

**SENATE CONCURRENT
RESOLUTION No. 78**

**STATE OF NEW JERSEY
221st LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

Senator DECLAN J. O'SCANLON, JR.

District 13 (Monmouth)

Co-Sponsored by:

Senator Space

SYNOPSIS

Declares Division of State Lottery's new rule concerning online lottery sales inconsistent with legislative intent.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 1/25/2024)

1 **A CONCURRENT RESOLUTION** concerning legislative review of
2 rules and regulations pursuant to Article V, Section IV,
3 paragraph 6 of the Constitution of the State of New Jersey and
4 invalidating the Division of State Lottery online lottery sale rule.
5
6 **WHEREAS**, Pursuant to Article V, Section IV, paragraph 6 of the
7 Constitution of the State of New Jersey, the Legislature may review
8 any rule or regulation adopted or proposed by an administrative
9 agency to determine if it is consistent with the intent of the
10 Legislature, and invalidate an adopted rule or regulation, or prohibit
11 the adoption of a proposed rule or regulation, if it finds that the rule
12 or regulation is not consistent with legislative intent; and
13 **WHEREAS**, Upon finding that a rule or regulation, either proposed or
14 adopted, is not consistent with legislative intent, Article V, Section
15 IV, paragraph 6 provides that the Legislature shall transmit its
16 findings in the form of a concurrent resolution to the Governor and
17 the head of the Executive Branch agency which promulgated, or
18 plans to promulgate, the rule or regulation, and the agency shall
19 have 30 days from the time the concurrent resolution is transmitted
20 to amend or withdraw the rule or regulation; and
21 **WHEREAS**, If the agency does not amend or withdraw the existing or
22 proposed rule or regulation, Article V, Section IV, paragraph 6
23 provides that the Legislature may invalidate or prohibit the adoption
24 of the proposed rule or regulation, following a public hearing held
25 by either House on the invalidation or prohibition, the placement of
26 a transcript of the public hearing on the desks of the members of
27 each House of the Legislature in an open meeting followed by the
28 passage of at least 20 calendar days, and a vote of the majority of
29 the authorized membership of each House in favor of a concurrent
30 resolution invalidating or prohibiting the adoption of the rule or
31 regulation; and
32 **WHEREAS**, Article IV, Section VII, paragraph 2, of the Constitution of
33 New Jersey permits the creation of a lottery to be operated by the
34 State; and
35 **WHEREAS**, the Legislature enacted the “State Lottery Act”, P.L.1970,
36 c.13 (C.5:9-1 et. seq.) in order to carry out the mandate thereof by
37 establishing a lottery to be operated by the State; and
38 **WHEREAS**, the State Lottery Act created the comprehensive statutory
39 mechanism for the operating of the lottery; and
40 **WHEREAS**, the State Lottery Act provides at N.J.S.A. 5:9-11 that no
41 license to sell lottery tickets or shares shall be issued to any person
42 to engage in business exclusively as a lottery sales agent; and
43 **WHEREAS**, the State Lottery Act defines person at N.J.S.A. 5:9-11 to
44 include all departments, commissions, agencies and
45 instrumentalities of the State, including counties and municipalities
46 and agencies and instrumentalities thereof; and
47 **WHEREAS**, On September 19, 2022 the Division of State Lottery,
48 established in the Department of Treasury, proposed a new rule,

1 N.J.A.C. 17:20-1.5, entitled “Internet sales of lottery tickets by the
2 Division of State Lottery”; and
3 **WHEREAS**, On August 17, 2023 the Division of State Lottery adopted
4 N.J.A.C. 17:20-1.5 as a new rule with an effective date of October
5 2, 2023; and
6 **WHEREAS**, The rule permits the Division of State Lottery to directly
7 sell lottery tickets to consumers in New Jersey through its website
8 and mobile applications; and
9 **WHEREAS**, The newly adopted rule is in direct conflict with N.J.S.A.
10 5:9-11 since the Division of State Lottery will be engaged in
11 business exclusively as a lottery sales agent; and
12 **WHEREAS**, The rule is contrary to the intent and plain meaning of the
13 provision in the State Lottery Act that prohibits a person, including
14 a Department, commission, and instrumentality of the State, from
15 obtaining a lottery sale license when it is engaged in business
16 exclusively as a lottery sales agent; and
17 **WHEREAS**, Any amended rule that permits the internet sale of lottery
18 tickets by the Division of State Lottery shall be deemed by the
19 Legislature as violating the State Lottery Act intent or plain
20 meaning of N.J.S.A. 5:9-11; now, therefore,

21
22 **BE IT RESOLVED** by the Senate of the State of New Jersey (the
23 General Assembly concurring):
24

25 1. The Legislature declares the rules and regulations adopted
26 by the Division of State Lottery to permit the direct sale of online
27 lottery tickets by the division to be inconsistent with the intent of
28 the Legislature.
29

30 2. Copies of this concurrent resolution, as filed with the
31 Secretary of State, shall be transmitted by the Clerk of the General
32 Assembly and the Secretary of the Senate to the Governor, the
33 Secretary of the Department of the Treasury, and the Executive
34 Director of the Division of State Lottery.
35

36 3. Pursuant to Article V, Section IV, paragraph 6 of the
37 Constitution of the State of New Jersey, the Division of State
38 Lottery shall have 30 days following transmittal of this resolution to
39 amend or withdraw N.J.A.C. 17:20-1.5 or the Legislature may, by
40 passage of another concurrent resolution, exercise its authority
41 under the Constitution to invalidate the rules and regulations in
42 whole or in part.
43

44

45 STATEMENT

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47 This concurrent resolution embodies the finding of the
48 Legislature that the final rule adopted by the Division of State

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1 Lottery on August 17, 2023 at N.J.A.C. 17:20-1.5, permitting the
2 direct internet sale of lottery tickets by the Division of State
3 Lottery, is not consistent with the legislative intent of the “State
4 Lottery Act”.

5 The Division of State Lottery shall have 30 days from the date of
6 transmittal of this resolution to amend or withdraw the rule or the
7 Legislature may, by passage of another concurrent resolution,
8 exercise its authority under the Constitution to invalidate the rule in
9 whole or in part.