant~~, accountant or by an auditor employed by a certified public accounting firm.
- (3) Any equipment used in the drawings shall be inspected by the independent certified public accountant or auditor employed by a certified public accounting firm and an employee of the Commission both before and after the drawings.
- (4) Audio and visual records of the drawings and inspections shall be made.

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

SECTION 15. G.S. 18C-122 reads as rewritten:

"§ 18C-122. Independent audits.

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

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

(c) The portion of the security audit report containing specific recommendations shall be confidential, shall be presented only to the Director and to the Commission, and shall be exempt from Chapter 132 of the General Statutes. The Commission may hear the report of such an audit, discuss, and take action on any recommendations to address that audit under G.S. 143-318.11(a)(1).

(d) Biennially at the end of the fiscal year, in addition to the audits required by G.S. 18C-116 and by subsection (a) of this section, beginning in 2010, the Commission shall engage an independent auditing firm that has experience in evaluating the operation of lotteries to perform an audit of the Lottery. The results of this audit shall be presented to the Commission, to the Governor, and to the General Assembly."

SECTION 16. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 9:29 a.m. this 27th day of July, 2009