

HOUSE BILL No. 2038

AN ACT concerning the Kansas lottery; amending K.S.A. 74-8702, 74-8706 and 74-8722 and K.S.A. 2000 Supp. 74-8705, 74-8707, 74-8710, 74-8718 and 74-8723 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 74-8723 is hereby amended to read as follows: 74-8723. (a) The Kansas lottery and the office of executive director of the Kansas lottery, established by K.S.A. 74-8703, and amendments thereto, and the Kansas lottery commission, created by K.S.A. 74-8709, and amendments thereto, shall be and hereby are abolished on July 1, ~~2002~~ 2008.

(b) This section shall be part of and supplemental to the Kansas lottery act.

Sec. 2. K.S.A. 74-8706 is hereby amended to read as follows: 74-8706. The executive director shall have the duty to:

(a) Make and keep books and records which accurately and fairly reflect each day's transactions, including but not limited to: The distribution of tickets and shares to lottery retailers; receipt of funds, prize claims, prize disbursements made by the Kansas lottery or otherwise or prizes liable to be paid by the Kansas lottery; expenses and other financial transactions of the Kansas lottery necessary so as to permit daily accountability.

(b) Make quarterly and annual financial reports to the commission, the governor, the state treasurer and the legislature. Such reports shall be based upon generally accepted accounting principles and include a full and complete statement of lottery revenues, prize disbursements, expenses, net revenues and other financial transactions for the reporting period.

(c) Make available for inspection by the commission, upon request, all books, records, files and other information and documents of the Kansas lottery.

~~(d) Engage, in accordance with K.S.A. 74-8705 and amendments thereto, an independent firm experienced in security procedures, including but not limited to computer security and systems security, to periodically conduct a comprehensive study and evaluation of all aspects of security in the operation of the Kansas lottery.~~

~~(e)~~ (d) Engage, in accordance with K.S.A. 74-8705, and amendments thereto, an independent firm experienced in marketing research and analysis to ~~periodically~~ *periodically* conduct an evaluation to determine the effectiveness of marketing, promotion and public information programs used by the Kansas lottery and make recommendations which will enhance such programs.

~~(f)~~ (e) Prepare and submit budgets and proposals for the operation of the Kansas lottery.

~~(g)~~ (f) Operate the Kansas lottery in such a manner that, after the initial state appropriation, it is self-sustaining and self-funded.

~~(h)~~ (g) Make available at the point of sale of any lottery tickets or shares a list of the odds of winning such game, based upon the number of tickets or shares projected to be sold.

~~(i)~~ (h) Make provision for the timely and efficient transfer of funds due from lottery retailers to the lottery operating fund, including the use of electronic funds transfers whenever possible.

Sec. 3. K.S.A. 2000 Supp. 74-8707 is hereby amended to read as follows: 74-8707. (a) The accounts and transactions of the Kansas lottery and the Kansas lottery commission shall be subject to an annual financial-compliance audit, and such other audits as directed by the legislative post audit committee, under the legislative post audit act. The annual audit shall be conducted as soon after the close of the fiscal year as practicable. The auditor to conduct this audit work shall be specified in accordance with K.S.A. 46-1122, and amendments thereto. If the legislative post audit committee specifies under such statute that a firm, as defined by K.S.A. 46-1112, and amendments thereto, is to perform all or part of such audit work, such firm shall be selected and shall perform such audit work as provided in K.S.A. 46-1123, and amendments thereto, and K.S.A. 46-1125 through 46-1127, and amendments thereto.

The post auditor shall ~~annually~~ compute *annually* the reasonably anticipated cost of providing audits pursuant to this ~~section~~ *subsection*, subject to review and approval by the contract audit committee established

by K.S.A. 46-1120, and amendments thereto. Upon such approval, the Kansas lottery shall reimburse the division of post audit for the amount approved by the contract audit committee. The furnishing of audit services pursuant to this ~~section~~ subsection shall be a transaction between the post auditor and the Kansas lottery and shall be settled in accordance with the provisions of K.S.A. 75-5516, and amendments thereto.

