

THE  
ARKANSAS SCHOLARSHIP  
LOTTERY ACT



ARKANSAS CODE ANNOTATED

§ 23-115-101 et seq.

AND

§ 6-85-201 et seq.

Provided by the Legal Division  
of the  
Bureau of Legislative Research

**TITLE 23  
CHAPTER 115**

**ARKANSAS SCHOLARSHIP LOTTERY ACT**

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**SUBCHAPTER 1  
GENERAL PROVISIONS**

**23-115-101. Short title.**

This chapter shall be known and may be cited as the "Arkansas Scholarship Lottery Act".

**23-115-102. Legislative intent.**

It is found and declared by the General Assembly that:

(1) Net proceeds of lotteries conducted under this chapter shall be used to:

(A) Fund and provide for scholarships and grants to citizens of the State of Arkansas enrolled in public and private nonprofit two-year and four-year colleges and universities located within the state; and

(B) Supplement, not supplant, nonlottery educational resources;

(2) Lotteries shall be operated and managed in a manner that:

(A) Provides continuing entertainment to the public;

(B) Maximizes revenues; and

(C) Ensures that the lotteries are operated with integrity, dignity, and adequate internal controls and free of political influence; and

(3) The Arkansas Lottery Commission shall be accountable to the General Assembly and to the public through a system of audits and reports.

**23-115-103. Definitions.**

As used in this chapter:

(1) "Administrative expenses" means operating expenses, excluding amounts set aside for prizes, regardless of whether the prizes are claimed, and excluding amounts held as a fidelity fund under § 23-115-603;

(2) "Administrative order" means the final disposition of the Arkansas Lottery Commission in any matter other than a claim in contract or in tort, including without limitation licensing in which the Arkansas Lottery Commission is required by law to make its determination after notice and a hearing;

(3)(A) "Casino gambling" means a location or business for the purposes of conducting illegal gambling activities, including without limitation activities under § 5-66-101 et seq. that are not authorized under this chapter.

(B) "Casino gambling" does not include the sale and purchase of tickets or shares;

(4)(A) "Compensation" means any money or anything of value received or to be received as a claim for future services, whether in the form of a retainer, fee,

salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof.

(B) "Compensation" includes without limitation a payment made under obligation for services or other value received;

(5) "Female-owned business" means a business:

(A) Whose management and daily business operations are under the control of one (1) or more females; and

(B) Either:

(i) Individually owned by a female who reports as her personal income for Arkansas income tax purposes the income of the business;

(ii) Which is a partnership in which a majority of the ownership interest is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or

(iii) Which is a corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation;

(6) "Gift" means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor;

(7) "Immediate family" means the father, mother, sister, brother, husband, wife, child, grandmother, grandfather, grandchild, father-in-law, mother-in-law, sister-in-law, brother-in-law, stepchild, grandmother-in-law, grandfather-in-law, stepgrandchild, or any individual acting as parent or guardian;

(8) "Incompetence" means:

(A) Gross ignorance of official duties;

(B) Gross carelessness in the discharge of official duties; or

(C) Inability or unfitness to discharge promptly and properly official duties because of a serious physical or mental defect that did not exist at the time of the person's appointment;

(9) "License" means authorization granted by the Arkansas Lottery Commission to an individual to operate as a retailer, including without limitation the execution of a contract between the Arkansas Lottery Commission and the individual relating to obligations and terms for operating as a retailer;

(10) "Lobbying" means communicating directly or soliciting others to communicate with any member of the Arkansas Lottery Commission, the Director of the Arkansas Lottery Commission, any employee of the Arkansas Lottery Commission, or a member of the Arkansas Lottery Commission Legislative Oversight Committee with the purpose of influencing the actions of the Arkansas Lottery Commission or the Arkansas Lottery Commission Legislative Oversight Committee;

(11) "Local government" means:

(A) A county;

(B) A city of the first class or a city of the second class;

(C) An incorporated town; or

(D) Any other district or political subdivision or any board, commission, or agency of the political subdivisions under subdivisions (11)(A)-(C) of this section;

(12)(A) "Lottery" means a game of chance approved by the Arkansas Lottery Commission and operated under this chapter.

(B) "Lottery" includes without limitation:

- (i) An instant ticket;
- (ii) A draw game; and
- (iii) Participation in a multistate or multisovereign game.

(C) "Lottery" does not include:

- (i) Casino gambling;
- (ii) A video lottery;

(iii) Pari-mutuel wagering on horse racing or greyhound racing governed by the Arkansas Horse Racing Law, § 23-110-101 et seq., or the Arkansas Greyhound Racing Law, § 23-111-101 et seq., whether the pari-mutuel wagering is on live racing, simulcast racing, or races conducted in the past and rebroadcast by electronic means;

(iv) Wagering on electronic games of skill under the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, § 23-113-101 et seq.; or

(v) Conducting or participating in charitable bingo and raffles under the Charitable Bingo and Raffles Enabling Act, § 23-114-101 et seq.;

(13) "Lottery proceeds" means all revenue derived from the sale of tickets or shares and all other moneys derived from a lottery, including without limitation fees collected by the Arkansas Lottery Commission under this chapter;

(14)(A) "Major procurement contract" means a contract for a gaming product or service costing more than seventy-five thousand dollars (\$75,000), including without limitation:

- (i) A major advertising contract;
- (ii) An annuity contract;
- (iii) A prize payment agreement;
- (iv) A consulting service;
- (v) Lottery equipment;
- (vi) Tickets; and
- (vii) Any other product and service unique to lotteries.

(B) "Major procurement contract" does not include a material, supply, equipment, or service common to the ordinary operations of the Arkansas Lottery Commission.

(C) When the cost of a proposed contract for a gaming product or service is to be paid in whole or in part on a contingent basis, the Arkansas Lottery Commission shall estimate the value of the proposed contract to determine whether it is a major procurement contract;

(15) "Member of a minority" means a lawful permanent resident of this state who is:

- (A) African American;

(B) Hispanic American;

(C) American Indian;

(D) Asian American; or

(E) Pacific Islander American;

(16) "Minority-owned business" means a business that is owned by:

(A) An individual who is a member of a minority who reports as his or her personal income for Arkansas income tax purposes the income of the business;

(B) A partnership in which a majority of the ownership interest is owned by one (1) or more members of a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or

(C) A corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more members of a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation;

(17) "Net proceeds" means lottery proceeds less operating expenses;

(18) "Nonlottery state educational resources" means the same as defined in § 6-85-204;

(19) "Operating expenses" means all costs of doing business, including without limitation:

(A) Prizes, commissions, and other compensation paid to retailers;

(B) Contracts for products or services necessary for the operation of the lottery, including without limitation the execution of major procurement contracts;

(C) Advertising and marketing costs;

(D) Personnel costs;

(E) Capital costs or depreciation of property and equipment;

(F) Funds for compulsive gambling education and treatment;

(G) The payment of sums to the Arkansas State Claims Commission for the reconciliation of valid claims against the Arkansas Lottery Commission;

(H) Payments for the cost of a state and federal criminal background check;

(I) Payments to the Department of Higher Education to:

(i) Reimburse the Department of Higher Education for the costs of administering scholarship awards funded with net proceeds; and

(ii) Replenish nonlottery state educational resources expended by the Department of Higher Education on scholarship awards otherwise funded with net proceeds;

(J) Amounts annually transferred to a fidelity fund under § 23-115-603; and

(K) Amounts paid to governmental entities for goods or services provided to the Arkansas Lottery Commission, including without limitation services provided by the Division of Legislative Audit and the Department of Finance and Administration;

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

(21)(A) "Public official" means:

- (i) The Governor;
- (ii) The Lieutenant Governor;
- (iii) The Secretary of State;
- (iv) The Treasurer of State;
- (v) The Attorney General;
- (vi) The Commissioner of State Lands;
- (vii) The Auditor of State; or
- (viii) A member of the General Assembly.

(B) "Public official" includes an individual during the time between the date he or she is elected and the date he or she takes office;

(22) "Retailer" means a person who sells tickets or shares on behalf of the Arkansas Lottery Commission under a license;

(23) "Share" means any intangible evidence of participation in a lottery;

(24) "Ticket" means any tangible evidence issued by a lottery to provide participation in a lottery;

(25)(A) "Vendor" means a person who provides or proposes to provide goods or services to the Arkansas Lottery Commission under a major procurement contract.

(B) "Vendor" does not include:

- (i) An employee of the Arkansas Lottery Commission;
- (ii) A retailer; or
- (iii) A state agency or instrumentality.

(C) "Vendor" includes a corporation whose stock is publicly traded and that is the parent company of the contracting party in a major procurement contract; and

(26) "Video lottery" means a lottery game that allows a game to be played using an electronic computer and an interactive computer terminal device:

(A) That is equipped with a video screen and keys and a keyboard or other equipment allowing input by an individual player;

(B) Into which the player inserts coins, currency, vouchers, or tokens as consideration in order for play to be available; and

(C) Through which the player may receive free games, coins, tokens, or credits that may be redeemed for cash, annuitized payments over time, a noncash prize, or nothing, as may be determined wholly or predominantly by chance.

## SUBCHAPTER 2 ARKANSAS LOTTERY COMMISSION

### 23-115-201. Arkansas Lottery Commission – Creation – Venue.

(a) There is created the Arkansas Lottery Commission to establish and oversee the operation of one (1) or more lotteries under this chapter.

(b) The commission is a self-supporting and revenue-raising agency of the state.

(c) The commission shall reimburse other governmental entities that provide goods or services to the commission.

### 23-115-202. Members – Duties.

(a)(1) The Arkansas Lottery Commission consists of the following members:

(A) Three (3) members appointed by the Governor;

(B) Three (3) members appointed by the Speaker of the House of

Representatives; and

(C) Three (3) members appointed by the President Pro Tempore of the

Senate.

(2) The members of the commission shall elect annually:

(A) A chair; and

(B) Other officers necessary to carry on its business.

(b)(1) Of the initial appointees to the commission by the Governor:

(A) One (1) member shall serve a term of two (2) years;

(B) One (1) member shall serve a term of four (4) years; and

(C) One (1) member shall serve a term of six (6) years.

(2) Of the initial appointees to the commission by the President Pro Tempore of the Senate:

(A) One (1) member shall serve a term of two (2) years;

(B) One (1) member shall serve a term of four (4) years; and

(C) One (1) member shall serve a term of six (6) years.

(3) Of the initial appointees to the commission by the Speaker of the House of Representatives:

(A) One (1) member shall serve a term of two (2) years;

(B) One (1) member shall serve a term of four (4) years; and

(C) One (1) member shall serve a term of six (6) years.

(4) All succeeding appointments to the commission shall be for terms of six (6) years.

(5) The appointing authorities shall determine the length of terms of the initial members of the commission.

(6) A member of the commission shall not serve more than two (2) terms.

(c) A vacancy on the commission shall be filled by the appointing authority for the unexpired portion of the term in which it occurs.

(d)(1) The commission shall meet at least quarterly upon the call of the chair.

(2) A majority of the total membership of the commission constitutes a quorum.

(e) The following shall not be appointed as a member of the commission:

(1) A member of the General Assembly; or

(2) A member of the immediate family of a member of the General Assembly.

(f) Members of the commission may receive expense reimbursement under § 25-16-901 et seq.

### 23-115-203. Qualifications of commission members.

(a)(1) In making appointments to the Arkansas Lottery Commission, the

appointing authorities under § 23-115-202 shall consider racial, gender, and geographical diversity among the membership as well as legal, financial, or marketing experience.

(2) Individuals appointed to the commission shall be residents of the State of Arkansas.

(b)(1) An individual considered for appointment to the commission shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check, to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The commission shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the appointing authority all releasable information obtained concerning the applicant.

(c) An individual shall not be appointed as a commission member if the individual has:

(1) Been convicted of a felony or a gambling offense in a state or federal court of the United States;

(2) Been convicted of a crime involving moral turpitude; or

(3) Entered into a plea agreement to avoid felony prosecution.

(d) Each member of the commission, before entering upon the discharge of the duties of a commissioner, shall file with the Secretary of State the constitutional oath of office.

(e) Upon the end of his or her term, a former member of the commission shall not:

(1) Represent a vendor or retailer before the commission for a period of two (2) years after the end of the former member's term; or

(2) Engage in lobbying on any matter related to the operation or conduct of lotteries under this chapter for a period of two (2) years after the end of the former member's term.

#### **23-115-204. Lottery Retailer Advisory Board.**

(a)(1) The Chair of the Arkansas Lottery Commission, subject to the approval of a majority of a quorum of the Arkansas Lottery Commission, shall appoint a Lottery Retailer Advisory Board to be composed of ten (10) retailers.

(2) In making appointments to the board, the chair may consider a broad spectrum of geographical, racial, gender, and business characteristics of retailers.

(3) The board shall advise the commission on retail aspects of lotteries and present the concerns of retailers throughout the state.

(b)(1) Except as provided in subdivision (b)(2) of this section, each member appointed to the board shall serve a term of two (2) years.

(2)(A) Five (5) of the initial appointees shall serve initial terms of one (1) year.

(B) The initial appointees shall draw lots to determine which five (5) members shall serve a one-year term.

(3) A member of the board shall not serve more than six (6) terms.

(c)(1) The board shall provide by rule for its operating procedures.

(2) Members shall serve without compensation or reimbursement of expenses.

(3) The board may report to the commission and the Arkansas Lottery Commission Legislative Oversight Committee in writing at any time.

(4) The commission may invite the board to make an oral presentation to the commission at any meeting of the commission.

(d) The following shall not be appointed as a member of the board:

(1) A member of the immediate family of a member of the commission;

(2) A member of the immediate family of the director of the commission; or

(3) A member of the immediate family of an employee of the commission.

#### **23-115-205. Commission powers.**

(a) The Arkansas Lottery Commission has all powers necessary or convenient to its usefulness in carrying out this chapter that are not in conflict with the Arkansas Constitution or the United States Constitution, including without limitation the following powers:

(1) To adopt and alter a seal;

(2) To adopt, amend, and repeal rules for the regulation of its affairs and the conduct of its business, to prescribe the duties of officers and employees of the commission, and to perform other matters as the commission determines;

(3) To bring suits to enforce demands of the state under this chapter;

(4) To procure or to provide insurance;

(5) To hold copyrights, trademarks, and service marks and to enforce the commission's rights with respect to those copyrights, trademarks, and service marks;

(6) To initiate, supervise, and administer the operation of lotteries in accordance with this chapter and rules adopted under this chapter;

(7) To enter into written agreements with one (1) or more other states or sovereigns for the operation, participation in marketing, and promotion of multistate or multisovereign games;

(8) To conduct market research as necessary or appropriate;

(9) To acquire or lease real property and make improvements to the real property and acquire by lease or by purchase personal property, including without limitation:

(A) Computers;

(B) Mechanical, electronic, and online equipment and terminals;

(C) Intangible property, including without limitation computer programs, computer systems, and computer software; and

(D) Broadcast equipment;

- (10) 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 commission;
- (11) To employ:
  - (A) The Director of the Arkansas Lottery Commission; and
  - (B)(i) An internal auditor.
  - (ii) The commission shall determine the duties and responsibilities of the internal auditor.
  - (iii) The internal auditor shall report directly to the commission;
- (12) To select and contract with vendors;
- (13) To select and license retailers;
- (14) To enter into contracts or agreements with state or local law enforcement agencies for the performance of law enforcement, background investigations, and security checks;
- (15) To conduct background investigations and, if considered necessary by the commission, credit investigations on each potential vendor and retailer;
- (16) To supervise ticket or share validation and lottery drawings;
- (17) To inspect at times determined solely by the commission the facilities of a vendor or a retailer to determine:
  - (A) The integrity of the vendor's product or the operations of the retailer; and
  - (B) Whether the vendor or the retailer is in compliance with its contract or license;
- (18) To report any suspected violation of this chapter to the appropriate prosecuting attorney or the Attorney General and to any law enforcement agencies having jurisdiction over the violation;
- (19) Upon request, to provide assistance to the Chief Fiscal Officer of the State, the Legislative Auditor, the appropriate prosecuting attorney, the Attorney General, or a law enforcement agency investigating a violation of this chapter;
- (20) To enter into contracts of terms and conditions that the commission determines;
- (21) To establish and maintain banking relationships associated with the maintenance and investment of lottery proceeds, including without limitation the establishment of checking and savings accounts and trust funds;
- (22)(A) To advertise and promote lotteries and scholarships and grants funded by net proceeds.
  - (B) The commission shall seek the advice of the Department of Higher Education when advertising to promote scholarships and grants funded by net proceeds;
- (23) To approve, disapprove, amend, or modify the budget recommended by the director for the operation of the commission;
- (24) To act as a retailer and to establish and operate a sales facility to conduct promotions that involve the sale of tickets or shares and any related merchandise;
- (25)(A) To contract with one (1) or more independent testing laboratories to scientifically test and technically evaluate lottery games, lottery terminals, and

lottery operating systems.

