

NO. 42158-5-II

COURT OF APPEALS  
STATE OF WASHINGTON  
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**COURT OF APPEALS, DIVISION  
OF THE STATE OF WASHINGTON**

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JAMES L. BRUMMETT AND AT LEAST 10,000'S OF OTHER  
LOTTER 2010 RAFFLE PLAYERS SO SITUATED,  
Appellants,

v.

WASHINGTON'S LOTTERY, WASHINGTON'S LOTTERY  
COMMISSION AND COLE & WEBER UNITED, et al.,  
Respondents.

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**BRIEF OF RESPONDENT STATE OF WASHINGTON**

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**TABLE OF CONTENTS**

I. STATEMENT OF THE ISSUES .....1

II. STATEMENT OF THE CASE ..... 1

III. COUNTERSTATEMENT OF FACTS.....2

IV. ISSUES AND ANALYSIS .....6

A. Standard Of Review .....6

B. Summary Of The Argument .....9

C. Plaintiff Has Failed To Come Forward With Evidence To Meet His Burden To Prove Fraud.....10

1. Plaintiff Has Failed To Prove Misrepresentation Of A Material Fact He Is Entitled To Rely Upon.....10

2. Plaintiff Cannot Prove Proximate Cause.....15

3. Plaintiff’s Remedy Is Limited To A Replacement Ticket.....18

D. Plaintiff Failed To Come Forward With Evidence Sufficient To Prove Negligent Misrepresentation .....19

E. The Director of Washington’s Lottery Acted Lawfully When He Directed That The “Nth” Number For The Award Of Promotional Prizes Be Adjusted.....22

F. Plaintiff Was Not Entitled To A Continuance To Conduct Discovery Because He Failed To Move For A Continuance Of The Motions For Summary Judgment Pursuant To CR 56(f).....24

V. CONCLUSION .....26

## TABLE OF AUTHORITIES

### Cases

|   |    |
|---|----|
| <i>Aba Sheikh v. Choe</i> ,<br>156 Wn.2d 441, 128 P.3d 574 (2006).....  | 22 |
| <i>Atherton Condominium Apartment-Owners Ass’n Bd. of Dirs. v. Blume Dev. Co.</i> ,<br>115 Wn.2d 506, 799 P.2d 250 (1990).....  | 7  |
| <i>Baughn v. Honda Motor Co., Ltd.</i> ,<br>107 Wn.2d 127, 727 P.2d 655 (1986).....   | 12 |
| <i>Braegelmann v. County. of Snohomish</i> , 53 Wn. App. 381, 766 P.2d 1137,<br><i>review denied</i> , 112 Wn.2d 1020 (1989).....   | 16 |
| <i>Briggs v. Nova Services</i> ,<br>166 Wn.2d 794, 213 P.3d 910 (2009).....   | 6  |
| <i>Celotex Corp. v. Catrett</i> ,<br>477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265, (1986).....   | 8  |
| <i>Confederated Tribes &amp; Bands of Yakama Indian Nation v. Locke</i> ,<br>176 F.3d 467 (9th Cir. 1999) .....   | 23 |
| <i>Cook, Perkiss &amp; Liehe Inc. v Northern California Collection Service Inc.</i> ,<br>911 F.2d 242 (9th Cir. 1990) .....   | 13 |
| <i>ESCA Corp. v. KPMG Peat Marwick</i> ,<br>135 Wn.2d 820, 959 P.2d 651 (1998).....   | 20 |
| <i>Estate of Bordon ex rel. Anderson v. State, Dep’t of Corrections</i> ,<br>122 Wn. App. 227, 95 P.3d 764 (2004), <i>review denied</i> , 154 Wn.2d 1003, 114 P.3d 1198 (2005)..... | 16 |
| <i>Gall v. McDonald Indus.</i> ,<br>84 Wn. App. 194 926 P.2d 934 (1996), <i>review denied</i> , 131 Wn.2d 1013, 932 P.2d 1256 (1997).....   | 15 |

|  |    |
|--|----|
| <i>Gross v. Sunding</i> ,<br>139 Wn. App. 54, 161 P.3d 380 (2007).....                                     | 25 |
| <i>Grimwood v. Univ. of Puget Sound Inc.</i> ,<br>110 Wn.2d 355, 753 P.2d 517 (1988).....                  | 7  |
| <i>Hartley v. State</i> ,<br>103 Wn.2d 768, 698 P.2d 77 (1985).....  | 16 |
| <i>Havens v. C &amp; D Plastics, Inc.</i> ,<br>124 Wn.2d 158, 876 P.2d 435 (1994).....                     | 20 |
| <i>Holland v. America West Airlines</i> ,<br>416 F. Supp. 2d 1028 (W.D. Wash. 2006).....                   | 20 |
| <i>Hostetler v. Ward</i> ,<br>41 Wn. App. 343, 704 P.2d 1193,<br>review denied, 106 Wn.2d 1004 (1986)..... | 6  |
| <i>Kirkham v. Smith</i> ,<br>106 Wn. App. 177, 23 P.3d 10 (2001).....                                      | 10 |
| <i>Malang v. Dep't of Labor &amp; Indus.</i> ,<br>139 Wn. App. 677, 162 P.3d 450 (2007).....               | 7  |
| <i>McInnis &amp; Co. v. Western Tractor &amp; Equip. Co.</i> ,<br>63 Wn.2d 652, 388 P.2d 562 (1964).....   | 18 |
| <i>Newcal Industries, Inc. v. Ikon Office Solution</i> ,<br>513 F.3d 1038 (9th Cir. 2008) .....            | 13 |
| <i>Orion Corp. v. State</i> ,<br>103 Wn.2d 441, 693 P.2d 1369 (1985).....                                  | 7  |
| <i>Sherwood &amp; Roberts-Yakima, Inc. v. Leach</i> , 67 Wn.2d 630, 409 P.2d<br>160 (1966).....            | 17 |
| <i>State ex rel. Evans v. Brotherhood of Friends</i> ,<br>41 Wn.2d 133, 247 P.2d 787 (1952).....           | 17 |

|   |        |
|---|--------|
| <i>State ex rel. Schillberg v. Safeway Stores Inc.</i> ,<br>75 Wn.2d 339, 450 P.2d 949 (1969).....          | 17     |
| <i>T.W. Elec. Service, Inc. v. Pacific Elec. Contractors Ass'n.</i> ,<br>809 F.2d 626 (9th Cir. 1987) ..... | 8      |
| <i>Thao v. Control Data Corp.</i> ,<br>57 Wn. App. 802, 790 P.2d 1239 (1990).....                           | 17, 18 |
| <i>Van Dinter v. Orr</i> ,<br>157 Wn.2d 329, 138 P.3d 608 (2006).....                                       | 20     |
| <i>West Coast, Inc., v. Snohomish Cnty.</i> ,<br>112 Wn. App. 200, 48 P.3d 997 (2002).....                  | 10     |
| <i>Weyerhaeuser Co. v. Aetna Cas. &amp; Sur. Co.</i> ,<br>123 Wn.2d 891, 874 P.2d 142 (1994).....           | 7      |
| <i>White v. State</i> ,<br>131 Wn.2d 1, 929 P.2d 396 (1997).....  | 7      |
| <i>Young v. Key Pharm. Inc.</i> ,<br>112 Wn.2d 216, 770 P.2d 182 (1989).....                                | 8, 9   |

**Statutes**

|                          |        |
|--------------------------|--------|
| RCW 67.70.030 .....      | 22     |
| RCW 67.70.040 .....      | 18, 22 |
| RCW 67.70.040(1).....    | 19, 22 |
| RCW 67.70.040(1)(d)..... | 23     |
| RCW 67.70.050 .....      | 23     |
| RCW 67.70.050(6).....    | 23     |
| RCW 67.70.050(11).....   | 23     |
| RCW Ch. 67.70.....       | 22     |

**Other Authorities**

*6 Washington Practice: Washington Pattern Jury Instructions: Civil*  
15.10 (5th ed. supp. 2011) ..... 15

James J. White & Robert S. Summers,  
*Uniform Commercial Code* § 9-4, at 446-47 (3d ed. 1988)..... 13

**Rules**

CR 56 ..... 7

CR 56(e)..... 8

CR 56(f) ..... 24, 25

**Regulations**

WAC 315-06-095..... 23

WAC 315-06-120..... 18

WAC 315-06-120(18).....18, 19

## **I. STATEMENT OF THE ISSUES**

1. Did the trial court err in ruling that plaintiff failed to come forward with evidence sufficient to prove that he failed to win a promotional prize associated with the 2010 Thanksgiving Raffle because of alleged fraud committed by Washington's Lottery?

