

CHAPTER NO. 297

SENATE BILL NO. 1

By Cohen, Crutchfield, Cooper, Miller, Ford, Clabough, Graves, Trail, Ketron, Fowler

Substituted for: House Bill No. 1

By Newton, Miller, Kernell, Ulysses Jones, Brenda Turner, Bowers, Tindell, Brown, Michael Turner, Sherry Jones, Pruitt, Sontany, Odom, Head, Lois DeBerry, Vaughn, Henri Brooks, West, Ferguson, Langster, Larry Turner, Bone, Winningham, Chumney, Harmon, Hackworth, Fraley, Coleman, Shepard

AN ACT to enact the "Tennessee Education Lottery Implementation Law" and to amend Tennessee Code Annotated, Title 4; Title 33; Title 38; Title 39; Title 48; Title 49 and Title 68, relative to a state lottery, including annual events authorized by the General Assembly. This act makes appropriations for the implementation of a state lottery, including annual events authorized by the General Assembly and lottery related operations and programs for an indefinite period of time.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Education Lottery Implementation Law".

SECTION 2. Tennessee Code Annotated, Title 4, is amended by adding the following language as a new, appropriately designated chapter:

Section 4-51-101. (a) There is hereby created a corporation which shall be known as the "Tennessee Education Lottery Corporation".

(b) The corporation shall be registered with the secretary of state and shall be subject to the corporate laws of the state of Tennessee.

(c) The corporation shall be a body, politic and corporate, and a quasi-public instrumentality, and not a state agency or department, which shall be deemed to be acting in all respects for the benefit of the people of the state through the operation of a state lottery and in the performance of other essential public functions entrusted to it.

(d) The corporation shall have perpetual succession and shall adopt, amend and repeal bylaws and regulations for the conduct of its affairs.

(e) The corporation shall strive to maximize net lottery proceeds.

(f) Venue for the corporation is Davidson County.

Section 4-51-102. As used in this chapter, unless the context otherwise requires:

(1) "Board" means the board of directors of the Tennessee education lottery corporation;

(2) "Chief executive officer" means the chief executive officer of the Tennessee education lottery corporation;

(3) "Corporation" means the Tennessee education lottery corporation;

(4) "Director" means a member of the board of directors of the Tennessee education lottery corporation;

(5) "Educational programs and purposes" means financial assistance to Tennessee citizens to enable such citizens to attend post-secondary educational institutions located within Tennessee, capital outlay projects for kindergarten through grade twelve (K-12) educational facilities, early learning programs and after school programs in accordance with the provisions of Article XI, Section 5 of the Constitution of Tennessee;

(6) "Immediate family" means a spouse, child, step-child, brother, sister, son-in-law, daughter-in-law, parent or grandparent;

(7) "Local government unit" means any county, metropolitan government, incorporated town or city, or special district of the state;

(8) "Lottery," "lotteries," "lottery game," or "lottery games" means any game of chance approved by the board and operated pursuant to this chapter, including, but not limited to, instant tickets, on-line games and games using mechanical or electronic devices. For the purposes of this chapter, "lottery," "lotteries," "lottery game," or "lottery games" does not include:

(A) Casino gambling or games of chance associated with casinos and prohibited pursuant to Article XI, Section 5 of the Constitution of Tennessee. For the purposes of this item, "casino gambling" means a location or business for the purpose of conducting illegal gambling activities, excluding the sale and purchase of lottery tickets or shares as authorized by this chapter; or

(B) Video lottery. For the purposes of this item, "video lottery" means a lottery that allows a game to be played utilizing an electronic computer and an interactive terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins or currency as consideration in order for play to be available, and through which terminal device, the player may receive free games or a voucher that can be redeemed for cash or non-cash prize, or nothing, determined wholly or predominantly by chance.

(9) "Lottery proceeds" or "proceeds" means all lottery revenue derived from the sale of lottery tickets or shares and all other monies derived from the lottery or received by the corporation;

(10) "Lottery retailer" or "retailer" means a person who sells lottery tickets or shares on behalf of the corporation pursuant to a contract;

(11) "Lottery vendor" or "vendor" means a person who provides or proposes to provide goods or services to the corporation pursuant to a major procurement contract, but does not include an employee of the corporation, a retailer, or a state agency or instrumentality thereof. Such term does include a corporation whose shares are traded publicly and which is the parent company of the contracting party in a major procurement contract;

(12) "Major procurement contract" means any gaming product or service costing in excess of seventy-five thousand dollars (\$75,000), including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets, and other products and services unique to the Tennessee lottery, but not including materials, supplies, equipment, and services common to the ordinary operations of a corporation;

(13) "Minority-owned business" means a business which is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of:

(A) Past practices of discrimination based on race, religion, ethnic background, or sex;

(B) A disability as defined in § 4-26-102; or

(C) Past practices of racial discrimination against African-Americans;

(14) "Net proceeds" or "net lottery proceeds" means all revenue derived from the sale of lottery tickets or shares and all other monies derived from lottery games less operating expenses. "Net proceeds" or "net lottery proceeds" does not include unclaimed prize money;

(15) "Operating expense" means all costs of doing business including, but not limited to, prizes, commissions, and other compensation paid to a lottery retailer, advertising and marketing costs, rental fees, personnel costs, capital costs, depreciation of property and equipment, amounts held in or paid from a fidelity fund pursuant to § 4-51-118, and all other operating costs;

(16) "Person" means any individual, corporation, partnership, unincorporated association, or other legal entity;

(17) "Prize" means an award, gift or anything of value regardless of whether there are conditions or restrictions attached to its receipt;

(18) "Share" means any intangible evidence of participation in a lottery game; and

(19) "Ticket" means any tangible evidence issued by the lottery to provide participation in a lottery game.

Section 4-51-103. (a) The corporation shall be governed by a board of directors composed of seven (7) directors.

(b) The directors shall be residents of Tennessee, shall have expertise in their businesses or professions and shall be appointed by the Governor. All appointments shall be filed with the secretary of state within five (5) working days of appointment.

(c) (1) No person shall serve as a director of the corporation who has been convicted of:

(A) Any felony;

(B) A misdemeanor involving gambling, theft, computer offenses, forgery, perjury, dishonesty or unlawfully selling or providing a product or substance to a minor;

(C) Any violation of this chapter; or

(D) Any offense in a federal court, military court or court of another state, territory or jurisdiction which under the laws of this state would disqualify such person pursuant to subdivisions (1)(A), (1)(B) or (1)(C).

(2) Prior to the appointment of a person as a director, the Governor shall submit the names of potential directors to the Tennessee Bureau of Investigation and the Tennessee Bureau of Investigation, pursuant to § 38-6-109, shall conduct a criminal history records check on all such persons. The Tennessee Bureau of Investigation may contract with the Federal Bureau of Investigation, other law enforcement agency or any other legally authorized entity to assist in such investigation. Such persons shall supply a fingerprint sample on request and in the manner requested by the investigating entity. The Tennessee Bureau of Investigation shall conduct such investigation as soon as practicable after submission of names by the Governor. The corporation shall pay, as an operating expense, the cost of the records check. The results of such a records check shall not be considered a record open to the public pursuant to Title 10, Chapter 7, Part 5.

(d) In making the appointments pursuant to subsection (b), the Governor shall strive to ensure that the board is composed of directors who are diverse in professional or educational background, ethnicity, race, gender, geographic residency, heritage, perspective and experience.

(e) Directors shall serve terms of five (5) years; provided that of the initial directors appointed:

(1) Two (2) directors shall be appointed for an initial term of one (1) year;

(2) Three (3) directors shall be appointed for an initial term of three (3) years; and

(3) Two (2) directors shall be appointed for an initial term of five (5) years.

After the initial terms, directors shall be appointed to serve five-year terms.

(f) All appointments of the directors shall be confirmed by joint resolution adopted by each house of the General Assembly prior to the commencement of the term of office to which such director is appointed. If the General Assembly is not in session when initial appointments are made, all initial appointees shall serve the terms prescribed pursuant to subsection (e) unless such appointments are not confirmed within thirty (30) days after the General Assembly next convenes following such appointments. Any vacancy on the board shall be filled by the Governor to serve the unexpired term and such appointment shall be confirmed in the same manner as the original appointment. However, if the General Assembly is not in session and a vacancy occurs, the Governor shall fill such vacancy by appointment and the appointee to such vacancy shall serve the unexpired term unless such appointment is not confirmed within thirty (30) days after the General Assembly next convenes following the appointment to fill such vacancy.

(g) The term of office of each director shall commence on July 1, following such director's appointment; provided that the term of office for each initial director shall commence on the date of appointment but shall be calculated, for purposes of the term, from July 1, 2003. If not reappointed, a director shall cease to hold office at the end of the director's term. All initial appointments of directors shall be made on, or before, July 1, 2003.

(h) A director of the board, or any member of their immediate family, shall not have a direct or indirect interest at the time of their appointment, or within a period of two (2) years prior to their appointment, in any undertaking that puts their personal interest in conflict with that of the corporation, including, but not limited to, any interest, through ownership, stock or otherwise, in a major procurement contract or a participating retailer; provided that a director, or a member of such director's immediate family, may hold an incidental interest not to exceed one percent (1%) of the outstanding stock of a participating retailer.

(i) The directors shall elect from their membership a chair and vice-chair. The directors shall also elect a secretary and treasurer who may, from time-to-time, serve as the acting chief executive officer of the corporation. Such officers shall serve for such terms as shall be prescribed by the bylaws of the corporation or until their respective successors are elected and qualified. No director of the board shall hold more than one (1) office of the corporation, except that the same director may serve as secretary and treasurer.

(j) The board of directors may delegate to one (1) or more of its members, to the chief executive officer, or to any agent or employee of the corporation such powers and duties as it may deem proper.

(k) A majority of directors in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the corporation.

(l) Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of a majority of present and voting directors.

(m) No vacancy in the membership of the board shall impair the right of the directors to exercise all the powers and perform all the duties of the board.

(n) (1) Upon approval by the chair, directors of the board shall be reimbursed for actual and reasonable expenses incurred or a per diem not to exceed the per diem provided to members of the General Assembly pursuant to § 3-1-106 for each day's service spent in the performance of the duties of the corporation or both.

(2) Directors shall not receive a salary for their duties.

(o) (1) The Governor may remove a director for neglect of duty or misconduct in office.

(2) If the Governor seeks removal of a director pursuant to the provisions of this subsection, the Governor shall deliver to the director a copy of the charges levied against such director together with a notice of hearing affording such director an opportunity to be heard in person or by counsel to defend publicly against such charges prior to removal. The notice of hearing shall be served upon the director no later than ten (10) days prior to the hearing date.

(3) If such director is removed, the Governor shall file in the office of the secretary of state a complete statement of all charges made against the director and the Governor's findings thereon, together with a complete record of the proceedings.

(4) If a director is removed, such vacancy shall be filled in the same manner as other vacancies on the board.

(p) No director shall make a contribution to the campaign of a candidate for the General Assembly or to a candidate for Governor.

Section 4-51-104. (a) The board of directors shall appoint and shall provide for the compensation of a chief executive officer who shall be an employee of the corporation and who shall direct the day-to-day operations and management of the corporation and shall be vested with such powers and duties as specified by the board and by law. The chief executive officer shall serve at the pleasure of the board.

(b) The board of directors shall provide the chief executive officer with private sector perspectives of a large marketing enterprise.

(c) The board of directors shall:

(1) Approve, disapprove, amend, or modify the budget recommended by the chief executive officer for the operation of the corporation;

(2) Approve, disapprove, amend, or modify the terms of major lottery procurements recommended by the chief executive officer;

- (3) Hear appeals required by this chapter;
- (4) Adopt regulations, policies, and procedures relating to the conduct of lottery games and as specified in § 4-51-108; and
- (5) Perform such other functions as specified by this chapter.

