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HOUSE BILL NO. 784

Offered January 11, 2006

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A BILL to amend and reenact §§ 58.1-4006, 58.1-4007, 58.1-4009, 58.1-4014, 58.1-4020, and 58.1-4021 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 58.1-4014.1, relating to the state lottery.

 Patron—Albo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-4006, 58.1-4007, 58.1-4009, 58.1-4014, 58.1-4020, and 58.1-4021 of the Code of Virginia are amended and reenacted, and the Code of Virginia is amended by adding a section numbered 58.1-4014.1, as follows:

§ 58.1-4006. Powers of the Director.

A. The Director shall supervise and administer the operation of the lottery in accordance with the provisions of this chapter and with the rules and regulations promulgated hereunder.

B. The Director shall also:

1. Employ such deputy directors, professional, technical and clerical assistants, and other employees as may be required to carry out the functions and duties of the Department.

2. Act as secretary and executive officer of the Board.

3. Require bond *or other surety satisfactory to the Director* from licensed agents as provided in subsection D of § 58.1-4009 and Department employees with access to Department funds or lottery funds, in such amount as provided in the rules and regulations of the Board. The Director may also require bond from other employees as he deems necessary.

4. Confer regularly, but not less than four times each year, with the Board on the operation and administration of the lottery; make available for inspection by the Board, upon request, all books, records, files, and other information and documents of the Department; and advise the Board and recommend such matters as he deems necessary and advisable to improve the operation and administration of the lottery.

5. Suspend, revoke or refuse to renew any license issued pursuant to this chapter or the rules and regulations adopted hereunder.

6. Enter into contracts for the operation of the lottery, or any part thereof, for the promotion of the lottery and into interstate lottery contracts with other states. A contract awarded or entered into by the Director shall not be assigned by the holder thereof except by specific approval of the Director.

7. Certify monthly to the State Comptroller and the Board a full and complete statement of lottery revenues, prize disbursements and other expenses for the preceding month.

8. Report monthly to the Governor, the Secretary of Finance and the Chairmen of the Senate Finance Committee, House Finance Committee and House Appropriations Committee the total lottery revenues, prize disbursements and other expenses for the preceding month, and make an annual report, which shall include a full and complete statement of lottery revenues, prize disbursements and other expenses, to the Governor and the General Assembly. Such annual report shall also include such recommendations for changes in this chapter as the Director and Board deem necessary or desirable.

9. Report immediately to the Governor and the General Assembly any matters which require immediate changes in the laws of this Commonwealth in order to prevent abuses and evasions of this chapter or the rules and regulations adopted hereunder or to rectify undesirable conditions in connection with the administration or operation of the lottery.

10. Notify prize winners and appropriate state and federal agencies of the payment of prizes in excess of \$600 in the manner required by the lottery rules and regulations.

11. Provide for the withholding of the applicable amount of state and federal income tax of persons claiming a prize for a winning ticket in excess of \$5,001.

C. The Director and the director of security or investigators appointed by the Director shall be vested with the powers of sheriff and sworn to enforce the statutes and regulations pertaining to the Department and to investigate violations of the statutes and regulations that the Director is required to enforce.

§ 58.1-4007. Powers of the Board.

A. The Board shall have the power to adopt regulations governing the establishment and operation of a lottery. The regulations governing the establishment and operation of the lottery shall be promulgated by the Board after consultation with the Director. Such regulations shall be in accordance with the

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59 Administrative Process Act (§ 2.2-4000 et seq.). The regulations shall provide for all matters necessary
60 or desirable for the efficient, honest and economical operation and administration of the lottery and for
61 the convenience of the purchasers of tickets or shares, and the holders of winning tickets or shares. The
62 regulations, which may be amended, repealed or supplemented as necessary, shall include, but not be
63 limited to, the following:

- 64 1. The type or types of lottery or game to be conducted in accordance with § 58.1-4001.
- 65 2. The price or prices of tickets or shares in the lottery; ~~however, all such sales shall be for cash.~~
- 66 3. The numbers and sizes of the prizes on the winning tickets or shares, including informing the
67 public of the approximate odds of winning and the proportion of lottery revenues (i) disbursed as prizes
68 and (ii) returned to the Commonwealth as net revenues.
- 69 4. The manner of selecting the winning tickets or shares.
- 70 5. The manner of payment of prizes to the holders of winning tickets or shares.
- 71 6. The frequency of the drawings or selections of winning tickets or shares without limitation.
- 72 7. Without limitation as to number, the type or types of locations at which tickets or shares may be
73 sold.
- 74 8. The method to be used in selling tickets or shares.
- 75 9. The advertisement of the lottery in accordance with the provisions of subsection E of § 58.1-4022.
- 76 10. The licensing of agents to sell tickets or shares who will best serve the public convenience and
77 promote the sale of tickets or shares. No person under the age of 18 shall be licensed as an agent. A
78 licensed agent may employ a person who is 16 years of age or older to sell or otherwise vend tickets at
79 the agent's place of business so long as the employee is supervised in the selling or vending of tickets
80 by the manager or supervisor in charge at the location where the tickets are being sold. Employment of
81 such person shall be in compliance with Chapter 5 (§ 40.1-78 et seq.) of Title 40.1.
- 82 11. The manner and amount of compensation, if any, to be paid licensed sales agents necessary to
83 provide for the adequate availability of tickets or shares to prospective buyers and for the convenience
84 of the public.
- 85 12. Apportionment of the total revenues accruing from the sale of tickets or shares and from all other
86 sources and establishment of the amount of the special reserve fund as provided in § 58.1-4022 of this
87 chapter.
- 88 13. Such other matters necessary or desirable for the efficient and economical operation and
89 administration of the lottery.

