

## **RULE 2 – RETAILER LICENSING, DUTIES AND COMPENSATION**

### **BASIS AND PURPOSE FOR RULE 2**

The purpose of Rule 2 is to establish and provide the specific factors required for determining eligibility of an applicant desiring to obtain a license for the Sale of Lottery Products to the public; to specify certain duties of the Retailers; to authorize the Director to establish bonding protection for the State of Colorado; to describe the types of limitations which may be placed upon licenses issued by the Director; to provide for the circumstances upon which the Director may terminate licenses and issue duplicate licenses; to specify certain terms, conditions and duties required of Retailers authorized to Sell Lottery game Products; to specify the rights of the Retailer, as well as the detailed operation of the Lottery at the retail sales level, including the conditions that must be met in order for a Retailer to be permitted to Sell Tickets to a Courier. The provisions of Rule 2 are necessary in order to promote the public interest, as well as the security and efficient operation of the Lottery. The statutory basis for Rule 2 is found in C.R.S. 44-40-107 and 44-40-109(1)(a) and (2).

#### **2.1 Application for License to Sell Lottery Products**

- A. Any Person, firm, association or corporation, whether for profit or non-profit. P may apply to the Lottery for a Retailer license by filing an application with the Division. Such application shall be completed under penalty of perjury on a form approved by the Director.
- B. A fee in an amount to be determined by the Director shall be paid by the applicant for a Retail license to the Lottery. This fee shall be paid at the time of the issuance of the license and upon renewal of the license thereafter.

#### **2.2 Retailer Commission**

- A. Each Retailer shall be entitled to receive a payment for the Sale or authorized disbursement of Lottery Products by said Retailer as provided for in C.R.S. 44-40-107 in the amounts specified in these rules and their Retailer agreement with the Lottery.
- B. At a minimum, Retailers shall receive the following commissions for the Sale of Jackpot Games and Scratch Tickets:
  1. 6% for the Sale of Jackpot Games; and,
  2. 7% for the Sale of Scratch Tickets.

## **2.3 Eligibility for License**

A. The Director shall issue licenses for the Sale of authorized Lottery Products in accordance with the provisions of C.R.S. 44-40-107 and these Rules and Regulations. The Director shall license only such Persons who, in the Director's opinion, will best serve the public interest and trust in the Lottery and promote the Sale of Lottery Products. Prior to issuing any license, the Director shall consider all of the following factors:

1. The moral character and reputation of the applicant per C.R.S. 44-40-107(4)(e);
2. The financial responsibility and security of the applicant and its business or activity;
3. The accessibility of the public to the Licensed Premises proposed by applicant;
4. The number and sufficiency of existing licenses to serve the public interest;
5. The volume of the applicant's expected Lottery Ticket Sales;
6. The security and efficient operation of the Lottery;
7. Whether the applicant is ineligible under the provisions of C.R.S. 44-40-107(4);
8. Business and security considerations which include but are not limited to:
  - a. Past security problems;
  - b. Credit history of owners, officers and the business entity; and,
  - c. History of administrative or regulatory actions.
9. Marketing considerations which include but are not limited to:
  - a. Projected Sales of Lottery Products; and,
  - b. Willingness to promote Lottery Products.

## **2.4 Duties of Retailers**

In order to promote the public interest and the security, and efficient and responsible operation of the Lottery, each Retail licensee must abide by the following terms, conditions and duties:

