

Chapter LOT 5

RETAILERS

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Note: Chapter LOT 5 was created as an emergency rule effective June 17, 1988.

LOT 5.01 Purpose. The purpose of this chapter is to provide the executive director with the procedure and criteria for selecting retailers to sell lottery tickets, to establish the retailer's duties and obligations under the contract, to provide the executive director with the procedure and criteria to terminate or suspend the retailer's contract, and to provide the applicant and retailer an appeal procedure if a contract is denied or a contract is terminated or suspended.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

LOT 5.02 Definitions. In this chapter:

(1) "Commencement of a game" means the date, designated by the executive director, on which lottery tickets for a particular instant scratch lottery game shall go on sale to the general public.

(2) "Executive director" includes the executive director's designees.

(3) "Lottery ticket" or "lottery share" means an instant scratch, an on-line or a break-open ticket issued by the Wisconsin lottery.

(4) "Low tier prize" means a lottery prize of \$25.00 or less, unless otherwise specified in the retailer's handbook.

(5) "Selling location" means each cash register at a lottery retail outlet where a lottery ticket is sold.

(6) "Settlement date" means the date, designated by the executive director, by which the retailer is to return unsold instant scratch tickets for a particular game.

(7) "Wisconsin lottery" means the lottery board, appointees, staff, and employees who administer the state lottery.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

LOT 5.03 Procedure for selecting and renewing contracting retailers. (1) Any person may apply for a contract to sell lottery tickets by submitting to the Wisconsin lottery a completed application for a lottery retail sales contract. Applications are available upon request by writing the Wisconsin Lottery, 1802 West Beltline Highway, P.O. Box 8941, Madison, WI 53708-8941. A nonrefundable check for \$75.00 made payable to the Wisconsin lottery shall accompany each application for a contract. A nonrefundable electronic fund transfer or check for \$25.00 made payable to the Wisconsin lottery shall accompany each application for a contract renewal.

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(2) The executive director shall examine the completed application, and based on criteria under s. 565.10 (2) to (5), Stats., and s. LOT 5.04 (1), shall either grant or deny the application. The executive director shall either grant or deny the applicant a contract within 35 business days after receipt by the Wisconsin lottery of the completed application and application fee under sub. (1) or after the completion of a credit check under s. LOT 5.04 (1) (a), whichever is later.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

LOT 5.04 Criteria for selecting retailers. (1) In addition to the criteria under s. 565.10 (1) to (5) Stats., the executive director shall determine if the applicant meets all of the following:

(a) The applicant or the applicant's business shall satisfactorily pass a credit check by the executive director.

(b) An inspection of the applicant's retail premises shows all of the following:

1. The applicant's premises are physically secure.
2. The applicant's premises have a secure place to store lottery tickets.

(c) Except for applicants applying for a temporary or seasonal contract and applicants whose businesses are located in state and federal buildings, the applicant's premises shall be open to the public at least 48 hours, excluding holidays, of each week.

(d) The applicant is expected to sell a minimum of 500 tickets a month. The executive director may deny a contract to an applicant whose anticipated monthly sales will not meet a minimum of 500 tickets or whose historical monthly sales are less than 500 tickets each month.

(e) The applicant may not be an employe or member of the lottery board or reside in the same household with a member or employe of the lottery board.

(2) If the applicant is a state agency or a local unit of government, the criteria under s. 565.10 (2) and (3) (a) Stats., and sub. (1) (e) shall apply to the entity's officers and directors.

(3) If the executive director finds that there are so many qualified applicants in a given geographic area of the state that, if all those applicants would be granted contracts to sell lottery tickets, there would be an undue concentration of such retailers in that area, the executive director will perform market evaluations on the retail establishments seeking a contract. Contracts shall only be granted to those retailers achieving the highest marketing evaluation score until the undue concentration is eliminated. The executive director shall, however, grant a sufficient number of contracts in a given area to serve public convenience.