2. Did the trial court err in ruling that plaintiff failed to come forward with evidence sufficient to prove that he failed to win a promotional prize associated with the 2010 Thanksgiving Raffle because of misrepresentations made by Washington's Lottery that raffle tickets were "selling fast?"

## **II. STATEMENT OF THE CASE**

This lawsuit arises from James Brummett's purchase of 12 non-winning raffle tickets for the 2010 Thanksgiving Raffle, a game of chance operated by defendant Washington's Lottery. Plaintiff filed suit against Washington's Lottery, its director and commissioners and several of its employees alleging that the Lottery, its director and certain of its employees (collectively referred to as the State defendants) committed fraud and misrepresentation in the advertising and sale of 30 promotional "Early Bird" prizes related to the Thanksgiving Raffle by stating that raffle tickets were "selling fast." Plaintiff claims that these statements caused him and others to rush to purchase tickets in hopes of winning one

of 30 promotional prizes associated with the more than 200,000 raffle tickets which were sold. This, he claims, entitled him to damages for failure to win a promotional prize.

The trial court dismissed plaintiff's claim against Washington's Lottery and its advertising agent, defendant Cole & Weber. Plaintiff appeals these orders of dismissal.

### **III. COUNTERSTATEMENT OF FACTS**

Plaintiff James Brummett has been a self-described "avid player" of [Washington's] Lottery games since 1982. CP at 11. In August 2010 the Lottery Commission, the governing board of Washington's Lottery, approved a Thanksgiving Raffle. The Commission authorized the sale of 250,000 raffle tickets with 2,720 raffle prizes to be awarded at different prize levels in the raffle drawing which would be held on Thanksgiving Day 2010. Tickets, costing \$10 each, went on sale on October 17, 2010, through November 25, 2010. CP at 187-88; 216. Tickets were numbered sequentially starting with 000001. The published prize structure for the raffle included 20-\$50,000 prizes; 200-\$250 prizes and 2600-\$50 prizes for total cash raffle prizes of \$1,175,000. Odds of winning a raffle prize, assuming all 250,000 tickets were sold, was 1 in 92. CP at 188.

By definition raffle games are created with a finite number of tickets. Based upon sales of tickets for earlier raffles, it was initially

hoped and anticipated that all 250,000 tickets authorized would sell out quickly. CP at 189. In order to encourage the sale of raffle tickets, the Lottery Director authorized what was advertised as an “Early Bird” promotion of 30 instant win \$500 cash prizes paid at the point of sale. This was done, and is commonly done with lottery games, in order to call attention to the raffle and to promote the sale of all the raffle tickets. CP at 188; 197-98; 216. The promotional or “Early Bird” prizes were funded separately from the raffle drawing prizes and did not diminish the raffle prizes. CP at 188, 221-22.

Advertising at the points of sale for raffle tickets and radio advertising was prepared with the anticipation that raffle tickets would sell quickly. CP at 189. Promotional prizes, in this case the “Early Bird” prizes, were awarded at intervals on sequentially purchased tickets (every “nth” ticket) based upon projections of raffle ticket sales. No specific representations were made to the public by way of advertising, either at point of sale, radio advertising or otherwise, concerning the method for determining which ticket purchasers would be eligible to receive a \$500 promotional prize. CP at 188, 198.

Based upon the early projections of raffle ticket sales which were optimistic, defendant Stephen Wade, Ph.D., the research and development manager for Washington’s Lottery, set the “nth” ticket number for the

award of promotional prizes at every 8000 tickets sold. This meant that every person who purchased a raffle ticket sequentially numbered at 8000, 16,000, 24,000 et seq, would receive an instant promotional “Early Bird” prize of \$500 at the point of sale until all authorized 30 promotional prizes had been distributed. CP at 187-88. As Dr. Wade describes in his declaration, the initial determination of the “nth ticket” interval to award promotional prizes is always based initially upon the number of tickets staff reasonably estimate will be sold. It is adjusted periodically as the sale of tickets proceeds in order to be certain that all advertised promotional prizes are actually awarded. If a larger number of tickets are sold than originally anticipated, the “nth ticket” number is raised. Conversely, if a smaller number of raffle tickets are sold than originally anticipated, the “nth ticket” number is lowered. In this situation, the same number of promotional prizes was awarded on a smaller number of transactions. This is done to assure that all 30 promotional prizes will be awarded. CP at 188-89. This was not announced to the public. CP at 198.

No specific representations concerning the method used to award promotional prizes for the raffle were announced or advertised to the ticket buying public. In contrast to the raffle itself, where projected odds of purchasing a winning ticket of one in 92 were announced in advertising,

no projected odds were advertised concerning the promotional prizes. CP at 198. The point of sale and other advertising only stated that in addition to being eligible to participate in the raffle drawing that 30 “Early Bird” prizes would be available to certain purchasers at the point of sale. CP at 201-05. Advertising for the raffle stated that raffle tickets would be available for purchase on October 19, 2010, and reminded purchasers that “(T)here are only 250,000 Raffle Tickets available.” The ad went on to state “Once they are sold, they’re gone! Do not delay, get yours today!” CP at 201.

On or about November 15, 2010, less than two weeks prior to the raffle drawing date, it was brought to the attention of the Lottery Director Harold Hanson that, rather than being sold out and all 30 promotional “Early Bird” prizes having been awarded by this date as originally anticipated, 11 out of the authorized 30 promotional prizes remained because the sale of raffle tickets was much slower than anticipated. CP at 189, 216. Because of this, and consistent with promotional prizes awarded with other raffle games in which tickets sell at a different rate than originally anticipated, it was necessary to adjust the “nth” value for the remaining promotional prizes to every thousandth ticket sold. If this had not occurred, it would not have been possible to have awarded all 30 promotional prizes. CP at 189; 199; 216-17. After this change was made,

all promotional prizes were awarded. The final promotional prize went to the purchaser of ticket no. 179,000.<sup>1</sup> An additional 32,755 raffle tickets were sold after the promotional prize period ended. CP at 190.

Consistent with promotional prizes in other games, no representations were made concerning the likelihood of a purchaser of raffle tickets to win one of the promotional “Early Bird” prizes. CP at 198. Advertising for raffle tickets made no specific promises in regard to the promotional prizes and did not promise that any particular method would be used to select the winners of promotional prizes. The sole reference to the promotional prizes in advertising was to state that “Early Bird” prizes were available. CP at 198, 201-05.

#### IV. ISSUES AND ANALYSIS

##### A. Standard Of Review

This court engages in de novo review in reviewing an order granting a motion for summary judgment and engages in the same inquiry as the trial court. *E.g., Briggs v. Nova Services*, 166 Wn.2d 794, 213 P.3d 910 (2009); *Hostetler v. Ward*, 41 Wn. App. 343, 704 P.2d 1193, *review denied*, 106 Wn.2d 1004 (1986). The inquiry on appeal is whether the evidence shows that there is no genuine issue as to any material fact and

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<sup>1</sup> The fact that not all 250,000 raffle tickets were sold actually increased the odds of winning one of the 2,720 prizes in the final drawing from 1 in 92 to 1 in 78. CP at 190.

that the moving party is entitled to a judgment as a matter of law. *Malang v. Dep't of Labor & Indus.*, 139 Wn. App. 677, 162 P.3d 450 (2007).

It is well established that summary judgment is appropriate where the evidence, viewed in the light most favorable to the nonmoving party, demonstrates there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56; *Weyerhaeuser Co. v. Aetna Cas. & Sur. Co.*, 123 Wn.2d 891, 897, 874 P.2d 142 (1994). An issue of material fact is one upon which the outcome of the litigation depends. *Atherton Condominium Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 799 P.2d 250 (1990).