Section 4-51-105. (a) The corporation shall have any and all powers necessary or convenient to its usefulness in carrying out and effectuating the purposes and provisions of this chapter which are not in conflict with the constitution of this state and which are generally exercised by corporations engaged in entrepreneurial pursuits, including, but not limited to, the following powers:

- (1) To sue and be sued in contract and in tort and to complain and defend in all courts;
- (2) To adopt and alter a seal;
- (3) To adopt, amend, and repeal bylaws, regulations, and policies and procedures for the regulation of its affairs and the conduct of its business; to elect and prescribe the duties of officers and employees of the corporation; and to perform such other matters as the corporation may determine. In the adoption of bylaws, regulations, policies, and procedures or in the exercise of any regulatory power, the corporation shall be exempt from the requirements of the Tennessee Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5;
- (4) To procure or to provide insurance;
- (5) To hold copyrights, trademarks, and service marks and enforce its rights with respect thereto;
- (6) To initiate, supervise, and administer the operation of the lottery in accordance with the provisions of this chapter and regulations, policies, and procedures adopted pursuant thereto;
- (7) To enter into written agreements with one (1) or more other states or sovereigns for the operation, participation in marketing, and promotion of a joint lottery or joint lottery games;
- (8) To conduct such market research as is necessary or appropriate, which may include an analysis of the demographic characteristics of the players of each lottery game and an analysis of advertising, promotion, public relations, incentives, and other aspects of communication;
- (9) To acquire or lease real property and make improvements thereon and acquire by lease or by purchase tangible personal property and intangible personal property;
- (10) To enter into contracts to incur debt in its own name and enter into financing agreements with the state, agencies or instrumentalities of the state, or

with any commercial bank or credit provider; provided that any such debt must be approved by the state funding board;

(11) To be authorized to administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence relative to any investigation or proceeding conducted by the corporation;

(12) To appoint and select officers, agents, and employees, including professional and administrative staff and personnel and hearing officers to conduct hearings required by this chapter, and to fix their compensation, pay their expenses, and provide a benefit program, including, but not limited to, a retirement plan and a group insurance plan; provided that the corporation may become a participating employer in the Tennessee consolidated retirement system pursuant to Section 4 of this act and may be eligible as a quasi-governmental organization for state group health insurance pursuant to § 8-27-207;

(13) To select and contract with vendors and retailers;

(14) To enter into contracts or agreements with the Tennessee Bureau of Investigation, local law enforcement agencies, appropriate federal agencies or private companies for the performance of criminal record checks, background investigations and security checks;

(15) To enter into contracts of any and all types on such terms and conditions as the corporation may determine;

(16) To establish and maintain banking and other financial relationships, including, but not limited to, establishment of checking and savings accounts and lines of credit;

(17) To advertise and promote the lottery and lottery games in a dignified and responsible manner;

(18) To act as a retailer, to conduct promotions which involve the dispensing of lottery tickets or shares, and to establish and operate sales facilities to sell lottery tickets or shares and any related merchandise;

(19) To establish and maintain regional offices; provided that there shall be at least one (1) such office in each grand division; and

(20) To adopt and amend such regulations, policies, and procedures as necessary to carry out and implement its powers and duties, organize and operate the corporation, regulate the conduct of lottery games in general, and any other matters necessary or desirable for the efficient and effective operation of the lottery or the convenience of the public. The promulgation of any such regulations, policies, and procedures shall be exempt from the requirements of the Tennessee Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(b) The provisions of Title 67, Chapter 4, Parts 7, 20 and 21 shall not apply to the activities of the corporation.

(c) The powers enumerated in subsection (a) of this section are cumulative of and in addition to those powers enumerated elsewhere in this chapter, and do not limit or restrict any other powers of the corporation.

Section 4-51-106. (a) (1) Investment of funds of the corporation shall be undertaken in a manner that first seeks to ensure preservation of principal, next ensures the liquidity needs of the corporation are met and, after satisfaction of the preceding objectives, seeks a market rate of return.

(2) Pursuant to § 4-51-105(a)(3), the corporation shall adopt an investment policy to govern the investment of assets consistent with the objectives listed in subdivision (1).

(3) A copy of such policy, and any revisions thereto, shall be filed with the state funding board.

(b) The corporation shall be authorized to invest in securities as provided in § 9-4-602; provided that if the business needs of the corporation necessitate investment in securities or classes of securities not specifically authorized in § 9-4-602, the corporation shall be authorized to invest in such additional securities or classes of securities after filing a statement with the state funding board describing the need for, and nature of, such additional security or classes of securities.

(c) The corporation is authorized, but not required, to invest its monies as part of the local government investment pool created in Title 9, Chapter 4, Part 7 and shall be deemed to be eligible for participation in such pool.

Section 4-51-107. (a) In accordance with § 4-51-105(a)(16), the corporation shall establish and maintain bank accounts only in institutions deemed to be a qualified public depository pursuant to Title 9, Chapter 4, Part 5; provided that if business needs dictate the establishment of accounts with an institution other than a qualified public depository, the corporation may create such accounts after filing a statement with the state funding board describing the business need for accounts at such an institution and the corporation's plan for securing funds on deposit with such an institution.

(b) For purposes of § 45-2-611, the corporation shall be considered a "governmental entity" and funds in its possession shall be deemed to be "public funds".

Section 4-51-108. (a) The board may adopt regulations, policies, and procedures regulating the conduct of lottery games in general, including, but not limited to, regulations, policies, and procedures specifying:

(1) The type of games to be conducted, including, but not limited to, instant lotteries, online games, and other games traditional to the lottery. Such games may include the selling of tickets or shares or the use of electronic or mechanical devices; provided that the board shall not approve, and the corporation shall not operate, video lottery as defined in § 4-51-102(8)(B);

(2) The sales price of tickets or shares and the manner of sale; provided that all sales shall be for cash only and that payment by checks, credit cards, charge cards or any form of deferred payment is prohibited. For the purposes of this subdivision, "cash" means coins or notes. Nothing in this part shall be construed as prohibiting or restricting the direct sale of lottery tickets or shares by the corporation through any form of payment and in any amount;

(3) The type, number and amount of prizes;

(4) The method and location of selecting or validating winning tickets or shares;

(5) The manner and time of payment of prizes, which may include lump sum payments or installments over a period of years;

(6) The manner of payment of prizes by the corporation or a lottery retailer to the holders of winning tickets or shares, including, without limitation, provision for payment of prizes not exceeding six hundred dollars (\$600) after deducting the price of the ticket or share and after performing validation procedures appropriate to the game and as specified by the board;

(7) The frequency of games and drawings or selection of winning tickets or shares;

(8) The means of conducting drawings;

(9) (A) The method to be used in selling tickets or shares, which may include the use of electronic or mechanical devices, but such devices shall only be placed in locations on the premises of the lottery retailer which are within the view of such retailer or an employee of such retailer and, if outside the area of immediate control of the retailer, such devices shall be equipped with technology allowing such retailer to remotely deactivate such device. All electronic or mechanical devices outside the area of immediate control of the retailer shall bear a conspicuous label at least twelve inches (12") in circumference prohibiting the use of such device by persons under eighteen (18) years of age, stating the following:

ATTENTION: STATE LAW STRICTLY PROHIBITS THE SALE OF LOTTERY TICKETS TO PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS; PROOF OF AGE MAY BE REQUIRED FOR PURCHASE.

* * *

ATENCION: POR LEY DEL ESTADO DE TENNESSEE ES ESTRICAMENTE PROHIBIDO VENDER BOLETAS DE LOTERIA A PERSONAS MENORES DE DIECIOCHO AÑOS; PRUEBA DE EDAD PUEDE SER REQUERIDA PARA COMPRARLAS.

(B) A lottery retailer who allows a person under eighteen (18) years of age to purchase a lottery ticket or share from an electronic or

mechanical device shall be subject to the penalties provided in § 39-17-602;

(10) The manner and amount of compensation to lottery retailers; and

(11) Any and all other matters necessary, desirable, or convenient toward ensuring the efficient and effective operation of lottery games, the continued entertainment and convenience of the public, and the integrity of the lottery.

(b) The board may delegate the adoption of regulations, policies, and procedures relating to the conduct of lottery games to the chief executive officer.

(c) The corporation shall not print on any lottery ticket a representation or likeness of the state flag, as provided in § 4-1-301, or the state seal, as provided in § 4-1-314.

Section 4-51-109. (a) The chief executive officer of the corporation shall direct and supervise all administrative and technical activities in accordance with the provisions of this chapter and with the regulations, policies, and procedures adopted by the board. It shall be the duty of the chief executive officer to:

(1) Facilitate the initiation and supervise and administer the operation of the lottery games;

(2) Employ and direct such personnel as deemed necessary;

(3) Employ by contract and compensate such persons and firms as deemed necessary;

(4) Promote or provide for promotion of the lottery and any functions related to the corporation;

(5) Prepare a budget for the approval of the board;

(6) Require bond from such retailers and vendors in such amounts as required by the board;

(7) Report quarterly to the state comptroller, the state treasurer, the legislative select committee created pursuant to Section 3 of this act and the board a full and complete statement of lottery revenues and expenses for the preceding quarter; and

(8) Perform other duties generally associated with a chief executive officer of a corporation of an entrepreneurial nature.

(b) The chief executive officer may for good cause suspend, revoke, or refuse to renew any contract entered into in accordance with the provisions of this chapter or the regulations, policies, and procedures of the board.

(c) The chief executive officer or his designee may conduct hearings and administer oaths to persons for the purpose of assuring the security or integrity of lottery operations or to determine the qualifications of or compliance by vendors and retailers.

(d) (1) No person shall serve as chief executive officer of the corporation who has been convicted of:

(A) Any felony;

(B) A misdemeanor involving gambling, theft, computer offenses, forgery, perjury, dishonesty or unlawfully selling or providing a product or substance to a minor;

(C) Any violation of this chapter; or

(D) Any offense in a federal court, military court or court of another state, territory or jurisdiction which under the laws of this state would disqualify such person pursuant to subdivisions (1)(A), (1)(B) or (1)(C).

(2) Prior to employment of a person as the chief executive officer, the board shall submit the names of potential chief executive officers to the Tennessee Bureau of Investigation and the Tennessee Bureau of Investigation, pursuant to § 38-6-109, shall conduct a criminal history records check on all such persons. The Tennessee Bureau of Investigation may contract with the federal bureau of investigation, other law enforcement agency or any other legally authorized entity to assist in such investigation. Such persons shall supply a fingerprint sample on request and in the manner requested by the investigating entity. The Tennessee Bureau of Investigation shall conduct such investigation as soon as practicable after submission of names by the board. The corporation shall pay, as an operating expense, the cost of the records check. The results of such a records check shall not be considered a record open to the public pursuant to Title 10, Chapter 7, Part 5.

(e) No person shall be selected to serve as the initial chief executive officer of the corporation who does not possess:

(1) At least two (2) years of experience as a chief executive officer or chief operating officer of a state lottery within the United States; or

(2) At least five (5) years of management level experience with a state lottery within the United States.

Section 4-51-110. (a) The corporation shall establish and maintain a personnel program for its employees and fix the compensation and terms of compensation of its employees, including, but not limited to, production incentive payments.

(b) No employee of the corporation shall have a financial interest in any vendor doing business or proposing to do business with the corporation.

(c) No employee of the corporation, with decision-making authority, shall participate in any decision involving a retailer with whom the employee has a financial interest.

(d) No employee of the corporation who leaves the employment of the corporation may represent any vendor or lottery retailer before the corporation for a period of two (2) years following termination of employment with the corporation.

