DECISION POINTS

- Shall the Lottery make a permanent rule change amending OAR 177-070-0080 and OAR 177-085-0015, striking out the requirement that the Lottery’s play slips be hand-engrossed, or shall the Lottery allow the current temporary rule changes to expire on August 18, 2016?
- Shall the Lottery change OAR 177-070-0080 and OAR 177-085-0015 to further allow the acceptance of computer-generated play slips for Powerball, Mega Millions, and Oregon’s Game Megabucks, consequently allowing retailers and/or the Lottery to process play slips at a significantly faster rate and at a higher volume?
- If OAR 177-070-0080 and OAR 177-085-0015 are changed to allow the acceptance of computer-generated play slips, which of the following models are acceptable?
  1) The Oregon Lottery authorizes retailers to accept thermal print-outs of draw game number selections, designed to duplicate the format of an Oregon Lottery play slip. Retailers may process these thermal print-outs by scanning them through Oregon Lottery game terminals to produce and sell tickets.
  2) The Oregon Lottery authorizes retailers to receive a high volume of computer-generated play slips via email or other online process and may print out these computer-generated play slips on thermal paper. The retailer can scan these print-outs through the Lottery’s game terminals to produce and sell tickets.
  3) The Oregon Lottery directly receives a high volume of computer-generated play slips – either digitally through email or another online process, or on thermal paper print-outs at the Lottery’s headquarters or at a Lottery payment center. The Lottery can then scan these print-outs through its game terminals to produce and sell tickets.

The following document will explain the original intent behind OAR 177-070-0080, as well as provide background regarding new technologies and business models that have evolved since this rule was adopted in 1992. This document will also present key issues and associated pros and cons to consider in determining whether computer-generated play slips and associated, alternative implementation models should be allowed.

BACKGROUND

Why is the Lottery contemplating permanent changes to OAR 177-070-0080 and OAR 177-085-0015?

“The Lotter” is one of a number of companies located around the world offering messenger services for international lottery players. The Lotter offers the purchase of lottery tickets from around the world via their branded websites listed as thelotter.com/us and thelotter.com/uk. The Lotter uses approximately twenty other affiliated websites, that also utilize a messenger service with local office staff to purchase lottery tickets from official lottery retailers globally, the U.S.A. and in Oregon. It presently offers a selection of games from forty-eight lotteries around the world where online lottery participation is allowed, including “Oregon’s Game Megabucks,” offered through the Oregon Lottery.

During December 2015, Oregon Lottery had their first encounter with The Lotter, when an Iraqi citizen claimed a $6.4 million Oregon’s Game Megabucks jackpot prize in person, at the Oregon Lottery Headquarters. The Lottery requested advice from the U.S. and Oregon Departments of Justice. Both agencies determined that what The Lotter and its affiliates are doing does not appear to be in violation of federal or state law.
In February 2016, the Oregon Lottery was subsequently approached by The Lotter representatives to discuss the section of OAR 177-070-0080(2) requiring that “All plays made in the [draw] game shall be marked on the play slip by hand. No play slips with plays marked by an electric or mechanical device shall be used to enter plays.” The Lotter requested the ability to use a computer to fill out Oregon Lottery issued play slips, for the purpose of purchasing multiple Lottery draw game tickets, thus streamlining the payment and play process for The Lotter and its affiliates. Oregon Lottery and The Lotter discussed that: 1) handwriting the slips manually was a very lengthy and cumbersome process when attempting to purchase a high volume of tickets, 2) the probability of errors increase significantly with handwritten slips, and 3) there was no discernible benefit from requiring handwritten slips. As a result of these discussions, the Lottery Director signed paperwork adopting a temporary rule to amend OAR 177-070-0080 effective February 22, 2016.

In March 2016, the Oregon Lottery was approached once again by The Lotter. In email correspondence with the Lottery Director, the representative for The Lotter explained that, based on overwhelming interest abroad in Powerball tickets after the $1+ billion jackpot, The Lotter had decided that it wanted to consolidate its messenger services for all U.S. national lottery sales through larger operations in a single state. Because of previous, positive interactions with the Oregon Lottery, The Lotter wished to base its operations in Oregon. The Lotter went on to explain that to accommodate the high volume of play slips and tickets, Oregon Lottery retailers would need to be able to accept and process number selections printed on thermal paper, rather than on the Lottery’s play slips. The Lotter shared that such thermal paper is currently used without difficulty in Florida, New York, and New Jersey. The representative additionally provided a video that illustrated how The Lotter uses thermal paper in higher volume operations.

The process involved in the use of thermal paper was described by The Lotter as follows:

- The international customer selects the numbers from an online form that looks exactly like the official slips.
- Those numbers are printed in the United States onto thermal paper in the shape of the official slips with black dots at the precise locations of the numbers selected.
- The thermal paper is inserted into the machines (lottery terminals), and tickets are produced.

OAR 177-070-0080 would need to be changed to allow the acceptance of computer-generated play slips.

Why was the “hand-engrossed” requirement included as part of OAR 177-070-0080?

A review of the history of OAR 177-070-0080 at State Archives reveals that this rule and the hand-engrossed requirement dates from June 22, 1992. The paperwork explains that it was adopted due to an event involving the Virginia State Lottery. The following language is from that paperwork:

“Need for the Rule: The Virginia State Lottery held a lotto drawing on February 15, 1992 which was won by the International Lotto Fund of Melbourne, Australia. An investigation indicated that this group had consolidated the funds of its members and effectuated a buyout of the prize pool.

The rule changes submitted for adoption by the Oregon Lottery Commission are designed to prevent such a buyout by limiting the types of play slips used and the methods by which tickets can be purchased. The purpose of these rules is to ensure fairness of the games to all potential players.”
There were no documents, reports, or studies relied upon in drafting that rule. And the consortium never actually purchased every single ticket for that drawing.

Contemporaneous news articles reveal that the consortium consisted of approximately 2,500 members who paid $3,000 each to provide the necessary funds to purchase all seven million possible ticket combinations of numbers. They did run out of time and were unable to purchase all seven million, but still managed to buy several million tickets. Luck was with them as they did have the only winning ticket and the consortium won $27 million payable over 25 years. They could just as easily have shared the prize if other players also had winning tickets.

An Internet search found no other examples of anyone attempting to purchase all tickets for a lottery jackpot to guarantee a win in the intervening 24 years.

The original hand engrossed requirement may be archaic and not needed for its original purpose. Although it is theoretically possible to purchase all the tickets for a lottery jackpot game, there are very real, practical reasons that act to prevent it from happening successfully or profitably (more information regarding obstacles to purchasing all potential jackpot game combinations for a specific draw are detailed in Appendix A).

Technology has now evolved to make it possible to sell mass quantities of tickets to a much larger consumer base than was ever envisioned in the original rule. The business model presented to the Lottery threads a fine, yet apparently legal line.

Elimination of the hand-engrossed requirement could open a new market for Powerball tickets and other jackpot prize draw games for the Oregon Lottery, serving to meet the Lottery’s mission of maximizing revenue commensurate with the public good - especially since the Oregon Office of Economic Analysis is now predicting a hit to Lottery revenues in the Portland metropolitan area due to the soon-to-be completed Cowlitz casino in La Center, Washington.

**What else does the Lottery know regarding messenger services and the legality of this model in the U.S.**?

In addition to seeking advice from the U.S. and Oregon Departments of Justice regarding the legality of The Lotter’s activities and those of its affiliates, the Oregon Lottery took additional steps to learn more about this model.

- Between December 2015 and April 2016, the Oregon State Police (OSP) Gaming Enforcement Division performed an appraisal of The Lotter to understand The Lotter’s corporate structure, confirm The Lotter’s control persons, and receive answers from The Lotter in response to over a dozen questions submitted by the OSP Gaming Enforcement Division. The OSP Gaming Enforcement Division’s goal was to share its conclusions regarding The Lotter with the Oregon Lottery based on its appraisal, along with information obtained from the U.S. Attorney’s Office, the Oregon Department of Justice, and the Federal Bureau of Investigation.
GamblingCompliance provides independent business intelligence to the global gambling industry. It specializes in legal, regulatory, political and market information and data; eLearning; and bespoke research services. In March 2016, the Lottery commissioned GamblingCompliance Research Services (GCRS) to summarize the results from research it conducted regarding issues that included the following:

- What are messenger lottery services, and how do such services typically operate?
- Clarify the difference between messenger lottery services and courier lottery services.
- What are the U.S. federal laws and regulations that messenger lottery services may implicate?
- Summarize U.S. state laws and regulations across a subset of lotteries where messenger lottery services have been implicated.