To defeat summary judgment, the non-moving party must come forward with specific, admissible evidence to sufficiently rebut the moving party's contentions and support all the necessary elements of the party's claims. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997). Conclusory allegations and opinions which are not founded on admissible facts cannot be considered in opposition to a motion for summary judgment. *Orion Corp. v. State*, 103 Wn.2d 441, 461-62, 693 P.2d 1369 (1985); *Grimwood v. Univ. of Puget Sound Inc.*, 110 Wn.2d 355, 753 P.2d 517 (1988).

In a summary judgment motion the moving party bears the initial burden of showing the absence of an issue of material fact. *Young v. Key*

*Pharm. Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). A moving defendant may meet this initial burden by pointing out to the court that there is an absence of evidence to support the plaintiff's case. *Young*, 112 Wn.2d at 225.

If the moving party is a defendant and meets this initial showing, then the inquiry shifts to the party with the burden of proof at trial, the plaintiff. If, at this point, the plaintiff "fails to make a showing sufficient to establish the existence of an element essential to that party's case and upon which that party will bear the burden of proof at trial," then the trial court should grant the motion and dismiss the plaintiff's claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265, (1986); see also *T.W. Elec. Service, Inc. v. Pacific Elec. Contractors Ass'n.*, 809 F.2d 626, 630-32 (9th Cir. 1987). In *Celotex*, the United States Supreme Court explained this result:

In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an initial element of the non-moving party's case necessarily renders all other facts immaterial.

477 U.S. at 322-23.

*Young* expressly adopted the *Celotex* reasoning and procedure. *Young*, 112 Wn.2d at 225-26. CR 56(e) states that the response, "by affidavits or as otherwise provided in this rule, must set forth specific facts

showing that there is a genuine issue for trial.” *Id.* at 225-26. The holding in *Young* requires that the plaintiff has the burden of affirmatively establishing in response to a motion for summary judgment that there is an issue of material fact as to each element of each cause of action asserted in his complaint. If he cannot, the motion must be granted.

**B. Summary Of The Argument**

In the present case plaintiff alleged in his complaint that Washington’s Lottery and the State defendants acted “fraudulently and negligently misrepresentation [sic] to induce Lottery game players to purchase tickets” by encouraging patrons in advertising to buy raffle tickets because they were “selling fast.” CP at 14-16. The Superior Court correctly ruled that plaintiff failed to come forward with admissible evidence to meet the high standard of proof to support the claims that he pled. CP at 598-99; (RP 26). The Superior Court did not err in granting the motion for summary judgment of Washington’s Lottery and the other State defendants because plaintiff failed to come forward with admissible evidence to oppose the defense motion raising issues of material fact which, if resolved in his favor, would meet his burden to prove the elements of fraud or any other possible claim made against State defendants.

**C. Plaintiff Has Failed To Come Forward With Evidence To Meet His Burden To Prove Fraud**

It is well established that fraud is never presumed, and that a plaintiff who alleges fraud must prove each of the elements of fraud by clear, cogent and convincing evidence. These elements include the following: (1) representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker's knowledge of its falsity or ignorance of the truth; (5) an intent that it be acted upon; (6) ignorance of the falsity on the part of the person to whom the representation is made; (7) the latter's reliance on the truth of the representation; (8) plaintiff's right to rely upon the representation; and (9) damages proximately caused by reliance on the false information. *E.g., West Coast, Inc., v. Snohomish Cnty*, 112 Wn. App. 200, 48 P.3d 997 (2002); *Kirkham v. Smith*, 106 Wn. App. 177, 23 P.3d 10 (2001). If plaintiff fails to prove any of these elements, his claim must be dismissed. *Id.*

**1. Plaintiff Has Failed To Prove Misrepresentation Of A Material Fact He Is Entitled To Rely Upon**

In the present case, even when all facts and reasonable inferences are viewed most favorably to plaintiff, it is not possible for plaintiff to meet this evidentiary burden. Plaintiff cannot establish under any factual scenario that Washington's Lottery, its employees or agents made any representation of fact concerning how the promotional Early Bird prizes

would be awarded. No representation was made that the promotional prizes would be selected by any particular method, only that 30 promotional prizes of \$500 each would be awarded. The only possible representation is that they would be selected from raffle tickets purchased “early” as opposed to raffle tickets purchased “later.” This is in fact what occurred. The 30 promotional prizes were in fact paid on tickets which were purchased prior to the sale of the final raffle ticket, and it is undisputed that the last of the promotional prizes were awarded prior to the sale of the final raffle ticket. In any case, the term “early” is a relative, not a specific term. No representation was made that the promotional prizes would be paid on the first 10 tickets purchased, the first one hundred tickets or the first one thousand tickets.

Employees of Washington’s Lottery made no specific representations of fact upon which purchasers of raffle tickets could rely upon other than the advertised statement that 30 promotional prizes of \$50 each would be paid from raffle tickets which were purchased earlier rather than later. That is what in fact did occur. All 30 promotional prizes were awarded and were awarded based upon the order in which raffle tickets were purchased.

Statements in advertising that tickets were “selling fast” could not be relied upon by purchasers of the raffle tickets that the promotional

prizes would be paid on any particular group of raffle ticket sales or would be paid on tickets purchased at any specific time during the ticket sales. Plaintiff contends that Washington's Lottery falsely advertised that the raffle tickets were "selling fast" (and made this so called representation even prior to one ticket being sold) that that this likely induced the public to purchase tickets before they sold out. He argues that this so called false statement caused persons, such as him, to rush to purchase tickets in hopes of winning a promotional prize before the ticket sales reached a certain point where he assumes that the promotional prizes would be gone. Statements that raffle tickets were "selling fast" cannot be considered a misrepresentation to support a claim of fraudulent advertising because it is not a statement of fact that can induce reliance by a reasonable consumer. At best it is merely "puffery" which cannot support a claim for fraud or negligent misrepresentation.

A statement made in the context of advertising is considered "puffery" when it merely states the seller's opinion, is a statement of obvious exaggeration or is a statement which is not an affirmation of facts or opinion that a reasonable consumer is entitled to rely upon. *Baughn v. Honda Motor Co., Ltd.*, 107 Wn.2d 127, 152, 727 P.2d 655 (1986) (statement in written advertisement that "you meet the nicest people on a Honda" is mere puffery); *Cook, Perkiss & Liehe Inc. v Northern*

*California Collection Service Inc.*, 911 F.2d 242, 246 (9th Cir. 1990) (statement in advertising that the defendant's costs were lower than any competitors was non-actionable puffery). *See also Newcal Industries, Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1053 (9th Cir. 2008). A statement that is quantifiable and that makes claim as to specific or absolute characteristics of a product, may be an actionable statement of fact while a general, subjective claim about a product is non-actionable puffery and cannot support a claim of fraud or misrepresentation. *Cook, Perkiss & Liehe Inc.*, 911 F.2d at 245; James J. White & Robert S. Summers, *Uniform Commercial Code* § 9-4, at 446-47 (3d ed. 1988).

Washington Lottery's statement in advertising that the raffle tickets were "selling fast" was general and subjective. The statement cannot be considered specific because "fast" is subjective to whomever the term is being stated by and therefore cannot be measured. For example, the Lottery did not state that they were selling 100 tickets every hour or that promotional prizes would be awarded on the first 30 tickets sold. An actionable statement that plaintiff could rely upon cannot be found in this case. Finally, statements made about the sale of tickets were not false. At the time that the advertising was prepared, it was hoped and anticipated, consistent with past raffles, that the tickets would in fact sell fast. CP at 189. As soon as Lottery staff learned that they were not in fact selling as

fast as anticipated, the Director authorized staff to adjust the method by which the promotional prizes were awarded, a method not announced to the public and not relied upon by any member of the public, in order to be certain that all 30 promotional prizes were in fact awarded consistent with the specific statement in advertisements that 30 promotional prizes would be awarded. CP at 189, 217.