(b) On or before December 31, 2004, and at least once every three years thereafter, there shall be conducted a security audit of the Kansas lottery. A security audit shall include a comprehensive study and evaluation of all aspects of security in the operation of the Kansas lottery. The auditor to conduct a security audit shall be specified in accordance with K.S.A. 46-1122, and amendments thereto. If the legislative post audit committee specifies under such statute that a person, as defined by K.S.A. 46-1112, and amendments thereto, other than the post auditor is to perform all or part of such audit work, such person shall be selected and shall perform such audit work as provided in the applicable provisions of K.S.A. 46-1123, and amendments thereto, and K.S.A. 46-1125 through 46-1127, and amendments thereto. The person selected to perform a security audit shall be experienced in security procedures, including, but not limited to, computer and systems security. A contract to conduct a security audit required by this subsection, shall be considered a major procurement contract as defined by K.S.A. 74-8702, and amendments thereto, and shall not be awarded until a background investigation is conducted on the person or firm selected to perform the audit. Such background investigation shall be subject to the requirements of subsection (c) of K.S.A. 74-8705, and amendments thereto.

For the purpose of conducting a security audit under this subsection, a person or a firm selected to perform the security audit shall not be limited to a legal entity permitted by law to engage in practice as a certified public accountant.

The post auditor shall compute the reasonably anticipated cost of providing audits pursuant to this subsection, subject to review and approval by the contract audit committee established by K.S.A. 46-1120, and amendments thereto. Upon such approval, the Kansas lottery shall reimburse the division of post audit for the amount approved by the contract audit committee. The furnishing of audit services pursuant to this subsection shall be a transaction between the post auditor and the Kansas lottery and shall be settled in accordance with the provisions of K.S.A. 75-5516, and amendments thereto.

Sec. 4. K.S.A. 2000 Supp. 74-8705 is hereby amended to read as follows: 74-8705. (a) Major procurement contracts shall be awarded in accordance with K.S.A. 75-3738 through 75-3744, and amendments thereto, or subsection (b), as determined by the director, except that:

(1) The contract or contracts for the initial lease of facilities for the Kansas lottery shall be awarded upon the evaluation and approval of the director, the secretary of administration and the director of architectural services;

(2) The commission shall designate certain major procurement contracts or portions thereof to be awarded, in accordance with rules and regulations of the commission, solely to minority business enterprises.

(b) The director may award any major procurement contract by use of a procurement negotiating committee. Such committee shall be composed of: (1) The executive director or a Kansas lottery employee designated by the executive director; (2) the chairperson of the commission or a commission member designated by the chairperson; and (3) the director of the division of purchases or an employee of such division designated by the director. Prior to negotiating a major procurement contract, the committee shall solicit bids or proposals thereon. The division of purchases shall provide staff support for the committee's solicitations. Upon receipt of bids or proposals, the committee may negotiate with one or more of the persons submitting such bids or proposals and select from among such persons the person to whom the contract is awarded. Such procurements shall be open and competitive and shall consider relevant factors, including security, competence, experience, timely performance and maximization of net revenues to the state. If a procurement negotiating committee is utilized, the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto, shall not apply. Meetings conducted by

the procurement negotiating committee shall be exempt from the provisions of the Kansas open meeting act, K.S.A. 75-4317 through 75-4320a, and amendments thereto.

(c) Before a major procurement contract is awarded, the executive director shall conduct a background investigation of: (1) The vendor to whom the contract is to be awarded; (2) all officers and directors of such vendor; (3) all persons who own a 5% or more interest in such vendor; (4) all persons who own a controlling interest in such vendor; and (5) any subsidiary or other business in which such vendor owns a controlling interest. The vendor shall submit appropriate investigation authorizations to facilitate such investigation. The executive director may require, in accordance with rules and regulations of the commission, that a vendor submit any additional information considered appropriate to preserve the integrity and security of the lottery. In addition, the executive director may conduct a background investigation of any person having a beneficial interest in a vendor. The secretary of revenue, securities commissioner, attorney general and director of the Kansas bureau of investigation shall assist in any investigation pursuant to this subsection upon request of the executive director. Whenever the secretary of revenue, securities commissioner, attorney general or director of the Kansas bureau of investigation assists in such an investigation and incurs costs in addition to those attributable to the operations of the office or bureau, such additional costs shall be paid by the Kansas lottery. The furnishing of assistance in such an investigation shall be a transaction between the Kansas lottery and the respective officer and shall be settled in accordance with K.S.A. 75-5516, and amendments thereto.