(e) Prior to employment of a person as an employee of the corporation at the level of division director and above and at any level within the division of security and as otherwise required by the board, the chief executive officer, or such officer's designee, shall submit the names of potential employees to the Tennessee Bureau of Investigation and the Tennessee Bureau of Investigation, pursuant to § 38-6-109, shall conduct a criminal history records check on all such persons. The Tennessee Bureau of Investigation may contract with the federal bureau of investigation, other law enforcement agency or any other legally authorized entity to assist in such investigation. Such persons shall supply a fingerprint sample on request and in the manner requested by the investigating entity. The Tennessee Bureau of Investigation shall conduct such investigation as soon as practicable after submission of names by the chief executive officer or such officer's designee. The corporation shall pay, as an operating expense, the cost of the records check. The results of such a records check shall not be considered a record open to the public pursuant to Title 10, Chapter 7, Part 5.

(f) No person shall be employed by the corporation who has been convicted of:

(1) Any felony;

(2) A misdemeanor involving gambling, theft, computer offenses, forgery, perjury, dishonesty or unlawfully selling or providing a product or substance to a minor;

(3) Any violation of this chapter; or

(4) Any offense in a federal court, military court or court of another state, territory or jurisdiction which under the laws of this state would disqualify such person pursuant to subdivisions (1), (2) or (3).

(g) The corporation shall bond corporation employees with access to corporation funds or lottery revenue in such an amount as provided by the board and may bond other employees as deemed necessary.

Section 4-51-111. (a) (1) All lottery proceeds shall be the property of the corporation.

(2) From its lottery proceeds the corporation shall pay the operating expenses of the corporation. As nearly as practical, at least fifty percent (50%) of the amount of money from the actual sale of lottery tickets or shares shall be made available as prize money; provided that this subdivision shall not be deemed to create any lien, entitlement, cause of action, or other private right, and any rights of holders of tickets or shares shall be determined by the corporation in setting the terms of its lottery or lotteries.

(3) As nearly as practical, for each fiscal year, net lottery proceeds shall equal at least thirty-five percent (35%) of the lottery proceeds or an amount that maximizes net lottery proceeds; provided that for the first two (2) full fiscal years and any partial first fiscal year of the corporation, net lottery proceeds need only equal, as nearly as practical, thirty percent (30%) of the lottery proceeds. If, after the second full fiscal year, the corporation determines that an amount that maximizes net lottery proceeds is less than thirty-five percent (35%) of the lottery proceeds, then, immediately upon making such determination, the corporation shall file with the state funding board a statement of reasons supporting such determination and a projection of such amount.

(b) (1) There is created within the state treasury a "lottery for education account". Amounts remaining in the account at the end of each fiscal year shall not revert to the general fund. Money in the account shall be invested by the state treasurer pursuant to Title 9, Chapter 4, Part 6 for the sole benefit of the account. All earnings attributable to such investments shall be credited to the lottery for education account.

(2) On or before the fifteenth day of the first month of each quarter, the corporation shall transfer to the state treasury, for credit to the lottery for education account, an amount representing the net lottery proceeds for the immediately preceding quarter. Upon deposit into the state treasury, net lottery proceeds shall become the unencumbered property of the state of Tennessee and the corporation shall have no power to agree or undertake otherwise. Except as otherwise provided in subdivision (3), such funds shall be expended for education programs and purposes in accordance with Article XI, Section 5 of the Constitution of Tennessee.

(3) (A) A general shortfall reserve subaccount shall be maintained within the lottery for education account.

(B) Except as provided in subdivision (D) of this subsection, the amount of the general shortfall reserve subaccount shall equal five percent (5%) of net lottery proceeds deposited into the lottery for education account from all deposits made to the fund from the initial deposit until the last deposit made in fiscal year 2007-2008. Transfers to the general shortfall reserve subaccount shall be made from the lottery for education account quarterly until the end of such fiscal year. Thereafter, only an amount necessary to maintain the general shortfall reserve subaccount in an amount equal to such accumulated total shall be deposited into the subaccount.

(C) If the net lottery proceeds deposited into the lottery for education account in any year, exclusive of the amount in the general shortfall reserve subaccount, are not sufficient to meet the amount appropriated for educational programs and purposes pursuant to subsection (c) of this section, the general shortfall reserve subaccount may be drawn upon to meet the deficiency; provided that reserves in the account shall be used first for any shortfall in the amount appropriated to the educational scholarship program and then to any other educational

programs and purposes otherwise provided by law for which net lottery proceeds may be expended. In the event it becomes necessary to draw from the general shortfall reserve subaccount in any fiscal year for educational programs and purposes, such programs and purposes shall be reviewed and shall be reduced to the amount of available net lottery proceeds, exclusive of the general shortfall reserve subaccount, estimated to be available in the next fiscal year. In the event the general shortfall reserve subaccount is drawn upon in any fiscal year, the subaccount shall be brought back to its prior level in subsequent fiscal years. Five percent (5%) of net lottery proceeds shall be deposited into the lottery for education account each quarter until the amount of the general shortfall reserve subaccount equals the accumulated total prior to being drawn upon. Notwithstanding any provision of this subdivision to the contrary, the program reduction and repayment provisions of this subdivision shall not be triggered if amounts in excess of the accumulated total are recommended for appropriation pursuant to subdivision (D) of this subsection.

(D) In addition to the amount provided pursuant to subdivision (B) of this subsection, the funding board may recommend appropriation of funds to the general shortfall reserve subaccount if such fund is deemed inadequate. The funding board may recommend appropriation of funds from the general shortfall reserve subaccount if adequate funds are deemed to be available in the general shortfall reserve subaccount and if such funds are needed for educational programs and purposes consistent with Article XI, Section 5 of the Constitution of Tennessee; provided that "adequate funds" shall not be deemed to be available if such recommended appropriation would reduce the general shortfall reserve account below the accumulated total amount established by the provisions of subdivision (B) of this subsection.

(4) A special reserve subaccount shall be maintained within the lottery for education account. The amount of the special reserve subaccount shall be equal to one percent (1%) of net lottery proceeds deposited into the lottery for education account from all deposits made to the fund from the initial deposit until the last deposit made in fiscal year 2007-2008. Transfers to the special reserve subaccount shall be made from the lottery for education account quarterly until the end of such fiscal year. The amount in the special reserve subaccount may be used to make or support loans to local government units for educational programs and purposes in accordance with Article XI, Section 5 of the Constitution of Tennessee and to pay or secure debt issued for such programs and purposes as otherwise provided by law. Such amount shall supplement, not supplant, non-lottery educational resources for such programs and purposes. Notwithstanding any provision of this section to the contrary, treasurer's earnings on the special reserve subaccount shall be credited to the special reserve subaccount to be used in a manner consistent with this subdivision.

(c) (1) No later than the date upon which the state funding board presents state revenue estimates to the Governor pursuant to § 9-4-5202(e)(3) in 2003, the funding board shall establish a projected revenue range for net lottery proceeds for the remainder of the current fiscal year and the next succeeding fiscal year.

No later than the date of presentation of such estimates to the Governor by the state funding board in all subsequent years, the funding board shall project the revenue for net lottery proceeds for the remainder of the then current fiscal year and the next succeeding fiscal year. Such projection shall be made in the same manner as other state revenues are projected by the funding board, which figure may be adjusted prior to the enactment of the General Appropriations Act. In making such projections, the funding board shall recognize unusual fluctuations in lottery proceeds. In making such projections, the funding board is authorized to obtain information from those having expertise and experience in projecting revenue from the sale of lottery tickets or shares.

(2) (A) Before December 15, 2003, and before December 15 in each succeeding year, the Tennessee student assistance corporation shall prepare a report setting forth an estimate of the total cost of lottery related financial assistance to be provided to Tennessee citizens during the next fiscal year pursuant to the provisions of Senate Bill No. 437 / House Bill No. 787, Chapter No. __ of the Public Acts of 2003. Such report shall include the major assumptions and the methodology used in arriving at such estimate. For the report due in December 2003, the Tennessee student assistance corporation shall base its estimate of total costs on the award values established pursuant to the provisions of Senate Bill No. 437 / House Bill No. 787, Chapter No. __ of the Public Acts of 2003. For subsequent reports, the Tennessee student assistance corporation shall base its estimate of total costs on the award values in effect at the time the report is prepared. The Tennessee higher education commission, the board of trustees of the university of Tennessee system, the state board of regents, the Department of Education and the Tennessee independent college and universities association shall provide the Tennessee student assistance corporation with such information as is needed to prepare its report. The Tennessee student assistance corporation shall deliver its report to the Governor, the funding board, the Speaker of the Senate, the Speaker of the House of Representatives, the chairs of the Senate and House Finance, Ways and Means committees, the chairs of the Senate and House Education Committees and to the members of the select committee on the Tennessee education lottery corporation.

(B) Before December 15, 2003, and before December 15 in each succeeding year, appropriate state agencies shall submit to the funding board and to the Governor their recommendations for other educational programs and purposes consistent with Article XI, Section 5 of the Tennessee Constitution based on the difference between the funding board's projections and recommendations for the lottery scholarship program based on the report submitted pursuant to subdivision (A). In no event shall such recommendations exceed the projections of the funding board for a specific fiscal year.

(3) (A) The Governor shall submit to the General Assembly in the annual budget document prepared pursuant to Title 9, Chapter 4, Part 51 recommendations concerning the distributions to be made from the lottery for education account based on the projections of the funding board, including recommended appropriations by the funding board from the

general shortfall reserve subaccount, if any, and any treasurer's earnings credited to the lottery for education account.

(B) In a separate budget category entitled "net education lottery proceeds", the Governor shall estimate the amount of net lottery proceeds and treasurer's earnings thereon to be credited to the lottery for education account during the fiscal year and the amount of unappropriated surplus estimated to be accrued in the account at the beginning of the fiscal year. The sum of estimated net lottery proceeds, treasurer's earnings thereon, and unappropriated surplus shall be designated "net education lottery proceeds".

(C) In the budget document, the Governor shall submit specific recommendations as to the educational programs and purposes for which appropriations should be made from the lottery for education account. Such recommendation shall include the specific value of each category of awards to be offered pursuant to the provisions of Senate Bill No. 437 / House Bill No. 787, Chapter No. ___ of the Public Acts of 2003. The recommendation for each category of award shall be the value of such award as set in the previous General Appropriations Act unless such value, based on the estimates of TSAC and the funding board, should be adjusted in a manner consistent with the provisions of Senate Bill 437 No. / House Bill No. 787, Chapter No. ___ of the Public Acts of 2003 and the provisions of this act.

(D) The Governor's recommendations as to the educational programs and purposes for which appropriations should be made in accordance with the provisions of this subdivision shall be referred to the education committees of both houses for recommendation and comments prior to final action by the Finance, Ways and Means Committees of both houses on the General Appropriations Act.

(4) The General Assembly shall appropriate from the lottery for education account by specific reference to it, or by reference to "net education lottery proceeds". All appropriations to any particular budget unit shall be made together in a separate part entitled, identified, administered and accounted for separately as a distinct budget unit for net education lottery proceeds. Such appropriations shall otherwise be made in the manner required by law for appropriations.

(5) It is the intent of the General Assembly that appropriations from the lottery for education account shall be allocated and expended for educational programs and purposes only in accordance with Article XI, Section 5 of the Constitution of Tennessee. Such net education lottery proceeds shall be used to supplement, not supplant, existing resources for educational programs and purposes.

(d) Any funds appropriated, but not expended, for educational programs or purposes from the lottery for education account or from the general shortfall reserve subaccount shall not revert to the general fund at the end of the fiscal year but shall be credited, respectively, to the lottery for education account or the general shortfall reserve

subaccount and retained there until allocated and appropriated as provided in subsections (b)(3) and (c).