Plaintiff himself admits in his complaint that he “did not know when he purchased his first eight Raffle Tickets of the 12 he bought that the “Early Bird” prizes were to be awarded every 8000 tickets sold.” CP at 16. He goes on to state that he only learned this information following his telephone conference with lottery counsel Jana Jones which he states took place after he purchased his ninth raffle ticket on November 15, 2010. CP at 16.

By his own admission, plaintiff did not purchase the majority of the 12 raffle tickets that he purchased in reliance that the promotional prizes would be awarded in any particular manner. He only purchased them on an assumption that the promotional prizes would be awarded on tickets purchased “earlier” rather than “later” but did not rely on any particular method of awarding the promotional prizes. In summary, no specific factual representations were made by employees of Washington’s Lottery concerning the method of awarding the promotional prizes upon

which plaintiff was entitled to rely upon or did in fact rely upon in making his decision to purchase 12 raffle tickets.

## **2. Plaintiff Cannot Prove Proximate Cause**

None of the state defendants made material misrepresentation of fact. Even had they done so, plaintiff's claim of fraud fails because he cannot prove proximate cause.

Plaintiff essentially claims that but for the so called "fraud" of the State defendants in promoting the possibility of winning an "Early Bird" prize, he would more likely have won a promotional prize. This claim is based upon pure speculation. Proximate cause included both (1) cause in fact and (2) legal causation. *Gall v. McDonald Indus.*, 84 Wn. App. 194, 207, 926 P.2d 934 (1996), *review denied*, 131 Wn.2d 1013, 932 P.2d 1256 (1997).

To establish cause in fact plaintiff must prove that but for defendant's tortious acts, he would not have suffered harm. This requires plaintiff to come forward with substantial evidence that some act or omission of the defendants produced injury to the plaintiff in a direct, unbroken sequence such that the injury would not have occurred "but for" the defendant's act or omission. *See 6 Washington Practice: Washington Pattern Jury Instructions: Civil 15.10* (5th ed. supp. 2011). Cause in fact "does not exist if the connection between an act and the later injury is

indirect and speculative.” *Estate of Bordon ex rel. Anderson v. State, Dep’t of Corrections*, 122 Wn. App. 227, 240, 95 P.3d 764 (2004), *review denied*, 154 Wn.2d 1003, 114 P.3d 1198 (2005). In the present case, to establish cause in fact plaintiff must prove that “but for” the change in the “nth” ticket number after November 15, he would have won a promotional prize. This is not possible to establish and would require the trier of fact to engage in pure speculation.

The other prong of proximate, legal causation, “requires a determination of whether liability should attach as a matter of law given the existence of cause in fact.” *Braegelmann v. County of Snohomish*, 53 Wn. App. 381, 384, 766 P.2d 1137, *review denied*, 112 Wn.2d 1020 (1989). This determination involves “mixed consideration of logic, common sense, justice, policy and precedent and is based upon considerations of public policy in determining when liability should attach for a tortious act committed by a defendant. *Id.* at 384-85. One consideration is how far the consequences of a defendant’s acts should extend. *Hartley v. State*, 103 Wn.2d 768, 698 P.2d 77 (1985).

In the present case plaintiff cannot prove either cause in fact or legal causation. Participation in a lottery is the purchase of an opportunity to win a prize purely by chance or lot, as opposed to skill or judgment. *State ex rel. Evans v. Brotherhood of Friends*, 41 Wn.2d 133, 150, 247

P.2d 787 (1952); *Sherwood & Roberts-Yakima, Inc. v. Leach*, 67 Wn.2d 630, 409 P.2d 160 (1966); *State ex rel. Schillberg v. Safeway Stores Inc.*, 75 Wn.2d 339, 344, 450 P.2d 949 (1969). Lottery schemes are “presented to the public as a general offer” to purchasers of a ticket who then have a “chance of winning a prize according to the advertised rules and procedures of the lottery.” *Thao v. Control Data Corp.*, 57 Wn. App. 802, 805, 790 P.2d 1239 (1990).

By purchasing a raffle ticket plaintiff, along with other purchasers, had a “chance” to win one of the promotional prizes at the time tickets were purchased. In addition, he and other purchasers had a “chance” to win one of the raffle prizes when the drawing took place on Thanksgiving Day. Advertising for the raffle made the following specific representations: the cost of each ticket was \$10; no more than 250,000 raffle tickets would be sold; sales started October 17, 2010, with the drawing to be held on Thanksgiving Day, November 25, 2010; tickets could only be purchased from a licensed Lottery retailer, and winning Raffle numbers must match all numbers on a ticket in the exact order to be eligible to win a prize. CP at 201-05. No specific representations were made concerning the method of awarding the promotional prizes. CP at 198. Plaintiff purchased only a “chance” to win one of the 30 promotional

prizes, along with a “chance” to win a prize in the raffle drawing. As a matter of law, this does not establish either cause in fact or legal cause.

### **3. Plaintiff’s Remedy Is Limited To A Replacement Ticket**

A plaintiff who establishes that a fraud was committed is not entitled to general damages or punitive damages but is only entitled to recover special damages which plaintiff proves were proximately caused by the fraud of the defendant. *E.g., McInnis & Co. v. Western Tractor & Equip. Co.*, 63 Wn.2d 652, 388 P.2d 562 (1964).

Even assuming that Washington’s Lottery falsely advertised plaintiff’s chances of winning a promotional prize, which it did not, plaintiff’s sole remedy is the issuance of replacements for the 12 raffle tickets which he purchased with tickets for another raffle game at a future date. WAC 315-06-120, the chapter of the Washington State Administrative Code governing the payment of Lottery prizes, provides that in the event a dispute occurs as to whether a ticket is a winning ticket, replacement of the disputed ticket(s) with an unplayed (or equivalent ticket) “*shall be the sole and exclusive remedy of the claimant.*” WAC 315-06-120(18) (emphasis added).<sup>2</sup> *See Appendix. See also Thao v. Control Data Corp.*, 57 Wn. App. 802.

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<sup>2</sup> Statutory authority for this regulation is set forth in RCW 67.70.040 which grants the Washington State Lottery Commission authority to adopt rules for the operation of a state lottery in order to produce “the maximum amount of net revenues for

If the State defendants acted in a fraudulent manner concerning the promotional prizes, which they did not, plaintiff has the right only to be restored to the economic position that he was in prior to purchasing the 12 raffle tickets. This is accomplished either by following WAC 315-06-120(18) and issuing him replacement tickets for a future raffle or, at best, by refunding the purchase price of his 12 raffle tickets which totaled \$120.

At the close of his complaint plaintiff prays for the “maximum amount allowed by law against Washington’s Lottery” and the other State defendants. CP at 23. At a maximum this is only either the right to receive 12 similarly prized tickets at a raffle drawing conducted by Washington’s Lottery at a future date or the \$120 cost of the raffle tickets that plaintiff purchased.

The Superior court did not err in dismissing plaintiff’s claim for fraud.

**D. Plaintiff Failed To Come Forward With Evidence Sufficient To Prove Negligent Misrepresentation**

In order to prove a claim for negligent misrepresentation, plaintiff must establish each of the following elements by clear and convincing evidence: (1) plaintiff was negligently supplied false information by the defendant; (2) the defendant knew or should have known that the information was false and knew would guide plaintiff to make a business

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the state consonant with the dignity of the State and the general welfare of the people.” RCW 67.70.040(1).

decision; (3) plaintiff justifiably relied upon the false information; (4) the false information was a proximate cause of plaintiff's damages. *Van Dinter v. Orr*, 157 Wn.2d 329, 138 P.3d 608 (2006); *Holland v. America West Airlines*, 416 F. Supp. 2d 1028 (W.D. Wash. 2006). In order to impose liability, the defendant must first have a duty to disclose the information. For purposes of proving negligent misrepresentation, there is no duty to disclose upon the defendant unless the duty is imposed by a fiduciary or quasi fiduciary relationship or some other special relationship imposed by statute or otherwise. *Van Dinter*, 157 Wn.2d at 334. As with fraud, plaintiff must show justifiable reliance on the misrepresented information and that the misrepresentation was a proximate cause of pecuniary loss to plaintiff. *ESCA Corp. v. KPMG Peat Marwick*, 135 Wn.2d 820, 959 P.2d 651 (1998). If liability is found for negligent misrepresentation, plaintiff may recover only his pecuniary loss caused by his justifiable reliance. *Havens v. C & D Plastics, Inc.*, 124 Wn.2d 158, 876 P.2d 435 (1994).

