



**Sub. H.B. 122\***

126th General Assembly

(As Reported by S. State and Local Government and Veterans Affairs)

**Reps. Wagoner, McGregor, Martin, Wagner, T. Patton, Hoops, Uecker, Seitz, Combs, Gibbs, Flowers, Collier, D. Evans, Calvert, Reidelbach, Setzer, Strahorn, Garrison, Latta, C. Evans, Kearns, Blasdel, Law, Gilb, Webster, Ujvagi, Harwood, Daniels, Carmichael, Walcher, Hartnett, D. Stewart, Book, Allen, Barrett, Brinkman, Brown, Cassell, Chandler, Coley, DeBose, Distel, Dolan, Domenick, Faber, Hughes, Key, Miller, Sayre, Schaffer, Schneider, J. Stewart, Yuko**

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**BILL SUMMARY**

- Prohibits any person from claiming or receiving payment of a lottery prize award with a value in excess of \$599 until each beneficial owner's name, address, and Social Security number are disclosed to the State Lottery Commission.
- Specifies the Commission may share that information with certain government agencies under specified provisions of law, but it remains confidential and cannot be subject to inspection or copying under the Public Records Law as a public record.
- Changes the procedure for the deduction from lottery prize awards of child or spousal support in default by requiring child support enforcement agencies to issue intercept directives if they determine a prize winner is subject to a "final and enforceable determination of default" under the Support Order Default Law.
- Increases the tax withholding percentage on lottery winnings from 3.5% to 6%.

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*\* This analysis was prepared before the report of the Senate State and Local Government and Veterans Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Requires tax withholding on secondary transfers of lottery winnings to be based on the gain or income that the transferor recognizes instead of the entire amount of payments the transferee makes to the transferor.

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## CONTENT AND OPERATION

### *Required provision of information about the beneficial owner of a lottery prize award to the State Lottery Commission*

(R.C. 3770.07(A)(1), (4), and (5)(c))

Current law requires that lottery prize awards be claimed by the holder of the winning lottery ticket, or by the executor or administrator, or the trustee of a trust, of the estate of a deceased holder of a winning lottery ticket, in a manner determined by the State Lottery Commission within specified time periods. The bill prohibits any lottery prize award with a value that exceeds \$599 from being claimed by or paid to any *person* until the name, address, and Social Security number of *each beneficial owner* of the prize award are disclosed to the Commission. For this prohibition, "person" means a "person" as generally defined for purposes of the entire Revised Code as well as a "person" as defined by Commission rule or order, and "each beneficial owner" means the ultimate recipient or, if there is more than one, each ultimate recipient of a lottery prize award.<sup>1</sup>

Except when the beneficial owner otherwise consents in writing, the name, address, and Social Security number (SSN) of a beneficial owner in the Commission's records *as a result of disclosure under the bill's implicit requirement* are confidential and cannot be subject to inspection or copying under the Public Records Law as a public record. However, subject to that exception or another exception provided by law, the name and address of an *individual claiming* a lottery prize award are subject to inspection and copying under the Public Records Law as a public record.

The bill further provides that the Commission may share with certain other governmental agencies the name, address, and SSN of a beneficial owner disclosed to the Commission under the bill's implicit requirement, as authorized under specified provisions of law pertaining to (1) the deduction of child or spousal support in default from lottery prize awards (see below) and (2) the deduction of taxes and certain other debts owed to the state from those awards

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<sup>1</sup> R.C. 1.59(C) defines "person" generally for the entire Revised Code to include an individual, corporation, business trust, estate, trust, partnership, and association (not in the bill).

(R.C. 3770.073--not in the bill). Information disclosed under those provisions of law to agencies remains confidential and cannot be subject to inspection or copying under the Public Records Law unless the beneficial owner otherwise provides written, notarized consent.

### **Deduction of support in default from lottery prize awards**

(R.C. 3123.89 and 3770.071)

#### **Current law**

If the amount or value of a lottery prize award is \$600 or more, current law requires the Director of the State Lottery Commission or the Director's designee to require *the prize winner* to affirm in writing, under oath, whether or not he or she is in default under a child or spousal support order. The Director or the Director's designee may take additional steps to determine if the prize winner is in default under such a support order. If the prize winner affirms that he or she is in default, or if the Director or the Director's designee otherwise determines the prize winner is in default, the Director or the Director's designee must (1) temporarily withhold payment of the prize award and (2) notify the *court that issued the support order* (a) that the person is a prize winner, (b) of the amount of the prize award, and (c) if the prize will be paid in installments, of the number of installments. Upon receipt of this notice, the court must inform the prize winner of the Director's notice, schedule a hearing to determine if the prize winner is in default and the amount of the default, and give the prize winner notice of the date, time, and location of the hearing.

#### **Changes made by the bill**

The bill generally retains the provisions of current law summarized above, but requires that the Director's notice instead be sent to *the child support enforcement agency* (CSEA) that administers the support order involved and requires the CSEA to conduct an investigation to determine whether the prize winner is subject to a *final and enforceable determination of default* under the Support Order Default Law. Thus, the bill removes the court that issued the support order from being the recipient of the Director's notice and from having to conduct a hearing to determine whether the prize winner is in default and the amount of the default.

