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By: **Delegate C. Davis**

Introduced and read first time: January 21, 2005

Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **State Lottery - Prize Winners - Voluntary Assignments**

3 FOR the purpose of enabling certain prize winners of the State lottery to voluntarily  
4 assign prizes that are paid in installments under certain circumstances;  
5 authorizing a court to issue an order approving a voluntary assignment if  
6 assignors and assignees meet certain requirements; authorizing a court to order  
7 a voluntary assignment if the court makes a certain finding; requiring that  
8 certain notice be given to the State Lottery Agency at a certain time; prohibiting  
9 assignments from including certain payments; discharging the State Lottery  
10 Agency, its officials, and employees, from liability under certain circumstances;  
11 providing that certain persons be held harmless and be indemnified from  
12 certain proceedings related to the assignment; authorizing the State Lottery  
13 Agency to establish a certain fee; requiring that a contract of assignment include  
14 a certain affidavit completed by the assignee; specifying certain contents of the  
15 affidavit; requiring that the assignee notify the State Lottery Agency of certain  
16 information under certain circumstances; requiring that a husband and wife  
17 who are co-owners of a prize assign the prize in a certain way; prohibiting  
18 certain court orders from requiring the State Lottery Agency to divide a single  
19 prize payment in a certain way; allowing the substitution of assignees under  
20 certain circumstances; prohibiting a court from allowing an assignment under  
21 certain circumstances; and generally relating to the State lottery.

22 BY repealing and reenacting, with amendments,  
23 Article - State Government  
24 Section 9-122  
25 Annotated Code of Maryland  
26 (2004 Replacement Volume)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
28 MARYLAND, That the Laws of Maryland read as follows:

1

**Article - State Government**

2 9-122.

3 (a) The regulations of the Agency shall provide for winning tickets to be drawn  
4 at least once a week.

5 (b) (1) Except as otherwise provided in this subsection, § 10-113.1 of the  
6 Family Law Article, and § 11-618 of the Criminal Procedure Article, a prize won  
7 under this subtitle is not assignable.

8 (2) If the prize winner dies before the prize is paid, the prize may be paid  
9 to the estate of the prize winner.

10 (3) Under appropriate court order, a prize won under this subtitle may  
11 be paid to a person other than the winner.

12 (4) (I) THE RIGHT OF A PERSON TO RECEIVE PAYMENT UNDER A  
13 PRIZE THAT IS PAID IN INSTALLMENTS OVER TIME BY THE AGENCY MAY BE  
14 VOLUNTARILY ASSIGNED AS A WHOLE OR IN PART, IF THE ASSIGNMENT IS MADE TO  
15 A PERSON DESIGNATED IN ACCORDANCE WITH AN ORDER OF A COURT OF  
16 COMPETENT JURISDICTION IN THE JUDICIAL DISTRICT WHERE THE ASSIGNING  
17 PRIZE WINNER RESIDES OR WHERE THE HEADQUARTERS OF THE AGENCY IS  
18 LOCATED.

19 (II) A COURT MAY ISSUE AN ORDER APPROVING A VOLUNTARY  
20 ASSIGNMENT AND DIRECTING THE AGENCY TO MAKE PRIZE PAYMENTS AS A WHOLE  
21 OR IN PART TO THE ASSIGNEE IF THE COURT FINDS THAT:

22 1. THE ASSIGNMENT IS IN WRITING, IS EXECUTED BY THE  
23 ASSIGNOR, AND IS BY ITS TERMS SUBJECT TO THE LAWS OF THIS STATE;

24 2. THE ASSIGNOR PROVIDES A SWORN AFFIDAVIT  
25 ATTESTING THAT THE ASSIGNOR IS OF SOUND MIND, IS IN FULL COMMAND OF THE  
26 ASSIGNOR'S FACULTIES, AND IS NOT ACTING UNDER DURESS;

27 3. THE ASSIGNOR HAS BEEN ADVISED ABOUT THE  
28 ASSIGNMENT BY AN INDEPENDENT ATTORNEY WHO IS NOT RELATED TO AND NOT  
29 COMPENSATED BY THE ASSIGNEE OR AN AFFILIATE OF THE ASSIGNEE;

