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HOUSE BILL NO. 1922

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Newman
on February 25, 1999)

(Patron Prior to Substitute—Delegate Woodrum)

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 41, consisting of sections numbered 59.1-475, 59.1-476, and 59.1-477, relating to structured settlements; transfers.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 41, consisting of sections numbered 59.1-475, 59.1-476, and 59.1-477 as follows:

CHAPTER 41.

STRUCTURED SETTLEMENT PROTECTION ACT.

§ 59.1-475. 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.

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

"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 approval of any court, responsible administrative authority or other government authority authorizing or approving such structured settlement.

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

"Transfer agreement" means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

§ 59.1-476. Conditions to transfers of structured settlement payment rights.

A. 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 of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

1. The transfer complies with the requirements of this chapter and will not contravene other applicable law; provided, however, that no structured settlement agreement payment right transfer approved by a court pursuant to this chapter shall be construed so as to prohibit the transfer of structured settlement payment rights;

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

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

b. The aggregate amount of such payments;

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

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

e. A good faith itemized estimate of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

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

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

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

3. The best interests of the payees and the payees' dependents render the transfer appropriate; and

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

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

C. 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 based on any failure of such transfer to satisfy the conditions of this section.

D. The provisions of this chapter shall not be applicable to payments made pursuant to § 65.2-522. Nothing contained in this chapter shall be construed to authorize any transfer of any structured settlement payment rights, or of any other payment rights arising under a tort claim or a workers' compensation claim, in contravention of applicable law or to give effect to any transfer of such rights that is invalid under applicable law; provided, however, that no structured settlement agreement payment right transfer approved by a court pursuant to this chapter shall be construed so as to prohibit the transfer of structured settlement payment rights.

§ 59.1-477. Jurisdiction; procedure for approval of transfers.

A. An application for authorization under § 59.1-476 of a transfer of structured settlement payment rights shall be made and prosecuted by the transferee and may be brought:

1. In the circuit court for a Virginia city or county in which the payee, the settlement obligor, the annuity issuer or the transferee resides, 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 subsection A of § 56-476. 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 § 26-33; or

2. In any court which approved the structured settlement agreement or before any responsible administrative authority which approved the structured settlement agreement; or

3. In any other court of general jurisdiction which has jurisdiction to issue a final order pursuant to subsection A of § 59.1-476.

B. Not less than twenty days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under § 59.1-476, the transferee shall file with the court or the responsible administrative authority and serve on all interested parties, a notice of the proposed transfer and the application for its authorization, including in such notice:

1. A copy of the transferee's application to the court or the responsible administrative authority;

- 122 2. A copy of the transfer agreement;
123 3. A copy of the disclosure statement required under § 59.1-476;
124 4. Notification that any interested party is entitled to support, oppose or otherwise respond to the
125 transferee's application, either in person or by counsel, by submitting written comments to the court or
126 the responsible administrative authority or by participating in the hearing; and
127 5. Notification of the time and place of the hearing and notification of the manner in which and the
128 time by which written responses to the application must be filed (which shall be not less than fifteen
129 days after service of the transferee's notice) in order to be considered by the court or the responsible
130 administrative authority.
131 2. That the provisions of this act shall expire on July 1, 2001, unless federal legislation has been
132 enacted by such date establishing a federal standard applicable to transfers of structured
133 settlement payment rights.