Excerpts from these documents are presented below. The full documents are provided along with this Briefing Document in Appendices B and C.

**Overview of messenger lottery services**

The messenger lottery service model involves the purchase of physical tickets by a person on behalf of/for another person. Typically, the person who purchases the ticket is in a different state or country than the customer they are purchasing the ticket on behalf of/for, thus allowing the customer to enter an official lottery draw different to that offered in their locality.

When using a messenger lottery service, a customer will generally have to abide by the rules and prizes set out by the lottery where a ticket is being purchased on their behalf. By meeting the rules of the lottery, the lottery retailer receives commission on the sale, the lottery still receives the sale, and the lottery prize fund is boosted.

Revenue creation for the most high-profile messenger lottery service, The Lotter, is achieved through transaction fees. Transaction fees include entry, shipping and handling, subscription, delivery, or service fees, and any other type of fee paid by a person in order to complete a transaction with a messenger lottery service. Of note, The Lotter does not take a commission from lottery winnings; however, some messenger lottery services charge a fee on such winnings under certain circumstances. For example, Lotto365.com is a messenger lottery service that, under certain circumstances, will charge a 5% collection fee on collected lottery winnings.

Meanwhile, some messenger lottery services act as more of a local courier lottery service. LottoGopher, which offers the sale of state lottery tickets to residents in that state (on an intrastate basis), is one example of such a service.

Messenger lottery services vary in size and how they operate. The chart below highlights four of the larger messenger lottery services in operation, specifically pointing out which jurisdictions they serve (and the games they offer in those jurisdictions) and their revenue models.
# BRIEFING DOCUMENT: Computer-Generated Play Slips

## Services

<table>
<thead>
<tr>
<th>Services</th>
<th>Jurisdictions Served And (Games Offered)</th>
<th>Revenue Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>theLotter.com</td>
<td>Australia (Monday Lotto; Oz Lotto, Powerball Lotto, Saturday Lotto, and Wednesday Lotto); Austria (Lotto); Brazil (Dupla Sena, Quina, and Mega-Sena); Canada (Lotto 6/49); Ontario (Ontario 49); Colombia (Baloto); Europe (EuroJackpot and EuroMillions); France (EuroMillions, My Million Raffle, and Loto); Germany (Loto); Greece (Joker and Lotto); Hungary (Hatioslotto and Ottoslotto); Ireland (Lotto); Italy (SiVinceTutto, SuperStar, and SuperEnalotto); New Zealand (Powerball); Poland (Lotto); Romania (Lotto 6/49); Russia (goslotto 6/45); South Africa (Lotto and Powerball); Spain (BonoLotto, El Gordo, and La Primitiva); Switzerland (Lotto); United Kingdom (EuroMillions, UK Millionaire Maker, Lotto, Thunderball); Ukraine (Megalot and Super Loto); United States (MegaMillions and Powerball); California (SuperLotto Plus); Florida (Lotto and Lucky Money); New Jersey (Pick 6 XTRA); New York (Cash4Life and Lotto); Oregon (MegaBucks)</td>
<td>Transaction fees</td>
</tr>
<tr>
<td>Lotto365.com</td>
<td>Australia (Oz Lotto); Brazil (Mega Sena); Europe (EuroMillions and EuroJackpot); France (France Lotto); Ireland (Irish Lotto); Spain (El Gordo); United Kingdom (National Lottery and Thunderball); United States (Powerball and MegaMillions); California (SuperLotto Plus and Hot Picks)</td>
<td>Transaction fees; Collection fees on collected winnings in excess of $600</td>
</tr>
<tr>
<td>IceLotto</td>
<td>Canada (Lotto 6/49); Europe (EuroMillions and EuroJackpot); United States (Powerball and MegaMillions); Italy (SuperEnalotto); Spain (La Primitiva, El Gordo, and BonoLotto); United Kingdom (Lotto)</td>
<td>Transaction fees; Variable percentage of winnings over $1m that does not exceed 10 percent of winnings</td>
</tr>
<tr>
<td>Lotterymaster</td>
<td>Canada (Lotto 6/49); Europe (EuroMillions and EuroJackpot); United States (Powerball and MegaMillions); Italy (SuperEnalotto); Spain (La Primitiva, El Gordo, and BonoLotto); United Kingdom (Lotto)</td>
<td>Transaction fees; Variable percentage of winnings over $1m that does not exceed 10 percent of winnings</td>
</tr>
</tbody>
</table>

Source: GCRS • May 2016

## Are messenger lottery services legal?

The answer to whether or not messenger lottery services are legal in the U.S. is not clear-cut.

The Oregon State Police performed a public source appraisal of The Lotter and its affiliates. To perform this work, Oregon State Police utilized what was obtainable through public sources, formulated questions based upon this information, and obtained answers from a representative of The Lotter.

During the course of this appraisal process, Oregon State Police had numerous conversations with the U.S. Attorney’s Office, Oregon Department of Justice and the Federal Bureau of Investigation, as to any violation of federal or state law or concern. Checks with these agencies regarding what The Lotter is doing (its model of business) have determined that what The Lotter and affiliates are doing does not appear to be in violation of federal or state law.
However, according to Gambling Compliance Research Services (GCRS): “In the U.S., interstate messenger lottery services appear to be prohibited under federal law, but how strictly the law is enforced remains to be seen. GCRS was unable to locate any cases of prosecution under 18 U.S.C. § 1301.

“18 U.S.C. § 1301 appears to prohibit a person who:

… being engaged in the business of procuring for a person in 1 State such a ticket, chance, share, or interest in a lottery, gift enterprise or similar scheme conducted by another State (unless that business is permitted under an agreement between the States in question or appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information to be used for the purpose of procuring such a ticket, chance, share, or interest; … shall be fined not more than $1,000 or imprisoned not more than two years, or both.

GCRS also noted the following regarding the intent of the Interstate Wagering Act of 1994, which amended 18 U.S.C. 1301: “The Interstate Wagering Act (1994) appears to intend to prohibit a person physically located in one state from having a lottery ticket purchased for them in another state at that exact time. The Interstate Wagering Act also appears to intend to prohibit a person located outside of the U.S. from having a ticket bought for them if that person “knowingly transmits in … foreign commerce information to be used for the purpose of procuring such a chance, share or interest…” in a lottery ticket. 18 U.S.C. § 1301.

“However, GCRS was unable to locate any precedential legal authority for matters brought under 18 U.S.C. § 1301, so the outcome to a challenge brought against a messenger lottery service is unknown.”

GCRS further shared the following observations across five U.S. lottery jurisdictions it researched – California, New York, Illinois, Virginia, and Pennsylvania. These states were chosen for a variety of reasons, including their market size (New York and California), unique operating model (Illinois), restrictive laws as they pertain to messenger lottery services (Pennsylvania), and unique political intelligence attained through research (Virginia).

