

CHAPTER 41**(HB 472)**

AN ACT clarifying that state lottery prizes paid in installments over time may be assigned under certain circumstances.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 154A.110 is amended to read as follows:

- (1) Proceeds of lottery prizes shall be subject to Kentucky state income tax. Any attachments, garnishments, or executions authorized and issued pursuant to statute shall also be withheld if served upon the process agent of the corporation. This section shall not apply to a retailer.
- (2) The board shall adopt rules to establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes, except that:
 - (a) No prize, nor any portion of a prize, nor any right of any person to a prize awarded shall be assignable, ***except as provided in subsection (6) of this section.*** Any prize, or portion thereof, remaining unpaid at the death of a prize winner shall be paid to the estate of such deceased prize winner or to the trustee under a revocable living trust established by the deceased prize winner as settlor, provided that a copy of such a trust has been filed with the corporation along with a notarized letter of direction from the settlor and no written notice of revocation has been received by the corporation prior to the settlor's death. Following such a settlor's death and prior to any payment to such a successor trustee, the corporation shall obtain from the trustee and each trust beneficiary a written agreement to indemnify and hold the corporation harmless with respect to any claims that may be asserted against the corporation arising from payment to or through the trust. Notwithstanding any other provisions of this section, any person, pursuant to an appropriate judicial order, shall be paid the prize to which a winner is entitled.
 - (b) No ticket shall knowingly be sold to any person under the age of eighteen (18), but this section does not prohibit the purchase of a ticket by a person eighteen (18) years of age or older for the purpose of making a gift to any person of any age. In such case, the corporation shall direct payment to an adult member of the person's family or the legal guardian of the person on behalf of such person. The person named as custodian shall have the same powers and duties as prescribed for a custodian pursuant to the Uniform Transfers to Minors Act.
 - (c) No prize shall be paid arising from claimed tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the corporation within applicable deadlines, lacking in captions that conform and agree with the play symbols as appropriate to the lottery game involved, or not in compliance with such additional specific rules and public or confidential validation and security tests of the corporation appropriate to the particular lottery game involved.
 - (d) No particular prize in any lottery game shall be paid more than once, and in the event of a binding determination that more than one claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them of an equal share in the prize.
 - (e) A holder of a winning cash ticket from a Kentucky lottery game shall claim a prize within three hundred sixty-five (365) days (for a ticket issued before January 1, 1995), and within one hundred eighty (180) days (for a ticket issued on or after January 1, 1995), or for a multistate lottery game within one hundred eighty (180) days, after the drawing in which the prize was won. In any Kentucky lottery game in which the player may determine instantly if he has won or lost, he shall claim a prize within three hundred sixty-five (365) days (for lottery games commenced or tickets printed or reprinted before January 1, 1995), and within one hundred eighty (180) days (for lottery games commenced or tickets printed or reprinted on or after January 1, 1995), or for a multistate lottery game within one hundred eighty (180) days, after the end of the lottery game as announced by the corporation. However, a holder of a pull-tab lottery ticket shall claim a prize within the time period and in the manner printed on the ticket. If a valid claim is not made for a prize within the applicable period, the prize shall constitute an unclaimed prize for purposes of subsection (3) of this section.

- (f) No prize shall be paid upon a ticket purchased or sold in violation of this chapter. Any such prize shall constitute an unclaimed prize for purposes of subsection (3) of this section.
- (3) Any unclaimed prize money may be retained by the corporation and added to the pool from which future prizes are to be awarded or used for special prize promotions, or may be appropriated by the General Assembly directly from the corporation for any public purpose. For fiscal years 2000-2001 and 2001-2002, any unclaimed prize money in excess of six million dollars (\$6,000,000) shall be transferred to the affordable housing trust fund established by KRS 198A.710.
- (4) The corporation is discharged of all liability upon payment of a prize.
- (5) No ticket shall be purchased by and no prize shall be paid to any of the following persons:
- (a) Any member of the board of directors, officers, or employees of the corporation;
 - (b) Any vendors or related entities, or any member of the board of directors, officers, employees of, partners in, or owners of any vendors or related entities to the vendors; or
 - (c) Any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any such person.
- (6) *The right of any person to receive payments due under a prize that is paid in installments over time by the corporation, excluding prizes payable for the winner's life, may be voluntarily assigned, in whole or in part, if the assignment is made to a person or entity designated pursuant to an order of the Circuit Court located in the judicial circuit where the headquarters of the corporation is located. The Circuit Court shall issue an order approving a voluntary assignment, specifying the exact dollar amount of each prize payment or payments assigned, or any portion thereof, the dates of the payments being assigned, the name of the assignor as it appears on the lottery claim form or the full legal name of the assignor if different than the name as it appears on the lottery claim form, and the full legal name of the assignee to whom the assigned payments will be made, and directing the corporation to make the specified payments to the assignee, if all of the following conditions have been met:*
- (a) *The assignment is in writing, executed by the assignor either before or after the effective date hereof, and by its terms, subject to the laws of this Commonwealth.*
 - (b) *The assignor provides a sworn affidavit attesting that the assignor:*
 - 1. *Is of sound mind, in full command of his or her faculties, and is not acting under duress;*
 - 2. *Has had the opportunity to receive independent legal, financial, and tax advice concerning the effects of the assignment;*
 - 3. *Understands that he or she will not receive the prize payments, or portions thereof, for the years assigned;*
 - 4. *Understands and agrees that with regard to the assigned payments, the Commonwealth, the corporation, and its respective officials and employees will have no further liability or responsibility to make the assigned payments to the assignor;*
 - 5. *Has been provided with a one (1) page written disclosure statement in bold type, fourteen (14) point font or larger, setting forth:*
 - a. *The payments being assigned, by amounts and payment dates;*
 - b. *The purchase price being paid; and*
 - c. *The amount, if any, of any origination or closing fees that will be charged to the lottery winner; and*
 - 6. *Has disclosed the existence or non-existence of a current spouse; and, if married, unless the court finds the assignor may make the assignment without the spouse's consent, the assignor has submitted to the court a signed and notarized statement wherein the spouse consents to the assignment.*
- (7) *Written notice of any petition seeking court approval of an assignment under subsection (6) of this section and of a court hearing, if any, concerning the proposed assignment shall be delivered by certified mail,*

