

STORAGE NAME: h3905s1.go

DATE: March 30, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3905

RELATING TO: State Lottery; assignment of prizes

SPONSOR(S): Committee on Governmental Operations, Representative Fasano and others

COMPANION BILL(S): SB 1418(i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REGULATED SERVICES YEAS 9 NAYS 2
 - (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill will allow a lottery prize winner to voluntarily assign all or part of that person's prize award pursuant to a court order subject to certain conditions. Such assignment could not include money subject to attachment for required child support payments or payment for debts owed to the state. The Department of the Lottery (department) is authorized to establish a reasonable fee to defray the costs of administering and processing such assignments. Provides that, if such assignments affect the federal tax situation of all prize winners, then such assignments are prohibited.

The fiscal impact is indeterminate and dependent upon the number of persons electing to exercise the option to assign prize winnings.

The bill will take effect on July 1 of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 24.115, Florida Statutes, provides that a person's right to a prize is not assignable; however, it may be paid to the estate of a deceased prize winner or to a person designated by a court order.

B. EFFECT OF PROPOSED CHANGES:

The bill would allow a lottery prize winner to voluntarily assign all or part of that person's prize award. Such assignment must be made pursuant to a court order, either from the jurisdiction of the person's residence or that of the Lottery Department's headquarters. Said court order may be issued if and only if the court finds that all of the following conditions have been met:

- (a) The assignment is in writing, is executed by the assignor, and is by its terms subject to the laws of this state; and
- (b) The purchase price being paid for the payments being assigned represents a present value of the payments being assigned discounted at an annual rate that does not exceed the state's usury limit for loans.
- (c) The assignor provides a sworn affidavit attesting that he or she:

- * Is of sound mind, is in full command of his or her faculties, and is not acting under duress;
- * Has been advised regarding the assignment by his or her own independent legal counsel who is unrelated to and is not being compensated by the assignee or any of the assignee's affiliates and has received independent financial or tax advice from a lawyer or other professional who is unrelated to and is not being compensated by the assignee or any of the assignee's affiliates concerning the effects of the assignment;
- * Understands that he or she will not receive all or part of the prize payments pursuant to the assignment agreement;
- * Understands and agrees that, with regard to the assigned payments, the department, and its respective officials and employees, will have no further liability or responsibility to make the assigned payments to him or her;
- * Has been provided with a one-page written disclosure statement setting forth, in bold type of not less than 14-points, the payments being assigned, by amounts and payment dates; the purchase price being paid; the rate of discount to present value, assuming daily compounding and funding on the contract date; and the amount, if any, of any origination or closing fees that will be charged to him or her; and
- * Was advised, in writing, regarding the right to cancel the contract, without any further obligation, within three business days following the date on which the contract was signed.

- (d) Written notice of the proposed assignment and any court hearing concerning the proposed assignment must be provided to the Lottery's counsel at least 10 days prior to any court hearing. The Lottery shall not be required to appear in or be named as a party to any such action seeking judicial confirmation of an assignment under this section, but may intervene as of right in any such proceeding.

A voluntary assignment may not include or cover payments that are subject to offset on account of a defaulted or delinquent child support obligation or on account of a debt owed to a state agency unless appropriate provisions are made pursuant to the court order to satisfy the obligation giving rise to the offset.

The department, and its respective officials and employees, shall be discharged of all liability upon payment of an assigned prize.

The department is authorized to establish a reasonable fee to defray the costs of administering and processing such assignments.

The bill provides that, if the Internal Revenue Service or the courts ever declare and issue a determination letter, revenue ruling, other public ruling of the Internal Revenue Service, or published decision to any state lottery or prize winner of any state lottery that the voluntary assignment of prizes will affect the federal income tax treatment of prize winners who do not assign their prizes, that the secretary of the department shall immediately file a copy of that letter, ruling, or published decision with the Secretary of State and the Office of the State Courts Administrator. After such filing, no court may authorize a voluntary assignment under this section.

This bill creates section 24.1153, Florida Statutes, and amends ss. 24.115 and 24.118, F.S., to conform to the provisions of the newly created section including appropriate cross references.

The act will take effect on July 1 of the year in which enacted.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

N/A

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

This bill does not reduce or eliminate an agency or program.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

This bill allows the Department of Lottery to establish a reasonable fee to defray any administrative expenses associated with assignments.

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. They would be charged a reasonable fee to defray the administrative costs associated with assignment of prize payments.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill would allow a lottery prize winner to voluntarily assign all or part of his or her winnings to another person or entity.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 24.1153, F.S., is created and ss. 24.115 and 24.118, F.S., are amended.

E. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

Indeterminate. The department's costs would be dependent upon the number of persons electing to exercise the option to assign prize winnings, however, the department is authorized to charge a reasonable fee to defray administrative expenses.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

A lottery prize winner would have the option to assign his or her winnings to another person or entity. Businesses which purchase such assigned winnings would be legally authorized to do so in the state.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill was taken up by the Regulated Services Committee on March 23, 1998. An amendment sponsored by Representative Morroni was adopted which clarifies that a person is not required to seek both financial and tax advice prior to an assignment. The bill received a favorable vote.

On March 30, 1998, the Committee on Governmental Operations adopted one amendment which strengthened the conditions that have to be met for the court to issue an order approving a voluntary assignment of prize payments. The bill was reported favorably, as amended, and was made a committee substitute.

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

Prepared by:

Legislative Research Director:

J Paul Whitfield Jr

Paul Liepshutz

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Prepared by:

Legislative Research Director:

Jimmy O. Helms

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