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HOUSE BILL NO. 1922

Offered January 18, 1999

A *BILL to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 59, consisting of sections numbered 38.2-5900 through 38.2-5902, relating to structured settlements; authorization for transfer.*

Patrons—Woodrum, Almand, Armstrong, Baker, Bennett, Bryant, Byron, Cantor, Clement, Deeds, Diamonstein, Griffith, Hall, Johnson, Jones, J.C., Jones, S.C., Keating, McEachin, Moran, Moss, Murphy, Plum, Rust, Scott and Wagner; Senators: Chichester, Colgan, Couric, Edwards, Gartlan, Hawkins, Holland, Howell, Martin, Mims, Norment, Saslaw, Stolle, Stosch and Trumbo

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 59, consisting of sections numbered 38.2-5900 through 38.2-5902 as follows:

CHAPTER 59.

STRUCTURED SETTLEMENT PROTECTION ACT.

§ 38.2.-5900. Definitions.

For purposes of this chapter:

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

"Applicable law" means the federal laws of the United States; the laws of Virginia; and the laws of any other jurisdiction which is the domicile of the payee, the annuity issuer or the structured settlement obligor, or under whose laws a structured settlement agreement was approved by a court or responsible administrative authority.

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

"Discounted present value" means the fair present value of future payments, as 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.

"Independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser who is engaged by a payee to render advice concerning the legal, tax and financial implications of a transfer of structured settlement payment rights; who is not affiliated with, or compensated in any manner by, the transferee of such transfer; and whose compensation for rendering such advice does not depend, directly or indirectly, on whether a transfer occurs.

"Interested parties" means, with respect to any structured settlement, the payee, any beneficiary 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.

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

"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 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 (including the rights of the payee to receive periodic payments).

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

"Structured settlement payment rights" means rights to receive periodic payments (including lump

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60 sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer,
61 where the payee, the settlement obligor or the annuity issuer is domiciled in this state; or the structured
62 settlement agreement was approved by a court or responsible administrative authority in this state.

63 "Transfer" means any sale, assignment, pledge, hypothecation, or other form of alienation or
64 encumbrance made by a payee for consideration.

65 "Terms of the structured settlement" include, with respect to any structured settlement, the terms of
66 the structured settlement agreement, the annuity contract, any qualified assignment agreement and any
67 order or approval of any court, responsible administrative authority or other government authority
68 authorizing or approving such structured settlement; and "transfer agreement" means the agreement
69 providing for transfer of structured settlement payment rights from a payee to a transferee.

70 § 38.2-5901. Conditions to transfers of structured settlement payment rights.

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

77 1. The transfer complies with the requirements of the chapter and will not contravene other
78 applicable law;

79 2. Not less than ten days prior to the date on which the payee first incurred any obligation with
80 respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no
81 smaller than fourteen points, setting forth:

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

83 b. The aggregate amount of such payments;

84 c. The discounted present value of such payments, together with the discount rate used in
85 determining such discounted present value;

86 d. The gross amount payable to the payee in exchange for such payments;

87 e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees,
88 closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs,
89 expenses and charges payable by the payee or deductible from the gross amount otherwise payable to
90 the payee;

91 f. The net amount payable to the payee after deduction of all commissions, fees costs, expenses and
92 charges described in subdivision e;

93 g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the
94 discounted present value of the payments; and

95 h. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of
96 penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

97 3. The payee has established that the transfer is necessary to enable the payee, the payee's
98 dependents, or both, to avoid imminent financial hardship, and the transfer should not be expected to
99 subject the payee, the payee's dependents, or both, to undue financial hardship in the future;

100 4. The payee has received independent professional advice regarding the legal, tax and financial
101 implications of the transfer; and

102 5. The transferee has given written notice of the transferee's name, address and taxpayer
103 identification number to the annuity issuer and the structured settlement obligor and has filed a copy of
104 such notice with the court or responsible administrative authority.

105 B. The provisions of this chapter may not be waived.

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

109 § 38.2-5902. Jurisdiction; procedure for approval of transfers.

110 A. The circuit court for the city or county in which the payee, the settlement obligor or the annuity
111 issuer resides or any circuit court that may have approved the structured settlement agreement shall
112 have nonexclusive jurisdiction over any application for authorization under § 38.2-5901 of a transfer of
113 structured settlement payment rights.

114 B. Not less than twenty days prior to the scheduled hearing on any application for authorization of a
115 transfer of structured settlement payment rights under § 38.2-5901, the transferee shall file with the
116 court and serve on all interested parties, a notice of the proposed transfer and the application for its
117 authorization, including in such notice:

118 1. A copy of the transferee's application to the court;

119 2. A copy of the transfer agreement;

120 3. A copy of the disclosure statement required under § 38.2-5901;

121 4. Notification that any interested party is entitled to support, oppose or otherwise respond to the

122 transferee's application, either in person or by counsel, by submitting written comments to the court or
123 by participating in the hearing; and
124 5. Notification of the time and place of the hearing and notification of the manner in which and the
125 time by which written responses to the application must be filed (which shall be not less than fifteen
126 days after service of the transferee's notice) in order to be considered by the court.

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