

2016 SESSION

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SENATE BILL NO. 621

Offered January 15, 2016

A BILL to amend and reenact §§ 59.1-475 through 59.1-477.1 of the Code of Virginia, relating to the Structured Settlement Protection Act.

Patrons—Stanley, Lucas and McPike

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-475 through 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.

"Applicable federal rate" means the most recently published applicable federal rate for determining the present value of an annuity, as prescribed by the U.S. Internal Revenue Service pursuant to 26 U.S.C. § 7520, as amended.

"Assignee" means a party acquiring or proposing to acquire structured settlement payment rights directly or indirectly from a transferee of such rights.

"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:

1. The payee, any;

2. Any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death or, the if such beneficiary is a minor, the designated beneficiary's parent or guardian;

3. The annuity issuer, the;

4. The structured settlement obligor; and any

5. Any other party to such structured settlement that has continuing rights or obligations to receive or make payments 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 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.

"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 a party that has the a 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

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59 settlement, whether from the structured settlement obligor or the annuity issuer, where the payee is
60 domiciled in, or the domicile or principal place of business of the structured settlement obligor or the
61 annuity issuer is located in, this the Commonwealth; or the structured settlement agreement was
62 approved by a court or responsible administrative authority in this Commonwealth; or the structured
63 settlement agreement is expressly governed by the laws of this in the Commonwealth.

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

68 "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of
69 structured settlement payment rights made by a payee for consideration; however, the term "transfer"
70 shall not include the creation or perfection of a security interest in structured settlement payment rights
71 under a blanket security agreement entered into with an insured depository institution, in the absence of
72 any action to redirect the structured settlement payments to such insured depository institution, or an
73 agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the
74 structured settlement payment rights.

75 "Transfer agreement" means the agreement providing for transfer of structured settlement payment
76 rights.

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

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

85 § 59.1-475.1. Required disclosures to payee.

86 Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee
87 shall provide to the payee a separate disclosure statement, in bold type no smaller than fourteen points,
88 setting forth:

89 1. The amounts and due dates of the structured settlement payments to be transferred;
90 2. The aggregate amount of such payments;
91 3. The discounted present value of the payments to be transferred, which shall be identified as the
92 "calculation of current value of the transferred structured settlement payments under federal standards for
93 valuing annuities," and the amount of the Applicable Federal Rate used in calculating such discounted
94 present value;

95 4. The gross advance amount;
96 5. An itemized listing of all applicable transfer expenses, other than attorneys' attorney fees and
97 related disbursements payable in connection with the transferee's application for approval of the transfer,
98 and the transferee's best estimate of the amount of any such fees and disbursements;

99 6. *The effective annual interest rate, which shall be disclosed in a statement in the following form:
100 "On the basis of the net amount that you will receive from us and the amounts and timing of the
101 structured settlement payments that you are transferring to us, you will in effect be paying interest to us
102 at a rate of ___ percent per year";*

103 7. The net advance amount;
104 8. The amount of any penalties or liquidated damages payable by the payee in the event of any
105 breach of the transfer agreement by the payee; and

106 8. 9. A statement that the payee has the right to cancel the transfer agreement, without penalty or
107 further obligation, not later than the third business day after the date the agreement is signed by the
108 payee.

109 § 59.1-476. Approval of transfers of structured settlement payment rights.

110 No direct or indirect transfer of structured settlement payment rights shall be effective and no
111 structured settlement obligor or annuity issuer shall be required to make any payment directly or
112 indirectly to any transferee or assignee of structured settlement payment rights unless the transfer has
113 been authorized in advance in a final court order or order of a responsible administrative authority based
114 on express findings by such court or responsible administrative authority that:

115 1. The transfer is in the best interest of the payee, taking into account the welfare and support of the
116 payee's dependents;

117 2. The payee has been advised in writing by the transferee to seek independent professional advice
118 regarding the transfer and has either received such advice or knowingly waived *in writing* the
119 opportunity to seek and receive such advice in writing; and

120 3. The transfer does not contravene any applicable statute or the order of any court or other

121 government authority.

122 **§ 59.1-476.1. Effects of transfer of structured settlement payment rights.**

123 Following issuance of a court order approving a transfer of structured settlement payment rights
124 under this chapter:

125 1. The structured settlement obligor and the annuity issuer *may rely on the court order in redirecting*
126 *periodic payments to an assignee or transferee in accordance with the order and shall, as to all parties*
127 *except the transferee or an assignee designated by the transferee, be discharged and released from any*
128 *and all liability for the transferred redirected payments and such discharge and release shall not be*
129 *affected by the failure of any party to the transfer to comply with this chapter or with the order of the*
130 *court approving the transfer;*

131 2. The transferee shall be liable to the structured settlement obligor and the annuity issuer:

132 a. If the transfer contravenes the terms of the structured settlement, for any taxes incurred by such
133 parties as a consequence of the transfer; and

134 b. For any other liabilities or costs, including reasonable costs and attorneys' attorney fees, arising
135 from compliance by such parties the structured settlement obligor or annuity issuer with the order of the
136 court or responsible administrative authority or arising as a consequence of the transferee's from the
137 failure of any party to the transfer to comply with this chapter;

138 3. Neither the annuity issuer nor the structured settlement obligor may be required to divide any
139 periodic payment between the payee and any transferee or assignee or between two or more transferees
140 or assignees; and

141 4. Any further transfer of structured settlement payment rights by the payee may be made only after
142 compliance with all of the requirements of this chapter.

