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KICKAPOO

**TRADITIONAL
TRIBE OF TEXAS**

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The Kickapoo Traditional Tribe of Texas (“Tribe”) thanks the State Affairs Committee for reviewing the issue of so-called “lottery courier services,” which are effectively a form of internet gaming. These lottery courier services are operating contrary to the law and represent a significant expansion of gambling in the State. As such, these lottery courier services must be prohibited from operating.

Lottery courier services facilitate and encourage the online play of lottery games, which is an expansion of gambling in the State. These companies allow for an entirely online gambling experience: (1) the player purchases the ticket online or with a mobile app, (2) electronic image of the ticket is sent to the player, (3) the result of the ticket is electronically transmitted to the player and (4) any winnings are automatically deposited into the player's online account. Only if a win is above a certain threshold is the physical ticket sent to the player to be redeemed in person. In most cases, the player never receives the physical ticket.

Lottery courier services—such as those operating in Texas—do not simply act as “delivery services” whose employees travel to brick-and-mortar lottery retailers to purchase lottery tickets in-person on behalf of their customers. Rather, they provide comprehensive online gaming experiences to their users that have the ability to mimic otherwise unlawful internet gaming. Each purchase of a “lottery ticket” is in essence the placement of a bet, and each “lottery” drawing is the outcome of that bet. This is an express attempt to work around the State’s prohibition on internet gaming, and, achieving this result—i.e., unregulated internet gaming—is the end goal for

many of these lottery courier services. At least one courier services was purchased by a top online sports betting company because of the online gaming capabilities of the courier service.¹

The Tribe opposes the use of lottery courier services in Texas for several reasons. *First*, allowing lottery courier services unlawfully expands gaming in the State and violates the State Lottery Act. *Second*, allowing lottery courier services to operate is bad policy and creates a slippery slope for the State's restrictions and prohibitions on internet gaming. *Third*, the existence and ongoing proliferation of online lottery sales directly harms the Tribe and severely detracts from the Tribe's lawful gaming facility, which is vital to the Tribe and its ability to generate essential governmental revenue to provide for its members.

First, allowing lottery courier services to continue operating unlawfully expands gaming in Texas. The State Lottery Act and the Texas Lottery Commission's accompanying regulations provide certain restrictions on the sale of lottery tickets. One such restriction is the prohibition of playing lottery "by telephone," i.e., internet gaming. The State Lottery Act expressly requires the Texas Lottery Commission to "adopt rules . . . governing the . . . enforcement of *prohibitions on a person playing a lottery game by telephone.*" Tex. Gov't Code § 466.015(b)(4) (emphasis added); 16 TAC § 401.158(28). The Act, therefore, contemplates that individuals are prohibited from playing the lottery by telephone, and by extension, a mobile app or website. The Commission's rules likewise prohibit the sale of state lottery tickets made "by mail, phone, fax, or other similar method of communications." 16 TAC § 401.355(a). Yet, while lottery courier services purport to be mere "delivery services," they are actually directly enabling an individual to play the lottery via phone in violation of the law. The Commission effectively is permitting a vast expansion of internet gaming in Texas, contrary to state law.

Further, the State's gaming laws prohibit all lottery ticket sales made by "a person who is not a sales agent or an employee of a sales agent . . ." Tex. Gov't Code § 466.303(a). A "sales agent" is "a person licensed under [the State Lottery Act] to sell tickets." *Id.* 466.002(9). The lottery courier services have no such licenses and are not sales agents or employees of sales agents, yet they still facilitate and profit from the sale of lottery tickets. In every meaningful way, therefore, these courier services are acting as unlicensed lottery ticket sales agents in direct contravention of the law. The laws also prohibit the sale of state lottery tickets to individuals under 18 years of age, Tex. Gov't Code §§ 466.3051, 466.015(b)(3); 16 TAC §§ 401.158(26), 401.355(b), and the purchase of state lottery tickets by use of credit cards, *see* Tex. Gov't Code § 466.3052, 16 TAC § 401.158(27). These particular restrictions are important in furthering the Legislature's intent to protect the children of Texas and "ensure integrity, security, honesty, and fairness in the operation and administration of the lottery." *See* Tex. Gov't Code § 466.014(a).

¹ *See* Richard Mulligan, *DraftKings to acquire Jackpocket for \$750m* (Feb. 16, 2024), <https://igamingbusiness.com/strategy/ma/draftkings-to-acquire-jackpocket-for-750m/> (noting "it was more important" to DraftKings that acquiring Jackpocket "would strengthen its position in sportsbook and igaming through higher customer lifetime value").

However, the Commission cannot ensure that lottery tickets are only sold to individuals over the age of 18 or purchased using allowable means when lottery courier services are used.

The Tribe operates a *lawful* Class II (bingo and non-banked poker) gaming facility on its reservation under the federal Indian Gaming Regulatory Act (IGRA). Per the IGRA, the Tribe may only use the revenue generated by its gaming facility for certain governmental purposes including funding tribal programs, promoting tribal economic development, and providing for the general welfare of its citizens. Through the use of its gaming revenue, the Tribe has been able to fund important programs and services for its members, including in the areas of education, healthcare, housing, and social services. However, the unlawful expansion of gaming in Texas, and in particular the proliferation of unregulated internet gaming, directly and adversely impacts the Tribe. As discussed, the lottery courier services have the ability to enable otherwise unlawful internet gaming and create an online user experience simulating real-time games of chance. When lottery courier services offer *unlawful* online gaming experiences to their users entirely from their phone or computer, those users have less incentive or reason to visit the Tribe's *lawful* gaming facility in-person. Without such visitors, the Tribe's facility will not generate the necessary revenues needed to fund its governmental programs and services relied upon by the Tribe's members. Nor will the Tribe be able to continue its employment opportunities for its members and those in the region.

The Commission should enforce Texas law against illicit lottery ticket sales via internet applications and mobile phone applications. At a minimum, any law purporting to allow lottery courier services in Texas must ensure that such services are *true* couriers by mandating they deliver the physical lottery tickets to players immediately upon purchase and *prior to* the ticket's drawing. Requiring delivery of the physical lottery ticket before the lottery is drawn will prevent the lottery courier service from misusing the State's lottery games as random number generators or to simulate real-time online games of chance. Without such a requirement, lottery courier services will continue operating in a manner that violates the State's prohibition on internet gaming and the sale of lottery tickets by phone, including through mobile internet applications.

The Tribe maintains respect for the law, its tribal citizens, and its neighbors. As such, the Tribe is deeply concerned about the unlawful expansion of gaming in the State of Texas, the operation of lottery courier services in a manner that allows internet gaming, and the slippery slope down which the Texas Lottery Commission is proceeding. The Tribe remains willing to assist the State in any efforts to regulate the use and operation of *true* lottery courier services that deliver physical tickets, but strongly urges this Committee to continue advancing the State's prohibition on internet gaming by disallowing these services to proceed as is.

The Tribe thanks this Committee for its consideration of the issues and calls for quick action to stop the expansion of gambling, including online gambling, throughout the state via lottery courier services

