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SENATE BILL NO. 621

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor on January 25, 2016)

(Patrons Prior to Substitute—Senators Stanley, McPike [SB 633] and Lucas [SB 638])

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.

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 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~~

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~~annuity~~ ~~issuer~~ ~~is~~ ~~located~~ ~~in,~~ ~~this~~ *the* 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~~ *in the* 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 structured settlement payment rights made by a payee for consideration; however, the term "transfer" shall not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

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

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

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

§ 59.1-475.1. Required disclosures to payee.

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

1. The amounts and due dates of the structured settlement payments to be transferred;

2. The aggregate amount of such payments;

3. The discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities," and the amount of the Applicable Federal Rate used in calculating such discounted present value;

4. The gross advance amount;

5. An itemized listing of all applicable transfer expenses, other than ~~attorneys'~~ *attorney* fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

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

7. The net advance amount;

~~7.~~ *8.* The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 59.1-477. Procedure for approval of transfers.

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

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

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

~~2.~~ A copy of the transfer agreement;

~~3.~~ *2.* A copy of the disclosure statement required under § 59.1-475.1;

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

4. A summary of:

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

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

5. Notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court ~~or~~

~~responsible administrative authority~~ or by participating in the hearing; and

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

§ 59.1-477.1. General provisions, construction.

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

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

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

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

E. Nothing contained in this chapter shall be construed to authorize any transfer of structured 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 terms.* The provisions of this chapter shall not be applicable to transfers of workers' compensation claims, awards, benefits, settlements or payments made or payable pursuant to Title 65.2.

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

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