If the CSEA determines that the prize winner is subject to a final and enforceable determination of default, it must issue *an intercept directive* (see below for its content) to the Director requiring the Director or the Director's designee to deduct from any unpaid prize award, or any annual installment of any unpaid prize award, a specified amount for support in satisfaction of the support

order under which the prize winner is in default. A copy of this intercept directive must be sent to the "obligor" prize winner.

The intercept directive must require the Director or the Director's designee to transmit the specified amount or amounts from the proceeds of the specified lottery prize award to the Office of Child Support in the Department of Job and Family Services. It also must contain all of the following information: (1) the name, address, and Social Security number or taxpayer identification number of the "obligor" prize winner, (2) a statement that the "obligor" prize winner has been determined to be in default under a support order, and (3) the amount of arrearage owed by the "obligor" prize winner as determined by the CSEA.

A CSEA must issue an intercept directive within 30 days from the date of the Director or Director's designee notice to the CSEA of the prize winner's acknowledgement of the default or the Director's or Director's designee's determination otherwise of the prize winner's default under the support order in question. Correspondingly, the Director or the Director's designee must pay the amount specified in the intercept directive to the Office of Child Support within 30 days after the directive's issuance, or, in the case of an annual installments prize award, on the date the next installment payment is due, after deducting that amount from the proceeds of the prize award.

#### **Tax withholding on lottery winnings**

(R.C. 3770.072 and 5747.062)

The bill changes the income tax withholding requirements on Ohio lottery winnings in two respects: the percentage withheld against all prize awards is increased, and the withholding base is reduced for prize awards that have been transferred to another person two or more times.

Under current law, the State Lottery Commission, when paying a lottery prize award exceeding \$5,000, is required to withhold 3.5% of the payment to cover the recipient's Ohio income tax on the prize award. The withheld amount is remitted to the Tax Commissioner and credited toward the recipient's Ohio income tax liability. The bill increases the tax withholding percentage from 3.5% to 6%.

Under current law unchanged by the bill, the right to receive lottery prize award payments may be sold or otherwise transferred. The original prize winner may sell or otherwise transfer the right to receive the payments to a transferee, who may in turn sell or otherwise transfer that right to a third person, who also

may sell or otherwise transfer the right, and so on.<sup>2</sup> Ohio law governs such transactions by requiring various conditions to be satisfied which, if satisfied, create the presumption that the transfer is fair and reasonable. A court must determine whether those conditions are satisfied and must approve a transfer agreement if they are satisfied.<sup>3</sup> Two of the conditions that must be satisfied are: (1) each of the parties must agree in writing that gain or income from the transaction is subject to the Ohio income tax or corporation franchise tax, and (2) the purchaser (or "transferee") is subject to withholding requirements on amounts paid to the seller (or "transferor"). To ensure that Ohio income taxes are paid on the payments the transferor receives from the transferee, current law requires the transferee to withhold 3.5% of the total amount paid to the transferor.

In addition to increasing the withholding percentage from 3.5% to 6%, the bill applies the percentage to a narrower base in those cases where the right to receive lottery prize award payments has been sold or otherwise transferred a second, third, or subsequent time. Instead of the transferee withholding 6% of the total amount payable to the transferor, the transferee must withhold 6% of the part of each payment that represents gain or income the transferor must recognize for federal income tax purposes. The transferor must prepare a written statement setting forth the recognized gain or income and deliver the statement to the transferee and a copy of the statement to the Tax Commissioner at least six days before the transferee is to make the payment to the transferor. The transferor must sign the statement, subject to the penalty of perjury.

If the transferee does not receive the statement by the time the payment is to be made, the transferee must withhold 6% of the entire payment instead of 6% of the transferor's gain or income from the payment. And, if the Tax Commissioner notifies the transferee that the transferor's computation of gain or income is erroneous, the transferee must henceforth withhold 6% of the entire payment instead of 6% of the transferor's gain or income. Further, if the transferor does not provide a copy of the statement to the Tax Commissioner within the prescribed time, the Tax Commissioner may impose a penalty of up to \$1,000; proceeds from the penalty are considered as either income tax or corporation franchise tax revenue, depending on which tax the transferor is subject to.

The narrowing of the withholding base and the requirement that a statement be prepared applies even if the transferor and transferee are "related members"-- i.e., persons having certain family relationships, or legal entities related in ways

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<sup>2</sup> *Under some circumstances, the number of times a prize award may be transferred is limited. See R.C. 3770.121.*

<sup>3</sup> *See R.C. 3770.10 to 3770.14.*

specified in the Corporation Franchise Tax Law, generally through common ownership or control.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-10-05	p. 303
Reported, H. State Gov't	05-17-05	p. 806
Passed House (96-1)	05-18-05	pp. 860-861
Reported, S. State & Local Gov't & Veterans Affairs	---	---

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