(4) An applicant or group of applicants, who has a physical or mental disability which constitutes or results in a substantial handicap to the applicant's employment, may be awarded a contract exclusively to sell lottery tickets if each such applicant or group of applicants each meet all of the following:

(a) Each applicant shall include with the retailer application a letter from the Wisconsin division of vocational rehabilitation verifying that the applicant's disability is a substantial handicap to employment;

(b) Each applicant meets all other criteria under subs. (1) through (3); and

(c) The lottery board approves the applicant's or the group's contract.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

LOT 5.05 Fidelity bond. (1) The lottery board may require from each retailer a fidelity bond in the amount determined by the executive director and based upon the applicant's projected lottery ticket sales.

(2) The bond shall be payable upon the order of the Wisconsin lottery and may be obtained through an insurance agency or a bond and surety company. No individual bond may be less than \$500.00.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

LOT 5.06 Certificate of authority. (1) When a retailer is awarded a contract or a contract renewal, the retailer shall pay \$25.00 to the Wisconsin lottery for a nonassignable and nontransferable certificate of authority. A certificate of authority is required for each location from which the retailer will sell lottery tickets.

(2) The retailer will be issued a year-round certificate of authority if the retailer intends to sell lottery tickets all 12 months of the year. If the retailer intends to sell lottery tickets less than 12 months a year, the retailer may be issued a seasonal certificate of authority. If the retailer intends to sell lottery tickets throughout the year but only at selected times and places, such as at weekly events or at fairs and festivals, the retailer may be issued a temporary certificate of authority.

(3) If the certificate is lost, mutilated or destroyed, the retailer shall within 15 calendar days request in writing and submit a completed application for a duplicate certificate. The retailer shall pay \$25.00 to the Wisconsin lottery for a duplicate certificate of authority.

(4) A mutilated certificate shall be surrendered to the executive director upon issuance of a duplicate. A lost certificate, when found, shall be surrendered to the executive director within 15 calendar days of its recovery.

(5) Payment under subs. (1) and (3) shall be by check or electronic fund transfer.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

LOT 5.07 Contract denial appeal procedure. (1) If the applicant was denied a contract, the executive director shall notify the applicant, in writing, of the denial along with a brief statement why the applicant was denied a contract. The applicant shall also be notified that a request for a reconsideration must be made by the applicant within 30 calendar days and that the request contain the information in sub. (2).

(2) Within 30 calendar days of the mailing of the denial, the applicant may request a reconsideration by filing with the executive director, a written statement setting forth the applicant's legal, factual, or equitable arguments and submitting any supporting documents. The request

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for reconsideration shall be deemed filed on the date received by the executive director.

(3) Within 20 calendar days of receipt of the filing for reconsideration, the executive director may in writing request the applicant to submit any additional facts, legal and equitable arguments, or documents which the executive director deems necessary to make a determination.

(4) The Wisconsin lottery's legal counsel shall compile a file containing all the material submitted by the applicant and any relevant material the executive director may have, including but not limited to, the completed application and credit check report. Legal counsel shall then review the file, research if necessary, the applicable laws and rules, and prepare an analysis and recommendation for the executive director's consideration.

(5) The executive director, after considering all the facts and arguments submitted by the applicant, and legal counsel's recommendation, shall independently evaluate whether to grant or deny the applicant a contract. Within 45 calendar days of the executive director's receipt of the filing for reconsideration or any supplemental information and documentation requested, the executive director shall notify the applicant, in writing, of the determination. If the applicant is denied a contract, the notice shall include a written statement setting forth the reasons for the denial and notifying the applicant of the right to a hearing on the denial under s. 227.42, Stats. The applicant shall be notified that a request for a hearing must be made by the applicant within 20 calendar days and that the request contain the information in sub. (6).

(6) Within 20 calendar days of the mailing of the final determination by executive director, the applicant may in writing request a hearing under s. 227.42, Stats. A request for a hearing shall be deemed filed on the date it is received by the executive director. A request shall contain all of the following:

(a) The applicant's name and address;

(b) The reasons why the applicant requests a hearing;

(c) The facts which the applicant intends to prove at the hearing;

(d) A description of the mistake the applicant believes was made, if the applicant claims that the denial of contract is based on a mistake in fact or in law; and

(e) Any supporting documents not previously submitted to the executive director.

(7) Within 20 calendar days of receipt of a request for hearing, the executive director shall in writing grant or deny the request for a hearing. A hearing shall be granted if the criteria in s. 227.42 (1), Stats., are met, and the executive director shall reasonably notify the applicant of the time and place of the hearing. A hearing shall be denied if criteria in s. 227.42 (1), Stats., are not met, and the executive director shall in writing inform the applicant of the reason for denial.

