

ARTICLE 24 - New Mexico Lottery

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6-24-1. Short title.

Chapter 6, Article 24 NMSA 1978 may be cited as the "New Mexico Lottery Act".

6-24-2. Legislative findings.

The legislature finds that:

- A. lotteries have been enacted in many states and the revenues generated from those lotteries have contributed to the benefit of the residents of those states;
- B. many New Mexicans already participate in other state lotteries and support the establishment of a state lottery in New Mexico; and
- C. the most desirable, efficient and effective mechanism for operation of a state lottery is an independent lottery authority organized as a business enterprise separate from state government, without need for state revenues or resources and subject to oversight, audit and accountability by public officials and agencies.

6-24-3. Purposes.

The purposes of the New Mexico Lottery Act [6-24-1 NMSA 1978] are to:

- A. establish and provide for the conduct of a fair and honest lottery for the entertainment of the public; and
- B. provide the maximum amount of revenues, without imposing additional taxes or using other state revenues, for the purpose of providing tuition assistance to resident undergraduates at New Mexico post-secondary educational institutions.

6-24-4. Definitions.

As used in the New Mexico Lottery Act [6-24-1 NMSA 1978]:

- A. "authority" means the New Mexico lottery authority;
- B. "board" means the board of directors of the authority;
- C. "chief executive officer" means the chief executive officer of the authority appointed by the board pursuant to the New Mexico Lottery Act;
- D. "lottery" means the New Mexico state lottery established and operated by the authority pursuant to the New Mexico Lottery Act;
- E. "lottery contractor" means a person with whom the authority has contracted for the purpose of providing goods or services for the lottery;
- F. "lottery game" means any variation of the following types of games, but does not include any video lottery game:

- (1) an instant-win game in which disposable tickets contain certain preprinted winners that are determined by rubbing or scraping an area or areas on the tickets to match numbers, letters, symbols or configurations, or any combination thereof, as provided by the rules of the game; provided, an instant-win game may also provide for preliminary and grand prize drawings conducted pursuant to the rules of the game; and
- (2) an on-line lottery game in which a lottery game is hooked up to a central computer via a telecommunications system through which a player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols and purchases a ticket bearing the player-selected numbers or symbols for eligibility in a drawing regularly scheduled in accordance with game rules;

G. "lottery retailer" means a person with whom the authority has contracted for the purpose of selling tickets in lottery games to the public;

H. "lottery vendor" means any person who submits a bid, proposal or offer as part of a major procurement contract and any person who is awarded a major procurement contract; and

I. "person" means an individual or any other legal entity.

6-24-5. New Mexico lottery authority created.

A. There is created a public body, politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the "New Mexico lottery authority". The authority is created and organized for the purpose of establishing and conducting the New Mexico state lottery to provide revenues for the public purposes designated by the New Mexico Lottery Act [6-24-1 NMSA 1978].

B. The authority shall be governed by a board of directors composed of seven members who are residents of New Mexico appointed by the governor with the advice and consent of the senate. The members of the board of directors shall be prominent persons in their businesses or professions and shall be appointed so as to provide equitable geographical representation. No more than four members of the board shall be from any one political party. The governor shall consider appointing at least one member who has at least five years experience as a law enforcement officer, at least one member who is an attorney admitted to practice in New Mexico and at least one member who is a certified public accountant certified in New Mexico.

C. Board members shall be appointed for five-year terms. To provide for staggered terms, four of the initially appointed members shall be appointed for terms of five years and three members for terms of three years. Thereafter, all members shall be appointed for five-year terms. A vacancy shall be filled by appointment by the governor for the remainder of the unexpired term. A member shall serve until his replacement is confirmed by the senate. Board members shall be eligible for reappointment.

D. The board shall select one of its members as chairman annually. A chairman may be selected for successive years. Members of the board may be removed by the governor for malfeasance, misfeasance or willful neglect of duty after reasonable notice and a public hearing unless the notice and hearing are expressly waived in writing by the member.

E. The board shall hold regular meetings at the call of the chairman, but not less often than once each calendar quarter. A board meeting may also be called upon the request in writing of three or more board members. A majority of members then in office constitutes a quorum for the transaction of any business and for the exercise of any power or function of the authority.

F. Board members shall receive no compensation for their services but shall be paid expenses incurred in the conduct of authority business as allowed and approved by the authority in accordance with policies adopted by the board.

G. A board member shall be subject to a background check and investigation to determine his fitness for office. The results of that background check shall be made available to the governor and the senate.

6-24-6. Powers of the authority.

