

11 VAC 5-31-10 et seq. - LICENSING REGULATIONS

LICENSING REGULATIONS

11 VAC 5-31-10. Definitions.

The following words and terms when used in any of the department's regulations shall have the same meanings as defined in this chapter unless the context clearly indicates otherwise.

“License” means the certificate issued by the department to a retailer who has met the requirements established by the department to sell lottery products.

"Lottery retailer," "lottery sales agent" or "retailer" means a person licensed by the director to sell and dispense lottery tickets or shares.

"Person," for purposes of licensing, means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals, as well as all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, municipalities, agencies and instrumentalities thereof.

“Vacuum fluorescent display” means a player display unit that, when connected to the lottery terminal, presents messages to the customer, such as customer transaction totals, validation and cancellation amounts, and jackpot drawing messages.

11 VAC 5-31-20. Eligibility.

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A. Any person who is 18 years of age or older and who is bondable may submit an application for licensure as a lottery retailer in accordance with the provisions and requirements of the department's licensing procedures, except no person may submit an application for licensure:

1. Who will be engaged primarily in the business of selling lottery tickets;
2. Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as a board member, officer or employee of the department; or
3. Who is a board member, officer or employee of any vendor to the department of lottery ticket goods or services, working directly on a contract with the department, or whose business owns, is owned by or controlled by, or affiliated with that vendor.

B. The submission of an application, forms or data for licensure does not in any way entitle any person to receive a license to act as a lottery retailer.

11 VAC 5-31-30. Application procedure.

Any eligible person shall first file an application with the department by completing all information requested on forms supplied for that purpose, along with submitting the required fees.

11 VAC 5-31-40. General standards for licensing.

A. The director or his designee may license those persons who, in his opinion, will best serve the public interest and convenience and public trust in the lottery and promote

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the sale of lottery tickets. Before issuing or renewing a license, the director may consider factors including, but not limited to, the following:

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;
 3. The sufficiency of existing lottery retailers to serve the public convenience;
 4. The volume of expected lottery ticket sales;
 5. The ability to offer a high level of customer service to lottery players.
 6. Whether the place of business caters to or is frequented predominantly by persons under 18 years of age;
 7. Whether the nature of the business constitutes a threat to the health or safety of prospective lottery patrons;
 8. Whether the nature of the business is consonant with the probity of the Commonwealth; and
 9. Whether the applicant or retailer has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery.
- B. The director may develop and, by director's order, publish additional criteria which, in his judgment, are necessary to serve the public interest and public trust in the lottery.

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C. After notification of selection as a lottery retailer, the retailer shall submit all required forms and information to the department to be considered for licensing. Failure to submit required forms and information within the times specified by the department's licensing procedures may result in the loss of the opportunity to become or remain a licensed retailer.

11 VAC 5-31-50. Bonding of lottery retailers.

A. A lottery retailer shall have and maintain a surety bond from a surety company entitled to do business in Virginia. The surety bond shall be in the amount and penalty of up to \$50,000 for instant game retailers and \$100,000 per clerk-activated terminal for on-line game retailers and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.

B. The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded.

11 VAC 5-31-60. Lottery bank accounts and electronic funds transfer (EFT) authorization.

A. A lottery retailer shall have and maintain a separate bank account in a bank participating in the Automatic Clearing House (ACH) system. This account shall be styled in the name of the retailer followed by "Virginia Lottery Trust" and shall be used exclusively for lottery business.

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B. The lottery account shall be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the EFT process to settle a retailer's account for funds owed by or due to the retailer from the sale of tickets and the payment of prizes. All retailers shall make payments to the department through the EFT process in accordance with the department's licensing procedures, unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

C. The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.

D. The director will establish a schedule for processing the EFT transactions against retailers' lottery trust accounts and issue instructions regarding the settlement of accounts.

11 VAC 5-31-70. License term and periodic review.

A. A general license for an approved lottery retailer shall be issued subject to a periodic determination of continued retailer eligibility and the payment of any fees fixed by the board.

B. The director may issue special licenses to persons for specific events and activities in accordance with the requirements of the department's licensing procedures.

11 VAC 5-31-80. License fees.

The initial general license fee shall be \$50 and the periodic review fee shall be [\$35, or as otherwise determined from time to time by the board,] and shall be paid in accordance

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with the department's licensing procedures. The license fees, where applicable, shall be paid for each location. These fees are nonrefundable.

11 VAC 5-31-90. Transfer of license prohibited.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable or assignable to any other person or location.

11 VAC 5-31-100. Display of license.

Each licensed lottery retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

11 VAC 5-31-110. Reporting requirements and settlement procedures.

Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering tickets; (ii) paying for tickets purchased; (iii) reporting receipts, transactions and disbursements pertaining to lottery ticket sales; and (iv) settling the retailer's account with the department.

11 VAC 5-31-120. Training of retailers and their employees.

Each retailer or his designated representative or representatives and anyone that operates an on-line terminal at the retailer's location is required to participate in training. The director may consider nonparticipation as grounds for suspending or revoking the retailer's license.