(8) In the event that neither the applicant nor the applicant's representative appears at the time and place designated for the hearing, the executive director may take action based upon the record as submitted.

By failing to appear, an applicant waives any further right to appeal before the Wisconsin lottery.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

LOT 5.08 Retailer contract terms and conditions. The retailer's contract shall include all of the following terms and conditions:

(1) **CONTRACT PERIOD AND SALES AUTHORIZATION.** The retailer's contract shall remain in effect for at least one year and shall expire on the date shown on the certificate of authority. The executive director may renew the contract. However, the retailer does not have a substantial interest in, or a vested legal or equitable right to a contract renewal.

(2) **CONTRACT NOT ASSIGNABLE OR TRANSFERABLE.** The retailer's contract may not be assigned or transferred from one person or location to another.

(3) **RETAILER IS NOT AN EMPLOYEE OR AGENT OF THE STATE.** The retailer is not an employee or agent of the state of Wisconsin, and is not entitled to any right, privilege, or benefit which would accrue to an employee or agent of the state of Wisconsin.

(4) **INDEMNIFICATION.** The retailer shall indemnify and hold harmless the state of Wisconsin, the Wisconsin lottery, and the Wisconsin lottery's employees and agents from and against all claims, suits, or actions arising from any willful or negligent act or omission of the retailer or its agents while performing under the terms of the retailer contract.

(5) **COMPLIANCE WITH STATE LAW AND RULES.** During the term of the retailer contract, the retailer shall comply with ch. 565, Stats., the lottery board's administrative rules, and any other applicable state law and administrative rules.

(6) **COMPLIANCE WITH RETAILER'S HANDBOOK.** During the term of the retailer contract, the retailer shall comply with instructions and procedures for each game as set forth in the retailer handbook.

(7) **CERTIFICATE OF AUTHORITY.** The certificate of authority is not assignable and not transferable and must be conspicuously displayed at the point of sale.

(8) **NOTIFICATION OF CHANGES IN THE RETAILER'S APPLICATION.** (a) The retailer shall in writing notify the executive director within 15 calendar days of every change of its organizational structure, including but not limited to changes from a sole proprietorship to a partnership or to a corporation.

(b) The retailer shall in writing notify the executive director at least 30 calendar days in advance of any change of the retailer's business address.

(c) The retailer shall in writing notify the executive director within 15 calendar days if the retailer, or any of the retailer's partners, officers, directors, or owners, as described under s. 565.10 (3), Stats., have been convicted or pleaded guilty or no contest to a felony, a gambling related offense, or fraud or misrepresentation in any connection.

(9) **RECORDS AND RECORDKEEPING.** (a) During the term of the retailer's contract and until the retailer gives a final accounting at the end of the contract term, the retailer shall maintain current, complete and

accurate lottery accounting records and correspondence including but not limited to, the receipt, sale, handling, and returns for credit of all lottery tickets received by the retailer.

(10) **INSURANCE REQUIREMENT.** (a) During the term of the retailer's contract, the retailer shall do all of the following:

1. Maintain worker's compensation insurance, if required to do so under ch. 102, Stats.; and

2. Maintain public liability and property damage insurance against any claim which might occur in carrying out the retailer's contract. Minimum coverages are \$300,000 single limit liability or \$100,000 bodily injury per person and \$300,000 per occurrence and \$100,000 property damage.

(b) The insurance requirement under subds. 1 and 2 do not apply to a state agency or a local unit of government.

(c) The retailer, by signing and executing the contract, warrants and represents to the lottery that the retailer has in place and will maintain during the contract period the insurance set forth under subds. 1 and 2 and at the minimum levels set forth under subd. 2.

(d) During the term of the retailer's contract, the executive director reserves the right to request from the retailer verification that the retailer has complied with the insurance requirement under subds. 1 and 2.

(11) **SALE OF TICKETS.** (a) The retailer shall accept only cash for lottery tickets.

(b) The retailer may not intentionally sell a lottery ticket to persons under 18.

(c) The retailer shall sell at least 500 tickets a month.