90 The Department shall not be subject to the provisions of Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2;
91 however, the Board shall promulgate regulations, after consultation with the Director, relative to
92 departmental procurement which include standards of ethics for procurement consistent with the
93 provisions of Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 and which ensure that
94 departmental procurement will be based on competitive principles.

95 The Board shall have the power to advise and recommend, but shall have no power to veto or
96 modify administrative decisions of the Director. However, the Board shall have the power to accept,
97 modify or reject any revenue projections before such projections are forwarded to the Governor.

98 B. The Board shall carry on a continuous study and investigation of the lottery throughout the
99 Commonwealth to:

- 100 1. Ascertain any defects of this chapter or the regulations issued hereunder which cause abuses in the
101 administration and operation of the lottery and any evasions of such provisions.
- 102 2. Formulate, with the Director, recommendations for changes in this chapter and the regulations
103 promulgated hereunder to prevent such abuses and evasions.
- 104 3. Guard against the use of this chapter and the regulations promulgated hereunder as a subterfuge
105 for organized crime and illegal gambling.
- 106 4. Ensure that this law and the regulations of the Board are in such form and are so administered as
107 to serve the true purpose of this chapter.

108 C. The Board shall make a continuous study and investigation of (i) the operation and the
109 administration of similar laws which may be in effect in other states or countries, (ii) any literature on
110 the subject which may be published or available, (iii) any federal laws which may affect the operation
111 of the lottery, and (iv) the reaction of Virginia citizens to the potential features of the lottery with a
112 view to recommending or effecting changes that will serve the purpose of this chapter.

113 D. The Board shall hear and decide an appeal of any denial by the Director of the licensing or
114 revocation of a license of a lottery agent pursuant to subdivision 10 of subsection A of this section and
115 subdivision 5 of subsection B of § 58.1-4006 of this chapter.

116 E. The Board shall have the authority to initiate procedures for the planning, acquisition, and
117 construction of capital projects as set forth in Article 4 (§ 2.2-1129 et seq.) of Chapter 11 and Article 3
118 (§ 2.2-1819 et seq.) of Chapter 18 of Title 2.2.

119 § 58.1-4009. Licensing of lottery sales agents; penalty.

120 A. No license as an agent to sell lottery tickets or shares shall be issued to any person to engage in

business primarily as a lottery sales agent. Before issuing such license the Director shall consider such factors as (i) the financial responsibility and security of the person and his business or activity; (ii) the accessibility of his place of business or activity to the public; (iii) the sufficiency of existing licensees to serve the public convenience; and (iv) the volume of expected sales.

B. For the purposes of this section, the term "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including counties, cities, municipalities, agencies and instrumentalities thereof.

C. The chief security officer of the State Lottery Department shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints that shall be submitted to the Federal Bureau of Investigation if the Director deems a National Criminal Records search necessary, on applicants for licensure as lottery sales agents. The Director may refuse to issue a license to operate as an agent to sell lottery tickets or shares to any person who has been (i) convicted of a crime involving moral turpitude, (ii) convicted of bookmaking or other forms of illegal gambling, (iii) found guilty of any fraud or misrepresentation in any connection, ~~or~~ (iv) convicted of a felony, *or (v) engaged in conduct prejudicial to public confidence in the Lottery.* The Director may refuse to grant a license or may suspend, revoke or refuse to renew a license issued pursuant to this chapter to a partnership or corporation, if he determines that any general or limited partner, or officer or director of such partnership or corporation has been (i) convicted of a crime involving moral turpitude, (ii) convicted of bookmaking or other forms of illegal gambling, (iii) found guilty of any fraud or misrepresentation in any connection, ~~or~~ (iv) convicted of a felony, *or (v) engaged in conduct prejudicial to public confidence in the Lottery.* Whoever knowingly and willfully falsifies, conceals or misrepresents a material fact or knowingly and willfully makes a false, fictitious or fraudulent statement or representation in any application for licensure to the State Lottery Department for lottery sales agent, shall be guilty of a Class 1 misdemeanor.

