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House Bill 515

By: Representatives Freeman of the 140th, Hill of the 180th, Knight of the 126th, Mitchell of the 88th, Jerguson of the 22nd, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 1 of Chapter 27 of Title 50 of the Official Code of Georgia Annotated, relating to general provisions relative to the "Lottery for Education Act," so as to define certain terms; to provide that under certain conditions lottery winnings may be assigned; to provide for a court order; to provide for findings of fact; to provide for notice and acknowledgment; to provide for liens and bankruptcy; to provide for an exemption from liability; to provide for a fee; to provide for certain restrictions and limitations; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 27 of Title 50 of the Official Code of Georgia Annotated, relating to general provisions relative to the "Lottery for Education Act," is amended by revising Code Section 50-27-3, relating to definitions, as follows:

"50-27-3.

As used in this chapter, the term:

- (1) 'Administrative expenses' means operating expenses, excluding amounts set aside for prizes, regardless of whether such prizes are claimed and excluding amounts held as a fidelity fund pursuant to Code Section 50-27-19.
- (2) 'Assignee' means any person or third party other than the winner to whom any portion of a prize or any right of any person to a prize awarded payable by the corporation in installment payments may be transferred or assigned pursuant to an appropriate judicial order as provided in Code Section 50-27-24.1.
- (3) 'Assignment' means the transfer of any portion of a prize or any right of any person to a prize awarded payable by the corporation in installment payments to any person or third party pursuant to an appropriate judicial order as provided in Code Section 50-27-24.1.
- (4) 'Assignor' means any person receiving installment payments seeking to assign or transfer any portion of a prize or any right of any person to a prize awarded to an assignee or any person or third party pursuant to an appropriate judicial order as provided in Code Section 50-27-24.1.
- (5) 'Board' means the board of directors of the Georgia Lottery Corporation.
- (6) 'Capital outlay projects' means the acquisition, construction, installation, modification, renovation, repair, extension, renewal, replacement, or rehabilitation of land, interests in

land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or furnishing of fixtures, machinery, equipment, computers, software, laboratories, furniture, textbooks, and reference material or other property of any nature whatsoever used on, in, or in connection with educational facilities.

(7) 'Casino gambling' means a location or business for the purpose of conducting illegal gambling activities, but excluding the sale and purchase of lottery tickets or shares as authorized by this chapter.

(8) 'Chief executive officer' means the chief executive officer of the Georgia Lottery Corporation.

(9) 'Corporation' means the Georgia Lottery Corporation.

(10) 'Educational facilities' means land, structures, and buildings owned or operated by and through the board of regents, the State Board of Education, the Department of Technical and Adult Education, or by any city, county, or independent school system within this state; provided, however, that a public road or highway leading to an educational facility shall not be considered an educational facility.

(11) 'Educational purposes and programs' means capital outlay projects for educational facilities; tuition grants, scholarships, or loans to citizens of this state to enable such citizens to attend colleges and universities located within this state, regardless of whether such colleges and universities are owned or operated by the board of regents or to attend institutions operated under the authority of the Department of Technical and Adult Education; costs of providing to teachers at accredited public institutions who teach levels K-12, personnel at public postsecondary technical institutes under the authority of the Department of Technical and Adult Education, and professors and instructors within the University System of Georgia the necessary training in the use and application of computers and advanced electronic instructional technology to implement interactive learning environments in the classroom and to access the state-wide distance learning network; costs associated with repairing and maintaining advanced electronic instructional technology; voluntary pre-kindergarten; and an education shortfall reserve.

(12) 'Interested party' means any individual or entity that has notified the corporation of his or her interest in the prize or is a party to a civil matter adverse to the assignor, including actions for alimony and child support.

(13) 'Lottery,' 'lotteries,' 'lottery game,' or 'lottery games' means any game of chance approved by the board and operated pursuant to this chapter, including, but not limited to, instant tickets, on-line games, and games using mechanical or electronic devices but excluding pari-mutuel betting and casino gambling as defined in this Code section.

(14) 'Major procurement contract' means any gaming product or service costing in excess of \$75,000.00, including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets, and other products and services unique to the Georgia lottery, but not including materials, supplies, equipment, and services common to the ordinary operations of a corporation.

(15) 'Member' or 'members' means a director or directors of the board of directors of the Georgia Lottery Corporation.

(16) 'Member of a minority' means an individual who is a member of a race which comprises less than 50 percent of the total population of the state.

