

# 5:12-2.1a

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2005 **CHAPTER:** 46

**NJSA:** 5:12-2.1a (Regulates assignment of slot machine annuity jackpot periodic payments)

**BILL NO:** A569 (Substituted for S1324)

**SPONSOR(S):** Van Drew

**DATE INTRODUCED:** Pre-filed

**COMMITTEE:** **ASSEMBLY:** Tourism and Gaming  
**SENATE:**

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** January 24, 2005

**SENATE:** February 14, 2005

**DATE OF APPROVAL:** March 21, 2005

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) 2nd reprint enacted

**A569**

**[SPONSOR'S STATEMENT:](#)** (Begins on page 2 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **[ASSEMBLY:](#)** [Yes](#)

**SENATE:** No

**[FLOOR AMENDMENT STATEMENT:](#)** [Yes](#)

**LEGISLATIVE FISCAL ESTIMATE:** No

**S1324**

**[SPONSOR'S STATEMENT:](#)** (Begins on page 7 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

**[SENATE:](#)** [Yes](#)

**[FLOOR AMENDMENT STATEMENT:](#)** [Yes](#)

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

IS 3/28/07

§1  
C.5:12-2.1a  
§3  
C.5:12-33.1  
§§4, 5  
C.5:12-100.1  
& 5:12-100.2

P.L. 2005, CHAPTER 46, *approved March 21, 2005*  
Assembly, No. 569 (*Second Reprint*)

1 AN ACT concerning <sup>1</sup>[the Casino Control Commission] slot machine  
2 annuity jackpots, amending P.L.1995, c.18,<sup>1</sup> and supplementing  
3 P.L.1977, c.110 (C.5:12-1 et seq.).

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 <sup>1</sup>[1. The Casino Control Commission shall, by regulation, regulate  
9 or prohibit, as the commission deems appropriate, the assignment,  
10 transfer, or encumbrance of periodic payments payable from a casino  
11 slot machine annuity jackpot awarded by a casino licensee or group of  
12 casino licensees. The provisions of this section shall prevail over the  
13 provisions of the "Uniform Commercial Code-Secured Transactions,"  
14 N.J.S.12A:9-101 et seq., including N.J.S.12A:9-406, or any other law  
15 to the contrary.]<sup>1</sup>

16  
17 <sup>1</sup>1. (New section) "Annuity jackpot" - A slot machine jackpot  
18 offered by a casino licensee or multi-casino progressive slot machine  
19 system pursuant to which a patron wins the right to receive fixed cash  
20 payments at specified intervals in the future.<sup>1</sup>

21  
22 <sup>1</sup>2. Section 3 of P.L.1995, c.18 (C.5:12-2.2) is amended to read as  
23 follows:

24 3. "Annuity jackpot <sup>2</sup>[trust] guarantee<sup>2</sup>" --A <sup>2</sup>[ trust that is  
25 formed]<sup>2</sup> [by one or more casino licensees,] <sup>2</sup>financial arrangement  
26 established<sup>2</sup> in accordance with <sup>2</sup>the <sup>2</sup>rules <sup>2</sup>[established by] <sup>2</sup>of <sup>2</sup>the  
27 commission[, ] to assure that all payments that are due to the winner  
28 of [a slot machine] an annuity jackpot [that is to be paid in  
29 installments at specified intervals in the future] are actually paid when  
30 due <sup>2</sup>regardless of the future financial stability of the slot system  
31 operator that is responsible for making such payments<sup>2</sup>.<sup>1</sup>

32 (cf: P.L.1995, c.18, s.3)

33

34 <sup>1</sup>3. (New section) "Multi-casino progressive slot machine system"

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly ATG committee amendments adopted February 26, 2004.

<sup>2</sup> Assembly floor amendments adopted December 13, 2004.

1 - A slot machine gaming system approved by the commission pursuant  
2 to which a common progressive slot machine jackpot is offered on slot  
3 machines that are interconnected in more than one casino hotel  
4 facility.<sup>1</sup>

5  
6 <sup>1</sup>4. (New section) a. The right of any annuity jackpot winner to  
7 receive annuity jackpot payments from a <sup>2</sup>[casino licensee or annuity  
8 jackpot trust] slot system operator<sup>2</sup> shall not be assignable, except  
9 as permitted by this section. The provisions of this section shall  
10 prevail over the provisions of the “Uniform Commercial Code –  
11 Secured Transactions,” N.J.S. 12A:9-101 et seq., including N.J.S.  
12 12A:9-406, or any other law to the contrary.

13 b. Notwithstanding any other provision of this section, annuity  
14 jackpot payments may be paid to the estate of a deceased jackpot  
15 winner, in the same manner as they were paid to the winner, upon  
16 receipt by the <sup>2</sup>[casino licensee or annuity jackpot trust] slot system  
17 operator<sup>2</sup> of a certified copy of an order appointing an executor or an  
18 administrator.

19 c. <sup>2</sup> [Any] A<sup>2</sup> person may be assigned and paid the annuity  
20 jackpot payments to which an annuity jackpot winner is entitled  
21 pursuant to a judicial order of the New Jersey Superior Court or any  
22 other court having jurisdiction over property located in this State  
23 provided that the order pertains to claims of ownership in the annuity  
24 jackpot payments, division of marital property in divorce actions,  
25 bankruptcy, child support, appointment of a guardian or conservator,  
26 or distribution of an estate.