D. Prior to issuance of a license, every lottery sales agent shall *either (i) be bonded by a surety company entitled to do business in this Commonwealth in such amount and penalty as may be prescribed by the regulations of the Department or (ii) provide such other surety as may be satisfactory to the Director,* payable to the State Lottery Department and conditioned upon the faithful performance of his duties.

E. Every licensed agent shall prominently display his license, or a copy thereof, as provided in the regulations of the Department.

§ 58.1-4014. Price of tickets or shares; who may sell; penalty.

~~A. No person shall sell a ticket or share at any price or at any location other than that fixed by rules and regulations of the Department. No person other than a licensed lottery sales agent or his employee shall sell lottery tickets or shares, except that nothing in this section shall be construed to prevent any person from giving lottery tickets or shares to another person over the age of 18 years as a gift.~~

~~B. Any person convicted of violating this section shall be guilty of a Class 1 misdemeanor.~~

~~C. Any person who steals or otherwise unlawfully converts to his own or another's use a lottery ticket, prize, share, or portion thereof shall be guilty of larceny. For purposes of this subsection, the face amount of a lottery ticket, prize, share, or portion thereof shall be deemed to be its value.~~

§ 58.1-4014.1. Larceny of tickets; fraudulent notification of prizes; penalty.

~~A. Any person who steals or otherwise unlawfully converts to his own or another's use a lottery ticket, prize, share, or portion thereof shall be guilty of larceny. For purposes of this subsection, the value of a lottery ticket, prize, share, or portion thereof shall be deemed to be the greater of its face amount or its redemption value.~~

~~B. Any person who, with intent to defraud, steal, embezzle or violate the provisions of § 18.2-186.3, designs, makes, prints, or otherwise produces, in whole or in part, a document or writing, whether in printed or electronic form, which falsely purports to be correspondence from or on behalf of the Lottery shall be guilty of a Class 3 felony.~~

~~Jurisdiction shall lie and prosecution may proceed under this subsection in any county or city (i) in which the document was created; (ii) from which it was sent, regardless of the form of delivery; or (iii) in which it was received, regardless of the form of delivery.~~

§ 58.1-4020. Unclaimed prizes.

A. Unclaimed prizes for a winning ticket or share shall be retained by the Director for the person entitled thereto for 180 days after the drawing in which the prize was won in the case of a drawing prize and for 180 days after the announced end of the lottery game in the case of a prize determined in any manner other than by means of a drawing. If no claim is made for the prize within the 180 days, the Director shall deem such prize forfeited by the person entitled to claim such winnings.

182 B. ~~All~~ *Fifty percent of all prizes deemed forfeited pursuant to subsection A shall be paid into the*
183 *Literary Fund. The Director may develop procedures, to be approved by the Auditor of Public Accounts,*
184 *for estimating the cumulative total of such unclaimed prizes in any lottery game in lieu of specifically*
185 *identifying unclaimed prizes where such specific identification would not be cost effective. The Director,*
186 *within sixty days after the end of each 180-day retention period, shall report the total value of prizes*
187 *forfeited at the end of such period to the Comptroller, who shall promptly transfer the total of such*
188 *prizes to the Literary Fund. The total value of prizes forfeited during the fiscal year shall be audited by*
189 *the Auditor of Public Accounts in accordance with § 58.1-4023. In the case of a prize payable over time*
190 *on one or more winning tickets, if one or more winning tickets is not claimed within the 180-day*
191 *redemption period, the Department shall transfer the then current monetary value of such portion of the*
192 *prize remaining unclaimed to the Literary Fund in accordance with procedures approved by the State*
193 *Treasurer. "Current monetary value" shall be determined by the net proceeds from the sale of that*
194 *portion of jackpot securities allocated to the unclaimed winner plus the amount of the initial cash*
195 *payment.*

196 C. Subsection B ~~of this section~~ shall not apply to prizes of \$25 or less resulting from any lottery
197 game other than a lottery game in which a drawing determined the prize. The Board shall adopt
198 regulations for the disposition of all such unclaimed prizes of \$25 or less not resulting from a drawing.
199 Such disposition shall be directed in whole or in part to either the State Lottery Fund or to other forms
200 of compensation to licensed sales agents.

201 D. *Fifty percent of all prizes deemed forfeited pursuant to subsection A shall be retained by the*
202 *Lottery and used to enhance prize structures or fund sales promotions.*

203 DE. For purposes of this section, "prize" refers to a cash prize. In the case of a prize payable over
204 time and not as a lump sum payment, "prize" means the present cash value of the prize, not the value
205 paid over time.