(17) 'Minority business' means any business which is owned by:

- (A) An individual who is a member of a minority who reports as his or her personal income for Georgia income tax purposes the income of such business;
- (B) A partnership in which a majority of the ownership interest is owned by one or more members of a minority who report as their personal income for Georgia income tax purposes more than 50 percent of the income of the partnership; or
- (C) A corporation organized under the laws of this state in which a majority of the common stock is owned by one or more members of a minority who report as their personal income for Georgia income tax purposes more than 50 percent of the distributed earnings of the corporation.
- (18) 'Net proceeds' means all revenue derived from the sale of lottery tickets or shares and all other moneys derived from the lottery less operating expenses.
- (19) 'Operating expenses' means all costs of doing business, including, but not limited to, prizes, commissions, and other compensation paid to retailers, advertising and marketing costs, personnel costs, capital costs, depreciation of property and equipment, funds for compulsive gambling education and treatment, amounts held in or paid from a fidelity fund pursuant to Code Section 50-27-19, and other operating costs.
- (20) 'Pari-mutuel betting' means a method or system of wagering on actual races involving horses or dogs at tracks which involves the distribution of winnings by pools. Such term shall not mean lottery games which may be predicated on a horse racing or dog racing scheme that does not involve actual track events. Such term shall not mean traditional lottery games which may involve the distribution of winnings by pools.
- (21) 'Person' means any individual, corporation, partnership, unincorporated association, or other legal entity.
- (22) 'Retailer' means a person who sells lottery tickets or shares on behalf of the corporation pursuant to a contract.
- (23) 'Share' means any intangible evidence of participation in a lottery game.
- (24) 'Ticket' means any tangible evidence issued by the lottery to provide participation in a lottery game.
- (25) 'Vendor' means a person who provides or proposes to provide goods or services to the corporation pursuant to a major procurement contract, but does not include an employee of the corporation, a retailer, or a state agency or instrumentality thereof. Such term does not include any corporation whose shares are publicly traded and which is the parent company of the contracting party in a major procurement contract."

SECTION 2.

Said article is further amended by revising paragraph (1) of subsection (c) of Code Section 50-27-24, relating to prize proceeds subject to state income tax, attachments, garnishments, or executions, validation of winning tickets, prohibited purchases, money-dispensing machines, and unclaimed prize money, as follows:

"(1) Except as provided in Code Section 50-27-24.1, no prize, any portion of a prize, or any right of any person to a prize awarded shall be assignable. Any prize or any portion of a prize remaining unpaid at the death of a prize winner shall be paid to the estate of the deceased prize winner or to the trustee of a trust established by the deceased prize winner as settlor if a copy of the trust document or instrument 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 a settlor's death and prior to any payment to such a successor trustee, the corporation shall obtain from the trustee 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 Code section, any person, pursuant to an appropriate judicial order, shall be paid the prize to which a winner is entitled;"

SECTION 4.

Said article is further amended by adding a new Code section to read as follows:

"50-27-24.1.

(a) Under an appropriate judicial order, any prize or any portion of a prize or any right of any person to a prize awarded payable by the corporation in installment payments may be paid to any person other than the winner.

(b) The right of a person to a prize payable by the corporation in installment payments may be voluntarily assigned as a whole or in part if the assignment is made to a person designated in accordance with an order of the superior court in the county where the corporation is located. In the case of a voluntary assignment for consideration made under a judicial order, the assignee shall withhold from the purchase price to be paid to the assignor federal and state income taxes in a manner and amount consistent with the procedures of the corporation and pay such withheld taxes to the proper taxing authority in a timely manner and maintain and file all required records, forms, and reports.

(c) On the filing by the assignor or the assignee in the superior court of a petition seeking approval of a voluntary assignment, the filing party shall schedule a hearing on such petition and serve notice of the hearing on all interested parties. The court shall conduct an evidentiary hearing. If the court finds that:

- (1) The assignment is in writing, is executed by the assignor, and is by its terms subject to the laws of the state;
- (2) The assignor has provided 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;
- (3) The assignor has been advised about the assignment by an independent attorney who is not related to and not compensated by the assignee or an affiliate of the assignee;
- (4) The assignor understands that he or she will not receive the prize payments or parts of payments during the years assigned;
- (5) The assignor understands and agrees that the corporation, directors, and officials and employees of the corporation are not liable or responsible for making any of the assigned payments;
- (6) The assignee has provided the assignor with a one-page disclosure statement in boldface type not less than 14 points in size, setting forth:
 - (A) The payments being assigned by the amount and payment date;
 - (B) The purchase price;
 - (C) The rate of discount to present value assuming daily compounding and funding on the contract date;
 - (D) An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative

fees, notary fees, and other commissions, fees, costs, expenses, and charges, and a good faith estimate of all legal fees and court costs payable by the assignor or deductible from the gross amount otherwise payable to the assignor;

