



Memo

Date:	September 15, 2023
To:	Oregon State Lottery Commissioners
From:	Kris Skaro, rules and policy analyst
Subject:	Inform re OAR 177-040-0055 (use of “lottery” in retailer’s assumed business name)

Background:

Recently, a retailer wanted to change their assumed business name to include the word “lottery.” (For example, “Food Mart & Lottery.”) The Lottery believes that a retailer using “lottery” in their assumed business name negatively impacts the FISH because it may create a form of advertising outside of the Lottery’s control (see ORS 461.220) or run afoul of Lottery’s responsibilities under problem gambling statutes (see ORS 461.820). However, it is not currently prohibited in rule or the retailer contract.

Proposed Rulemaking:

Retail Contracts proposes to amend OAR 177-040-0055 to prohibit the use of the word “lottery” in a retailer’s assumed business name or any other term the Lottery Director has determined threatens the fairness, integrity, security, and honesty of the Lottery or that otherwise conflicts with Lottery’s legal obligation to advertise responsible and promote responsible gaming practices and messages.

Next Steps/Enclosures:

The Lottery will notify current retailers via our website and retailer email list serve about the proposed change and opportunity to comment. I will report back to you after the rulemaking process is complete. In the meantime, a draft of the notice of proposed rulemaking is enclosed for your review.

Thank you, and please reach out to me or Mike if you have any questions.

DRAFT¹ NOTICE OF PROPOSED RULEMAKING
CHAPTER 177
OREGON STATE LOTTERY

FILING CAPTION: Prohibiting use of certain terms in Lottery retailer’s assumed business name

LAST DAY AND TIME TO OFFER COMMENT TO LOTTERY: Friday, October 27, 2023 at 5 p.m.

HEARING(S):

DATE: Monday, October 16, 2023

TIME: 10-11 a.m.

OFFICER: Kris Skaro

REMOTE HEARING DETAILS

MEETING URL: [Click here to join online](#)

PHONE NUMBER: 971-323-0081

CONFERENCE ID: 720020544

SPECIAL INSTRUCTIONS:

Written comment can be submitted to Kris Skaro at kris.skaro@lottery.oregon.gov until 5 p.m. on Friday, October 27, 2023.

The public may also comment at a virtual hearing over Microsoft Teams. Click the meeting URL above to join online on your computer, tablet, or through the Microsoft Teams app. You can also join by phone using the call-in information above.

If you have questions about how to attend the hearing or comment, please contact Kris Skaro at kris.skaro@lottery.oregon.gov or 971-719-0794.

NEED FOR THE RULE

The Lottery needs to amend OAR 177-040-0055 about advertising and inducements to play to prohibit Lottery retailers from using the word “lottery” in their assumed business name. This prohibition applies to current retailers and applicants for a retailer contract.

¹ This version of the Notice of Proposed Rulemaking is provided for discussion purposes at the public meeting of the Lottery Commission on September 22, 2023. The Lottery’s official notice must be filed with the Oregon Secretary of State. The official version will be available online in the October 2023 Oregon Bulletin at <https://secure.sos.state.or.us/oard/displayBulletins.action> or upon request to kris.skaro@lottery.oregon.gov.

The Lottery believes that a retailer using “lottery” in their assumed business name negatively impacts the fairness, integrity, security, and honesty of the Lottery because it may create a form of advertising outside of the Lottery’s control (see ORS 461.220) or run afoul of Lottery’s responsibilities under problem gambling statutes (see ORS 461.820). Therefore, the Lottery proposes to prohibit the use of the word “lottery” in a retailer’s assumed business name or other term the Lottery Director has determined threatens the fairness, integrity, security, and honesty of the Lottery or that conflicts with Lottery’s legal obligations to advertise responsibly and enforce responsible gaming practices and messages. ORS 461.300 directs Lottery to “adopt rules specifying the terms and conditions for contracting with lottery game retailers.” Thus, Lottery needs to amend OAR 17-040-0055 to reflect the limitations on terms used in a retailer’s business name.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

