

Ohio Lottery Prize Assignment Statute Effective March 31, 2005

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3770.10 Definitions (effective date 3/31/05)

As used in sections 3770.07 and 3770.10 to 3770.14 of the Revised Code:

(A) "Court of competent jurisdiction" means either the general division or the probate division of the court of common pleas of the county in which the prize winner or transferor resides, or, if the prize winner or transferor is not a resident of this state, either the general division or the probate division of the court of common pleas of Franklin county or a federal court having jurisdiction over the lottery prize award.

(B) "Discounted present value" means the present value of the future payments of a lottery prize award that is determined by discounting those payments to the present, using the most recently published applicable federal rate for determining the present value of an annuity as issued by the United States internal revenue service and assuming daily compounding.

(C) "Independent professional advice" means the advice of an attorney, a certified public accountant, an actuary, or any other licensed professional adviser if all of the following apply:

- (1) The prize winner has engaged the services of the licensed professional adviser to render advice concerning the legal and other implications of a transfer of the lottery prize award.
- (2) The licensed professional adviser is not affiliated in any manner with or compensated in any manner by the transferee of the lottery prize award.
- (3) The compensation of the licensed professional adviser is not affected by whether or not a transfer of a lottery prize award occurs.

(D) "Prize winner" means any person that holds the right to receive all or any part of a lottery prize award as a result of being any of the following:

(1) A person who is a claimant under division (A) of section 3770.07 of the Revised Code;

(2) A person who is entitled to a prize award and who is under a legal disability as described in division (B) of section 3770.07 of the Revised Code;

(3) A person who was awarded a prize award to which another has claimed title by a federal bankruptcy court order or other court order referred to in division (D)(1) of section 3770.07 of the Revised Code;

(4) A person who is receiving payments upon the death of a prize winner as provided in division (D)(2) of section 3770.07 of the Revised Code.

(E) "Transfer" means any form of sale, assignment, or redirection of payment of all or any part of a lottery prize award for consideration.

(F) "Transfer agreement" means an agreement that is complete and valid, and that provides for the transfer of all or any part of a lottery prize award from a transferor to a transferee. A transfer agreement is incomplete and invalid unless the agreement contains both of the following:

(1) A statement, signed by the transferor under penalties of perjury, that the transferor irrevocably agrees that the transferor is subject to the tax imposed by Chapter 5733. or 5747. of the Revised Code with respect to gain or income which the transferor will recognize in connection with the transfer. If the transferor is a pass-through entity, as defined in section 5733.04 of the Revised Code, each investor in the pass-through entity shall also sign under penalties of perjury a statement that the investor irrevocably agrees that the investor is subject to the tax imposed by Chapter 5733. or 5747. of the Revised Code with respect to gain or income which the transferor and the investor will recognize in connection with the transfer.

(2) A statement, signed by the transferee, that the transferee irrevocably agrees that the transferee is subject to the withholding requirements imposed by division (C) of section 3770.072 of the Revised Code and that the transferee is subject to the tax imposed by Chapter 5733. or 5747. of the Revised Code with respect to gain or income which the transferee will recognize in connection with lottery prize awards to be received as a result of the transfer. If the transferee is a pass-through entity, as defined in section 5733.04 of the Revised Code, each investor in the pass-through entity shall also sign under penalties of perjury a statement setting forth that the investor irrevocably agrees that the investor is subject to the withholding requirements imposed by division (C) of section 3770.072 of the Revised Code and is subject to the tax imposed by Chapter

5733. or 5747. of the Revised Code with respect to gain or income which the transferee and the investor will recognize in connection with lottery prize awards to be received as a result of the transfer.

(G) "Transferee" means a party acquiring or proposing to acquire all or any part of a lottery prize award through a transfer.

(H) "Transferor" means either a prize winner or a transferee in an earlier transfer whose interest is acquired by or is sought to be acquired by a transferee or a new transferee through a transfer.

