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November 16, 2022

To: New Jersey Lottery Commission

From: Eric Blomgren, Chief Administrator & Director of Government Affairs

New Jersey Gasoline, Convenience Store, Automotive Association

Re: PRN 2022-125

The New Jersey Gasoline, Convenience Store, Automotive Association (NJGCA) represents nearly one thousand independent small businesses across the state, many of whom are longtime lottery retailers. On their behalf we oppose this change in regulation.

Lottery sales have long been a cornerstone of the business for any of the state's nearly 2,500 convenience stores. These businesses have long relied on the appeal of the lottery to draw in customers, who then often purchase other, higher margin products. It's the sale of these ancillary products that keep the store in business and the employees employed. Virtually any c-store owner will tell you that they see a sharp spike in overall sales when draw games start reaching huge jackpots, as they did just recently with the Powerball jackpot of over \$2 billion.

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

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

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

To the extent there are some potential customers that are not able or willing to purchase from a physical retailer but could be sold a ticket if they could buy it online, these customers can and are able to be serviced by the two (so far) authorized and regulated lottery courier companies. It is not clear to us why the State entering this field would provide a better or more cost-effective experience.

NJGCA was skeptical of the legislation mandating the licensing of these courier companies. Lottery couriers were pitched as a way to help seniors and the disabled who can't physically leave their homes get a ticket delivered to their door, in practice they have turned into effective internet lottery already. It was also pitched that the couriers would be buying their tickets from actual retailers, in practice sales are made from a chosen retailer.

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

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We also have concerns over the legality of this change being made through the regulatory process and not through statutory process. The original authorizing statutes for the Lottery Commission seem to us to strongly imply that the Commission was only to sell lottery tickets through private sector partners, not directly to the consumer. Legislators seemed to agree that such a change would require their direct action, which is why legislation to expressly authorize internet lottery was introduced in the 215th and 214th sessions of the Legislature (A-1073 and A-2676 respectively). In both sessions the Legislature chose not to move forward with authorization.

Has the Lottery Commission conducted any kind of formal impact reports based on projections for what this change will entail specifically for New Jersey retailers? Has any kind of detailed business plan been developed to analyze how much will need to be spent on the technical side to develop and maintain these services, with the security necessary, as well as age-gating, and geo-locating services? What about the level of expenses necessary to promote the existence and availability of the new service, and would it be possible for advertising to be targeting in ways that it is largely only seen by current non-players? How much of this marketing plan will be conducted and developed by the Commission, and how much by an outside vendor, and what kinds of oversight will the

Commission have to control the messaging of a private company whose goals will be to increase their own revenue, even if it is at the expense of the retailer?

If the State does decide to nevertheless move forward with these sales, there are certain protections for retailers that should be enshrined in regulation. Under the current program, retailers are paid a commission of 5% of the ticket price. The Commission should take a matching percentage of gross revenue they make online and distribute it back equally to all existing retailers on at least a quarterly basis as a dividend. When internet gambling was originally introduced to the state, the providers were required to associate with existing casinos to ensure that they did not end up suffocating existing physical providers. If that principle can be applied to some of the largest companies in the state it should be applied to some of the smallest as well.

Another suggestion would be to incentivize or even require those playing digitally to visit a retailer to redeem a winning ticket and/or withdraw their winnings from their account. This would generate some foot traffic back to the store. There could even be an additional prize for collecting their winnings at a store, even if it's just something like a free scratch-off ticket. Any app or website should also feature some kind of tool to help players find their nearest retailer.

We would also hope that the Commission does not leverage its advantages to start offering rewards or bonus programs that only apply to purchases made through the app, thereby incentivizing players to make more and more of their purchases through the app and to avoid making purchases at a retailer since they would not earn any kind of progress towards an award.

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We are also concerned about what the advertising will be and how it will be structured. How much will the Commission be spending on advertising for internet lottery specifically? How much will that take away from advertising that would be spent on lottery generally? Neither the Lottery Commission, nor any companies it has contracted with to provide marketing, should be allowed to run any advertising that promotes internet sales as being more convenient or in any way better than visiting a local retailer. Retailers should also not be required to display any advertising in their store which expressly promotes to their customers that they no longer need to visit that store to make some of their purchases. Even if it is not the intention of any current Lottery Commission staff to allow any such messages, that may not be true for future staff in the years to come, and retailers would feel more at ease seeing such a protection in writing.

We also believe the Commission should guarantee that they will track and make public some kind of a metric to measure the total sales online and the total sales of draw games at retail stores over time, so everyone will be able to see if indeed the option of internet lottery is genuinely expanding the pool of players or if most of the sales made online are being cannibalized from existing sales that would have been made at small businesses.

In discussions among our members, it has also been made clear that the current commission on sales of lottery tickets is no longer sufficient. The 5% rate has not been changed in the half century since the lottery was started. The expense of keeping open a brick-and-mortar store continues to escalate. Property taxes have exploded over that time, utility bills are much higher as well, and more than anything is the higher cost of labor. The minimum wage has doubled in the last decade alone, and do to the ongoing labor shortage triggered by the recent pandemic, wages for even c-store cashiers are often above the minimum just to attract someone. Including the various taxes and insurance costs tied to having an employee, it costs around \$18 an hour to man the cash register at that c-store. Earning only 5 or 10 cents back on the sale of a ticket is increasingly not enough.

There are no states with a commission lower than ours. Oregon's Lottery offers its retailers a full 8% commission. Even our neighbor New York has a higher rate, and their retailers have recently begun an effort to increase it further. We believe the commission for all retailers moving forward should be increased to 7.5%. We also believe there should be an increase in the reward caps for selling winning tickets, which are currently capped at \$30,000 or less depending on the game.

We do appreciate the consideration given to ensure that these sales will only apply to draw games, and not interactive ones. If it were expanded to scratch-offs that would be a huge concern, and would have a much more devastating impact to retailers.

Ultimately, we do not believe the Lottery Commission should move forward with this regulation. If it nevertheless does, at the very least it should enshrine the protections we have suggested in these comments, and either way it should move forward with increasing commissions for retailers.