27 d. <sup>2</sup>[Any] A<sup>2</sup> person may be assigned and paid the annuity jackpot  
28 payments to which an annuity jackpot winner is entitled pursuant to a  
29 judicial order of the New Jersey Superior Court or any other court  
30 having jurisdiction over property located in this State <sup>2</sup>[provided that  
31 the order contains at least the following findings]. The annuity  
32 jackpot winner and the proposed assignee shall prepare a proposed  
33 form of order and submit such proposed order to the court for its  
34 consideration. The proposed form of order shall contain the following  
35 information<sup>2</sup>:

36 (1) the full legal name, address, social security number or taxpayer  
37 identification number and, if applicable, resident alien number of the  
38 winner;

39 (2) the full legal name, address, social security number or taxpayer  
40 identification number and, if applicable, resident alien number of the  
41 assignee;

42 (3) the date on which and the casino where the annuity jackpot was  
43 won;

44 (4) the slot machine game on which the annuity jackpot was won;

45 (5) the <sup>2</sup>[casino licensee or annuity jackpot trust] slot system  
46 operator<sup>2</sup> primarily responsible for making the annuity jackpot

1 payments:

2 (6) the gross amount of the annuity jackpot won before application  
3 of withholding taxes;

4 (7) the gross amount of each payment to be made to the winner by  
5 the <sup>2</sup>[casino licensee or annuity jackpot trust] slot system operator<sup>2</sup>  
6 before application of withholding taxes;

7 (8) the dates of the payments to be assigned and the amount of the  
8 specific payments to be assigned on each date;

9 (9) the identity of the winner's spouse, if any, and the interest of  
10 the spouse, if any, in the annuity jackpot payments;

11 (10) the identity of any other co-owner, claimant or lienholder and  
12 the amount of the interests, liens, security interests, prior assignments  
13 or offsets asserted by each such party;

14 (11) that the interest rate or discount rate, as applicable, and all  
15 fees and costs and other material terms relating to the assignment are  
16 expressly and clearly included in all material documents and in all  
17 documents that include any obligations of the annuity jackpot winner;

18 (12) that the interest rate or discount rate, as applicable, and any  
19 other fees or charges associated with the assignment do not indicate  
20 overreaching or exploitation, do not exceed current usury rates, and  
21 does not violate any laws of usury of this State;

22 (13) that the winner has reviewed and understands the terms of the  
23 assignment;

24 (14) that the winner understands that the winner will not receive  
25 the annuity jackpot payments, or portions thereof, for the years  
26 assigned;

27 (15) that the winner has agreed to the assignment of the winner's  
28 own free will without undue influence or duress;

29 (16) that the winner has retained and consulted with independent  
30 legal counsel who has advised the winner of the winner's legal rights  
31 and obligations;

32 (17) that the winner has retained and consulted with an  
33 independent tax advisor concerning the tax consequences of the  
34 assignment;

35 (18) that the winner has disclosed all existing debts, liens and child  
36 support obligations and does not seek assignment for purposes of  
37 evading creditors, judgments or obligations for child support; and

38 (19) that the winner has certified that: the winner is not obligated  
39 to repay any public assistance benefits; and the winner does not have  
40 a child support obligation, or if the winner does have a child support  
41 obligation, that no arrearage is due.

42 <sup>2</sup>The annuity jackpot winner and the proposed assignee shall  
43 provide a copy of the proposed form of order to the slot system  
44 operator at least 10 days before the court is scheduled to act on the  
45 proposed order to allow the slot system operator the opportunity to  
46 ensure that the proposed order is complete and correct in all respects  
47 prior to court's approval.<sup>2</sup>

1 e. Before a winner is legally bound, by agreement, contract or  
2 otherwise, and prior to the issuance of an order pursuant to subsection  
3 d. of this section, the assignee shall provide the winner with all  
4 material documents which shall be binding on the assignor, including  
5 documents evidencing obligations of the winner, and a written notice  
6 recommending that the winner obtain independent counsel before  
7 signing any document which shall be binding on the assignor. All  
8 documents shall include a notice of the assignor's right to cancel the  
9 agreement which shall be located in immediate proximity to all spaces  
10 reserved for the signature of the winner in bold-faced type of at least  
11 10 points and which shall provide as follows:

12 "You have the right to cancel this assignment without any cost to  
13 you until midnight three business days after the day on which you have  
14 signed an agreement to assign all or a portion of your annuity jackpot.

15 Cancellation occurs when you give notice by regular first class mail,  
16 postage prepaid, to the assignee at the address listed at the top of the  
17 first page of this document that you wish to cancel the assignment.  
18 Notice is deemed given when deposited in a mailbox."

19 f. <sup>2</sup>[If the casino licensee or annuity jackpot trust determines that  
20 a judicial order granting an assignment, issued pursuant to subsection  
21 d. of this section, is complete and correct in all respects, the casino  
22 licensee or annuity jackpot trust] The slot system operator<sup>2</sup> shall, not  
23 later than 10 days after receiving a true and correct copy of the filed  
24 judicial order, send the winner and the assignee written confirmation  
25 of receipt of the court-ordered assignment and of the <sup>2</sup>[casino  
26 licensee's or annuity jackpot trust's] slot system operator's<sup>2</sup> intent to  
27 rely thereon in making future payments to the assignee named in the  
28 order. The <sup>2</sup>[casino licensee or annuity jackpot trust] slot system  
29 operator<sup>2</sup> shall, thereafter, make all payments in accordance with the  
30 judicial order. No change in the terms of any assignment shall be  
31 effective unless made pursuant to a subsequent judicial order pursuant  
32 to this section.

33 g. The <sup>2</sup>[casino licensee or annuity jackpot trust] slot system  
34 operator<sup>2</sup> may impose a reasonable fee on an assignor to defray any  
35 direct or indirect administrative expenses associated with an  
36 assignment.

37 h. The commission and the State are not parties to assignment  
38 proceedings, except that the State may intervene as necessary to  
39 protect the State's interest in monies owed to the State.