(e) In compliance with the requirement of this act that there shall be a separate accounting of net education lottery proceeds, no deficiency in the lottery for education account shall be replenished by book entries reducing any non-lottery reserve of general funds, including specifically but without limitation the reserve for revenue fluctuations or other reserve accounts established by law; nor shall any program or project started specifically from net education lottery proceeds be continued from the general fund; such programs must be adjusted or discontinued according to available net education lottery proceeds unless the General Assembly by general law establishes eligibility requirements and appropriates specific other funds within the General Appropriations Act; nor shall any non-lottery surplus in the general fund be reduced. No surplus in the lottery for education account shall be reduced to correct any non-lottery deficiencies in sums available for general appropriations, and no surplus in the lottery for education account shall be included in any revenue or surplus calculated for setting aside any additional funds in the reserve for revenue fluctuations as provided in § 9-4-211.

(f) (1) There is created a special account in the state treasury to be known as the "after school programs special account", hereinafter referred to as the "after school account". In accordance with § 4-51-123, fifty percent (50%) of monies constituting an unclaimed prize shall be deposited in the after school account at the end of each fiscal year.

(2) In any fiscal year in which the financial assistance program for attendance at post-secondary educational institutions located within this state is funded pursuant to Title 49, Chapter 4, Part 9, and excess is available from net lottery proceeds for other educational purposes and projects consistent with Article XI, § 5 of the Constitution of Tennessee, then in any such fiscal year monies in the after school account may be appropriated by the General Assembly from such account pursuant to subdivision (3).

(3) Monies in the after school account shall be used exclusively for after school programs consistent with Article XI, § 5 of the Constitution of Tennessee. Such monies shall supplement, not supplant, non-lottery educational resources for after school educational programs and purposes. The General Assembly shall appropriate from the after school programs special account by specific reference to it, or by reference to the "after school account". Such appropriations shall otherwise be made in the manner required by law for appropriations.

(4) Any reserve balance remaining unexpended at the end of a fiscal year in the after school account shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

(5) Notwithstanding any provision of this section to the contrary, interest accruing on investments and deposits of the after school account shall be credited to such account, shall not revert to the general fund and shall be carried forward into the subsequent fiscal year.

(6) Monies in the after school account shall be invested by the state treasurer in accordance with the provisions of § 9-4-603.

Section 4-51-112. (a) It is the intent of the General Assembly that the corporation encourage participation by minority-owned businesses. Accordingly, the board of directors shall adopt a plan which achieves to the greatest extent possible a level of participation by minority-owned businesses taking into account the total number of all retailers and vendors, including any subcontractors. The corporation is authorized and directed to undertake training programs and other educational activities to enable such minority-owned businesses to compete for contracts on an equal basis. The corporation will strive to maximize participation of minority-owned businesses to achieve a minimum participation goal of fifteen percent (15%) through both prime and second tier business contracting opportunities. The board shall monitor the results of minority-owned business participation and shall report the results of minority-owned business participation to the General Assembly at least on an annual basis.

(b) (1) The chairperson of the board, in consultation with the board of directors, shall appoint an advisory council on minority business participation. The council shall be composed of nine (9) citizens, three (3) of whom shall be appointed from and represent each grand division of the state. The membership of the council shall collectively reflect a richness of diversity in professional and business experience, educational attainment, ethnicity, race, gender, heritage, and socio-economic perspective.

(2) The advisory council on minority business participation shall serve as an educational, research and technical resource for the board of directors. It shall be a duty of the council to solicit, analyze and present the views and concerns of minority business owners throughout the state. The council may report to the board of directors or to the legislative select committee in writing at any time. The board of directors may invite the council to present oral testimony to the board of directors at any meeting of the board.

(3) The advisory council on minority business participation shall annually elect from its membership a chair, a vice chair and such other officers, as it deems necessary. The council shall meet at least quarterly at the call of the chair. The organizational meeting of the advisory board shall be convened by the chair of the board of directors.

(4) Members appointed to the advisory council shall each serve regular terms of three (3) years; provided, however, in order to stagger such terms, three (3) of the initial appointees shall serve terms of two (2) years, and three (3) of the initial appointees shall serve terms of one (1) year.

(5) The advisory council on minority business participation shall establish its own rules and internal operating procedures. As an operating expense of the corporation, members of the advisory council shall receive a per diem not to exceed the per diem provided to members of the General Assembly pursuant to § 3-1-106, for each day's service spent in the performance of the duties and responsibilities of the advisory council.

Section 4-51-113. (a) The corporation shall investigate the financial responsibility, security, and integrity of any lottery system vendor who is a finalist in submitting a bid, proposal, or offer as part of a major procurement. At the time of

submitting such bid, proposal, or offer to the corporation, the corporation shall require the following items:

(1) A disclosure of the vendor's name and address and, as applicable, the names and addresses of the following:

(A) If the vendor is a corporation, the officers, directors, and each stockholder in such corporation; provided that in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially one percent (1%) or more of such securities need be disclosed;

(B) If the vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust;

(C) If the vendor is an association, the members, officers, and directors; and

(D) If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.

(2) A disclosure of all the states and jurisdictions in which the vendor does business and the nature of the business in each such state or jurisdiction;

(3) A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including, but not limited to, lottery goods and services, and the nature of the goods or services involved for each such state or jurisdiction;

(4) A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license of any kind or had fines or penalties assessed to the vendor's license, contract, or operation and the disposition of such in each such state or jurisdiction. If any lottery or gaming license or contract has been revoked or has not been renewed or any lottery or gaming license or application has been either denied or is pending and has remained pending for more than six (6) months, all of the facts and circumstances underlying the failure to receive such a license shall be disclosed;

(5) (A) A disclosure of the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court, or in another jurisdiction, of the vendor for any felony or any other criminal offense other than a traffic violation;

(B) A disclosure of the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court, or in another jurisdiction, of any present employee, or past employee within ten (10) years, of the vendor for any felony or misdemeanor involving gambling, theft, computer offenses, forgery, perjury, dishonesty or unlawfully selling or providing a product or substance to a minor.

(6) A disclosure of the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the vendor;

(7) A disclosure of the vendor's minority-owned business participation plan, if a portion of the vendor's contract is to be subcontracted pursuant to the provisions of the proposal or, if at any time thereafter, a portion of such vendor's contract is subcontracted; and

(8) Such additional disclosures and information as the corporation may determine to be appropriate for the procurement involved.

(b) If ten percent (10%) or more of the cost of a vendor's contract is subcontracted, the vendor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a vendor.

(c) A lottery procurement contract shall not be entered into with any lottery system vendor who has not complied with the disclosure requirements described in subsections (a) and (b) of this section and any contract with such a vendor is voidable at the option of the corporation. Any contract with a vendor who does not comply with such requirements for periodically updating such disclosures during the tenure of contract as may be specified in such contract may be terminated by the corporation. The provisions of this section shall be construed broadly and liberally to achieve the ends of full disclosure of all information necessary to allow for a full and complete evaluation by the corporation of the competence, integrity, background, and character of vendors for major procurements.

(d) A major procurement contract shall not be entered into with any vendor who has been found guilty of a felony related to the security or integrity of a lottery in this or any other jurisdiction.

(e) A major procurement contract shall not be entered into with any vendor if such vendor has an ownership interest in an entity that had supplied consultation services under contract to the corporation regarding the request for proposals pertaining to those particular goods or services.

(f) For the purposes of this chapter, "jurisdiction" includes, but is not limited to:

(1) Any Native American tribal government;

(2) Any governmental body at the national, state or local level in the United States or its territories and possessions; and

(3) Any governmental body at the national or state, or its equivalent, level in any other country.

(g) No lottery system vendor nor any applicant for a major procurement contract may pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars (\$100) in any calendar year, to any director, the chief

executive officer or any employee of the corporation, or to a member of the immediate family of any such person.

(h) Notwithstanding any provision of this part to the contrary, no applicant for a major procurement contract, or any person employed by such applicant, may contact or otherwise solicit a member of the board of directors individually during the application and selection process for such contract. All contact and other solicitations made by an applicant for a major procurement contract, or any person employed by such applicant, shall be directed to the board as a whole.

Section 4-51-114. (a) (1) Except as provided in subdivision (2), each vendor shall, at the execution of the contract with the corporation, post a performance bond or letter of credit from a bank or credit provider acceptable to the corporation in an amount as deemed necessary by the corporation for that particular bid or contract. In lieu of the bond, a vendor may, to assure the faithful performance of its obligations, deposit and maintain with the corporation securities that are interest bearing or accruing and that are rated in one (1) of the three (3) highest classifications by an established nationally recognized investment rating service. Securities eligible under this section are limited to:

(A) Certificates of deposit issued by solvent banks or savings associations approved by the corporation and which are organized and existing under the laws of this state or under the laws of the United States;

(B) United States bonds, notes, and bills for which the full faith and credit of the government of the United States is pledged for the payment of principal and interest; and

(C) Corporate bonds approved by the corporation. The corporation that issued the bonds shall not be an affiliate or subsidiary of the depositor.

Such securities shall be held in trust and shall have at all times a market value at least equal to the full amount estimated to be paid annually to the lottery vendor under contract.

(2) Because of certain economic considerations, minority businesses may not be able financially to comply with the bonding, deposit of securities, or letter of credit requirements of subdivision (1). In order to assure minority participation in major procurement contracts to the most feasible and practicable extent possible, the chief executive officer is authorized and directed to waive the bonding, deposit of securities, and letter of credit requirements of subdivision (1) for a period of five (5) years from the time that a minority business enters into a major procurement contract for any minority business which substantiates financial hardship pursuant to the policies and procedures established by the board.

(b) Each vendor shall be qualified to do business in this state and shall file appropriate tax returns as provided by the laws of this state. All contracts under this section shall be governed by the laws of Tennessee.

(c) No contract shall be let with any vendor in which a public officer, as covered in § 8-50-501(a), or an employee of such officer, has an ownership interest of one percent (1%) or more.

Section 4-51-115. (a) The General Assembly recognizes that to conduct a successful lottery, the corporation must develop and maintain a state-wide network of lottery retailers that will serve the public convenience and promote the sale of tickets or shares and the playing of lottery games while ensuring the integrity of the lottery operations, games, and activities.

(b) The corporation shall make every effort to provide small retailers a chance to participate in the sales of lottery tickets or shares.

(c) (1) The corporation shall provide for compensation to lottery retailers in the form of commissions for the sale and cashing of lottery tickets or shares in an amount of not less than six and one-half percent (6 ½ %) of gross sales. Each lottery retailer shall be required to cash lottery tickets or shares up to the amount authorized pursuant to § 4-51-108(a)(6) in the manner adopted by regulation, policy, or procedure of the board but shall be paid no additional compensation for cashing such lottery tickets or shares.

(2) In addition to the commissions for services rendered by lottery retailers pursuant to subdivision (1), the corporation may provide for other forms of compensation for services rendered by lottery retailers relating to the sale of lottery tickets or shares.

(d) The corporation shall issue a certificate of authority to each person with whom it contracts as a retailer for purposes of display; provided that if a retailer contract permits sales at multiple locations, a separate certificate shall be issued for each authorized location. Every lottery retailer shall post and keep conspicuously displayed in a location on the premises where lottery tickets or shares are sold, and accessible to the public, its certificate of authority. No certificate shall be assignable or transferable.

(e) Notwithstanding any provision of law to the contrary, no business seeking to become a lottery retailer shall be prohibited from applying to the corporation, and if successful in such application, from selling lottery tickets or shares, including, but not limited to, businesses licensed pursuant to Title 57, Chapter 3, Part 2; provided that the corporation shall not issue, sell or authorize the sale of lottery tickets at any location licensed to provide deferred presentment services pursuant to Title 45, Chapter 17, Part 1, or to any pawnshop, as defined in § 45-6-203, or to any business engaged exclusively in the business of selling lottery tickets or shares; provided further that this subsection shall not preclude the corporation from selling or giving away lottery tickets or shares.