30 4. THE ASSIGNOR HAS RECEIVED INDEPENDENT FINANCIAL  
31 OR TAX ADVICE CONCERNING THE EFFECTS OF THE ASSIGNMENT FROM AN  
32 ATTORNEY OR OTHER PROFESSIONAL WHO IS UNRELATED TO AND IS NOT  
33 COMPENSATED BY THE ASSIGNEE OR AN AFFILIATE OF THE ASSIGNEE;

34 5. THE ASSIGNOR UNDERSTANDS THAT THE ASSIGNOR WILL  
35 NOT RECEIVE THE PRIZE PAYMENTS OR PARTS OF PAYMENTS DURING THE YEARS  
36 ASSIGNED;

1                                   6.       THE ASSIGNOR UNDERSTANDS AND AGREES THE AGENCY,  
2 COMMISSION, AND OFFICIALS AND EMPLOYEES OF THE AGENCY ARE NOT LIABLE OR  
3 RESPONSIBLE FOR MAKING THE ASSIGNED PAYMENTS;

4                                   7.       THE ASSIGNEE PROVIDES THE ASSIGNOR WITH A  
5 ONE-PAGE DISCLOSURE STATEMENT THAT SETS FORTH IN BOLD TYPE NOT LESS  
6 THAN 14 POINTS IN SIZE THE PAYMENTS BEING ASSIGNED BY AMOUNT AND  
7 PAYMENT DATE, THE PURCHASE PRICE, THE RATE OF DISCOUNT TO PRESENT VALUE  
8 ASSUMING DAILY COMPOUNDING AND FUNDING ON THE CONTRACT DATE, AND ANY  
9 ORIGINATION OR CLOSING FEE THAT WILL BE CHARGED TO THE ASSIGNOR;

10                                 8.       FOR AN ASSIGNOR UNDER 70 YEARS OF AGE, THE RATE OF  
11 DISCOUNT TO PRESENT VALUE, ASSUMING DAILY COMPOUNDING AN FUNDING ON  
12 THE CONTRACT DATE, MINUS ANY ORGANIZATION OR CLOSING FEE THAT WILL BE  
13 CHARGED TO THE ASSIGNOR, DOES NOT EXCEED 5 PERCENTAGE POINTS OVER THE  
14 WALL STREET JOURNAL PRIME RATE PUBLISHED ON THE BUSINESS DAY BEFORE  
15 THE DATE OF THE CONTRACT;

16                                 9.       FOR AN ASSIGNOR 70 YEARS OF AGE OR OLDER, THE RATE  
17 OF DISCOUNT TO PRESENT VALUE, ASSUMING DAILY COMPOUNDING AND FUNDING  
18 ON THE CONTRACT DATE, MINUS ANY ORIGINATION OR CLOSING FEE THAT WILL BE  
19 CHARGED TO THE ASSIGNOR, DOES NOT EXCEED THE WALL STREET JOURNAL PRIME  
20 RATE PUBLISHED ON THE BUSINESS DAY BEFORE THE DATE OF THE CONTRACT; AND

21                                 10.      THE CONTRACT OF ASSIGNMENT EXPRESSLY STATES  
22 THAT THE ASSIGNOR HAS 5 BUSINESS DAYS AFTER SIGNING THE CONTRACT TO  
23 CANCEL THE ASSIGNMENT.

24                                 (III)   1.       WRITTEN NOTICE OF THE PROPOSED ASSIGNMENT AND  
25 ANY COURT HEARING CONCERNING THE PROPOSED ASSIGNMENT SHALL BE GIVEN  
26 TO THE AGENCY'S COUNSEL AT LEAST 30 DAYS BEFORE A COURT HEARING.

27                                 2.       THE AGENCY NEED NOT APPEAR IN OR BE NAMED AS  
28 PARTY TO AN ACTION THAT SEEKS JUDICIAL APPROVAL OF AN ASSIGNMENT BUT  
29 MAY INTERVENE AS OF RIGHT IN THE ACTION.

30                                 3.       A CERTIFIED COPY OF A COURT ORDER APPROVING A  
31 VOLUNTARY ASSIGNMENT SHALL BE GIVEN TO THE AGENCY NOT LATER THAN 60  
32 DAYS BEFORE THE DATE ON WHICH THE PAYMENT IS TO BE MADE.

