

CHAPTER 47

GOVERNMENT - STATE

HOUSE BILL 03-1036

BY REPRESENTATIVE(S) Garcia, Borodkin, Boyd, Cloer, Coleman, Fairbank, Frangas, Fritz, Hefley, Jahn, Johnson R., Lee, Madden, May M., Merrifield, Miller, Paccione, Pommer, Ragsdale, Romanoff, Stafford, Stengel, Veiga, Weissmann, and Williams S.;
also SENATOR(S) Dyer, Chlouber, Evans, Fitz-Gerald, Groff, Hanna, Isgar, Jones, Takis, Tapia, Tupa, and Windels.

AN ACT

CONCERNING THE APPLICATION OF LOTTERY WINNINGS TO OFFSET RESTITUTION OWED IN CRIMINAL CASES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 18.5 of title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

16-18.5-106.5. Lottery winnings offset. (1) (a) THE JUDICIAL DEPARTMENT SHALL, ON NO LESS THAN A MONTHLY BASIS, CERTIFY TO THE DEPARTMENT OF REVENUE INFORMATION REGARDING ANY DEFENDANT WHO HAS BEEN ORDERED TO PAY RESTITUTION PURSUANT TO SECTION 18-1.3-603, C.R.S.

(b) THE INFORMATION DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL INCLUDE THE SOCIAL SECURITY NUMBER OF THE PERSON WHO IS OBLIGATED TO PAY RESTITUTION AND THE AMOUNT OF RESTITUTION DUE AND OWING. THE DEPARTMENT OF REVENUE MAY REQUEST ADDITIONAL IDENTIFYING INFORMATION, AS NEEDED, FROM THE JUDICIAL DEPARTMENT IN ORDER TO OBTAIN AN ACCURATE DATA MATCH PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(2) (a) PRIOR TO THE PAYMENT OF LOTTERY WINNINGS REQUIRED BY RULE AND REGULATION OF THE COLORADO LOTTERY COMMISSION TO BE PAID ONLY AT THE LOTTERY OFFICES, THE DEPARTMENT OF REVENUE SHALL CHECK THE SOCIAL SECURITY NUMBER OF EACH WINNER WITH THOSE CERTIFIED BY THE JUDICIAL DEPARTMENT PURSUANT TO SUBSECTION (1) OF THIS SECTION. IF THE NAME AND ASSOCIATED SOCIAL SECURITY NUMBER OF A LOTTERY WINNER APPEARS AMONG THOSE CERTIFIED, THE DEPARTMENT OF REVENUE SHALL OBTAIN THE CURRENT ADDRESS OF THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

WINNER, SHALL SUSPEND THE PAYMENT OF THE WINNINGS, AND SHALL NOTIFY THE JUDICIAL DEPARTMENT. THE NOTIFICATION SHALL INCLUDE THE NAME, HOME ADDRESS, AND SOCIAL SECURITY NUMBER OF THE WINNER. THE JUDICIAL DEPARTMENT SHALL FORWARD THE NOTIFICATION TO THE COURT IN WHICH THE LOTTERY WINNER'S RESTITUTION OBLIGATION IS PENDING.

(b) (I) AFTER RECEIPT OF THE NOTIFICATION, THE COURT SHALL NOTIFY THE PERSON THAT IS OBLIGATED TO PAY RESTITUTION, IN WRITING, THAT THE STATE INTENDS TO OFFSET THE PERSON'S RESTITUTION OBLIGATION AGAINST HIS OR HER WINNINGS FROM THE STATE LOTTERY. SUCH NOTIFICATION SHALL INCLUDE INFORMATION CONCERNING THE OBLIGATED PERSON'S RIGHT TO OBJECT TO THE OFFSET AND TO REQUEST AN ADMINISTRATIVE REVIEW PURSUANT TO THE RULES AND REGULATIONS OF THE STATE COURT ADMINISTRATOR.

(II) THE SOLE ISSUES TO BE DETERMINED AT THE ADMINISTRATIVE REVIEW DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL BE:

(A) WHETHER THE PERSON IS REQUIRED TO PAY RESTITUTION PURSUANT TO AN ORDER ENTERED BY A COURT OF THIS STATE; AND

(B) THE AMOUNT OF RESTITUTION OUTSTANDING.

(3) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5) OF THIS SECTION, UPON NOTIFICATION BY THE DEPARTMENT OF REVENUE OF AMOUNTS DEPOSITED WITH THE STATE TREASURER PURSUANT TO SECTION 24-35-212, C.R.S., AND UPON THE TRANSFER OF THE AMOUNTS BY THE STATE TREASURER TO THE COURT IN WHICH THE RESTITUTION OBLIGATION IS PENDING, THE COURT SHALL DISBURSE THE AMOUNTS IN ACCORDANCE WITH THIS SUBSECTION (3).

(b) THE CLERK OF THE COURT SHALL APPLY THE AMOUNTS TOWARD THE OUTSTANDING RESTITUTION BALANCE OWED IN THE CRIMINAL CASE. THE CLERK SHALL DISTRIBUTE THE REMAINDER, IF ANY, TO THE PERSON AGAINST WHOM THE RESTITUTION ORDER WAS ENTERED. THE COURT SHALL NOTIFY THE CRIME VICTIM OR VICTIMS OF ACTIONS TAKEN UNDER THIS PARAGRAPH (b).