A. The authority shall have all powers necessary or convenient to carry out and effectuate the purposes and provisions of the New Mexico Lottery Act [6-24-1NMSA 1978] that are not in conflict with the constitution of New Mexico and that are generally exercised by corporations engaged in entrepreneurial pursuits, including the power to:

- (1) sue and be sued;
- (2) adopt and alter a seal;
- (3) adopt, amend and repeal bylaws, rules, policies and procedures for the conduct of its affairs and its business;
- (4) procure or provide insurance;
- (5) hold copyrights, trademarks and service marks and enforce its rights with respect thereto;
- (6) initiate, supervise and administer the operation of the lottery in accordance with the provisions of the New Mexico Lottery Act and rules, policies and procedures adopted pursuant to that act;
- (7) enter into written agreements or contracts for the operation, participation in or marketing or promotion of a joint lottery or joint lottery games with operators of a lottery:
 - (a) in one or more other states;
 - (b) in a territory of the United States;
 - (c) in one or more political subdivisions of another state or territory of the United States;
 - (d) in a sovereign nation;
 - (e) in an Indian nation, tribe or pueblo located within the United States; or
 - (f) legally operated outside of the United States;
- (8) acquire or lease real property and make improvements thereon and acquire by lease or by purchase personal property, including computers, mechanical, electronic and on-line equipment and terminals and intangible property, including computer programs, systems and software;
- (9) enter into contracts to incur debt and borrow money in its own name and enter into financing agreements with the state, with agencies or instrumentalities of the state or with any commercial bank or credit provider;
- (10) receive and expend, in accordance with the provisions of the New Mexico Lottery Act, all money received from any lottery or nonlottery source for effectuating the purposes of the New Mexico Lottery Act;
- (11) 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 authority;
- (12) appoint and prescribe the duties of officers, agents and employees of the authority, including professional and administrative staff and personnel, and to fix their compensation, pay their expenses and provide a benefit program, including a retirement plan and a group insurance plan;
- (13) select and contract with lottery vendors and lottery retailers;
- (14) enter into contracts or agreements with state, local or federal law enforcement agencies or private investigators or other persons for the performance of law enforcement, background investigations and security checks;
- (15) enter into contracts of all types on such terms and conditions as the authority may determine;

- (16) establish and maintain banking relationships, including establishment of checking and savings accounts and lines of credit;
- (17) advertise and promote the lottery and lottery games;
- (18) act as a lottery retailer, conduct promotions that involve the dispensing of lottery tickets and establish and operate a sales facility to sell lottery tickets and any related merchandise; and
- (19) adopt, repeal and amend such rules, policies and procedures as necessary to carry out and implement its powers and duties, organize and operate the authority, conduct lottery games and any other matters necessary or desirable for the efficient and effective operation of the lottery and the convenience of the public.

B. The powers enumerated in this section are cumulative of and in addition to those powers enumerated elsewhere in the New Mexico Lottery Act [6-24-1 NMSA 1978], and no such powers limit or restrict any other powers of the authority.

6-24-7. Board of directors; duties.

The board shall provide the authority with the private-sector perspective of a large marketing enterprise and shall make every effort to exercise sound and prudent business judgment in its management and promotion of the lottery. It is the duty of the board to:

- A. adopt all rules, policies and procedures necessary for the establishment and operation of the lottery;
- B. maximize the revenue for the public purposes of the New Mexico Lottery Act [6-24-1 NMSA 1978] and to that end assure that all rules, policies and procedures adopted further revenue maximization;
- C. appoint a chief executive officer, prescribe the chief executive officer's qualifications, duties and salary and set the salaries of the other officers and employees of the authority;
- D. approve, disapprove, amend or modify the annual budget recommended by the chief executive officer for the operation of the authority;
- E. approve or disapprove all procurements over seventy-five thousand dollars (\$75,000);
- F. supervise the chief executive officer and the other officers and employees of the authority and meet with the chief executive officer at least once every three months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the lottery and transact other necessary business;
- G. conduct, with the chief executive officer, a continuing study of the lottery and other state lotteries to improve the efficiency, profitability and security of the authority and the lottery;
- H. prepare quarterly and annual reports and maintain records as required under the New Mexico Lottery Act;
- I. pursue other matters necessary, desirable or convenient for the efficient and effective operation of lottery games, the continued entertainment and convenience of the public and the integrity of the lottery; and
- J. support problem gambling initiatives and provide information to players about where to obtain problem gambling assistance in New Mexico.

6-24-8. Lottery games; adoption of rules, policies and procedures by board.

The board may adopt rules, policies and procedures for the conduct of lottery games in general, including, but not limited to the following matters:

- A. the type of games to be conducted, which may include any type of lottery game not prohibited by the New Mexico Lottery Act [6-24-1 NMSA 1978];
- B. the percentage of lottery revenues that shall be returned to the public in the form of lottery prizes;
- C. the method and location of selecting or validating winning tickets;
- D. the manner and time of payment of prizes, which may include lump-sum payments or installments over a period of years;
- E. the manner of payments of prizes to the holders of winning tickets;
- F. the frequency of games and drawings or selection of winning tickets;
- G. the method to be used in selling tickets, which may include the use of electronic or mechanical devices;
- H. the price of each ticket and the number and size of prizes;
- I. the conduct of drawings and determination of winners of lottery games;
- J. requirements governing lottery tickets, including, but not limited to, requirements that all instant-win tickets be recyclable; and
- K. any and all other matters necessary, desirable or convenient toward ensuring the efficient and effective operation of lottery games.

6-24-9. Legislative oversight; legislative finance committee; duties.