Plaintiff argues in his brief that negligent misrepresentation occurred by the Lottery's advertisement prior to the beginning of the sale of raffle tickets that the tickets were selling fast. As with plaintiff's claim of fraud, this is not misrepresentation of a fact that plaintiff was justified in relying upon in making a decision concerning the purchase of raffle

tickets and the possible eligibility to receive a promotional prize. Instead, it is a generalized statement, more properly characterized as “puffery,” that plaintiff was not entitled to rely upon. *Infra* pp. 11-12. Further, even if this statement was a negligent statement upon which plaintiff was entitled to rely in making his decisions concerning when to purchase a raffle ticket, plaintiff cannot prove proximate cause.

It is pure speculation to argue that but for this so called misrepresentation had plaintiff purchased more raffle tickets toward the end of the sale as opposed to the beginning that he would have received one of the 30 promotional prizes that were eventually distributed over 179,000 sales of raffle tickets. In any case, plaintiff would be limited to recovery of his pecuniary loss which, at best, would be refund of \$120 expended to purchase the 12 raffle tickets that he purchased. *Infra* pp. 16-17.

Plaintiff also appears to argue that Washington’s Lottery, its director and employees committed negligent misrepresentation when they failed to disclose the actual method (the “nth” number) used to award promotional prizes. This claim has absolutely no merit because Washington’s Lottery had no duty to disclose this information to the

public.<sup>3</sup> Washington's Lottery had no fiduciary or quasi fiduciary relationship with plaintiff and other members of the public who purchase lottery tickets that required Washington's Lottery to disclose the method by which the promotional prizes were awarded. Nothing in statutes or regulations governing operation of the Lottery created a duty to require the disclosure of this information. No such duty arises out of RCW Ch. 67.70, the statute which established the Lottery "consonant with the dignity of the state and the general welfare of the people." RCW 67.70.040(1).

Plaintiff's claims of negligent misrepresentation and negligence fail as a matter of law because plaintiff has failed to come forward with evidence sufficient to meet his burden to prove the elements of the claim of negligent misrepresentation.

**E. The Director of Washington's Lottery Acted Lawfully When He Directed That The "Nth" Number For The Award Of Promotional Prizes Be Adjusted**

Washington's Lottery is a state agency which is operated by an independent commission whose members are appointed by the governor.

RCW 67.70.030, RCW 67.70.040 grants the commission the authority and

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<sup>3</sup> In his brief plaintiff argues that that the Lottery was "negligent" in failing to "front load" the promotional prizes and in changing the "nth" number to 1000 in November 2010 from 8000. Plaintiff did not plead a claim for negligence in his complaint and did not argue this claim to the Superior court. As such, he cannot now raise this issue on appeal. In any case, the Lottery had no duty to plaintiff to award the promotional prizes in any particular manner. If such a duty was owed, it was owed to the public at large and not to plaintiff individually. *E.g., Aba Sheikh v. Choe*, 156 Wn.2d 441, 448, 128 P.3d 574 (2006).

duty to adopt rules for the operation of the lottery as it deems necessary and desirable in order to maximize net revenues for the State “consonant with the dignity of the State and general welfare of the people.” Included is the authority to adopt rules concerning the manner of selecting winning tickets. RCW 67.70.040(1)(d). *See also Confederated Tribes & Bands of Yakama Indian Nation v. Locke*, 176 F.3d 467, 470 (9th Cir. 1999). RCW 67.70.050 vests authority to supervise the operation of the Lottery in its director. RCW 67.70.050(6) and (11) and WAC 315-06-095 grant the Lottery director authority to conduct promotions:

The director has the authority to conduct promotional contests of chance for the enhancement of ticket sales.

WAC 315-06-095. *See Appendix.*

Inherent in this grant of authority includes the authority of the Lottery director to adjust the manner in which the promotional prizes would be awarded for the Thanksgiving Day Raffle to be certain that all promotional prizes would be awarded. Contrary to plaintiff’s assertions in his brief, the Lottery Director is not required to award promotional prizes in any particular manner.

Lottery Director Harold Hanson acted within his authority to conduct promotions when he learned from staff in mid-November 2010 that the sale of raffle tickets was slower than originally anticipated and

directed his staff to adjust the “nth” ticket number for payment of the promotional prizes in order to insure that all 30 promotional prizes were in fact awarded. Just as Director Hanson exercised the authority to authorize the sale of 30 promotional prizes, he had the authority to direct the manner in which the promotional prizes were awarded. This did not contradict any express representations made concerning how the promotional prizes would be awarded. As a matter of law, the change in the manner in which the promotional prizes were awarded at the direction of the Lottery Director does not constitute fraud.

As a matter of law the Lottery Director had the authority to determine the manner in which promotional prizes were awarded. Contrary to plaintiff’s argument, the Director was not required to use any particular method to award the promotional prizes.

**F. Plaintiff Was Not Entitled To A Continuance To Conduct Discovery Because He Failed To Move For A Continuance Of The Motions For Summary Judgment Pursuant To CR 56(f)**

Plaintiff argues in his brief that the Superior court should not have granted the motions for summary judgment of the defendants because he should have been allowed to take depositions and pursue other discovery. This argument has no merit because plaintiff failed to move for a continuance of the summary judgment motions pursuant to CR 56(f).

CR 56(f) provides that when a party opposing a motion for summary judgment cannot, for reasons stated, present by affidavits facts essential to justify his opposition to the motion for summary judgment that the court may order a continuance to permit the non-moving party to obtain affidavits sufficient to oppose the motion for summary judgment. In the present case, however, plaintiff failed to make a motion to continue the motions for summary judgment supported by a declaration explaining what facts he could obtain by way of further discovery and how such facts would be material to the outcome of the motion. *Gross v. Sunding*, 139 Wn. App. 54, 68, 161 P.3d 380 (2007) (and cases cited therein) (a party opposing a motion for summary judgment was not entitled to a continuance to conduct depositions because the non-moving party was unable to demonstrate that the information anticipated to be discovered would be material to the outcome.).

Plaintiff failed to move for a continuance pursuant to CR 56(f) and failed to come forward with an affidavit demonstrating how the anticipated discovery would give rise to a material issue of fact. Even if he had moved for a continuance as required by CR 56(f), he is unable to demonstrate that the information he thought he would obtain in discovery would be material to the outcome. The trial court did not err in granting the motions for summary judgment despite plaintiff's insistence now that

he should have been allowed to take depositions and conduct further discovery.

## V. CONCLUSION

Washington's Lottery did not make fraudulent representations concerning the award of promotional prizes that plaintiff and other members of the ticket buying public were entitled to rely upon when making a decision to purchase raffle tickets. Statements made in initial advertising that raffle tickets were "selling fast" were made in good faith based upon sales of raffle tickets in earlier raffles. No representations of any particular method by which promotional prizes would be selected were made sufficient to justify reliance by the public. By purchasing a raffle ticket, plaintiff and other members of the public purchased a "chance" to win one of the raffle prizes and a "chance" to win one of the 30 promotional prizes, all of which were awarded prior to the end of the sale.

By definition, a lottery involves the sale of a finite number of tickets. No profit motive was involved when the "nth" number for the award of promotional prizes was changed in order to be certain that all 30 advertised promotional prizes were in fact awarded. The fact that fewer raffle tickets were sold than originally anticipated increased each purchaser's chance of winning one of the raffle prizes. Plaintiff has failed

to meet the high burden of proof necessary to prove each element of fraud and misrepresentation by clear, cogent and convincing evidence.

Defendant Washington's Lottery and the other State defendants respectfully ask that the order of Thurston County Superior Court Judge Carol Murphy granting the motion for summary judgment of the State defendants be affirmed.