The following table summarizes the information GCRS compiled in an effort to answer the following questions:

- Is the messenger lottery service “selling” lottery tickets in a particular state as defined by state law?
- Is the messenger lottery service “reselling” lottery tickets in a particular state as defined by state law? If so, is the messenger lottery service appropriately positioned in the state to do so?
- Are the fees required to be paid by a person to a messenger lottery service other than the cost of the lottery tickets — that is, the transaction fees — considered part of the “price” of a lottery ticket? If so, if a person pays a messenger lottery service a transaction fee, would that be considered a person selling a lottery ticket for a price greater than that set by a state lottery department?
**BRIEFING DOCUMENT: Computer-Generated Play Slips**

6/16/16

<table>
<thead>
<tr>
<th>State</th>
<th>Legal Status of Messenger Lotteries</th>
<th>Only Licensed Retailers Authorized to Sell Tickets</th>
<th>Tickets Must be Sold at Fixed Price Set by Lottery</th>
<th>Transaction Fee Likely Included in “Price”</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>Unclear</td>
<td>Yes</td>
<td>Yes</td>
<td>Unclear</td>
</tr>
<tr>
<td>Illinois</td>
<td>Unclear</td>
<td>Yes</td>
<td>Yes</td>
<td>Unclear</td>
</tr>
<tr>
<td>New York</td>
<td>Unclear</td>
<td>Yes</td>
<td>Yes</td>
<td>Unclear</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Likely Prohibited</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Virginia</td>
<td>Likely Prohibited*</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes*</td>
</tr>
</tbody>
</table>

* Source: GCRS • May 2016

* Note: In VA, a bill that will expressly prohibit “ticket courier services“ will take effect July 1, 2016

**POTENTIAL SALES IMPACT IF COMPUTER-GENERATED PLAY SLIPS PRINTED ON THERMAL PAPER ARE ALLOWED**
The Lottery is awaiting sales data from The Lotter.

**ADDITIONAL CONSIDERATIONS / POTENTIAL PROS AND CONS**

**Would changes to OAR 177-070-0080 apply to anyone in Oregon?**
Yes. Computer-generated play slips for Powerball, Mega Millions, and Oregon’s Game Megabucks could be executed by any messenger lottery service, other type of business, or individual 18+ years of age.

An initial assessment by the Lottery’s Director’s Office staff indicate that the infrastructure and expenses related to implementing this business model (e.g., Internet-based platform, play slip design to mirror the Lottery's, printers, staff, required volume, etc.) would discourage current Oregon Lottery retailers – or players - from the completion and processing of computer-generated play slips.

**Do we know that play slip “proxies” on thermal paper will be accepted by Oregon Lottery’s game terminals, without damaging the equipment or resulting in inaccurate tickets?**
According to The Lotter’s legal representative in Oregon, “Such thermal paper is utilized without any difficulty in Florida, New York, and New Jersey. The machines there read the thermal paper just fine.” This representative noted that a representative of LocalLotto, Inc. (The Lotter’s U.S. operations located in Delaware), believes that “Oregon machines will have no problem reading [thermal paper] either.”

However, testing has not yet been conducted by the Lottery’s quality assurance vendor or lottery terminal vendor.
What should the Oregon Lottery’s stance be regarding different staffing configurations that could be used to accommodate processing high volumes of play slips?

A Lottery retailer can currently have up to two Altura game terminals at its location. Because the situation of processing a high volume of draw game play slips electronically has not previously presented itself, parameters or requirements related to staffing resources needed to process these play slips (i.e., retailer, messenger lottery service, or Oregon Lottery staff) have not been discussed and may or may not be necessary.

Are there implications for Oregonians from a responsible gambling or problem gambling perspective?

Messenger lottery services differ from local courier services in that messenger lottery services purchase lottery tickets from one state for customers residing in another country (or another state, depending on the messenger lottery service). The ability to process play slips at a significantly faster rate could promote high-volume sales and may bring in new players. But since the majority of ticket purchasers using the computer-generation method for purchasing draw games are foreseen to be messenger lottery services, permitting fully computer-generated play slips is not expected to increase gambling by Oregonians in Oregon.

Potential implications of high-volume sales related to the Casino Prohibition Rule

If a retailer that currently offers both Oregon Video Lottery (an on-premise retailer) and Traditional Lottery processed a high volume of draw game sales through computer generated play slips, that could have an impact on that retailer’s ability to comply with the Casino Prohibition Rule (OAR 177-040-0061). The percent of Lottery compensation versus non-Lottery sales is a factor in determining compliance with this Rule. If the volume of total Lottery compensation resulting from additional computer-generated play slips exceeded 50% of the retailer’s total sales, then the retailer would have to take additional steps to address other factors considered in determining compliance to sufficiently outweigh the Lottery compensation percentage - otherwise the retailer’s contract could be terminated.

The Casino Prohibition Rule only applies to on-premise retailers, and not to those who sell Traditional Lottery games only. However, ORS 461.300(2)(e) requires that a retailer not be engaged exclusively in the business of selling Lottery tickets or shares. A retailer that sells a high volume of tickets could be perceived as exclusively selling Lottery or defeating the intent of the statute because non-lottery sales are such an insignificant part of their sales. However, the risk of this occurring is very low and existing regulations are sufficient to get a retailer to make the necessary changes to comply with this statute.

How will these decisions impact retailers?

If the Oregon Lottery were to authorize business model 1) or 2) described on Page 1, it is possible that only a very small number of Lottery retailers would benefit from the additional commissions and selling bonuses resulting from transactions using computer-generated play slips.
If the Oregon Lottery processed all computer-generated play slip transactions – as described in business model 3) – the question of potential retailer “haves and have nots” would no longer be an issue, since the Lottery would be processing all of these types of transactions. This model could potentially also eliminate commissions and selling bonuses to retailers resulting from these types of transactions, marginally increasing transfers to the State. However, by placing the Lottery in the role of “retailer” for these transactions, the Lottery would enter into contracts with messenger lottery services, potentially opening itself up to a greater risk of liability.

**Could there be reputational concerns?**

**A limited risk of “guilt by association.”** The Lottery is expected to ensure Fairness, Integrity, Security, and Honesty (“The FISH”) in all of its operations. However, the Lottery cannot control all the activities in which gaming vendors, retailers, players – or messenger lottery services – may engage. While the Lottery has safeguards in place to promote the FISH in its interactions with businesses and the public, situations can arise where the unlawful or ill-advised actions of a separate entity or individual can cast a negative light on the Lottery – merely by association.

In those instances, the Lottery must be able to clearly demonstrate that it has operated with the utmost integrity, adhering to all rules and statutes regarding its conduct. These types of events have been relatively rare, but can negatively impact public perceptions of the Lottery, as well as have political and financial implications.

**Not exclusively “Oregon’s Game.”** With respect to Oregon’s Game Megabucks, the purchase of tickets for this game at a high volume by players outside of Oregon may lead local players to believe it is no longer “their game.”

**Through which states in the U.S. is The Lotter currently processing its international draw game transactions? Why is The Lotter deciding to consolidate its international sales in Oregon instead?**

According to The Lotter’s legal representative in Oregon: “As a result of the overwhelming interest abroad in Powerball tickets (around 600,000 per draw when the jackpot was $1 billion), The Lotter has decided that it wants to funnel its courier [messenger] services for all U.S. national lottery ticket sales through larger operations in a single state. Presently, such sales are distributed between New York, New Jersey, and Florida.

“Because of how responsive the Oregon Lottery has been to the various issues presented by The Lotter’s services, The Lotter has selected to base its operations in Oregon. Thus, in the next couple of months, all courier services for U.S. national lottery ticket sales will come through Oregon, and the Lotter will hire additional employees. Towards that end, the Lottery has sent its operations team to the U.S. to ramp up. Ilan Oron [LocalLotto Inc.] is the gentleman in charge.”
Should messenger lottery services be treated as a player, a retailer, or something different?

From a lottery’s perspective, it can be argued that messenger lottery services are “players.” For example, until recently the Oregon Lottery’s interactions with The Lotter were similar to the Lottery’s interactions with any player. A local affiliate of The Lotter would walk into a Lottery retailer’s establishment, present completed draw game play slips and receive the purchased game tickets from the retailer. The affiliate’s representative purchased a lottery game and collected winnings in the same manner as any other player. The Lottery ticket is a bearer instrument and is owned by the bearer of the ticket. If the Oregon Lottery were to treat The Lotter like any other player, there would be no background check, contract, or licensing required – as is the case with any Oregon Lottery player.

However, Lottery retailer interactions with a messenger lottery service are different from interactions with a typical player. For example, Global Services Pro Limited, which manages local courier offices for The Lotter (both are owned by Globis Holding Limited, which is registered in Malta), presently has service agreements in place with two Oregon Lottery retailers – Jack Pedro (formerly Binky’s, Inc.) and Broadway on Deck LLC. An assessment of whether or not these service agreements are in alignment or at odds with the requirements of these retailers’ contracts with the Oregon Lottery has not yet been conducted.

