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HOUSE BILL NO. 837

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on March 8, 1998)

(Patron Prior to Substitute—Delegate Cantor)

A BILL to amend the Code of Virginia by adding in Title 58.1 a section numbered 58.1-4020.1, relating to voluntary assignment of lottery prizes.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 58.1 a section numbered 58.1-4020.1 as follows:

§ 58.1-4020.1. Voluntary assignment of lottery prizes or pledge as collateral for a loan.

A. Lottery prizes, payable in installments over a period of time, may be voluntarily assigned or pledged as collateral for a loan by written contract, in whole or in part, by the person entitled to such installments endorsed by the written order of a court of competent jurisdiction after a hearing provided the rate charged for the assignment or loan shall not exceed twelve percent subject to the following requirements and affirming that such requirements have been met:

1. The contract shall be signed by the assignor and the assignee or lender and borrower, and the assignor or lender shall affirm that the assignment or loan has been voluntarily executed.

2. The contract shall 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 retained independent legal counsel and independent financial counsel concerning the implications of the assignment or loan, including the tax consequences; and (iii) understands that he is relinquishing or limiting his rights to receive the lottery proceeds. Such independent counselors shall not be referred by or associated with the assignee or lender.

3. The contract shall 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. The contract shall expressly state that the assignor or borrower has three business days after signing the contract to cancel the assignment or loan.

5. The contract shall 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 58.1-4019 A, and that the Lottery has complied with § 58.1-4019 B 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 of § 58.1-4019 B.

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

7. The court 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 being assigned or loaned by date and gross pre-tax amount.

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. Such fee shall be reflective of the direct and indirect costs of processing such assignments.

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 which implies that the assignee, prospective assignee, lender or prospective lender is associated with or an agent of the Virginia Lottery.

2. That the provisions of this act shall expire on July 1, 1999.

3. That the Lottery Department shall submit a report and recommendations to the 1999 Session of the General Assembly regarding borrowing and assignment activity by lottery winners.