- A. The legislative finance committee shall oversee the operations of the authority, as well as periodically review and evaluate the success with which the authority is accomplishing its duties and operating the lottery pursuant to the New Mexico Lottery Act [6-24-1 NMSA 1978]. The committee may conduct an independent audit or investigation of the lottery or the authority.
- B. The legislative finance committee shall report annually its findings and recommendations on the lottery and the operation of the authority to each regular session of the legislature.

6-24-10. Chief executive officer; compensation; appointment; duties.

- A. The board shall appoint and set the compensation of a "chief executive officer", who shall serve at the pleasure of the board.
- B. The chief executive officer, who shall be an employee of the authority, shall:
 - (1) manage and direct the operation of the lottery and all administrative and technical activities of the authority in accordance with the provisions of the New Mexico Lottery Act [6-24-1 NMSA 1978] and pursuant to rules, policies and procedures adopted by the board pursuant to that act;

- (2) employ and supervise such personnel as deemed necessary;
- (3) with the approval of the board and pursuant to rules, policies and procedures adopted by the board, enter into contracts for materials, equipment and supplies to be used in the operation of the lottery, for the design and installation of lottery games, for consultant services and for promotion of the lottery;
- (4) contract with lottery retailers pursuant to the New Mexico Lottery Act and board rules;
- (5) promote or provide for promotion of the lottery and any functions related to the authority;
- (6) hire an executive vice president for security and an internal auditor and take all necessary measures to provide for the security and integrity of the lottery;
- (7) prepare an annual budget for the approval of the board;
- (8) provide quarterly to the board, the governor and the legislative finance committee a full and complete report of lottery revenues and expenses for the preceding quarter; and
- (9) perform such other duties as are necessary to implement and administer the lottery

C. The chief executive officer may refuse to renew a lottery contract in accordance with the provisions of the New Mexico Lottery Act or the rules, policies and procedures of the board.

D. 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 lottery vendors and lottery retailers.

6-24-11. Employees; conflict of interest; investigations; bonds.

A. No employee of the authority shall participate in any decision involving a lottery retailer with whom the employee has a financial interest.

B. No employee of the authority who leaves the employment of the authority may represent any lottery vendor or lottery retailer before the authority for a period of two years following termination of employment with the authority.

C. A background investigation shall be conducted on each applicant who has reached the final selection process prior to employment by the authority. The authority is authorized to pay for the actual cost of such investigations and may contract with the department of public safety for the performance of the investigations.

D. The authority shall bond authority employees with access to authority funds or lottery revenue in an amount determined by the board and may bond other employees as deemed necessary.

6-24-12. Executive vice president for security; qualifications; duties.

A. The chief executive officer shall hire an executive vice president for security, who shall be qualified by training and experience, including at least five years of law enforcement experience, and be knowledgeable and experienced in computer security. The executive vice president for security shall take direction as needed from the chief executive officer and shall be accountable to the board.

B. The executive vice president for security shall:

- (1) be the chief administrative officer of the security division of the authority, which is designated as a law enforcement agency for the purposes of administering the security provisions of the New Mexico Lottery Act [6-24-1 NMSA 1978];

- (2) be responsible for assuring the security, honesty, fairness and integrity of the operation and administration of the lottery and to that end shall institute all necessary security measures, including an examination of the background of all prospective employees, lottery retailers, lottery vendors and lottery contractors;
- (3) in conjunction with the chief executive officer, confer with the attorney general or his designee to promote and ensure the security, honesty, fairness and integrity of the operation and administration of the lottery; and
- (4) in conjunction with the chief executive officer, report any alleged violation of law to the attorney general or any other appropriate law enforcement authority for further investigation and action.

C. The executive vice president for security and the employees of the division assigned by him as security agents shall be commissioned by the board as peace officers with full powers of arrest in the performance of their duties. These peace officers shall seek and must obtain certification pursuant to the provisions of the Law Enforcement Training Act [29-7-1 NMSA 1978].

D. The department of public safety in conjunction with the authority shall develop policy and procedures to require background checks. The policy and procedures shall require the fingerprinting of all board members and prospective employees. Fingerprint cards will be submitted to the department of public safety records bureau for processing through the federal bureau of investigation. The department of public safety will not disseminate the criminal history information to the authority.

E. An applicant for consideration shall be fingerprinted and shall provide two fingerprint cards to the department of public safety. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with Section 6-24-18 NMSA 1978. Other information contained in the federal bureau of investigation record supported by independent evidence can form the basis for the denial, suspension or revocation for good and just cause. Such records and any related information shall be privileged and shall not be disclosed to individuals not directly involved in the decisions affecting the specific applicants or employees. The authority shall pay for the cost of obtaining the federal bureau of investigation record. The department of public safety shall implement the provisions of this section on or before July 1, 1999.

6-24-13. Determination of confidential information; applicability of Open Meetings Act; criminal investigations.

A. The authority is specifically authorized to determine which information relating to the operation of the lottery is confidential. Such information is limited to trade secrets and proprietary information; security measures, systems or procedures; security reports; information concerning bids or other contract data during the negotiation process, the disclosure of which would impair the efforts of the authority to contract for goods or services on favorable terms; and information obtained pursuant to investigations that would be protected from public disclosure under the Inspection of Public Records Act [14-2-4 NMSA 1978].