(B) An independent testing laboratory shall:

- (i) Have a national reputation that is demonstrably competent; and
- (ii) Be qualified to scientifically test and evaluate all components of a lottery game, lottery terminal, or lottery operating system.

(C) An independent testing laboratory shall not be owned or controlled by a vendor or a retailer; and

(26) To adopt and amend rules necessary to carry out and implement its powers and duties, organize and operate the commission, regulate the conduct of lotteries in general, and any other matters necessary or desirable for the efficient and effective operation of lotteries for the convenience of the public.

(b) The powers enumerated in subsection (a) of this section:

- (1) Are in addition to those powers of the commission enumerated elsewhere in this chapter; and
- (2) Do not limit or restrict any other powers of the commission.
- (c) The commission may delegate to one (1) or more of its members, to the director, or to any agent or employee of the commission powers and duties as it deems proper.

**23-115-206. Internal controls – Annual audit.**

(a) To ensure the financial integrity of lotteries, the Arkansas Lottery Commission shall:

- (1) Establish and maintain effective internal controls over financial reporting, including the monitoring of ongoing activities, and comply with the Arkansas Constitution and applicable laws, rules, contracts, agreements, and grants;
- (2) Establish and maintain effective internal controls to prevent and detect fraud, including without limitation a system of internal audits;
- (3) Include in any contract or license with a vendor or retailer for data processing services or other computer services a provision permitting the Division of Legislative Audit to have access and authority to audit the computer systems of the vendor or retailer;
- (4) Notify the division of all known fraud or suspected fraud or all known or suspected illegal acts involving management or other employees of the commission or others with whom the commission contracts;
- (5) Inform the division and the Chief Fiscal Officer of the State of any known material violations of the Arkansas Constitution, applicable statutes, rules, contracts, agreements, or grants;
- (6) Prepare the financial statements, including the related notes to the financial statements, of the commission in accordance with generally accepted accounting principles and in accordance with guidelines and timelines established by the Chief Fiscal Officer of the State to permit incorporation into the state's financial statements and to permit the audit of the state's financial statements and the commission's financial statements in a timely manner;
- (7) Make all financial records and related information available to the division, including the identification of significant vendor relationships in which the vendor

has the responsibility for program compliance, in accordance with §§ 10-4-416 and 10-4-424;

(8)(A) Submit monthly and annual reports to the Governor and the Arkansas Lottery Commission Legislative Oversight Committee disclosing the total lottery revenues, prize disbursements, operating expenses, net assets, and administrative expenses of the commission during the reporting period.

(B)(i) The initial annual report shall describe the organizational structure of the commission and summarize the functions performed by each organizational division within the commission.

(ii) Future annual reports shall describe any revisions to the organizational structure since the filing of the previous annual report;

(9) Maintain weekly or more frequent records of lottery transactions, including without limitation:

- (A) The distribution of tickets or shares to retailers;
- (B) Revenues received;
- (C) Claims for lottery prizes;
- (D) Lottery prizes paid;
- (E) Lottery prizes forfeited; and
- (F) Other financial transactions of the commission;

(10)(A) Submit to the Cochairmen of the Arkansas Lottery Commission Legislative Oversight Committee by April 30 of each year a copy of the annual operating budget for the commission for the next fiscal year.

(B) The proposed operating budget shall be accompanied by:

- (i) An estimate of the net proceeds to be available for scholarships and grants during the succeeding fiscal year; and
- (ii) The following information for each employment classification:
  - (a) The total number of persons currently employed;
  - (b) The number of white male employees;
  - (c) The number of white female employees;
  - (d) The total number of Caucasian employees;
  - (e) The number of black male employees;
  - (f) The number of black female employees;
  - (g) The number of other employees who are members of racial minorities;

and

(h) The total number of minorities currently employed; and

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

(b)(1)(A) The division shall annually audit the commission.

(B) The division may conduct an investigation or audit or prepare special reports regarding the commission or related entities, scholarships, grants, vendors, retailers, or any other transactions or relationships connected or associated with the commission or its operations, duties, or functions upon the approval of the Legislative Joint Auditing Committee.

(2) The commission shall reimburse the division at an hourly rate set by the Legislative Joint Auditing Committee for work performed by the division relating to any audit, investigation, or special report regarding the commission and related

entities, scholarships, grants, vendors, retailers, or other related matters.

(3)(A) If the commission, the General Assembly, the Arkansas Lottery Commission Legislative Oversight Committee, or the Legislative Joint Auditing Committee requests additional audits or performance reviews of the fiscal affairs or operations of the commission to be conducted by a private certified public accountant or other consultant, the division shall select and contract with appropriate certified public accountants or consultants to provide the services.

(B) The division shall contract for the services which shall be paid directly to the contractor by the commission.

(C) A copy of any report or management correspondence prepared by the certified public accountants or consultants shall be forwarded to the commission, the division, and the Arkansas Lottery Commission Legislative Oversight Committee.

(4) This chapter does not limit the statutory authority of the division or the responsibilities of the commission or related entities, board members, employees, vendors, retailers, or any other individuals or entities to cooperate with the division or provide information or records requested by the division.

### **23-115-207. Rulemaking.**

(a) The Arkansas Lottery Commission may adopt rules regulating the conduct of lotteries in general, including without limitation rules specifying:

(1) The types of lotteries to be conducted;

(2)(A) The sale price of tickets or shares and the manner and method of sale.

(B)(i) All sales of tickets or shares are for cash only.

(ii) Payment by checks, credit cards, charge cards, or any form of deferred payment is prohibited;

(3) The 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, including without limitation lump-sum payments or installments over a period of years;

(6)(A) The manner of payment of prizes to the holders of winning tickets or shares.

(B) Winners of five hundred dollars (\$500) or less may claim prizes from any of the following:

(i) A retailer; or

(ii) The commission.

(C)(i) Winners of more than five hundred dollars (\$500) shall claim prizes from the commission.

(ii) The commission may establish claim centers throughout the state as it deems necessary;

(7) The frequency of lotteries 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.



(B) The selling of tickets or shares may include the use of electronic or mechanical devices.

(C) If the commission elects to use electronic or mechanical devices to sell tickets or shares, the commission shall provide by rule:

(i) Specifications and required features for electronic or mechanical devices that may be used to sell tickets or shares; and

(ii) Procedures and requirements to prevent the use of electronic or mechanical devices by an individual under eighteen (18) years of age.

(D) A retailer who knowingly allows a person under eighteen (18) years of age to purchase a lottery ticket from an electronic or mechanical device is subject to the penalties under § 23-115-901;

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

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

(b) The commission may adopt rules requiring the publication on a ticket or share of the odds of winning a particular lottery game.

(c)(1)(A) Except as provided in subdivision (c)(1)(B) of this section, the promulgation of rules under this chapter shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(B) The commission shall not be required to file rules under § 10-3-309.

(2)(A) The promulgation of rules by the commission shall be exempt from § 10-3-309.

(B) The commission shall file its rules with the Arkansas Lottery Commission Legislative Oversight Committee for review at least thirty (30) days before the expiration of the public comment period.

### **23-115-208. Sovereign immunity.**

(a) This chapter does not waive the sovereign immunity of the State of Arkansas.

(b)(1) A claim in contract or in tort against the Arkansas Lottery Commission or its employees shall be presented to the Arkansas Lottery Commission.

(2) The Arkansas Lottery Commission shall promulgate rules concerning the consideration of claims in contract or in tort presented to the Arkansas Lottery Commission, including without limitation rules concerning the conduct of hearings on claims in contract or in tort.

(c)(1) A claimant may appeal the decision of the commission under subsection (b) of this section to the Arkansas State Claims Commission.

(2) The claimant may:

(A) Within forty (40) days after the decision is rendered, file with the Arkansas State Claims Commission a notice of appeal of the decision of the Arkansas Lottery Commission;

(B) Within forty (40) days after the decision is rendered, file with the Arkansas Lottery Commission a motion for reconsideration requesting the Arkansas Lottery Commission to reconsider its decision; and

(C) Within twenty (20) days after the Arkansas Lottery Commission's reconsideration or denial of the motion for reconsideration, file with the Arkansas State Claims Commission a notice of appeal of the decision of the Arkansas Lottery Commission.

(3) When the Arkansas Lottery Commission notifies parties of a decision of the Arkansas Lottery Commission, it shall advise the parties of the right of appeal.

(d)(1)(A) Except as provided in subdivisions (d)(2)-(4) of this section, appeals of claims in contract or in tort against the Arkansas Lottery Commission or its employees shall be conducted by the Arkansas State Claims Commission in the same manner as a claim under § 19-10-201 et seq.

(B) The Arkansas State Claims Commission shall consider an appeal de novo.

(2) A decision of the Arkansas State Claims Commission relating to a claim in contract or in tort against the Arkansas Lottery Commission or its employees shall not be appealed to the General Assembly.

(3)(A) A valid claim in any amount against the Arkansas Lottery Commission shall not be referred to the General Assembly for an appropriation.

(B) The Clerk of the Arkansas State Claims Commission shall notify the Arkansas Lottery Commission of the amount of the valid claim.

(C) Upon receipt of notification from the clerk, the Arkansas Lottery Commission shall deliver a check to the clerk, who shall deposit the sum as a nonrevenue receipt into the Miscellaneous Revolving Fund from which he or she shall disburse the amount of the claim to the claimant.

(4) Written reports under § 19-10-212 shall be filed with the Arkansas Lottery Commission Legislative Oversight Committee.

### **23-115-209. Appealing administrative orders of the commission.**

(a) A retailer, a vendor, or an applicant for a contract or a retailer license aggrieved by an administrative order of the Arkansas Lottery Commission may appeal that decision to Pulaski County Circuit Court.

(b) The court shall hear appeals from administrative orders of the commission, and based upon the record of the proceedings before the commission, may reverse the administrative order of the commission only if the person appealing the administrative order proves the administrative order to be:

(1) Clearly erroneous;

(2) Arbitrary and capricious;

(3) Procured by fraud;

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

(5) Contrary to the United States Constitution, the Arkansas Constitution, or this chapter.

(c) The circuit court may remand an appeal to the commission to conduct further hearings.

(d)(1) A person who appeals the award of a contract, including without limitation a major procurement contract, is liable for all costs of appeal and defense if the appeal is denied or the contract award upheld.

(2) If upon the motion of the commission the court finds the appeal to have been frivolous, the cost of appeal and defense shall include without limitation the following expenses of the commission resulting from institution of the appeal:

- (A) Court costs;
- (B) Bond;
- (C) Legal fees; and
- (D) Loss of income.

(3) A person appealing the award of a contract may be entitled to the reasonable costs incurred in connection with the contract solicitation, including without limitation bid preparation costs.

### **23-115-210. Removal of commission member.**

(a)(1) A member of the Arkansas Lottery Commission may be removed by the appointing authority for:

- (A) Misconduct;
- (B) Incompetence; or
- (C) Any malfeasance in office.

(2) The appointing authority shall appoint a qualified individual to replace the removed member of the commission to serve the remainder of his or her term.

(b) An order of removal of a commission member by the appointing authority shall:

- (1) Be in writing;
- (2) Be delivered to the removed commission member or counsel for the removed commission member; and
- (3) Specifically set out the grounds relied upon for removal.

(c)(1) A removed commission member may institute proceedings for review by filing a petition in Pulaski County Circuit Court within thirty (30) days after delivery to him or her or his or her attorney of the appointing authority's order of removal.

(2) This petition shall not supersede or stay the order of removal, nor shall any court enter an order to this effect or one that would impair the authority of the appointing authority to appoint a commission member whose service begins immediately upon fulfillment of the normal requirements for assuming office.

(d)(1) When the matter is heard by the circuit court, it shall be tried de novo without a jury.

(2) The appointing authority shall have the burden of proof to show by clear and convincing evidence that cause under subdivision (a)(1) of this section existed for removal of the commission member.

(3)(A) If the circuit court determines that cause has been shown, it shall enter an order removing the commission member in question from office.

(B) If the circuit court determines that cause under subdivision (a)(1) of this section has not been shown by clear and convincing evidence, the circuit court shall order the removed commission member reinstated to his or her position and upon request shall award a reasonable attorney's fee and court costs to the reinstated party.

(e)(1) Subject to the restrictions of subsection (c) of this section on supersedeas or stay orders, a removed commission member may appeal the decision of the circuit court to the Supreme Court.

(2) The appointing authority may appeal the decision of the circuit court to the Supreme Court, but the appeal shall not preclude the circuit court, in its discretion, from entering an order reinstating the removed member.

(f) A commission action in which the appointed replacement commission member participates is not void, voidable, or in any way subject to invalidation on grounds of participation of the appointed replacement commission member or lack of participation by the removed commission member if the circuit court or the Supreme Court orders the removed commission member reinstated.

### **23-115-211. Certain sections inapplicable.**

The following sections shall not apply to the Arkansas Lottery Commission:

- (1) Section 19-1-211;
- (2) Section 19-1-301 et seq.;
- (3) Section 19-1-609;
- (4) Section 19-4-1802;
- (5) Section 19-5-206;
- (6) Section 19-11-301 et seq.;
- (7) Section 22-9-103;
- (8) Section 22-9-104;
- (9) Section 25-1-104;
- (10) Section 25-26-201 et seq.; and
- (11) Section 25-27-104.

## **SUBCHAPTER 3**

### **EMPLOYEES OF ARKANSAS LOTTERY COMMISSION**

#### **23-115-301. Director – Appointment – Duties.**

(a)(1)(A) The Arkansas Lottery Commission shall appoint the Director of the Arkansas Lottery Commission.

(B) The director is an employee of the commission and shall direct the day-to-day operations and management of the commission.

(2) The director is vested with powers and duties as specified by the commission and by law.

(3) The director serves at the pleasure of the commission.

(b)(1) An individual considered for appointment as director shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state

and federal criminal background check.

(4) The commission shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant.

(c) The commission shall not employ as director an individual who has:

(1) Been convicted of a felony or a gambling offense in a state or federal court of the United States;

(2) Been convicted of a crime involving moral turpitude; or

(3) Entered into a plea agreement to avoid felony prosecution.

### **23-115-302. Duties of director.**

(a) The Director of the Arkansas Lottery Commission shall direct and supervise all administrative and technical activities related to the operation of a lottery in accordance with this chapter and with rules adopted by the Arkansas Lottery Commission.

(b) The director shall:

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

(2) Direct personnel as deemed necessary;

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

(4) Appoint, select, and employ officers, agents, and employees, including professional and administrative staff and personnel and hearing officers, and fix their compensation and pay their expenses as authorized by Arkansas law;

(5) Promote or provide for the promotion of lotteries and any functions related to the operation of a lottery;

(6) Prepare a budget for the approval of the commission;

(7) Require bond from retailers and vendors in amounts as required by the commission;

(8) Report monthly to the commission and the Arkansas Lottery Commission Legislative Oversight Committee a complete statement of lottery revenues and expenses for the preceding month and an accompanying statement of net assets; and

(9) Perform other duties generally associated with a director of a commission of an entrepreneurial nature.

(c) The director may for good cause suspend, revoke, or refuse to renew any contract or license entered into in accordance with this chapter and the rules of the commission.