return receipt requested, to the corporation's registered agent at least fifteen (15) days prior to entry of the court order or a court hearing, if any. The corporation is not a necessary or indispensable party and is not required to appear in or be named as a party to any action seeking court approval of a voluntary assignment, but may intervene as of right in any such proceeding.

- (8) *A voluntary assignment under subsection (6) of this section shall not include or cover payments or portions of payments that are, at the time of entry of the court order, subject to offset or withholding due to:*
- (a) *A defaulted or delinquent child support obligation;*
 - (b) *A debt owed to a state agency; or*
 - (c) *Any attachments, garnishments, or executions authorized and issued pursuant to statute and served upon the process agent of the corporation as set forth in subsection (1) of this section;*

unless appropriate provision is made in the court order to satisfy the obligation or obligations giving rise to the offset or withholding at the time of closing of the assignment transaction. Each court order shall provide that any delinquent child support obligation owed by the assignor as of the date of the court order and any debts owed to a state agency by the assignor as of the date of the court order shall be offset by the corporation first against remaining payments or portions thereof then due the assignor and then against payments due the assignee each year until paid in full.

- (9) *A court order approving a voluntary assignment under subsection (6) of this section, together with any other order issued in connection with any one (1) prize drawn, shall not require the corporation to divide any single prize payment among more than three (3) different persons or entities.*
- (10) *The Commonwealth, the corporation, and their respective officials and employees shall be discharged of all further liability upon payment of a prize pursuant to court order issued under subsection (6) of this section. It shall be the responsibility of the assignor or the assignee to provide the corporation information necessary for the corporation to identify the parties to any assignment under subsection (6) of this section and to make the payments assigned.*
- (11) *The Kentucky Lottery Corporation may establish a reasonable fee, not to exceed one thousand dollars (\$1,000), to defray any administrative expenses associated with processing each assignment made pursuant to subsection (6) of this section. The fee amount shall reflect the direct and indirect costs associated with processing the assignments. A court order approving an assignment under subsection (6) of this section shall direct the assignee to pay the fee to the corporation no later than ten (10) days after entry of the order.*
- (12) *A certified copy of a court order approving a voluntary assignment under subsection (6) of this section shall be delivered by certified mail, return receipt requested, to the corporation's registered agent at least thirty (30) days prior to the date upon which the first assigned payment is to be paid to the assignee. Within ten (10) days of receipt of the court order, the corporation shall acknowledge in writing to both the assignor and the assignee its receipt of the court order and that the corporation shall thereafter make the prize payments in accordance with the court order.*
- (13) *Subsection (6) of this section supersedes and prevails over any provision in the Uniform Commercial Code, including KRS 355.9-406.*
- (14) *The right to assign prize payments pursuant to subsection (6) of this section shall be suspended upon:*
- (a) *The publication by the United States Internal Revenue Service, hereinafter referred to in this subsection as the "Service," of a revenue ruling or other public ruling of the Service, which rules that, based upon the right of assignment provided in subsection (6) of this section, Kentucky lottery prizewinners who do not assign any prize payments would be subject to an immediate income tax liability for the value of the entire prize rather than annual income tax liability for each installment when paid; or*
 - (b) *The issuance by a court of competent jurisdiction of a published decision holding that, based upon the right of assignment provided in subsection (6) of this section, a lottery prizewinner who does not assign any prize payments under that subsection would be subject to an immediate income tax liability for the value of the entire prize rather than annual income tax liability for each installment when paid.*

Approved March 24, 2006.