B. The authority is subject to the provisions of the Open Meetings Act [10-15-1.1 NMSA 1978]; provided that meetings or portions of meetings devoted to discussing information deemed to be confidential pursuant to Subsection A of this section are exempt from the provisions of that act.

C. The authority or its authorized agent shall:

- (1) conduct criminal background investigations and credit investigations on all potential lottery retailers and all lottery vendors prior to the execution of any contract with a lottery retailer or a lottery vendor;
- (2) supervise ticket validation and lottery drawings;

- (3) inspect at times determined solely by the authority the facilities of any lottery vendor or lottery retailer in order to determine the integrity of the lottery vendor's product or the operations of the lottery retailer in order to determine whether the lottery vendor or the lottery retailer is in compliance with its contract;
- (4) report any suspected violations of the New Mexico Lottery Act [6-24-1 NMSA 1978] to the appropriate district attorney, the attorney general or to any law enforcement agency having jurisdiction over the violation; and
- (5) upon request, provide assistance to any district attorney, the attorney general or a law enforcement agency investigating a violation of the New Mexico Lottery Act.

6-24-14. Lottery retailers; contracts; sales commission; bonds.

A. Lottery tickets shall be sold only by a lottery retailer who, pursuant to a contract with the authority, has been issued a certificate of authority signed by the chief executive officer. The lottery retailer shall display the certificate conspicuously at each authorized location. No lottery retailer shall sell a lottery ticket except from the locations listed in his contract and as evidenced by his certificate of authority unless the authority authorizes in writing any temporary location not listed in his contract.

B. Before entering into a contract with a lottery retailer applicant, the chief executive officer shall consider:

- (1) the financial responsibility and security of the applicant and his business or activity;
- (2) the accessibility of his place of business or activity to the public; and
- (3) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

C. No person shall be a lottery retailer who:

- (1) is under eighteen years of age;
- (2) is engaged exclusively in the business of selling lottery tickets;
- (3) is a lottery vendor or an employee or agent of any lottery vendor doing business in New Mexico;
- (4) has been found to have violated any provisions of the New Mexico Lottery Act [6-24-1 NMSA 1978] or any rule adopted by the board pursuant to that act; or
- (5) fails to certify to the chief executive officer that his premises are in compliance with the federal Americans with Disabilities Act of 1990.

D. All lottery retailer contracts may be renewable annually in the discretion of the authority unless sooner terminated.

E. The authority to act as a lottery retailer is not assignable or transferable.

F. Lottery retailer applicants shall pay an application fee established by the board to cover the cost of investigating and processing the application.

G. The board shall determine the commission to be paid lottery retailers for their sales of lottery tickets.

H. Each lottery retailer shall keep a complete and current set of records accounting for all of his sales of lottery tickets and shall provide it for inspection upon request of the board, the chief executive officer, the legislative finance committee or the attorney general.

I. Lottery retailers shall make payments to the lottery only by check, bankdraft, electronic fund transfer or other recorded, noncash financial transfer method as determined by the chief executive officer.

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

6-24-15. Lottery tickets; sales.

A. The price of each lottery ticket shall be clearly stated on the ticket. No person shall sell a ticket at a price other than at the price established by the authority unless authorized in writing by the chief executive officer. No person other than a lottery retailer shall sell lottery tickets, but this subsection shall not be construed to prevent a person who may lawfully purchase tickets from making a gift of lottery tickets. Transactions between individuals on a nonprofit basis are permissible. Nothing in the New Mexico Lottery Act [6-24-1 NMSA 1978] shall be construed to prohibit the authority from designating certain of its agents or employees to sell or give lottery tickets directly to the public.

B. Lottery tickets may be given by merchants as a means of promoting goods or services to customers or prospective customers.

C. Tickets shall not be sold to or purchased by individuals under eighteen years of age. Persons under eighteen years of age may receive lottery tickets as gifts.

D. Tickets may be purchased only with cash or a check and shall not be purchased on credit.

E. The names of elected officials shall not appear on any lottery ticket.

6-24-16. Termination of lottery retailer contracts.

A. Any lottery retailer contract executed by the authority pursuant to the New Mexico Lottery Act [6-24-1 NMSA 1978] shall specify the reasons for which a contract may be terminated by the authority, which reasons shall include but not be limited to:

- (1) a violation of the New Mexico Lottery Act or any rule, policy or procedure of the board adopted pursuant to that act;
- (2) failure to accurately or timely account for lottery tickets, lottery games, revenues or prizes as required by the authority;
- (3) commission of any fraud, deceit or misrepresentation;
- (4) failure to achieve sales goals established by the lottery;
- (5) conduct prejudicial to public confidence in the lottery;
- (6) the lottery retailer's filing for or being placed in bankruptcy or receivership;
- (7) any material change as determined in the sole discretion of the authority in any matter considered by the authority in executing the contract with the lottery retailer; and
- (8) failure to meet any of the objective criteria established by the authority pursuant to the New Mexico Lottery Act.

B. The chief executive officer may terminate a contract with a lottery retailer for violations or actions that according to the terms of the contract, pursuant to Subsection A of this section, require termination.