(4) THE STATE COURT ADMINISTRATOR SHALL PROMULGATE RULES AND REGULATIONS, SUBJECT TO THE APPROVAL OF THE SUPREME COURT, ESTABLISHING PROCEDURES TO IMPLEMENT THIS SECTION INCLUDING BUT NOT LIMITED TO THE PROCESS BY WHICH A LOTTERY WINNER MAY OBJECT TO AN OFFSET AGAINST RESTITUTION IN ACCORDANCE WITH PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION.

(5) IF A LOTTERY WINNER OWES RESTITUTION IN A CRIMINAL CASE AND ALSO OWES A CHILD SUPPORT DEBT OR ARREARAGES AS DESCRIBED IN SECTION 26-13-118 (1), C.R.S., THE LOTTERY WINNINGS OFFSET DESCRIBED IN SECTIONS 24-35-212 (5) (b) AND 26-13-118, C.R.S., SHALL TAKE PRIORITY AND BE APPLIED FIRST. ANY REMAINING LOTTERY WINNINGS SHALL BE DISBURSED AND DISTRIBUTED IN ACCORDANCE WITH THIS SECTION.

(6) THE HOME ADDRESSES AND SOCIAL SECURITY NUMBERS OF PERSONS SUBJECT TO THE STATE LOTTERY WINNINGS OFFSET DESCRIBED IN THIS SECTION THAT ARE

PROVIDED TO THE JUDICIAL DEPARTMENT BY THE DEPARTMENT OF REVENUE SHALL BE SENT TO THE RESPECTIVE COURT.

SECTION 2. 24-35-212 (5), Colorado Revised Statutes, is amended to read:

24-35-212. Prizes. (5) (a) Prior to the payment of any lottery winnings required by rule and regulation of the commission to be paid only at the lottery offices, the department of revenue shall require the winner to submit the winner's social security number and federal employer identification number, if applicable, and shall check the social security number of the winner with those certified by the department of human services AND THE JUDICIAL DEPARTMENT for the purpose of the state lottery winnings ~~offset~~ OFFSETS as provided in ~~section~~ SECTIONS 16-18.5-106.5 AND 26-13-118, C.R.S. The social security number and the federal employer identification number shall not become part of the public record of the department of revenue.

(b) (I) If the social security number of a lottery winner appears among those certified by the department of human services, the department of revenue shall suspend the payment of such winnings until the requirements of section 26-13-118, C.R.S., are met. If, after consulting with the department of human services, the department of revenue determines that the lottery winner owes a child support debt pursuant to section 14-14-104, C.R.S., or owes child support arrearages as part of an enforcement action pursuant to article 5 of title 14, C.R.S., or owes child support arrearages which are the subject of enforcement services provided pursuant to section 26-13-106, C.R.S., then the department of revenue shall withhold from the amount of winnings paid to the lottery winner an amount equal to the amount of child support debt or child support arrearages which are due or, if the amount of winnings is less than or equal to the amount of child support debt or arrearages due, shall withhold the entire amount of the lottery winnings. Any moneys so withheld shall be transmitted to the state treasurer for disbursement by the department of human services as directed in section 26-13-118, C.R.S.

(II) IF THE SOCIAL SECURITY NUMBER OF A LOTTERY WINNER APPEARS AMONG THOSE CERTIFIED BY THE JUDICIAL DEPARTMENT, THE DEPARTMENT OF REVENUE SHALL SUSPEND THE PAYMENT OF SUCH WINNINGS UNTIL THE REQUIREMENTS OF SECTION 16-18.5-106.5, C.R.S., ARE MET. IF, AFTER CONSULTING WITH THE JUDICIAL DEPARTMENT, THE DEPARTMENT OF REVENUE DETERMINES THAT THE LOTTERY WINNER IS OBLIGATED TO PAY THE AMOUNTS CERTIFIED UNDER 16-18.5-106.5, C.R.S., THEN THE DEPARTMENT OF REVENUE SHALL WITHHOLD FROM THE AMOUNT OF WINNINGS PAID TO THE LOTTERY WINNER AN AMOUNT EQUAL TO THE AMOUNT OF RESTITUTION WHICH IS DUE OR, IF THE AMOUNT OF WINNINGS IS LESS THAN OR EQUAL TO THE AMOUNT OF RESTITUTION DUE, SHALL WITHHOLD THE ENTIRE AMOUNT OF THE LOTTERY WINNINGS. ANY MONEYS SO WITHHELD SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DISBURSEMENT AS DIRECTED IN SECTION 16-18.5-106.5 (3), C.R.S.

(III) IF A LOTTERY WINNER OWES A CHILD SUPPORT DEBT OR ARREARAGES DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) AND ALSO OWES RESTITUTION AS DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), THE LOTTERY WINNING OFFSET AGAINST THE CHILD SUPPORT DEBT OR ARREARAGES SHALL TAKE PRIORITY AND BE APPLIED FIRST. THE REMAINING LOTTERY WINNING MONEYS, IF ANY, SHALL BE APPLIED TOWARD THE PAYMENT OF OUTSTANDING RESTITUTION AND

PROCESSED IN ACCORDANCE WITH SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

SECTION 3. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to orders of restitution entered on or after the applicable effective date of this act and delinquencies of restitution orders existing on or after said date.

Approved: March 20, 2003