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November 14, 2024

To: Assembly Regulated Professions Committee
From: Eric Blomgren, Executive Director
New Jersey Gasoline, Convenience Store, Automotive, Association

Re: Support A-3759 “Prohibits internet sale of lottery tickets by State Lottery Commission.”

NJGCA represents a large portion of the state’s more than 2,500 convenience stores, most of whom are licensed lottery retailers, and on their behalf that we support this bill.

Questionable Authority

The goal of this bill is not really to add new language to current statute but to clarify beyond any doubt the current law and its intent—which is that the Lottery Commission cannot and should not license itself to be a lottery retailer.

In August of last year the Lottery Commission formally approved its proposed regulation giving itself the ability to license itself as a lottery retailer, with the intent to sell draw-based games (like Powerball and Mega Millions) directly to consumers through their website and through a mobile phone app. We continue to believe that this power was not delegated to them by the Legislature at any point in the more than half century since the creation of the state lottery.

The law creating the lottery in New Jersey was the State Lottery Act of 1970 (NJ Statute 5:9-14). The State Lottery Act provides that “no person other than a licensed lottery agent shall sell lottery tickets or shares...” Further, the Act provides that “no license as an agent to sell lottery tickets or shares shall be issued to any person to engage in business exclusively as a lottery sales agent.” (N.J. Statute 5:9-11) Notably, a “person” is defined by the Act to “include all departments, commissions, agencies and instrumentalities of the state.” The Commission is therefore a “person” under the State Lottery Act. They feel that the act of managing the lottery is separate and distinct from selling the tickets—tickets which would not exist without their management.

More recently the State considered and allowed through legislative action the sale of lottery tickets through private companies—couriers. The Courier Services Act, passed in 2016, allowed for third party couriers to conduct sales online through existing lottery agents, which are authorized brick-and-mortar retail vendors. Pursuant to the Lottery Courier Services Act, lottery couriers “shall not be licensed as lottery sales agents under [N.J. Statute 5:9-11].” (N.J. Statute 5:9-14.3d). Indeed, licensing lottery couriers as lottery sales agents would permit them to “engage in business

exclusively” to sell and deliver lottery tickets, in violation of N.J. Statute 5:9-11. However, the proposed regulations would effectively do just that—transform the State into couriers and sales agents.

The Commission will also be approving their own application to be a lottery sales agent and then will be required to enforce their own “Retailer Code of Conduct” against themselves. It is a fundamental tenet of fairness that no one can be a judge in their own case, yet that is what they are making themselves.

The Threat to Small Businesses

Lottery sales have long been a cornerstone of the business for the state’s convenience stores. These businesses have relied on the appeal of the lottery to draw in customers, who then often purchase other, higher margin products. It’s the sale of these ancillary products that keep the store in business and the employees employed. Virtually any c-store owner will tell you that they see a sharp spike in overall sales when draw games start reaching huge jackpots, as they did over the last year when there were Powerball jackpots over \$1 billion.

Convenience stores, either standalone or in conjunction with a gas station, have for decades been an entryway for newly arrived, hardworking immigrants to this country to achieve their part of the American Dream. Many of our members started in this country manning registers or pumping gas and now own a successful business, with children who are planning to take over and expand. The other key products that have helped draw customers to their stores—gasoline and cigarettes—are in long-term decline. If this change is made, we fear it will send their lottery ticket sales into decline as well.

Allowing the State to sell some lottery tickets directly to the consumer through the internet and mobile devices will put our physical retail stores in direct competition with the very entity that acts as our supplier, distributor, and chief advertiser.

No doubt, it will not take all of their sales; many lottery customers prefer the experience of coming into the physical store, and some customers come for the coffee and then make an impulse buy of a ticket, rather than the other way around. However, there are other existing customers who will find it more convenient to make all or even just some of their planned purchases through an app on their mobile device, wherever they are sitting. Office pools would be a good example of a type of purchase that we feel could disproportionately move online.

To the extent there are some potential customers that are not able or willing to purchase from a physical retailer but could be sold a ticket if they could buy it online, these customers can and are

able to be serviced by the four authorized and regulated lottery courier companies. It is not clear to us why the State entering this field would provide a better or more cost-effective experience.

The courier system does, however, provide a balance to the market that would not be found if the State were to sell tickets directly. Consumers of courier companies must pay an added fee that they would not have to pay if they had traveled to a c-store, a fact which increases the likelihood that the ticket sale is one that would not have occurred without the existence of the courier company. This would not be the case if a ticket purchased virtually through a Lottery Commission app was offered at the same cost as one purchased in-store. Couriers are also effectively limited in the amount of advertising they can do since they need to ensure that whatever they spend on advertising is recouped through increased sales of tickets purchased through them. The Lottery Commission and its contracted marketing partner will be able to leverage the revenues from all lottery tickets sold to advertise their new internet offerings.

We are also concerned about what the advertising will be and how it will be structured. How much will the Commission be spending on advertising for internet lottery specifically? How much will that take away from advertising that would be spent on lottery generally? What if either the Lottery Commission or the private contractor that does its advertising decide to run ads that promote internet sales as being more *convenient* than visiting a local retailer? What if retailers are required to display advertising in their store which expressly promotes to their customers that they no longer need to visit that store to make some of their purchases?

In discussions among our members, it has also been made clear that the current commission on sales of lottery tickets is no longer sufficient. The 5% rate has not been changed in the half century since the lottery was started. The expense of keeping open a brick-and-mortar store continues to escalate. Property taxes have exploded over that time, utility bills are much higher as well, and more than anything is the higher cost of labor. The minimum wage has doubled in the last decade alone, and due to the ongoing labor shortage, even wages for c-store cashiers are often above the minimum just to attract someone. Including the various taxes and insurance costs tied to having an employee, it costs around \$18 an hour to man the cash register at that c-store. Earning only 5 or 10 cents back on the sale of a ticket is increasingly not enough. There are no states with a commission lower than ours. Oregon's Lottery offers its retailers a full 8% commission. Even our neighbor New York has a higher rate, and their retailers have recently begun an effort to increase it further.

Thank you for your consideration of this important issue. I ask that you vote to approve this bill.