If the Oregon Lottery were to authorize business model 3) described on Page 1 of this document, it can be argued that the Lottery would then be interacting with The Lotter and its affiliates as a “retailer.” While this model could potentially address the perceived inequity of some Oregon Lottery retailers entering into contracts with these services and benefiting from increased sales resulting from this contract, this model would require the Oregon Lottery to enter into a contract with The Lotter directly, potentially opening up the Lottery and the State to a greater risk of liability related to this business model.
APPENDIX A: Play Slip Rulemaking
June 14, 2016

Rulemaking: On February 22, 2016, the Director of the Oregon Lottery initiated permanent and temporary rulemaking to revise two administrative rules to clarify the requirements for the use and completion of Lottery play slips to select the player’s choice of numbers. This was done after inquiries from an international courier service (www.TheLotter.com) questioned the rules’ requirements that such play slips be hand-engrossed.

The Director signed paperwork adopting a temporary rule to amend OAR 177-070-0080 effective February 22, 2016. This temporary rule will expire August 18, 2016 and may not be renewed. Amendments to the other rule were proposed for permanent rulemaking only and were not filed as a temporary rule.

The proposed amendments are as follows:

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Division 70 - Draw Games

OAR 177-070-0080 Unauthorized Use of Play Slips

(1) General: A person shall not insert into a Draw game terminal’s play slip reader any material that is not a play slip printed and approved for use by the Oregon Lottery, including but not limited to facsimiles or copies of play slips. No device shall be connected to a Lottery terminal to enter plays, except as may be approved by the Lottery.

(2) Hand-Marked: All plays made in the game shall be marked on the play slip by hand. No play slips with plays marked by an electric or mechanical device shall be used to enter plays.

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Division 085 - Powerball Game Rules

OAR 177-085-0015 Powerball® Game Description

(1) General Information: Effective for drawings held on or after October 7, 2015 and for tickets purchased for such drawings, Powerball® is a five out of sixty-nine numbers plus one out of twenty-six numbers lottery game, drawn every Wednesday and Saturday as part of the Powerball® drawing event, which pays the Grand Prize, at the election of the player made in accordance with these rules or by a default election made in accordance with these rules, either on an annuitized pari-mutuel basis or as a single lump sum payment of the total funding held in the Grand Prize Pool for the winning drawing on a pari-mutuel basis. Except as provided in the rules, all other prizes are paid as a single lump sum payment. Powerball® winning numbers applicable to determine Powerball® prizes are determined in the Powerball® drawing event.

(2) Selection of Numbers: To play Powerball®, a player shall select (or computer pick) five different numbers, from one through sixty-nine and one additional number from one through twenty-six. The additional number may be the same as one of the first five numbers selected by the player, as long as it is from one through twenty-six.

(3) Purchase of Tickets: Tickets can be purchased for two dollars, including any specific statutorily-mandated tax of a selling lottery to be included in the price of a ticket, from an Oregon Lottery® approved retailer in a manner approved by the Oregon Lottery® and in accordance with these rules. A player may purchase tickets for future consecutive drawings up to the maximum permitted by the Lottery.
(4) **Player’s Responsibility:** It is the sole responsibility of the player to verify the accuracy of the game play or plays and other data printed on the ticket. A ticket may not be voided or canceled by returning the ticket to the retailer or to the Lottery, including tickets that are printed in error. No ticket shall be returned to the Lottery for credit. The placing of plays is done at the player’s own risk through the Lottery retailer, who when entering the play or plays is acting on behalf of the player.

(5) **Entry of Plays:** Plays may only be entered manually using a Lottery terminal keypad or touch screen or by means of a play slip provided by the Lottery and hand-marked by the player or by such other means approved by the Lottery. Retailers cannot permit the use of facsimiles of play slips, copies of play slips, or other materials that are inserted into a terminal’s play slip reader that are not printed or approved by the Lottery. Retailers must not permit any device to be connected to a Lottery terminal to enter plays, except as approved by the Lottery.

(6) **Determination of Winning Numbers:** The winning numbers for the Powerball® game shall be determined at a drawing conducted under the supervision of the MUSL Board. The MUSL Board shall determine the frequency of Powerball® game drawings. Winning numbers shall be selected at random with the aid of mechanical drawing equipment or a random number generator. The Lottery Director shall designate a Drawing Manager who shall review and randomly observe the drawings conducted by the MUSL Board. The drawing procedures shall include procedures for randomly selecting the Powerball® game winning numbers and the Power Play® multiplier.

**History:** A review of the history of OAR 177-070-0080 at State Archives reveals that this rule and the hand-engrossed requirement dates from June 22, 1992. The paperwork explains that it was adopted due to an event involving the Virginia State Lottery. The following language is from that paperwork:

> “Need for the Rule: The Virginia State Lottery held a lotto drawing on February 15, 1992 which was won by the International Lotto Fund of Melbourne, Australia. An investigation indicated that this group had consolidated the funds of its members and effectuated a buyout of the prize pool.

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Contemporaneous news articles reveal that the consortium consisted of approximately 2500 members who paid $3000 each to provide the necessary funds to purchase all seven million possible ticket combination of numbers. They did run out of time and were unable to purchase all seven million, but still managed to buy several million tickets. Luck was with them as they did have the only winning ticket and the consortium won $27 million payable over 25 years. They could just as easily have shared the prize if other players also had winning tickets.

An internet search found no other examples of anyone attempting to purchase all tickets for a lottery jackpot to guarantee a win in the intervening 24 years.

That being said there were numerous recent news articles in response to the huge Powerball jackpot asking if one could guarantee oneself a Powerball Jackpot win.

A review of some of those articles from such sources as Time, CNN, and Business Insider, reveals that it would cost “just” $584 million to purchase every Powerball combination. A $1.5 billion dollar jackpot would theoretically provide a handsome return on that investment. Plus the person would also win all of
the low tier prizes, and by inundating the system with the $584 million purchase, the lump sum value of the jackpot would rise by about $292 million- which the person would theoretically win back. Since gambling losses are deductible to the extent of a player’s wins, almost all of the purchase price would be deductible except for the cost of the winning tickets. This means that the winner could wipe out any federal taxes owed on the first $584 million of the winnings.

The downside: So why has this not been done?

First: Share and share alike - the odds are that the winner will end up sharing the prize with someone. By purchasing every combination the player guarantees him or herself a win, but there is just a 22% chance of being the only winner. At $1.5 billion all it takes is two other winners and the investment is unprofitable. And the more tickets sold, the greater the likelihood that the prize will be shared. Some sources calculate the odds as small as 3 percent that the prize will not be shared at the levels of sales seen with the recent Powerball roll-up.

Second: Full speed ahead - if the player was able to buy one Powerball ticket every second, it would take more than nine years to buy every possible combination. Even if the player had an army of clerks it is still extremely unlikely that the player would be able to buy every number combination. The ticket printers can only print at one speed. Even without accounting for machine breakdowns and changing the paper, it appears highly unlikely that a group could complete such a task in the three to four days in between each Powerball drawing.

During the last Powerball run-up, all of the retailers selling Powerball tickets were only able to sell 440 million tickets over the course of three days.

Third: Annuity or lump sum payment? The first hit comes even before taxes. The estimated $1.5 billion prize is only if the winner opts to take the winnings in 30 annual payments. A winner who elects to take the prize as a lump sum will receive an amount that approximates one-half of the advertised grand prize amount depending on the “MUSL annuity factor”.

Fourth: Taxes and more taxes.

Federal Taxes: Lottery winnings are taxed as ordinary income and are subject to the highest federal tax rate of 39.6 percent.

The selling lottery will withhold 25 percent if the winner is a citizen or resident with a Social Security number. For someone choosing the lump sum, that reduces take-home winnings by $232.5 million. Residents who do not have a Social Security number, or fail to provide one, will have 28 percent withheld and foreigners, 30 percent.

The winner will have to pay the remaining 14.6 percent in federal taxes come tax time in April. That is an additional tax bill of roughly $135.8 million.

After federal taxes, the winner would be left with about $561.7 million for their $584 million purchase.

