



STATE OF ARKANSAS
**Department of Finance
and Administration**

OFFICE OF THE ARKANSAS LOTTERY

Post Office Box 3238
Little Rock, Arkansas 72203-3238
Phone: (501) 683-2000
Fax: (501) 683-1878
<http://myarkansaslottery.com>

October 30, 2015

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

RE: Department of Finance and Administration Office of the Arkansas Lottery Proposed
Amendments to the Arkansas Scholarship Lottery Retailer Rules

Dear Ms. Davis:

Arkansas Code Annotated § 23-115-207(c)(2)(B), as amended by Act 1258 of 2015, requires the Arkansas Department of Finance Administration Office of the Arkansas Lottery (OAL) to file its rules with the Arkansas Legislative Council for review at least thirty (30) days before the expiration of the public comment period. The public comment period for a proposed amended OAL rule expires on December 1, 2015. Pursuant to the aforementioned statute, please accept for review the proposed amendments to the Arkansas Scholarship Lottery Retailer Rules. I am submitting two (2) copies each of the Questionnaire and Impact Statement, attached to the front of two (2) copies of the proposed rule and required documents, as instructed in the Questionnaire.

Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jean C. Block".

Jean C. Block
Chief Legal Counsel

Enclosures

cc: Larry Walther, Director, Arkansas Department of Finance and Administration

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Arkansas Department of Finance & Administration
DIVISION Office of the Arkansas Lottery (OAL)
DIVISION DIRECTOR Bishop Woosley
CONTACT PERSON Jean Block, OAL Chief Legal Counsel
ADDRESS 124 W. Capitol Avenue, Suite 1400, Little Rock, AR 72201
PHONE NO. 501-683-1893 FAX NO. 501-683-3849 E-MAIL jean.block@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Bishop Woosley
PRESENTER E-MAIL Bishop.Woosley@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule?

Arkansas Scholarship Lottery Retailer Rules

The Lottery's bonding requirement. The proposed amended rules: (1) Eliminate the requirement that a Lottery retailer obtain a surety bond through an insurance company. (2) Establish a Self-Bond program administered through the Lottery. (3) Require lottery retailers to participate in the Self-Bond program by paying a \$100.00 annual bond fee for each retailer location. (4) Authorize the Lottery Director to increase or decrease the annual bond as warranted by the amount of defaulted obligations. (5) Delete language which requires a Lottery retailer to notify the Lottery within 30 days prior to a cancellation of its surety bond.

2. What is the subject of the proposed rule?

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No

If yes, please provide the federal rule, regulation, and/or statute citation. N/A

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? OAL would like rule to become effective by 8/26/15

When does the emergency rule expire? OAL will promulgate the rule within 120 days after emergency rule takes effect.

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. A.C.A. § 23-115-207 and Act 1076 of 2015

7. What is the purpose of this proposed rule? Why is it necessary? The proposed rule eliminates the current surety bond requirement for Lottery retailers, and creates an alternate Self-bond program within the Office of the Lottery in which Lottery retailers will be required to participate.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). <http://myarkansaslottery.com/about/enabling-legislation-and-rules>

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

12. Do you expect this rule to be controversial? Yes No

If yes, please explain. _____

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?
Please provide their position (for or against) if known.

None

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Finance & Administration
DIVISION Office of the Arkansas Lottery (OAL)
PERSON COMPLETING THIS STATEMENT Jean C. Block, Chief Legal Counsel
TELEPHONE NO. 501-683-1893 **FAX NO.** 501-683-3849 **EMAIL:** jean.block@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Arkansas Scholarship Lottery Retailer Rules

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;
The financial impact of this rule is that it will impose less financial burden on Lottery retailers. Currently, lottery retailers pay anywhere from \$200-\$800 for an annual bond. The proposed rule institutes an annual bond of \$100.00 and authorizes the Lottery Director to increase or decrease that amount depending on the amount of default obligations, but in no event shall the bond fee be less than \$75.00 or exceed \$200.00.

(b) The reason for adoption of the more costly rule;
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
General Revenue _____	General Revenue _____
Federal Funds _____	Federal Funds _____
Cash Funds _____	Cash Funds _____

Special Revenue
Other (Identify)

Special Revenue
Other (Identify)

Total _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ 100.00

\$ 100.00

All Lottery retailers will be required to pay \$100.00 bond fee for each store location.

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ N/A

\$ N/A

N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
 - (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

**Arkansas Department of Finance and Administration Office of the Arkansas Lottery Summary
of Proposed Rule Changes to Arkansas Scholarship Lottery Retailer Rules**

1. In Section 2.3 (e), the word *surety* was deleted. The sentence as it read prior to the revision, with the deleted word **IN BOLD** is shown below, followed by the Section as it reads after the deletion:

Previous language:

(e) Set fidelity fund and **surety** bond amounts for retailers; and

Revised language:

(e) Set fidelity fund and bond amounts for retailers; and

2. In Section 4.4, **Retailer Loss Coverage**, the second sentence of the first paragraph was revised. The words *obtain and maintain a surety bond listing the ALC as principal in an amount determined by the Director for each sales location, using an insurance company acceptable to the ALC*, were deleted and replaced by the words *post an appropriate bond as determined by the ALC*. The sentence as it read prior to the revision is shown below, with the deleted words **IN BOLD** followed by the revised version:

Previous language:

A retailer is required to **obtain and maintain a surety bond listing the ALC as principal in an amount determined by the Director for each sales location, using an insurance company acceptable to the ALC.**

Revised language:

A retailer is required to post an appropriate bond as determined by the ALC.