(f) The board shall develop a list of objective criteria upon which the qualification of lottery retailers shall be based. Separate criteria shall be developed to govern the selection of retailers of instant tickets and on-line retailers. In developing these criteria, the board shall consider such factors as the applicant's financial responsibility, security of the applicant's place of business or activity, accessibility to the public, integrity, and reputation. The board shall not consider political affiliation, activities, or monetary

contributions to political organizations or candidates for any public office. The criteria shall include, but not be limited to, the following:

(1) The applicant shall be current in filing all applicable tax returns to the state of Tennessee and in payment of all taxes, interest, and penalties owed to the state of Tennessee, excluding items under formal appeal pursuant to applicable statutes. The Department of Revenue is authorized and directed to provide this information to the corporation upon request;

(2) No person, partnership, unincorporated association, corporation, including the board and executive officers thereof, or other business entity shall be selected as a lottery retailer who:

(A) Has been convicted of a criminal offense related to the security or integrity of a lottery in this state or any other jurisdiction;

(B) Has been convicted of any felony involving gambling or any misdemeanor involving gambling, theft, computer offenses, forgery, perjury, dishonesty or unlawfully selling or providing a product or substance to a minor in this state or any other jurisdiction unless such person's civil rights have been restored or at least five (5) years have elapsed from the date of the completion of the sentence without a subsequent conviction of a crime described in this subdivision (2)(B);

(C) Has been found to have violated the provisions of this chapter or any regulation, policy, or procedure of the corporation unless either ten (10) years have passed since the violation or the board finds the violation both minor and unintentional in nature;

(D) Is a vendor or any employee or agent of any vendor doing business with the corporation;

(E) Resides in the same household as a director or an officer of the corporation; or

(F) Has made a statement of material fact to the corporation knowing such statement to be false.

(g) (1) Persons applying to become lottery retailers shall be charged a uniform application fee for each lottery outlet. Retailers who participate in on-line games shall be charged a uniform application fee for each on-line outlet;

(2) Any lottery retailer contract executed pursuant to this section may, for good cause, be suspended, revoked, or terminated by the chief executive officer, or such officer's designee, if the retailer is found to have violated any provision of this chapter or objective criteria established by the board. Review of such activities shall be in accordance with the procedures outlined in this chapter and shall not be subject to the Tennessee Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5;

(3) All lottery retailer contracts shall be renewable annually unless, in the discretion of the corporation, sooner canceled or terminated. At the time of renewal, the corporation shall review the lottery retailer's compliance with the provisions of this chapter and Title 39, Chapter 17, Part 6. The corporation shall renew such contracts only if the lottery retailer is in compliance with the provisions of this chapter and Title 39, Chapter 17, Part 6 and would otherwise be eligible to be a lottery retailer pursuant to the provisions of this chapter and the terms of the retailer's contract; provided that a violation of the provisions of Title 39, Chapter 17, Part 6 by an employee of a lottery retailer shall only prohibit the issuance of a certificate of authority for the specific location of such violation for a period of one (1) year from the date of conviction unless, in the case of a lottery retailer operating multiple locations and in the discretion of the corporation, the entire contract should be canceled or terminated as otherwise provided by this chapter or by the retailer's contract.

(h) No lottery retailer or applicant to be a lottery retailer shall pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars (\$100) in any calendar year, to any director, the chief executive officer or any employee of the corporation, or to a member of the immediate family of any such person.

Section 4-51-116. (a) The chairperson of the board of directors shall appoint a lottery retailer advisory board to be composed of twelve (12) lottery retailers, four (4) from each grand division, representing the broadest possible spectrum of geographical, racial and business characteristics of lottery retailers. The function of the advisory board shall be to advise the board of directors on retail aspects of the lottery and to present the concerns of lottery retailers throughout the state.

(b) Members appointed to the lottery retailer advisory board shall serve terms of two (2) years; provided that six (6) of the initial appointees shall serve terms of one (1) year.

(c) The advisory board shall establish its own rules and internal operating procedures. The advisory board may report to the board of directors or to the legislative select committee in writing at any time. The board of directors may invite the advisory board to make an oral presentation to the board of directors at regular meetings of the board.

(d) As an operating expense of the corporation, members of the advisory board shall receive a per diem not to exceed the per diem provided to members of the General Assembly pursuant to § 3-1-106, for each day's service spent in the performance of the duties and responsibilities of the advisory board.

Section 4-51-117. (a) No lottery retailer contract shall be transferable or assignable.

(b) No lottery retailer shall contract with any person for lottery goods or services except with the approval of the board.

(c) Lottery tickets and shares shall only be sold by the retailer stated on the lottery retailer certificate of authority.

Section 4-51-118. (a) The corporation may establish a fidelity fund separate from all other funds and shall assess each retailer a one-time fee not to exceed one hundred dollars (\$100) per sales location. In accordance with § 4-51-106, the corporation is authorized to invest the funds or place such funds in one (1) or more interest-bearing accounts. Moneys deposited to the fund may be used to cover losses the corporation experiences due to nonfeasance, misfeasance or malfeasance of a lottery retailer. In addition, the funds may be used to purchase blanket bonds covering the corporation against losses from all lottery retailers. At the end of each fiscal year, the corporation shall pay to the lottery for education account any amount in the fidelity fund that exceeds five hundred thousand dollars (\$500,000), and such funds shall be commingled with and treated as net proceeds from the lottery.

(b) A reserve account may be established as a general operating expense account to cover amounts deemed uncollectable. The corporation shall establish procedures for minimizing any losses that may be experienced for the foregoing reasons and shall exercise and exhaust all available options in such procedures prior to amounts being written off to this account.

(c) (1) The corporation may require any retailer to post an appropriate bond, as determined by the corporation, using an insurance company acceptable to the corporation; provided that after one (1) full fiscal year of lottery operations the amount of any such bond shall not exceed the applicable district sales average of lottery tickets for two (2) quarterly billing periods.

(2) In its discretion, the corporation may allow a retailer to deposit and maintain with the corporation securities that are interest bearing or accruing. Securities eligible under this paragraph shall be limited to:

(A) Certificates of deposit issued by solvent banks or savings associations organized and existing under the laws of this state or under the laws of the United States;

(B) United States bonds, notes, and bills for which the full faith and credit of the United States is pledged for the payment of principal and interest;

(C) Federal agency securities by an agency or instrumentality of the United States government.

(3) Such securities shall be held in trust in the name of the corporation.

Section 4-51-119. (a) Any retail contract executed by the corporation pursuant to this chapter shall specify the reasons for which a contract may be canceled, suspended, revoked, or terminated by the corporation, which reasons shall include, but not be limited to:

(1) Commission of a violation of this chapter, a regulation, or a policy or procedure of the corporation;

- (2) Commission of a violation of Title 39, Chapter 17, Part 6, relative to lottery offenses;
- (3) Failure to accurately or timely account for lottery tickets, lottery games, revenues, or prizes as required by the corporation;
- (4) Commission of any fraud, deceit, or misrepresentation;
- (5) Insufficient sales;
- (6) Conduct prejudicial to public confidence in the lottery;
- (7) The retailer filing for or being placed in bankruptcy or receivership;
- (8) Any material change as determined in the sole discretion of the corporation in any matter considered by the corporation in executing the contract with the retailer; or
- (9) Failure to meet any of the objective criteria established by the corporation pursuant to this chapter.

(b) If, in the discretion of the chief executive officer, or such officer's designee, cancellation, denial, revocation, suspension or rejection of renewal of a lottery retailer contract is in the best interest of the lottery, the public welfare or the state of Tennessee, the chief executive officer, or such officer's designee, may cancel, suspend, revoke or terminate, after notice and a right to a hearing, any contract issued pursuant to this chapter. Such contract may, however, be temporarily suspended by the chief executive officer or his designee without prior notice pending any prosecution, hearing or investigation, whether by a third party or by the chief executive office. A contract may be suspended, revoked or terminated by the chief executive officer, or such officer's designee, for any one (1) or more of the reasons enumerated in this section. Any hearing held shall be conducted by the chief executive officer or such officer's designee. A party to the contract aggrieved by the decision of the chief executive officer, or such officer's designee, may appeal the adverse decision to the board. Such appeal shall be pursuant to the regulations, policies and procedures set by the board and is not subject to the Tennessee Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

Section 4-51-120. (a) All proceeds from the sale of the lottery tickets or shares shall constitute a trust fund until paid to the corporation either directly or through the corporation's authorized collection representative. A lottery retailer and officers of a lottery retailer's business shall have a fiduciary duty to preserve and account for lottery proceeds and lottery retailers shall be personally liable for all proceeds. Proceeds shall include unsold instant tickets received by a lottery retailer and cash proceeds of the sale of any lottery products, net of allowable sales commissions and credit for lottery prizes sold to or paid to winners by lottery retailers. Sales proceeds and unused instant tickets shall be delivered to the corporation or its authorized collection representative upon demand.

(b) Pursuant to § 4-51-105(a)(3), the corporation shall adopt and enforce policies designed to safeguard and limit the opportunity for loss of lottery proceeds which are not in the possession of the corporation. Such policies may include, but are not limited to:

- (1) Requirements governing financial institutions into which retailers shall deposit lottery proceeds;
- (2) Requirements for the establishment of separate accounts for the deposit of lottery proceeds by retailers;
- (3) The timing of deposit of lottery proceeds by retailers; and
- (4) The timing of withdrawal of funds from retailer accounts by the corporation.

Any such policies, and any revisions thereto, shall be filed with the state funding board.

(c) Notwithstanding any provision of law to the contrary, whenever any person who receives proceeds from the sale of lottery tickets or shares in the capacity of a lottery retailer becomes insolvent or dies insolvent, the proceeds due the corporation from such person or his estate shall have preference over all debts or demands.

Section 4-51-121. If a lottery retailer's rental payments for the business premises are contractually computed, in whole or in part, on the basis of a percentage of retail sales and such computation of retail sales is not explicitly defined to include sales of tickets or shares in a state-operated or state-managed lottery, only the compensation received by the lottery retailer from the corporation may be considered the amount of the lottery retail sale for purposes of computing the rental payment.

Section 4-51-122. (a) In accordance with Title 39, Chapter 17, Part 6:

- (1) No person shall sell a ticket or share at a price other than established by the corporation unless authorized in writing by the chief executive officer.
- (2) No person, other than a duly certified lottery retailer, shall sell lottery tickets or shares.
- (3) This subsection shall not be construed to prevent a person who may lawfully purchase tickets or shares from making a gift of lottery tickets or shares to another.
- (4) This subsection shall not be construed to prevent a merchant who may lawfully purchase tickets or shares from making a gift of lottery tickets or shares as a means of promoting goods or services to customers or prospective customers subject to prior approval by the corporation.
- (5) This subsection shall not be construed to prohibit the corporation from designating certain of its agents and employees to sell or give lottery tickets or shares directly to the public.

(b) No lottery retailer shall sell a lottery ticket or share except from the locations listed in the retailer's contract and as evidenced by the retailer's certificate of authorization unless the corporation authorizes in writing any temporary location not listed in the retailer's contract.

(c) In accordance with Title 39, Chapter 17, Part 6, no lottery tickets or shares shall be sold to persons under eighteen (18) years of age; provided that nothing in this chapter or title 39, chapter 17, part 6, prohibits the purchase of a lottery ticket or share by a person eighteen (18) years of age or older for the purpose of making a gift to any person of any age. In such case, the corporation shall direct payment of proceeds of any lottery prize to an adult member of the person's family or a legal representative of the person on behalf of such person.

Section 4-51-123. (a) Except as otherwise provided in Part 2 of this chapter, attachments, garnishments, or executions authorized and issued pursuant to law shall be withheld from proceeds of any lottery prize if timely served upon the corporation.

(b) Subsection (a) shall not apply to a retailer.