11 VAC 5-31-130. Retailers' conduct.

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A. Each retailer shall comply with all applicable state and federal laws and regulations, as well as all rules, policies and procedures of the department, license terms and conditions, specific rules for all applicable lottery games, directives and instructions that may be issued by the director, and licensing and equipment agreements and contracts signed by the retailer.

B. Retailers shall sell lottery tickets at the price fixed by the board.

C. Tickets shall be sold during all normal business hours of the lottery retailer and when the equipment is available, unless the director approves otherwise.

D. Tickets shall be sold only at the location listed on each retailer's license from the department.

E. Retailers shall not exchange instant ticket packs or tickets or on-line ticket stock with one another, but may transfer instant ticket packs or tickets between or among locations under the same ownership.

F. No retailer or his employee or agent shall try to determine the numbers or symbols appearing under the removable latex or electronically-produced coverings or otherwise attempt to identify unsold winning tickets. However, this shall not prevent the removal of the covering over the validation code or validation number after the ticket is sold.

G. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. An employee not yet 18 years of age, but who is at least 16 years of age, may sell or otherwise vend lottery tickets at the retailer's place of business

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so long as the employee is supervised by the manager or supervisor in charge at the location where the tickets are being sold.

11 VAC 5-31-140. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transactions or checks.

A. Payments shall be due from retailers as specified by the director in accordance with department policies.

B. Any retailer who fails to make payment when payment is due will be contacted by the department and instructed to make immediate deposit of the funds due. If the retailer is not able to deposit the necessary funds or if the item is returned to the department unpaid for a second time, the retailer's license may be inactivated. If inactivated, the license will not be reactivated until payment is made by cashier's check, certified check or EFT transaction, and if the retailer is deemed a continuing credit risk by the department, not until an informal conference is held to determine if the licensee is able and willing to meet the terms of his retailer contract. Additionally, interest may be charged on the moneys due plus a \$25 penalty. The interest charge will be equal to the "Underpayment Rate" established pursuant to § 58.1-15 of the Code of Virginia. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

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C. In addition to the penalty authorized by subsection B of this section, the director may assess a \$25 service charge against any retailer whose payment through EFT transaction or by check is dishonored.

D. The service charge, interest and penalty charges may be waived if it is determined by the department that the event that otherwise would result in the assessment of a service charge, interest or penalty is not in any way the fault of the lottery retailer.

11 VAC 5-31-150. Licensed retailers' compensation.

A. A licensed retailer shall receive 5.0% compensation based on his net ticket sales and 1.0% of the cash value of all prizes which the retailer paid.

B. The board shall approve any bonus or incentive system for payment to retailers. The director may then award such cash bonuses or other incentives to retailers.

C. Retailers may not accept any compensation for the sale of lottery tickets other than compensation approved under this section, regardless of the source.

11 VAC 5-31-160. Denial, suspension, revocation or noncontinuation of license.

A. The director may refuse to issue a license to a person if the person does not meet the eligibility criteria and standards for licensing as set out in § 58.1-4009 of the Code of Virginia, these regulations, and in the department's licensing procedures, or if:

1. The person's place of business caters to or is frequented predominantly by persons under 18 years of age, but excluding family-oriented businesses;

2. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;

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3. The nature of the person's business is not consonant with the probity of the Commonwealth;
 4. The person has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery; or
 5. The person has been suspended permanently from a federal or state licensing or authorization program and that person has exhausted all administrative remedies pursuant to the respective agency's regulations or procedures.
- B. The director may suspend, revoke, or refuse to continue a license for any of the reasons enumerated in § 58.1-4012 of the Code of Virginia, in subsection A of this section, in the department's procedures, or for any of the following reasons:
1. Failure to maintain the required lottery trust account;
 2. Failure to comply with lottery game rules;
 3. Failure to properly care for, or prevent the abuse of, the department's equipment, or failure to properly position and display the vacuum fluorescent display;
 4. Failure to meet minimum point of sale standards; or
 5. Failure to continue to meet the eligibility criteria and standards for licensing.
- C. Any person refused a license under subsections A or B of this section may appeal the director's decision in the manner provided by 11 VAC 5-20-150.

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D. Before taking action under subsection C of this section, the director will notify the retailer in writing of his intent to suspend, revoke or deny continuation of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a conference. Such notice shall be given to the retailer in accordance with the provisions of the department's regulations.

E. If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into alleged violations is concluded.

F. A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final lottery accounting of his lottery activities by the date specified by the director.

11 VAC 5-31-170. License termination by retailer.

The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 15 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property has been surrendered.

11 VAC 5-31-180. Inspection of premises.

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Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials, equipment or tickets are stored or kept in order to inspect the lottery materials, equipment or tickets and the licensed premises.

11 VAC 5-31-190. Examination of records and equipment; seizure of records and equipment.

A. Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing and copying, and make all equipment related to his lottery activities available for inspection, as required by the director or department representatives, between the hours of 8 a.m. and 5 p.m. Mondays through Fridays during the normal business hours of the licensed retailer.

B. All books, records and equipment pertaining to the licensed retailer's lottery activities may be seized with good cause by the director or department representatives without prior notice.

11 VAC 5-31-200. Audit of records.

The director may require a lottery retailer to submit to the department an audit report conducted by an independent certified public accountant on the licensed retailer's lottery

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activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.