- A. To be bound by and comply with all lawful provisions of Article 40, Title 44, C.R.S. and the Lottery Rules and Regulations adopted pursuant thereto; the Retailer agreement between the Retailer and the Division; and any other lawful instructions or directives issued by the Director;
- B. To actively promote the responsible Sale of authorized Colorado Lottery Products, including making them available for Sale at all times when the Gaming System is available and the Retailer is open to the public;
- C. To maintain regular business hours so that the public knows when the Retailer is open to the public and has access to purchase authorized Lottery Products;
- D. To pay Prizes worth less than \$600.00 to the Prize Winner for any Lottery Products Validated by the Retailer. All Products Validated by a Retailer must be paid by that Retailer as follows:
  - 1. To maintain sufficient funds to pay Prizes worth \$150 or less by cash, check, or money order.
  - 2. The Retailer will be prompted at the time of Validation whether to accept the Validation for Prizes greater than \$150 but less than \$600. If a Retailer accepts and Validates the Ticket, the Prize must be paid.
  - 3. Prizes shall be paid during the Retailer's normal business hours, provided the Validation system is operational and claims can be Validated. The Retailer shall not charge the Claimant a fee for payment of a Prize or for cashing a business check drawn on the Retailer's account.
- E. To maintain authorized displays, notices, equipment and other materials used in connection with the Sale of Lottery Products in accordance with reasonable instructions or directives issued by the Director;
- F. To maintain a complete and accurate set of books of account, correspondence and records of all Lottery transactions and operations, including but not limited to the receipt, Sale, handling, scratch inventory (both active and inactive), and returns for credit for all Lottery Products received by Retailer, and any books of account, correspondence, reports and records that may be required for Lottery Products. Books, correspondence and records referencing the Lottery account must be made available during normal business hours, with or without prior notice, to any duly authorized representative of the Lottery for inspection and audit by an auditor selected by the Commission or Director;

- G. To allow announced and/or unannounced inspections of the Licensed Premises by duly authorized representatives of the Division during normal business hours, to determine compliance with the provisions of the Act, Rules and Regulations, instructions and directives of the Director. The compliance inspection may be performed online, via telephone, in person or as otherwise provided by the Division representative. The inspections may be performed annually or in an otherwise determined time frame;
- H. To indemnify and hold the State of Colorado, the Division and the Commission harmless from any and all liabilities, claims, actions, and judgments of any kind or nature arising from or relating to the Retailer's acts or omissions in the course of operating and conducting the Sale of Lottery Products;
- I. To pay an administrative fee, to be determined by the Director, to reimburse the Colorado Lottery for inactive Scratch Tickets that are lost due to negligence or misconduct of the Retailer;
- J. To provide confirmation that the Retailer is not a member of the Lottery Commission, an employee of the Lottery or a current Lottery contractor.
- K. To agree that all Lottery Products shall be deemed to have been Purchased by the Retailer once Activated or Sold, whichever comes first;
- L. To pay a communication and/or administrative fee at the discretion of the Director in an amount to be determined by the Director to cover operational costs to the Lottery in servicing said Retailer account, including a fee assessed for not maintaining sufficient funds in the banking account designated to be swept to pay the Lottery for Lottery Products;
- M. To maintain a secure place for unsold Lottery Products upon instruction or directive by the Director or designee;
- N. To prominently display the Colorado Lottery Retailer license in an area visible to the general public;
- O. To agree that all unclaimed Prizes from all Lottery Products remain the property of the State of Colorado as set forth in C.R.S. 44-40-113 and 40-40-114;
- P. To pay, without reimbursement, all electricity charges in conjunction with the operation of the any equipment related to the Sale of Lottery Products;
- Q. To participate in Lottery training sessions and provide staff training;
- R. To use signage identifying the location as a Lottery Retailer. Nothing herein shall require Retailer to install signage which is in violation of any state, local, or municipal code;

