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Bill Analysis

Legislative Service Commission

Sub. S.B. 226

124th General Assembly
(As Passed by the Senate)

Sens. Blessing, Robert Gardner, Goodman, Fingerhut, DiDonato, Mallory, Spada, Roberts

BILL SUMMARY

- Permits the transfer of a lottery prize award pursuant to a transfer agreement, upon the prior approval of a court of competent jurisdiction.
- Requires that a transferee provide to a lottery prize winner or transferor a detailed disclosure statement of prize award payments to be transferred under the agreement, including their amounts, due dates, and discounted present value.
- Establishes procedures for filing an application with the court for approval of the transfer.

CONTENT AND OPERATION

Transfer of lottery prize awards

Under current law, lottery prize awards generally must be claimed by the holder of the winning ticket, or by the executor or administrator, or the trustee of a trust, of a deceased holder of a winning ticket. The right of any person to a lottery prize award is prohibited from being the subject of a security interest or used as collateral. Likewise, the right cannot be assigned, nor may it be subject to garnishment, attachment, execution, withholding, or deduction, except in accordance with statutes pertaining to court or administrative child support orders and certain other matters. (R.C. 3770.07(A)(1), (3), and (4).)

The bill creates an exception to these prohibitions, whereby a lottery "prize winner" who holds the right to receive all or any part of a lottery prize award other than by transfer, including a person who receives all or part of the award due to the prize winner's death, may transfer the award to another party under a transfer agreement. A "transferor," meaning a prize winner or a grantee in an earlier transfer whose interest is, or is sought to be, acquired by a transferee also may

transfer the award to another party under the bill's transfer mechanism. The bill defines a "transfer" as a grant of a security interest in, or a sale, assignment, pledge, hypothecation (a pledge as security or collateral for a debt, without delivery of title or possession), or any other form of alienation or encumbrance of, all or any part of a lottery prize award for consideration. (R.C. 3770.07(A)(3) and (4) and 3770.10(D), (E), (F), and (H).)

Before a transfer may occur, the transferor must first receive a disclosure statement from the party acquiring or proposing to acquire all or any part of the lottery prize award (the "transferee"), and the transferee must obtain a court order approving the transfer (R.C. 3770.10(G)).

The bill also provides that the transfer of all or any part of a lottery prize award is subject to Ohio's secured transactions law (R.C. 1309.109(E) and 3770.15).

Mechanism for transferring a lottery prize award

Disclosure statement to be provided to the transferor

Prior to the date on which a transferor becomes obligated to transfer a lottery prize award under a transfer agreement, the transferee must provide to the transferor a disclosure statement, in boldface type of the minimum size of 14 points, setting forth the amounts and due dates of the lottery prize award payments that would be transferred under the agreement, and the aggregate amount of those payments (R.C. 3770.11(A) and (B)). The disclosure statement also must disclose (R.C. 3770.10(B) and 3770.11(C) to (G)):

- The discounted present value of the lottery prize award payments, calculated as of the date the statement is provided to the transferor, and the amount of the applicable federal rate used in determining the discounted present value. The bill defines "discounted present value" as the present value of the future payments of a lottery prize award that is determined by discounting those payments to the present, using the most recently published applicable federal rate for determining the present value of an annuity as issued by the United States Internal Revenue Service and assuming daily compounding.
- The gross amount payable to the transferor in exchange for or as consideration for the transfer of the lottery prize award payments;
- An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees, and other commissions, fees, costs, expenses, and charges payable by the transferor or deductible from the gross amount otherwise payable to the transferor;

- The net amount payable to the transferor, after deduction from the gross amount of all commissions, fees, costs, expenses, and charges described above;
- The quotient, expressed as a percentage, obtained by dividing the net amount payable to the transferor by the discounted present value of the payments.

Hearing on an application for advance approval of a transfer; express findings

Under the bill, a transferee must file an application, in advance, for approval of a lottery prize award transfer, in the probate court of the county in which the prize winner resides or, if the prize winner is not an Ohio resident, the probate court of Franklin County or a federal court having jurisdiction over the lottery prize award (R.C. 3770.10(A) and 3770.13(A)).