In determining the need for the proposed rule, Lottery reviewed the following materials:

- ORS chapter 461 available at https://www.oregonlegislature.gov/bills_laws/ors/ors461.html.
- Article XV, § 4(4) of the Oregon State Constitution available at https://www.oregonlegislature.gov/bills_laws/Pages/OrConst.aspx.
- OAR chapter 177 available at <https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=153>.
- 2020-2025 Lottery Retailer Contract available upon request to kris.skaro@lottery.oregon.gov.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:

Lottery expects amending OAR 177-040-0055 will not affect racial equity in the state. The Lottery has no reason to expect that a retailer from a particular racial background would be more or less likely to have a prohibited term in their assumed business name. Having prohibited conduct in rule ensures the prohibition will be applied equally to all current and prospective retailers regardless of race or other individual characteristics.

FISCAL AND ECONOMIC IMPACT

The Lottery estimates amending OAR 177-040-0055 will have no fiscal or economic impact on state agencies, including the Lottery, or units of local government. The Lottery estimates that a current retailer or retailer contract applicant would be negatively fiscally impacted in the event they use a prohibited term in their assumed business name and their contract is terminated or their application is denied. The Lottery does not identify any new costs of compliance for most businesses, including small businesses, except in the case of a business who chooses to change their business name to keep or obtain a Lottery retailer contract. See the Lottery’s cost of compliance statement for more information.

COST OF COMPLIANCE:

(1) Identify any state agencies, unit of local government, and members of the public likely to be economically affected by the rule(s).

The Lottery estimates amending OAR 177-040-0055 will have no fiscal or economic impact on state agencies, including the Lottery, or units of local government.

The Lottery estimates amending OAR 177-040-0055 will have a negative fiscal or economic impact on a current or prospective Lottery retailer who uses a prohibited term in their assumed business name. Under the rule, if the retailer did not change their business name, their contract could be terminated or their application for a contract could be denied. The amount of the fiscal impact will vary from retailer to retailer but for context, the average Video Lottery retailer earns \$130,660 in commissions per year and the average traditional Lottery retailer earns \$11,253 in commissions per year.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

There are currently 3,769 Lottery retailers who are subject to OAR 177-040-0055. Any business who is currently applying for a contract or who plans to apply for a contract in the future would also be subject to business name limitations in the rule. The Lottery estimates that most, but not all, current and prospective retailers is a small business as defined in ORS 183.310. (Lottery does not have the information needed to determine exactly how many retailers are small businesses. For example, Lottery does not know how many employees each retailer has. However, in Lottery's experience, and per industry data, most current and prospective retailers have fewer than 50 employees and would otherwise be considered a small business. There are some, however, such as the multi-state chain retailers, that would not be considered a small business. Thus, Lottery says most, but not all, are likely to be small businesses.)

The types of businesses who are Lottery retailers include: grocery stores, convenience stores, gas stations, bars, restaurants, taverns, bowling alleys, small café eateries, pizzerias, and the like.

(b) Describe the expected reporting, recordkeeping, and administrative activities and cost required to comply with these rule(s);

Most current and prospective retailers will not incur new reporting, recordkeeping, or administrative costs to comply with the proposed rule. If a business uses a prohibited term in their business name, they could choose to terminate their Lottery retailer contract or not apply in the case of a prospective retailer. If the business wants to keep or obtain a contract with the Lottery, they would need to change their business name. There would be various administrative activities relating to that but they will vary greatly from retailer to retailer.

(c) Estimate the cost of professional services, equipment supplies, labor, and increased administration required to comply with the rule(s).

As noted above, most current and prospective retailers have business names that comply with the rule and therefore most will not incur any costs of compliance. A business who wanted to change their name to comply with the rule would need to undertake various administrative activities to do so, such as changing their business registration with the Oregon Secretary of State. The costs associated with these activities will vary greatly from retailer to retailer and therefore Lottery is not able to estimate the costs.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULES

Small businesses were not involved in the development of these rules but small businesses are encouraged to provide comment during the public comment period. Lottery plans to proactively outreach to all current retailers to make them aware of the proposed change and the opportunity to comment.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? IF NOT, WHY NOT?