RESPECTFULLY SUBMITTED this 28th day of September, 2011.

ROBERT M. MCKENNA  
Attorney General



PATRICIA C. FETTERLY, WSBA #8425  
Assistant Attorney General  
Attorney for Respondents

**CERTIFICATE OF SERVICE**

Pursuant to RAP 10.2(h), I caused the foregoing document described as *Brief of Respondent* to be mailed on the 28th day of September, 2011, on all interested parties to this action as follows:

US Mail to: James L. Brummett, *Appellant*  
P.O. Box 731903  
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US Mail to: Mr. Charles A. Willmes  
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3101 Western Avenue, Suite 200  
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BY \_\_\_\_\_  
STATE OF WASHINGTON  
11 SEP 28 PM 4:25  
COURT OF APPEALS  
DIANE BROWN

  
C. A. MEYER

# **APPENDIX**

**67.42.090 Bungee jumping—Permission.** (1) Bungee jumping from a publicly owned bridge or publicly owned land is allowed only if permission has been granted by the government body that has jurisdiction over the bridge or land.

(2) Bungee jumping into publicly owned waters is allowed only if permission has been granted by the government body that has jurisdiction over the body of water.

(3) Bungee jumping from a privately owned bridge is allowed only if permission has been granted by the owner of the bridge. [1993 c 203 § 6.]

**Findings—Intent—1993 c 203:** See note following RCW 67.42.010.

**67.42.900 Severability—1985 c 262.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 262 § 10.]

**67.42.901 Effective date—1985 c 262.** This act shall take effect on January 1, 1986. [1985 c 262 § 11.]

## Chapter 67.70 RCW STATE LOTTERY

### Sections

|           |  |
|-----------|--|
| 67.70.010 | Definitions.   |
| 67.70.030 | State lottery commission created—Membership—Terms—Vacancies—Chairman—Quorum.   |
| 67.70.040 | Powers and duties of commission—When legislative approval required.  |
| 67.70.042 | Scratch games—Baseball stadium construction.   |
| 67.70.043 | New games—Stadium and exhibition center bonds, operation, and development—Youth athletic facilities.   |
| 67.70.044 | Shared game lottery.   |
| 67.70.050 | Office of director created—Appointment—Salary—Duties.  |
| 67.70.055 | Activities prohibited to officers, employees, and members.   |
| 67.70.060 | Powers of director.  |
| 67.70.070 | Licenses for lottery sales agents—Factors—"Person" defined.  |
| 67.70.080 | License as authority to act.   |
| 67.70.090 | Denial, suspension, and revocation of licenses.  |
| 67.70.100 | Assignment of rights prohibited—Exceptions—Notices—Assignment of payment of remainder of an annuity—Intervention—Limitation on payment by director—Rules—Recovery of costs of commission—Federal ruling required—Discharge of liability. |
| 67.70.110 | Maximum price of ticket or share limited—Sale by other than licensed agent prohibited.   |
| 67.70.120 | Sale to minor prohibited—Exception—Penalties.  |
| 67.70.125 | Use of public assistance electronic benefit cards prohibited—Licensee to report violations.  |
| 67.70.130 | Prohibited acts—Penalty.   |
| 67.70.140 | Penalty for unlicensed activity.   |
| 67.70.150 | Penalty for false or misleading statement or entry or failure to produce documents.  |
| 67.70.160 | Penalty for violation of chapter—Exceptions.   |
| 67.70.170 | Penalty for violation of rules—Exceptions.   |
| 67.70.180 | Persons prohibited from purchasing tickets or shares or receiving prizes—Penalty.  |
| 67.70.190 | Unclaimed prizes.  |
| 67.70.200 | Deposit of moneys received by agents from sales—Power of director—Reports.   |
| 67.70.210 | Other law inapplicable to sale of tickets or shares.   |
| 67.70.220 | Payment of prizes to minor.  |
| 67.70.230 | State lottery account created.   |
| 67.70.240 | Use of moneys in state lottery account limited.  |
| 67.70.241 | Promotion of lottery by person or entity responsible for operating stadium and exhibition center—Commission approval—Cessation of obligation.  |
| 67.70.250 | Methods for payment of prizes by installments.   |
| 67.70.255 | Debts owed to state agency or political subdivision—Debt information to lottery commission—Prize set off against debts.  |
| 67.70.260 | Lottery administrative account created.  |
| 67.70.270 | Members of commission—Compensation—Travel expenses.  |

|           |  |
|-----------|--|
| 67.70.280 | Application of administrative procedure act.   |
| 67.70.290 | Post-audits by state auditor.  |
| 67.70.300 | Investigations by attorney general authorized.   |
| 67.70.310 | Management review by director of financial management.                                   |
| 67.70.320 | Verification by certified public accountant.   |
| 67.70.330 | Enforcement powers of director—Office of the director designated law enforcement agency. |
| 67.70.340 | Transfer of shared game lottery proceeds.  |
| 67.70.902 | Construction—1982 2nd ex.s. c 7.   |
| 67.70.903 | Severability—1982 2nd ex.s. c 7.   |
| 67.70.904 | Severability—1985 c 375.   |
| 67.70.905 | Effective date—1985 c 375.   |

*Pathological gamblers, information for:* RCW 9.46.071.

*Problem and pathological gambling treatment:* RCW 43.20A.890.

**67.70.010 Definitions.** For the purposes of this chapter:

(1) "Commission" means the state lottery commission established by this chapter;

(2) "Director" means the director of the state lottery established by this chapter;

(3) "Lottery" or "state lottery" means the lottery established and operated pursuant to this chapter;

(4) "Online game" means a lottery game in which a player pays a fee to a lottery retailer and selects a combination of digits, numbers, or symbols, type and amount of play, and receives a computer-generated ticket with those selections, and the lottery separately draws or selects the winning combination or combinations;

(5) "Shared game lottery" means any lottery activity in which the commission participates under written agreement between the commission, on behalf of the state, and any other state or states. [2002 c 349 § 1; 1994 c 218 § 3; 1987 c 511 § 1; 1982 2nd ex.s. c 7 § 1.]

**Effective date—1994 c 218:** See note following RCW 9.46.010.

**67.70.030 State lottery commission created—Membership—Terms—Vacancies—Chairman—Quorum.** There is created the state lottery commission to consist of five members appointed by the governor with the consent of the senate. Of the initial members, one shall serve a term of two years, one shall serve a term of three years, one shall serve a term of four years, one shall serve a term of five years, and one shall serve a term of six years. Their successors, all of whom shall be citizen members appointed by the governor with the consent of the senate, upon being appointed and qualified, shall serve six-year terms. No member of the commission who has served a full six-year term is eligible for reappointment. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which the vacancy occurs.

The governor shall designate one member of the commission to serve as chairman at the governor's pleasure.

A majority of the members shall constitute a quorum for the transaction of business. [1982 2nd ex.s. c 7 § 3.]

**67.70.040 Powers and duties of commission—When legislative approval required.** The commission shall have the power, and it shall be its duty:

(1) To adopt rules governing the establishment and operation of a state lottery as it deems necessary and desirable in order that such a lottery be initiated at the earliest feasible practicable time, and in order that such lottery produce the maximum amount of net revenues for the state consistent

with the dignity of the state and the general welfare of the people. Such rules shall include, but shall not be limited to, the following:

(a) The type of lottery to be conducted which may include the selling of tickets or shares, but such tickets or shares may not be sold over the internet. The use of electronic or mechanical devices or video terminals which allow for individual play against such devices or terminals shall be prohibited. An affirmative vote of sixty percent of both houses of the legislature is required before offering any game allowing or requiring a player to become eligible for a prize or to otherwise play any portion of the game by interacting with any device or terminal involving digital, video, or other electronic representations of any game of chance, including scratch tickets, pull-tabs, bingo, poker or other cards, dice, roulette, keno, or slot machines. Approval of the legislature shall be required before entering any agreement with other state lotteries to conduct shared games;

(b) The price, or prices, of tickets or shares in the lottery;

(c) The numbers and sizes of the prizes on the winning tickets or shares;

(d) The manner of selecting the winning tickets or shares, except as limited by (a) of this subsection;