(d) The director or his or her designee may conduct hearings and administer oaths to persons to assure the security and integrity of lottery operations or to determine the qualifications of or compliance by vendors and retailers.

### **23-115-303. Employees – Background investigation.**

(a) As required by Arkansas Constitution, Article 16, § 4, the General Assembly shall fix the salaries of all employees of the Arkansas Lottery

Commission, including without limitation the Director of the Arkansas Lottery Commission.

(b) A commission employee shall not have a financial interest in a vendor doing business or proposing to do business with the commission.

(c) A commission employee with decision-making authority shall not participate in a decision involving a retailer with whom the commission employee has a financial interest.

(d)(1) A commission employee who leaves the employment of the commission shall not:

(A) Represent a vendor or retailer before the commission for a period of two (2) years after leaving the employment of the commission; or

(B) Engage in lobbying on any matter related to the operation or conduct of a lottery for a period of two (2) years after leaving the employment of the commission.

(2)(A) Subdivision (d)(1) of this section is supplemental to § 19-11-701 et seq.

(B) If any provision of § 19-11-701 et seq. would impose a restriction on a specific employee greater than the restrictions under subdivision (d)(1) of this section, the provision of § 19-11-701 et seq. shall apply.

(e)(1) Each person considered for employment by the commission shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The commission shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant.

(f) The commission shall not employ an individual who has:

(1) Been convicted of a felony or a gambling offense in a state or federal court of the United States;

(2) Been convicted of a crime involving moral turpitude; or

(3) Entered into a plea agreement to avoid felony prosecution.

(g)(1) The commission shall bond a commission employee with access to commission funds or lottery revenue in an amount as provided by the commission and may bond other commission employees as deemed necessary.

(2) Bonds under subdivision (g)(1) of this section shall be fidelity bonds in excess of the amount provided by the Governmental Bonding Board.

### **23-115-304. Commission employees – Participation in Arkansas Public Employees' Retirement System.**

(a) Employees of the Arkansas Lottery Commission shall be members of the

Arkansas Public Employees' Retirement System.

(b) A commission employee's salary for retirement purposes shall be the amount determined by the commission as authorized by the General Assembly and shall not include any multipliers used to increase a person's salary as authorized by the General Assembly.

**23-115-305. Regular salaries.**

There is hereby established for the Arkansas Lottery Commission the following regular employees, the grades to be assigned to the respective positions, and the maximum annual salaries for each such position. The maximum annual salary for the positions assigned to grades shall be determined in accordance with, but shall not exceed, the maximum annual amount for the grade assigned in this section, as established in § 21-5-209. Except for the purpose of determining the maximum annual salary rate, which is to be applicable to each of the positions to which a salary grade is assigned in this section, in accordance with § 21-5-209, all positions set forth in this section shall be exempt from other provisions of the Uniform Classification and Compensation Act, § 21-5-201 et seq., but shall not be exempt from the Regular Salaries Procedures and Restrictions Act, § 21-5-101 et seq.

Item No.	Class Code	Title	Maximum No. of Employees	Maximum Annual Salary Rate
(01)	LOTTERY	CMSN DIRECTOR	1	\$141,603
(02)	LOTTERY	CMSN INTERNAL AUDITOR	1	\$141,603
(03)	LOTTERY	CMSN CHIEF OPERATING OFFICER	1	\$126,050
(04)	LOTTERY	CMSN INFORMATION TECH DIR	1	GRADE N912
(05)	LOTTERY	CMSN ADMIN & OPERATIONS DIR	1	GRADE N912
(06)	LOTTERY	CMSN CHIEF LEGAL COUNSEL	1	GRADE N910
(07)	LOTTERY	CMSN CHIEF FISCAL OFFICER	1	GRADE N910
(08)	LOTTERY	CMSM MARKETING & PROD DEV DIR	1	GRADE N909
(09)	LOTTERY	CMSN SALES/RETAIL RELATIONS DIR	1	GRADE N909
(10)	LOTTERY	CMSN PROCUREMENT DIRECTOR	1	GRADE N908
(11)	LOTTERY	CMSN ADMIN ANALYST	2	GRADE C115
(12)	LOTTERY	CMSN ADMIN SUPPORT SUPERVISOR	2	GRADE C113
(13)	LOTTERY	CMSN ADMIN SUPPORT	6	GRADE C112

SPEC III

**23-115-306. Special salary allowances.**

(a) The Arkansas Lottery Commission, upon approval of the Arkansas Lottery Commission Legislative Oversight Committee, may make special salary allowances authorized by this section for recruitment or retention in amounts as the commission may determine equitable in view of the exacting duties that are involved as a part of the salary of the:

- (1) Director of the Arkansas Lottery Commission;
- (2) Internal auditor of the commission; and
- (3) Chief operating officer of the commission.

(b) The total compensation for a position subject to an allowance under subsection (a) of this section, including the salary authorized by the General Assembly and a special salary allowance, shall not exceed an amount equal to two and one-half (2 1/2) times the salary for the position authorized by the General Assembly.

(c)(1) The requirement of approval by the Arkansas Lottery Commission Legislative Oversight Committee before granting a special salary allowance under this section is not a severable part of this section.

(2) If the requirement of approval by the Arkansas Lottery Commission Legislative Oversight Committee is ruled unconstitutional by a court of competent jurisdiction, this section is void.

**23-115-307. Expansion pool.**

(a) The Arkansas Lottery Commission is authorized an expansion pool of sixty (60) positions not to exceed the career service grade C130 and fifteen (15) positions not to exceed the professional and executive grade N922 to be used to establish additional positions of the proper title and salary if the commission does not have sufficient positions available to address growth needs.

(b) A position established under this section shall not exceed a salary rate in excess of the highest rate established by grade or by line item in this subchapter.

(c) A position shall not be authorized from the expansion pool until the specific positions that are requested by the commission are reviewed by the Arkansas Lottery Commission Legislative Oversight Committee.

(d) When seeking review of positions by the Arkansas Lottery Commission Legislative Oversight Committee under this section, the commission shall provide an organizational chart indicating the current structure of the commission and its employees.

(e)(1) The requirement of review by the Arkansas Lottery Commission Legislative Oversight Committee before authorizing positions from the expansion pool is not a severable part of this section.

(2) If the requirement of review by the Arkansas Lottery Commission Legislative Oversight Committee is ruled unconstitutional by a court of competent jurisdiction, this section is void.

**23-115-308. Participation in Arkansas Administrative Statewide Information System.**

The Arkansas Lottery Commission may participate in the Arkansas Administrative Statewide Information System.

**SUBCHAPTER 4  
OPERATION OF LOTTERY**

**23-115-401. Minority-owned and female-owned businesses.**

(a) It is the intent of the General Assembly that the Arkansas Lottery Commission encourage participation by minority-owned businesses and female-owned businesses.

(b) The commission shall adopt a plan that encourages to the greatest extent possible a level of participation by minority-owned businesses and female-owned businesses taking into account the total number of all retailers and vendors, including any subcontractors.

(c) The commission shall provide training programs and other educational activities to encourage minority-owned businesses and female-owned businesses to compete for contracts on an equal basis.

(d) The commission shall employ staff to assist prospective vendors and retailers with entering into and competing for contracts, including without limitation the development and implementation of the plans and programs under subsections (b) and (c) of this section.

(e) The commission shall monitor the results of minority-owned business and female-owned business participation and shall report the results of minority-owned business and female-owned business participation to the Governor and the Arkansas Lottery Commission Legislative Oversight Committee on at least an annual basis.

**23-115-402. Restriction on sales.**

(a)(1) Unless authorized to do so in writing by the Director of the Arkansas Lottery Commission, a person shall not sell a ticket or share at a price other than established by the Arkansas Lottery Commission.

(2)(A) Only a retailer holding a valid certificate of authority from the commission shall sell a ticket.

(B) This subsection does not prevent an individual who may lawfully purchase tickets or shares from making a gift of tickets or shares to another individual.

(b) This chapter does not prohibit the commission from designating certain of its agents and employees to sell or give tickets or shares directly to the public.

(c) Subject to prior approval by the commission, retailers may give away tickets or shares as a means of promoting goods or services to customers or prospective customers.

(d) A retailer shall not sell a ticket or share except from the locations

evidenced by the retailer's license issued by the commission unless the commission authorizes in writing any temporary location not listed in the retailer's license.

(e)(1) Tickets or shares shall not be sold or given to individuals under eighteen (18) years of age.

(2) An individual under eighteen (18) years of age is not eligible to win a lottery prize.

(f) An individual is not eligible to win a lottery prize while the individual is incarcerated in:

- (1) The Department of Correction;
- (2) The Department of Community Correction; or
- (3) A county or municipal jail or detention facility.

**23-115-403. Attachments, garnishments, or executions withheld from lottery prizes – Validity of tickets or shares – Lottery prize restrictions – Unclaimed lottery prizes.**

(a) Proceeds of a lottery prize are subject to Arkansas state income tax.

(b)(1) Except as otherwise provided in this chapter, attachments, garnishments, or executions authorized and issued under Arkansas law shall be withheld if timely served upon the Arkansas Lottery Commission.

(2) Subdivision (b)(1) of this section does not apply to a retailer.

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

(1)(A) A lottery prize, any portion of a lottery prize, or any right of any individual to a lottery prize is not assignable.

(B) A lottery prize or any portion of a lottery prize remaining unpaid at the death of a lottery prize winner shall be paid to the estate of the deceased lottery prize winner or to the trustee of a trust established by the deceased lottery prize winner as settlor if:

(i) A copy of the trust document or instrument has been filed with the commission along with a notarized letter of direction from the settlor; and

(ii) No written notice of revocation has been received by the commission before the settlor's death.

(C) Following a settlor's death and before any payment to a successor trustee, the commission shall obtain from the trustee a written agreement to indemnify and hold the commission harmless with respect to any claims that may be asserted against the commission arising from payment to or through the trust.

(D) Under an appropriate judicial order, an individual shall be paid the lottery prize to which a winner is entitled;

(2) A lottery prize shall not be paid arising from claimed tickets that are:

(A) Stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received, or not recorded by the commission within applicable deadlines;

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

(C) Not in compliance with rules and public or confidential validation and security tests of the commission appropriate to the particular lottery involved;

(3)(A) A particular lottery prize in any lottery shall not be paid more than one (1) time.

(B) If there is a determination that more than one (1) claimant is entitled to a particular lottery prize, the sole remedy of the claimants is the award to each of them of an equal share in the lottery prize;

(4)(A) Within one hundred eighty (180) days after the drawing in which a cash lottery prize has been won, a holder of a winning cash ticket or share from an Arkansas lottery or from a multistate or multisoovereign lottery shall claim the cash lottery prize.

(B)(i) In an Arkansas lottery in which a player may determine instantly if he or she has won or lost, a player who has won shall claim a cash lottery prize within ninety (90) days after the playing of the instant game.

(ii) In any multistate or multisovereign lottery in which a player may determine instantly if he or she has won or lost, a player who has won shall claim a cash lottery prize within one hundred eighty (180) days after the playing of the instant game.

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

(D) The commission at any time may alter the time periods under subdivisions (4)(A) and (B) of this section by rule; and

(5)(A) If practicable, an auditor chosen by the commission shall be present at a draw to determine the winners of a draw game to verify the accuracy of the results.

(B) The commission may request an auditor employed by the Division of Legislative Audit for the purposes of subdivision (c)(5) of this section.

(d)(1) A lottery prize shall not be paid upon a ticket or share purchased or sold in violation of this chapter.

(2) A lottery prize described in subdivision (d)(1) of this section is an unclaimed lottery prize for purposes of this section.

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

(f)(1) A ticket or share shall not be purchased by and a lottery prize shall not be paid to any:

(A) Member of the commission;

(B) Employee of the commission; or

(C) Member of the immediate family of a member of the commission or an employee of the commission.

(2) If an officer, employee, agent, or subcontractor of a vendor has access to confidential information that may compromise the integrity of a lottery, a ticket or share shall not be purchased by and a lottery prize shall not be paid to the:

(A) Officer, employee, agent, or subcontractor of the vendor; or

(B) Immediate family of the officer, employee, agent, or subcontractor of the vendor.

(g)(1) Unclaimed prize money is not net lottery proceeds.

(2)(A) An annual amount of at least two hundred thousand dollars (\$200,000) shall be directed to the Department of Health for the treatment of compulsive gambling disorder and educational programs related to compulsive gambling disorder.

(B) As part of its regulation of public health, the State Board of Health may promulgate rules to implement subdivision (g)(2)(A) of this section, including without limitation the creation of:

(i) Programs for the treatment of compulsive gambling disorder; and

(ii) Educational programs related to compulsive gambling disorder.

(3) Unclaimed lottery prize money remaining after the payment under subdivision (g)(2) of this section shall be:

(A) Added to the pool from which future lottery prizes are to be awarded;

or

(B) Used for special lottery prize promotions.

#### **23-115-404. Confidential information.**

(a)(1) Except as provided in subdivision (a)(2) of this section, the Arkansas Lottery Commission shall comply with the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2) The following records or information shall be treated as confidential and are exempt from public disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.:

(A) Information pertaining to the security of lottery games and lottery operations, including without limitation:

(i) Security measures, systems, or procedures; and

(ii) Security reports; and

(B) Any records exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) The Division of Legislative Audit shall have full access to the records of the commission.

#### **23-115-405. Intelligence sharing, reciprocal use, or restricted use agreements.**

(a) The Arkansas Lottery Commission may enter into an intelligence sharing, reciprocal use, or restricted use agreement with the United States Government, law enforcement agencies, lottery regulation agencies, and gaming enforcement agencies of other jurisdictions that provide for and regulate the use of information provided and received under the agreement.

(b) Records, documents, and information in the possession of the commission received under subsection (a) of this section are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., and shall not be released without the permission of the person or agency providing the records, documents, and information.

**23-115-406. Authority of local government.**

(a)(1) The authority of local government concerning all matters relating to the operation of lotteries is preempted by this chapter.

(2) Local government shall not take any action, including without limitation the adoption of an ordinance, relating to the operation of lotteries.

(b) This section does not prohibit local government from requiring a retailer to obtain an occupational license for any business unrelated to the sale of tickets or shares.

**23-115-407. Video lotteries prohibited.**

A video lottery shall not be used as part of a lottery under this chapter.

**23-115-408. Use of video lotteries by institution or facility governed by other wagering laws prohibited.**

This chapter does not permit the use of a video lottery for any purposes by any institution or facility governed by the:

- (1) Arkansas Horse Racing Law, § 23-110-101 et seq.;
- (2) Arkansas Greyhound Racing Law, § 23-111-101 et seq.; or
- (3) Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, § 23-113-101 et seq.

**23-115-409. Laws under other wagering chapters not affected.**

This chapter does not alter wagering that may be conducted under the Arkansas Horse Racing Law, § 23-110-101 et seq., the Arkansas Greyhound Racing Law, § 23-111-101 et seq., or the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, § 23-113-101 et seq.

**SUBCHAPTER 5  
VENDORS**

**23-115-501. Vendors – Requirements when submitting a bid, proposal, or offer – Major procurement contract.**

(a) The Arkansas Lottery Commission shall investigate the financial responsibility, security, and integrity of a vendor who is a finalist in submitting a bid, proposal, or offer as part of a major procurement contract.

(b) At the time of submitting a bid, proposal, or offer to the commission, the commission 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)(i) If the vendor is a corporation, the officers, directors, and each stockholder of more than a ten percent (10%) interest in the corporation.
  - (ii) However, 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 five percent (5%) or more of the 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 for each 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 without limitation lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction;

(4)(A) 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 each instance in each state or jurisdiction.

(B) 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 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 of the vendor for any felony or any other criminal offense other than a traffic violation committed by the persons identified under subdivision (b)(1) of this section.

(B)(i) The commission may request that any or all of the persons identified under subdivision (b)(1) of this section undergo a state and federal criminal background check.