3. Also in Section 4.4, **Retailer Loss Coverage**, immediately after the first paragraph, four paragraphs were added, as follows:

All retailers shall be bonded through ALC's Self-Bond Program, and shall pay a \$100.00 bond fee for each Retailer location. The bond shall be renewed annually for each retailer location. The ALC Director may increase or decrease the annual bond fee as warranted by the annual amount of defaulted obligations. In any event, the bond fee shall not be less than \$75.00 or more than \$200.00.

A retailer's failure to abide by its financial obligations to the ALC per the Retailer Contract shall constitute a default. ALC will pay a retailer's defaulted obligation from the pool of self-bond fees. Upon said payment, retailer shall be obligated to reimburse ALC for the full amount of the defaulted obligation immediately. ALC may institute any and all legal actions authorized by law to collect a defaulted obligation from a retailer.

ALC may suspend a retailer's authority to sell Lottery Tickets for any period in which a retailer does not pay the bond required under this section or a defaulted obligation. A retailer's authority to sell Lottery Tickets may be reinstated upon payment of an outstanding bond or defaulted obligation. A retailer's failure to pay the bond or defaulted obligation may result in the termination of its license.

Section 4.4, Retailer Loss Coverage, paragraphs two through six, as revised:

All retailers shall be bonded through ALC's Self-Bond Program, and shall pay a \$100.00 bond fee for each Retailer location. The bond shall be renewed annually for each retailer location. The ALC Director may increase or decrease the annual bond fee as warranted by the annual amount of defaulted obligations. In any event, the bond fee shall not be less than \$75.00 or more than \$200.00.

A retailer's failure to abide by its financial obligations to the ALC per the Retailer Contract shall constitute a default. ALC will pay a retailer's defaulted obligation from the pool of self-bond fees. Upon said payment, retailer shall be obligated to reimburse ALC for the full amount of the defaulted obligation immediately. ALC may institute any and all legal actions authorized by law to collect a defaulted obligation from a retailer.

ALC may suspend a retailer's authority to sell Lottery Tickets for any period in which a retailer does not pay the bond required under this section or a defaulted obligation. A retailer's authority to sell Lottery Tickets may be reinstated upon payment of an outstanding bond or defaulted obligation. A retailer's failure to pay the bond or defaulted obligation may result in the termination of its license.

At the end of each fiscal year, the Director may authorize inclusion of all or a portion of the unused bond fees in the revenues of the OAL for the fiscal year.

The Director may also allow a retailer to deposit and maintain with the ALC securities that are interest bearing or accruing. The securities shall be held in trust in the name of the commission. Securities eligible 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.

4. In Section 6.2 (h), the words *Within thirty (30) days prior to a cancellation of retailer's surety bond; or* were deleted and replaced with the words *Immediately upon receiving damaged or misprinted lottery tickets*. The section as it read prior to the revision is shown below, with the deleted words **IN BOLD** followed by the revised version:

Previous language:

- (h) **Within thirty (30) days prior to a cancellation of retailer's surety bond; or**

Revised language:

- (h) **Immediately upon receiving damaged or misprinted lottery tickets.**

**Arkansas Scholarship Lottery
Retailer Rules**

2.3 Authority of Director. The Director may:

- (e) Set fidelity fund and surety-bond amounts for retailers; and

4.4 Retailer Loss Coverage. A retailer shall be assessed an annual fee of up to one hundred dollars (\$100) per sales location to be deposited into the ALC's fidelity fund. ~~A retailer is required to obtain and maintain a surety post an appropriate bond as determined by the ALC. bond listing the ALC as principal in an amount determined by the Director for each sales location, using an insurance company acceptable to the ALC.~~

All retailers shall be bonded through ALC's Self-Bond Program and shall pay a \$100.00 bond fee for each Retailer location. The bond shall be renewed annually for each retailer location. The ALC Director may increase or decrease the annual bond fee as warranted by the annual amount of defaulted obligations. In any event, the bond fee shall not be less than \$75.00 or more than \$200.00.

A retailer's failure to abide by its financial obligations to the ALC per the Retailer Contract shall constitute a default. ALC will pay a retailer's defaulted obligation from the pool of self-bond fees. Upon said payment, retailer shall be obligated to reimburse ALC for the full amount of the defaulted obligation immediately. ALC may institute any and all legal actions authorized by law to collect a defaulted obligation from a retailer.

ALC may suspend a retailer's authority to sell Lottery Tickets for any period in which a retailer does not pay the bond required under this section or a defaulted obligation. A retailer's authority to sell Lottery Tickets may be reinstated upon payment of an outstanding bond or defaulted obligation. A retailer's failure to pay the bond or defaulted obligation may result in the termination of its license.

At the end of each fiscal year, the Director may authorize inclusion of all or a portion of the unused bond fees in the revenues of the OAL for the fiscal year.

The Director may also allow a retailer to deposit and maintain with the ALC securities that are interest bearing or accruing. The securities shall be held in trust in the name of the commission. Securities eligible 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.

6.2 Notices. The retailer must notify the ALC if the following occurs:

~~(h) Within thirty (30) days prior to a cancellation of retailer's surety bond; or~~

~~(+)~~ (h) Immediately upon receiving damaged or misprinted lottery tickets.

Mark-up