6-24-17. Disclosure of odds.

The authority shall make adequate disclosure of the odds with respect to each lottery game by stating the odds in lottery game advertisements or by posting the odds at each place in which lottery tickets are sold.

6-24-18. Felony and gambling-related convictions; ineligibility for lottery positions.

No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a board member, chief executive officer, officer or employee of the authority, lottery vendor or lottery retailer. Prior to appointment as a board member, chief executive officer or other officer or employee, a person shall submit to the board a full set of fingerprints made at a law enforcement agency by an agent or officer of such agency on forms supplied by the authority. The executive vice president for security may require a lottery retailer to submit fingerprints prior to completing a contract.

6-24-19. Procurement; competitive proposals.

The authority shall enter into a contract for a procurement after evaluating competitive proposals and shall not design requests for proposals to provide only for sole source contracts. The authority shall conduct its own procurement, but the authority shall conduct all procurement in accordance with the Procurement Code [13-1-28 NMSA 1978]. In all procurement decisions, the authority shall take into account the particularly sensitive nature of the 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 revenue for the public purposes of the New Mexico Lottery Act [6-24-1 NMSA 1978]. Procurements shall not be artificially divided to reduce the cost of the procurement below the procurement thresholds provided in the Procurement Code.

6-24-20. Disclosures by lottery vendor.

A. Any lottery vendor that submits a bid or proposal for a contract to supply lottery equipment, tickets or other material or services for use in the operation of the lottery shall disclose at the time of such bid or proposal:

- (1) the lottery vendor's business name and address and the names and addresses of the following:
 - (a) if the lottery vendor is a partnership, all of the general and limited partners;
 - (b) if the lottery vendor is a trust, the trustee and all persons entitled to receive income or benefit from the trust;
 - (c) if the lottery vendor is an association, the members, officers and directors;
 - (d) if the lottery vendor is a corporation, the officers, directors and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding five percent or more of the publicly held securities must be disclosed; and
 - (e) if the lottery vendor is a subsidiary company, each intermediary company, holding company or parent company involved therewith and the officers, directors and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company that is a publicly traded corporation, only the names and addresses of those owning or holding five percent or more of the publicly held securities must be disclosed;
- (2) if the lottery vendor is a corporation, all the states in which the lottery vendor is authorized to do business and the nature of that business;
- (3) other jurisdictions in which the lottery vendor has contracts to supply gaming materials, equipment or services;

- (4) the details of any conviction by a federal or any state court of the lottery vendor or any person whose name and address is required under this section for a criminal offense punishable by imprisonment for more than one year and shall submit to the board a full set of fingerprints of such person made at a law enforcement agency by an agent or officer of such agency on forms supplied by the authority;
- (5) the details of any disciplinary action taken by any state against the lottery vendor or any person whose name and address are required by this section regarding any matter related to gaming services or the selling, leasing, offering for sale or lease, buying or servicing of gaming materials or equipment;
- (6) audited annual financial statements of the lottery vendor for the preceding five years;
- (7) a statement of the lottery vendor's gross receipts realized in the preceding year from gaming services and the sale, lease or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;
- (8) the name and address of any source of gaming materials or equipment for the lottery vendor;
- (9) the number of years the lottery vendor has been in the business of supplying gaming services or gaming materials or equipment; and
- (10) any other information, accompanied by any documents the board by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of the New Mexico Lottery Act [6-24-1 NMSA 1978].

B. No contract for supplying goods or services for use in the operation of the lottery is enforceable against the authority unless the requirements of this section have been fulfilled.

6-24-21. Drawings for and payment of prizes; unclaimed prizes; applicability of taxation.

A. All lottery prize drawings shall be open to the public. If the prior written approval of the chief executive officer and the executive vice president for security are obtained, the selection of winning entries may be performed by an employee of the lottery. A member of the board shall not perform the selection of a winning entry. Drawings for a prize of more than five thousand dollars (\$5,000) shall be conducted and videotaped by the security division and witnessed by the internal auditor of the authority or his designee. Promotional drawings for a prize of less than five thousand dollars (\$5,000) are exempt from the requirements of this subsection if prior written approval is given by the chief executive officer and the executive vice president for security. All lottery drawing equipment used in public drawings to select winning numbers or entries or participants for prizes shall be examined and tested by the chief executive officer's staff and the internal auditor of the authority or his designee prior to and after each public drawing.

B. Any lottery prize is subject to applicable state taxes. The authority shall report to the state and federal taxing authorities any lottery prize exceeding six hundred dollars (\$600).