(ii) If requested, a state and federal criminal background check shall be conducted in the manner under § 23-115-601(e);

(6) A disclosure of the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including without limitation bonded indebtedness, and any pending litigation of the vendor;

(7) A disclosure of the vendor's most recent financial report, including any reports on internal control over financial reporting, and the most recent audit report of the vendor's operation as a service organization; and

(8) Additional disclosures and information that the commission may determine to be appropriate for the procurement involved.

(c) If any portion 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.

(d)(1) The commission shall not enter into a major procurement contract with a vendor that:

(A) Has not complied with the disclosure requirements described in subsection (b) of this section;

(B) Has been found guilty of a felony related to the security or integrity of a lottery in this or any other jurisdiction; or

(C) Has an ownership interest in an entity that has supplied lottery goods or services under contract to the commission regarding the request for proposals pertaining to those particular goods or services.

(2) The commission may terminate a major procurement contract with a vendor that does not comply with requirements for periodically updating disclosures during the tenure of the major procurement contract as may be specified in the major procurement contract.

(3) This section shall be construed broadly and liberally to achieve full disclosure of all information necessary to allow for a full and complete evaluation by the commission of the competence, integrity, background, and character of vendors for major procurement contracts.

(e)(1) A vendor who provides or proposes to provide goods or services under a major procurement contract shall not provide a gift or compensation to:

(A) The Director of the Arkansas Lottery Commission, a commission member, a commission employee, or a member of the Arkansas Lottery Commission Legislative Oversight Committee; or

(B) A member of the immediate family of the director, a commission member, a commission employee, or a member of the Arkansas Lottery Commission Legislative Oversight Committee.

(2)(A) Any person who knowingly violates subdivision (e)(1) of this section shall be guilty of a Class A misdemeanor.

(B)(i) The Arkansas Ethics Commission shall also have the authority to investigate and address alleged violations of subdivision (e)(1) of this section.

(ii) The Arkansas Ethics Commission shall have the same power and authority to enforce the provisions of subdivision (e)(1) of this section as granted to it under §§ 7-6-217 and 7-6-218.

(f)(1) A public official shall not knowingly own a financial interest in a vendor.

(2)(A) If a public official becomes aware that he or she owns a financial interest in a vendor, the public official shall divest the financial interest as soon as possible.

(B) A public official shall not divest the financial interest to a member of his or her immediate family.

### **23-115-502. Vendor – Performance bond or letter of credit.**

(a)(1) At the execution of the major procurement contract with the Arkansas Lottery Commission, each vendor shall post a performance bond or letter of credit from a bank or credit provider acceptable to the commission in an amount as deemed necessary by the commission for that particular bid or major procurement contract.

(2) In lieu of the bond, to assure the faithful performance of its obligations, a

vendor may deposit and maintain with the commission securities that are:

(A) Interest bearing or accruing; and

(B) Rated in one (1) of the three (3) highest classifications by an established, nationally recognized investment rating service.

(3) Securities eligible under this section are limited to:

(A) Certificates of deposit in an amount fully insured by the Federal Deposit Insurance Corporation issued by solvent banks or savings associations, if the solvent banks or savings associations are:

(i) Approved by the commission; and

(ii) Organized and existing under the laws of this state or under the laws of the United States;

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

(C) Federal agency securities by an agency or instrumentality of the United States Government; and

(D)(i) Corporate bonds approved by the commission.

(ii) The entity that issued the bonds shall not be an affiliate or subsidiary of the depositor.

(4) The securities shall be held in trust and shall at all times be in an amount as deemed necessary by the commission for the particular bid or major procurement contract.

(b)(1) 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.

(2) All major procurement contracts under this section shall be governed by the laws of this state except as provided in this chapter.

### **23-115-503. Cancellation, suspension, revocation, or termination of major procurement contract.**

(a) A major procurement contract executed by the Arkansas Lottery Commission under this chapter shall specify the reasons for which the major procurement contract may be canceled, suspended, revoked, or terminated by the commission. The reasons shall include without limitation:

(1) Commission of a violation of this chapter or a rule of the commission;

(2) Commission of any fraud, deceit, or misrepresentation;

(3) Conduct prejudicial to public confidence in a lottery;

(4) The vendor's filing for or being placed in bankruptcy or receivership; or

(5) Any material change as determined in the sole discretion of the commission in any matter considered by the commission in executing the major procurement contract with the vendor.

(b)(1) If upon approval of the commission the Director of the Arkansas Lottery Commission or his or her designee determines that cancellation, denial, revocation, suspension, or rejection of renewal of a major procurement contract is in the best interest of lotteries, the public welfare, or the State of Arkansas, the director or his or her designee may cancel, suspend, revoke, or terminate, after notice and a right to



a hearing, a major procurement contract issued under this chapter.

(2) The major procurement contract may be temporarily suspended by the director or his or her designee without commission approval or prior notice pending a hearing.

(3) A major procurement contract may be suspended, revoked, or terminated by the director or his or her designee for any one (1) or more of the reasons enumerated in this section.

(c) Hearings under this section shall be held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

#### **23-115-504. Political contributions by vendors.**

(a) The General Assembly finds:

(1) That the integrity of the Arkansas Lottery Commission and lotteries is of utmost importance; and

(2) That the people of the State of Arkansas should have confidence and be assured that public officials are free of any untoward political influence by vendors.

(b) A vendor awarded a major procurement contract for lottery equipment or tickets or an officer, employee, or agent of a vendor awarded a major procurement contract for lottery equipment or tickets shall not make a political contribution to a public official or a candidate for election as a public official.

(c) A vendor proposing to provide goods or services under a major procurement contract or an officer, employee, or agent of a vendor proposing to provide goods or services under a major procurement contract shall not:

(1) Make a political contribution to a public official or a candidate for election as a public official while the award of the major procurement contract is pending; and

(2) While the award of the major procurement contract is pending, promise to make a political contribution to a public official or a candidate for election as a public official after the award of the major procurement contract.

### **SUBCHAPTER 6 RETAILERS**

#### **23-115-601. Retailers.**

(a) The General Assembly recognizes that to conduct a successful lottery, the Arkansas Lottery Commission must develop and maintain a statewide network of retailers that will serve the public convenience and promote the sale of tickets or shares and the playing of lotteries while ensuring the integrity of lottery operations, games, and activities.

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

(c) The commission shall provide for compensation to retailers in the form of commissions in an amount of not less than five percent (5%) of gross sales of tickets and shares and may provide for other forms of compensation for services

rendered in the sale or cashing of tickets or shares.

(d)(1) For purposes of display, the commission shall issue a license to each person that it licenses as a retailer.

(2)(A) Every retailer shall post and keep conspicuously displayed in a location on the premises accessible to the public its license.

(B) A license is not assignable or transferable.

(e)(1) A person considered as a retailer shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check, to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The commission shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant.

(f)(1) The commission shall develop a list of objective criteria upon which the qualification of retailers shall be based.

(2) The commission shall develop separate criteria to govern the selection of retailers of instant tickets.

(3) In developing the criteria, the commission shall consider certain factors, including without limitation:

(A) The applicant's financial responsibility;

(B) Security of the applicant's place of business or activity;

(C) Accessibility to the public;

(D) The applicant's integrity; and

(E) The applicant's reputation.

(4) The commission shall not consider political affiliation, activities, or monetary contributions to political organizations or candidates for any public office.

(5) The criteria shall include without limitation the following:

(A)(i) The applicant shall be current in filing all applicable tax returns to the State of Arkansas and in payment of all taxes, interest, and penalties owed to the State of Arkansas, excluding items under formal appeal under applicable statutes.

(ii) The Department of Finance and Administration shall provide to the commission the information required under subdivision (f)(5)(A)(i) of this section;

(B) The commission shall not select as a retailer any person who:

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

(ii)(a) Has been convicted of any illegal gambling activity, false statements, false swearing, or perjury in this or any other jurisdiction or convicted of any crime punishable by more than one (1) year of imprisonment or a fine of more than one thousand dollars (\$1,000), or both.

(b) Subdivision (f)(5)(B)(ii)(a) of this section shall not apply if the person's civil rights have been restored and 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 subdivision (f)(5)(B)(ii)(a) of this section;

(iii) Has been found to have violated this chapter or any rule, policy, or procedure of the commission unless:

(a) Ten (10) years have passed since the violation; or

(b) The commission finds the violation both minor and unintentional in nature;

(iv) Is a vendor or an employee or agent of a vendor doing business with the commission;

(v) Is a member of the immediate family of a member of the commission;

(vi) Has made a statement of material fact to the commission knowing the statement to be false; or

(vii)(a) Is engaged exclusively in the business of selling tickets or shares.

(b) Subdivision (f)(5)(B)(vii)(a) of this section does not preclude the commission from selling or giving away tickets or shares for promotional purposes;

(C)(i) A person applying to become a retailer shall be charged a uniform application fee determined by rule for each lottery outlet.

(ii) The application fee shall take into account the cost of a state and federal criminal background check under subsection (e) of this section; and

(D) All retailer licenses may be renewable annually in the discretion of the commission unless canceled or terminated by the commission.

(g)(1) A retailer or an applicant to be a retailer shall not provide a gift or compensation to:

(A) The Director of the Arkansas Lottery Commission, a commission member, or a commission employee; or

(B) A member of the immediate family of the director, a commission member, or a commission employee.

(2)(A) Any person who knowingly violates subdivision (g)(1) of this section shall be guilty of a Class A misdemeanor.

(B)(i) The Arkansas Ethics Commission shall also have the authority to investigate and address alleged violations of subdivision (g)(1) of this section.

(ii) The Arkansas Ethics Commission shall have the same power and authority to enforce the provisions of subdivision (g)(1) of this section as granted to it under §§ 7-6-217 and 7-6-218.

### **23-115-602. Retailer license.**

(a) A retailer license is not transferable or assignable.

(b) A retailer shall not contract with any person for lottery goods or services except with the approval of the Arkansas Lottery Commission.

(c) Tickets and shares shall be sold only by the retailer stated on the retailer's license issued by the commission under this chapter.

### **23-115-603. Fidelity fund – Retailer fee – Reserve account to cover losses – Retailer bond.**

(a)(1) The Arkansas Lottery Commission shall establish a fidelity fund separate from all other funds and shall assess each retailer an annual fee not to exceed one hundred dollars (\$100) per sales location to be deposited into the fidelity fund.

(2) Moneys deposited into the fidelity fund may be:

(A) Invested or deposited into one (1) or more interest-bearing accounts;

(B) Used to cover losses the commission experiences due to nonfeasance, misfeasance, or malfeasance of a retailer; and

(C) Used to purchase blanket bonds covering the commission against losses from all retailers.

(3) At the end of each fiscal year, the commission shall pay to the trust account managed and maintained by the Department of Higher Education any amount in the fidelity fund that exceeds five hundred thousand dollars (\$500,000), and the funds shall be considered net proceeds from a lottery.

(b)(1) A reserve account may be established as a general operating expense to cover amounts deemed uncollectable.

(2) The commission shall establish procedures for minimizing any losses that may be deemed uncollectable and shall exercise and exhaust all available options in those procedures before writing off amounts to this account.

(c)(1) The commission shall require a retailer to post an appropriate bond, as determined by the commission, using an insurance company acceptable to the commission.

(2) If applicable, the amount of the bond shall not exceed the district sales average of tickets for two (2) billing periods.

(d)(1) In its discretion, the commission may allow a retailer to deposit and maintain with the commission securities that are interest-bearing or accruing.

(2) Securities eligible under this subsection are limited to:

(A) Certificates of deposit in an amount fully insured by the Federal Deposit Insurance Corporation 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 Government bonds, notes, and bills for which the full faith and credit of the United States Government is pledged for the payment of principal and interest; or

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

(3) The securities shall be held in trust in the name of the commission.

### **23-115-604. Cancellation, suspension, revocation, or termination of retailer license.**

(a) A retailer license executed by the Arkansas Lottery Commission under this chapter shall specify the reasons for which the retailer license may be canceled,

suspended, revoked, or terminated by the commission. The reasons shall include without limitation:

- (1) Commission of a violation of this chapter or a rule of the commission;
- (2) Failure to accurately or timely account for tickets, lottery games, revenues, or prizes as required by the commission;
- (3) Commission of any fraud, deceit, or misrepresentation;
- (4) Insufficient sales;
- (5) Conduct prejudicial to public confidence in a lottery;
- (6) The retailer's filing for or being placed in bankruptcy or receivership;
- (7) Any material change as determined in the sole discretion of the commission in any matter considered by the commission in executing the license with the retailer; or
- (8) Failure to meet any of the objective criteria established by the commission under this chapter.

(b)(1) If upon approval of the commission the Director of the Arkansas Lottery Commission or his or her designee determines that cancellation, denial, revocation, suspension, or rejection of renewal of a retailer license is in the best interest of lotteries, the public welfare, or the State of Arkansas, the director or his or her designee may cancel, suspend, revoke, or terminate, after notice and a right to a hearing, a retailer license issued under this chapter.

(2) The retailer license may be temporarily suspended by the director or his or her designee without commission approval or prior notice pending a hearing.

(3) A retailer license may be suspended, revoked, or terminated by the director or his or her designee for any one (1) or more of the reasons enumerated in subsection (a) of this section.

(4) Hearings under subsection (b) of this section shall be held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

#### **23-115-605. Retailers – Fiduciary duty – Protection against loss.**

(a)(1) All proceeds from the sale of tickets or shares constitute a trust fund until paid to the Arkansas Lottery Commission either directly or through the commission's authorized collection representative.

(2) A retailer and officers of a retailer's business have a fiduciary duty to preserve and account for retail lottery proceeds, and retailers are personally liable for all lottery proceeds.

(3) For the purpose of this section, lottery proceeds include without limitation:

- (A) Unsold instant tickets received by a retailer;
- (B) Cash proceeds of the sale of any lottery products;
- (C) Net of allowable sales commissions; and
- (D) Credit for lottery prizes paid to winners by retailers.

(4) Sales proceeds and unused instant tickets shall be delivered to the commission or its authorized collection representative upon demand.

(b)(1) The commission shall require retailers to place all lottery proceeds due the commission in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their

collection by the retailer until the date they are paid to the commission.

(2) At the time of the deposit, lottery proceeds shall be deemed to be the property of the commission.

(3) The commission may require a retailer to establish a single separate electronic funds transfer account when available for the purpose of:

- (A) Receiving moneys from ticket or share sales;
- (B) Making payments to the commission; and
- (C) Receiving payments for the commission.

(4) Unless authorized in writing by the commission, each retailer shall establish a separate bank account for lottery proceeds that shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.

(c) When an individual who receives proceeds from the sale of tickets or shares in the capacity of a retailer becomes insolvent or dies insolvent, the proceeds due the commission from the individual or his or her estate have preference over all debts or demands.

(d) If the commission determines that a retailer failed to comply with subsection (b) of this section three (3) times within any consecutive twenty-four-month period, the commission may pursue business closure against the retailer under this subchapter.

#### **23-115-606. Retailer – Rental payments based on percentage of retail sales.**

If a 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 the computation of retail sales is not explicitly defined to include sales of tickets or shares, only the compensation received by the retailer from the Arkansas Lottery Commission may be considered the amount of the lottery retail sale for purposes of computing the rental payment.

#### **23-115-607. Business closure authority – Notice.**

(a) In addition to all other remedies provided by law for failure to remit lottery proceeds due the Arkansas Lottery Commission, the Director of the Arkansas Lottery Commission may close the business of a retailer if the retailer fails to comply with § 23-115-605(b) three (3) times within any consecutive twenty-four-month period.

(b)(1) The director shall give notice to the retailer that the third delinquency in complying with § 23-115-605(b) in any consecutive twenty-four-month period may result in the closure of the business.

(2) The notice shall be in writing and delivered to the retailer by:

- (A) The United States Postal Service; or
- (B) Hand delivery.

(c)(1) If the retailer has a third delinquency in complying with § 23-115-605(b) in any consecutive twenty-four-month period after the issuance of the notice provided in subsection (b) of this section and the director chooses to close the

business, the director shall notify the retailer by certified mail or by hand delivery that the business will be closed within five (5) business days from the date of receipt of the notice unless the retailer avoids closure of the business under subsection (d) of this section.