- S. To provide authorization for an account with EFT capability to be used for weekly billing of all Lottery Products;
- T. To maintain a balance in the account sufficient to cover payment due the Lottery for the established billing period. The Lottery shall utilize EFT to withdraw the amount due the Lottery on the day specified by the Director. In the event the day specified for withdrawal occurs on a legal holiday, withdrawal shall occur on the following business day. If an EFT is unsuccessful due to insufficient funds, the Division may sweep the fund for any lesser amount until payment of all outstanding debt has occurred. The Division may assess a fee for late payments;
- U. To Sell Scratch Products in consecutive and numerical order;
- V. To not exchange Lottery Products and/or books with any other Person, including other Retailers;
- W. To play Lottery Products, if so desired, in a responsible and fair manner. Retailers are prohibited from playing 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;
  - 1. To print Jackpot Tickets only on the specific ticket stock issued by the Lottery to the Licensed Premises for that Retailer and not transfer ticket stock to any other outlet or location;
  - 2. To acknowledge that the Gaming Terminal and any and all other supplies, equipment, signage or vending machines issued by the Lottery or a Vendor remain the property of the Lottery or a Vendor. The Retailer shall exercise due diligence in the use and operation of the Gaming Terminal and all other supplies, equipment, signage, and vending machines issued by the Lottery or a Vendor, as well as immediately notify the Lottery or a Vendor about any communications or other systems malfunctions, including, but not limited to, the issuance of an invalid online ticket, inaccurate jackpot amounts being displayed on digital signage, or the inability to generate or redeem an online ticket. The Retailer shall not perform any mechanical or electrical maintenance on the Gaming Terminal or any other supplies, equipment, signage, or vending machines issued by the Lottery or a Lottery Vendor. The Retailer shall not move, alter, or tamper with the Gaming Terminal except as required by the Lottery or a Vendor;
  - 3. To provide, without reimbursement, the full costs of Gaming Terminal installation and hookup charges, as well as any and all charges related to the Sale of Lottery Products as specified by the Lottery;

4. To provide, without reimbursement, any requirement the Lottery deems necessary for the Gaming Terminal or other equipment related to the Sale or promotion of Lottery Products, including, but not limited to maintenance of equipment and payment for electricity and internet. and,

## **2.5 ADA - Americans with Disabilities Act**

- A. To prohibit discrimination, no Retailer shall discriminate against any individual on the basis of disability in the full and equal enjoyment of Lottery-related goods, services, facilities, privileges, or accommodations of a Licensed Premises.
- B. The Americans with Disabilities Act and subsequent amendments thereto applies to all Retailers and is enforced by the United States Department of Justice.

## **2.6 Licensing Disqualifications**

A License shall not be granted to:

- A. Any Person, firms, association, or corporations, whether for profit or non-profit, who will engage in business exclusively as a Lottery sales agent, unrelated to any other commercial business activity.
- B. Any Person, firms, association, or corporations, whether for profit or non-profit, who has provided false or misleading information to the Lottery.
- C. Any Person, firms, association, or corporations, whether for profit or non-profit, who is deemed not financially responsible to operate a business.
- D. Any Person, firms, association, or corporations, whether for profit or non-profit, whose proposed Licensed Premises is a residence or, by reason of its location is not accessible to a sufficient number of Persons so as to reasonably justify the Lottery's expenditure of public monies to provide and deliver Lottery Products, services, and supplies to such a location. In making such a determination, the Director shall consider the possible economic benefit to the State and the convenience to the public to be gained from licensing such Person.
- E. Any Person, firms, association, or corporations, whether for profit or non-profit, whose volume of Lottery Ticket Sales projected or anticipated is such as not to reasonably justify the Lottery's expenditure of public monies to provide and deliver Lottery Products, services, and supplies to such a location, when considering the possible economic benefit and convenience to the public to be gained there from. For the purpose of initial licensing, a projected or anticipated volume of instant game Lottery Ticket Sales must meet the current minimum Sales requirement as determined by the Lottery Director.
- F. Any sole proprietor who is not a resident of the State of Colorado.

- G. Any corporation or limited liability company that is neither incorporated nor authorized to do business in the State of Colorado.
- H. Any partnership, or association, or other type of business entity, in which no general partner(s), member(s), or representative(s) is a resident of the State of Colorado.
- I. Any Person who has been convicted, within ten years of an application, of a felony crime, including but not limited to, robbery, burglary, theft, trespass, criminal mischief, forgery, computer crime, bribery, perjury, offenses related to judicial and other proceedings, telecommunications crimes, racketeering, or the distribution, Sale, manufacturing, dispensation or possession of drugs or drug paraphernalia. Other convictions, whether felony or misdemeanor, may relate to a determination that the Person is not of good character and reputation and may lead to the denial of a license.
- J. Any business entity member that has an outstanding liability with the Division including amounts transferred to Central Collection Services or has been written off by the Division due to bankruptcy or for non-payment.

## **2.7 Bonding Requirement**

No license shall be issued or renewed by the Director, unless the applicant or Retailer is first bonded in such an amount and type as may be required by the Director to protect the State against any monetary loss that may arise from the Retailer's Purchase and Sale of Lottery Products.