40 i. The <sup>2</sup>[casino licensee or annuity jackpot trust] slot system  
41 operator<sup>2</sup> and the State shall comply with, and rely upon, a judicial  
42 order in distributing payments subject to that order.

43 j. A winner may pledge or grant a security interest in all or part of  
44 an annuity jackpot as collateral for repayment of a loan pursuant to a  
45 judicial order containing the <sup>2</sup>[findings] information<sup>2</sup> required by  
46 subsection d. of this section which the court deems relevant to the

1 pledge or grant.

2 k. Except where inconsistent with the provisions of this section,  
3 the New Jersey consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.),  
4 shall apply to all transactions under this section.

5 l. The <sup>2</sup>[court shall cease to approve assignments pursuant to  
6 subsection d.] provisions of subsections d., e. and j.<sup>2</sup> of this section  
7 <sup>2</sup>shall be invalid<sup>2</sup> if:

8 (1) the United States Internal Revenue Service issues a technical  
9 rule letter, revenue ruling, or other public ruling in which it is  
10 determined that because of the right of assignment provided by  
11 subsection d. of this section, annuity jackpot winners who do not  
12 exercise the right to assign annuity jackpot payments would be subject  
13 to an immediate income tax liability for the value of the entire annuity  
14 jackpot rather than annual income tax liability for each installment  
15 when received; or

16 (2) a court of competent jurisdiction issues a published decision  
17 holding that because of the right of assignment provided by subsection  
18 d. of this section, annuity jackpot winners who do not exercise the  
19 right to assign annuity jackpot payments would be subject to an  
20 immediate income tax liability for the value of the entire annuity  
21 jackpot rather than annual income tax liability for each installment  
22 when received.

23 m. Upon receipt, the commission shall immediately file a copy of  
24 a letter or ruling of the United States Internal Revenue Service or a  
25 published decision of a court of competent jurisdiction, described in  
26 subsection l. of this section, with the Secretary of State. No  
27 assignment shall be approved pursuant to subsection d. of this section  
28 after the date of such filing.

29 n. A voluntary assignment shall not include or cover payments, or  
30 portions of payments, that are subject to the offset pursuant to section  
31 5 of this amendatory and supplementary act, P.L. , c. (C. ), or  
32 any other law, unless appropriate provisions are made to satisfy the  
33 obligations giving rise to the offset.

34 o. No assignee shall directly or indirectly recommend or facilitate  
35 the hiring of any lawyer or accountant to assist the assignor in  
36 determining the appropriateness of the proposed assignment. Further,  
37 the assignee shall not offer, prior to the closing, tax or investment  
38 advice.<sup>1</sup>

39

40 <sup>1</sup>5. (New section) a. Each <sup>2</sup>[casino licensee or annuity jackpot  
41 trust] slot system operator<sup>2</sup> that awards an annuity jackpot shall  
42 provide prompt notice to the <sup>2</sup>[Office of Information Technology in  
43 the Department of the Treasury] commission<sup>2</sup> of the name, address  
44 and social security number of each annuity jackpot winner and the  
45 amount of the pending payments. <sup>2</sup>The commission shall forward such  
46 information to the Office of Information Technology in the  
47 Department of the Treasury.<sup>2</sup>

1     b. The Office of Information Technology shall cross check the  
2 annuity jackpot winner list with the data supplied by the Commissioner  
3 of Human Services pursuant to section 2 of P.L.1991, c.384  
4 (C.5:9-13.2) for a social security number match. If a match is made,  
5 the Office of Information Technology shall notify the Commissioner  
6 of Human Services.

7     c. If an annuity jackpot winner is in arrears of a child support  
8 order, or is a former recipient of Aid to Families with Dependent  
9 Children or Work First New Jersey, food stamp benefits or  
10 low-income home energy assistance benefits who has incurred an  
11 overpayment which has not been repaid, the <sup>2</sup>Probation Division of the  
12 Superior Court or the<sup>2</sup> Department of Human Services <sup>2</sup>[the  
13 Probation Division, or the Superior Court as the case may be] , as  
14 appropriate<sup>2</sup>, shall promptly notify the <sup>2</sup>[casino licensee or annuity  
15 jackpot trust] slot system operator<sup>2</sup> of the name, address, social  
16 security number and amount due on an arrears child support order or  
17 the amount due on an overpayment. The <sup>2</sup>[casino licensee or annuity  
18 jackpot trust] slot system operator <sup>2</sup> shall withhold this amount from  
19 the pending annuity jackpot payment and transmit same to the  
20 <sup>2</sup>Probation Division of the Superior Court or the<sup>2</sup> Department of  
21 Human Services <sup>2</sup>, as appropriate,<sup>2</sup> in accordance with regulations  
22 promulgated by the State Treasurer.

23     d. The <sup>2</sup>[county welfare agency which provided the public  
24 assistance benefits or the]<sup>2</sup> Probation Division <sup>2</sup>of the Superior  
25 Court<sup>2</sup>, acting as agent for the child support payee <sup>2</sup>or the county  
26 welfare agency that provided the public assistance benefits, as  
27 appropriate<sup>2</sup>, shall have a lien on the proceeds of the annuity jackpot  
28 payment in an amount equal to the amount of child support arrearage  
29 or the amount of overpayment incurred <sup>2</sup>, as appropriate<sup>2</sup>. The lien  
30 imposed by this section shall be enforceable in the Superior Court.  
31 Any of the annuity jackpot winner's funds remaining after withholding  
32 pursuant to the lien established pursuant to this section shall be paid  
33 to the winner in accordance with the rules of the commission.