(2) If the fifth day falls on a Saturday, Sunday, or legal holiday, the performance of an act to avoid business closure under subsection (d) of this section is timely when performed on the next succeeding business day that is not a Saturday, Sunday, or legal holiday.

(d) A retailer may avoid closure of the business by:

(1) Remitting the delinquent lottery proceeds; or

(2) Entering into a written payment agreement approved by the director to satisfy the lottery proceeds delinquency.

### **23-115-608. Administrative hearing.**

(a) A retailer may request an administrative hearing concerning the decision of the Director of the Arkansas Lottery Commission to close the retailer's business.

(b) Within five (5) business days after the delivery or attempted delivery of the notice required by § 23-115-607(c), the retailer may file a written protest, signed by the retailer or his or her authorized agent, with the director stating the reasons for opposing the closure of the business and requesting an administrative hearing.

(c)(1) A retailer may request that an administrative hearing be held:

(A) In person;

(B) By telephone;

(C) Upon written documents furnished by the retailer; or

(D) Upon written documents and any evidence to be produced by the

retailer at an administrative hearing.

(2) The director may determine whether an administrative hearing at which testimony is to be presented will be conducted in person or by telephone.

(3) A retailer who requests an administrative hearing based upon written documents is not entitled to any other administrative hearing before the rendering of the administrative decision.

(d) The administrative hearing shall be conducted by a hearing officer appointed by the director.

(e)(1) The hearing officer shall:

(A) Set the time and place for a hearing; and

(B) Give the retailer notice of the hearing.

(2) At the administrative hearing, the retailer may:

(A) Be represented by an authorized representative; and

(B) Present evidence in support of his or her position.

(f) The administrative hearing shall be held within fourteen (14) calendar days of receipt by the director of the request for hearing.

(g) The administrative hearing and determinations made by the hearing officer under this subchapter are subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(h) The defense or defenses to the closure of a business under this subchapter

are:

(1) Written proof that the retailer remitted the delinquent lottery proceeds due;

or

(2) That the retailer has entered into a written payment agreement, approved by the director, to satisfy the lottery proceeds delinquency.

(i) The decision of the hearing officer shall be in writing with copies delivered to the retailer and the director by the United States Postal Service or by hand delivery.

### **23-115-609. Judicial relief.**

(a)(1) If the decision of the hearing officer under § 23-115-608 is to affirm the closure of the business, the decision shall be submitted in writing and delivered by the United States Postal Service or by hand to the retailer.

(2) The retailer may seek judicial relief from the decision by filing suit within twenty (20) calendar days of the date of the decision.

(b)(1) Jurisdiction for a suit under this section to contest a determination of the director shall be in Pulaski County Circuit Court, where the matter shall be tried de novo.

(2)(A) If the circuit court finds that the business closure order was appropriately issued by the director, the circuit court shall issue an injunction against the retailer prohibiting the further operation of the business.

(B) If a business subject to an injunction issued by the circuit court as provided in this subchapter continues in operation, upon conviction, any person responsible for the decision to operate the business after the issuance of the injunction shall be guilty of a Class A misdemeanor.

(3) An appeal may be made from the circuit court to the appropriate appellate court, as provided by law.

(c) The procedures established by § 23-115-608 and this section are the sole methods for seeking relief from a written decision to close the business of a retailer for failure to comply with § 23-115-605(b).

(d) The decision to close the business of a retailer shall be final:

(1) If the retailer fails to:

(A) Request an administrative hearing under § 23-115-608; or

(B) Seek judicial relief under this section; or

(2) Upon the final decision of a circuit court or an appellate court.

(e)(1) It is unlawful for a business to continue in operation after a business closure order is issued that is:

(A) Upheld on appeal under this subchapter; or

(B) Not appealed by the retailer under this subchapter.

(2) Upon conviction, any person responsible for the decision to operate the business in violation of this subchapter shall be guilty of a Class A misdemeanor.

### **23-115-610. Business closure procedure.**

(a) If a retailer fails to timely seek administrative or judicial review of a business closure decision or if the business closure decision is affirmed after

administrative or judicial review, the Director of the Arkansas Lottery Commission shall direct the Department of Finance and Administration to affix a written notice to all entrances of the business that:

- (1) Identifies the business as being subject to a business closure order; and
- (2) States that the business is prohibited from further operation.
- (b) The Director of the Arkansas Lottery Commission may also direct that the business be locked or otherwise secured so that it may not be operated.
- (c) The Director of the Department of Finance and Administration may request the assistance of the Department of Arkansas State Police or any state or local law enforcement official to post the notice or to secure the business as authorized in this section.
- (d) The commission may reimburse the Department of Finance and Administration for the costs of administering this section after review of the amount by the Arkansas Lottery Commission Legislative Oversight Committee.

### **23-115-611. Revocation and suspension of business license.**

- (a) The closure of a business under this subchapter shall be grounds for cancellation, suspension, revocation, or termination of a retailer license under § 23-115-604.
- (b) The closure of a business under this subchapter shall be grounds for the suspension or revocation of any business license granted under the laws of the State of Arkansas, excluding professional licenses.
- (c) After the decision to close the retailer's business becomes final, the Director of the Arkansas Lottery Commission shall contact the appropriate administrative body responsible for granting licenses to operate the business and report the closure of the business.

### **23-115-612. Authority to promulgate rules.**

The Arkansas Lottery Commission may promulgate rules necessary for the implementation and enforcement of this subchapter.

## **SUBCHAPTER 7 PROCUREMENTS**

### **23-115-701. Procurements – Major procurement contracts – Competitive bidding.**

- (a)(1) The Arkansas Lottery Commission may purchase, lease, or lease-purchase goods or services as necessary for effectuating the purposes of this chapter.
- (2) The commission may make procurements that integrate functions, including without limitation:
  - (A) Lottery design;
  - (B) Ticket distribution to retailers;
  - (C) Supply of goods and services; and

- (D) Advertising.
- (3) In all procurement decisions, the commission shall:
  - (A) Take into account the particularly sensitive nature of lotteries; and
  - (B) Act to promote and ensure:
    - (i) Security, honesty, fairness, and integrity in the operation and administration of lotteries; and
    - (ii) The objectives of raising net proceeds for the benefit of scholarships and grants.
  - (b) Except as provided in subsections (c) and (d) of this section, the commission shall comply with the Arkansas Procurement Law, § 19-11-201 et seq.
  - (c)(1) The commission shall adopt rules concerning the procurement process for major procurement contracts.
  - (2) The commission shall arrange for the solicitation and receipt of competitive bids for major procurement contracts.
  - (3) Except for printing, stationery, and supplies under Arkansas Constitution, Amendment 54, the commission is not required to accept the lowest responsible bid for major procurement contracts but shall select a bid that provides the greatest long-term benefit to the state, the greatest integrity for the commission, and the best service and products for the public.
  - (d) In any bidding process, the commission may administer its own bidding and procurement or may utilize the services of the Department of Finance and Administration.
  - (e)(1) Each proposed major procurement contract shall be filed with the Arkansas Lottery Commission Legislative Oversight Committee for review before the execution date of the major procurement contract.
  - (2) The committee shall provide the commission with its review as to the propriety of the major procurement contract within thirty (30) days after receipt of the proposed major procurement contract.

## **SUBCHAPTER 8 LOTTERY PROCEEDS**

### **23-115-801. Lottery proceeds.**

- (a)(1) All lottery proceeds are the property of the Arkansas Lottery Commission.
- (2)(A) The commission shall pay its operating expenses from its lottery proceeds.
  - (B)(i) An amount of lottery proceeds determined by the commission to maximize net proceeds shall be made available as prize money.
  - (ii)(a) Subdivision (a)(2)(B)(i) of this section does not create any lien, entitlement, cause of action, or other private right.
  - (b) In setting the terms of a lottery, the commission shall determine any rights of holders of tickets or shares.
- (3) The percentage of lottery proceeds determined by the commission to be net

proceeds shall equal an amount determined by the commission to maximize net proceeds.

(b)(1) On or before the fifteenth day of each month, the commission shall deposit the net proceeds from the lottery into one (1) or more trust accounts at one (1) or more financial institutions.

(2) The commission shall follow the investment policy guidelines of the State Board of Finance in selecting a financial institution and managing the net proceeds from the lottery deposited into a trust account.

(c)(1) The Director of the Department of Higher Education shall certify to the commission the amount of net proceeds from the lottery needed to:

(A) Fund the scholarships awarded to recipients under § 6-85-201 et seq. for an academic year; and

(B) Ensure that sufficient funds remain available to pay for scholarship awards for the recipients through the anticipated completion of the degree or certificate a recipient is seeking.

(2)(A)(i) The commission shall transfer the funds requested by the director under subdivision (c)(1) of this section into one (1) or more trust accounts at one (1) or more financial institutions meeting the requirements of subdivision (b)(2) of this section maintained by the department.

(ii) The director shall disburse trust account funds only in the name of the recipient:

(a) To an approved institution of higher education; or

(b) If a recipient transfers to another approved institution of higher education, to the approved institution of higher education where the recipient transferred.

(3) By August 1 of each year, the director shall provide to the commission and to the Arkansas Lottery Commission Legislative Oversight Committee for the academic year just ended an accounting of all trust accounts maintained by the department, including without limitation:

(A) Total deposits to all trust accounts;

(B) Total disbursements from the trust accounts; and

(C) The balance remaining in the trust accounts.

(d)(1) The General Assembly finds that:

(A) The administration of scholarships with proceeds from the lottery are expenses of the commission; and

(B) Because the department has the expertise and experienced staff needed to efficiently and appropriately administer the scholarships, the commission shall use the services of the department to administer scholarships funded with net proceeds from the lottery.

(2) The commission shall reimburse the department for the costs of administering the scholarship awards funded with net proceeds from the lottery after review of the reimbursement amount by the Arkansas Lottery Commission Legislative Oversight Committee.

(3) The department shall refund to the Higher Education Grants Fund Account the amount of a reimbursement received from the commission under this subsection

for services provided and funded from the fund account.

**23-115-802. Scholarship Shortfall Reserve Trust Account. [Effective July 1, 2010.]**

(a) The Arkansas Lottery Commission shall maintain a Scholarship Shortfall Reserve Trust Account.

(b)(1) An amount equal to four percent (4%) of the total amount of net proceeds disbursed during the preceding fiscal year in the form of scholarships and grants for higher education shall be deposited from lottery proceeds each year until the amount in the account equals twenty million dollars (\$20,000,000).

(2) Thereafter, only an amount necessary to maintain the account in an amount equal to twenty million dollars (\$20,000,000) shall be deposited into the account.

(3) Any amount in the trust fund exceeding twenty million dollars (\$20,000,000) shall be considered net proceeds and shall be deposited annually into one (1) or more trust accounts at one (1) or more financial institutions by July 1 of each year.

(c)(1) If net proceeds in any year are not sufficient to meet the amount allocated for higher education scholarships, the account may be drawn upon to meet the deficiency.

(2) If it becomes necessary to draw from the account in any fiscal year, the Department of Higher Education shall review the scholarship and grant program and shall reduce the program to accommodate available lottery proceeds, exclusive of the account.

(d) This section is effective on July 1, 2010.

**23-115-803. Disposition of funds.**

(a)(1) To effectuate the Arkansas Lottery Commission's purposes, the commission may borrow moneys from the State of Arkansas or accept and expend moneys from the State of Arkansas and shall repay any sums borrowed from the state as soon as practicable.

(2) As used in this section, "purposes" includes without limitation the payment of the initial expenses of initiation, administration, and operation of the commission and lotteries.

(3) The commission shall not issue bonds for any purpose.

(b)(1) The commission shall be self-sustaining and self-funded.

(2)(A) Except as provided in subsection (a) of this section, moneys in the General Revenue Fund Account of the State Apportionment Fund shall not be used or obligated to pay the expenses of the commission or prizes of a lottery.

(B) A claim for the payment of an expense of a lottery or prizes of a lottery shall not be made against any moneys other than moneys credited to the commission's operating account.

**SUBCHAPTER 9  
PENALTIES**

**23-115-901. Sale of ticket or share to person under 18 years of age prohibited – Penalty.**

(a) A retailer who knowingly sells a ticket or share to a person under eighteen (18) years of age or permits a person under eighteen (18) years of age to play a lottery is guilty of a violation and subject to the following penalties:

- (1) A fine not to exceed two hundred fifty dollars (\$250) for a first violation within a forty-eight-month period;
  - (2) For a second violation within a forty-eight-month period:
    - (A) A fine not to exceed five hundred dollars (\$500); and
    - (B) Suspension of the retailer license issued under § 23-115-601 et seq. for a period not to exceed two (2) days;
  - (3) For a third violation within a forty-eight-month period:
    - (A) A fine not to exceed one thousand dollars (\$1,000); and
    - (B) Suspension of the retailer license issued under § 23-115-601 et seq. for a period not to exceed seven (7) days;
  - (4) For a fourth or subsequent violation within a forty-eight-month period:
    - (A) A fine not to exceed two thousand dollars (\$2,000); and
    - (B) Suspension of the retailer license issued under § 23-115-601 et seq. for a period not to exceed fourteen (14) days; and
  - (5) For a fifth or subsequent violation within a forty-eight-month period, the retailer license issued under § 23-115-601 et seq. may be revoked.
- (b) An employee of a retailer who violates this section is subject to a fine not to exceed one hundred dollars (\$100) per violation.
- (c) It is an affirmative defense to a prosecution under this section that the retailer reasonably and in good faith relied upon representation of proof of age in making the sale.
- (d) A person convicted of violating any provision of this section whose retailer license is suspended or revoked upon conviction shall surrender to the court his or her retailer license and the court shall transmit the retailer license to the Arkansas Lottery Commission and instruct the commission:
- (1) To suspend or revoke the person's retailer license or to not renew the license; and
  - (2) Not to issue any new retailer license to that person for the period of time determined by the court in accordance with this section.

**23-115-902. Fraud – Penalty.**

- (a)(1) A person who, with a purpose to defraud, falsely makes, alters, forges, utters, passes, or counterfeits a ticket is guilty of a Class D felony.
- (2) A person convicted of violating subdivision (a)(1) of this section is subject to an additional fine of not more than fifty thousand dollars (\$50,000).
- (b)(1) A person who purposely influences or attempts to influence the winning of a lottery prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials is guilty of a Class D felony.
- (2) A person convicted of violating subdivision (b)(1) of this section is subject

to an additional fine of not more than fifty thousand dollars (\$50,000).

**23-115-903. False statement on license application – Penalty.**

- (a) A person shall not knowingly make:
  - (1) A material false statement in an application for a license or proposal to conduct a lottery; or
  - (2) A material false entry in any book or record that is compiled, maintained, or submitted to the Arkansas Lottery Commission.
- (b)(1) A person who violates this section is guilty of a Class D felony.
- (2) A person convicted for violating subsection (a) of this section is subject to an additional fine of not more than twenty-five thousand dollars (\$25,000) or the dollar amount of the material false entry or material false statement, whichever is greater.

**23-115-904. Inconsistent statutes inapplicable.**

- (a) Section 5-66-101 et seq. and all other laws and parts of laws inconsistent with this chapter are expressly declared not to apply to any person engaged in, conducting, or otherwise participating in lotteries.
- (b) A person is not guilty of any criminal offense set forth in § 5-66-101 et seq. or any other law relating to illegal gambling to the extent the person relied on any rule, order, finding, or other determination by the Arkansas Lottery Commission that the activity was authorized by this chapter.

**SUBCHAPTER 10  
DEBTORS OWING MONEY TO THE STATE**

**23-115-1001. Legislative intent.**

- (a) The purposes of this subchapter are to establish:
  - (1) A policy and to provide a system whereby all claimant agencies of this state in conjunction with the Arkansas Lottery Commission 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 lottery prizes under this chapter from the commission; and
  - (2) Procedures for setting off against any prize the sum of any debt owed to the state or to persons on whose behalf the state and its claimant agencies act.
- (b) This subchapter shall be liberally construed to effectuate the purposes stated in subsection (a) of this section.

