

WSR 22-17-136

PROPOSED RULES

WASHINGTON STATE LOTTERY

[Filed August 23, 2022, 12:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-048.

Title of Rule and Other Identifying Information: Washington's lottery is proposing revisions to WAC 315-04-180 Obligations of lottery retailers, which requires licensed lottery retailers to reimburse the lottery for lost or stolen tickets, in order to allow the director some discretion to waive reimbursement if certain conditions are met.

Hearing Location(s): On October 27, 2022, at 8:30 a.m., virtual. In response to the COVID-19 public health emergency, the commission will not provide a physical location for this hearing. See walottery.com or call or email Kristi Weeks for details on how to participate virtually.

Date of Intended Adoption: October 27, 2022.

Submit Written Comments to: Kristi Weeks, P.O. Box 4300[0], Olympia, WA 98504-3000, email KWeeks@walottery.com, fax 360-515-0416, by October 26, 2022.

Assistance for Persons with Disabilities: Debbie Robinson, phone 360-791-3045, fax 360-742-3902, TTY 360-586-0933, email DRobinson@walottery.com, by October 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule language will grant the director discretion to waive payment or reimbursement for lost or stolen lottery tickets if the retailer can show they have consistently and demonstrably stored them in a safe and secure manner, in addition to reporting the loss promptly and cooperating with all investigations.

Reasons Supporting Proposal: The current rule does not provide the director of the lottery discretion to waive reimbursement for lost or stolen tickets in any situation. This places a burden on retailers in light of the recent and significant increase in theft of lottery tickets.

Statutory Authority for Adoption: RCW 67.70.040 (1) and (3).

Statute Being Implemented: RCW 67.70.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington's lottery, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Kristi Weeks, 814 4th Avenue East, Olympia, WA, 360-810-2881; and Enforcement: Marcus Glasper, 814 4th Avenue East, Olympia, WA, 360-810-2866.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The lottery is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, the lottery does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii) and to date the joint [administrative] rules review committee has not made the section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:
Is fully exempt.

August 23, 2022
Kristi Weeks
Director of Legal Services

OTS-4055.1

AMENDATORY SECTION (Amending WSR 21-06-052, filed 2/25/21, effective 3/28/21)

WAC 315-04-180 Obligations of lottery retailers. (1)(a) Upon acceptance of a pack of instant tickets from the director, the retailer shall be responsible for the condition and security of the pack. The retailer shall hold the pack in its own safekeeping until it is ready to begin sale of the pack. Immediately prior to beginning sale, the retailer shall place the pack in "activated" status on the lottery-issued terminal. Placement in activated status designates that the tickets in the pack may be sold, and prizes in the pack may be paid. Tickets must not be sold before being placed in active status.

(b) In the event that instant tickets accepted by the retailer are lost, stolen, or in any way unaccounted for prior to their being placed in activated status, the retailer shall, upon discovery of their disappearance, immediately notify the director of each pack or portion of a pack so unaccounted for, lost, or stolen. The retailer may be required to provide the director a police report or other evidence of the pack's disappearance. The retailer may be charged (~~twenty-five dollars~~) \$25 for each pack or portion of a pack unaccounted for, lost, or stolen.

(c) A retailer may return an unopened pack, at no charge, to the director at any time prior to the pack having been placed in activated status. Within (~~thirty~~) 30 days of the official end of an instant game, a retailer shall return to the director all packs never activated in that game.

(d) Upon placement of a pack in activated status, the retailer shall be liable to the director for payment for the pack, in the amount calculated under WAC 315-06-035. Payment for a pack shall be due to the director (~~(+1)~~) (i) no later than (~~fifty~~) 50 calendar days after the pack has been placed in activated status or when (~~eighty~~) 80 percent of the low tiered prizes have been validated, thereby validating the pack; or (~~(+2)~~) (ii) payment for a pack shall be due to the director no later than (~~twenty-one~~) 21 days after activation. The director shall not reimburse the retailer for any ticket losses which occur after activation of the pack from which the tickets came, except as allowed by subsection (2) of this section, WAC 315-04-210(2), or 315-06-190.

(e) Each lottery retailer and lottery license applicant shall sign and comply with a lottery retailer contract. Failure to sign or

to comply shall result in revocation or denial of a retailer's lottery license.