State Taxes: State taxes will vary from state to state. In Oregon, the state will require withholding at 8 percent. On a $930 million prize, that would be $74.4 million.
Fifth: Cash only - no credit. Unless the player is in a state that permits purchases with other than cash, assuming the player uses twenty dollar bills, according to some calculations it would take 4% of the TOTAL US circulation of $20 bills to purchase all the Powerball tickets.

Conclusion: The original hand engrossed requirement may be archaic and not needed for its original purpose. Although it is theoretically possible to purchase all the tickets in the various lottery jackpot games as discussed above, it appears there are very real practical reasons that act to prevent it from happening successfully or profitably.

At the same time, the odds against winning the jackpot have increased dramatically since 1992. This alone may prevent “cornering the market” on a particular drawing’s jackpot prize.

Technology has now evolved to make it possible to sell mass quantities of tickets to a much larger consumer base than was ever envisioned in the original rule. The business model presented to the Lottery threads a very fine, yet apparently legal line.

Elimination of the hand-engrossed requirement from the above two rules could open a new market for Powerball tickets and other jackpot prize draw games for the Oregon Lottery without leading to the side effects feared in 1992. This could serve to meet the Lottery’s mission of maximizing revenue commensurate with the public good - especially since the Oregon Office of Economic Analysis is now predicting a hit to Lottery revenues in the Portland metropolitan area due to the Cowlitz casino in La Center Washington which is expected to open in 2017.
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Authors

Kevin Cochran, Esq.
Senior Legal Analyst, Americas
Washington D.C. Office
E: Kevinc@gamblingcompliance.com
T: (+1) 202 261 3525

Allegra Lapetina, Esq.
Legal Analyst, Americas
Washington D.C. Office
E: Allegral@gamblingcompliance.com
T: (+1) 202 349 4179

With additional assistance from the GCRS team in GamblingCompliance’s London office.

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Module 3: Messenger Lottery Services

§ 1. BACKGROUND

In this report module, GCRS provides an overview of the following: (i) what messenger lottery services are, and how such services typically operate; (ii) the U.S. federal laws and regulations that messenger lottery services may implicate; (iii) select U.S. state laws and regulations that messenger lottery services may implicate; (iv) U.S. state legislation addressing courier lottery services; and (v) how messenger lottery services are treated under the laws and regulations of select international jurisdictions.

§ 2. EXECUTIVE SUMMARY

- The messenger lottery services model involves the purchase of physical tickets by a person on behalf of/for another person.

- Typically, the person who purchases the ticket is in a different state or country than the customer they are purchasing the ticket on behalf of/for, thus allowing the customer to enter an official lottery drawing different to that offered in their locality.

- Messenger lottery services conducted on an interstate and international basis appear to be prohibited under federal law, specifically, 18 U.S.C. § 1301.

- Of note, during the course of its research, GCRS did not find any case law in which a messenger lottery service was the subject of an action brought under 18 U.S.C. § 1301.

- Under the laws and regulations of three states which GCRS analyzed — California, Illinois, and New York — it is unclear, in GCRS’ view, whether messenger lottery services are legal or illegal. However, under Pennsylvania and Virginia law (Virginia: effective July 1, 2016), which GCRS also analyzed, it is GCRS’ view that messenger lottery services appear to be illegal.

- Legislation to authorize and regulate courier lottery services was recently vetoed in New Jersey. However, legislation to expressly prohibit such services was recently approved in Virginia and will take effect July 1, 2016.

- The status of messenger lottery services is not just unclear in the U.S. Many international jurisdictions lack clarity surrounding the operation of such services. In this report module, five international jurisdictions are highlighted because of their position on messenger lottery services. In four of the jurisdictions — Belgium, Bulgaria, Germany, and Ireland — it is GCRS’ view that messenger lottery services appear to be captured by general prohibitions on gambling services. However, under Cyprus law, it is unclear in GCRS’ view whether messenger lottery services are legal or illegal.
§ 3. OVERVIEW OF MESSENGER LOTTERY SERVICES

The messenger lottery service model involves the purchase of physical tickets by a person on behalf of/for another person.

Typically, the person who purchases the ticket is in a different state or country than the customer they are purchasing the ticket on behalf of/for, thus allowing the customer to enter an official lottery draw different to that offered in their locality.

When using a messenger lottery service, a customer will generally have to abide by the rules and prizes set out by the lottery where a ticket is being purchased on their behalf. By meeting the rules of the lottery, the lottery retailer receives commission on the sale, the lottery still receives the sale, and the lottery prize fund is boosted.

Revenue creation for the most high-profile messenger lottery service, theLotter, is achieved through transaction fees. Transaction fees include entry fees, shipping and handling fees, subscription fees, delivery fees, service fees, and any other type of fee paid by a person in order to complete a transaction with a messenger lottery service. Of note, theLotter does not take a commission from lottery winnings; however, some messenger lottery services charge a fee on such winnings under certain circumstances. For example, Lotto365.com is a messenger lottery service that, under certain circumstances, will charge a 5 percent collection fee on collected lottery winnings.1

Meanwhile, some messenger lottery services act as more of a local courier lottery service. LottoGopher, which offers the sale of state lottery tickets to residents in that state on an intrastate basis, is one example of such a service.

theLotter, a high-profile messenger lottery service, does not take a commission from lottery winnings; however, some messenger lottery services charge a fee on such winnings under certain circumstances.

Messenger Lottery Purchase And Payout Example: theLotter

A customer in the U.K. wishes to play a $20m California Lottery SuperLotto jackpot using theLotter. On theLotter.com, the customer selects their lottery numbers and completes the transaction. The price for one ticket, which includes a one-time transaction fee, called a service fee, is $7.50.

After the U.K. customer completes the transaction, theLotter engages a California representative to purchase the ticket from an authorized California Lottery retailer on the customer’s behalf. The ticket, which never leaves California, is then scanned, and a copy of the scan is made available to the customer on theLotter.com.

In the event the U.K. customer wins, theLotter will notify the customer by email, then fly the customer to California. There, theLotter’s California representative will “hand [the customer their] winning ticket and provide [the customer] with a detailed explanation on how to collect [their] winnings from the official lottery’s office.”2
§ 3. OVERVIEW OF MESSENGER LOTTERY SERVICES CONT’D.

Messenger lottery services vary in size and how they operate. The chart below highlights four of the larger messenger lottery services in operation, specifically pointing out where such services possess licenses, which jurisdictions they serve (and the games they offer in those jurisdictions), and their revenue models.

<table>
<thead>
<tr>
<th>Service</th>
<th>Licenses</th>
<th>Jurisdictions Served (And Games Offered)</th>
<th>Revenue Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>theLotter</td>
<td>theLotter does not disclose any licenses.</td>
<td>Australia (Monday Lotto; Oz Lotto, Powerball Lotto, Saturday Lotto, and Wednesday Lotto); Austria (Lotto); Brazil (Dupla Sena, Quina, and Mega-Sena); Canada (Lotto 6/49); Ontario (Ontario 49); Colombia (Baloto); Europe (EuroJackpot and EuroMillions); France (EuroMillions, My Million Raffle, and Loto); Germany (Lotto); Greece (Joker and Lotto); Hungary (Hatoslotto and Ottoslotto); Ireland (Lotto); Italy (SiVinceTutto, SuperStar, and SuperEnalotto); New Zealand (Powerball); Poland (Lotto); Romania (Lotto 6/49); Russia (Gosloto 6/45); South Africa (Lotto and Powerball); Spain (BonoLotto, El Gordo, and La Primitiva); Switzerland (Lotto); United Kingdom (EuroMillions, UK Millionaire Maker, Lotto, Thunderball); Ukraine (Megalot and Super Loto); United States (MegaMillions and Powerball); California (SuperLotto Plus); Florida (Lotto and Lucky Money); New Jersey (Pick 6 XTRA); New York (Cash4Life and Lotto); Oregon (Megabucks).</td>
<td>Transaction fees.</td>
</tr>
<tr>
<td>Lotto365.com</td>
<td>Lotto365.com does not disclose any licenses.</td>
<td>Australia (Oz Lotto); Brazil (Mega Sena); Europe (EuroMillions and EuroJackpot); France (France Loto); Ireland (Irish Lotto); Spain (El Gordo); United Kingdom (National Lottery and Thunderball); United States (Powerball and Mega Millions); California (SuperLotto Plus and Hot Picks).</td>
<td>Transaction fees; Collection fees on collected winnings over $600.</td>
</tr>
<tr>
<td>IceLotto</td>
<td>IceLotto does not disclose any licenses.</td>
<td>Canada (Lotto 6/49); Europe (EuroMillions and EuroJackpot); United States (Powerball and Mega Millions); Italy (SuperEnalotto); Spain (La Primitiva, El Gordo, and BonoLotto); United Kingdom (Lotto).</td>
<td>Transaction fees; Variable percentage of winnings over $1m that does not exceed 10 percent of winnings.</td>
</tr>
<tr>
<td>Lottermaster</td>
<td>Lottermaster does not disclose any licenses.</td>
<td>Canada (Lotto 6/49); Europe (EuroMillions and EuroJackpot); United States (Powerball and MegaMillions); Italy (SuperEnalotto); Spain (La Primitiva, El Gordo, and BonoLotto); United Kingdom (Lotto).</td>
<td>Transaction fees; Variable percentage of winnings over $1m that does not exceed 10 percent of winnings.</td>
</tr>
</tbody>
</table>