(c) The corporation shall adopt regulations, policies, and procedures to establish a system of verifying the validity of lottery tickets or shares claimed to win prizes and to effect payment of such prizes, except that:

(1) No prize, any portion of a prize, or any right of any person to a prize awarded shall be assignable. Any prize or any portion of a prize remaining unpaid at the death of a prize winner shall be paid to the estate of the deceased prize winner or to the trustee of a trust established by the deceased prize winner as settlor if a copy of the trust document or instrument has been filed with the corporation along with a notarized letter of direction from the settlor and no written notice of revocation has been received by the corporation prior to the settlor's death. Following a settlor's death and prior to any payment to such a successor trustee, the corporation shall obtain from the trustee a written agreement to indemnify and hold the corporation harmless with respect to any claims that may be asserted against the corporation arising from payment to or through the trust. Notwithstanding any other provisions of this section to the contrary, any person, pursuant to an appropriate judicial order, shall be paid the prize to which a winner is entitled;

(2) No prize shall be paid:

(A) Arising from claimed tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the corporation within applicable deadlines;

(B) Lacking in captions that conform and agree with the play symbols as appropriate to the particular lottery game involved; or

(C) Not in compliance with such additional specific regulations and public or confidential validation and security tests of the corporation appropriate to the particular lottery game involved.

(3) No particular prize in any lottery game shall be paid more than once and, in the event of a determination that more than one (1) claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them of an equal share in the prize; and

(4) (A) A holder of a winning cash ticket or share from any lottery game conducted by a drawing shall claim a cash prize within one (1) year after the drawing in which the cash prize was won. If a multistate or multisoovereign lottery game requires, by rule or regulation, a period of time less than one (1) year for redemption of a winning ticket, such period shall apply for that lottery game.

(B) In any Tennessee lottery game in which the player may determine instantly if he has won or lost, such player shall claim a cash prize within ninety (90) days, or for a multistate or multisovereign lottery game within one hundred eighty (180) days, after the end of the lottery game.

(C) If a valid claim is not made for a cash prize within the applicable period, the cash prize shall constitute an unclaimed prize for purposes of this section.

(d) No prize shall be paid upon a ticket or share purchased or sold in violation of this chapter. Any such prize shall constitute an unclaimed prize for purposes of this section.

(e) The corporation is discharged of all liability upon payment of a prize.

(f) No ticket or share shall be purchased by and no prize shall be paid to:

(1) (A) Any member of the board of directors;

(B) Any officer or employee of the corporation; or

(C) To any member of the immediate family of any person described in subdivisions (1)(A) or (B) residing as a member of the same household in the principal place of residence of any such person.

(2) No ticket or share shall be purchased by and no prize shall be paid to any officer, employee, agent, or subcontractor of any vendor, or to any member of the immediate family residing as a member of the same household in the principal place of residence of any such person if such officer, employee, agent, or subcontractor has access to confidential information which may compromise the integrity of the lottery.

(g) No lottery game utilizing an electronic or mechanical machine may use a machine which:

(1) Dispenses coins or currency; or

(2) Accepts debit or credit cards.

(h) Unclaimed prize money shall not constitute net lottery proceeds and, for the purposes of § 4-51-111(a), shall not be distributed as lottery proceeds. The provisions of Title 66, Chapter 29 shall not apply to unclaimed prize money of the corporation. At the end of each fiscal year, fifty percent (50%) of any unclaimed prize money shall be added to the pool from which future prizes are to be awarded or used for special prize promotions and fifty percent (50%) of any unclaimed prize money shall be deposited in the after school programs special account created in accordance with § 4-51-111.

Section 4-51-124. (a) Except as otherwise provided in this chapter, the corporation is subject to the provisions of Title 8, Chapter 44, Part 1 and Title 10, Chapter 7, Part 5. The corporation is specifically authorized to determine which information relating to the operation of the lottery is confidential. Such confidential information shall include, but is not limited to:

- (1) Trade secrets;
- (2) Security measures, systems, or procedures;
- (3) Security reports;
- (4) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the corporation to contract for goods or services on favorable terms;
- (5) Employee personnel information unrelated to compensation, duties, qualifications or responsibilities;
- (6) Information obtained pursuant to investigations which is otherwise confidential; and
- (7) Identifying information obtained from prize winners, including, but not limited to, home and work addresses, telephone numbers, social security number and any other information that could reasonably be used to locate the whereabouts of an individual; provided that:
 - (A) The corporation shall disclose any relevant information to a claimant agency pursuant to Part 2 of this chapter necessary to establish or enforce a claim against a debtor as defined in Part 2 of this chapter;
 - (B) The corporation may disclose a lottery prize winner's name, home state, hometown and, if authorized by the prize winner, any other information for marketing, advertising or promotional purposes; and
 - (C) The corporation shall disclose any information not subject to the provisions of subdivisions (1)-(4) or (6), that is otherwise necessary to assist any federal, state or local entity in the performance of its statutory or regulatory duties.

Information deemed confidential pursuant to this section is exempt from the provisions of § 10-7-503. Meetings or portions of meetings devoted to discussing

information deemed confidential pursuant to this section are exempt from the provision of Title 8, Chapter 44, Part 1.

(b) The corporation shall perform or cause to be performed full criminal history record checks prior to the execution of any vendor contract.

(c) The corporation, or its authorized agent, shall:

(1) Conduct criminal history record checks and credit investigations on all potential retailers; provided that the corporation, or its authorized agent, may conduct or cause to be conducted criminal history record checks and credit investigations on employees of potential and authorized lottery retailers at any time;

(2) Supervise ticket or share validation and lottery drawings;

(3) Inspect, at times determined solely by the corporation, the facilities of any vendor or lottery retailer in order to determine the integrity of the vendor's product or the operations of the retailer in order to determine whether the vendor or the retailer is in compliance with its contract;

(4) Report any suspected violations of this chapter to the appropriate district attorney or the attorney general and reporter and to any law enforcement agencies having jurisdiction over the violation; and

(5) Upon request, provide assistance to any district attorney, the attorney general and reporter or a law enforcement agency investigating a violation of this Chapter or Title 39, Chapter 17, Parts 5 or 6.

Section 4-51-125. (a) The corporation may enter into intelligence sharing, reciprocal use, or restricted use agreements with the federal government, law enforcement agencies, lottery regulation agencies, and gaming enforcement agencies of other jurisdictions which provide for and regulate the use of information provided and received pursuant to the agreement.

(b) Records, documents, and information in the possession of the corporation received pursuant to an intelligence-sharing, reciprocal use, or restricted use agreement entered into by the corporation with a federal department or agency, any law enforcement agency, or the lottery regulation or gaming enforcement agency of any jurisdiction shall be considered investigative records of a law enforcement agency and are not subject to the provisions of §10-7-503 and shall not be released under any condition without the permission of the person or agency providing the record or information.

Section 4-51-126. (a) (1) All major procurement contracts shall be competitively bid pursuant to policies and procedures adopted by the board pursuant to § 4-51-104(c)(4) and approved by the board of standards pursuant to subdivision (2). Such policies and procedures shall be designed to allow the selection of proposals that provide the greatest long-term benefit to the state, the greatest integrity for the corporation and the best service and products for the

public. The requirement for competitive bidding does not apply in the case of a single vendor having exclusive rights to offer a particular service or product.

(2) (A) Policies and procedures concerning competitive bidding of major procurement contracts for on-line and instant ticket lottery vendors and for advertising contracts estimated to be valued in excess of five hundred thousand dollars (\$500,000) shall be filed with the board of standards for review in accordance with subdivision (2)(B).

(B) Notwithstanding any provision of Title 12, Chapter 3, Part 4 to the contrary, the board of standards shall review and approve, or disapprove, such policies and procedures within five (5) working days after submission.

(i) Upon approval, such policies and procedures shall become effective immediately and shall remain effective until amended, altered or repealed.

(ii) If not approved, the board of standards shall file a statement with the corporation stating its basis for non-approval. The corporation shall make any necessary revisions and file such revised policies and procedures with the board of standards for review and approval in a manner consistent with the provisions of this subdivision.

(iii) If the board of standards neither approves nor disapproves of such policies and procedures within five (5) working days, such policies and procedures shall become effective after the tenth calendar day and shall remain effective until amended, altered or repealed.

(C) Any amendment to such policies and procedures shall be filed with the board of standards for review and approval in a manner consistent with the provisions of this subdivision.

(b) In any bidding process, the corporation may administer its own bidding and procurement or may utilize the services of the Department of General Services or other state agency or subdivision thereof.

(c) (1) There shall be a lottery procurement panel consisting of the secretary of state, state treasurer and the commissioner of finance and administration. The commissioner of finance and administration shall serve as chair of the panel, and the Department of Finance and Administration shall provide staff support to the panel as needed.

(2) Prior to issuance of procurement documents for major procurement contracts regarding on-line and instant ticket lottery vendors, and any advertising contract estimated to be valued in excess of five hundred thousand dollars (\$500,000), the corporation shall file such procurement documents with the lottery procurement panel. Such panel may individually, or collectively, review the procurement document and submit comments, if any, to the corporation

within five (5) working days after submission to the panel for review. After receiving comments from the panel and, in any event, after the tenth calendar day after submission to the panel for review, the corporation may:

(A) Revise such procurement document based on the comments of the panel. Any revised procurement document based on the comments of the panel shall be filed with the panel prior to issuance; or

(B) Revise such procurement document in a manner not based on the comments of the panel. Any revised procurement document not based on the comments of the panel shall be filed with the panel and reviewed by the panel in accordance with the provisions of this subsection prior to issuance; or

(C) Issue the procurement document without revision. Notwithstanding any provision of this subdivision to the contrary, the corporation may revise such procurement document prior to the fifth working day provided that the revised procurement document is filed with the panel and reviewed in accordance with the provisions of this subsection prior to issuance.

(3) Comments of the procurement panel, or failure of the corporation to modify procurement documents based on such comments, shall not confer any rights, or constitute a basis, for a challenge by a vendor to the procurement process.

(d) If the corporation determines that the requirement for competitive bidding does not apply to a major procurement contract regarding an on-line or instant ticket lottery vendor because such vendor is a single vendor having exclusive rights to offer a particular service or product, then, immediately upon making such a determination, the corporation shall file with the panel a notice of its intent not to require competitive bidding and a statement of reasons supporting that determination.

(e) Executed copies of major procurement contracts regarding on-line and instant ticket lottery vendors, and any advertising contract valued in excess of five hundred thousand dollars (\$500,000), shall be filed with the lottery procurement panel within five (5) working days of execution.

(f) Procurement documents, contracts and any other documentation, or portions thereof, filed with the lottery procurement panel by the corporation shall be subject to the provisions of § 4-51-124. Such information shall retain its confidentiality, if any, and shall only be used by the panel in the performance of its official duties.

(g) (1) Except for information deemed confidential pursuant to the provisions of § 4-51-124, major procurement contracts entered into by the corporation regarding on-line and instant ticket lottery vendors, and any advertising contract valued in excess of five hundred thousand dollars (\$500,000), shall be posted, via link to "Major Procurement Contracts", on the web page of the Tennessee Education Lottery Corporation. The corporation may post additional major procurement contracts.

(2) The corporation shall post all major procurement contract procurement documents, via link to "Major Procurement Opportunities", on the web page of the Tennessee Education Lottery Corporation.

Section 4-51-127. (a) Any retailer, vendor, or applicant for a retailer or vendor contract aggrieved by a final action of the board may appeal that decision to the chancery court of Davidson County.

(b) The chancery court of Davidson County shall hear appeals from decisions of the board and based upon the record of the proceedings before the board may reverse the decision of the board only if the appellant proves the decision to be:

(1) Clearly erroneous;

(2) Arbitrary and capricious;

(3) Procured by fraud;

(4) A result of substantial misconduct by the board; or

(5) Contrary to the United States Constitution or the Constitution of Tennessee or the provisions of this chapter.

(c) The chancery court may remand an appeal to the board to conduct further hearings.