**23-115-1002. Definitions.**

- As used in this subchapter:
- (1) "Claimant agency" means a state agency, department, board, bureau, commission, or authority:
    - (A) To which a person owes a debt; or
    - (B) That acts on behalf of a person to collect a debt;

- (2) "Debt" means a:
  - (A) Liquidated sum due and owing any claimant agency when the sum has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for the sum; or
  - (B) Sum that is due and owing any person and is enforceable by the state;
- (3) "Debtor" means an individual owing money to or having a delinquent account with a claimant agency when the obligation has not been:
  - (A) Adjudicated as satisfied by court order;
  - (B) Set aside by court order; or
  - (C) Discharged in bankruptcy; and
- (4) "Prize" means the proceeds of any lottery prize awarded under this chapter.

**23-115-1003. Collection remedy.**

The collection remedy authorized by this subchapter is in addition to and not in substitution for any other remedy available by law.

**23-115-1004. List of debtors – Withholding winnings – Ranking of liens.**

- (a)(1) A claimant agency may submit to the Arkansas Lottery Commission a list of the names of all debtors owing in excess of one hundred dollars (\$100) to the claimant agency or to persons on whose behalf the claimant agency is acting.
- (2) The full amount of the debt is collectible from any prize without regard to limitations on the amounts that may be collectible in increments through garnishment or other proceedings.
- (3) The list shall constitute a valid lien upon and claim of lien against the prize of any debtor named in the list.
- (4) The list shall contain:
  - (A) The name of each debtor;
  - (B) The social security number of each debtor if available; and
  - (C) Any other information that would assist the commission in identifying each debtor named in the list.

(b)(1) The commission shall withhold any prizes subject to the lien created by this section and send notice to the winner by certified mail, return receipt requested, of the action and the reason the prizes were withheld.

- (2)(A) However, if the winner appears and claims prizes in person, the commission shall notify the winner at that time by hand delivery of the action.
- (B) If the debtor does not protest the withholding of the prizes in writing within thirty (30) days of receipt of the notice, the commission shall pay the prizes to the claimant agency.
- (C) If the debtor protests the withholding of the prizes within thirty (30) days of receipt of the notice, the commission shall:
  - (i) File an action in interpleader in the circuit court of the county where the debtor resides;
  - (ii) Pay the disputed sum into the registry of the circuit court; and
  - (iii) Give notice to the claimant agency and debtor of the initiation of the action.

- (c) The liens created by this section are ranked by priority 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 commission is not required to deduct claimed debts from prizes paid out by retailers or entities other than the commission.
- (e) Any list of debt provided under this section shall be provided periodically as the commission shall provide by rule, and the commission is not obligated to retain the lists or deduct debts appearing on the lists beyond the period determined by the rules.
- (f) The commission may prescribe forms and promulgate rules it deems necessary to implement this section.
- (g) The commission and any claimant agency shall incur no civil or criminal liability for good faith adherence to this section.
- (h) The claimant agency shall pay the commission for all costs incurred by the commission in setting off debts in the manner provided in this subchapter.

**23-115-1005. Confidential information.**

- (a)(1) Notwithstanding any other confidentiality statute, the Arkansas Lottery Commission may provide to a claimant agency all information necessary to accomplish and effectuate the intent of this subchapter.
- (2) Information shall be used by a claimant agency only in the pursuit of its debt collection duties and practices.
  - (b) Confidential information obtained by a claimant agency from the commission under this section shall retain its confidentiality.
  - (c) An employee or prior employee of a claimant agency who unlawfully discloses any information for any other purpose, except as otherwise specifically authorized by law, is guilty of a Class A misdemeanor.

**23-115-1006. Application.**

This subchapter applies only to prizes of more than five hundred dollars (\$500).

**SUBCHAPTER 11  
ARKANSAS LOTTERY COMMISSION LEGISLATIVE OVERSIGHT  
COMMITTEE**

**23-115-1101. Arkansas Lottery Commission Legislative Oversight Committee.**

- (a) The Arkansas Lottery Commission Legislative Oversight Committee is established.
- (b) The Arkansas Lottery Commission Legislative Oversight Committee shall consist of the following members of the General Assembly appointed as follows:
  - (1) Six (6) members of the House of Representatives shall be appointed to the Arkansas Lottery Commission Legislative Oversight Committee by the Speaker of



the House of Representatives; and

(2) Six (6) members of the Senate shall be appointed to the Arkansas Lottery Commission Legislative Oversight Committee by the President Pro Tempore of the Senate.

(c) In making appointments, each appointing officer shall select members who have appropriate experience and knowledge of the issues to be examined by the Arkansas Lottery Commission Legislative Oversight Committee and may consider racial, gender, and geographical diversity among the membership.

(d) The Arkansas Lottery Commission Legislative Oversight Committee shall:

(1) Review whether expenditures of lottery proceeds have been in accordance with this chapter;

(2) Review proposed rules of the Arkansas Lottery Commission;

(3)(A) Review proposed contracts of twenty-five thousand dollars (\$25,000) or more before the execution of the contracts.

(B) The commission shall provide a list of all contracts less than twenty-five thousand dollars (\$25,000) to the Arkansas Lottery Commission Legislative Oversight Committee on a monthly basis;

(4) Review reports filed with the Arkansas Lottery Commission Legislative Oversight Committee by the Department of Higher Education, including without limitation reports filed under § 6-85-205 and § 6-85-220;

(5) Perform its duties under § 6-85-220; and

(6) Study other lottery matters as the Arkansas Lottery Commission Legislative Oversight Committee considers necessary to fulfill its mandate.

(e)(1) By November 1 of each year, the Arkansas Lottery Commission Legislative Oversight Committee shall provide to the General Assembly:

(A) Any analysis or findings resulting from its activities under this section that the committee deems relevant; and

(B) Its recommendations for any changes to the:

(i) Scholarship award amounts;

(ii) Number or type of scholarships; and

(iii) Scholarship eligibility requirements.

(2) The Arkansas Lottery Commission Legislative Oversight Committee may make interim reports to the General Assembly regarding the expenditure of net lottery revenues.

(f)(1) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a Cochair of the Arkansas Lottery Commission Legislative Oversight Committee.

(2) The Arkansas Lottery Commission Legislative Oversight Committee shall meet at least quarterly upon the joint call of the Cochairs of the Arkansas Lottery Commission Legislative Oversight Committee.

(3) Six (6) members of the Arkansas Lottery Commission Legislative Oversight Committee constitute a quorum.

(4) No action may be taken by the Arkansas Lottery Commission Legislative Oversight Committee except by a majority vote at a meeting at which a quorum is present.

(g) Members of the Arkansas Lottery Commission Legislative Oversight Committee are entitled to per diem and mileage at the same rate authorized by law for attendance at meetings of interim committees of the General Assembly and shall be paid from the same source.

(h)(1) With the consent of both the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Arkansas Lottery Commission Legislative Oversight Committee may meet during a session of the General Assembly to perform its duties under this chapter.

(2) This subsection does not limit the authority of the Arkansas Lottery Commission Legislative Oversight Committee to meet during a recess as authorized by § 10-3-211 or § 10-2-223.

### **23-115-1102. Filing of information with Arkansas Lottery Commission Legislative Oversight Committee.**

(a) It is the intent of the General Assembly that the Arkansas Lottery Commission Legislative Oversight Committee perform the monitoring and oversight functions of the Legislative Council for the Arkansas Lottery Commission.

(b) All contracts, rules, reports, or other information required by law to be filed by the commission with the Legislative Council:

(1) Shall not be filed with the Legislative Council; and

(2) Shall be filed with the Arkansas Lottery Commission Legislative Oversight Committee.

(c) The Arkansas Lottery Commission Legislative Oversight Committee shall perform all duties or functions of the Legislative Council required by law concerning the contracts, rules, reports, or other information filed with the Arkansas Lottery Commission Legislative Oversight Committee under subsection (b) of this section.

**TITLE 6  
CHAPTER 85**

**ARKANSAS ACADEMIC CHALLENGE  
SCHOLARSHIP PROGRAM**

**TITLE 6**  
**CHAPTER 85**  
**ARKANSAS ACADEMIC CHALLENGE SCHOLARSHIP PROGRAM**

**SUBCHAPTER 2**  
**ARKANSAS ACADEMIC CHALLENGE SCHOLARSHIP PROGRAM –**  
**PART 2**

**6-85-201. Findings.**

The General Assembly finds that:

- (1) In approving Arkansas Constitution, Amendment 87, the citizens of this state provided an opportunity to increase the resources provided for higher education scholarships and grants through a state lottery; and
- (2) The net proceeds from the state lottery, in addition to existing nonlottery state educational resources for scholarships and grants, will:
  - (A) Encourage associate degree recipients and university juniors to complete a baccalaureate degree;
  - (B) Provide opportunities for students more than one (1) year out of high school to enter or reenter higher education;
  - (C) Provide an improved system of communication to students and parents about opportunities for higher education scholarships and grants in Arkansas; and
  - (D) Provide an evaluation and analysis of all state funding for scholarships and grants and how the funding advances the state's goals for higher education.

**6-85-202. Creation.**

The Arkansas Academic Challenge Scholarship Program – Part 2 is hereby created and established.

**6-85-203. Applicability.**

- (a) This subchapter is applicable to students who apply for a scholarship under the Arkansas Academic Challenge Scholarship Program – Part 2 for the academic year 2010-2011, and each academic year thereafter.
- (b) Except to the extent of an award amount under § 6-85-107(b)(2), a recipient of a scholarship under the Arkansas Academic Challenge Scholarship Program – Part 1, § 6-85-101 et seq., is not eligible for an additional scholarship under this subchapter.
- (c) Recipients of Arkansas Governor's Distinguished Scholarships are prohibited from receiving Arkansas Academic Challenge Scholarships under this subchapter.

**6-85-204. Definitions.**

As used in this subchapter:

- (1) "ACT" means the ACT Assessment administered by ACT, Inc.;
- (2) "ACT equivalent" means the Scholastic Aptitude Test (SAT), COMPASS, Accuplacer, or other nationally normed test that is correlated with the ACT and approved by the Department of Higher Education for use by institutions of higher education to assess a person's college readiness;
- (3) "Approved institution of higher education" means an institution of higher education approved by the Department of Higher Education to participate in the Arkansas Academic Challenge Scholarship Program – Part 2 and that is:
  - (A) A state-supported two-year or four-year college or university; or
  - (B) A private, nonprofit two-year or four-year college or university with its primary headquarters located in Arkansas that is eligible to receive Title IV federal student aid funds; or
  - (C) An approved school of nursing, subject to the provisions of § 6-85-213
- (c);
- (4) "Approved school of nursing" means a school of nursing with its primary headquarters located in Arkansas that:
  - (A) Prepares students as registered nurses;
  - (B) Grants nursing diplomas;
  - (C) Is eligible to participate in Title IV federal student aid programs;
  - (D) Is approved by the Arkansas State Board of Nursing;
  - (E) Has been approved by the Department of Higher Education as eligible to participate in the Arkansas Academic Challenge Scholarship Program; and
  - (F) Is not a two-year or four-year college or university;
- (5) "End-of-course assessment" means an examination taken at the completion of a course of study to determine whether a student demonstrates attainment of the knowledge and skills necessary for mastery of that subject;
- (6) "General Educational Development test" means a test measuring the knowledge and skills usually learned in high school that is administered by a state-approved institution or organization;
- (7) "High school grade point average" means the numbered grade average on a student's high school transcript calculated using the first seven (7) of the last eight (8) semesters the student completed prior to graduating high school;
- (8) "Lawful permanent resident" means a non-United States citizen who resides in the United States under a legally recognized and lawfully recorded permanent residence and who may receive state public benefits under 8 U.S.C. § 1622;
- (9) "Net proceeds from the state lottery" means lottery proceeds less operating expenses, as defined in § 23-115-103;
- (10) "Nonlottery state educational resources" means the funding available for state-supported scholarships and grants for students enrolled in two-year and four-year institutions of higher education in this state that:
  - (A) The General Assembly makes available from general revenue to the Higher Education Grants Fund Account without consideration of the availability of proceeds from the state lottery; and
  - (B) The Department of Finance and Administration estimates is available

for distribution to the Higher Education Grants Fund Account during a fiscal year from the Educational Excellence Trust Fund;

(11) "Nontraditional student" means a student who is not a traditional student;

(12) "Personally identifiable student data" means any information that, alone or in combination with other available information, is linked or linkable to a specific student that would allow a reasonable person in the school community to identify the student with reasonable certainty;

(13) "Postsecondary grade point average" means the cumulative numbered grade average for college credit courses as calculated using a 4.0 scale;

(14) "Qualified certificate program" means a program that is:

(A) Offered by an approved institution of higher education;

(B) Shorter in duration than an associate degree for which credit hours are awarded that are creditable toward an associate degree; and

(C) Recognized by the United States Department of Education for financial aid purposes;

(15) "Recipient" means an applicant awarded a scholarship funded through the program;

(16) "State-supported student financial assistance" means a state-supported scholarship, grant, tuition waiver, or tuition reimbursement funded with state funds or net proceeds from the state lottery awarded by:

(A) The Department of Higher Education; or

(B) A scholarship or grant awarded by an institution of higher education in this state in whole or in part by state funds, including without limitation:

(i) Scholarships awarded on the basis of entrance exam scores or high school academic achievement;

(ii) Tuition waivers based on age, military service, occupation, or other factors;

(iii) Out-of-state tuition waivers for undergraduate students from contiguous states in close proximity to a college or university;

(iv) Scholarships for transfers from two-year institutions;

(v) Performance scholarships for band, musical performing groups, arts, theater, forensics, and similar activities that are not awarded on the basis of entrance exam scores or high school academic achievement; and

(vi) Any other publicly-funded program under which students are not charged or are reimbursed by the institution of higher education for tuition, fees, books, or other costs of attendance; and

(17) "Traditional student" means a student who will enter postsecondary education as a full-time first-time freshman within twelve (12) months after graduating from high school and remains continuously enrolled as a full-time student.

#### **6-85-205. Authority and duties of the Department of Higher Education.**

(a)(1) The Department of Higher Education shall develop and promulgate rules for the administration of the Arkansas Academic Challenge Scholarship Program consistent with the purposes and requirements of this subchapter.

(2) At least ten (10) business days before the date the Department of Higher Education files with the Bureau of Legislative Research under § 25-15-204 a proposed rule or proposed change to a rule promulgated under this subchapter, the Department of Higher Education shall file a copy of the proposed rule or proposed change to a rule with the Arkansas Lottery Commission Legislative Oversight Committee.

(b) The rules developed and promulgated by the Department of Higher Education under this section shall pertain to:

(1) Student eligibility criteria based on this subchapter;

(2) The method for selecting scholarship recipients and for determining continuing eligibility;

(3) The procedures for making payment to an approved institution of higher education where the recipient is enrolled; and

(4) Other administrative procedures that may be necessary for the implementation and operation of the program.

(c) The Department of Higher Education shall implement a complete financial aid management system that uses a single application form that may be accessed as a web-based application for all Arkansas state-supported student financial assistance administered by the Department of Higher Education, including:

(1) Scholarships awarded under this subchapter or other state law that are funded with net proceeds from the state lottery; and

(2) Scholarships, grants, or other financial assistance for higher education students funded with nonlottery state educational resources.

(d)(1) The Department of Education and the Department of Higher Education are directed to develop appropriate informational materials on the Arkansas Academic Challenge Scholarship Program and to ensure distribution of the materials to Arkansas students in grade seven through grade twelve (7-12) each year as a part of the packet of materials on precollegiate preparation distributed by the Department of Education as required by § 6-61-217.

(2) The distribution of materials shall be accomplished through the collaboration of school counselors and other appropriate public school or Department of Higher Education personnel.

(e) The Director of the Department of Higher Education shall review and evaluate the operation of the program with regard to eligibility criteria and size of the scholarship award to ensure that the program's operation meets the intent of this subchapter.

(f) The Department of Higher Education may determine the necessary procedures for the awarding of scholarships if the number of eligible applicants exceeds the funds available based on the criteria under this subchapter.