34     e. The <sup>2</sup>[Department] Commissioner<sup>2</sup> of Human Services shall  
35 promulgate such <sup>2</sup>[rules and]<sup>2</sup> regulations as may be necessary to  
36 effectuate the purposes of this section including, but not limited to,  
37 regulations providing for prompt notice to any annuity jackpot winner,  
38 from whose payments the <sup>2</sup>Probation Division of the Superior Court  
39 or the<sup>2</sup> Department of the Human Services seeks to withhold funds,  
40 of the amount to be withheld and the reason therefor and providing the  
41 annuity jackpot winner with the opportunity for a hearing upon request  
42 prior to the disposition of any funds.

43     f. The State Treasurer shall also provide, by regulation, safeguards  
44 against the disclosure or inappropriate use of any personally  
45 identifiable information regarding any person obtained pursuant to this  
46 section.



1       g. For the purposes of this section, “prompt notice” shall mean  
2 notice within 14 days or less.<sup>1</sup>

3

4       <sup>1</sup>[2.] 6.<sup>1</sup> This act shall take effect immediately.

5

6

7

8

9       Regulates assignment of slot machine annuity jackpot periodic  
10 payments; provides for offset of annuity jackpots for child support  
11 arrearages.

# ASSEMBLY, No. 569

## STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

**Sponsored by:**

**Assemblyman JEFF VAN DREW**

**District 1 (Cape May, Atlantic and Cumberland)**

**SYNOPSIS**

Clarifies authority of Casino Control Commission to regulate assignment, transfer or encumbrance of casino slot machine annuity jackpot periodic payments.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the Casino Control Commission and  
2 supplementing P.L.1977, c.110 (C.5:12-1 et seq.).

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. The Casino Control Commission shall, by regulation, regulate  
8 or prohibit, as the commission deems appropriate, the assignment,  
9 transfer, or encumbrance of periodic payments payable from a casino  
10 slot machine annuity jackpot awarded by a casino licensee or group of  
11 casino licensees. The provisions of this section shall prevail over the  
12 provisions of the "Uniform Commercial Code-Secured Transactions,"  
13 N.J.S.12A:9-101 et seq., including N.J.S.12A:9-406, or any other law  
14 to the contrary.

15  
16 2. This act shall take effect immediately.

17  
18 STATEMENT

19  
20 The purpose of this bill is to clarify that the Casino Control  
21 Commission has the authority to adopt regulations that regulate, or  
22 even prohibit, the assignment, transfer or encumbrance of periodic  
23 payments payable from a casino slot machine annuity jackpot awarded  
24 by a casino licensee or group of casino licensees.

25 The commission has adopted a regulation providing that a winner's  
26 right to receive future periodic payments from an annuity jackpot may  
27 not be assigned, transferred, or encumbered in any way, except for a  
28 transfer to a winner's estate. The commission adopted this regulation  
29 to avoid application by the federal Internal Revenue Service of the  
30 "constructive receipt" doctrine to annuity jackpot winners. Under the  
31 doctrine, if a winner has the ability to assign, transfer, or encumber  
32 future payments, the winner is deemed to have received the entire  
33 jackpot amount in the current tax year and the entire amount is subject  
34 to federal income tax in that year. If the doctrine were applied, all  
35 annuity jackpot winners, even those with no intention of assigning,  
36 transferring, or encumbering their interest, could become subject to  
37 federal income tax on the present value of the entire annuity jackpot.  
38 That tax liability would likely be far in excess of the amount of an  
39 annual annuity payment.

40 The efficacy of the commission's regulation may have been  
41 unintentionally undermined by recent revisions of the "Uniform  
42 Commercial Code - Secured Transactions," N.J.S.A.12A:9-101 et seq.  
43 That law, in relevant part, provides that an "account" may be  
44 transferred and defines an "account" as including "winnings in a lottery  
45 or other game of chance operated or sponsored by a State,  
46 governmental unit of a State, or person licensed or authorized to

1 operate the game by a State or governmental unit of a State." The  
2 Uniform Commercial Code also contains language to the effect that its  
3 provisions concerning assignments prevail over any other law unless  
4 that other law expressly refers to the relevant section of the code and  
5 states that it prevails over the code's provisions.

6 By expressly providing that its provisions would prevail over the  
7 Uniform Commercial Code's assignment provisions, this bill would  
8 enable the Casino Control Commission to continue to regulate the  
9 assignment of slot machine annuity jackpot payments in a manner  
10 which avoids the imposition of burdensome federal tax requirements  
11 on winners.

# ASSEMBLY TOURISM AND GAMING COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 569**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 26, 2004

The Assembly Tourism and Gaming Committee reports favorably and with committee amendments Assembly, No. 569.

As amended by the committee, this bill establishes a procedure to regulate the assignment, transfer or encumbrance of periodic payments payable from a casino slot machine annuity jackpot awarded by a casino licensee or group of casino licensees.

The New Jersey Casino Control Commission has adopted a regulation providing that a winner's right to receive future periodic payments from an annuity jackpot may not be assigned, transferred, or encumbered in any way, except for a transfer to a winner's estate. The commission adopted this regulation to avoid application by the federal Internal Revenue Service of the "constructive receipt" doctrine to annuity jackpot winners. Under the doctrine, if a winner has the ability to assign, transfer, or encumber future payments, the winner is deemed to have received the entire jackpot amount in the current tax year and the entire amount is subject to federal income tax in that year. If the doctrine were applied, all annuity jackpot winners, even those with no intention of assigning, transferring, or encumbering their interest, could become subject to federal income tax on the present value of the entire annuity jackpot. That tax liability would likely be far in excess of the amount of an annual annuity payment.