Upon the request of the chairperson, the Kansas bureau of investigation and other criminal justice agencies shall provide to the chairperson all background investigation information including criminal history record information, arrest and nonconviction data, criminal intelligence information and information relating to criminal and background investigations of a vendor to whom a major procurement contract is to be awarded. Such information, other than conviction data, shall be confidential and shall not be disclosed, except as provided in this section. In addition to any other penalty provided by law, disclosure of such information shall be grounds for removal from office or termination of employment.

(d) All major procurement contracts shall be subject to approval of the commission.

(e) *The executive director shall not agree to any renewal or extension of a major procurement contract unless such extension or renewal is awarded in the manner provided by this section.*

Sec. 5. K.S.A. 74-8702 is hereby amended to read as follows: 74-8702. As used in ~~this~~ *the Kansas lottery* act, unless the context otherwise requires:

- (a) "Commission" means the Kansas lottery commission.
- (b) "Executive director" means the executive director of the Kansas lottery.
- (c) "Gaming equipment" means any electric, electronic or mechanical device or other equipment unique to the Kansas lottery used directly in the operation of any lottery and in the determination of winners pursuant to this act.
- (d) "Kansas lottery" means the state agency created by this act to operate a lottery or lotteries pursuant to this act.
- (e) "Lottery retailer" means any person with whom the Kansas lottery has contracted to sell lottery tickets or shares, or both, to the public.
- (f) "Lottery" or "state lottery" means the lottery or lotteries operated pursuant to this act.
- (g) "Major procurement" means any gaming product or service, including but not limited to facilities, advertising and promotional services, annuity contracts, prize payment agreements, consulting services, equipment, tickets and other products and services unique to the Kansas lottery, but not including materials, supplies, equipment and services common to the ordinary operations of state agencies.
- (h) "Person" means any natural person, association, corporation or partnership.
- (i) "Prize" means any prize paid directly by the Kansas lottery pursuant to its rules and regulations.

(j) “Share” means any intangible manifestation authorized by the Kansas lottery to prove participation in a lottery game.

(k) “Ticket” means any tangible evidence issued by the Kansas lottery to prove participation in a lottery game.

(l) “Vendor” means any person who has entered into a major procurement contract with the Kansas lottery.

(m) “Returned ticket” means any ticket which was transferred to a lottery retailer, which was not sold by the lottery retailer and which was returned to the Kansas lottery for refund by issuance of a credit or otherwise.

(n) “Video lottery machine” means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game authorized by the commission, including but not limited to bingo, poker, black jack and keno, and which uses a video display and microprocessors and in which, by chance, the player may receive free games or credits that can be redeemed for cash.

(o) (1) *“Lottery machine” means any machine or device that allows a player to insert cash or other form of consideration and may deliver as the result of an element of chance, regardless of the skill required by the player, a prize or evidence of a prize, including, but not limited to:*

(A) *Any machine or device in which the prize or evidence of a prize is determined by both chance and the player’s or players’ skill, including, but not limited to, any machine or device on which a lottery game or lottery games, such as poker or blackjack, are played;*

(B) *any machine or device in which the prize or evidence of a prize is determined only by chance, including, but not limited to, any slot machine or bingo machine; or*

(C) *any lottery ticket vending machine, such as a keno ticket vending machine, pull-tab vending machine or an instant-bingo vending machine.*

(2) *“Lottery machine” shall not mean:*

(A) *Any food vending machine defined by K.S.A. 36-501, and amendments thereto;*

(B) *any nonprescription drug machine authorized under K.S.A. 65-650, and amendments thereto;*

(C) *any machine which dispenses only bottled or canned soft drinks, chewing gum, nuts or candies; or*