(d) Any person who appeals the award of a major procurement contract for the supply of a lottery ticket system, share system, or an on-line or other mechanical or electronic system shall be liable for all costs of appeal and defense in the event the appeal is denied or the contract award is upheld. Costs of appeal and defense shall include, but is not limited to, court costs, bond and attorney's fees; provided that, upon motion of the corporation, such costs shall also include any loss of income to the corporation resulting from institution of the appeal if the court finds the appeal to have been frivolous.

Section 4-51-128. (a) The corporation may borrow, or accept and expend, in accordance with the provisions of this chapter, such moneys as may be received from any source, including income from the corporation's operations, for effectuating its corporate purposes, including the payment of the initial expenses of initiation, administration, and operation of the corporation and the lottery, and other lottery related purposes, including the payment of the initial expenses of initiation, administration, and operation of educational programs and purposes.

(b) The corporation shall be self-sustaining and self-funded. Moneys in the state general fund shall not be used or obligated to pay the expenses of the corporation or prizes of the lottery and no claim for the payment of an expense of the lottery or prizes of the lottery may be made against any moneys other than moneys credited to the corporation operating account.

(c) The corporation may purchase, lease, or lease-purchase such goods or services as are necessary for effectuating the purposes of this chapter. The corporation

may make procurements which integrate functions such as lottery game design, lottery ticket distribution to retailers, supply of goods and services, and advertising. In all procurement decisions, the corporation shall take into account the particularly sensitive nature of the state lottery and shall act to promote and ensure security, honesty, fairness and integrity in the operation and administration of the lottery and the objectives of raising net lottery proceeds for the benefit of educational programs and purposes.

Section 4-51-129. To ensure the financial integrity of the lottery, the corporation, through its board of directors, shall:

(1) Submit quarterly and annual reports to the Governor, the select committee on the Tennessee education lottery corporation created pursuant to Section 3 of this act, the comptroller of the treasury and the state treasurer, disclosing the total lottery revenues, prize disbursements, operating expenses, and administrative expenses of the corporation during the reporting period. The annual report shall additionally describe the organizational structure of the corporation and summarize the functions performed by each organizational division within the corporation;

(2) Adopt a system of internal audits; all audits performed by the internal audit staff of the corporation shall be conducted in accordance with the standards established by the comptroller of the treasury pursuant to § 4-3-304(9);

(3) Maintain weekly or more frequent records of lottery transactions, including the distribution of tickets or shares to retailers, revenues received, claims for prizes, prizes paid, prizes forfeited, and other financial transactions of the corporation;

(4) (A) Be subject to audits by the comptroller of the treasury in accordance with § 8-4-109. Such audits may be undertaken at anytime at the sole discretion of the comptroller; provided that the comptroller shall conduct, or contract for, an annual financial audit of the corporation. The comptroller of the treasury, or the comptroller's designated representatives, shall have access to the corporation's books, records and accounts whenever deemed necessary by such office. The comptroller of the treasury, or the comptroller's designated representatives, shall have access to any and all of the records of the corporation's distributing agencies, lottery vendors or lottery retailers that relate to the operation, administration or promotion of the lottery. Except as provided in subdivision (B), the corporation may, with prior notice to the comptroller of the treasury, contract with a licensed independent certified public accountant or firm for additional audits concerning any phase of the operations of the corporation; provided that the licensed certified public accountant or firm shall have no financial interest in any vendor with whom the corporation is under contract. The corporation shall be responsible, as an operating expense, for reimbursement of the costs of audits prepared by the comptroller of the treasury and for the payment of fees for audits prepared by a licensed independent certified public accountant or firms. All audits shall be prepared in accordance with generally accepted governmental auditing standards.

(B) The corporation may, with prior approval of the comptroller of the treasury, contract with a licensed independent certified public accountant or firm for an additional annual financial audit of the corporation; provided that the licensed certified public accountant or firm shall have no financial interest in any vendor with whom the corporation is under contract. If a licensed independent certified public accountant or firm is employed pursuant to the provisions of this subdivision, the audit contract between the corporation and the licensed independent certified public accountant or firm shall be on contract forms prescribed by the comptroller of the treasury. The corporation shall be responsible, as an operating expense, for the payment of fees for audits prepared pursuant to the provisions of this subdivision. Such audits shall be prepared in accordance with generally accepted governmental auditing standards and shall meet minimum audit standards prescribed by the comptroller of the treasury.

(C) A copy of any audit performed by the comptroller of the treasury or any independent certified public accountant or firm shall be transmitted to the Governor, the Speaker of the Senate, the Speaker of the House of Representatives, the select committee chairs, the state treasurer and, if applicable, the comptroller of the treasury;

(5) Submit to the Department of Finance and Administration, the office of legislative budget analysis and the comptroller of the treasury by June 30th of each year a copy of the annual operating budget for the corporation for the next fiscal year. This annual operating budget shall be approved by the board and be on such forms as prescribed by the Department of Finance and Administration;

(6) For informational purposes only, submit to the Department of Finance and Administration on September 1 of each year a proposed operating budget for the corporation for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate of the net lottery proceeds to be deposited into the lottery for education account during the succeeding fiscal year. This budget shall be on such forms as prescribed by the Department of Finance and Administration; and

(7) Adopt the same fiscal year as that used by state government.

Section 4-51-130. (a) No member of the General Assembly, the Governor, a member of the Governor's cabinet or a cabinet-level member of the Governor's staff shall serve as a director or employee of the corporation while holding such position in state government.

(b) No member of the General Assembly, the Governor, a member of the Governor's cabinet or a cabinet-level member of the Governor's staff shall serve as an employee, or otherwise receive compensation or other benefit for consultation or services rendered directly, or indirectly through a partnership, corporation or other business entity, from an on-line or instant ticket lottery vendor of the Tennessee education lottery corporation or an on-line or instant ticket lottery vendor seeking to become a vendor of the Tennessee education lottery corporation, while holding such position in state government. Nothing in this subsection shall be construed as

prohibiting continued employment of such official by a partnership, corporation or other business entity receiving compensation from an on-line or instant ticket lottery vendor if:

(1) Such official has no direct or indirect contact with an on-line or instant ticket lottery vendor; and

(2) Such official does not share in any compensation or any benefit received from an on-line or instant ticket lottery vendor.

(c) The provisions of this section shall not apply to any employee of the corporation or of an on-line or instant ticket lottery vendor who, subsequent to such employment, seeks election to the General Assembly or the office of Governor. No provision of this subsection shall be construed as prohibiting such person from continuing in such employment during such person's term in office as a member of the General Assembly.

(d) The provisions of this section also apply to any children residing in the primary residence and the spouse of any member of the General Assembly, the Governor, a member of the Governor's cabinet or a cabinet-level member of the Governor's staff.

(e) A violation of this section is a Class C misdemeanor punishable only by a fine of one thousand dollars (\$1,000).

Section 4-51-131. The General Assembly, by enacting this Chapter and Title 39, Chapter 17, Part 6, intends to preempt any other regulation of the area covered by this Chapter and Title 39, Chapter 17, Part 6. No political subdivision or agency may enact or enforce a law, ordinance, resolution or regulation that regulates or prohibits any conduct in the area covered by this chapter and Title 39, Chapter 17, Part 6.

Section 4-51-201. The purpose of this part is to establish a policy and to provide a system whereby all claimant agencies of this state in conjunction with the corporation shall cooperate in identifying debtors who owe money to the state through its various claimant agencies or to persons on whose behalf the state and its claimant agencies act and who qualify for prizes under Part 1 of this chapter from the corporation. It is also the purpose of this part to establish procedures for setting off against any such prize the sum of any debt owed to the state or to persons on whose behalf the state and its claimant agencies act. It is the intent of the General Assembly that this part be liberally construed to effectuate these purposes.

Section 4-51-202. As used in this part unless the context otherwise requires:

(1) "Claimant agency" means any state agency, department, board, bureau, commission or authority to which an individual owes a debt or which acts on behalf of an individual to collect a debt.

(2) "Debt" means any liquidated sum due and owing any claimant agency, which sum has accrued through contract, subrogation, tort or operation of law, regardless of whether there is an outstanding judgment for the sum or any sum which is due and owing any person and is enforceable by the state or any of the claimant agencies of the state. "Debt" specifically includes, but is not limited

to, uncollected amounts owed by any person due to judgments for overdue child support as provided by Title 36, Chapter 5.

(3) "Debtor" means any individual owing money or having a delinquent account with any claimant agency, which obligation has not been adjudicated as satisfied by court order, set aside by court order or discharged in bankruptcy. "Debtor" specifically includes, but is not limited to, all persons who are required by any order to pay child support and whose payments are overdue as provided by Title 36, Chapter 5, and which payments have become judgments by operation of law pursuant to § 36-5-101(a)(5), or by law in any other state or territory, or by judgment of a court in this or any other state or territory.

(4) "Prize" means the proceeds of any lottery prize awarded under Part 1 of this chapter.

Section 4-51-203. The collection remedy authorized by this part is in addition to and not in substitution for any other remedy available by law.

Section 4-51-204. (a) (1) Any claimant agency may submit to the corporation a list of the names of all persons owing debts in excess of one hundred dollars (\$100) to such claimant agency or to persons on whose behalf the claimant agency is acting. The full amount of the debt shall be collectable from any lottery winnings without regard to limitations on the amounts that may be collectable in increments through garnishment or other proceedings. Such list, filed by paper or by electronic means, shall constitute a valid lien upon and claim of lien against the lottery winnings of any debtor named in such list. The list shall contain the names of the debtors, their social security numbers, if available, and any other information that would assist the corporation in identifying the debtors named in the list.

(2) The corporation may establish with any claimant agency, which has such capability, an automated process utilizing the corporation's and the claimant agency's databases to effectuate the provisions of this part, including, but not limited to, a computerized matching process.

(b) (1) The corporation is authorized and directed to withhold any winnings subject to the lien created by this section and send notice to the winner by certified mail, return receipt requested, of such action and the reason the winnings were withheld. However, if the winner appears and claims winnings in person, the corporation shall notify the winner at that time by hand delivery of such action.

(2) If the debtor does not protest the withholding of such funds in writing within thirty (30) days of such notice, the corporation shall pay the funds over to the claimant agency. Except as provided in subdivision (3), if the debtor protests the withholding of such funds within thirty (30) days of such notice, the corporation shall file an action in interpleader in the circuit court of the county in which the debtor resides if the debtor resides in Tennessee. If the debtor does not reside in Tennessee, such action shall be filed in Davidson County. The corporation shall pay the disputed sum into the clerk of the court and give notice to the claimant agency and debtor of the initiation of such action.

(3) For all persons who are debtors of the Department of Human Services due to overdue child support, the corporation shall withhold all winnings subject to administrative proceedings in accordance with the provisions of title 36, chapter 5 and the rules of the department.

(c) The liens created by this section shall rank among themselves as follows:

(1) Taxes due the state;

(2) Delinquent child support; and

(3) All other judgments and liens in order of the date entered or perfected.

(d) The corporation shall not be required to deduct claimed debts from prizes paid out by retailers or entities other than the corporation.

(e) Any list of debt provided pursuant to this part shall be provided periodically as the corporation shall provide by rules and regulations and the corporation shall not be obligated to retain such lists or deduct debts appearing on such lists beyond period determined by such rules and regulations; provided that lists provided to the corporation through an automatic data match process shall be maintained on an ongoing basis to enable the continuous monitoring and withholding of lottery winnings for debts due any claimant agency.

(f) Pursuant to § 4-51-105(a)(3), the corporation is authorized to prescribe forms and promulgate rules and regulations which it deems necessary to carry out the provisions of this part.

(g) The corporation and any claimant agency shall incur no civil or criminal liability for good faith adherence to the provisions of this section.

(h) The claimant agency shall pay the corporation for all costs incurred by the corporation in setting off debts in the manner provided in this part.