(2) (a) A retailer shall maintain and store all activated instant tickets in a secure manner. For purposes of this subsection "secure manner" means:

(i) Instant tickets are removed from the in-counter dispenser and secured in a locked room or container when the retail location is closed for business;

(ii) Instant tickets are not allowed to hang loosely from, or otherwise be located outside of, the in-counter dispenser when the retail location is open for business; and

(iii) Instant tickets are given, or otherwise made accessible, to customers only after the purchase is complete.

(b) In the case of theft of activated instant tickets from a retailer or retail location, the director may waive payment or reimburse the retailer for some or all of those stolen instant tickets if, in the sole discretion of the director, each of the following conditions is fully met:

(i) Prior to the theft, the retailer consistently and demonstrably maintained and stored activated instant tickets in a secure manner.

(ii) The retailer reported the theft to the lottery, including an accurate accounting of the stolen instant tickets (i.e., game, pack, and ticket number(s)), within two hours of discovery of the event and cooperates fully with any lottery investigation.

(iii) The retailer reported the theft to appropriate law enforcement within two hours of discovery of the event and cooperates fully with any investigation and prosecution.

(iv) The retailer reported the theft to their appropriate insurance company, if any, and cooperates fully with any investigation and recovery. Waived payment or reimbursement from the lottery under this subsection may supplement, but shall not be used in place of, available insurance coverage.

(v) The retailer has not been reimbursed or had payment waived by the director for a separate theft within the 12 months immediately preceding the current event.

(vi) The person who committed, or is reasonably suspected to have committed, the theft is not an employee of the retailer or other person known to the retailer and who had more access to the instant tickets than a typical retail customer.

(c) A retailer whose request for waiver of payment or reimbursement under this subsection is denied by the director may request a brief adjudicative proceeding pursuant to WAC 315-20-125.

(3) Each lottery retailer shall abide by the law, these rules, and all other directives or instructions issued by the director.

~~((3))~~ (4) Each lottery retailer grants to the director an irrevocable license to enter upon the premises of the lottery retailer in which tickets may be sold or any other location under the control of the lottery retailer where the director may have good cause to believe lottery materials and/or tickets are stored or kept in order to inspect said lottery materials and/or tickets and the licensed premises.

~~((4))~~ (5) All property given, except tickets, to a lottery retailer remains the property of the director, and, upon demand, the lottery retailer agrees to deliver forthwith the same to the director. The lottery retailer also agrees to be responsible for the maintenance and security of such property.

~~((5))~~ (6) All books and records pertaining to the lottery retailer's lottery activities shall be made available for inspection and copying, during the normal business hours of the lottery retailer and between 8:00 a.m. and 5:00 p.m., Monday through Friday, upon demand by the director.

~~((6))~~ (7) All books and records pertaining to the lottery retailer's lottery activities shall be subject to seizure by the director without prior notice.

~~((7))~~ (8) No lottery retailer shall advertise or otherwise display advertising in any part of the lottery retailer's premises as a licensed location which may be considered derogatory or adverse to the operations or dignity of the lottery.

[Statutory Authority: RCW 67.70.040 (1), (3). WSR 21-06-052, § 315-04-180, filed 2/25/21, effective 3/28/21. Statutory Authority: RCW 67.70.040 (1) and (3). WSR 16-13-090, § 315-04-180, filed 6/15/16, effective 7/16/16. Statutory Authority: RCW 67.70.040 (1), (3) and 67.70.040. WSR 07-11-154, § 315-04-180, filed 5/22/07, effective 6/22/07. Statutory Authority: RCW 67.70.040. WSR 98-11-091, § 315-04-180, filed 5/20/98, effective 6/20/98; WSR 94-11-027, § 315-04-180, filed 5/6/94, effective 6/6/94; WSR 94-03-020, § 315-04-180, filed 1/7/94, effective 2/9/94; WSR 86-01-060 (Order 83), § 315-04-180, filed 12/16/85; WSR 84-05-008 (Order 51), § 315-04-180, filed 2/7/84; WSR 83-19-019 (Order 36), § 315-04-180, filed 9/12/83. Statutory Authority: 1982 2nd ex.s. c 7. WSR 82-21-037 (Order 2), § 315-04-180, filed 10/15/82.]