33                                 (IV)   A VOLUNTARY ASSIGNMENT MAY NOT INCLUDE OR COVER  
34 PAYMENTS OR PARTS OF PAYMENTS TO THE EXTENT THAT THE PAYMENTS ARE  
35 SUBJECT TO CHILD SUPPORT PAYMENTS, CRIMINAL RESTITUTION, OR BANKRUPTCY  
36 PROCEEDINGS.

37                                 (V)    1.       THE AGENCY, THE COMMISSION, AND OFFICIALS AND  
38 EMPLOYEES OF THE AGENCY ARE NOT LIABLE UNDER THIS PARAGRAPH AFTER  
39 PAYMENT OF AN ASSIGNED PRIZE IS MADE.

1                                   2.       THE ASSIGNOR AND ASSIGNEE SHALL HOLD HARMLESS  
2 AND INDEMNIFY THE AGENCY, THE COMMISSION, AND THE STATE AND ITS  
3 EMPLOYEES AND AGENTS FROM ALL CLAIMS, SUITS, ACTIONS, COMPLAINTS, OR  
4 LIABILITIES RELATED TO THE ASSIGNMENT.

5                                   (VI)   1.       THE AGENCY MAY ESTABLISH A REASONABLE FEE TO  
6 DEFRAID ADMINISTRATIVE EXPENSES ASSOCIATED WITH ASSIGNMENTS MADE  
7 UNDER THIS SECTION, INCLUDING A PROCESSING FEE IMPOSED BY A PRIVATE  
8 ANNUITY PROVIDER.

9                                   2.       THE AMOUNT OF THE FEE SHALL REFLECT THE DIRECT  
10 AND INDIRECT COSTS OF PROCESSING ASSIGNMENTS.

11                                  (VII)   1.       A CONTRACT OF ASSIGNMENT IN WHICH THE ASSIGNOR IS  
12 A LOTTERY WINNER SHALL INCLUDE A SWORN AFFIDAVIT PROVIDED BY THE  
13 AGENCY AND COMPLETED BY THE ASSIGNEE.

14                                  2.       THE AFFIDAVIT SHALL INCLUDE:

15                                  A.       A SUMMARY OF ASSIGNEE CONTACTS WITH THE WINNER;

16                                  B.       A SUMMARY OF ANY COMPLAINTS, LAWSUITS, CLAIMS, OR  
17 OTHER LEGAL ACTIONS FROM LOTTERY WINNERS REGARDING CONDUCT OF THE  
18 ASSIGNEE OR ITS AGENTS;

19                                  C.       A STATEMENT THAT THE ASSIGNEE IS REGISTERED TO DO  
20 BUSINESS IN THE STATE AND IS IN GOOD STANDING WITH THE DEPARTMENT OF  
21 ASSESSMENTS AND TAXATION AND ANY OTHER LICENSING OR REGULATORY UNIT  
22 WHOSE APPROVAL IS REQUIRED IN THE CONDUCT OF THE ASSIGNEE'S BUSINESS;

23                                  D.       A BRIEF BUSINESS HISTORY OF THE ASSIGNEE;

24                                  E.       A DESCRIPTION OF THE BUSINESS OF THE ASSIGNEE; AND

25                                  F.       A STATEMENT OF THE ASSIGNEE'S PRIVACY AND  
26 NONHARASSMENT POLICIES AND EXPRESS AFFIRMATION THAT THE ASSIGNEE HAS  
27 FOLLOWED THOSE POLICIES IN THE STATE.

28                                  3.       THE AFFIDAVIT SHALL BE PROVIDED ONLY BY THE  
29 ASSIGNEE WHO ENTERS INTO THE CONTRACT WITH THE LOTTERY WINNER OR THE  
30 ESTATE OF A LOTTERY WINNER.

31                                  (VIII)  THE ASSIGNEE SHALL NOTIFY THE AGENCY OF ITS BUSINESS  
32 LOCATION AND MAILING ADDRESS FOR PAYMENT PURPOSES AND OF ANY CHANGE  
33 IN LOCATION OR ADDRESS DURING THE ENTIRE COURSE OF THE ASSIGNMENT.

