

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1785

H.P. 1304

House of Representatives, February 15, 1996

An Act Relating to Payment of Tri-state Lotto Prizes.

Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative NADEAU of Saco. (GOVERNOR'S BILL)
Cosponsored by Senator FERGUSON of Oxford and
Representative TRUE of Fryeburg.

Be it enacted by the People of the State of Maine as follows:

2
4 **Sec. 1. 8 MRSA §416, sub-§1**, as amended by PL 1991, c. 295, §2 and affected by §4, is further amended to read:

6 **1. Prizes over \$5,000; certified list.** All prizes over
8 \$5,000 are awarded to holders of winning tickets as provided in
10 this section. Within one week after any drawing or selection of
12 prize winning tickets, the commission shall deliver to each of
14 the party states a certified list of the tickets to which prizes
16 are awarded and the amount of each such prize. Upon delivery of
18 the certified list and voucher of the commission, moneys
20 sufficient for the payment of those prizes may be withdrawn from
22 the prize account established in section 415, subsection 2. The
24 commission shall each month provide each party state with a
26 record of all such withdrawals. Payment of prizes is made by the
commission, or its designee, to holders of the tickets to which
prizes are awarded. The right of any person to a prize drawn is
not assignable, except that payment of any prize drawn may be
paid to the estate of a deceased prize winner, and except that
any person, pursuant to an appropriate judicial order or an
administrative order relating to child support, may be paid the
prize to which the winner is entitled. The commission and its
officers, agents and employees are discharged of all further
liability upon payment of a prize pursuant to this section
another person as provided in section 416-A.

28 ~~Prior to paying any winnings that must be paid directly by the~~
30 ~~commission, the commission shall determine whether the lottery~~
32 ~~winner is on a list, provided by any of the party states, of~~
34 ~~persons who owe to that state a child support debt that has been~~
36 ~~liquidated by judicial or administrative action. If the winner~~
38 ~~is on a list of persons who owe child support debts, the~~
40 ~~commission shall suspend payment of winnings and notify the~~
42 ~~winner of its intention to offset the winner's child support debt~~
44 ~~against the winnings. The commission shall notify the winner of~~
46 ~~the winner's right to request a hearing before the creditor~~
48 ~~agency in the party state within 15 days of the winner's receipt~~
50 ~~of that notice. The hearing is limited to the questions of~~
~~whether the debt is liquidated and whether post-liquidation~~
~~events have affected the winner's liability. The decision of the~~
~~agency as to the existence of a liquidated debt constitutes final~~
~~agency action. If, within 90 days of the notice of intended~~
~~setoff to the winner, the creditor agency of the party state~~
~~requesting setoff certifies to the commission that the winner did~~
~~not make a timely request for hearing or that a hearing was held~~
~~and the debt was upheld, the commission shall offset the~~
~~liquidated debt against the winnings due to the winner. Any~~
~~remaining winnings are paid to the winner. If the commission~~
~~does not hear from the creditor agency of the party state within~~

90--days--of--the--notice--of--intended--setoff--to--the--winner,--the
2 commission shall release all winnings to the winner.

4 Sec. 2. 8 MRSA §416-A is enacted to read:

6 §416-A. Payment of prize to another person

8 1. Conditions permitting payment of a prize to another
10 person. Payment of a prize may be made to a person other than
12 the winner as follows:

14 A. To the estate of a deceased prizewinner upon receipt by
16 the commission of a certified court order appointing an
18 executor or administrator;

20 B. To any person pursuant to a certified final order of a
22 court of competent jurisdiction, including orders pertaining
24 to claims of ownership in the prize, division of marital
26 property in divorce actions, bankruptcy, child support,
28 appointment of a guardian or conservator and distribution of
30 an estate; or

32 C. To any person, including a trustee, pursuant to a
34 certified final order of a court of competent jurisdiction
36 of a party state approving the voluntary assignment of the
38 right to a prize if the court affirmatively finds all of the
40 following:

42 (1) That the assignor and the assignee are not
44 represented by the same counsel;

46 (2) That the assignment is in writing and represents
48 the entire agreement between the parties;

50 (3) That the assignment agreement contains the
following provisions:

(a) The assignor's name, social security number
or tax identification number and address;

(b) The assignee's name, social security number
or tax identification number, citizenship or
resident alien number, if applicable, and address;

(c) The specific prize payment or payments
assigned or any portion of the payments, including:

(i) The payable due dates and amounts of
each payment to be assigned; and

2 (ii) The gross amount of the annual payment
3 or payments to be assigned before taxes; and