(d) The retailer may not exchange lottery tickets with any other person including other retailers.

(e) The retailer may not sell any lottery tickets at a price different from the price authorized by the lottery, condition the sale of a lottery ticket upon purchase of any other item or service, or impose any restriction upon the sale of a lottery ticket unless specifically authorized by the executive director.

(f) The retailer may not play the lottery games by using any method other than random, fair chance, or by any method contrary to the principle that every lottery ticket has an equal and random chance of winning.

(g) The retailer shall make player brochures available to potential lottery ticket customers and explain the game rules when requested.

(h) The retailer shall stamp each ticket with the retailer's identification number assigned by the lottery.

(12) **SALES BEFORE COMMENCEMENT OF GAME PROHIBITED.** The retailer may not sell any lottery tickets for a game before the commencement of that game.

(13) **RETAILER RESPONSIBILITY FOR TICKETS.** (a) The retailer shall be responsible for the condition and security of lottery tickets received. If Register, March, 1989, No. 399

the retailer's lottery tickets are lost, stolen, mutilated, damaged, unaccountable or otherwise unsalable, the retailer shall be solely responsible for those tickets. The executive director may not reimburse the retailer for such losses or for instant scratch tickets not returned by the retailer in the proper sequentially numbered order.

(b) The retailer shall report by telephone within 24 hours any stolen tickets to the director of security in Madison, Wisconsin.

(14) **RETAILER'S PAYMENT FOR TICKETS.** (a) All lottery tickets received by the retailer shall be deemed to have been purchased by the retailer.

(b) The retailer's accounting records and correspondence under par. (a) shall be available to the executive director for examination and copying during the retailer's regular business hours. All such records and correspondence are subject to seizure and audit without prior notice.

(b) The retailer's electronic fund transfer account shall be debited once a week by the lottery for tickets received the previous week.

(c) If the retailer failed to place sufficient funds in the electronic fund transfer account for the tickets received the previous week, the retailer shall not receive more tickets until the lottery is paid in full.

(d) The executive director may assess the retailer a \$20.00 surcharge for each dishonored retailer's check or electronic fund transfer.

(15) **UNSOLD INSTANT SCRATCH TICKETS RETURNED FOR CREDIT.** (a) On or before the settlement date, the retailer may return to the lottery unsold instant scratch tickets and receive credit. Credit shall be the retailer's purchase price.

(b) The lottery shall credit the retailer's electronic fund transfer account for all returned unopened packs of tickets, and for one opened, partial pack of tickets per selling location.

(c) For tickets returned up to 90 calendar days after the settlement date, the lottery shall credit the retailer's account with what the credit would have been if timely returned minus a 20% late penalty.

(d) The executive director may not accept unsold tickets which are returned more than 90 calendar days after the settlement date.

(16) **INSTANT SCRATCH TICKET REDEMPTION.** (a) The retailer shall redeem low tier prizes for tickets sold at the retailer's outlet and presented to the retailer by the customer. If the customer elects to redeem the low tier prize from the lottery's office, the lottery shall debit the retailer's account in that amount.

(b) The retailer may not redeem winning lottery tickets for prizes in amounts different from the amounts authorized by the executive director or condition redemption of a lottery prize upon the purchase of any other item or service, or impose any restriction upon the redemption of a lottery prize unless specifically authorized in writing by the executive director.

(17) **BREAK-OPEN TICKETS.** (a) Unsold break-open tickets may not be returned for credit.

(b) The retailer shall redeem all prizes from tickets purchased at the retailer's outlet.

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(18) **POINT-OF-SALE MATERIAL.** The retailer shall maintain and display prominently lottery point-of-sale material, including the door decal, current game poster, current game player brochures and the ticket dispenser.

(19) **RIGHT TO APPEAL SUSPENSION OR TERMINATION.** In the event the executive director suspends or terminates the retailer's contract, the retailer is entitled to an appeal in accordance with the provisions set forth under s. LOT 5.10.

(20) **SUSPENSION OR TERMINATION PROCEDURE.** The retailer upon notice of the suspension or termination, shall immediately stop selling lottery tickets. Within 2 weeks of the suspension or termination, the retailer shall make payment on any money owed for tickets for unsold tickets and surrender all state owned lottery property.