C. The authority shall adopt rules, policies and procedures to conduct fair and equitable drawings and establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes, provided:

- (1) no prize shall be paid upon a ticket purchased or sold in violation of the New Mexico Lottery Act [6-24-1 NMSA 1978]. Any such prize shall constitute an unclaimed prize for purposes of this section;
- (2) the authority is discharged from all liability upon payment of a prize;

- (3) the board may by rule provide for the payment of prizes by lottery retailers, whether or not the lottery retailer sold the winning ticket, whenever the amount of the prize is less than an amount set by board rule. Payment shall not be made directly to a player by a machine or a mechanical or electronic device;
- (4) prizes not claimed within the time period established by the authority are forfeited and shall be paid into the prize fund. No interest is due on a prize when a claim is delayed;
- (5) the right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order;
- (6) until a signature or mark is placed on a ticket in the area designated for signature, a ticket is owned by the bearer of the ticket, but after a signature or mark is placed on a ticket in the area designated for signature, a ticket is owned by the person whose signature or mark appears, and that person is entitled to any prize attributable to the owner; and
- (7) the authority is not responsible for lost or stolen tickets.

6-24-22. Lien on lottery winnings for debt collected by human services department; payment to department; procedure.

- A. The human services department shall periodically certify to the authority the names and social security numbers of persons owing a debt to or collected by the human services department. This list shall include individuals that owe child support being collected by the state's child support enforcement agency pursuant to Title IV-D of the Social Security Act.
- B. Prior to the payment of a lottery prize in excess of six hundred dollars (\$600), the lottery shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the human services department.
- C. If the prize winner is on the list of persons owing a debt to or collected by the agency, the lottery shall make a good-faith attempt to notify the human services department, and the department then has a lien against the lottery prize in the amount of the debt owed to or collected by the agency. The lottery has no liability to the human services department or the person on whose behalf the department is collecting the debt if the lottery fails to match a winner's name to a name on the list or is unable to notify the department of a match. The department shall provide the lottery with written notice of a lien promptly within five working days after the lottery notifies the department of a match.
- D. If the lottery prize is to be paid directly by the authority, the amount of the debt owed to or collected by the human services department shall be held by the lottery for a period of ninety days from the lottery's confirmation of the amount of the debt to allow the department to institute any necessary administrative seizure proceedings in accordance with Section 27-1-11 NMSA 1978. If an administrative seizure a proceeding is not initiated within the ninety-day period, the authority shall release the lottery prize payment to the winner.
- E. The human services department, in its discretion, may release or partially release the lien upon written notice to the authority.
- F. A lien or administrative seizure established against a lottery prize on behalf of a child support enforcement case shall take first priority over all other liens established by the department.
- G. A lien under this section is in addition to any other lien created by law.

6-24-23. Lottery tuition fund created; purpose.

A. The "lottery tuition fund" is created in the state treasury. The fund shall be administered by the commission on higher education [higher education department]. Earnings from investment of the fund shall accrue to the credit of the fund. Any balance in the fund at the end of any fiscal year shall remain in the fund for appropriation by the legislature as provided in this section.

B. Money in the lottery tuition fund is appropriated to the commission on higher education [higher education department] for distribution to New Mexico's public post-secondary educational institutions to provide tuition assistance for New Mexico resident undergraduates as provided by law.

6-24-24. Disposition of revenue.

A. As nearly as practical, an amount equal to at least fifty percent of the gross annual revenue from the sale of lottery tickets shall be returned to the public in the form of lottery prizes.

B. No later than the last business day of each month, the authority shall transmit at least twenty-seven percent of the gross revenue of the previous month until December 31, 2008 and at least thirty percent of the gross revenue of the previous month thereafter to the state treasurer, who shall deposit it in the lottery tuition fund.

C. Operating expenses of the lottery include all costs incurred in the operation and administration of the lottery and all costs resulting from any contracts entered into for the purchase or lease of goods or services required by the lottery, including the costs of supplies, materials, tickets, independent audit services, independent studies, data transmission, advertising, promotion, incentives, public relations, communications, commissions paid to lottery retailers, printing, distribution of tickets, purchases of annuities or investments to be used to pay future installments of winning lottery tickets, debt service and payment of any revenue bonds issued, contingency reserves, transfers to the reserve fund and any other necessary costs incurred in carrying out the provisions of the New Mexico Lottery Act [6-24-1 NMSA 1978].

6-24-25. Prohibition on use of state funds.

The authority shall be self-sustaining and self-funded. No appropriations, loans or other transfer of state funds shall be made to the authority or used or obligated to pay the expenses of the authority or lottery prizes. No claim for the payment of any lottery expense or lottery prize shall be made against any money other than money credited to the authority.

6-24-26. Authorization to issue revenue bonds.

A. In order to provide funds for the initial development and operation of the lottery, the board is authorized to issue lottery revenue bonds in an amount not to exceed three million dollars (\$3,000,000) payable solely from revenues of the authority generated from operation of the lottery.

B. The board may issue bonds to refund other bonds issued pursuant to this section.

C. The bonds shall have a maturity of no more than five years from the date of issuance. The board shall determine all other terms, covenants and conditions of the bonds; provided, however, that the bonds may provide for prepayment in part or in full of the balance due at any time without penalty.

D. The bonds shall be executed with the manual or facsimile signature of the chief executive officer or the chairman of the board and attested by another member of the board. The bonds may bear the seal, if any, of the authority.

E. The proceeds of the bonds and the earnings on those proceeds are appropriated to the authority for the initial development and operation of the lottery, to pay expenses incurred in the preparation, issuance and sale of the bonds, to pay any obligations relating to the bonds and the proceeds of the bonds under the Internal Revenue Code of 1986 and for any other lawful purpose.