4 (d) A notice of right to cancel in immediate
5 proximity to the space reserved for the signature
6 of the assignor in boldface type of a minimum size
7 of 10 points that provides that:

8 (i) The assignor may cancel the assignment
9 without cost until midnight of the
10 forty-fifth business day after the day on
11 which the assignor has signed an agreement to
12 assign a prize or portion of a prize;

13 (ii) Cancellation occurs when notice of
14 cancellation is given to the assignee;

15 (iii) Notice is sufficient if it indicates
16 the intention of the assignor not to be
17 bound; and

18 (iv) Notice of cancellation, if given by
19 mail, is deemed given when deposited in a
20 mailbox properly addressed with first class
21 mail postage prepaid.

22 Failure to provide the notice of right to cancel
23 as provided in this division renders the
24 assignment agreement unenforceable and the
25 assignor may collect a reasonable attorney's fee
26 in any action to enforce such agreement;

27 (4) That, prior to execution of the assignment
28 agreement, the assignee has provided to the assignor in
29 writing, on a disclosure form separate and apart from
30 the agreement, the following:

31 (a) The aggregate dollar value of payments
32 assigned;

33 (b) The total consideration paid to the assignor
34 by the assignee; and

35 (c) An itemization of all other fees or costs to
36 be paid by the assignor or deducted from the
37 payment to the assignor;

38 (5) That the assignor has represented to the court in
39 sworn testimony, if a personal appearance is required

2 by the court, or in the assignor's written affidavit,
sworn to under penalty of perjury, that:

4 (a) Prior to signing the assignment agreement,
the assignor reviewed the agreement and understood
6 its terms and effects;

8 (b) The assignor has consulted with independent
financial and tax advisors not referred by or
10 associated with the assignee;

12 (c) The assignor has signed the assignment
agreement acting under free will without undue
14 influence or duress;

16 (d) The assignor is not under any obligation to
pay child support or is under that obligation and
18 is in good standing with respect to that
obligation or has agreed to a payment plan with
20 the party state agency responsible for child
support and is in full compliance with that plan;
22 and

24 (e) The assigned payment or payments are not
subject to any claims, liens, levies, security
26 interests, assignments or offsets asserted by
other persons or the party states or has provided
28 the court with written consent of each person
having such an interest; and

30
32 (6) If the assignor is married, the assignor has
submitted to the court a signed and notarized statement
34 of the spouse consenting to the assignment. If a
notarized statement is not presented to the court, the
36 court shall determine the ability of the assignor to
make the proposed assignment without the spouse's
38 consent.

40 2. Pledge of payment as collateral for a loan. A winner
may pledge all or any part of a prize as collateral for a loan.

42 A. Notwithstanding any provision of the Uniform Commercial
Code - Secured Transactions, Title 11, article 9, to the
44 contrary, perfection of a security interest in a prize must
be completed by filing, in addition to any other filings
46 that may be required, a financing statement with the
commission.

48
50 B. In order to be entitled to receive a prize payment or
payments from the commission, a secured party must obtain a

certified final order of a court of competent jurisdiction that:

(1) Adjudges the prize winner in default of a loan agreement with the secured party;

(2) Makes findings with respect to the loan agreements and financing statements constituting the loan transaction that are equivalent to those required pursuant to subsection 1, paragraph C and, in addition, a finding that truth-in-lending disclosures set forth in 12 Code of Federal Regulations, Sections 226.17, 226.18, 226.19 and 226.20 were made; and

(3) Identifies specific payments and awards ownership of those payments to the secured party.

C. This subsection may not be construed to:

(1) Create or enlarge a cause of action in favor of a secured party;

(2) Alter or impair any rule of law applicable to or governing the rights of a debtor under federal or state lending statutes; or

(3) Alter or impair the provisions of the Uniform Commercial Code - Secured Transactions, Title 11, article 9, except to the extent inconsistent with the provisions of this section.

3. Commission intervention. The commission may intervene as of right in any action pursuant to subsection 1, paragraph C or subsection 2, but may not be considered an indispensable or necessary party.

4. Service of final order. A certified copy of the final order required by subsection 1, paragraph B, a certified copy of the final order and the assignor's affidavit required under subsection 1, paragraph C and a certified copy of the final order required by subsection 2 must be served on the commission together with a nonrefundable processing fee of \$500 within 15 days after entry of the order.

5. Request to modify or vacate final order. The commission may file a request to modify or vacate a final order pursuant to subsection 1, paragraph C or subsection 2 within 15 days after service of the order on the commission.