Such bonding may take the form of any instrument that is determined by the Director to satisfy the requirements of C.R.S. 44-40-107(1) and 44-40-121.

## **2.8 Limitations on Licenses**

- A. Retailers shall limit the Sale of authorized Lottery Products to the Licensed Premises. A Person must be present on the Licensed Premises to complete the Sale of a Lottery Product.
- B. A Retail license shall terminate unless timely renewed. The Director may limit a Retailer to a particular type of Lottery game or games. A license may be renewed upon the timely payment of a renewal fee and timely submission of a renewal application on a form prescribed by the Director.
- C. The Director shall determine:
  1. The length of the Retail license period;
  2. Any limitations on the hours and days of Lottery Product Sales;

3. The Licensed Premises where the Sale of Lottery Products shall be remitted;
4. The specific Person, firm, association, or for-profit or non-profit corporation, who is authorized to Sell Lottery Products;
5. The specific Lottery Products that a Retailer is authorized to Sell;
6. The specific sporting, charitable, social, or other special event where Lottery Products may be sold; and,
7. Such other limitations or conditions of licensing as determined by the Director to best serve the public convenience; to promote the Sale of Lottery Products; to protect the security and integrity of the Lottery Products; or as may be otherwise necessary or desirable for the efficient and economical operation and administration of the Lottery.

## **2.9 Non-Transferability of License**

A license issued pursuant to these Rules and Regulations shall not be assignable or transferable. If either the Person who has signed the application for licensure is no longer employed by the Retailer in the capacity stated on the application or if the ownership of the Retailer substantially changes, the Director reserves the right to terminate the license. The Retailer shall notify the Director in writing at least thirty (30) days prior to any such proposed change. A substantial change in ownership shall mean a transfer of ten percent (10%) or more of either the equity of such business, or the decision-making authority thereof.

## **2.10 Duplicate Licenses**

Upon the loss, mutilation or destruction of any license issued by the Director, a duplicate license can be issued. A mutilated license shall be surrendered to the Director upon issuance or denial of a duplicate license. A lost license, when found, must be immediately surrendered to the Director.

## **2.11 Couriers**

- A. No Retailer Shall Sell Lottery Products to a Courier without prior approval from the Division.
- B. The Director has the sole discretion to approve an application by a Retailer to Sell Lottery Products to a Courier. The Director shall consider whether approving the application will promote the integrity and security of the Lottery, including but not limited to whether:

1. The Retailer has not had any documented issues of non-compliance with Lottery Rules or Statutes that indicate that the Retailer would be unfit to handle the additional Sales volume and responsibility that Selling to a Courier would require.
2. The Retailer and the Courier are in compliance with the Act, the Retailer agreement and the Lottery's Rules & Regulations.
3. The Retailer does not owe the Lottery any outstanding debts.
4. The Retailer has verified that the Courier is registered with the Colorado Secretary of State and is in good standing. Review of the Courier's status on the Colorado Secretary of State's website constitutes verification for the purposes of these Rule.
5. The Retailer does not employ a Person who is also employed by a Courier.
6. The Retailer has executed a written contract with the Courier.
7. The Sale and Purchase of Tickets between the Courier and the Retailer occur only on the Retailer's Licensed Premises when the Retailer is open to the public during regular business hours, meaning that an employee of the Courier shall be on the Licensed Premises to Purchase the Lottery Tickets from the Retailer in-person.
8. The Courier is using Play Slips that conform to MUSL standards and has mechanisms in place to ensure the accurate processing of orders for Tickets that are placed by Courier Customers and can provide information on how the Tickets will be stored, tracked, Validated and processed to ensure the Courier Customer receives any Prizes that they are entitled to.
9. The Retailer and the Courier have sufficient safeguards to ensure that any Lottery Tickets Purchased by the Courier on behalf of Courier Customers are being tracked, stored and Validated in a secure manner that ensures the Courier Customer gets any Prizes that they are entitled to by virtue of their Purchase.
10. The Retailer shall not permit any device to be connected to the Gaming System, except as specifically approved in writing, in advance, by the Lottery.
11. The Retailer has attested to and continues to ensure that the Courier is doing the following:
  - a. Not violating the Act or the Lottery's rules;

