

# VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

## CHAPTER 924

*An Act to amend and reenact § 58.1-4013 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-4020.1, relating to voluntary assignment of lottery prizes.*

[H 1564]

Approved March 23, 2003

**Be it enacted by the General Assembly of Virginia:**

**1. That § 58.1-4013 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 58.1-4020.1 as follows:**

§ 58.1-4013. Right to prize not assignable; exceptions.

A. No right of any person to a prize drawn shall be assignable, except that: (i) payment of any prize drawn may be paid according to the terms of a deceased prize winner's beneficiary designation or similar form filed with the Department or to the estate of a deceased prize winner who has not completed such a form; ~~and~~ (ii) the prize to which the winner is entitled may be paid to a person pursuant to an appropriate judicial order; *and (iii) payment of any prize drawn may be paid in accordance with the provisions of § 58.1-4020.1.* Payments made according to the terms of a deceased prize winner's beneficiary designation or similar form filed with the Department are effective by reason of the contract involved and this statute and are not to be considered as testamentary or subject to Chapter 3 (§ 64.1-45 et seq.) of Title 64.1. The Director shall be discharged of all liability upon payment of a prize pursuant to this section.

B. Investments of prize proceeds made by the Department to fund the payment of an annuitized prize are to be held in the name of the Department or the Commonwealth and not in the name of the prize winner. Any claim of a prize winner to a future payment remains inchoate until the date the payment is due under Department regulations.

C. Except as provided in Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and this chapter, no lottery prize or installment thereof may be subject to garnishment or to a lien of any kind until such prize or installment thereof has been paid or distributed.

D. Whenever the Department or the Director is or may be named as a party in any proceeding instituted by or on behalf of one or more persons who claim ownership of a winning lottery ticket, prize, share or portion thereof for the purpose of determining the ownership or right to such ticket, prize, share or portion thereof, the Director may voluntarily pay or tender the prize, share or portion thereof into the circuit court where the action is filed, or may be ordered to do so by the court, and shall thereupon be discharged from all liability as between the claimants of such ticket, prize, share or portion thereof without regard to whether such payment was made voluntarily or pursuant to a court order.

Nothing in this section shall be deemed to constitute a waiver of the sovereign immunity of the Commonwealth or to authorize any attachment, garnishment, or lien against the prize, share or portion thereof paid into the court except as permitted by subsection C.

*§ 58.1-4020.1. Voluntary assignment of lottery prizes or pledge as collateral for a loan; requirements for the assignees and lenders.*

A. *Lottery prizes, payable in installments over a period of time, excluding prizes payable for the winner's life, may be voluntarily assigned or pledged as collateral for a loan, in whole or in part, by the person entitled to such installments, by written contract affirming that the requirements of this section have been met and endorsed by written order of a court of competent jurisdiction after a hearing. The order shall specify the name, address and social security number or tax identification number of the assignee or lender and shall specifically describe the payments be assigned or pledged as collateral by date and gross pre-tax amount.*

*The rate charged for any such assignment or loan shall not exceed 15 percent.*

*The contract shall:*

*1. Be signed by the assignor and the assignee or the lender and the borrower, and the assignor or borrower shall affirm the assignment or loan has been voluntarily executed.*

*2. Include or be accompanied by a sworn statement attesting that the assignor or borrower (i) is of sound mind and not acting under duress; (ii) has been advised in writing by the assignee or lender to seek independent legal counsel and independent financial counsel concerning the implications of the assignment or loan, including the tax consequences, and has either received such advice or knowingly waived such advice in writing; (iii) understands that he is relinquishing or limiting his rights to receive the lottery proceeds; and (iv) has received from the Virginia Lottery, in response to a written request therefor, confirmation of the assignee's or lender's registration with the Virginia Lottery in accordance with subsection E of this section.*

3. Include a disclosure statement setting forth (i) the amounts assigned or loaned; (ii) the dates such amounts are payable; (iii) the purchase price paid for the assignment or loan; (iv) the rate of discount to present value, assuming daily compounding and funding on the contract date; (v) the amount of any fees associated with the assignment or loan and by whom such fees are payable; and (vi) the tax identification number of the assignee.

4. Expressly state that the assignor or borrower has three business days after signing the contract to cancel the assignment or loan.

5. Expressly state that the assignee or lender is eligible to purchase, share or receive prizes of the Virginia Lottery pursuant to §§ 58.1-4015, 58.1-4016 and subsection A of § 58.1-4019, and that the Virginia Lottery has complied with subsection B of § 58.1-4019 in that the original prizewinner is (or if deceased, was) a natural person if and to the extent that the prize was awarded on or after the effective date pursuant to subsection B of § 58.1-4019.

6. Expressly state that no amounts assigned or loaned are subject to setoff pursuant to Article 21 (§ 58.1-520 et seq.) of Chapter 3 of this title.

B. The Commonwealth, the Virginia Lottery and any employee or representative of either shall be indemnified and held harmless upon payment of amounts due as set forth in the court order.

C. The Lottery may establish a reasonable fee to process the assignments provided for in this section and to receive, review and file the registration required by subsection E and confirm compliance with the registration requirements. The fee shall be reflective of the direct and indirect costs of processing the assignments or registrations.

D. Notwithstanding the provisions of this section, the Commonwealth and the Virginia Lottery shall not accept any assignment if either of the following has occurred:

1. Federal law provides that the right to assign lottery proceeds is deemed receipt of income in the year the lottery prize is won for all installment lottery prize winners. "Federal law" includes statutory law, rulings of courts of competent jurisdiction, and published rulings by the Internal Revenue Service.

2. State law provides that the right to assign lottery proceeds is deemed receipt of income in the year the lottery prize is won for all installment lottery prize winners. "State law" includes statutory law, rulings of courts of competent jurisdiction, and published rulings by the Department of Taxation.

E. An assignee, prospective assignee, lender or prospective lender shall not make any representation in any written or oral communications with a lottery winner that implies that the assignee, prospective assignee, lender or prospective lender is associated with or an agent of the Virginia Lottery. Every prospective assignee or prospective lender shall register with the Virginia Lottery, prior to contracting for any assignment or loan pursuant to this section. The registration shall include (i) the assignee's or lender's standard information packet or materials given or sent to prospective assignees or borrowers, (ii) the assignee's or lender's standard form of agreement, (iii) the assignee's or lender's federal tax identification number, and (iv) where applicable, the assignee's or lender's most recent public financial statement.

**2. That the Virginia Lottery Department shall submit a report and recommendations to the House and Senate Finance Committees no later than December 1, 2004, regarding borrowing and assignment activity by lottery winners in accordance with the provisions of this act.**