

(PRE-FILED)

By: **Senator Astle**
Requested: November 8, 2005
Introduced and read first time: January 11, 2006
Assigned to: Budget and Taxation

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 certain court to hear petitions for approval of voluntary
6 assignments; requiring a certain court to issue an order that approves a
7 voluntary assignment and directs the State Lottery Agency to make certain
8 payments to the assignee if the court makes certain findings; requiring that a
9 certain notice be given to the State Lottery Agency at a certain time; requiring
10 the State Lottery Agency under certain circumstances to send the assignor and
11 the assignee written confirmation of an assignment and the State Lottery
12 Agency's intent to rely on it in making payments to the assignee; prohibiting
13 assignments from including certain payments; discharging the State Lottery
14 Agency, the State Lottery Commission, and officials and employees of the State
15 Lottery Agency from liability under certain circumstances; providing that
16 certain persons be held harmless and be indemnified from certain proceedings
17 related to the assignment; authorizing the State Lottery Agency to establish a
18 certain fee; requiring that a contract of assignment include a certain affidavit
19 completed by the assignee; specifying the contents of the affidavit; requiring an
20 assignee to notify the State Lottery Agency of certain information under certain
21 circumstances; requiring that a husband and wife who are co-owners of a prize
22 assign the prize in a certain way; prohibiting certain court orders from requiring
23 the State Lottery Agency to divide a single prize payment in a certain way;
24 allowing the substitution of assignees under certain circumstances; prohibiting
25 a court from allowing an assignment under certain circumstances; specifying
26 that, if certain provisions of this Act are inconsistent with certain other
27 provisions of law, the provisions of this Act shall prevail; providing that
28 contracts or agreements that are made or entered into on or before a certain
29 date and purport to assign or grant interest in prize payments are void; and
30 generally relating to the State lottery.

31 BY repealing and reenacting, with amendments,
32 Article - State Government
33 Section 9-122

1 Annotated Code of Maryland
2 (2004 Replacement Volume and 2005 Supplement)

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

5 **Article - State Government**

6 9-122.

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

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

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

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

16 (4) (I) THE RIGHT OF A PERSON TO RECEIVE PAYMENT UNDER A
17 PRIZE THAT IS PAID IN INSTALLMENTS OVER TIME BY THE AGENCY MAY BE
18 VOLUNTARILY ASSIGNED AS A WHOLE OR IN PART, IF THE ASSIGNMENT IS MADE TO
19 A PERSON DESIGNATED IN ACCORDANCE WITH AN ORDER OF THE CIRCUIT COURT IN
20 THE COUNTY WHERE THE HEADQUARTERS OF THE AGENCY IS LOCATED.

21 (II) A CIRCUIT COURT SPECIFIED UNDER SUBPARAGRAPH (I) OF
22 THIS PARAGRAPH MAY HEAR PETITIONS FOR APPROVAL OF VOLUNTARY
23 ASSIGNMENTS.

24 (III) ON THE FILING BY THE ASSIGNOR OR THE ASSIGNEE IN THE
25 CIRCUIT COURT OF A PETITION SEEKING APPROVAL OF A VOLUNTARY ASSIGNMENT,
26 THE COURT SHALL ISSUE AN ORDER APPROVING A VOLUNTARY ASSIGNMENT AND
27 DIRECTING THE AGENCY TO MAKE PRIZE PAYMENTS AS A WHOLE OR IN PART TO THE
28 ASSIGNEE IF THE COURT FINDS THAT:

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

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

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

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

5 5. THE ASSIGNOR UNDERSTANDS THAT THE ASSIGNOR WILL
6 NOT RECEIVE THE PRIZE PAYMENTS OR PARTS OF PAYMENTS DURING THE YEARS
7 ASSIGNED;

8 6. THE ASSIGNOR UNDERSTANDS AND AGREES THE AGENCY,
9 COMMISSION, AND OFFICIALS AND EMPLOYEES OF THE AGENCY ARE NOT LIABLE OR
10 RESPONSIBLE FOR MAKING ANY OF THE ASSIGNED PAYMENTS;

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

17 8. THE CONTRACT OF ASSIGNMENT EXPRESSLY STATES
18 THAT THE ASSIGNOR HAS 5 BUSINESS DAYS AFTER SIGNING THE CONTRACT TO
19 CANCEL THE ASSIGNMENT.

20 (IV) 1. WRITTEN NOTICE OF THE PETITION AND PROPOSED
21 ASSIGNMENT AND ANY COURT HEARING CONCERNING THE PETITION AND
22 PROPOSED ASSIGNMENT SHALL BE GIVEN TO THE AGENCY'S COUNSEL AT LEAST 30
23 DAYS BEFORE A COURT HEARING.

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

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

30 (V) BEGINNING OCTOBER 1, 2006, THE AGENCY, NOT LATER THAN 30
31 DAYS AFTER RECEIVING A CERTIFIED COPY OF A COURT ORDER APPROVING A
32 VOLUNTARY ASSIGNMENT, SHALL SEND THE ASSIGNOR AND THE ASSIGNEE
33 WRITTEN CONFIRMATION OF:

34 1. THE COURT-APPROVED ASSIGNMENT; AND

35 2. THE INTENT OF THE AGENCY TO RELY ON THE
36 ASSIGNMENT IN MAKING PAYMENTS TO THE ASSIGNEE NAMED IN THE ORDER.