Section 4-51-205. (a) Pursuant to § 4-51-124, the corporation shall provide to a claimant agency all information necessary to accomplish and effectuate the intent of this part.

(b) The information obtained by a claimant agency from the corporation in accordance with this part shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices. Any employee or prior employee of any claimant agency who discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to a civil penalty of fifty dollars (\$50.00) which shall be collected by the claimant agency as otherwise provided by law.

Section 4-51-206. The provisions of this part shall only apply to prizes of six hundred dollars (\$600) or more.

SECTION 3. (a) There is hereby created a special joint committee of the General Assembly to be known as the select committee on the Tennessee education lottery corporation.

(b) The select committee shall be composed of eighteen (18) members. Nine (9) senators shall be appointed by the Speaker of the Senate, provided that: at least three (3) of whom shall be appointed from the membership of the State and Local Government Committee, one (1) of whom shall be the chair; at least two (2) of whom shall be appointed from the membership of the Education Committee, one (1) of whom shall be the chair; and, at least one (1) of whom shall be appointed from the membership of the Finance, Ways and Means Committee. Nine (9) representatives shall be appointed by the Speaker of the House of Representatives, provided that: at least three (3) of whom shall be appointed from the membership of the State and Local Government committee, one (1) of whom shall be the chair; at least two (2) of whom shall be appointed from the membership of the Education Committee, one (1) of whom shall be the chair; and, at least one (1) of whom shall be appointed from the membership of the Finance, Ways and Means Committee. The chairs of the Senate and House State and Local Government Committees shall serve as co-chairs of the select committee. During the organizational session of each General Assembly, the respective speakers shall appoint or reappoint members to serve on the select committee on the Tennessee education lottery corporation. Any vacancies occurring on the select committee, between organizational sessions, shall be filled by the respective speakers in accordance with the guidelines established in this subsection.

(c) The select committee, at the call of the co-chairs, shall periodically inquire into and review the operations of the Tennessee education lottery corporation as well as periodically review and evaluate the success with which the corporation is accomplishing its statutory duties and functions as provided in this act and shall inquire into and review the educational programs and purposes otherwise provided by law and established in accordance with the provisions of Article XI, Section 5 of the Constitution of Tennessee.

(d) The select committee may conduct, or cause to be conducted, any independent audit or investigation of the corporation it deems necessary.

(e) The Tennessee education lottery corporation shall provide the select committee, not later than December 1 of each year, with a complete report of the level of participation of minority businesses in all retail and major procurement contracts awarded by the corporation.

(f) Members of the select committee shall be entitled to reimbursement for their expenses in attending meetings of the committee or any subcommittee thereof at the same rates and in the same manner as when attending the General Assembly.

SECTION 4. (a) The Tennessee education lottery corporation shall be eligible to be a participating employer in the Tennessee consolidated retirement system upon:

(1) Passage of a resolution by the corporation's board of directors authorizing an actuarial study; and

(2) Passage of a resolution by the corporation's board of directors authorizing such participation and accepting the liability as a result of the participation by its full-time employees.

(b) The employees of the corporation shall make the same contributions, participate in the same manner, and shall be eligible for the same benefits as employees of local governments participating in the retirement system under this part.

(c) The employees shall be entitled to credit for prior service as approved by the board of directors of the corporation under the same provisions which apply to employees of local governments.

(d) The retirement system shall not be liable for the payment of retirement allowances or other payments on account of employees of the corporation or their beneficiaries for which reserves have not been previously created from funds contributed by the corporation, its employees or the corporation and its employees.

(e) In case of the withdrawal of the corporation as a participating employer, the benefits of the members and beneficiaries shall be determined in accordance with the provisions of § 8-35-211.

(f) It is the legislative intent that the state shall realize no increased cost as a result of this section. All costs associated with retirement coverage, including administrative costs, shall be the responsibility of the corporation.

SECTION 5. Tennessee Code Annotated, Section 39-17-505, is amended by deleting subsection (a) and by substituting instead the following:

(a) (1) A person commits an offense who knowingly owns, manufactures, possesses, buys, sells, rents, leases, stores, repairs, transports, prints or makes any gambling device or record.

(2) It is not an offense for a person to own or possess in this state a lottery ticket originating from a state in which a lottery is lawful, if such ticket is not owned or possessed for the purpose of resale.

(3) It is not an offense for a person to knowingly own, manufacture, possess, buy, sell, rent, lease, store, repair, transport, print or make any gambling device or record if such device or record is owned, manufactured, possessed, bought, sold, rented, leased, stored, repaired, transported, printed or made pursuant to the provisions of Title 4, Chapter 51, Part 1 and Title 39 Chapter 17, Part 6.

SECTION 6. Tennessee Code Annotated, Section 39-17-506, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) A person commits an offense who knowingly makes or aids in the making of any lottery. For the purposes of this section, "makes or aids in the making of any lottery" does not include:

(1) Ownership or possession in this state of a lottery ticket originating from another state in which a lottery is lawful, if such ticket is not owned or

possessed for the purpose of resale; provided that nothing in this subdivision shall be construed as preventing the sale of lottery tickets or shares under the authority of the Tennessee education lottery corporation; or

(2) The Tennessee education lottery operated pursuant to Title 4, Chapter 51, Part 1.

SECTION 7. Tennessee Code Annotated, Section 39-17-506(b), is amended by deleting the language "For the purposes of this section, 'making a lottery' includes" and by substituting instead the language "For the purposes of this section, 'makes or aids in the making of any lottery' includes".

SECTION 8. Tennessee Code Annotated, Title 39, Chapter 17, is amended by adding the following language as a new, appropriately designated part:

Section 39-17-601. As used in this part, unless the context otherwise requires:

(1) "Corporation" means the Tennessee education lottery corporation or its successor;

(2) "Proof of age" means a driver license or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older, contains a photograph or other likeness of the individual, and appears on its face to be valid;

(3) "State lottery game" means any game of chance approved and operated pursuant to Title 4, Chapter 51, Part 1, including, but not limited to, instant tickets, on-line games and games using mechanical or electronic devices;

(4) "State lottery retailer" means:

(A) A person who sells state lottery tickets or shares on behalf of the corporation pursuant to a contract or an employee or agent of such person; or

(B) The corporation or an employee or agent of the corporation.

(5) "State lottery ticket or share" means a lottery ticket or share issued by, or under the authority of, the corporation for evidence of participation in a state lottery game.

Section 39-17-602. (a) It is an offense for any person, including a state lottery retailer, to sell a state lottery ticket or share to any person under eighteen (18) years of age.

(b) It is an offense for a state lottery retailer to allow a person under eighteen (18) years of age to purchase a state lottery ticket or share from an electronic or mechanical device.

(c) It is an offense for a state lottery retailer to allow a person under eighteen (18) years of age to play any state lottery game.

(d) It is an offense for a state lottery retailer to redeem a state lottery ticket or share for any person under eighteen (18) years of age.

(e) A person's first violation of any provision of this section is a Class B misdemeanor. A person's second or subsequent violation of any provision of this section is a Class A misdemeanor.

(f) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the state lottery retailer reasonably and in good faith relied upon representation of proof of age in making, or allowing, the sale or redemption.

Section 39-17-603. (a) It is a delinquent act for a person under eighteen (18) years of age to purchase, or attempt to purchase, a state lottery ticket or share.

(b) It is a delinquent act for a person under eighteen (18) years of age to redeem, or attempt to redeem, a state lottery ticket or share.

(c) A violation of this section is punishable by a fine not to exceed fifty dollars (\$50.00) or, in the discretion of the court, community service work not less than twenty (20) hours nor more than fifty (50) hours.

(d) The provisions of this section shall not be construed as prohibiting any person under eighteen (18) years of age from handling or transporting state lottery tickets or shares as a part of and in the course of such person's employment; provided that the person is under the supervision of another employee who is at least twenty-one (21) years of age.

Section 39-17-604. (a) It is an offense for a person, other than a state lottery retailer, to sell a state lottery ticket or share.

(b) It is an offense for a person to sell a state lottery ticket or share at a price other than face value.

(c) It is an offense for a state lottery retailer to sell a state lottery ticket or share at a location other than the location listed on such retailer's certificate of authorization.

(d) A violation of this section is a Class A misdemeanor.

(e) It is an exception to the application of this section that:

(1) A state lottery retailer, with written pre-authorization from the chief executive officer of the corporation, sold state lottery tickets or shares at a price other than established by the corporation; and

(2) A state lottery retailer, with written pre-authorization from the chief executive officer of the corporation, sold state lottery tickets or shares at a temporary location.

(f) This section shall not be construed as preventing the corporation from giving or selling state lottery tickets or shares at any price or at any location.

Section 39-17-605. (a) It is an offense for a state lottery retailer to fail to display a certificate of authorization pursuant to § 4-51-115(d) at each location where such retailer sells state lottery tickets or shares.

(b) A violation of this section is a Class C misdemeanor.

Section 39-17-606. (a) Each state lottery retailer shall display, in a prominent place at the location where such retailer sells lottery tickets or shares, a sign, at least seventeen inches (17") high and twenty-two inches (22") wide, stating:

ATTENTION: STATE LAW STRICTLY PROHIBITS THE SALE OF LOTTERY TICKETS TO PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS; PROOF OF AGE MAY BE REQUIRED FOR PURCHASE.

* * *

ATENCION: POR LEY DEL ESTADO DE TENNESSEE ES ESTRUCTAMENTE PROHIBIDO VENDER BOLETAS DE LOTERIA A PERSONAS MENORES DE DIECIOCHO AÑOS; PRUEBA DE EDAD PUEDE SER REQUERIDA PARA COMPRARLAS.

(b) A violation of this section is a Class C misdemeanor.

Section 39-17-607. (a) It is an offense for any person to falsely make, alter, forge, pass or counterfeit a state lottery ticket with the intent to defraud.

(b) It is an offense for any person to knowingly influence, or attempt to influence, the winning of a prize through the use of coercion, fraud, deception or tampering with lottery equipment or materials.

(c) (1) A violation of subsection (a) is a Class D felony provided that the maximum fine shall be fifty thousand dollars (\$50,000).

(2) A violation of subsection (b) is a Class C felony provided that the maximum fine shall be one hundred thousand dollars (\$100,000).

Section 39-17-608. (a) It is an offense for any person to knowingly:

(1) Make a material false statement in any application to the corporation for a license or proposal to conduct lottery activities; or

(2) Make a material false entry in any book or record which is compiled for the corporation, maintained for the corporation or submitted to the corporation.

(b) A violation of this section is a Class D felony provided that the maximum fine shall be twenty-five thousand dollars (\$25,000) or the dollar amount of the false entry or statement, whichever is greater.

Section 39-17-609. All terminals, tickets, shares and other devices imported, transported or distributed under the authority of the Tennessee education lottery corporation are exempt from the provisions of 15 U.S.C. § 1172.

Section 39-17-610. The General Assembly, by enacting this part, intends to preempt any other regulation of the area covered by this part and Title 4, Chapter 51. No political subdivision or agency may enact or enforce a law, ordinance, resolution or regulation that regulates or prohibits any conduct in the area covered by this part and Title 4, Chapter 51.

SECTION 9. Tennessee Code Annotated, Section 39-15-413(a), is amended by inserting the language "39-17-602, 39-17-603," between the language "39-17-427," and the language "39-17-901".

SECTION 10. Tennessee Code Annotated, Section 39-15-413(a), is amended by inserting the language ", state lottery ticket or share" between the language "illegal drugs" and "or any other prohibited material".

SECTION 11. Tennessee Code Annotated, is amended by adding the following language as a new, appropriately designated section:

Section __. Participation in any activity which is conducted pursuant to law and authorized by the provisions of Article XI, Section 5 of the Constitution of Tennessee shall not be construed as gambling for the purposes of § 8-47-101.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 29, 2003


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 11th day of June 2003


PHIL BREDESEN, GOVERNOR