206 EF. In accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App.
207 U.S.C.A. § 525), any person whose unclaimed prize was deemed forfeited pursuant to subsection A
208 while he was in active military service may claim such forfeited prize by presenting his winning ticket
209 to the Director no later than 180 days after his discharge from active military service. Within thirty days
210 of such presentation, the Director shall verify the claim and report the verification to the Comptroller.
211 The Comptroller shall promptly pay the verified claim first from funds available in the Unclaimed
212 Property Trust Fund in § 3-2.00 of the general appropriations act; if such funds are insufficient, then,
213 from any undesignated, unreserved year-end balance of the general fund. All verified claims shall be
214 paid in accordance with the Board's rules and regulations then in effect regarding the manner of
215 payment of prizes to the holders of winning tickets or shares.

216 § 58.1-4021. Deposit of moneys received by agents; performance of functions, etc., in connection
217 with operation of lottery; compensation of agents.

218 A. The Director shall require all lottery sales agents to deposit to the credit of the State Lottery Fund
219 in banks, designated by the State Treasurer, all moneys received by such agents from the sale of lottery
220 tickets or shares, less any amount paid as prizes or retained as compensation to agents for the sale of
221 the tickets or shares, and to file with the Director, or his designated agents, reports of their receipts,
222 transactions and disbursements pertaining to the sale of lottery tickets in such form and containing such
223 information as he may require. Such deposits and reports shall be submitted at such times and within
224 such intervals as shall be prescribed by rule and regulation of the Department. The Director may arrange
225 for any person, including a bank, to perform such functions, activities or services in connection with the
226 operation of the lottery as he may deem advisable pursuant to this chapter and the rules and regulations
227 of the Department, and such functions, activities and services shall constitute lawful functions, activities
228 and services of the person.

229 B. The rules and regulations of the Department shall provide for a service charge to the licensed
230 agent if any payor bank dishonors a check or draft tendered for deposit to the credit of the State Lottery
231 Fund by a licensed agent or for an electronic transfer of funds to the State Lottery Fund from the
232 account of a licensed agent for money received from the sale of lottery tickets.

233 The regulations of the Department shall provide for a service charge and penalty to a licensed agent
234 if any payor bank dishonors a check or draft from the account of a licensed agent tendered for payment
235 of any prize by a licensed agent to any claimant. Any such charge or penalty so collected by the
236 Department shall be used first to reimburse the claimant for any charges or penalties incurred by him as
237 a result of the licensed agent's dishonored check tendered as payment of any prize and the remainder to
238 offset the Department's administrative costs.

239 C. A licensed agent shall be charged interest as provided in § 58.1-15 on the money that is not
240 timely paid to the State Lottery Fund in accordance with the rules and regulations of the Department
241 and shall in addition thereto pay penalties as provided by rules and regulations of the Department.

242 D. Should the Department refer the debt of any licensed agent to the Attorney General, the
243 Department of Taxation as provided in § 58.1-520 et seq., or any other central collection unit of the

Commonwealth, an additional service charge shall be imposed in the amount necessary to cover the administrative costs of the Department and agencies to which such debt is referred.

E. Notwithstanding the provisions of Chapter 5 (§ 8.01-257 et seq.) of Title 8.01, in any action for the collection of a debt owed by any licensed agent to the Lottery, venue shall lie in the city of Richmond.

E. All proceeds from the sale of lottery tickets or shares received by a person in the capacity of a sales agent shall constitute a trust fund until deposited into the State Lottery Fund either directly or through the Department's authorized collection representative. Proceeds shall include cash proceeds of the sale of any lottery products, less any amount paid as prizes or retained as compensation to agents for the sale of the tickets or shares. Sales agents shall be personally liable for all proceeds.

F. If the Director determines that the deposit or collection from any sales agent of any moneys or proceeds under this section is or will be jeopardized or will otherwise be delayed, he may adjust either the time or the interval or both for such deposits or collections of any sales agent; require that all such moneys or proceeds shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets prior to their deposit or collection under this section; and require such other security of any sales agent as he may deem advisable to ensure the timely deposit or collection of moneys or proceeds to the credit of the State Lottery Fund.

Collection of moneys or proceeds "is or will be jeopardized or will otherwise be delayed" when (i) a check, draft, or electronic funds transfer to the credit of the State Lottery Fund is dishonored as described in subsection B; (ii) an independent auditor states that the lottery sales agent's financial condition raises substantial doubt about its ability to continue as a going concern; or (iii) the lottery sales agent (a) closes for business or fails to maintain normal business hours without reasonable explanation, (b) has a credit record reflecting recent actions which cast doubt as to its creditworthiness, (c) states it has or may have cash flow problems or may be unable to meet its financial obligations, (d) states it may seek the protection of the federal bankruptcy or state insolvency law, (e) refuses to purchase additional lottery tickets or returns tickets ordered without good cause, or (f) does any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect moneys or proceeds which are or will become due and payable to the State Lottery Fund.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.