(g)(1) The Department of Higher Education shall report to the General Assembly annually regarding the implementation of this subchapter.

(2) By August 1 of each year, the Department of Higher Education shall provide to the Arkansas Lottery Commission Legislative Oversight Committee an unaudited financial report on the administration of the Arkansas Academic Challenge Scholarship Program for the fiscal year just ended.

**6-85-206. Basic eligibility requirements.**

The basic requirements for an applicant to be eligible for an award from the Arkansas Academic Challenge Scholarship Program – Part 2 are:

(1)(A) The applicant has been an Arkansas resident for at least the twelve (12) months immediately preceding the date the applicant will enroll in an approved institution of higher education, and if the applicant is less than eighteen (18) years of age, a parent or guardian of the applicant or a combination of the applicant and a parent or guardian of the applicant has maintained Arkansas residency for the same period of time.

(B) To be considered an Arkansas resident, an applicant shall demonstrate residency by evidence deemed sufficient to the Department of Higher Education, including without limitation information provided by the applicant on the Free Application for Federal Student Aid or a subsequent application required by the United States Department of Education for federal financial aid;

(2) The applicant is a citizen of the United States or is a lawful permanent resident;

(3)(A) The applicant is accepted for admission as a full-time student or part-time student at:

(i) An approved institution of higher education in a program of study that leads to or is creditable toward:

(a) A baccalaureate degree;

(b) An associate degree;

(c) A certificate from a qualified certificate program; or

(ii) An approved school of nursing in a program of study that leads to a nursing diploma under § 6-85-213.

(B) A full-time student shall enroll in at least twenty-seven (27) semester hours the first academic year and thirty (30) semester hours per academic year thereafter or the equivalent, as described in this subchapter, or the equivalent as defined by the Department of Higher Education.

(C) A part-time student shall complete at least six (6) semester hours but fewer than the minimum number of semester hours for a full-time student, as defined by the Department of Higher Education;

(4) The applicant has not earned a baccalaureate degree;

(5) The applicant does not owe a refund on a federal or state student financial aid grant for higher education;

(6) The applicant is not in default on a state or federal student financial aid loan for higher education;

(7) The applicant has not borrowed, as determined by the approved institution of higher education to be attended, in excess of the annual loan limits under the Federal Family Educational Loan Program Systems, William D. Ford Federal Direct Loan Program, Income Contingent Loan Demonstration Program, Federal Stafford Loan Program, Parent Loan for Undergraduate Students Program, or Supplemental Loan for Students Program in the same academic year for which the student has applied for assistance under this subchapter;

(8) The applicant is not incarcerated at the time of the application for or during

the time the applicant receives a scholarship under this subchapter;

(9) The applicant has complied with United States Selective Service System requirements for registration;

(10) The applicant has completed and submitted to the United States Department of Education a Free Application for Federal Student Aid or a subsequent application required by the United States Department of Education for federal financial aid; and

(11) The applicant certifies that he or she is drug-free and pledges in writing on the application form to refrain from the use or abuse of illegal substances in order to become eligible and maintain eligibility for this program.

**6-85-207. Additional eligibility requirements for traditional students.**

In addition to the requirements of § 6-85-206, an applicant is eligible as a traditional student if the applicant:

(1)(A) Graduated from an Arkansas public high school and has:

(i) Successfully completed the Smart Core curriculum established by the Department of Education; and

(ii) Either:

(a) Achieved a high school grade point average of at least 2.5; or

(b) Had a minimum composite score of nineteen (19) on the ACT or the equivalent score on an ACT equivalent.

(B) Graduated from an Arkansas public high school before the 2013-2014 school year, but did not complete the Smart Core curriculum, he or she shall have achieved a high school grade point average of at least 2.5 and either:

(i) Have a minimum composite score of nineteen (19) on the ACT or the equivalent score on an ACT equivalent; or

(ii) Scored proficient or higher on all state-mandated end-of-course assessments, including without limitation end-of-course assessments on:

(a) Algebra I;

(b) Geometry; and

(c) Biology;

(2) Graduated from an Arkansas public high school that is annually identified in the report by the Department of Education under § 6-15-421 as a school in which twenty percent (20%) or more of the students received a letter grade of "B" or higher but did not score proficiency or higher on the end-of-course assessment on the first attempt, achieved a high school grade point average of at least 2.5, and:

(A) Completed the Smart Core curriculum if graduating from an Arkansas high school in the 2013-2014 school year or later; and

(B) Either:

(i) Has a minimum composite score of nineteen (19) on the ACT or the equivalent score on an ACT equivalent; or

(ii) Scores proficient or higher on all state-mandated end-of-course assessments, including without limitation, end-of-course assessments on:

(a) Algebra I;

(b) Geometry;

- (c) Biology; and
- (d) Beginning with the 2013-2014 school year, literacy;
- (3) Has a disability identified under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as it existed on July 1, 2009, and graduated from an Arkansas public high school but did not complete the Smart Core curriculum because the applicant's individualized education program under § 6-41-217 did not require it, achieved a high school grade point average of at least 2.5 and either:
  - (A) Has a minimum composite score of nineteen (19) on the ACT or the equivalent score on an ACT equivalent; or
  - (B) Scored proficient or higher on all state-mandated end-of-course assessments, including without limitation, end-of-course assessments on:
    - (i) Algebra I;
    - (ii) Geometry;
    - (iii) Biology; and
    - (iv) Beginning with the 2013-2014 school year, literacy; or
- (4) Graduated from a private high school, an out-of-state high school, or a home school high school and achieved a minimum composite score of nineteen (19) on the ACT or the equivalent score on an ACT equivalent.

**6-85-208. Additional eligibility requirements for a nontraditional student.**

- (a) An applicant is eligible as a nontraditional student if, in addition to the requirements of § 6-85-206, the applicant:
  - (1) Graduated from an Arkansas high school and achieved a 2.5 high school grade point average;
  - (2) Had a minimum composite score of nineteen (19) on the ACT or the equivalent score on an ACT equivalent; or
  - (3) Has completed at least twelve (12) semester hours of courses granting three (3) or more hours of credit at an approved institution of higher education and earned a postsecondary grade point average of at least 2.5.
- (b) To be eligible, a nontraditional student applicant who graduated from a private high school, an out-of-state high school, or a home school high school shall have achieved a minimum composite score of nineteen (19) on the ACT or the equivalent score on an ACT equivalent.

**6-85-209. Additional eligibility requirements for a student near completion.**

- In addition to the requirements of § 6-85-206, an applicant is eligible as a student near completion if at the time of applying for the scholarship the applicant:
  - (1) Is enrolled in a two-year or four-year approved institution of higher education;
  - (2) Is within twenty-five percent (25%) of the requirements for completion of an associate degree or baccalaureate degree; and
  - (3) Has achieved a postsecondary grade point average of at least 2.5.

**6-85-210. Continuing eligibility.**

- (a) A recipient who meets continuing eligibility criteria under this subchapter shall receive a scholarship for one (1) academic year renewable annually until the recipient first:
  - (1) Earns a baccalaureate degree;
  - (2)(A) Attempts a transcript total of one hundred thirty (130) semester hours in eight (8) semesters at any approved institution of higher education as an undergraduate full-time student.
    - (B) If the recipient's undergraduate degree requires additional hours, the Department of Higher Education, in conjunction with the institution of higher education where the recipient is enrolled, shall determine the maximum period of time for renewal of the scholarship; or
  - (3) Attempts a transcript total of one hundred thirty (130) semester hours in sixteen (16) semesters at any approved institution of higher education as an undergraduate part-time student.
    - (b) To maintain eligibility for an Arkansas Academic Challenge Scholarship under this subchapter, a recipient shall meet the following requirements:
      - (1) A recipient shall continue to meet the eligibility requirements of this subchapter while a recipient of a scholarship under this subchapter;
      - (2)(A)(i) A recipient shall meet the satisfactory academic progress standards required to receive other financial aid at the approved institution of higher education where the recipient is enrolled, as determined by the Department of Higher Education in conjunction with the institution of higher education where the recipient is enrolled.
        - (ii) By accepting scholarship funds under this subchapter, the receiving institution certifies that students will be enrolled in courses that will meet satisfactory academic progress standards leading toward a certificate, an associate degree, a nursing diploma, or a baccalaureate degree.
      - (B) A recipient shall be continuously enrolled unless the Department of Higher Education has approved a leave of absence for:
        - (i) A medical condition of the student or a member of the student's immediate family;
        - (ii) A personal or family emergency;
        - (iii) Military service under § 6-61-112;
        - (iv) A commitment for twelve (12) months or more for community, national, or global humanitarian service; or
        - (v) Any other reason approved by the Department of Higher Education.
    - (C)(i) A traditional student recipient is continuously enrolled in an approved institution of higher education if he or she completes twenty-seven (27) semester hours in the first year as a recipient and completes thirty (30) semester hours each academic year thereafter.
      - (ii) A nontraditional student recipient is continuously enrolled if he or she maintains at an approved institution of higher education in consecutive semesters, not including any summer term:
        - (a) Full-time enrollment if the student receives a scholarship under this subchapter for a full-time student; or

(b) Part-time enrollment if the student is receiving a scholarship under this subchapter for a part-time student;

(3) A recipient who enrolls in one (1) or more remedial courses shall complete all remedial courses required by the approved institution of higher education by the time the student completes the first thirty (30) semester hours attempted after receiving the scholarship;

(4) A recipient shall earn a postsecondary grade point average of 2.5 or higher at an approved institution of higher education;

(5) A recipient shall enroll in courses that lead toward a baccalaureate degree program after attempting the lesser of:

(A) Sixty-six (66) semester hours; or

(B) The completion of an associate degree program, unless the number of hours required to complete the associate degree program exceeds sixty-six (66) semester hours, in which case, the higher number of hours for completion shall be used for this subdivision (b)(5); and

(6) A recipient shall meet any other continuing eligibility criteria established by the Department of Higher Education.

(c)(1) If a recipient becomes ineligible for the scholarship because the recipient's postsecondary grade point average or number of completed credit hours no longer meets the minimum requirement for the scholarship, the recipient may regain eligibility under this subsection (c) one (1) time only.

(2) Except as provided under § 6-85-211(a)(3) and unless the requirements of this subsection are waived by the Department of Higher Education, to regain eligibility for the scholarship:

(A) A full-time student shall:

(i) Complete at least fifteen (15) semester hours of courses for credit for which the approved institution of higher education certifies that the courses meet the satisfactory academic progress standards of the institution; and

(ii) Achieve a 2.5 grade point average for the semester hours completed under this subdivision (c)(2); and

(B) A part-time student shall:

(i) Complete at least six (6) semester hours of courses for credit for which the approved institution of higher education certifies that the courses meet the satisfactory academic progress standards of the institution; and

(ii) Achieve a 2.5 grade point average for the semester hours completed under this subdivision (c)(2).

(d)(1) If a recipient becomes ineligible for the scholarship because the recipient has not completed the required number of hours for continuing eligibility, the recipient may regain eligibility under this subsection (d) for one (1) time only.

(2)(A) Except as provided under § 6-85-211(a)(3) and unless the requirements of this subsection are waived by the Department of Higher Education, to regain eligibility for the scholarship, the recipient shall complete the number of hours needed to regain eligibility.

(B) The recipient shall complete the required number of hours during the summer term at the student's own expense.

(e) If a recipient is subject to losing a scholarship under subsection (c) or (d) of this section due to a catastrophic event experienced by the recipient or a family member of the recipient, the department may waive the requirements of this subsection and determine the appropriate requirements for the recipient to either retain or regain the scholarship.

#### **6-85-211. Literacy tutoring.**

(a) As an additional component to the Arkansas Academic Challenge Scholarship:

(1) Each applicant for the scholarship shall agree that for each year the scholarship is awarded he or she may volunteer to serve as a literacy tutor for a minimum of twenty (20) clock hours each semester in a public school or a faith-based educational institution serving students in prekindergarten through grade six (preK-6);

(2) A recipient who agrees to volunteer as a literacy tutor:

(A) Shall complete the prerequisite training in literacy and college readiness skills provided under this section before he or she begins tutoring; and

(B) May receive college credit for the tutoring as determined by the institution of higher education where the recipient is enrolled; and

(3) An enrolled college student who participates in the tutorial program and fails to meet the academic eligibility requirement under this subchapter for the fall or spring semester shall be given the probationary opportunity during the subsequent spring or summer term to continue his or her education and improve academic performance before losing scholarship funding in the subsequent semester.

(b) A recipient who agrees to volunteer as a literacy tutor under this section shall receive the prerequisite training in literacy and college readiness from an approved institution of higher education based on training modules developed by the Department of Education.

#### **6-85-212. Scholarship award amounts.**

(a) The General Assembly may use net proceeds from the state lottery to fund the scholarships awarded under this subchapter and to supplement the state-supported student financial assistance that the General Assembly determines is necessary to meet the state's objective for broadening and increasing access of Arkansas citizens to higher education.

(b) Net proceeds from the state lottery used to fund scholarships under this subchapter shall:

(1) Be used exclusively for the purposes set out in Arkansas Constitution, Amendment 87 and this subchapter; and

(2) Supplement and shall not supplant nonlottery state educational resources.

(c) It is General Assembly's intent that before increasing award amounts for scholarships under this subchapter, the number of scholarships awarded to nontraditional students under § 6-85-208 and to students near completion under § 6-85-209 be increased.

(d) The scholarships established under this subchapter are subject to available funding and do not create for any student an entitlement to financial assistance to enable the student's attendance at an approved institution of higher education.

(e)(1) For the 2010-2011 academic year, the General Assembly shall determine the scholarship award amount by February 28, 2010, based on the amount of net proceeds from the state lottery reasonably projected to be available for scholarships in the 2010-2011 academic year.

(2)(A) The Department of Higher Education shall award an aggregate amount of scholarship awards to nontraditional students beginning with the 2010-2011 academic year up to eight million dollars (\$8,000,000).

(B) Priority for scholarships awarded to nontraditional students is based on the applicant's level of progress toward completion of a certificate, an associate degree, nursing diploma, or a baccalaureate degree, or on other criteria established by the Department of Higher Education.

(3) The scholarship award for a full-time student enrolled in a two-year approved institution of higher education is one-half (1/2) of the scholarship award amount for a full-time undergraduate student enrolled in a four-year approved institution of higher education.

(4) The scholarship award amount for a part-time student recipient shall be:

(A) One-half (1/2) of the award amount for a full-time student recipient, if the recipient is enrolled in at least six (6) semester hours but less than nine (9) semester hours; or

(B) Three-quarters (3/4) of the award amount for a full-time student recipient, if the recipient is enrolled in at least nine (9) semester hours but less than the number of hours required for a full-time student recipient;

(f)(1) By November 1 of each year, the Arkansas Lottery Commission Legislative Oversight Committee shall provide to the General Assembly its recommendations for any changes to the:

- (A) Award amounts;
- (B) Number or type of scholarships; and
- (C) Eligibility requirements.

(2) The committee may base its recommendations for scholarship award amounts on the following guidelines and any additional information the committee finds relevant to making the recommendations:

Annual 2-yr institution award amount	Annual 4-yr institution award amount	If net lottery proceeds are greater than	Or equal to
\$1,250	\$2,500	\$ 49,308,626	\$ 60,405,551
\$1,500	\$3,000	\$ 60,405,551	\$ 71,502,476
\$1,750	\$3,500	\$ 71,502,476	\$ 82,599,401
\$2,000	\$4,000	\$ 82,599,401	\$ 93,696,326
\$2,250	\$4,500	\$ 93,696,326	\$104,793,251
\$2,500	\$5,000	\$104,793,251	\$115,890,177
\$2,750	\$5,500	\$115,890,177	\$126,987,102

\$3,000                      \$6,000                      \$126,987,102

(g) After the 2010-2011 academic year, the determination of the amount of net proceeds from the state lottery available for each semester is based on the Arkansas Lottery Commission's certification of net proceeds.