37 (VI) A VOLUNTARY ASSIGNMENT MAY NOT INCLUDE OR COVER
38 PAYMENTS OR PARTS OF PAYMENTS TO THE EXTENT THAT THE PAYMENTS ARE
39 SUBJECT TO CHILD SUPPORT PAYMENTS, CRIMINAL RESTITUTION, OR BANKRUPTCY

1 PROCEEDINGS AS OF THE DATE OF THE COURT ORDER APPROVING A VOLUNTARY
2 ASSIGNMENT.

3 (VII) 1. THE AGENCY, THE COMMISSION, AND OFFICIALS AND
4 EMPLOYEES OF THE AGENCY ARE NOT LIABLE UNDER THIS PARAGRAPH AFTER
5 PAYMENT OF AN ASSIGNED PRIZE IS MADE.

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

10 (VIII) 1. THE AGENCY MAY ESTABLISH A REASONABLE FEE TO
11 DEFRAY ADMINISTRATIVE EXPENSES ASSOCIATED WITH ASSIGNMENTS MADE
12 UNDER THIS SECTION, INCLUDING A PROCESSING FEE IMPOSED BY A PRIVATE
13 ANNUITY PROVIDER.

14 2. THE AMOUNT OF THE FEE SHALL REFLECT THE DIRECT
15 AND INDIRECT COSTS OF PROCESSING ASSIGNMENTS.

16 (IX) 1. A CONTRACT OF ASSIGNMENT IN WHICH THE ASSIGNOR IS
17 A LOTTERY WINNER SHALL INCLUDE A SWORN AFFIDAVIT IN A FORM THAT THE
18 AGENCY PROVIDES AND THE ASSIGNEE COMPLETES.

19 2. UNTIL THE AGENCY PROVIDES THE FORM, AN ASSIGNEE
20 MAY USE ITS OWN FORM THAT INCLUDES THE INFORMATION REQUIRED IN
21 SUBSUBPARAGRAPH 3 OF THIS SUBPARAGRAPH.

22 3. THE AFFIDAVIT SHALL INCLUDE:

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

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

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

31 D. A BRIEF BUSINESS HISTORY OF THE ASSIGNEE;

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

33 F. A STATEMENT OF THE ASSIGNEE'S PRIVACY AND
34 NONHARASSMENT POLICIES AND EXPRESS AFFIRMATION THAT THE ASSIGNEE HAS
35 FOLLOWED THOSE POLICIES IN THE STATE.

1 4. THE AFFIDAVIT SHALL BE PROVIDED ONLY BY THE
2 ASSIGNEE WHO ENTERS INTO THE CONTRACT WITH THE LOTTERY WINNER OR THE
3 ESTATE OF A LOTTERY WINNER.

4 (X) THE ASSIGNEE SHALL NOTIFY THE AGENCY OF ITS BUSINESS
5 LOCATION AND MAILING ADDRESS FOR PAYMENT PURPOSES AND OF ANY CHANGE
6 IN LOCATION OR ADDRESS DURING THE ENTIRE COURSE OF THE ASSIGNMENT.

7 (XI) AN ASSIGNMENT MAY BE MADE BY A HUSBAND AND WIFE WHO
8 ARE CO-OWNERS OF A PRIZE ONLY IF THEY JOINTLY ASSIGN THE PRIZE TO AN
9 ASSIGNEE.

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

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

16 3. ANY SUBSEQUENT ASSIGNEE IS BOUND AS THE ORIGINAL
17 ASSIGNEE BY THE PROVISIONS OF THIS SECTION AND THE TERMS AND CONDITIONS
18 OF THE CONTRACT OF ASSIGNMENT.

19 (XIII) IF THE INTERNAL REVENUE SERVICE OR A COURT OF
20 COMPETENT JURISDICTION ISSUES A DETERMINATION LETTER, REVENUE RULING,
21 OR OTHER PUBLIC DOCUMENT DECLARING THAT THE VOLUNTARY ASSIGNMENT OF
22 PRIZES WILL AFFECT THE FEDERAL INCOME TAX TREATMENT OF LOTTERY PRIZE
23 WINNERS WHO DO NOT ASSIGN THEIR PRIZES:

24 1. WITHIN 15 DAYS AFTER THE AGENCY RECEIVES THE
25 LETTER, RULING, OR OTHER DOCUMENT, THE DIRECTOR OF THE AGENCY SHALL
26 FILE A COPY OF IT WITH THE ATTORNEY GENERAL; AND

27 2. A COURT MAY NOT ISSUE AN ORDER AUTHORIZING A
28 VOLUNTARY ASSIGNMENT UNDER THIS PARAGRAPH.

29 (XIV) THIS PARAGRAPH SHALL PREVAIL OVER ANY INCONSISTENT
30 PROVISION IN § 9-406 OF THE COMMERCIAL LAW ARTICLE.

31 (XV) A CONTRACT OR AGREEMENT MADE OR ENTERED INTO ON OR
32 BEFORE MAY 31, 2006, THAT PURPORTS TO VOLUNTARILY ASSIGN OR GRANT AN
33 INTEREST IN PRIZE PAYMENTS IS VOID.

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

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

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

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

5 (ii) a guardian of the minor.

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

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

9 (ii) a guardian of the minor.

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

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

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

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

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

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

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

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 June 1, 2006.