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HOUSE BILL NO. 942

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 2, 2006)

(Patron Prior to Substitute—Delegate Morgan)

A BILL to amend and reenact §§ 59.1-475 and 59.1-477.1 of the Code of Virginia, relating to the Structured Settlement Protection Act; application to workers' compensation benefit payments.

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-475 and 59.1-477.1 of the Code of Virginia are amended and reenacted as follows:
§ 59.1-475. Definitions.

For purposes of this chapter:

"Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

"Dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

"Discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

"Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

"Independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser.

"Interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement.

"Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under subdivision 5 of § 59.1-475.1.

"Payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

"Periodic payments" includes both recurring payments and scheduled future lump sum payments.

"Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of § 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time.

"Responsible administrative authority" means, with respect to a structured settlement, any governmental authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement.

"Settled claim" means the original tort claim ~~or workers' compensation claim~~ resolved by a structured settlement.

"Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim ~~or for periodic payments in settlement of a workers' compensation claim.~~

"Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

"Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

"Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this Commonwealth; or the structured settlement agreement was approved by a court or responsible administrative authority in this Commonwealth; or the structured settlement agreement is expressly governed by the laws of this Commonwealth.

"Terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement.

"Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of

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60 structured settlement payment rights made by a payee for consideration; however, the term "transfer"
61 shall not include the creation or perfection of a security interest in structured settlement payment rights
62 under a blanket security agreement entered into with an insured depository institution, in the absence of
63 any action to redirect the structured settlement payments to such insured depository institution, or an
64 agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the
65 structured settlement payment rights.

66 "Transfer agreement" means the agreement providing for transfer of structured settlement payment
67 rights.

68 "Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to
69 be paid by the payee or deducted from the gross advance amount, including, without limitation, court
70 filing fees, attorneys' fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees,
71 commissions, and other payments to a broker or other intermediary; however, "transfer expenses" shall
72 not include preexisting obligations of the payee payable for the payee's account from the proceeds of a
73 transfer.

74 "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights
75 through a transfer.

76 § 59.1-477.1. General provisions, construction.

77 A. The provisions of this chapter may not be waived by any payee.

78 B. Any transfer agreement entered into on or after the effective date of the act of the General
79 Assembly enacting this section by a payee who resides in this Commonwealth shall provide that disputes
80 under such transfer agreement, including any claim that the payee has breached the agreement, shall be
81 determined in and under the laws of this Commonwealth. No such transfer agreement shall authorize the
82 transferee or any other party to confess judgment or consent to entry of judgment against the payee.

83 C. No transfer of structured settlement payment rights shall extend to any payments that are
84 life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee
85 has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and
86 the structured settlement obligor for periodically confirming the payee's survival, and giving the annuity
87 issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

88 D. No payee who proposes to make a transfer of structured settlement payment rights shall incur any
89 penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed
90 transferee or any assignee based on any failure of such transfer to satisfy the conditions of this chapter.

91 E. Nothing contained in this chapter shall be construed to authorize any transfer of structured
92 settlement payment rights in contravention of any law or to imply that any transfer under a transfer
93 agreement entered into prior to July 1, 2001, is valid or invalid. The provisions of this chapter shall not
94 be applicable to *transfers of workers' compensation claims, awards, benefits, settlements or payments*
95 *made or payable pursuant to § 65.2-522 Title 65.2.*

96 F. Compliance with the requirements set forth in § 59.1-475.1 and fulfillment of the conditions set
97 forth in § 59.1-476 shall be solely the responsibility of the transferee in any transfer of structured
98 settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear
99 any responsibility for, or any other liability arising from, non-compliance with such requirements or
100 failure to fulfill such conditions.