- b. Undergoing an annual external SOC2 or ISO27001 audit in addition to a financial audit of its operations to ensure integrity in operations and provide evidence thereof and any findings to the Retailer and how they plan to address those findings;
- c. Disclosing all fees charged by the Courier to the Courier Customer for its services in a manner that makes clear that those fees are separate from the Ticket price set by the Commission prior to taking payment from and finalizing the Courier Customer's order;
- d. Not targeting advertisements for Tickets to under-age Persons or Persons who are located outside the state of Colorado or within the designated boundaries of federally recognized Indian lands;
- e. Not using the Lottery's logo without explicit permission from the Director of the Lottery and is not holding itself out as being a licensed Retailer or otherwise affiliated with or acting as an agent of the Lottery;
- f. Has a method to contact the Courier's customer service to attempt to resolve issues, disputes or complaints related to the Courier's services and clearly displays that information to the public and Courier Customers on its website and in its online and mobile platforms;
- g. Utilizing Geolocation on any mobile or electronic device that may be used by a Courier Customer to order Tickets through the Courier in order to verify that the Courier Customer is located within the State of Colorado and not within the designated boundaries of federally recognized Indian lands;
- h. Utilizing KYC or Know Your Customer to verify the identity and age of a prospective customer to prevent account duplication and prohibit minors or other unauthorized Persons from placing orders for Tickets through the Courier;
- i. Securely storing Tickets Purchased on behalf of Courier Customers for 30 days following either the Prize being paid to the Courier Customer for the Ticket or expiration of the time period when the Prize is eligible to be paid, whichever comes first;
- j. Not assessing any fee for the payment of any Prize Amount;
- k. Transfers winning Tickets worth \$600 or more to the Courier Customer to be claimed directly with the Lottery;

- I. Allows Courier Customers to place daily, weekly and monthly limits on their spending and allow the Player to self-exclude themselves from ordering Tickets through the Courier;
  - m. Complying with any responsible gaming controls adopted by the Lottery; and,
  - n. Complying with the Colorado Consumer Privacy Act, C.R.S. 6-1-1301, *et seq.*
12. The Retailer agrees to hold the State of Colorado, the Colorado Lottery, its employees, and agents harmless from any and all disputes arising out of the use of the Courier's service for the delivery of Tickets and/or any fees assessed to the Courier Customer associated with the use of the Courier's Service.
13. The Retailer has an ongoing duty to ensure that the Courier's operations comply with the requirements of this Rule 2.13 and present any evidence of such compliance to the Lottery upon request.
14. The Director in his or her sole discretion may deny, suspend or terminate the Retailer's approval to Sell to a Courier upon an investigation and finding that the Courier poses a threat to the security, integrity or operation of the Lottery or has otherwise violated the Act or the Rules.
15. Upon the initial application and annual renewal of the Lottery license, any Retailer affiliated with a Courier must provide, at a minimum, the following certifications and information to the Division:
  - a. The Retailer must identify all affiliations, partnerships, and contracts with Courier(s) to the Division and provide the following information:
    - a) the name of the Person or business serving as the Courier or Courier Service and b) the contact information for the Courier.
  - b. The Retailer must submit annual Sales data and revenue generated from any affiliation with any Couriers for the prior year, including the number of Sales and the revenue for all Sales.
  - c. The Retailer must certify that the Courier(s) with which they are affiliated are complying with Section 2.13(a).
16. The Director has the discretion to administratively suspend and/or seek the revocation of the license of a Retailer license pursuant C.R.S. 24-4-105 and 106 if the Retailer who Sells Tickets to a Courier constitutes an operational threat, threat of loss, fraud, or any other action that impacts the security and integrity of the Lottery.

17. The Director may withhold payment of a Prize to investigate whether a Ticket sold to a Courier may have been procured in a manner that violates the security, integrity or operation of the Lottery or otherwise violates the Act or the Rules.

**RULE 2.A [Repealed eff. 09/30/2008]**