(D) *any machine excluded from the definition of gambling devices under subsection (d) of K.S.A. 21-4302, and amendments thereto.*

Sec. 6. K.S.A. 2000 Supp. 74-8710 is hereby amended to read as follows: 74-8710. (a) The commission, upon the recommendation of the executive director, shall adopt rules and regulations governing the establishment and operation of a state lottery as necessary to carry out the purposes of this act. Temporary rules and regulations may be adopted by the commission without being subject to the provisions and requirements of K.S.A. 77-415 through 77-438, and amendments thereto, but shall be subject to approval by the attorney general as to legality and shall be filed with the secretary of state and published in the Kansas register. Temporary and permanent rules and regulations may include but shall not be limited to:

(1) Subject to the provisions of subsection ~~(b)~~ (c), the types of lottery games to be conducted, including but not limited to instant lottery, on-line and traditional games, but not including games on video lottery machines or lottery machines.

(2) The manner of selecting the winning tickets or shares, except that, if a lottery game utilizes a drawing of winning numbers, a drawing among entries or a drawing among finalists, such drawings shall always be open to the public and shall be recorded on both video and audio tape.

(3) The manner of payment of prizes to the holders of winning tickets or shares.

(4) The frequency of the drawings or selections of winning tickets or shares.

(5) The type or types of locations at which tickets or shares may be sold.

(6) The method or methods to be used in selling tickets or shares.

(7) Additional qualifications for the selection of lottery retailers and the amount of application fees to be paid by each.

(8) The amount and method of compensation to be paid to lottery retailers, including special bonuses and incentives.

(9) Deadlines for claims for prizes by winners of each lottery game.

(10) Provisions for confidentiality of information submitted by vendors pursuant to K.S.A. 74-8705, and amendments thereto.

(11) Information required to be submitted by vendors, in addition to that required by K.S.A. 74-8705, and amendments thereto.

(12) The major procurement contracts or portions thereof to be awarded to minority business enterprises pursuant to subsection (a) of K.S.A. 74-8705, and amendments thereto, and procedures for the award thereof.

(b) No new lottery game shall commence operation after the effective date of this act unless first approved by the governor or, in the governor's absence or disability, the lieutenant governor.

(c) *The lottery shall adopt rules and regulations concerning the game of keno. Such rules and regulations shall require that the amount of time which elapses between the start of games shall not be less than four minutes.*

Sec. 7. K.S.A. 2000 Supp. 74-8718 is hereby amended to read as follows: 74-8718. (a) It is unlawful ~~for~~:

(1) ~~Any person~~ To sell a lottery ticket or share at a price other than that fixed by rules and regulations adopted pursuant to this act;

(2) ~~for~~ any person other than a lottery retailer authorized by the Kansas lottery to sell or resell any lottery ticket or share; ~~or~~

(3) ~~any person~~ to sell a lottery ticket or share to any person, knowing such person to be under 18 years of age; ~~or~~

(4) ~~to sell a lottery ticket at retail by electronic mail, the internet or telephone.~~

(b) (1) Violation of this section is a class A nonperson misdemeanor upon conviction for a first offense; and

(2) violation of this section is a severity level 9, nonperson felony upon conviction for a second or subsequent offense.

Sec. 8. K.S.A. 74-8722 is hereby amended to read as follows: 74-8722. (a) The Kansas lottery shall not recruit for employment or as a volunteer any person under 18 years of age for the purpose of appearing, being heard or being quoted in any advertising or promotion of any lottery in any electronic or print media.

(b) *The unsolicited advertisement or promotion of any lottery by the Kansas lottery through electronic mail or telephone is prohibited.*

(c) *All advertising and marketing practices of the Kansas lottery shall meet or exceed the standards of the North American association of state and provincial lotteries (NASPL) which are in effect on July 1, 2001, or any later version as adopted by the commission in rules and regulations.*

Sec. 9. K.S.A. 74-8702, 74-8706 and 74-8722 and K.S.A. 2000 Supp. 74-8705, 74-8707, 74-8710, 74-8718 and 74-8723 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.