Source: GCRS • May 2016

§ 4. MESSENGER LOTTERY SERVICES AND U.S. FEDERAL LAW

In the U.S., interstate messenger lottery services appear to be prohibited under federal law, but how strictly the law is enforced remains to be seen. GCRS was unable to locate any cases of prosecution under 18 U.S.C. § 1301.

18 U.S.C. § 1301 appears to prohibit a person who:

... being engaged in the business of procuring for a person in 1 State such a ticket, chance, share, or interest in a lottery, gift enterprise or similar scheme conducted by another State (unless that business is permitted under an agreement between
Module 3: Messenger Lottery Services

§ 4. MESSENGER LOTTERY SERVICES AND FEDERAL LAW CONT’D.

the States in question or appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information to be used for the purpose of procuring such a ticket, chance, share, or interest; ... shall be fined not more than $1,000 or imprisoned not more than two years, or both.


Messenger lottery services conducted on an interstate basis could also implicate two additional federal laws, specifically, 18 U.S.C. § 1302 (prohibition on mailing of lottery tickets or related matter) and 19 U.S.C. § 1305 (prohibition of importation of lottery tickets).

The Interstate Wagering Act Of 1994 And The Pic-A-State Lottery Service Saga

In 1993, Pennsylvania repeatedly tried to put a stop to the operations of Pic-A-State Pa., Inc (hereinafter, “Pic-A-State”). Pic-A-State, whose business model was similar to theLotter’s, was a Pennsylvania corporation that was:

[E]ngaged in the business of taking orders for, and purchasing, out-of-state lottery tickets on behalf of customers. Pic-A-State’s operations were designed to avoid the longstanding prohibition on the interstate traffic in lottery tickets by keeping the tickets themselves in the state of origin and transferring only a computer-generated “receipt” to the customer.


The state passed Act No. 8 of 1993, which, among other things, changed the state’s laws regarding the sale of any interest in lottery tickets from another state.


Specifically, Sen. Specter said: “Transactions of the sale and interest in out-of-State lottery tickets by persons via computer communications, where no paper crosses State lines, are legal under this strict interpretation of the law.” 139 Cong. Rec. S15247.

The Interstate Wagering Act aimed to prohibit transactions in which interests in out-of-state lottery tickets are purchased by a person in the purchaser’s home state.
Additionally, congressional records indicate the Interstate Wagering Act was intended to "uphold the intent of [the] law by preserving a State’s right to sell its own lottery tickets within its borders and exclude the sale of other States’ tickets." 139 Cong. Rec. S15247. The record notes that other states which have lottery programs were concerned that the sale of out-of-State lottery tickets could undermine their ability to realize projected revenues for programs funded by the lottery. 139 Cong. Rec. S15247.

During discussion of the Interstate Wagering Act, then-Senator Joseph Biden (D) introduced a letter from then-Delaware Governor Thomas Carper (D). In his letter, Gov. Carper noted that a previous decision in Pennsylvania District Court had the potential to negatively affect state revenues from lottery ticket sales, especially for smaller states such as Delaware. 139 Cong. Rec. S15248.

In 1994, the Interstate Wagering Act passed Congress. The act amended 18 U.S.C. § 1301 by inserting the following bolded language:

Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or, being engaged in the business of procuring for a person in 1 State such a ticket, chance, share, or interest in a lottery, gift enterprise or similar scheme conducted by another State (unless that business is permitted under an agreement between the States in question or appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information to be used for the purpose of procuring such a ticket, chance, share, or interest; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined under this title or imprisoned not more than two years, or both.


Three days after the passage of the Interstate Wagering Act, Pic-A-State filed suit seeking injunctive relief and a declaratory judgment that the act was unconstitutional.

While the suit was ongoing for Pic-A-State’s challenge to the Interstate Wagering Act, the Pic-A-State decision over the Pennsylvania statute was overturned on appeal by the Third Circuit U.S. Court of Appeals in 1994, as the Pennsylvania statute now fully conformed with the newly enacted (and challenged) federal law. Pic-A-State Pa. v. Pennsylvania, 42 F.3d 175, 178-80 (3d Cir. 1994) ("Pic-A-State I").

§ 4. MESSENGER LOTTERY SERVICES AND FEDERAL LAW CONT’D.


In 1996, the Third Circuit U.S. Court of Appeals affirmed the district court decision, finding Congress’ regulation of lotteries, an activity affecting interstate commerce, rationally related to “Congress’ goals of protecting state lottery revenues, preserving state sovereignty in the regulation of lotteries, and controlling interstate gambling.” McLean v. Reno, p. 23.

Status In The U.S.: Messenger Lottery Services Appear To Violate Federal Law

Even after the Interstate Wagering Act and the Pic-A-State case, the status of messenger lottery services is still unclear.

The Interstate Wagering Act (1994) appears to intend to prohibit a person physically located in one state from having a lottery ticket purchased for them in another state at that exact time. The Interstate Wagering Act also appears to intend to prohibit a person located outside of the U.S. from having a ticket bought for them if that person “knowingly transmits in … foreign commerce information to be used for the purpose of procuring such a chance, share or interest...” in a lottery ticket. 18 U.S.C. § 1301.

However, GCRS was unable to locate any precedential legal authority for matters brought under 18 U.S.C. § 1301, so the outcome to a challenge brought against a messenger lottery service is unknown.

Of note, because 18 U.S.C. § 1301 does not provide states the right to prosecute offenders under the statute, an action would need to be brought by the federal government. In a footnote in the McLean v. Reno opinion, the federal government stated that it was “unlikely to prosecute Pic-A-State...” and “any prosecution would be brought by the Commonwealth of Pennsylvania” under state statute. McLean v. Reno, p. 9.

§ 5. MESSENGER LOTTERY SERVICES AND SELECT STATE LAWS

In general, lotteries tend to be regulated at the state level, with each state passing authorizing legislation and promulgating its own set of rules and regulations. As noted in § 4, states may not bring action under 18 U.S.C. § 1301, so states must rely on their own laws to evaluate the legality of messenger lottery services.

This section will evaluate lottery frameworks and how messenger lottery services may be evaluated under such frameworks in California, New York, Illinois, Virginia, and Pennsylvania. Those states were chosen for a variety of reasons, including their market size (New York and California), unique operating model (Illinois), restrictive laws as they pertain to messenger lottery services (Pennsylvania), and unique political intelligence attained through research (Virginia).

In general, the key questions at issue are:
§ 5. MESSENGER LOTTERY SERVICES AND SELECT STATE LAWS CONT’D.

• Is the messenger lottery service "selling" lottery tickets in a particular state as defined by state law? If so, is the messenger lottery service appropriately licensed in the state as a retailer to do so?

• Is the messenger lottery service "reselling" lottery tickets in a particular state as defined by state law? If so, is the messenger lottery service appropriately positioned in the state to do so?