F. The bonds may be sold either at a public sale or at a private sale to the state investment officer or to the state treasurer. If the bonds are sold at a public sale, the notice of sale and other procedures for the sale shall be determined by the chief executive officer or the board.

G. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bonds for value.

H. An amount of money from the sources specified in Subsection A of this section sufficient to pay the principal of and interest on the bonds as they become due in each year shall be set aside, and is hereby pledged, for the payment of the principal and interest on the bonds.

I. The bonds shall be legal investments for any person or board charged with the investment of public funds and may be accepted as security for any deposit of public money, and the bonds and interest thereon are exempt from taxation by the state and any political subdivision or agency of the state.

J. The bonds shall be payable by the authority, which shall keep a complete record relating to the payment of the bonds.

6-24-27. Revenue and budget reports; records; independent audits.

A. The board shall:

- (1) submit quarterly and annual reports to the governor and the legislative finance committee disclosing the total lottery revenue, prizes, commissions, ticket costs, operating expenses and other revenue of the authority during the reporting period and, in the annual report, describe the organizational structure of the authority and summarize the functions performed by each organizational division within the authority;
- (2) maintain weekly or more frequent records of lottery transactions, including the distribution of lottery tickets to retailers, revenue received, claims for prizes, prizes paid, prizes forfeited and other financial transactions of the authority; and
- (3) use the state government fiscal year.

B. The board shall provide, for informational purposes, to the department of finance and administration and the legislative finance committee, by December 1 of each year, a copy of the annual proposed operating budget for the authority for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate of the revenue to be deposited in the lottery tuition fund for the current and succeeding fiscal years.

C. The board shall contract with an independent certified public accountant or firm for an annual financial audit of the authority. The certified public accountant or firm shall have no financial interest in any lottery contractor. The certified public accountant or firm shall present an audit report no later than March 1 for the prior fiscal year. The certified public accountant or firm shall evaluate the internal auditing controls in effect during the audit period. The cost of this financial audit shall be an operating expense of the authority. The legislative finance committee may, at any time, order an audit of any phase of the operations of the authority, at the expense of the authority, and shall receive a copy of the annual independent financial audit. A copy of any audit performed by the certified public accountant or ordered by the legislative finance committee shall be transmitted to the governor, the speaker of the house of representatives, the president pro tempore of the senate, the legislative finance committee and the legislative council service library.

6-24-28. Internal auditor; appointment; duties.

A. The board, with the recommendation and assistance of the chief executive officer, shall employ an internal auditor. The internal auditor, who shall be an employee of the authority, shall be qualified by training and experience as an auditor and management analyst and have at least five years of auditing experience. The internal auditor shall take direction as needed from the chief executive officer and be accountable to the board.

B. The internal auditor shall conduct and coordinate comprehensive audits for all aspects of the lottery, provide management analysis expertise and carry out any other duties specified by the board and by law. The internal auditor shall specifically:

- (1) conduct, or provide for through a competitive bid process, an annual financial audit and observation audits of drawings;
- (2) create an annual audit plan to be approved by the board;
- (3) search for means of better efficiency and cost savings and waste prevention;
- (4) examine the policy and procedure needs of the lottery and determine compliance;
- (5) ensure that proper internal controls exist;
- (6) perform audits that meet or exceed governmental audit standards; and
- (7) submit audit reports on a quarterly basis to the board, the chief executive officer, the state auditor and the legislative finance committee.

C. The internal auditor shall conduct audits as needed in the areas of:

- (1) personnel security;
- (2) lottery retailer security;
- (3) lottery contractor security;
- (4) security of manufacturing operations of lottery contractors;
- (5) security against lottery ticket counterfeiting and alteration and other means of fraudulently winning;
- (6) security of drawings among entries or finalists;
- (7) computer security;
- (8) data communications security;
- (9) database security;
- (10) systems security;
- (11) lottery premises and warehouse security;
- (12) security in distribution;
- (13) security involving validation and payment procedures;
- (14) security involving unclaimed prizes;
- (15) security aspects applicable to each particular lottery game;
- (16) security of drawings in games whenever winners are determined by drawings;

- (17) the completeness of security against locating winners in lottery games with preprinted winners by persons involved in their production, storage, distribution, administration or sales; and
- (18) any other aspects of security applicable to any particular lottery game and to the lottery and its operations.

D. Specific audit findings related to security invasion techniques are confidential and may be reported only to the chief executive officer or his designee, the board, the governor and the attorney general.

6-24-29. Unlawfully influencing and fraud; penalties.

A. It is unlawful to knowingly:

- (1) influence the winning of a prize through the use of coercion, fraud, deception or tampering with lottery equipment or materials;
- (2) make a material false statement in any application for selection as a lottery retailer or any lottery vendor proposal or other proposal to conduct lottery activities or to make a material false entry in any book or record that is compiled or maintained or submitted pursuant to the provisions of the New Mexico Lottery Act [6-24-1 NMSA 1978];
- (3) obtain or attempt to obtain access to a computer database or information maintained by the authority without the specific written authorization of the authority; or
- (4) obtain or attempt to obtain access to a computer database or information maintained by a person pursuant to a contract with the authority without the specific written authorization of the authority.