(e) The manner and time of payment of prizes to the holder of winning tickets or shares which, at the director's option, may be paid in lump sum amounts or installments over a period of years;

(f) The frequency of the drawings or selections of winning tickets or shares. Approval of the legislature is required before conducting any online game in which the drawing or selection of winning tickets occurs more frequently than once every twenty-four hours;

(g) Without limit as to number, the type or types of locations at which tickets or shares may be sold;

(h) The method to be used in selling tickets or shares, except as limited by (a) of this subsection;

(i) The licensing of agents to sell or distribute tickets or shares, except that a person under the age of eighteen shall not be licensed as an agent;

(j) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public;

(k) The apportionment of the total revenues accruing from the sale of lottery tickets or shares and from all other sources among: (i) The payment of prizes to the holders of winning tickets or shares, which shall not be less than forty-five percent of the gross annual revenue from such lottery, (ii) transfers to the lottery administrative account created by RCW 67.70.260, and (iii) transfer to the state's general fund. Transfers to the state general fund shall be made in compliance with RCW 43.01.050;

(1) Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

(2) To ensure that in each place authorized to sell lottery tickets or shares, on the back of the ticket or share, and in any advertising or promotion there shall be conspicuously displayed an estimate of the probability of purchasing a winning ticket.

(3) To amend, repeal, or supplement any such rules from time to time as it deems necessary or desirable.

(4) To advise and make recommendations to the director for the operation and administration of the lottery. [2006 c 290 § 3; 1994 c 218 § 4; 1991 c 359 § 1; 1988 c 289 § 801; 1987 c 511 § 2; 1985 c 375 § 1; 1982 2nd ex.s. c 7 § 4.]

**State policy—2006 c 290:** See note following RCW 9.46.240.

**Effective date—1994 c 218:** See note following RCW 9.46.010.

**Severability—1988 c 289:** See note following RCW 50.16.070.

**67.70.042 Scratch games—Baseball stadium construction.** The lottery commission shall conduct at least two but not more than four scratch games with sports themes per year. These games are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(4). [1997 c 220 § 207 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 104.]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

*State contribution for baseball stadium limited: RCW 82.14.0486.*

**67.70.043 New games—Stadium and exhibition center bonds, operation, and development—Youth athletic facilities.** The lottery commission shall conduct new games that are in addition to any games conducted under RCW 67.70.042 and are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(5). No game may be conducted under this section before January 1, 1998. No game may be conducted under this section after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met, and no game is required to be conducted after the distributions cease under RCW 67.70.240(5).

For the purposes of this section, the lottery may accept and market prize promotions provided in conjunction with private-sector marketing efforts. [1997 c 220 § 205 (Referendum Bill No. 48, approved June 17, 1997).]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**67.70.044 Shared game lottery.** (1) Pursuant to RCW 67.70.040(1)(a), the commission may enter into the multi-state agreement establishing a shared game lottery known as "The Big Game," that was entered into by party state lotteries in August 1996 and subsequently amended.

(2) The shared game lottery account is created as a separate account outside the state treasury. The account is managed, maintained, and controlled by the commission and consists of all revenues received from the sale of shared game lottery tickets or shares, and all other moneys credited or transferred to it from any other fund or source under law. The

account is allotted according to chapter 43.88 RCW. [2002 c 349 § 2.]

**67.70.050 Office of director created—Appointment—Salary—Duties.** There is created the office of director of the state lottery. The director shall be appointed by the governor with the consent of the senate. The director shall serve at the pleasure of the governor and shall receive such salary as is determined by the governor, but in no case may the director's salary be more than ninety percent of the salary of the governor. The director shall:

(1) Supervise and administer the operation of the lottery in accordance with the provisions of this chapter and with the rules of the commission.

(2) Appoint such deputy and assistant directors as may be required to carry out the functions and duties of his office: PROVIDED, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such deputy and assistant directors.

(3) Appoint such professional, technical, and clerical assistants and employees as may be necessary to perform the duties imposed by this chapter: PROVIDED, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such employees as are engaged in undercover audit or investigative work or security operations but shall apply to other employees appointed by the director, except as provided for in subsection (2) of this section.

(4) In accordance with the provisions of this chapter and the rules of the commission, license as agents to sell or distribute lottery tickets such persons as in his opinion will best serve the public convenience and promote the sale of tickets or shares. The director may require a bond from any licensed agent, in such amount as provided in the rules of the commission. Every licensed agent shall prominently display his license, or a copy thereof, as provided in the rules of the commission. License fees may be established by the commission, and, if established, shall be deposited in the state lottery account created by RCW 67.70.230.

(5) Confer regularly as necessary or desirable with the commission on the operation and administration of the lottery; make available for inspection by the commission, upon request, all books, records, files, and other information and documents of the lottery; and advise the commission and recommend such matters as the director deems necessary and advisable to improve the operation and administration of the lottery.

(6) Subject to the applicable laws relating to public contracts, enter into contracts for the operation of the lottery, or any part thereof, and into contracts for the promotion of the lottery. No contract awarded or entered into by the director may be assigned by the holder thereof except by specific approval of the commission: PROVIDED, That nothing in this chapter authorizes the director to enter into public contracts for the regular and permanent administration of the lottery after the initial development and implementation.

(7) Certify quarterly to the state treasurer and the commission a full and complete statement of lottery revenues, prize disbursements, and other expenses for the preceding quarter.

(8) Carry on a continuous study and investigation of the lottery throughout the state: (a) For the purpose of ascertain-

ing any defects in this chapter or in the rules issued thereunder by reason whereof any abuses in the administration and operation of the lottery or any evasion of this chapter or the rules may arise or be practiced, (b) for the purpose of formulating recommendations for changes in this chapter and the rules promulgated thereunder to prevent such abuses and evasions, (c) to guard against the use of this chapter and the rules issued thereunder as a cloak for the carrying on of professional gambling and crime, and (d) to ensure that this chapter and rules shall be in such form and be so administered as to serve the true purposes of this chapter.

(9) Make a continuous study and investigation of: (a) The operation and the administration of similar laws which may be in effect in other states or countries, (b) the operation of an additional game or games for the benefit of a particular program or purpose, (c) any literature on the subject which from time to time may be published or available, (d) any federal laws which may affect the operation of the lottery, and (e) the reaction of the citizens of this state to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this chapter.

(10) Have all enforcement powers granted in chapter 9.46 RCW.

(11) Perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [1998 c 245 § 106. Prior: 1987 c 511 § 3; 1987 c 505 § 57; 1986 c 158 § 21; 1985 c 375 § 2; 1982 2nd ex.s. c 7 § 5.]

**67.70.055 Activities prohibited to officers, employees, and members.** The director, deputy directors, any assistant directors, and employees of the state lottery and members of the lottery commission shall not:

(1) Serve as an officer or manager of any corporation or organization which conducts a lottery or gambling activity;

(2) Receive or share in, directly or indirectly, the gross profits of any lottery or other gambling activity regulated by the gambling commission;

(3) Be beneficially interested in any contract for the manufacture or sale of gambling devices, the conduct of a lottery or other gambling activity, or the provision of independent consultant services in connection with a lottery or other gambling activity. [1987 c 511 § 4; 1986 c 4 § 2.]

**67.70.060 Powers of director.** (1) The director or the director's authorized representative may:

(a) Make necessary public or private investigation within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the director or an administrative law judge

**WAC 315-06-095 Promotional contests of chance.**

The director has the authority to conduct promotional contests of chance for the enhancement of ticket sales.

[Statutory Authority: RCW 67.70.040. 91-20-062, § 315-06-095, filed 9/25/91, effective 10/26/91.]

**WAC 315-06-120 Payment of prizes—General provisions.** (1) The director may designate claim centers for the filing of prize claims, and the location of such centers shall be publicized from time to time by the director.