(21) **GROUND FOR SUSPENSION OR TERMINATION.** The retailer's contract may be suspended or terminated without prior notice by the lottery for any one of the following reasons:

(a) The retailer failed to meet any of the qualifications for being a retailer under s. 565.10, Stats., or under the lottery board's administrative rules;

(b) The retailer violated a provision under ch. 565, Stats., or any rule promulgated under this chapter;

(c) The retailer failed to sell a monthly minimum of 500 lottery tickets;

(d) The retailer intentionally sold a lottery ticket to a person under 18;

(e) The retailer endangered the security of the lottery;

(f) The retailer engaged in fraud, deceit, misrepresentation or other conduct prejudicial to public confidence in the lottery;

(g) The retailer failed to remit money owed to the lottery or failed at least 3 times to make payment on or before the settlement date;

(h) The retailer engaged in telecommunication or printed advertising that in the executive director's determination was false, deceptive, or misleading; or

(i) The retailer failed to follow instructions and procedures for the conduct of any particular lottery game or lottery special event.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

LOT 5.09 Limitation on length of suspension. A suspension shall be limited to a maximum of 45 calendar days, during which time the executive director shall consider the appropriate permanent action to be taken, including, but not limited to, termination of the retailer contract.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.

LOT 5.10 Appeal procedure for a contract termination. (1) The executive director shall give the retailer written notice of the retailer's terminated contract and state the grounds for the termination. The retailer shall also be notified that a request for a reconsideration must be made by the retailer within 30 calendar days and that the request contain the information in sub. (2).

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(2) Within 30 calendar days of the mailing of the notice of the termination, the retailer may request a reconsideration by filing with the executive director a written statement setting forth the retailer's legal, factual, or equitable arguments and submitting any supporting documents. The request for reconsideration shall be deemed filed on the date received by the executive director.

(3) Within 20 calendar days of receipt of the filing for reconsideration, the executive director may request the retailer to submit any additional facts, legal and equitable arguments, or documents which the executive director deems necessary to make a determination.

(4) The Wisconsin lottery's legal counsel shall compile all relevant correspondence, lottery accounting records, and all materials submitted to the executive director by the retailer for reconsideration. Legal counsel shall then review the file, research, if necessary, the applicable laws and rules, and prepare an analysis and recommendation for the executive director's consideration.

(5) The executive director, after considering all the facts and arguments submitted by the retailer, and legal counsel's recommendation, shall independently evaluate whether to either reinstate or terminate the contract. Within 45 calendar days of the executive director's receipt of the filing for reconsideration or any supplemental information and documentation requested, the executive director shall notify the retailer, in writing, of the determination. If the contract is terminated, the notification shall include a statement setting forth the reasons for the termination and notifying the retailer of the right to a hearing under s. 227.42, Stats. The retailer shall also be notified that a request for a hearing must be made by the retailer within 20 days and that the request contain the information in sub. (6).

Note: It is the intention of the lottery board that "20 days" should be considered in terms of calendar days.

(6) Within 20 calendar days of the mailing of the final determination by the executive director, the retailer may in writing request a hearing under s. 227.42, Stats. A request shall be deemed filed on the date received by the executive director. A request for a hearing under s. 227.42 Stats., shall contain all of the following:

- (a) The retailer's name and address;
- (b) The reasons why the retailer requests a hearing;
- (c) The facts which the retailer intends to prove at the hearing;
- (d) A description of the mistake the retailer believes was made, if the retailer claims that the termination of contract is based on a mistake in fact or in law; and
- (e) Any supporting documents not previously submitted to the executive director.

(7) Within 20 calendar days of receipt of a request for hearing, the executive director shall in writing grant or deny the request for a hearing under s. 227.42, Stats. A hearing shall be granted if the criteria under s. 227.42 (1), Stats., are met. The executive director shall reasonably notify the retailer of the time and place of the hearing. The executive director shall inform the retailer in writing of the reason for denying a hearing.

(8) In the event that neither the retailer nor the retailer's representative appears at the time and place designated for the hearing, the executive director may take action based upon the record as submitted. By failing to appear, the retailer waives any further right to appeal before the Wisconsin lottery.

History: Cr. Register, March, 1989, No. 399, eff. 4-1-89.