Upon the filing of the application, the court must set a date, time, and place for a hearing on it and notify the transferee and transferor of that date, time, and place. Not less than 14 days prior to the hearing date, the transferee must file with the court and serve on it and the State Lottery Commission, in the manner required by the Rules of Civil Procedure for the service of process, a notice of the proposed transfer and the application for its approval. The notice must contain the date, time, and place of the hearing and include a copy of (1) the application, (2) the transfer agreement, and (3) the disclosure statement provided by the transferee, signed by the transferor. (R.C. 3770.13(B)(1) and (2).)

The Commission is not required to appear in or be named as a party to the hearing, but may intervene as of right in it (R.C. 3770.13(B)(3)).

At the conclusion of the hearing, the court may grant or deny approval of the transfer of the lottery prize award. It must enter its order accordingly, and the order is a final and appealable order. If the transfer is denied, the court must include in its order the reason for the denial. (R.C. 3770.13(B)(4) and (5).) If the court approves the transfer, it must include in its order all of the following express findings (the bill, moreover, permits an approval to be granted only if these findings are made) (R.C. 3770.10(C), 3770.12, and 3770.13(B)(4)):

(1) The transferee has provided to the transferor a disclosure statement that complies with the bill, and the transferor has confirmed receipt of the statement, as evidenced by the transferor's notarized signature on a copy of the disclosure statement.

(2) If the transferor is a prize winner, the prize winner has established that the transfer is fair and reasonable and in the winner's best interests.

(3) If the transferor is a prize winner, the prize winner has received independent professional advice from an attorney, certified public accountant, actuary, or other licensed professional adviser, regarding the legal and other implications of the transfer. The adviser must have been engaged by the prize winner to render such advice, cannot be affiliated with, or compensated in any manner by, the transferee of the award, and the adviser's compensation cannot be affected by whether or not the transfer occurs.

(4) The transferee has given written notice of its name, address, and taxpayer identification number to the State Lottery Commission and has filed a copy of that notice with the court.

(5) The transferee is a trust, limited partnership, general partnership, corporation, professional association, limited liability company, or other entity that is qualified to do business in Ohio and meets the registration requirements for that type of entity under Title 17, the Corporation, Limited Liability Company, Partnership, and Other Business Entity Law.

(6) The transfer complies with all applicable requirements of state law and does not contravene any applicable law.

(7) The transfer does not include or cover the amounts of the lottery prize award that are required to be withheld or deducted under a court or administrative child support order, for child or spousal support arrearages, or under the state income tax law.

(8) Any amounts described in (7) above that are required to be withheld or deducted, as of the date of the court order, will be offset by the Commission first against remaining payments due the transferor and then against payments due the transferee.

(9) Except as provided in (7) and (8) above, that the transferor's interest in each and all of the future payments from the lottery prize award is to be paid to a single transferee, or, if the payments from the award are to be divided between and among multiple transferees, the Commission has promulgated rules under its existing, general rulemaking powers permitting transfers to multiple transferees, and the transfer is consistent with those rules.

Lottery prize award payments to be made in compliance with court order

Upon receipt of a court order approving the transfer of a lottery prize award, the transferee must provide a certified copy of it to the Director of the State Lottery Commission. Not later than ten days after receipt of the copy, the Director must acknowledge to the transferee in writing the Commission's intent to comply with the court order in making future payments. (R.C. 3770.14(A).)

The Director must make payments of the lottery prize award in accordance with the court order. The Director may charge a processing fee, in an amount determined by the Commission by rule under its existing rulemaking powers, to cover any direct or indirect costs associated with making the prize award payments in accordance with the court order. Upon payment of the award, the Director and Commission are discharged from all further liability for it. (R.C. 3770.14(B) and (C).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-31-02	p. 1409
Reported, S. Ways & Means	03-06-02	p. 1551
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