(E) The net amount payable to the assignor after deduction of all commissions, fees, costs, expenses, and charges described in subparagraph (D) of this paragraph; and

(F) The amount of any penalty and the amount of any liquidated damages, inclusive of penalties, payable by the assignor in the event of any breach of the transfer agreement by the assignor;

(7) The interest rate or discount rate, as applicable, associated with the assignment does not indicate overreaching or exploitation, does not exceed current usury rates, and does not violate any laws of usury of this state; and

(8) The contract of assignment expressly states that the assignor has three business days after signing the contract to cancel the assignment, the court shall issue an order approving a voluntary assignment and directing the corporation to make prize payments as a whole or in part to the assignee.

(d) Written notice of the petition and proposed assignment and any court hearing concerning the petition and proposed assignment shall be given to the corporation's counsel at least ten days before a court hearing. The corporation need not appear in or be named as party to an action that seeks judicial approval of an assignment but may intervene as of right in the action. A certified copy of a court order approving a voluntary assignment shall be given to the corporation not later than ten days before the date on which the payment is to be made. Written notice of the petition and proposed assignment and any court hearing concerning the petition and proposed assignment shall be served by certified mail to the last known address of any interested party. The interested party need not appear in or be named as party to an action that seeks judicial approval of an assignment but may intervene as of right in the action.

(e) The corporation, not later than ten days after receiving a certified copy of a court order approving a voluntary assignment, shall send the assignor and the assignee written confirmation of the court approved assignment and the intent of the corporation to rely on the assignment in making payments to the assignee named in the order free from any attachments, garnishments, or executions.

(f) A voluntary assignment may not include or cover payments or parts of payments to the assignor to the extent that such payments are subject to attachments, garnishments, or executions authorized and issued pursuant to law as provided in subsection (b) of Code Section 50-27-24. Each court order issued under this subsection shall provide that any obligations of the assignor created by subsection (b) of Code Section 50-27-24 shall be satisfied out of the proceeds to be received by the assignor.

(g) A voluntary assignment may not include portions of payments that are subject to offset on account of a defaulted or delinquent child support obligation, nonwage garnishment, or criminal restitution obligation or on account of a debt owed to a state agency. Each court order issued under subsection (c) of this Code section shall provide that any delinquent child support or criminal restitution obligations of the assignor and any debts owed to a state agency by the assignor, as of the date of the court order, shall

be set off by the corporation first against remaining payments or portions thereof due the prize winner and then against payments due the assignee.

(h) The corporation, the directors, officials, and employees of the corporation are not liable under this Code section after payment of an assigned prize is made. The assignor and assignee shall hold harmless and indemnify the corporation, the directors, and the state, and its employees and agents, from all claims, suits, actions, complaints, or liabilities related to the assignment.

(i) The corporation may establish a reasonable fee to defray administrative expenses associated with assignments made under this Code section, including a processing fee imposed by a private annuity provider. The amount of the fee shall reflect the direct and indirect costs of processing assignments.

(j) The assignee shall notify the corporation of its business location and mailing address for payment purposes and of any change in location or address during the entire course of the assignment.

(k) A court order or a combination of court orders under this Code section may not require the corporation to divide a single prize payment among more than three different persons. This Code section does not prohibit the substitution of assignees as long as there are not more than three assignees at any one time for any one prize payment. Any subsequent assignee is bound as the original assignee by the provisions of this Code section and the terms and conditions of the contract of assignment.

(l) If the federal Internal Revenue Service or a court of competent jurisdiction issues a determination letter, revenue ruling, or other public document declaring that the voluntary assignment of prizes will affect the federal income tax treatment of lottery prize winners who do not assign their prizes, then within 15 days after the corporation receives the letter, ruling, or other document, the director of the corporation shall file a copy of it with the Attorney General and a court may not issue an order authorizing a voluntary assignment under this Code section.

(m) The provisions of this Code section shall prevail over any inconsistent provision in Code Section 11-9-109.

(n) Any agreement or option to sell, assign, pledge, hypothecate, transfer, or encumber a lottery prize, or any portion thereof, prior to the effective date of this Code section shall be void in its entirety."

SECTION 4.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.