The efficacy of the commission's regulation may have been unintentionally undermined by recent revisions of the "Uniform Commercial Code - Secured Transactions," N.J.S.A.12A:9-101 et seq. That law, in relevant part, provides that an "account" may be transferred and defines an "account" as including "winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State." The Uniform Commercial Code also contains language to the effect that its provisions concerning assignments prevail over any other law unless that other law expressly refers to the relevant section of the code and states that it prevails over the code's provisions.

By expressly providing that its provisions prevail over the Uniform Commercial Code's assignment provisions, this bill provides a procedure to regulate the assignment of annuity jackpot payments in a manner which avoids the imposition of burdensome federal tax requirements on winners. In order to assign annuity jackpots, the winner will have to obtain a judicial order. The judicial order must contain a number of findings to ensure that the assignment deal is fair to the winner, made by the winner for a legitimate purpose and of his or her own free will. The bill allows the winner to cancel the assignment within three business days, and provides instructions to casino licenses and annuity jackpot trusts. The bill provides that the court will cease to approve assignments if the United States Internal Revenue Service or a court of competent jurisdiction determines that the right to assign an annuity jackpot would subject all annuity jackpot winners to immediate income tax liability for the value of the entire annuity jackpot rather than annual income tax liability for each installment when received.

The bill also provides a procedure for the offsetting of annuity jackpots for child support arrearages and unrepaid overpayments of public assistance benefits. Both procedures are substantially similar to procedures used by the State Lottery.

#### COMMITTEE AMENDMENTS

Previously the bill provided that the New Jersey Casino Control Commission had the authority to regulate or prohibit the assignment of annuity jackpots, and that the provisions of the bill prevailed over the Uniform Commercial Code's assignment provisions. The committee adopted amendments to establish a procedure for assigning annuity jackpot payments, and a procedure for the offsetting of annuity jackpots for child support arrearages and unrepaid overpayments of public assistance benefits. Finally, the amendments provide definitions for the terms "annuity jackpot" and "multi-casino progressive slot machine system", and amend the definition of "annuity jackpot trust".

# STATEMENT TO

[First Reprint]

## **ASSEMBLY, No. 569**

with Assembly Floor Amendments  
(Proposed By Assemblyman VAN DREW)

ADOPTED: DECEMBER 13, 2004

These amendments make this bill identical to Senate. No.1324 (1R).

These amendments make the following changes:

- C replace references to "casino licensee or annuity jackpot trust" with "slot system operator". The former term has the effect of limiting the type of financial arrangements that may be established to ensure the payment of annuity jackpots. This change is designed to make this bill consistent with Assembly, No.3214 (1R), regarding the regulation of such arrangements, which has passed both Houses.
- C provide that parties seeking a court order for the assignment of casino annuity jackpot payments submit to the court and to the slot system operator a proposed form of order containing various information pertinent to the proposed assignment. Previously under the bill, the court order was required to contain this information as findings of the court.
- C provide that the slot system operator determine the completeness and accuracy of the information in the proposed form of order prior to its approval by the court. Previously under the bill, the slot system operator made the determination after the order was approved.
- C rephrase a provision that suspends the casino annuity jackpot assignment process in certain situations.
- C require a slot system operator to provide certain information about a annuity jackpot winner to the Casino Control Commission, which will in turn forward the information to the Office of Information Technology in the Department of the Treasury.
- C clarify references to the Probation Division in the Superior court.

**SENATE, No. 1324**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED MARCH 8, 2004

**Sponsored by:**  
**Senator BARBARA BUONO**  
**District 18 (Middlesex)**

**SYNOPSIS**

Regulates assignment of slot machine annuity jackpot periodic payments; provides for offset of annuity jackpots for child support arrearages.

**CURRENT VERSION OF TEXT**

As introduced.





S1324 BUONO

2

1 AN ACT concerning slot machine annuity jackpots, amending  
2 P.L.1995, c.18, and supplementing P.L.1977, c.110 (C.5:12-1 et  
3 seq.).

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) "Annuity jackpot" - A slot machine jackpot  
9 offered by a casino licensee or multi-casino progressive slot machine  
10 system pursuant to which a patron wins the right to receive fixed cash  
11 payments at specified intervals in the future.

12  
13 2. Section 3 of P.L.1995, c.18 (C.5:12-2.2) is amended to read as  
14 follows:

15 3. "Annuity jackpot trust" -- A trust that is formed [by one or  
16 more casino licensees,] in accordance with rules established by the  
17 commission[, ] to assure that all payments that are due to the winner  
18 of [a slot machine] an annuity jackpot [that is to be paid in  
19 installments at specified intervals in the future] are actually paid when  
20 due.

21 (cf: P.L.1995, c.18, s.3)

22  
23 3. (New section) "Multi-casino progressive slot machine system"-  
24 A slot machine gaming system approved by the commission pursuant  
25 to which a common progressive slot machine jackpot is offered on slot  
26 machines that are interconnected in more than one casino hotel facility.

27  
28 4. (New section) a. The right of any annuity jackpot winner to  
29 receive annuity jackpot payments from a casino licensee or annuity  
30 jackpot trust shall not be assignable, except as permitted by this  
31 section. The provisions of this section shall prevail over the provisions  
32 of the "Uniform Commercial Code – Secured Transactions," N.J.S.  
33 12A:9-101 et seq., including N.J.S.12A:9-406, or any other law to the  
34 contrary.

35 b. Notwithstanding any other provision of this section, annuity  
36 jackpot payments may be paid to the estate of a deceased jackpot  
37 winner, in the same manner as they were paid to the winner, upon  
38 receipt by the casino licensee or annuity jackpot trust of a certified  
39 copy of an order appointing an executor or an administrator.

