HOUSE
RESEARCH
ORGANIZATION bill analysis | 4/26/1999 | HB 1799
P. King, Morrison

SUBJECT: Allowing lottery winners to assign their right to annual payments.

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 8 ayes — Wilson, Yarbrough, Flores, Goolsby, Haggerty, J. Moreno, Palmer, A. Reyna

0 nays

1 absent — D. Jones

WITNESSES: For — Robin Shapiro, Singer Asset Finance Company

Against — None

On — Kimberly Kiplin, Texas Lottery Commission

BACKGROUND: The Texas Government Code Sec. 466.406(a) prohibits lottery prize winners from transferring their right to annual payments to other persons. The only exceptions are payments to the estate if the lottery winner dies or when the payments are made under an appropriate judicial order. In some states, lottery winners are allowed to sell their future installment payments to finance companies in return for a lump sum payment.

Lottery players must decide at the time they purchase the ticket whether they want the Texas Lottery Commission to provide annual payments or a lump sum equal to the net present value of the annual payments. The net present value usually equals half the total annual payments that the prize winner would receive.

DIGEST: HB 1799 would allow lottery prize winners to assign their rights to installment payments to another person, as long as the assignment was made by an order of a Travis County district court. The order would direct the Texas Lottery Commission to direct the payments in whole or in part to the person assigned the payments.

The assignment would have to be a written form signed by the prize winner. The Texas Lottery Commission would have to be provided with a copy of the petition and notice of the hearing on the assignment within ten days of the hearing. The commission could intervene in the proceeding, but it would not be required to be a party.

The prize winner also would have to present a sworn affidavit to the district court stating that the prize winner:

- was eighteen years of age or older;
- was of sound mind and not under duress;
- had consulted with independent legal counsel, and had had the opportunity for independent financial and tax advice;
- understood that assigned installment payments or portions of payments would go to the other person;
- agreed that the state and the commission would have no further liability or responsibility to make the assigned payments to the original prize winner;
- had received a disclosure statement detailing the payments assigned, the purchase price, the rate of discount to the present value of the prize, and the amount of any closing fees;
- was advised of the right to cancel the assignment contract within three business days of signing it.

The order would include prize payments to be assigned, years each assigned payment would be made, and the gross amount of payments before taxes. It also would include the prize winner's name as it appeared on the claim form, the full legal name of the person making the assignment if the name differed from the prize winner's on the claim form, plus clear identification of that person.

A married prize winner would have to provide a notarized statement of consent to the assignment signed by the spouse. The court could determine whether the prize winner could make the assignment without that consent.

HB 1799 would authorize the commission to collect a reasonable fee to defray administrative expenses.

HB 1799 would not allow lottery winners to assign their annual payments until the commission received a determination from the Internal Revenue Service (IRS) on whether all lottery winners would be subject to immediate tax liability for the assignment value of the entire prize rather than the annual tax liability for each installment when paid if some lottery winners were allowed to assign their annual payments. Assignments would be not allowed if the IRS determined that all lottery winners would be subject to immediate taxation.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY:

HB 1799 would allow lottery prize winners to assign their winnings under specified conditions designed to ensure that their interest would be protected. Annual payments on lottery prize winnings are the property of the prize winner and should be treated just as any other annuity or investment. Prize winners should be allowed to sell or dispose of their own property on their own terms when they choose to do so.

Private finance companies could offer more payment options than the lottery commission. Private companies could offer short term assignments for a few years that would be too costly for the commission to administer. Assignments should be available from both the public and private sector to offer more choices and flexibility to prize winners.

Lottery prize winners in Texas have to decide at the moment of purchase whether they prefer to receive their winnings in the form of annual payments or a lump sum. The average ticket buyer makes this decision without fully considering the implications. HB 1799 would, in effect, give prize winners the flexibility to change their minds at a later date about how they want to receive their money.

If a prize winner receiving annual payments dies, the estate must pay taxes on the full value of the future payments. This tax can be as high as 37-to-50 cents out of every future dollar in annual payments. The assignment process established by HB 1799 could be used to avoid this tax liability and to provide for survivors of the prize winner.

It is doubtful that an assignor could get through the detailed district court assignment and affidavit process without the full permission of the prize winner. However, a floor amendment would add even greater protections for the consumer and the commission, including required legal representation for the prize winner and more involvement by the commission in the assignment process.

HB 1799 includes a contingent provision that would not allow lottery assignments should the IRS determine that the assignments process outlined in the bill would expose other lottery winners to greater tax liability. In other words, if the process makes winners who do not choose to make assignments subject to income tax liability for their entire winnings, rather than annual income tax liability on installments, no assignments would be allowed.

OPPONENTS SAY:

The Texas Lottery Commission has proposed a rule allowing prize winners to change from annual payments to a lump sum at any time. The commission should be given the opportunity to let this process work through this rule, rather than instituting the complex process of going to district court to authorize assignment of lottery winnings.

The commission could give prize winners 100 percent of the net present value of their annual payments, which would be equivalent to the lump-sum option allowed at the time a ticket is purchased. Private companies would not be able to offer 100 percent net present value and still make a profit. Consumers would be better served by the commission in this situation than by private companies.

OTHER OPPONENTS SAY:

The assignment process in HB 1799 needs more consumer protections to prevent shady operators from taking advantage of newly wealthy lottery prize winners. In many states, private finance companies offering to buy lottery assignments have been investigated for ethical abuses. Often, the finance company hires the “independent” legal counsel and barrages the prize winner with persuasive sales pitches.

The bill also should provide stronger protection for the Texas Lottery Commission. If an assignment were to be made by someone other than the prize winner, the actual prize winner would not be not bound by the release of liability in the assignment and potentially could sue the commission. While the commission could use the court-ordered assignment in its defense, it could still be vulnerable to costly litigation.

NOTES: Rep. P. King plans to offer a floor amendment that would require legal representation for the prize winner and more involvement by the commission in the assignment process.