

BILL ANALYSIS

Senate Research Center

S.B. 626
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Lottery Act (Act) requires mandatory deduction from the prize winnings of a person for certain delinquent amounts owed to the state. Examples of such delinquencies include tax or other money owed to the comptroller of public accounts, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission. A mandatory deduction from prize winnings is also required for delinquent child support payments administered or collected by the attorney general.

The Act also allows prize winners who receive installment payments to assign future installments, except that any prize payments due within the final two years of the payment schedule may not be assigned. This provision allows the Texas Lottery Commission (commission) to determine if there are delinquent payments owed to the state and to collect on those payments prior to the payout of the final two years of prize winnings. However, recent court decisions have held that, based on a separate provision of the Uniform Commercial Code, a lottery prize winner does have the right to assign the final two years of prize payments. S.B. 626 removes the prohibition on the ability of the prizewinner to assign their winnings the last two years of the payment schedule. S.B. 626 also clarifies and resolves redundancies in current statute that governs the commission.

This inconsistency in existing law has resulted in numerous lawsuits costing the commission and the Office of the Attorney General time and resources to defend. S.B. 626 resolves the inconsistencies in language between the Act and the Uniform Commercial Code, and provides a clear statement of policy regarding the ability to assign prize payments.

S.B. 626 amends current law relating to lottery winnings, including assignment of winnings, periodic payments of winnings, and the deduction of child support delinquency amounts from winnings paid to a prize winner.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Lottery Commission is modified in SECTION 4 (Section 466.4075, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter I, Chapter 466, Government Code, by adding Section 466.4001, to define in this subchapter "prize winner."

SECTION 2. Amends Section 466.406(b), Government Code, to require payment of prize payments not previously assigned as provided by this section or Section 466.410 to be made to the estate of a deceased prize winner, rather than prizewinner, if the prize winner was an individual. Makes a conforming change.

SECTION 3. Amends Section 466.407, Government Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

- (a) Requires the executive director of the Texas Lottery Commission (executive director; commission) to deduct the amount of a delinquent tax or other money from the winnings of a prize winner, rather than the winnings of a person, who was been finally determined

to be delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the comptroller of public accounts (comptroller), rather than collected by the comptroller, under Section 403.055 in default on a loan made under Chapter 52 (Student Loan Program), Education Code, or in default on a loan guaranteed under Chapter 57 (Guaranteed Student Loans), Education Code. Deletes existing text requiring the executive director to deduct the amount of a delinquent tax or other money from the winnings of a person who has finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission; delinquent in making child support payments administered or collected by the attorney general; or delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31 (Financial Assistance and Service Programs), Human Resources Code. Makes a conforming and nonsubstantive changes.

(a-1) Requires the executive director to deduct delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as a determined by a court or a Title IV-D agency under Chapter 231 (Title IV-D Services), Family Code.

(b) Provides that if the winnings of a prize winner, rather than a person's winnings, exceed the amount of a delinquency under Subsection (a) or (a-1), the director of the division is required to pay the balance to the prize winner. Requires the director to transfer the amount deducted to the appropriate agency or to the state disbursement unit under Chapter 234 (State Case Registry, Disbursement Unit, and Directory of New Hires), Family Code, as applicable.

SECTION 4. Amends Section 466.4075, Government Code, as added by Chapter 1104 (H.B. 2424), Acts of the 75th Legislature, Regular Session, 1997, as follows:

Sec. 466.4075. DEDUCTIONS OF CHILD SUPPORT FROM CERTAIN LOTTERY WINNINGS. (a) Provides that this section applies only to a prize that is awarded by the director under Section 466.402(b) (relating to prize payment amounts), including a prize paid in periodic installments, rather than providing that this section applies only to a prize that is required to be paid in periodic installments and is awarded by the director under Section 466.402(b).

(b) Requires the executive director, in the event of a single payment, to deduct from winnings of the prize winner an amount for delinquent child support owed by the prize winner if the executive director has been provided with a certified copy of a court order or a writ of withholding issued under Chapter 158, Family Code, or notice of a child support lien created under Subchapter G (Child Support Lien), Chapter 157 (Enforcement), Family Code.