40 c. Any person may be assigned and paid the annuity jackpot  
41 payments to which an annuity jackpot winner is entitled pursuant to a  
42 judicial order of the New Jersey Superior Court or any other court

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 having jurisdiction over property located in this State provided that the  
2 order pertains to claims of ownership in the annuity jackpot payments,  
3 division of marital property in divorce actions, bankruptcy, child  
4 support, appointment of a guardian or conservator, or distribution of  
5 an estate.

6 d. Any person may be assigned and paid the annuity jackpot  
7 payments to which an annuity jackpot winner is entitled pursuant to a  
8 judicial order of the New Jersey Superior Court or any other court  
9 having jurisdiction over property located in this State provided that the  
10 order contains at least the following findings:

11 (1) the full legal name, address, social security number or taxpayer  
12 identification number and, if applicable, resident alien number of the  
13 winner;

14 (2) the full legal name, address, social security number or taxpayer  
15 identification number and, if applicable, resident alien number of the  
16 assignee;

17 (3) the date on which and the casino where the annuity jackpot was  
18 won;

19 (4) the slot machine game on which the annuity jackpot was won;

20 (5) the casino licensee or annuity jackpot trust primarily  
21 responsible for making the annuity jackpot payments;

22 (6) the gross amount of the annuity jackpot won before application  
23 of withholding taxes;

24 (7) the gross amount of each payment to be made to the winner by  
25 the casino licensee or annuity jackpot trust before application of  
26 withholding taxes;

27 (8) the dates of the payments to be assigned and the amount of the  
28 specific payments to be assigned on each date;

29 (9) the identity of the winner's spouse, if any, and the interest of  
30 the spouse, if any, in the annuity jackpot payments;

31 (10) the identity of any other co-owner, claimant or lienholder and  
32 the amount of the interests, liens, security interests, prior assignments  
33 or offsets asserted by each such party;

34 (11) that the interest rate or discount rate, as applicable, and all  
35 fees and costs and other material terms relating to the assignment are  
36 expressly and clearly included in all material documents and in all  
37 documents that include any obligations of the annuity jackpot winner;

38 (12) that the interest rate or discount rate, as applicable, and any  
39 other fees or charges associated with the assignment do not indicate  
40 overreaching or exploitation, do not exceed current usury rates, and  
41 does not violate any laws of usury of this State;

42 (13) that the winner has reviewed and understands the terms of the  
43 assignment;

44 (14) that the winner understands that the winner will not receive  
45 the annuity jackpot payments, or portions thereof, for the years  
46 assigned;

1 (15) that the winner has agreed to the assignment of the winner's  
2 own free will without undue influence or duress;

3 (16) that the winner has retained and consulted with independent  
4 legal counsel who has advised the winner of the winner's legal rights  
5 and obligations;

6 (17) that the winner has retained and consulted with an  
7 independent tax advisor concerning the tax consequences of the  
8 assignment;

9 (18) that the winner has disclosed all existing debts, liens and child  
10 support obligations and does not seek assignment for purposes of  
11 evading creditors, judgments or obligations for child support; and

12 (19) that the winner has certified that: the winner is not obligated  
13 to repay any public assistance benefits; and the winner does not have  
14 a child support obligation, or if the winner does have a child support  
15 obligation, that no arrearage is due.

16 e. Before a winner is legally bound, by agreement, contract or  
17 otherwise, and prior to the issuance of an order pursuant to subsection  
18 d. of this section, the assignee shall provide the winner with all  
19 material documents which shall be binding on the assignor, including  
20 documents evidencing obligations of the winner, and a written notice  
21 recommending that the winner obtain independent counsel before  
22 signing any document which shall be binding on the assignor. All  
23 documents shall include a notice of the assignor's right to cancel the  
24 agreement which shall be located in immediate proximity to all spaces  
25 reserved for the signature of the winner in bold-faced type of at least  
26 10 points and which shall provide as follows:

27 "You have the right to cancel this assignment without any cost to  
28 you until midnight three business days after the day on which you have  
29 signed an agreement to assign all or a portion of your annuity jackpot.

30 Cancellation occurs when you give notice by regular first class mail,  
31 postage prepaid, to the assignee at the address listed at the top of the  
32 first page of this document that you wish to cancel the assignment.  
33 Notice is deemed given when deposited in a mailbox."

34 f. If the casino licensee or annuity jackpot trust determines that a  
35 judicial order granting an assignment, issued pursuant to subsection d.  
36 of this section, is complete and correct in all respects, the casino  
37 licensee or annuity jackpot trust shall, not later than 10 days after  
38 receiving a true and correct copy of the filed judicial order, send the  
39 winner and the assignee written confirmation of receipt of the  
40 court-ordered assignment and of the casino licensee's or annuity  
41 jackpot trust's intent to rely thereon in making future payments to the  
42 assignee named in the order. The casino licensee or annuity jackpot  
43 trust shall, thereafter, make all payments in accordance with the  
44 judicial order. No change in the terms of any assignment shall be  
45 effective unless made pursuant to a subsequent judicial order pursuant  
46 to this section.

1 g. The casino licensee or annuity jackpot trust may impose a  
2 reasonable fee on an assignor to defray any direct or indirect  
3 administrative expenses associated with an assignment.

4 h. The commission and the State are not parties to assignment  
5 proceedings except that the State may intervene as necessary to  
6 protect the State's interest in monies owed to the State.

7 i. The casino licensee or annuity jackpot trust and the State shall  
8 comply with, and rely upon, a judicial order in distributing payments  
9 subject to that order.

10 j. A winner may pledge or grant a security interest in all or part of  
11 an annuity jackpot as collateral for repayment of a loan pursuant to a  
12 judicial order containing the findings required by subsection d. of this  
13 section which the court deems relevant to the pledge or grant.