6. Payments. Commencing on the 30th day after full compliance with subsection 4 or after final determination of any

2 motion filed to vacate or modify a final order entered pursuant
3 to subsection 5, the commission is obligated to make payments,
4 subject to tax withholding, in accordance with that order.

6 7. Change in assignment. A modification or amendment to an
7 order pursuant to subsection 1, paragraph B or C or subsection 2
8 or an additional or subsequent assignment of a prize is not valid
9 or binding on the commission unless the modification, amendment
10 or assignment is approved by a separate court order that meets
11 the requirements of this section.

12 8. Discharge of liability. The commission, its officers,
13 agents and employees are discharged of all further liability upon
14 payment of a prize pursuant to this section.

16 9. Confidentiality of records. The financial, tax, trust
17 or personal records filed, received, maintained or produced by
18 the commission in connection with payment of a prize as provided
19 in this section are confidential. Such records are not public
20 records under Title 1, chapter 13. Upon written request, the
21 commission may release the name, town of residence, date of prize
22 and the gross and net amounts of the annual prize payment of a
23 winner. Financing statements filed with the commission are
24 public records.

26 10. Child support debts. This compact recognizes that each
27 party state has enacted laws authorizing a party state agency to
28 collect child support debts and arrearages. Upon receipt of
29 notice from a party state agency, the commission shall suspend
30 payment of winnings in the amount of the child support debt or
31 arrearage and notify the winner. Child support debts and
32 arrearages of a winner must be offset by the commission in the
33 manner in which the state lottery commission of a party state is
34 required by law to offset those debts and arrearages.

36 **Sec. 3. 19 MRSA §504-B, sub-§2, as enacted by PL 1991, c. 295,**
37 **§3 and affected by §4, is repealed.**

38 **Sec. 4. Effective date.** This Act takes effect when the Attorney
40 General notifies the Revisor of Statutes that New Hampshire and
41 Vermont have enacted concurrent legislation relating to payment
42 of prizes to persons other than the winner, except that the Maine
43 Revised Statutes, Title 8, section 416-A, subsection 1, paragraph
44 C and subsection 2, relating to the pledge of a future prize
45 payment or payments as collateral to secure a loan, are repealed
46 if any of the following occur:

48 1. The United States Internal Revenue Service, or IRS,
49 issues a technical rule letter, revenue ruling or other public
50 ruling in which the IRS determines that, based upon the right of

2 voluntary assignment or pledge of future prize payments as
collateral to secure a loan as provided in the Maine Revised
Statutes, Title 8, section 416-A, subsection 1, paragraph C and
4 subsection 2, a winner who does not assign any prize payments
under section 416-A would be subject to an immediate income tax
6 liability for the value of the entire prize rather than the
annual income tax liability for each installment when paid;

8
2. A court of competent jurisdiction issues a published
10 decision holding that, based upon the right of voluntary
assignment or pledge of future prize payments as collateral to
12 secure a loan as provided in the Maine Revised Statutes, Title 8,
section 416-A, subsection 1, paragraph C and subsection 2, a
14 winner who does not assign any prize payments under section 416-A
would be subject to an immediate income tax liability for the
16 value of the entire prize rather than annual income tax liability
for each installment when paid;

18
3. Upon receipt of a letter or ruling from the IRS or a
20 published decision of a court of competent jurisdiction, the
Director of the Bureau of Alcoholic Beverages and Lottery
22 Operations shall file immediately a copy of that letter, ruling
or published decision with the Attorney General; and

24
4. Upon the filing by the Director of the Bureau of
26 Alcoholic Beverages and Lottery Operations of a letter, ruling or
published decision with the Attorney General, a winner is
28 ineligible to assign a prize or pledge a future prize payment or
payments as provided in the Maine Revised Statutes Title 8,
30 section 416-A, subsection 1, paragraph C and subsection 2.

32 **STATEMENT OF FACT**

34
This bill permits the voluntary assignment of Tri-state
36 Lotto prizes on specified terms and conditions. This bill also
permits the prizewinner to pledge future prize payments as
38 collateral for a loan on specified terms and conditions. The
bill becomes effective when concurrent legislation is enacted by
40 New Hampshire and Vermont. Provisions of the bill permitting the
assignment or pledge of prizes are repealed if the United States
42 Internal Revenue Service or a court rules, with regard to prizes
that are not assigned or pledged, that the right to do so
44 requires the taxation of the entire prize in the year in which it
is received rather than the years in which amounts are actually
46 paid.