143 **§ 59.1-477. Procedure for approval of transfers.**

144 A. An application under this chapter for approval of a transfer of structured settlement payment
145 rights shall be made by the transferee and *may shall* be brought in the state circuit court for the county
146 or city in which the payee *resides, is domiciled* in the state in which Commonwealth, except that if the
147 structured settlement obligor or the annuity issuer maintains its principal place of business, or in any
148 court or before any responsible administrative authority *payee is not domiciled in the Commonwealth,*
149 *the application may be brought in the court in the Commonwealth* that approved the structured
150 settlement agreement. Applications brought in Virginia shall be brought in circuit court, and such court
151 may refer the matter to a commissioner of accounts for a report to such court and a recommendation on
152 the findings required by § 59.1-476. Such report and recommendation shall be filed with the court and
153 mailed to all interested parties served under subsection B of this section, and such report and
154 recommendation and any exceptions thereto shall be examined by the court and confirmed or corrected
155 as provided in § 64.2-1212.

156 B. A timely hearing shall be held on an application for approval of a transfer of structured
157 settlement payment rights. The payee shall appear in person at the hearing unless the court determines
158 that good cause exists to excuse the payee from appearing in person. Not less than twenty 20 days prior
159 to the scheduled hearing on any an application for approval of a transfer of structured settlement
160 payment rights under § 59.1-476, the transferee shall file with the court or responsible administrative
161 authority and serve on all interested parties a notice of the proposed transfer and the application for its
162 approval, including with such notice. In addition to complying with the other requirements of this
163 chapter, the application shall include:

164 1. A copy of the transferee's application;

165 2. A copy of the transfer agreement;

166 3. A copy of the disclosure statement required under § 59.1-475.1;

167 4. A listing 3. The payee's name, age, and county of domicile and the number and ages of each of
168 the payee's dependents, together with each dependent's age;

169 4. A summary of:

170 a. Any prior transfers by the payee to the transferee or an affiliate, or through the transferee or an
171 affiliate to an assignee, within the four years preceding the date of the transfer agreement and any
172 proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an
173 affiliate, applications for approval of which were denied within the two years preceding the date of the
174 transfer agreement; and

175 b. Any prior transfers by the payee to any person or entity other than the transferee or an affiliate
176 or an assignee of the transferee or an affiliate within the three years preceding the date of the transfer
177 agreement and any prior proposed transfers by the payee to any person or entity other than the
178 transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval of which
179 were denied within the one year preceding the date of the current transfer agreement, to the extent that
180 the transfers or proposed transfers have been disclosed to the transferee by the payee in writing or
181 otherwise are actually known by the transferee;

182 5. Notification that any interested party is entitled to support, oppose or otherwise respond to the
183 transferee's application, either in person or by counsel, by submitting written comments to the court or
184 responsible administrative authority or by participating in the hearing; and

185 6. Notification of the time and place of the hearing and notification of the manner in which and the
186 time by which written responses to the application must be filed (, which shall be not less than fifteen
187 five days after service of *prior to the transferee's notice*) *hearing* in order to be considered by the court
188 or the responsible administrative authority.

189 **§ 59.1-477.1. General provisions, construction.**

190 A. *The Compliance with the provisions of this chapter may not be waived by any payee.*

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

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

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

204 E. Nothing contained in this chapter shall be construed to authorize any transfer of structured
205 settlement payment rights in contravention of any law ~~or to imply that any transfer under a transfer~~
~~agreement entered into prior to July 1, 2001, is valid or invalid. A court shall not be precluded from~~
~~hearing an application for approval of a transfer of payment rights under a structured settlement where~~
~~the terms of the structured settlement prohibit the sale, assignment, or encumbrance of such payment~~
~~rights, nor shall the interested parties be precluded from waiving or asserting their rights under those~~
206 ~~terms.~~ The provisions of this chapter shall not be applicable to transfers of workers' compensation
207 claims, awards, benefits, settlements or payments made or payable pursuant to Title 65.2.

208 F. Compliance with the requirements set forth in § 59.1-475.1 and fulfillment of the conditions set
209 forth in § §§ 59.1-476 and 59.1-477 shall be solely the responsibility of the transferee in any transfer of
210 structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer
211 shall bear any responsibility for, or any other liability arising from, non-compliance with such
212 requirements or failure to fulfill such conditions.

213 **2. That the provisions of this act shall apply to any transfer of structured settlement payment**
214 **rights under a transfer agreement that is entered into on or after July 1, 2016.**