3770.11 Transfer agreements; disclosure statements (in effect now)

Prior to the date on which a prize winner becomes obligated under a transfer agreement, the transferee shall provide to the prize winner a disclosure statement, in boldface type of the minimum size of fourteen points, setting forth all of the following:

(A) The amounts and due dates of the lottery prize award payments that would be transferred under the transfer agreement;

(B) The aggregate amount of the lottery prize award payments described in division (A) of this section;

(C) The discounted present value of the lottery prize award payments described in division (A) of this section, calculated as of the date the disclosure statement is provided to the prize winner, and the amount of the applicable federal rate used in determining the discounted present value;

(D) The gross amount payable to the prize winner in exchange for or as consideration for the transfer of the lottery prize award payments described in division (A) of this section, including the annual rate of discount to present value used to determine the gross amount payable to the prize winner, assuming daily compounding and funding on the date of the transfer agreement;

(E) An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees, and other commissions, fees, costs, expenses, and charges payable by the prize winner or deductible from the gross amount otherwise payable to the prize winner as

described in division (D) of this section;

(F) The net amount payable to the prize winner after deduction from the gross amount payable to the prize winner as described in division (D) of this section of all commissions, fees, costs, expenses, and charges described in division (E) of this section;

(G)(1) The quotient, expressed as a percentage, obtained by dividing the net amount payable to the prize winner as described in division (F) of this section by the discounted present value of the payments described in division (C) of this section.

(2) Solely for purposes of division (G)(1) of this section, "net amount payable" does not include taxes required to be withheld under division (C)(1) of section 3770.072 of the Revised Code.

3770.12 Approval of transfer of prize award, final order (effective date 3/31/05)

<Note: See also preceding version of this section, in effect until 3-31-05.>

A court of competent jurisdiction shall approve a transfer of a lottery prize award only in a final order that is based on express findings of the court. The court shall approve the transfer if each of the following conditions that applies is met and is included in the court's express findings:

(A) If the transferor is a prize winner, the transferee has provided to the prize winner a disclosure statement that complies with section 3770.11 of the Revised Code, and the prize winner has confirmed the prize winner's receipt of the disclosure statement, as evidenced by the prize winner's notarized signature on a copy of the disclosure statement.

(B) If the transferor is a prize winner, the prize winner has received independent professional advice regarding the legal and other implications of the transfer.

(C) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the state lottery commission and has filed a copy of that notice with the court in which the application for approval of the transfer was filed.

(D) The transferee is a trust, limited partnership, general partnership, corporation, professional association, limited liability company, or other entity that is qualified to do business in this state and meets the registration requirements for that type of entity under Title XVII of the Revised Code.

(E) The transfer complies with all applicable requirements of the Revised Code and does not contravene any applicable statute or court order.

(F) The transfer does not include or cover the amounts of the lottery prize award that are required to be withheld or deducted pursuant to section 3119.80, 3119.81, 3121.02, 3121.03, 3123.06, 3770.071, or 3770.072 of the Revised Code.

(G) Any amounts described in division (F) of this section that are required to be withheld or deducted, as of the date of the court order, will be offset by the commission first against remaining payments due the transferor and then against payments due the transferee.

(H) Except as provided in divisions (F) and (G) of this section, that the transferor's interest in each and all of the future payments from a particular lottery prize award is to be paid to a single transferee, or, if the payments from the lottery prize award are to be directed from the state lottery commission to multiple transferees, the commission has promulgated rules under section 3770.03 of the Revised Code permitting transfers to multiple transferees, and the transfer is consistent with those rules.

(I) If the lottery prize award has been transferred within twelve months immediately preceding the effective date of the proposed transfer, the state lottery commission has not objected to the proposed transfer. The court shall presume that the requirements of this division are met unless the commission notifies the court in writing before the hearing on the application for transfer, or through counsel at that hearing, that a transfer of the same lottery prize award has been made within that twelve-month period and that the commission objects to a subsequent transfer within that twelve-month period. The court shall find that the requirements of this division are not met if the commission provides notice of a prior transfer of the same lottery prize award within that twelve-month period and its objection to the proposed transfer, unless the transferor or transferee shows by clear and convincing evidence that no previous transfer of the same lottery prize award occurred within that twelve-month period. For purposes of this division, any of a series of transfers of a lottery prize award that occur simultaneously as part of a single transaction shall not be considered to be a prior transfer of the lottery prize award within the twelve-month period immediately preceding the effective date of the proposed transfer, provided that the condition set

forth in division (C) of this section is met.