(2) A claim shall be entered in the name of one claimant, which shall be either a natural person, association, corporation, general or limited partnership, club, trust, estate, society, company, joint stock company, receiver, trustee, or another acting in a fiduciary or representative capacity whether appointed by a court or otherwise. A claim which includes one or more tickets with an address label or stamp on the back of the ticket shall be deemed to have been entered in the name of one claimant: Provided, That if the address label or stamp contains the name of more than one claimant, the prize payment will be made to the one who has signed the ticket and/or claim form or, if there is no signature, to the first claimant listed on the address label or stamp. If there are two or more claimant names written or signed on the ticket, lottery personnel shall return the ticket(s) to claimants and shall request that the claimants sign a notarized statement relinquishing ownership to one claimant. The claimant must submit his or her Social Security number (SSN) or the federal employer's identification number (FEIN) when claiming any prize exceeding six hundred dollars.

(3) A claim may be entered in the name of a claimant other than a natural person only if the claimant is a legal entity and possesses a federal employer's identification number (FEIN) as issued by the Internal Revenue Service, such number is shown on the claim form and the entity's terms comply with subsection (4) of this section. Groups, family units, organizations, clubs, or other organizations which are

not a legal entity, or do not possess a federal employer's identification number, shall designate one natural person or one legal entity in whose name the claim is to be entered.

(4) The terms governing a claimant other than a natural person, i.e., articles of incorporation, trust terms, etc., shall be submitted to the director for approval. Terms not in compliance with lottery statutes or rules shall not be approved. Payment shall not be made to a claimant other than a natural person until the director has approved the terms.

All claimants other than natural persons shall have governing terms which:

(a) Prohibit deletion, amendment, or addition of terms without the director's approval;

(b) State the names of all natural persons who have a direct or indirect right or interest in the claimant, each of their percentage interests and their Social Security numbers;

(c) Acknowledge that the debt collection process mandated by RCW 67.70.255 and WAC 315-06-125 shall be applied to the natural persons who hold interests in the claimant through their Social Security numbers; and

(d) Provide that in the event the claimant ceases to exist prior to the full payout of the prize, the lottery will not make further payment without court order.

(5) The lottery shall not make payment to a claimant other than a natural person unless the terms governing the claimant include those enumerated in subsection (4) of this section.

(6) Unless otherwise provided in the rules for a specific type of game, a claimant shall sign the back of the ticket and/or complete and sign a claim form approved by the director. The claimant shall submit the claim form and/or claimant's ticket to the lottery in accordance with the director's instructions as stated in the game brochure and/or on the back of the ticket or submit a request for reconstruction of an alleged winning ticket and sufficient evidence to enable reconstruction and that the claimant had submitted a claim for the prize, if any, for that ticket. The claimant, by submitting the claim or request for reconstruction, agrees to the following provisions:

(a) The discharge of the state, its officials, officers, employees, and the commission of all further liability upon payment of the prize; and

(b) The authorization to use the claimant's name and, upon written permission, photograph for publicity purposes by the lottery.

(7) A prize must be claimed within the time limits prescribed by the director in the instructions for the conduct of a specific game, but in no case shall a prize be claimed later than one hundred eighty days, except a shared game lottery, after the official end of that instant game or draw game drawing for which that draw game ticket was purchased.

(8) The director may deny awarding a prize to a claimant if:

(a) The ticket was not legally issued initially;

(b) The ticket was stolen from the commission, director, its employees or retailers, or from a lottery retailer; or

(c) The ticket has been altered or forged, or has otherwise been mutilated such that the authenticity of the ticket cannot be reasonably assured by the director.

(9) No natural person or legal entity entitled to a prize may assign the right to payment, except under the following limited circumstances:

(a) That payment of a prize may be made to any court appointed legal representative, including, but not limited to, guardians, executors, administrators, receivers, or other court appointed assignees; and

(b) When payment of all or part of the remainder of an annuity and the right to receive future annual prize payments has been voluntarily assigned to another person, pursuant to an appropriate judicial order that meets the requirements of RCW 67.70.100(2).

(10) In the event that there is a dispute or it appears that a dispute may occur relative to any prize, the director may refrain from making payment of the prize pending a final determination by the director or by a court of competent jurisdiction relative to the same.

(11) A ticket that has been legally issued by a lottery retailer is a bearer instrument until signed. The person who signs the ticket or has possession of an unsigned ticket is considered the bearer of the ticket. Payment of any prize may be made to the bearer, and all liability of the state, its officials, officers, and employees and of the commission, director and employees of the commission terminates upon payment.

(12) All prizes shall be paid within a reasonable time after the claims are validated by the director and a winner is determined. Provided, prizes paid for claims validated pursuant to WAC 315-10-070(2) shall not be paid prior to one hundred eighty-one days after the official end of that instant game.

(13) The date of the first installment payment of each prize to be paid in installment payments shall be the date the claim is validated, or the date the winner makes a choice of payment by annual payments or by single cash payment pursuant to WAC 315-34-057. Subsequent installment payments shall be made as follows:

(a) If the prize was awarded as the result of a drawing conducted by the lottery, installment payments shall be made weekly, monthly, or annually from the date of the drawing in accordance with the type of prize awarded.

(b) If the prize was awarded in a manner other than a drawing conducted by the lottery, installment payments shall be made weekly, monthly, or annually from the date the claim is validated in accordance with the type of prize awarded.

(14) The director may, at any time, delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim or any other matter that may have come to his or her attention. All delayed payments shall be brought up to date immediately upon the director's confirmation and continue to be paid on each originally scheduled payment date thereafter.

(15) If any prize is payable for the life of the winner, only a natural person may claim such a prize. Such "win for life" type prizes shall cease upon the death of the winner or the end of a guaranteed payment period (if any), whichever is later. Win for life prizes may be assigned; and the following conditions apply to such assignments:

(a) The original winner's actual life shall determine when prize payments cease; and

(b) The assignee shall be responsible for notifying the lottery of the original winner's death.

(16) The director's decisions and judgments in respect to the determination of a winning ticket or of any other dispute arising from the payment or awarding of prizes shall be final and binding upon all participants in the lottery.

(17) Each lottery retailer shall pay all prizes authorized to be paid by the lottery retailer by these rules during its normal business hours at the location designated on its license.

(18) In the event a dispute between the director and the claimant occurs as to whether the ticket is a winning ticket, and if the ticket prize is not paid, the director may, solely at his or her option, replace the disputed ticket with an unplayed ticket (or tickets of equivalent sales price from any game). This shall be the sole and exclusive remedy of the claimant.

(19) At the director's discretion, the lottery may designate an alternative payment date for prize payment.

[Statutory Authority: RCW 67.70-040 [67.70.040] (1)(3). 10-16-025, § 315-06-120, filed 7/23/10, effective 8/23/10. Statutory Authority: RCW 67.70.040. 08-11-043, § 315-06-120, filed 5/14/08, effective 6/14/08; 00-24-103, § 315-06-120, filed 12/6/00, effective 1/6/01; 00-12-032, § 315-06-120, filed 5/30/00, effective 6/30/00; 99-19-103, § 315-06-120, filed 9/20/99, effective 10/21/99; 97-20-052, § 315-06-120, filed 9/24/97, effective 10/25/97; 96-19-071, § 315-06-120, filed 9/17/96, effective 10/18/96; 96-15-124, § 315-06-120, filed 7/24/96, effective 8/24/96; 94-19-062, § 315-06-120, filed 9/20/94, effective 10/21/94; 93-04-004, § 315-06-120, filed 1/21/93, effective 2/21/93; 91-03-036, § 315-06-120, filed 1/9/91, effective 2/9/91; 89-12-042 (Order 116), § 315-06-120, filed 6/1/89; 87-17-012 (Order 103), § 315-06-120, filed 8/10/87; 87-01-057 (Order 96), § 315-06-120, filed 12/16/86; 86-01-060 (Order 83), § 315-06-120, filed 12/16/85; 85-16-031 (Order 77), § 315-06-120, filed 7/30/85; 84-19-045 (Order 64), § 315-06-120, filed 9/17/84; 84-09-008 (Order 54), § 315-06-120, filed 4/9/84; 84-01-002 (Order 41), § 315-06-120, filed 12/8/83. Statutory Authority: RCW 67.70.040 and 67.70.050. 83-05-029 (Order 14), § 315-06-120, filed 2/10/83.]