B. Any person who violates any provision of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

6-24-30. Conflicts of interest; penalties.

A. It is unlawful for the chief executive officer, a board member or any employee of the authority or any person residing in the household of the officer, board member or employee to:

- (1) have, directly or indirectly, an interest in a business, knowing that such business contracts with the lottery for a major procurement, whether such interest is as a natural person, partner, member of an association, stockholder or director or officer of a corporation; or
- (2) accept or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, service or hospitality having an aggregate value of more than twenty dollars (\$20.00) in any calendar year, except for food and beverages consumed by the recipient at the time of receipt, from a person, knowing that the person:
 - (a) contracts or seeks to contract with the state to supply gaming equipment, materials, lottery tickets or consulting services for use in the lottery; or
 - (b) is a lottery retailer.

B. It is unlawful for a lottery retailer or a lottery vendor to offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, service or hospitality having an aggregate value of more than twenty dollars (\$20.00) in any calendar year, except food and beverages consumed by the recipient at the time of receipt, to a person, knowing the person is the chief executive officer, a board member or an employee of the authority, or a person residing in the household of the officer, board member or employee.

C. Any person who violates any provision of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. If a board member, the chief executive officer or an employee of the authority, or any person residing in the household thereof, is convicted of a violation of this section, that board member, chief executive officer or employee shall be removed from office or employment with the authority.

6-24-31. Forgery of lottery ticket; penalty.

A. It is unlawful to falsely make, alter, forge, pass, present or counterfeit, with intent to defraud, a lottery ticket, or receipt for the purchase thereof, issued or purported to have been issued by the lottery under the New Mexico Lottery Act [6-24-1 NMSA 1978].

B. It is unlawful to steal, knowingly possess or attempt to redeem stolen lottery tickets.

C. A person who violates the provisions of Subsection A of this section when:

- (1) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is one hundred dollars (\$100) or less is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;
- (2) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is more than one hundred dollars (\$100) but not more than one thousand dollars (\$1,000) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;
- (3) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is more than one thousand dollars (\$1,000) but not more than two thousand five hundred dollars (\$2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;
- (4) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is more than two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and
- (5) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is more than twenty thousand dollars (\$20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. A person who violates the provisions of Subsection B of this section when:

- (1) the face value of the lottery tickets is one hundred dollars (\$100) or less is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;
- (2) the face value of the lottery tickets is more than one hundred dollars (\$100) but not more than one thousand dollars (\$1,000) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;
- (3) the face value of the lottery tickets is more than one thousand dollars (\$1,000) but not more than two thousand five hundred dollars (\$2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;
- (4) the face value of the lottery tickets is more than two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

- (5) the face value of the lottery tickets is more than twenty thousand dollars (\$20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

6-24-32. Unlawful sale of lottery ticket; penalty.

A. It is unlawful for:

- (1) any person to sell a lottery ticket at a price other than that fixed by the authority pursuant to the New Mexico Lottery Act [6-24-1 NMSA 1978];
- (2) any person other than the authority or a lottery retailer to sell or resell any lottery ticket; and
- (3) any person to sell a lottery ticket to any person under eighteen years of age.

B. Notwithstanding the provisions of Subsection A of this section, any person may make a gift of lottery tickets, and the authority or a lottery retailer may make a gift of lottery tickets for promotional purposes.

C. Any person who violates any provision of this section for the first time is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. Any person who violates any provision of this section for a second or subsequent time is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

6-24-33. Unlawful purchase of lottery ticket; penalty.

A. It is unlawful for the following persons to purchase a lottery ticket or to share knowingly in the lottery winnings of another person:

- (1) the chief executive officer, a board member or an employee of the authority; or
- (2) an owner, officer or employee of a lottery vendor or, in the case of a corporation, an owner of five percent or more of the corporate stock of a lottery vendor.

B. Notwithstanding the provisions of Subsection A of this section, the chief executive officer may authorize in writing any employee of the authority and any employee of a lottery contractor to purchase a lottery ticket for the purposes of verifying the proper operation of the lottery with respect to security, systems operation and lottery retailer contract compliance. Any prize awarded as a result of such ticket purchase shall become the property of the authority and shall be added to the prize pools of subsequent lottery games.

C. Nothing in this section shall prohibit lottery retailers or their employees from purchasing lottery tickets or from being paid a prize for a winning ticket.

D. Certain classes of persons who, because of the unique nature of the supplies or services they provide for use directly in the operation of the lottery, may be prohibited, in accordance with rules adopted by the board, from participating in any lottery in which such supplies or services are used.

E. Any person who violates any provision of this section for the first time is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

F. Any person who violates any provision of this section for a second or subsequent time is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

6-24-34. Criminal provisions of act in addition to any existing Criminal Code provisions.

The criminal provisions of the New Mexico Lottery Act [6-24-1 NMSA 1978] are not intended to and do not replace or preempt prosecution for Criminal Code [30-1-1 NMSA 1978] violations based on identical or similar conduct.