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A.R.S. § 41-1055(B) Economic, Small Business, and Consumer Impact Statement
Title 19. Alcohol, Dog and Horse Racing, Lottery and Gaming
Chapter 03. Arizona State Lottery Commission

A.R.S. § 41-1055(B): An identification of proposed rulemaking.

The Lottery Commission ("Lottery") rulemaking is related to the authorization and regulation of lottery courier services in Arizona. Proposed rules A.A.C. are R19-3-204(B)(3)(31), R19-3-1101, R19-3-1102, R19-3-1103 and R19-3-1104.

The proposed rules are justified, as lottery courier services represent a growing segment of the lottery industry. With the expansion of these services in Arizona, the Lottery seeks to establish rules to ensure compliance with applicable laws and regulations, safeguard Arizona Lottery players, and uphold the integrity of the agency and lottery products.

The rules augment the corresponding statutory section in R19-3-204(B):

- R19-3-204(B) is the violation list of reasons a license may be revoked, suspended, or denied renewal. The proposed rules would add clarifying language through a new thirty-first violation for selling tickets to couriers without explicit Lottery authorization.

This rulemaking addresses changes authorized by the Lottery Commissioners during the April 10, 2024, Commission Meeting. Questions about the Economic Impact Statement may be directed to: Kome Akpolo (kakpolo@azlottery.gov).

A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

The rules augment the statutory sections regulating persons seeking or holding a lottery retail license pursuant to A.R.S. § 5-562.

A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

The Lottery does not anticipate any new costs in the implementation and enforcement of the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rule changes. It is suggested that the regulation and partnership with lottery courier services in Arizona will offer individuals 21+ years of age in Arizona a more efficient and economical means of ticket sales, and maximize net revenue for public benefit. The enhanced efficiency is expected to increase access and revenue generation for the Lottery, thereby increasing the transfer of funds to the beneficiaries, including the state's General Fund.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

(c) The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

No additional costs are anticipated to be imposed upon lottery courier service providers. The Lottery is not proposing any new fees. The Operating Agreements may set requirements to comply with additional audits related to geofencing, building safety and the safekeeping of secured assets such as lottery tickets.

A.R.S. § 41-1055(B)(4): A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

The Lottery does not anticipate any impact on the private employment of licensees and courier service providers that pursue operating agreements. Likewise, the Lottery does not anticipate any impact on public employment at the Lottery.

A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rulemaking.

Many of the lottery retailers regulated by the Lottery may qualify as small businesses within the meaning of A.R.S. § 41-1001(23). However, the Lottery does not track the number of employees or annual receipts of each licensee.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The Lottery does not believe that any of the methods will lead to administrative or other costs related to compliance with the proposed rulemaking. These changes should not result in any cost to the lottery courier service providers.

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

The Lottery does not believe that any of the methods listed at A.R.S. § 41- 1035 are useful to reduce the impact of the rulemaking on small businesses.

(i.) Establishing less stringent compliance or reporting requirements in the rule for small businesses;

There cannot be a less stringent version of the minimum standards; to ensure protection of the public, the standards must be universal.

(ii.) Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;

There are no scheduled deadlines in the rules.

(iii.) Consolidate or simplify the rule's compliance or reporting requirements for small businesses;

There cannot be a simplified version of the minimum standards; to ensure protection of the public, the standards must be universal.

(iv.) Establish performance standards for small businesses to replace design or operational standards in the rule; and

There cannot be a simplified version of the minimum standards; to ensure protection of the public, the standards must be universal.

(v.) Exempting small businesses from any or all requirements of the rule.

Not applicable. See answers to i-iv above.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The Lottery does not expect any appreciable increase in either costs to private persons and consumers created by this rulemaking. The Lottery expects an increased benefit to private persons and consumers as the rulemaking will ensure that courier services operate within the bounds of state regulations regarding the sale of lottery tickets and ensure the legitimacy of these services in Arizona.

A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.

This rule will lead to an increase in state revenue through the sale of lottery tickets.

A.R.S. § 41-1055(B)(7): A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The Lottery believes that the current rulemaking offers a regulatory solution that supports business, protects integrity of the lottery, discourages illegal gaming activities and protects consumers, at no-cost to the state least intrusive and non-costly alternative method to achieve the purpose of the proposed rulemaking, which is to establish and regulate lottery courier providers, a growing segment of the lottery industry.

A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of

proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

The rule is not based on official data. The proposed rule is based on the regulatory framework established by New Jersey, which became the first state in December 2016 to authorize and regulate couriers. Today, there are three state lotteries that authorize and regulate couriers — New Jersey, New York, and Arkansas — all define couriers differently and have varying regulatory requirements and approaches. Colorado is currently undergoing the rulemaking process for lottery courier services following a 2023 report that found unregulated lottery courier services do not have sufficient oversight by the Colorado Lottery. Minnesota adopted a different regulatory strategy by establishing a specific "lottery service business"¹ category within their business statutes, likely to encompass a broader range of digital lottery activities beyond mere courier services. State approaches to couriers vary widely, and the regulatory landscape is evolving with the recent growth of courier activity in the gaming industry. Today, 16 states and the District of Columbia operate couriers without regulation or oversight by their state lottery, while Indiana, Wisconsin, Texas, Virginia, and California have opted to prevent courier operations either through statutory language or "warning" licensed retailers of the risk to knowingly participate in or facilitate lottery courier ticket sales through license revocation. The absence of a statutory framework in Arizona prevents direct enforcement against lottery courier services. Therefore, for "warnings" to have the necessary enforceability to deter retailers effectively, a modification of the Lottery's existing rules is required in Arizona.

Due to the limitations of available official data on this specific issue,² the proposed rules are informed by the Arizona Lottery's stakeholder engagement, assessment of two audit reports from Texas and Colorado highlighting the lack of regulatory oversight by state lotteries, as well as legal research examining regulatory frameworks in other jurisdictions that have implemented measures to address similar concerns.

¹ <https://www.revisor.mn.gov/statutes/cite/299L.09>

² If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms.(A.R.S. § 41-1055(C)).