(h) The department shall ensure that sufficient funds remain available to pay for scholarship awards through the anticipated completion of the degree or certificate a recipient is seeking and report the balance of those funds to the General Assembly before the amount of awards under this subchapter are increased by the General Assembly.

(i) All awards under this subchapter are subject to the prohibition under § 6-80-105 against using public funds in a student financial package in excess of the recognized cost of attendance at the institution where the student is enrolled.

(j)(1) If the department has less than a sufficient amount to provide for the scholarship commitments under this subchapter, the department first shall use the department's Scholarships and Grants Contingency Appropriation to fund the shortfall.

(2) The department then shall give priority for continued financial support under this subchapter to a recipient who has continuing eligibility superior to first-time applicants.

(3) If the funding is still insufficient to fully fund the scholarships created under this subchapter, the department shall award scholarships after considering applicants:

(A) With the highest level of progress toward completion of a certificate, an associate degree, or a baccalaureate degree;

(B) With the highest high school or postsecondary grade point average, as applicable to the applicant; and

(C) Who are enrolled in or intend to enroll in a program of study that is:

(i) In an area of critical workforce need as determined by the department;

or

(ii) Is in a science, technology, engineering, or mathematics field.

(k) When the General Assembly determines that there exist sufficient net lottery proceeds to fund students enrolling in certificate, associate degree, and baccalaureate degree programs, the department shall submit recommendations to the Arkansas Lottery Commission Legislative Oversight Committee for the award of scholarships and grants to certain graduate and professional programs at approved institutions of higher education.

**6-85-213. Nursing school eligibility.**

(a)(1) The General Assembly recognizes that the State of Arkansas is experiencing a critical shortage of nurses.

(2) It is the intent of this section to allow the Department of Higher Education the opportunity, under specific circumstances, to include an approved school of nursing that would not otherwise be an approved institution of higher education in the Arkansas Academic Challenge Scholarship Program.

(b) The department shall make awards to applicants attending an approved



school of nursing under this section if the recipient meets continuing eligibility requirements in § 6-85-210.

(c) The department shall pay scholarship awards under this section only from nonlottery state educational resources.

**6-85-214. Accountability – Transparency – Legislative oversight.**

(a) The General Assembly finds that:

(1) The continual evaluation of the Arkansas Academic Challenge Scholarship Program and of all state-supported scholarship and grant programs by the General Assembly is critical for maximizing the benefits to the state and its citizens of state financial aid for higher education and meeting state objectives for higher education; and

(2) Accountability and transparency in the implementation of state-supported scholarship programs are fundamental to a proper evaluation of the programs.

(b) The General Assembly finds that the collection of data and the reports required under §§ 6-85-215 – 6-85-220 are necessary to ensure accountability and transparency.

**6-85-215. Student consent form.**

(a)(1)(A) A student receiving any state-supported student financial assistance for which an institution of higher education is required to provide information under this section shall complete and sign a consent form authorizing the release of the student's individual personal information to the Bureau of Legislative Research and authorizing:

(i) The institution of higher education to provide the bureau with academic progress information for the scholarship recipient; and

(ii) The Department of Higher Education to release the student's individual personal information to the bureau.

(B) If a student is less than eighteen (18) years of age, the student's parent or guardian shall complete and sign the consent form.

(2)(A) The student may opt out of the release of information. A decision to opt out applies only to the release of information under this section and does not apply to information released under any other section of this subchapter or under any other law.

(B) In order to provide better statistical data, each institution shall report the number of students who opt out.

(3) The consent form shall state that:

(A) The purpose for the bureau collecting data is to guide the General Assembly's evaluation of the need for adjustments to scholarship program eligibility and funding levels;

(B) Personally identifiable student data will not be released by the bureau or the Department of Higher Education; and

(C) The student may opt out of the release of information, and that opting out will not affect the student's eligibility for a scholarship.

(4) The form shall list the categories of information authorized for release

under this section.

(5) The Director of the Bureau of Legislative Research may:

(A) Seek an opinion from the Family Policy Compliance Office of the United States Department of Education concerning the student consent requirement and opt out under this section; or

(B) Request the Department of Higher Education to seek the opinion on behalf of the bureau.

(b) The information consented to be released by the student shall include:

(1) A unique student identifier;

(2) Status for Federal PELL grant;

(3) Postsecondary grade point average;

(4) Number of semester hours attempted;

(5) Number of semester hours completed;

(6) Gender, race, ethnicity, and age;

(7) High school graduated from or General Educational Development test score;

(8) High school grade point average; and

(9) ACT score or ACT equivalent score, if available.

(c) This section does not apply to scholarships or other forms of student financial assistance that are completely privately funded.

(d) Approved institutions of higher education shall undertake any procedures necessary to ensure the collection of the information under this section and shall provide it to the Bureau of Legislative Research in a mutually agreed upon electronic format by November 1 of each school year for students awarded for that academic year state-supported student financial assistance.

(e)(1) The student data provided to the bureau under this section are not subject to release under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2) The bureau shall not release any personally identifiable student data received under this section.

(f) The bureau shall inform the Department of Higher Education of any data used in the preparation of reports and provide the Department of Higher Education at least two (2) working days to review any student-related data used in preparation of reports before publicly releasing that student-related data without personally identifiable data.

**6-85-216. Institution report to the Department of Higher Education.**

(a)(1) An approved institution of higher education that enrolls students receiving scholarships under this subchapter annually shall provide information, and semiannually provide updated information, to the Department of Higher Education regarding all state-supported student financial assistance whether or not the state-supported student financial assistance is awarded under this subchapter.

(2) The information shall be provided in the form of individual student records and shall include without limitation information regarding:

(A) State-supported student financial assistance;

- (B) Demographic student data; and
- (C) Disaggregated data on remedial courses.
- (b) The department shall establish by rule the:
  - (1) Specific data required;
  - (2) Manner of reporting the information required; and
  - (3) Technology or software required for reporting.
- (c) The department shall use the information provided under this section to conduct the research and analysis needed to support the annual report of the Director of the Department of Higher Education to the Arkansas Lottery Commission Legislative Oversight Committee under § 6-85-205.

**6-85-217. Information provided to the Bureau of Legislative Research by the Department of Higher Education.**

- (a)(1) The Department of Higher Education shall provide to the Bureau of Legislative Research the following data when requested for the purpose of assisting the General Assembly with evaluation and analysis under this subchapter:
    - (A) Existing individual student data;
    - (B) Institutional data;
    - (C) Financial data;
    - (D) Aggregate student scholarship and grant application and award data;
- and
- (E) Other data needed to track scholarship and grant students from year to year.

(b)(1) To maintain confidentiality of individual student records in accordance with the Family Educational Right to Privacy Act, 20 U.S.C. § 1232g, the Department of Higher Education shall establish a system for removing or recoding any personally identifiable student data in student records that are used by the bureau for research and evaluation of scholarships and grants funded with net proceeds from the state lottery and those funded with nonlottery state educational resources.

(2) The bureau shall assist the Department of Higher Education by providing input concerning the development or modification of the system.

(3)(A) The Director of the Bureau of Legislative Research may seek an opinion from the Family Policy Compliance Office of the United States Department of Education concerning the Department of Higher Education's system, any proposed modification of the system, or any request for information made by the bureau under this section.

(B) The director may request the Department of Higher Education to seek the opinion on behalf of the bureau.

(c) The Department of Higher Education shall make its staff reasonably accessible for consultation with the bureau's staff in developing and responding appropriately to bureau requests under this section.

(d)(1) The Department of Higher Education shall provide data to the bureau in a database or spreadsheet format.

(2) The Department of Higher Education shall provide other information and

records requested by the bureau as soon as possible and in whatever reasonable form requested.

(e)(1) The student data provided to the bureau under this section are not subject to release under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2) The bureau shall not release any personally identifiable student data received under this section.

(f) The bureau's staff shall inform the Department of Higher Education of any data used in the preparation of reports and provide the department at least two (2) working days to review any student-related data used in preparation of reports before publicly releasing that student-related data without personally identifiable student data.

**6-85-218. Advisory council.**

(a) An advisory council is created to provide recommendations to the Department of Higher Education and the Arkansas Lottery Commission Legislative Oversight Committee for the implementation of this subchapter.

(b) The advisory council shall be composed of sixteen (16) members as follows:

(1) The Director of the Department of Higher Education, or his or her designee;

(2) The Commissioner of Education, or his or her designee;

(3) The Executive Director of the Arkansas Association of Educational Administrators, or his or her designee;

(4) The Executive Director of the Arkansas Education Association, or his or her designee;

(5) The Executive Director of the Arkansas School Boards Association, or his or her designee;

(6) The Director of the Bureau of Legislative Research, or his or her designee, who shall serve as an ex officio nonvoting member; and

(7)(A) Ten (10) members who shall serve three-year terms, selected as follows:

(i) One (1) member of the House of Representatives selected by the Speaker of the House of Representatives;

(ii) One (1) member of the Senate selected by the President Pro Tempore of the Senate;

(iii) Two (2) members selected by the Director of the Department of Higher Education who are employed at the department;

(iv) Two (2) members selected by the Director of the Department of Higher Education who are presidents or chancellors of two-year approved institutions of higher education, or the designee of the president selected;

(v) Two (2) members selected by the Director of the Department of Higher Education who are presidents or chancellors of four-year approved institutions of higher education or the designee of the president or chancellor selected;

(vi) One (1) member selected by the Director of the Department of Higher Education who is a financial aid administrator at an approved institution of higher

education, or his or her designee; and

(vii) One (1) member selected by the Director of the Department of Higher Education who is a student services administrator at an approved institution of higher education, or his or her designee.

(B) Members appointed under this subdivision (b)(7):

(i) Shall have initial terms that are staggered evenly between two (2) and three (3) years as determined by lot at the advisory council's first meeting; and

(ii) May be reappointed to successive terms.

(C) A vacancy under this subdivision (b)(7) shall be filled by appointment by the appointing authority effective until the expiration of the regular term.

(c) The advisory council shall be staffed by the department.

(d) The legislator members of the advisory council shall serve as cochair of the advisory council and shall call meetings as needed to fulfill the purpose of the advisory council.

(e)(1) Legislative members are entitled to reimbursement for expenses and per diem at the same rate and from the same source as provided by law for members of the General Assembly attending meetings of interim committees.

(2) Nonlegislative members of the advisory council shall serve without compensation but may be reimbursed by the department for reasonable travel expenses incurred to attend meetings if funding is available.

(f) By August 1, 2009, and as requested thereafter, the advisory council shall report its recommendations to the Arkansas Lottery Commission Legislative Oversight Committee.

#### **6-85-219. Reports to legislative committees.**

(a)(1) Quarterly during fiscal years 2010 and 2011, the Department of Higher Education shall report to the Arkansas Lottery Commission Legislative Oversight Committee:

(A) The information required by subsection (b) of this section to the extent the information is available;

(B) The costs of administering scholarships funded with net proceeds from the state lottery;

(C) Projected levels of state funding for scholarships and grants;

(D) Recommendations for changes to the program, including without limitation, adjustments to eligibility requirements of the Arkansas Academic Challenge Scholarship Program and award levels; and

(E) Other data the committee or the General Assembly may require.

(2) The Arkansas Lottery Commission Legislative Oversight Committee may specify criteria related to any item of information required by this section.

(b)(1) Annually by July 1, the department shall report to the Arkansas Lottery Commission Legislative Oversight Committee in the manner and format that the committee requires on all state-supported student financial assistance awarded by the department and awarded by approved institutions of higher education.

(2) The information provided shall include without limitation:

(A) Current year expenditures for scholarships and grants under the

program;

(B) Projected obligations for succeeding years from each scholarship or grant funding source;

(C) Fund balances for the:

(i) Higher Education Grants Fund Account; and

(ii) Trust accounts maintained by the Director of the Department of Higher Education to hold the net proceeds from the state lottery;

(D) An evaluation of whether the net proceeds from the state lottery available for the program supplements and does not supplant nonlottery state educational resources;

(F) Recommendations for changes to the program, including without limitation:

(i) Adjustments to the eligibility requirements of the program; and

(ii) Increases or decreases in the amounts awarded for an Arkansas Academic Challenge Scholarship based on the amount of net proceeds from the state lottery available; and

(H) Any other information that the Arkansas Lottery Commission Legislative Oversight Committee or the General Assembly may request.

(c) The department shall report to the Arkansas Lottery Commission Legislative Oversight Committee, the House Committee on Education, the Senate Committee on Education, and the Joint Budget Committee on the compliance with § 6-85-216 by each approved institution of higher education.

(d) The Bureau of Legislative Research shall report to the Arkansas Lottery Commission Legislative Oversight Committee, the House Committee on Education, the Senate Committee on Education, and the Joint Budget Committee on:

(1) The compliance with § 6-85-216 by approved institutions of higher education; and

(2) The status of reporting by the department under § 6-85-217.

#### **6-85-220. Arkansas Lottery Commission Legislative Oversight Committee – Annual report.**

(a) The Arkansas Lottery Commission Legislative Oversight Committee shall:

(1) Oversee the development and implementation of Arkansas Code requirements with regard to the Arkansas Academic Challenge Scholarship Program;

(2) Review whether and how the use of net state lottery proceeds helps to accomplish state objectives for higher education;

(3) Review the ongoing data collection, research, and evaluation of the program;

(4) Review the annual report of the Director of the Department of Higher Education under § 6-85-219;

(5) Review and recommend changes to the:

(A) Number of awards for each scholarship and grant;

(B) Award levels;

(C) Eligibility requirements; and

(D) Overall administration of the program; and  
(6) Review and recommend policies for scholarships and grants funded with nonlottery state educational resources, including without limitation ways to ensure that net proceeds from the state lottery are used to supplement and not supplant nonlottery state educational resources.

(b) By November 1 of each year, the Arkansas Lottery Commission Legislative Oversight Committee shall report its findings and recommendations to the Arkansas Lottery Commission, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Governor, the House Committee on Education, and the Senate Committee on Education.

**Uncodified Section 7 of the Arkansas Scholarship Lottery Act:**

(a) The Director of the Department of Higher Education shall determine the amount of excess net proceeds from the state lottery by calculating the difference between:

(1) The amount committed to scholarships awarded under the Academic Challenge Scholarship Program – Part 1 and the scholarships for traditional students and nontraditional students under the Academic Challenge Scholarship Program – Part 2; and

(2) The amount of net proceeds from the state lottery reasonably projected for the 2010-2011 academic year as determined by the director, after consultation with the Arkansas Lottery Commission, the Legislative Oversight Committee, the House Committee on Education, and the Senate Committee on Education.

(b) The amount of excess net proceeds from the state lottery shall only be available for one (1) or more of the following:

(1) Awarding scholarships to students near completion;

(2) Increasing state-supported student financial assistance under the Higher Education Opportunities Grant Program, § 6-82-1701 et seq. and the Arkansas Workforce Improvement Grant Program, § 6-82-1601 et seq., or other state-supported student financial assistance programs for nontraditional students; or

(3) Establishing a reserve fund.

(c) By July 15, 2010, the Director of the Department of Higher Education shall prepare a report on the projected distribution of excess net proceeds from the state lottery based on:

(1) The award amounts set by the General Assembly in February 2010 under this act;

(2) The amount of excess net proceeds from the state lottery reasonably projected to be available for funding scholarships under this act;

(3) The number of applications accepted for the 2010-2011 academic year under this act;

(4) The number of applicants on the waiting lists for scholarships to be awarded under this act;

(5) Of the applicants on the waiting list, whether the applicants are traditional students, nontraditional students, or students near completion;

(d) The director shall provide the report to the Arkansas Lottery Commission

Legislative Oversight Committee, the House Committee on Education, and the Senate Committee on Education for review.

(e)(1) The department shall maintain a list of nontraditional students and students near completion and shall award scholarships under this subchapter first in order of those nearest completion.

(2) The amount of the award per student per year shall be determined by dividing the number of hours until completion by thirty (30) and multiplying by the amount the legislature sets for the award for baccalaureate students.

(3) The amount of the award for associate degree students shall be determined by dividing the number of hours until completion by fifteen (15) and multiplying by the amount the legislature sets for two-year students.