



Phil Mullin

Bill Analysis

Legislative Service Commission

Sub. S.B. 226

124th General Assembly

(As Reported by H. State Government)

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

Reps. Clancy, Young

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 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 does not affect the security interest or collateral prohibition, but it creates an exception to the assignment, etc. prohibition, whereby a lottery prize winner may transfer the prize award to another party under a specified type of transfer agreement. "Prize winner" is defined for transfer purposes as any person

who holds the right to receive all or any part of a lottery prize award as a result of being any of the following: (1) a person who is a claimant of a lottery prize award, (2) a person who is entitled to a prize award and who is under a legal disability, (3) a person who was awarded a prize award to which another has claimed title by a court order, or (4) a person who is receiving payments upon the death of a prize winner. A "transfer" is any form of sale, assignment, or redirection of payment of all or any part of a lottery prize award for consideration. Under the bill's transfer mechanism, a "transferor," meaning either a prize winner or a "transferee" in an earlier transfer whose interest is, or is sought to be, acquired by a "transferee" or new transferee may transfer a lottery prize award to another party. But, in the case of a prize winner, before a transfer may occur, the prize winner must first receive a specified disclosure statement from the transferee; and, in the case of any transfer, the transferee must obtain a court order approving the transfer. (R.C. 3770.07(A)(3) and (4) and 3770.10(D), (E), (F), (G), and (H).)

Mechanism for transferring a lottery prize award

Disclosure statement to be provided to the transferor--if the transferor is a prize winner

Prior to the date on which a prize winner becomes obligated to transfer a lottery prize award under a transfer agreement, the transferee must provide to the prize winner 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 prize winner, 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 prize winner in exchange for or as consideration for the transfer of the lottery prize award payments, including the annual rate of discount to present value used to determine the gross amount payable to the prize winner, assuming daily compounding and funding on the transfer agreement's date;

- 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 prize winner or deductible from the gross amount otherwise payable to the prize winner;
- The net amount payable to the prize winner, 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 prize winner by the discounted present value of the payments; solely for purposes of this calculation, the net amount payable does not include income taxes withheld under the bill (see "*Tax provisions*," below).

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 30 days prior to the hearing date, the transferee must file with the court and serve on 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 or, if the transferor is not a prize winner, a redacted copy of the transfer agreement that discloses sufficient information to allow the Commission and the court to determine the validity of the agreement, (3) if the transferor is a prize winner, the disclosure statement provided by the transferee and signed by the prize winner, (4) the amounts and due dates of the lottery prize award payments that will be transferred under the transfer agreement, and (5) the complete name, address, and taxpayer identification number of the transferee. (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) If the transferor is a prize winner, the transferee has provided to the prize winner a disclosure statement that complies with the bill, and the prize winner has confirmed receipt of the statement, as evidenced by the prize winner's notarized signature on a copy of the 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 that 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, 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 directed from the Commission to 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.

(10) If the lottery prize award has been transferred within 12 months immediately preceding the effective date of the proposed transfer, the Commission has not objected to the proposed transfer. The court must presume that this requirement is met unless the Commission notifies the court in writing before the hearing on the application for transfer, or through counsel at that hearing, that a transfer of the same lottery prize award has been made within that 12-month period and that the Commission objects to a subsequent transfer within that period. The court must find that this requirement is not met if the Commission provides that notice and objection, unless the transferor or transferee shows by clear and convincing evidence that no previous transfer of the same lottery prize award occurred within that 12-month period.

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 (1) to the transferee designated in the certified copy of the court order and (2) in accordance with the prize payment schedule established when the prize was claimed. 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 that prize payment schedule. Upon payment of the award, the Director and Commission are discharged from all further liability for it. (R.C. 3770.14(B) and (C).)

Tax provisions

Under current law, the State Lottery Commission is required to withhold 3 1/2% from any lottery prize award payment greater than \$5,000; this ensures the

collection of income taxes. Withheld amounts are credited against the recipient's Ohio income tax liability. The Commission must file monthly and annual returns with the Tax Commissioner showing the withholding, and issue a statement to the recipient (similar to a W-2).

The bill prescribes tax withholding requirements for those cases where the right to a lottery prize award is transferred. In such a case, the Commission must withhold the 3 1/2% on payments to the transferee, and the transferee, in turn, must withhold 3 1/2% of the amount paid to each prize winner. Transferees must comply with the same return and statement requirements as currently apply to the Commission. The withholding and reporting requirements are subject to the same enforcement and collection remedies as are existing tax withholding requirements. Specifically, penalties and interest may be charged, and assessments may be issued, for failures to report or remit withheld taxes, and personal liability attaches to any individual who is responsible for complying with those requirements on behalf of a transferee (e.g., an employee of the transferee), but who fails to comply.

The bill also specifies that transferees and transferors are subject to Ohio income or corporation franchise taxes for the entire amount of income arising from prize awards transferred to them. For this purpose, "income" includes earnings, profits, and gains from transferring prize awards, owning them (directly or indirectly), or having any other interest in them.

A lottery prize award "transfer agreement" is not complete or valid unless it incorporates separate statements by the transferor and transferee agreeing to the tax treatment and withholding requirements. (R.C. 3770.072, 3770.10(F), 5733.051(H), 5733.98(A)(27), 5747.062, 5747.20(B)(5), and 5747.98(A)(34).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-31-02	p. 1409
Reported, S. Ways & Means	03-06-02	p. 1551
Passed Senate (32-1)	03-06-02	p. 1554
Reported, H. State Gov't	05-15-02	p. 1774

S0226-RH.124/jc