• Are the fees required to be paid by a person to a messenger lottery service other than the cost of the lottery tickets — that is, the transaction fees — considered part of the "price" of a lottery ticket? If so, if a person pays a messenger lottery service a transaction fee, would that be considered a person selling a lottery ticket for a price greater than that set by a state lottery department?

Of note, the state evaluations set out herein do not cover payment methods used by a person placing an order with a messenger lottery service, as it is assumed that all payments for lottery tickets by the messenger lottery services are made with cash.

<table>
<thead>
<tr>
<th>State</th>
<th>Legal Status Of Messenger Lottery Services</th>
<th>Only Licensed Retailers Authorized To Sell Tickets</th>
<th>Tickets Must Be Sold At Fixed Price Set By Lottery</th>
<th>Transaction Fee Likely Included in &quot;Price&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>Unclear</td>
<td>Yes</td>
<td>Yes</td>
<td>Unclear</td>
</tr>
<tr>
<td>Illinois</td>
<td>Unclear</td>
<td>Yes</td>
<td>Yes</td>
<td>Unclear</td>
</tr>
<tr>
<td>New York</td>
<td>Unclear</td>
<td>Yes</td>
<td>Yes</td>
<td>Unclear</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Likely Prohibited*</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes*</td>
</tr>
<tr>
<td>Virginia</td>
<td>Likely Prohibited*</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes*</td>
</tr>
</tbody>
</table>

* Note: In VA, a bill that will expressly prohibit "ticket courier services" will take effect July 1, 2016. Source: GCRS • May 2016

California

California, which was chosen for analysis because it is one of the largest U.S. lottery markets by sales, appears to be a state where the legality of messenger lottery services is unclear.

Under the California State Lottery Act, lottery tickets may only be sold by a licensed lottery retailer. In order to be considered by the lottery, a retailer applicant must:

• Be a person, organization or business entity;
• Be located in, doing business in, and licensed to do business in California;
• Be in good standing with governmental regulatory and taxing agencies;
Module 3: Messenger Lottery Services

§ 5. MESSENGER LOTTERY SERVICES AND SELECT STATE LAWS CONT’D.

• Be engaged in business other than selling lottery products; and
• Be at least 18 years of age.

Omnibus Lottery Regulations § 7.2.

Furthermore, no ticket or share may be sold for more or less than the retail sales price established by the California Lottery Commission. Cal. Gov’t Code § 8880.31. It is unclear whether or not any type of transaction fee that may be charged by a messenger lottery service would be considered an increase or variation in the “price” of a ticket.

Lastly, under California Penal Code § 321:

Every person who sells, gives, or in any manner whatever, furnishes or transfers to or for any other person any ticket, chance, share, or interest, or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery, is guilty of a misdemeanor.

New York

New York, which was chosen for analysis because it is one of the largest U.S. lottery market by sales, appears to be a state where the legality of messenger lottery services is unclear.

In New York, lottery tickets may only be sold by a licensed lottery sales agent. NY Tax § 1609(a). In order to obtain a license, retailers must be New York residents, or have their place of business located in New York. NY Lottery Rules and Regs. § 5001.4. Applicants cannot become licensed lottery sales agents if they are exclusively engaged in selling lottery tickets, NY Lottery Rules and Regs. § 5001.2.

In addition, it is a misdemeanor to sell a lottery ticket at a price greater than that fixed by the state lottery division. NY Tax § 1609(a). It is unclear whether or not any type of transaction fee that may be charged by a messenger lottery service would be considered an increase or variation in the “price” of a ticket.

Pennsylvania

Pennsylvania, which was chosen for analysis because of uniquely relevant state law, appears to be a state in which messenger lottery services are prohibited.

In Pennsylvania, lottery tickets may only be sold by a licensed lottery agent. Licenses may only be issued to:

• Residents of Pennsylvania
• Corporations incorporated in Pennsylvania or authorized to do business in Pennsylvania
• Partnerships in which one of the partners resides in Pennsylvania
§ 5. MESSENGER LOTTERY SERVICES AND SELECT STATE LAWS CONT’D.

• Unincorporated businesses authorized to do business in Pennsylvania


No person may “engage in the business of reselling lottery tickets or shares at a price greater than that fixed by rule or regulation of the department.” 72 P.S. § 3761-307(a). The statute also appears to find transactional fees to be included in the “price”, expressly stating that: “Price shall include any fee associated with the acquisition or transportation of lottery tickets or shares.” 72 P.S. § 3761-307(a).

Finally, Section 3761-307(c) of Title 72 prohibits a person from engaging “in the sale or offering for sale within [Pennsylvania] of any interest in a lottery of another state or government whether or not such interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase or other record of such interest.” A person in violation of Section 3761-307 of Title 72 is guilty of a misdemeanor and must pay a fine of $2,000.

Illinois

Illinois, which was chosen for analysis because of its private management operating model, appears to be a state where the legality of messenger lottery services is unclear.

In Illinois, no person other than a licensed lottery sales agent or distributor can sell or resell lottery tickets or shares. 20 ILCS 1605/14. It is unclear whether a messenger lottery service would be considered to be “selling” or “reselling” lottery tickets. Further, a person may not:

• Sell a ticket or share at a price greater than that fixed by rule or regulation of the [Lottery] Department; or
• Charge a fee to redeem a winning ticket or share.

20 ILCS 1605/14.

It is unclear whether transaction fees paid by a person to a messenger lottery service would qualify as increasing the “price” of a lottery ticket, or qualify as a “fee to redeem a winning ticket share.”

A person violating Section 1605/14 of Chapter 20 for the first time is guilty of a Class B misdemeanor and subsequent violations would result in a Class 4 felony. 20 ILCS 1605/14.

Virginia

Virginia, which was chosen for analysis because of recent legislative developments, appears to be a state where the legality of messenger lottery services will likely be prohibited starting July 1, 2016.
§ 5. MESSENGER LOTTERY SERVICES AND SELECT STATE LAWS CONT’D.

Currently, in Virginia, no person other than a licensed lottery sales agent or his employee may sell lottery tickets or shares. Va. Code § 58.1-4014. It is unclear whether a messenger lottery service would be considered to be selling or reselling lottery tickets.

Further, a person may not sell a ticket or share at any price or at any location other than that fixed by the Virginia State Lottery Department. Va. Code § 58.1-4014. It is unclear whether transaction fees paid by a person to a messenger lottery service would qualify as increasing the “price” of a lottery ticket, or qualify as a “fee to redeem a winning ticket share.”

A person convicted of violating Section 58.1-4014 of the Virginia Code is guilty of a Class 1 misdemeanor.

During the 2016 legislative session, Virginia Delegate Nick Rush (R) introduced a bill in the state General Assembly to prohibit the operation of a so-called “ticket courier service” in the state. The bill passed both houses and was signed into law by Governor Terry McAuliffe (D) in March 2016. The bill will take effect July 1, 2016.

The bill will define ticket courier service as “a service operated for the purpose of purchasing Virginia Lottery tickets on behalf of individuals located within or outside the [state] and delivering or transmitting such tickets, or electronic images thereof, to such individuals as a business-for-profit delivery service.”

Any person convicted of violating the act will be guilty of a Class 1 misdemeanor.

A representative from Rep. Rush’s office told GCRS that the bill is intended to prohibit international companies from purchasing Virginia Lottery tickets and selling them to non-Virginia residents. (Specifically, the representative mentioned concerns among lottery stakeholders in Virginia about messenger lotteries actually turning over winning tickets to ticket purchasers.) In addition, the representative told GCRS that the bill is intended to codify the view of lottery stakeholders in Virginia that messenger lottery services are illegal under state law.

§ 6. STATE-LEVEL LEGISLATION RE: COURIER LOTTERY SERVICES

Courier lottery services are treated differently across the U.S. In general, it does not appear that intrastate courier lottery services would operate in violation of 18 U.S.C. § 1301.

In the past two years, legislatures in Virginia and New Jersey have advanced different types of courier lottery bills.

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§ 6. STATE-LEVEL LEGISLATION RE: COURIER LOTTERY SERVICES CONT’D.