No. The Lottery plans to contact all Lottery retailers during the rulemaking process to make them aware of the proposed change and opportunity to comment.

CONTACT:

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Salem, OR 97301

RULES PROPOSED:

AMEND: OAR 177-040-0055

RULE TITLE: Advertising Lottery Games and Inducements to Play

RULE SUMMARY: The Lottery is proposing to amend OAR 177-040-0055 about advertising Lottery games and inducements to play. The proposed amendment would prohibit retailers from using the word “lottery” in their assumed business name or any other term the Director has determined is a threat to the fairness, integrity, security, and honesty of the Lottery. The Lottery may make alternate changes in response to public comment or other information received during the public comment process. The Lottery may also make non-substantive changes to improve the readability, organization, clarity, and accuracy of the rule such as, but not limited to, updating the statutory sections of the rule.

177-040-0055

Advertising Lottery Games and Inducements to Play

(1) Prohibitions:

- (a) A retailer ~~must~~ may not conduct false or misleading advertising, in any form, regarding the Lottery or Lottery games including, but not limited to, claiming the odds of winning a Lottery game are different at the retailer’s business than at any other Lottery retailer’s business.
- (b) A retailer may not use the word “lottery” in its assumed business name or any other term that the Director otherwise determines, in their sole discretion, is a threat to the fairness, integrity, security, and honesty of the Lottery or conflicts with Lottery’s legal obligation to advertise responsibly and promote responsible gaming practices and messaging.

- (2) Requests for Use: The Director or the Director's designee must approve all requests from a retailer for the use of trade or service marks registered by the Lottery. Trade or service marks registered by the Lottery include, but are not limited to, the Lottery's name, logo, and promotional names.
- (a) Requirements: All requests from a retailer must be in writing and must include a sample of the proposed use of the trade or service mark. The request must also explain how and where the trade or service mark will be used.
 - (b) Permission: Permission for use of a trade or service mark may be granted in the exercise of the sole and exclusive discretion of the Lottery, taking into account the particularly sensitive nature of the Lottery and ensuring the integrity of its operations and image. Approval for use of a trade or service mark shall not be given for display of the mark in an inappropriate manner or format.
 - (c) Rights: Nothing in this rule shall be construed to grant, or create any expectation or right to display, publish or use, in any manner, in whole or in part, any trade or service mark registered by the Lottery. Any display, publication or use by a retailer of any trade or service mark registered by the Lottery without the express, written prior consent and agreement of the Lottery is unauthorized and unlawful, and the Lottery expressly reserves the right to take any action to enforce its rights in such trade and service marks.
- (3) Inducements: For purposes of this section:
- (a) Credit and Credit Cards: A Lottery retailer shall not extend credit to persons to play Lottery games. This does not include the use of a credit or debit card by a player for the purchase of Lottery tickets or shares. An example of the use of a credit or debit card for the purchase of Lottery tickets or shares includes, but is not limited to, the purchase of Scratch-It tickets with a grocery purchase.
 - (b) Loans: A Lottery retailer shall not provide any form of financial assistance to a Video LotterySM player for the purpose of playing Lottery games. An example of providing financial assistance to a Video LotterySM player includes, but is not limited to, a loan of money for any amount of time for the purpose of playing Lottery games.
 - (c) Alcohol: A Lottery retailer shall not provide alcoholic beverages as an inducement to play Lottery games.

Statutory/Other Authority: ~~Or Const., Art. XV, & Sec. § 4(4)(a)~~, ORS 461.120, 461.300

Statutes/Other Implemented: ~~Or Const, Art XV, § 4(4)(a)~~, ORS 461.120, 461.300, ORS 461.150, 461.220, 461.820