14 k. Except where inconsistent with the provisions of this section,  
15 the New Jersey consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.),  
16 shall apply to all transactions under this section.

17 l. The court shall cease to approve assignments pursuant to  
18 subsection d. of this section if:

19 (1) the United States Internal Revenue Service issues a technical  
20 rule letter, revenue ruling, or other public ruling in which it is  
21 determined that because of the right of assignment provided by  
22 subsection d. of this section, annuity jackpot winners who do not  
23 exercise the right to assign annuity jackpot payments would be subject  
24 to an immediate income tax liability for the value of the entire annuity  
25 jackpot rather than annual income tax liability for each installment  
26 when received; or

27 (2) a court of competent jurisdiction issues a published decision  
28 holding that because of the right of assignment provided by subsection  
29 d. of this section, annuity jackpot winners who do not exercise the  
30 right to assign annuity jackpot payments would be subject to an  
31 immediate income tax liability for the value of the entire annuity  
32 jackpot rather than annual income tax liability for each installment  
33 when received.

34 m. Upon receipt, the commission shall immediately file a copy of  
35 a letter or ruling of the United States Internal Revenue Service or a  
36 published decision of a court of competent jurisdiction, described in  
37 subsection l. of this section, with the Secretary of State. No  
38 assignment shall be approved pursuant to subsection d. of this section  
39 after the date of such filing.

40 n. A voluntary assignment shall not include or cover payments, or  
41 portions of payments, that are subject to the offset pursuant to section  
42 5 of this amendatory and supplementary act, P.L. , c. (C. ), or  
43 any other law, unless appropriate provisions are made to satisfy the  
44 obligations giving rise to the offset.

45 o. No assignee shall directly or indirectly recommend or facilitate  
46 the hiring of any lawyer or accountant to assist the assignor in

1 determining the appropriateness of the proposed assignment. Further,  
2 the assignee shall not offer, prior to the closing, tax or investment  
3 advice.

4

5 5. (New section) a. Each casino licensee or annuity jackpot trust  
6 that awards an annuity jackpot shall provide prompt notice to the  
7 Office of Information Technology in the Department of the Treasury  
8 of the name, address and social security number of each annuity  
9 jackpot winner and the amount of the pending payments.

10 b. The Office of Information Technology shall cross check the  
11 annuity jackpot winner list with the data supplied by the Commissioner  
12 of Human Services pursuant to section 2 of P.L.1991, c.384  
13 (C.5:9-13.2) for a social security number match. If a match is made,  
14 the Office of Information Technology shall notify the Commissioner  
15 of Human Services.

16 c. If an annuity jackpot winner is in arrears of a child support  
17 order, the Probation Division of the Superior Court shall promptly  
18 notify the casino licensee or annuity jackpot trust of the name, address,  
19 social security number and amount due on an arrears child support  
20 order. The casino licensee or annuity jackpot trust shall withhold this  
21 amount from the pending annuity jackpot payment and transmit same  
22 to the Probation Division of the Superior Court in accordance with  
23 regulations promulgated by the State Treasurer.

24 d. The Probation Division of the Superior Court, acting as agent  
25 for the child support payee, shall have a lien on the proceeds of the  
26 annuity jackpot payment in an amount equal to the amount of child  
27 support arrearage. The lien imposed by this section shall be  
28 enforceable in the Superior Court. Any of the annuity jackpot  
29 winner's funds remaining after withholding pursuant to the lien  
30 established pursuant to this section shall be paid to the winner in  
31 accordance with the rules of the commission.

32 e. The commissioner of Human Services shall promulgate such  
33 rules and regulations as may be necessary to effectuate the purposes  
34 of this section including, but not limited to, regulations providing for  
35 prompt notice to any annuity jackpot winner, from whose payments  
36 the Probation Division of the Superior Court seeks to withhold funds,  
37 of the amount to be withheld and the reason therefor and providing the  
38 annuity jackpot winner with the opportunity for a hearing upon request  
39 prior to the disposition of any funds.

40 f. The State Treasurer shall also provide, by regulation, safeguards  
41 against the disclosure or inappropriate use of any personally  
42 identifiable information regarding any person obtained pursuant to this  
43 section.

44 g. For the purposes of this section, "prompt notice" shall mean  
45 notice within 14 days or less.

1       6. This act shall take effect immediately.

2

3

4

STATEMENT

5

6       This bill establishes a procedure to regulate the assignment, transfer  
7 or encumbrance of periodic payments payable from a casino slot  
8 machine annuity jackpot awarded by a casino licensee or group of  
9 casino licensees.

10       The New Jersey Casino Control Commission has adopted a  
11 regulation providing that a winner's right to receive future periodic  
12 payments from an annuity jackpot may not be assigned, transferred, or  
13 encumbered in any way, except for a transfer to a winner's estate. The  
14 commission adopted this regulation to avoid application by the federal  
15 Internal Revenue Service of the "constructive receipt" doctrine to  
16 annuity jackpot winners. Under the doctrine, if a winner has the ability  
17 to assign, transfer, or encumber future payments, the winner is deemed  
18 to have received the entire jackpot amount in the current tax year and  
19 the entire amount is subject to federal income tax in that year. If the  
20 doctrine were applied, all annuity jackpot winners, even those with no  
21 intention of assigning, transferring, or encumbering their interest,  
22 could become subject to federal income tax on the present value of the  
23 entire annuity jackpot. That tax liability would likely be far in excess  
24 of the amount of an annual annuity payment.