The bill will define ticket courier service as “a service operated for the purpose of purchasing Virginia Lottery tickets on behalf of individuals located within or outside the [state] and delivering or transmitting such tickets, or electronic images thereof, to such individuals as a business-for-profit delivery service.”

Any person convicted of violating the law is guilty of a Class 1 misdemeanor.

Conversely, during New Jersey’s 2014-2015 legislative session, a group of state legislators introduced a measure that aimed to authorize the operation of so-called “lottery courier services” in the state. The bill passed the state Senate and Assembly but was vetoed by Governor Chris Christie (R).

The bill would have defined a courier service as “a person or business entity that is registered with the State Lottery Commission to purchase State Lottery tickets on behalf of individuals within the State and delivering those tickets to those individuals in the State as a business-for-profit delivery service.”

Under the bill, the authorized operation of a registered courier service would not have constituted the sale of lottery tickets, and therefore charging a fee for the purchase and delivery of a ticket would not have constituted a violation of state law. However, a courier service would have been prohibited from collecting a portion of lottery winnings as part of its fee.

Lastly, the bill would have authorized the state Lottery Commission to establish regulations allowing for courier services to redeem winning tickets on behalf of clients.

In recent years, LottoGopher has gained attention from the mainstream media. The courier lottery service started in California and eventually expanded to other states, including Florida. In 2011, Florida Attorney General Pam Bondi (R) filed suit against LottoGopher, alleging multiple claims. LottoGopher no longer operates in Florida. Also of note, LottoGopher appears to no longer be taking orders from persons located in California. GCRS could find no information on legal actions taken in California against the courier lottery service.

§ 7. MESSENGER LOTTERY SERVICES AND SELECT INTERNATIONAL LAWS

The legality of messenger lottery services is also unclear in many jurisdictions around the world. Due to the unclear status of messenger lottery services, GCRS chose countries where the laws appear to prohibit such services (Belgium, Germany, and Ireland), where such services have been targeted for enforcement (Bulgaria), or where major messenger lottery services are based (Cyprus).

Under the laws and regulations of four of the five International jurisdictions which GCRS analyzed — Belgium, Bulgaria, Germany, and Ireland — it is GCRS’ view that messenger lottery services appear to be captured by general prohibitions on gambling services in those jurisdictions. (Of note, Bulgaria has gone as far as to include theLotter, a high-profile messenger lottery service, on its blacklist of...
§ 7. MESSENGER LOTTERY SERVICES AND SELECT STATE LAWS CONT’D.

Unauthorized online gambling operators. However, under Cyprus law, which GCRS also analyzed, it is unclear in GCRS’s view whether messenger lottery services are legal or illegal.

Also of note, the GCRS team in GamblingCompliance’s London office is conducting research on the legality of messenger lottery services in international jurisdictions and has preliminarily found that such services are unregulated, and appear to be illegal, in many of those jurisdictions.

Belgium

- **Messenger Lottery Services Lawful.** No
- **Messenger Lottery Licensing Requirements.** None
- **Commentary.** According to Belgium’s Penal Code, lotteries are defined as any transaction offered to the public and intended to provide a gain based on chance. The country imposes penalties — including fines and up to three months in jail — on those involved in the unauthorized offering of lottery games. Additionally, Article 302 of the Penal Code establishes that, among others, agents of illegal lotteries are also liable. The offering of messenger lottery services in Belgium appears to fall under the scope of the Penal Code and may result in penalties.22

Bulgaria

- **Messenger Lottery Services Lawful.** No
- **Messenger Lottery Licensing Requirements.** None
- **Commentary.** The Bulgaria State Commission on Gambling has included TheLotter on its blacklist of 515 unauthorized online gambling operators. The blacklist contains the company and domain names of the businesses which are considered to be offering illegal online gambling services in the country.23

Cyprus

- **Messenger Lottery Services Lawful.** Unclear
- **Messenger Lottery Licensing Requirements.** None
- **Commentary.** Although Cyprus has imposed a general ban on gambling services, current law is silent with regard to the operation of messenger lottery services. Of note, a large number of companies offering messenger lottery services are based in Cyprus; however, as of this writing, GCRS was unable to confirm whether those services are considered lawful in Cyprus.24

Bulgaria has gone as far as to include theLotter, a high-profile messenger lottery service, on its blacklist of 515 unauthorized online gambling operators.
Module 3: Messenger Lottery Services

§ 7. MESSENGER LOTTERY SERVICES AND SELECT STATE LAWS CONT’D.

Germany

- **Messenger Lottery Services Lawful.** No
- **Messenger Lottery Licensing Requirements.** None
- **Commentary.** According to Article 287 of Germany’s Criminal Code, the organization of public lotteries is punishable with fines and up to two years in jail. The scope of that provision of the Criminal Code, which appears to capture the operation of messenger lottery services, extends to “...offers for the conclusion of game contracts for a public lottery or playout or directed toward the conclusion of such game contracts...” Of note, Deutscher Lotto, the association of lottery operators in Germany, stated in a press release that the offering of messenger lottery services is considered an illegal offer under the scope of German law.25

Ireland

- **Messenger Lottery Services Lawful.** No
- **Messenger Lottery Licensing Requirements.** None
- **Commentary.** Section 21 (2) of the Gaming and Lotteries Act states that: “No person shall import, print, publish or distribute or sell, offer or expose for sale, invite an offer to buy or have in his possession for sale or distribution any ticket, counterfoil or coupon for use in a lottery or any document containing any information relating to a lottery”.26
§ 8. ENDNOTES


3 Case is also referenced as Pic-A-State PA., Inc. v. Reno, 76 F.3d 1294 (3rd Cir. 1996). GCRS used the slip opinion found on the Villanova Law website for this research.


5 The Congressional Record cited can be found here: https://www.scribd.com/doc/311383001/SKM-C554e16050313090.

6 It is GCRS’ understanding that Sen. Specter’s amendment meant to prohibit a person physically located in State A from purchasing a ticket in State B. This would not prohibit a person who lives in State A from purchasing a ticket in State B if that person is physically located in State B.

7 But, this does not mean a state would not play any type of role in a federal investigation; a state, or an agency of the state, may be asked to participate in a federal investigation.

8 For the purposes of this research, transaction fees include entry fees, shipping and handling fees, subscription fees, delivery fees, service fees, and any other type of fee paid by a person in order to complete a transaction with a messenger lottery service.

9 No lottery tickets or shares may be sold by a lottery game retailer unless the retailer has a certificate of authority, issued by the lottery, to sell lottery tickets. Cal. Gov’t Code § 8880.53.

10 The Lottery Bureau may also sell lottery tickets at any branch offices it established within the state. 61 Pa. Code § 805.16.

11 Virginia House Bill 1291 (2016).

12 Virginia House Bill 1291 (2016).

13 Telephone Interview with Representative Rush’s Legislative Assistant, (April 26, 2016).

14 Virginia House Bill 1291 (2016).

15 Virginia House Bill 1291 (2016).

16 New Jersey Assembly Bill 4018 (2014).
§ 8. ENDNOTES CONT’D.

17 In his veto message, Gov. Christie stated “there is no evidence of a demand for this service in New Jersey or that [the] bill would increase lottery sales.” Further, Gov. Christie noted the bill “may have the unintended consequences of empowering and appearing to legitimize fraudsters, giving them more opportunities to target the elderly and infirm.” See, New Jersey Assembly Bill 4018 Veto Message (2014).

18 New Jersey Assembly Bill 4018 (2014).


23 See, “Bulgaria Country Report”. GamblingCompliance.com, accessed May 2, 2016, https://gamblingcompliance.com/premium-content/research_report/bulgaria-country-report#expandtent/research_report/belgium-country-report#expand. Of note, Bulgaria law requires the State Commission on Gambling to maintain a list of unlicensed websites. If “Operator X” is listed by the regulator as a non-licensed operator in Bulgaria, then Operator X has three days to stop targeting Bulgaria. After that period, the State Commission on Gambling requests the Sofia District Court to order Internet service providers (or “ISPs”) to block Operator X’s website within 24 hours from when the court issues its order. ISPs refusing to comply face penalties ranging from BGN10,000 (~$6,000) up to BGN30,000 (~$17,000).

§ 8. ENDNOTES CONT’D.

