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Kaufman, Navarro, Rockwall, Van Zandt and parts of Dallas, Ellis and Collin County

The Lottery Commission's Misguided Oversight

When the Texas legislature created a state lottery, in 1991, the statute was carefully crafted to require an individual who wanted to play the lottery to go to a licensed, brick-and-mortar lottery retailer to purchase a ticket with cash or a debit card. The purchase by telephone was expressly prohibited. These safeguards aimed to prevent addicts from incurring gambling debts. Since then, the Lottery Commission has, through the rulemaking process, circumvented the intent of the statute and enabled independent, third-party couriers to enter the state and begin offering novel ways to play the lottery, such as by facilitating the purchase of games via an application on a mobile phone or an internet-connected device.

These couriers claim that, because they send a person to purchase a lottery ticket, in person, it is not purchased using a telephone. However, in a 2023 Senate Finance Committee hearing, several legislators questioned this practice and the Commission's misguided oversight.

During the 88th Legislature, my office filed Senate Bill 1820 to prohibit the order, purchase, or sale of a lottery game digitally by mobile device, including the facilitation of a game via a mobile application or website by an independent third-party courier. This bill directed the Lottery Commission to adopt rules to enforce these prohibitions. Unfortunately, the House killed the bill.

Per the Legislative Budget Board, in the twelve months to September 30, 2023, lottery ticket sales associated with courier services were expected to account for \$173.1 million. Some couriers have relationships with established, licensed brick-and-mortar lottery retailers and have demonstrated an ability to generate significant game sales. (The above figure represents an estimate, as the Lottery Commission has no way of segregating sales originating from courier transactions from walk-in purchases.)

Third-party couriers are not comprehended in current law, though the legislature prohibits the play of lottery games by phone. The emergence of these couriers in the state represents a legal gray area, frustrating efforts to track sales and to ensure the fair play of the lottery. Incremental rule changes by the Commission have circumvented legislative intent and enabled independent third-party couriers to enter the state.

The issue is apt to become even more salient. DraftKings, a sports betting platform, recently acquired JackPocket, one such third-party courier app. JackPocket acquires new customers at a much lower cost than DraftKings' current method and operates in states where online sports betting is not legal (including Texas), providing DraftKings a ready customer base. DraftKings plans to expand JackPocket to even more states and potentially develop new lottery products within the app, aiming to capture a larger share of the massive lottery market.



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The Lottery Commission's Misguided Oversight *(Continued)*

Meanwhile, the Texas Lottery Commission remains in a precarious position. It benefits from the increased sales generated by these services but faces pressure to uphold the law's intent. The lack of clear regulation creates uncertainty for both consumers and courier companies. Additionally, the agency's cavalier attitude toward guardrails strikes many as a dereliction of duty.

For its part, the Texas legislature is poised to address the existence of courier services and to restore the lottery to its conception as a game to be played in person and with cash.

The Texas Lottery Commission is currently undergoing review by the Texas Sunset Advisory Commission. This review entails a deep dive by Sunset staff into the inter-workings of the agency and results in a staff report, followed by public comments and a public hearing. For more information, please visit <https://www.sunset.texas.gov/reviews-and-reports/agencies/texas-lottery-commission>.