

May 20, 2005

The Honorable Thomas V. Mike Miller, Jr.  
Senate President  
State House  
Annapolis, MD 21401

Dear Mr. Speaker:

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed Senate Bill 225 – *State Lottery – Prize Winners – Voluntary Assignments*.

This bill, for the first time in the history of the Maryland State Lottery, authorizes voluntary assignment by a lottery prizewinner. A voluntary assignment is an uncompelled transfer by way of sale or gift of the right to receive the lottery prize from the winner (assignor) to another person or entity (assignee). Senate Bill 225 was drafted to intentionally minimize the involvement of the Lottery Agency in any judicial proceedings arising out or otherwise caused by a voluntary assignment of a lottery prize. This intention is clearly reflected in a subsection of the legislation which provides “The Agency need not appear in or be named as a party to an action that seeks judicial approval of an assignment but may intervene as of right in the action.”

The clear intent to keep the State out of any judicial proceedings is further reinforced by a later subsection in the legislation which provides “The assignor and assignee shall hold harmless and indemnify the [Lottery] Agency, the [Lottery] Commission, and the State and its employees and agents from all claims, suits, actions, complaints, or liabilities related to the assignment.”

Unfortunately, it appears that the drafter and the General Assembly were unaware of relatively recent changes in the Uniform Commercial Code (UCC) as codified in the Commercial Law Article (CL) of the Annotated Code of Maryland. Chapter 282 of the 1999 Laws of Maryland (which became effective on July 1, 2001) made extensive changes in the UCC.

Of particular significance, for purposes of this legislation, is a provision contained in Chapter 282 that added lottery winnings to the definition of “account” to CL § 9–102(a)(2). As a consequence of this legislative alteration, the UCC became applicable to winnings from the Maryland State Lottery. The legal and procedural implications arising from the applicability of the UCC, when coupled with voluntary assignability of lottery prize winnings, expose the Maryland Lottery Agency, its employees, and its agents to a myriad of legal proceedings.

CL § 9–406 sets out the duties and obligations associated with the discharging of assignment under the UCC. Subsection (j), added to the statute by Chapter 408 of the 2001 Laws of Maryland, and still later modified by Chapter 477 of the 2002 Laws of Maryland, provides “This section prevails over any inconsistent statute of this State, unless the provision is contained in statute of this State, refers expressly to this section, and states that the provision prevails over this section.”

Senate Bill 225 does not, of course, contain any provision which purports to exempt this legislation from the preemption of CL Section 9–406(j)(1). Thus, the “hold harmless” and indemnification provisions of this legislation are rendered inoperative.