If the court determines that all of the conditions in divisions (A) to (I) of this section that apply are met, the transfer of the lottery prize award shall be presumed to be fair and reasonable and in the best interests of the prize winner.

3770.121 Transfer of remainder of lottery prize installments (new section in effect 12/31/05)

Any state lottery commission rules allowing lottery prize awards to be paid in installments also shall allow a prize winner who is being paid a prize award in that manner to transfer all or a portion of the remainder of the prize award, subject to each of the following conditions:

(A) If each transfer is for less than one hundred per cent of the remainder of the prize award, the remainder of the prize award for each transfer must be five hundred thousand dollars or greater at the time of the transfer. If the lottery prize award is a lifetime prize, for each transfer the remainder of the minimum guaranteed prize to which the prize winner is entitled must be five hundred thousand dollars or greater at the time of the transfer.

(B) Payments of the prize award transferred shall be subject to the withholding or deduction of any amounts that are required to be withheld or deducted under section 3119.80, 3119.81, 3121.02, 3121.03, 3123.06, 3770.071, or 5747.062 of the Revised Code.

(C) The maximum number of transfers under this section with respect to any single prize award shall not exceed three unless a greater number has been specified by the commission in the rules

3770.13 Application for approval in advance of transfer of prize award

(A) A transferee shall file an application under sections 3770.10 to 3770.14 of the Revised Code for the approval in advance of a transfer of a lottery prize award in a court of competent jurisdiction.

(B) The following procedures shall apply to an application for the approval in advance by a court of a transfer of a lottery prize award under division (A) of this section:

(1) Upon the filing of the application, the court shall set a date, time, and place for a hearing on the application and shall notify the transferee and transferor of the date, time, and place of the hearing.

(2) Not less than thirty days prior to the date set by the court for the hearing on an application filed pursuant to this section, the transferee shall file with the court and shall serve on the state lottery commission, in the manner prescribed in the Rules of Civil Procedure for the service of process, a notice of the proposed transfer and the application for its approval in advance. The notice shall include all of the following:

(a) A copy of the application;

(b) A copy of the transfer agreement or, if the transferor is not a prize winner, a redacted copy of the transfer agreement that discloses sufficient information to allow the commission and the court to determine the validity of the transfer agreement;

(c) If the transferor is a prize winner, a copy of the disclosure statement provided by the transferee pursuant to section 3770.11 of the Revised Code and signed by the prize winner pursuant to division (A) of section 3770.12 of the Revised Code;

(d) The amounts and due dates of the lottery prize award payments that will be transferred under the transfer agreement;

(e) Notification of the date, time, and place of the hearing on the application;

(f) The complete name, address, and taxpayer identification number of the transferee.

(3) The commission shall not be required to appear in or be named as a party to a hearing on the application, but may intervene as of right in the proceeding.

(4) At the conclusion of the hearing on an application under this section, the court may grant or deny the approval of the transfer. The court shall enter its

order accordingly. If the court grants the approval of the transfer, it shall include in its order all of the express findings specified in section 3770.12 of the Revised Code. If the court denies the approval of the transfer, it shall include in its order the reasons for the denial.

(5) An order of the court made under division (B)(4) of this section is a final and appealable order.

3770.14 Certified copy of court order; payments to transferee

(A) Upon receipt of a court order issued under section 3770.13 of the Revised Code, the transferee shall provide a certified copy of the court order to the director of the state lottery commission. Not later than ten days after receipt of the certified copy of the court order, the director shall acknowledge to the transferee in writing the commission's intent to comply with the court order in making future payments.

(B) The director shall make payments of the lottery prize award to the transferee designated in the certified copy of the court order and in accordance with the prize payment schedule established when the prize was claimed. The director may charge a processing fee, in an amount determined by the commission by rule pursuant to section 3770.03 of the Revised Code, to cover any direct or indirect costs associated with making the prize award payments in accordance with that prize payment schedule.

(C) Upon payment of the lottery prize award pursuant to this section, the director and the commission are discharged from all further liability therefor.

(2004 H 362, eff. 3-31-05; 2003 H 95, eff. 9-26-03; 2002 S 226, eff. 9-17-02)