(c) Creates this subsection from existing text. Requires the executive director, if the prize is paid in periodic installments, to deduct from periodic installment winnings paid to a prize winner amounts owed by the prize winner for child support, rather than to deduct an amount a court has ordered a person to pay as child support from a person's periodic installment winnings, if the executive director has been provided with a certified copy of a court order or a writ of withholding issued under Chapter 158, Family Code, or notice of a child support lien created under Subchapter G, Chapter 157, Family Code. Provides that this subsection does not apply to the payment of amounts to a person to whom the prize winner assigns the right to receive prize payments under Section 466.410 (Assignment of Prizes). Makes a nonsubstantive change.

(d) Redesignates existing Subsection (c) as Subsection (d). Requires the court order, writ of withholding, or notice of a child support lien provided under Subsection (c), to direct child support to be paid in the manner in which the periodic installment prize is paid. Makes no further changes to this subsection.

(e) Redesignates existing Subsection (d) as Subsection (e). Requires the executive director, if the winnings of a prize winner, rather than a person's winnings, exceed the amount deducted under Subsection (b) or (c) and Section 466.407 or any other section of this chapter allowing a deduction from the winnings of a prize winner, to pay the balance to the prize winner. Requires the executive director to transfer the money deducted under Subsection (b) or (c) to the appropriate person as determined by court order, the clerk of the court that issued the order for placement in the registry of the court, or the state disbursement unit under Chapter 234, Family Code, as appropriate. Makes a conforming change.

(f) Redesignates existing Subsection (e) as Subsection (f). Authorizes the commission to adopt rules necessary to administer this section. Deletes existing text requiring the commission to adopt rules under this section that allow a person with a court order under Chapter 157 or 158, Family Code, to file copies of the order with the commission, and describe the procedures used by the commission to compare the list of persons winning periodic installment prizes under Section 466.402(b) with a list of obligors compiled from orders filed under Subdivision (1) and to make the deductions required under this section.

(g) Provides that Section 9.406 (Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective), Business & Commerce Code, does not apply to periodic payments of lottery prize winnings under this section.

SECTION 5. Amends Section 466.410, Government Code, by amending Subsections (a), (b), (e), and (i) and adding Subsection (k), as follows:

(a) Authorizes a person to assign, in whole or in part, the right to receive prize payments that are paid by the commission in installments over time if the assignment is made to a person designated by an order of a district court of Travis County, except that a person may not assign the right to receive prize payments if the person is subject to a child support order and is delinquent in making support payments under that order, rather than except that installment prize payments due within the final two years of the prize payment schedule may not be assigned.

(b) Requires a district court to issue an order approving a voluntary assignment and directing the commission to direct prize payments in whole or in part to the assignee if certain conditions are met, including if the assignor provides a sworn and notarized affidavit stating that the assignor is not delinquent in payment of child support under a court or administrative order issued in this state or another state. Makes nonsubstantive and conforming changes.

(e) Requires the court order to include specific findings as to compliance with the requirements of Subsections (b), (c), and (d) and to specify the prize payment or payments assigned, or any portion thereof, including the dates and amounts of the payments to be assigned, the years in which each payment is to begin and end, the gross amount of the annual payments assigned before taxes, and the name of the prize winner as it appears on the lottery claim form. Deletes existing text requiring the court order to include the prizewinner's name as it appears on the lottery claim form, the assignor's social security or tax identification number, and, if applicable, the citizenship or resident alien number of the assignee if an individual.

(i) Provides that, notwithstanding any other provision of this section, there will be no right to assign prize payments following:

(1) the issuance, by the Internal Revenue Service, of a technical rule letter, revenue ruling, or other public ruling of the Internal Revenue Service that determines that, based on the right of assignment as provided by this section, a

lottery prize winner, rather than prizewinner, who does not assign prize payments would be subject to an immediate income tax liability for the value of the entire prize rather than annual income tax liability for each installment when paid; or

(2) the issuance by a court of a published decision holding that, based on the right of assignment as provided by this section, a lottery prize winner who does not assign prize payments would be subject to an immediate income tax liability for the value of the entire prize rather than annual income tax liability for each installment when paid. Makes a conforming change.

(k) Provides that Section 9.406, Business & Commerce Code, does not apply to periodic payments of lottery prize winnings under this section.

SECTION 6. (a) Repealer: Section 466.407(c) (relating to rules regarding the form and frequency of report), Government Code.

(b) Repealer: Section 466.4075 (Deductions of Child Support from Certain Lottery Winnings), Government Code, as added by Chapter 135 (H.B. 566), Acts of the 75th Legislature, Regular Session, 1997.

SECTION 7. Effective date: upon passage or September 1, 2011.