34                                  (IX)   AN ASSIGNMENT MAY BE MADE BY A HUSBAND AND WIFE WHO  
35 ARE CO-OWNERS OF A PRIZE ONLY IF THEY JOINTLY ASSIGN THE PRIZE TO AN  
36 ASSIGNEE.

1 (X) 1. A COURT ORDER OR A COMBINATION OF COURT ORDERS  
2 UNDER THIS SECTION MAY NOT REQUIRE THE AGENCY TO DIVIDE A SINGLE PRIZE  
3 PAYMENT AMONG MORE THAN THREE DIFFERENT PERSONS.

4 2. THIS SECTION DOES NOT PROHIBIT THE SUBSTITUTION  
5 OF ASSIGNEES AS LONG AS THERE ARE NOT MORE THAN THREE ASSIGNEES AT ANY  
6 ONE TIME FOR ANY ONE PRIZE PAYMENT.

7 (XI) IF THE INTERNAL REVENUE SERVICE OR A COURT OF  
8 COMPETENT JURISDICTION ISSUES A DETERMINATION LETTER, REVENUE RULING,  
9 OR OTHER PUBLIC DOCUMENT DECLARING THAT THE VOLUNTARY ASSIGNMENT OF  
10 PRIZES WILL AFFECT THE FEDERAL INCOME TAX TREATMENT OF LOTTERY PRIZE  
11 WINNERS WHO DO NOT ASSIGN THEIR PRIZES:

12 1. THE DIRECTOR OF THE AGENCY SHALL IMMEDIATELY  
13 FILE A COPY OF THE DOCUMENT WITH THE ATTORNEY GENERAL; AND

14 2. A COURT MAY NOT ISSUE AN ORDER AUTHORIZING A  
15 VOLUNTARY ASSIGNMENT UNDER THIS PARAGRAPH.

16 (c) A licensed agent may pay in cash game prizes of not more than \$5,000.

17 (d) (1) In this subsection, the words "bank" and "guardian" and references to  
18 a "member" of a "minor's family" have the meanings stated in § 13-301 of the Estates  
19 and Trusts Article.

20 (2) If a minor wins a prize of less than \$5,000, the Director may give a  
21 draft, as provided for in rules and regulations of the Agency payable to the order of  
22 the minor, to:

23 (i) an adult member of the minor's family; or

24 (ii) a guardian of the minor.

25 (3) If a minor wins \$5,000 or more, the Director may deposit the prize in  
26 a bank to the credit of 1 of the following, as custodian for the minor:

27 (i) an adult member of the minor's family; or

28 (ii) a guardian of the minor.

29 (4) A custodian under paragraph (3) of this subsection has the same  
30 powers and duties as a custodian under the Maryland Uniform Transfers to Minors  
31 Act.

32 (e) On payment of a prize in accordance with this section, the Director is  
33 discharged of all liability.

34 (f) (1) A prize winner shall claim a prize within 182 days after the drawing  
35 in which the prize is won.

1                   (2)       Except as provided in paragraph (3) of this subsection, the Director  
2 shall keep an unclaimed prize:

3                   (i)       for 182 days after the drawing in which the prize is won, for  
4 payment of the winner; and

5                   (ii)       then in an unclaimed prize fund for use for other prizes.

6                   (3)       For a game that the Agency designates as a bonus game or drawing  
7 and that is not a daily or weekly State lottery drawing, the period for claiming a prize  
8 may differ from the period set in paragraph (2) of this subsection.

9       (g)       (1)       Unless otherwise specifically provided by the laws of the State, and  
10 except for prizes paid for any multistate lottery game, the State and every officer,  
11 department, agency, board, commission, or other unit of State government may not  
12 raise the defense of sovereign immunity in the courts of the State in an action in  
13 contract brought by an annuitant or prize winner that is based on the liability of the  
14 State to pay an annuitant or prize winner the prize that the annuitant is entitled to  
15 receive in accordance with this subtitle and any regulations adopted under this  
16 subtitle.

17                   (2)       Notwithstanding any other provision of law, the State may raise the  
18 defense of sovereign immunity to a contract action brought by an annuitant or prize  
19 winner of any multistate lottery game, for any claim that exceeds \$200,000.

20       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
21 effect October 1, 2005.