25       The efficacy of the commission's regulation may have been  
26 unintentionally undermined by recent revisions of the "Uniform  
27 Commercial Code - Secured Transactions," N.J.S.A.12A:9-101 et seq.  
28 That law, in relevant part, provides that an "account" may be  
29 transferred and defines an "account" as including "winnings in a lottery  
30 or other game of chance operated or sponsored by a State,  
31 governmental unit of a State, or person licensed or authorized to  
32 operate the game by a State or governmental unit of a State." The  
33 Uniform Commercial Code also contains language to the effect that its  
34 provisions concerning assignments prevail over any other law unless  
35 that other law expressly refers to the relevant section of the code and  
36 states that it prevails over the code's provisions.

37       By expressly providing that its provisions prevail over the Uniform  
38 Commercial Code's assignment provisions, this bill provides a  
39 procedure to regulate the assignment of annuity jackpot payments in  
40 a manner which avoids the imposition of burdensome federal tax  
41 requirements on winners. In order to assign annuity jackpots, the  
42 winner will have to obtain a judicial order. The judicial order must  
43 contain a number of findings to ensure that the assignment deal is fair  
44 to the winner, made by the winner for a legitimate purpose and of his  
45 or her own free will. The bill allows the winner to cancel the  
46 assignment within three business days, and provides instructions to

**S1324 BUONO**

8

1 casino licenses and annuity jackpot trusts. The bill provides that the  
2 court will cease to approve assignments if the United States Internal  
3 Revenue Service or a court of competent jurisdiction determines that  
4 the right to assign an annuity jackpot would subject all annuity  
5 jackpot winners to immediate income tax liability for the value of the  
6 entire annuity jackpot rather than annual income tax liability for each  
7 installment when received.

8 The bill also provides a procedure for the offsetting of annuity  
9 jackpots for child support arrearages.

SENATE WAGERING, TOURISM AND HISTORIC  
PRESERVATION COMMITTEE

STATEMENT TO

**SENATE, No. 1324**

**STATE OF NEW JERSEY**

DATED: MAY 6, 2004

The Senate Wagering, Tourism and Historic Preservation Committee reports favorably Senate Bill No. 1324.

This bill establishes a procedure to regulate the assignment, transfer or encumbrance of periodic payments payable from a casino slot machine annuity jackpot awarded by a casino licensee or group of casino licensees.

The New Jersey Casino Control Commission has adopted a regulation providing that a winner's right to receive future periodic payments from an annuity jackpot may not be assigned, transferred, or encumbered in any way, except for a transfer to a winner's estate. The commission adopted this regulation to avoid application by the federal Internal Revenue Service of the "constructive receipt" doctrine to annuity jackpot winners. Under the doctrine, if a winner has the ability to assign, transfer, or encumber future payments, the winner is deemed to have received the entire jackpot amount in the current tax year and the entire amount is subject to federal income tax in that year. If the doctrine were applied, all annuity jackpot winners, even those with no intention of assigning, transferring, or encumbering their interest, could become subject to federal income tax on the present value of the entire annuity jackpot. That tax liability would likely be far in excess of the amount of an annual annuity payment.

The efficacy of the commission's regulation may have been unintentionally undermined by recent revisions of the "Uniform Commercial Code - Secured Transactions," N.J.S.A.12A:9-101 et seq. That law, in relevant part, provides that an "account" may be transferred and defines an "account" as including "winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State." The Uniform Commercial Code also contains language to the effect that its provisions concerning assignments prevail over any other law unless that other law expressly refers to the relevant section of the code and states that it prevails over the code's provisions.

By expressly providing that its provisions prevail over the Uniform Commercial Code's assignment provisions, this bill provides a



procedure to regulate the assignment of annuity jackpot payments in a manner which avoids the imposition of burdensome federal tax requirements on winners. In order to assign annuity jackpots, the winner will have to obtain a judicial order. The judicial order must contain a number of findings to ensure that the assignment deal is fair to the winner, made by the winner for a legitimate purpose and of his or her own free will. The bill allows the winner to cancel the assignment within three business days, and provides instructions to casino licenses and annuity jackpot trusts. The bill provides that the court will cease to approve assignments if the United States Internal Revenue Service or a court of competent jurisdiction determines that the right to assign an annuity jackpot would subject all annuity jackpot winners to immediate income tax liability for the value of the entire annuity jackpot rather than annual income tax liability for each installment when received.

The bill also provides a procedure for the offsetting of annuity jackpots for child support arrearages.

STATEMENT TO  
**SENATE, No. 1324**

with Senate Floor Amendments  
(Proposed By Senator BUONO)

ADOPTED: DECEMBER 6, 2004

These amendments make the following changes:

- C replace references to "casino licensee or annuity jackpot trust" with "slot system operator". The former term has the effect of limiting the type of financial arrangements that may be established to ensure the payment of annuity jackpots. This change is designed to make this bill consistent with Assembly, No.3214 (1R) (identical to Senate, No.1894), regarding the regulation of such arrangements, which has passed the Assembly and is currently on second reading in the Senate.
- C provide that parties seeking a court order for the assignment of casino annuity jackpot payments submit to the court and to the slot system operator a proposed form of order containing various information pertinent to the proposed assignment. Previously under the bill, the court order was required to contain this information as findings of the court.
- C provide that the slot system operator determine the completeness and accuracy of the information in the proposed form of order prior to its approval by the court. Previously under the bill, the slot system operator made the determination after the order was approved.
- C rephrase a provision that suspends the casino annuity jackpot assignment process in certain situations.
- C require a slot system operator to provide certain information about a annuity jackpot winner to the Casino Control Commission, which will in turn forward the information to the Office of Information Technology in the Department of the Treasury.
- C provide that casino annuity jackpot payments will be reduced by an amount necessary to pay unrepaid overpayments of certain public benefits provided to the winner. Previously under the bill these winnings were reduced only by an amount necessary to pay child support arrearages of the winner.