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SENATE BILL NO. 633

Offered January 15, 2016

A BILL to amend and reenact §§ 59.1-475, 59.1-475.1, 59.1-476, 59.1-477, and 59.1-477.1 of the Code of Virginia, relating to the Structured Settlement Protection Act.

Patron—McPike

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-475, 59.1-475.1, 59.1-476, 59.1-477, 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 *an annuity or insurance* 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:

1. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

2. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

3. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur.

"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~~ the terms of the structured settlement.

"Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated all 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, *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 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~~:

1. 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 the Commonwealth; or the

2. The structured settlement agreement was approved by a court or responsible administrative

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59 authority in ~~this the~~ Commonwealth; or ~~the~~

60 3. *The settled claim was pending before the courts of the Commonwealth when the parties entered*
61 *into the structured settlement agreement is expressly governed by the laws of this Commonwealth.*

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

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

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

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

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

84 **§ 59.1-475.1. Required disclosures to payee.**

85 Not less than ~~three~~ 10 days prior to the date on which a payee signs a transfer agreement, the
86 transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than
87 ~~fourteen~~ 14 points, setting forth:

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

89 2. The aggregate amount of such payments;

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

94 4. The gross advance amount;

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

98 6. The net advance amount;

99 7. The amount of any penalties ~~or~~ *and the aggregate amount of any* liquidated damages, *inclusive of*
100 *penalties*, payable by the payee in the event of any breach of the transfer agreement by the payee; ~~and~~

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

104 9. *The quotient, expressed as a percentage, obtained by dividing the net payment amount by the*
105 *discounted present value of the payments; and*

106 10. *The discount rate used by the transferee to determine the net amount payable to the payee for*
107 *the structured settlement payments to be transferred.*

108 **§ 59.1-476. Approval of transfers of structured settlement payment rights.**

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

114 1. *The transfer complies with the requirements of this chapter;*

115 2. *The transferee has provided to the payee a disclosure statement as required by § 59.1-475.1;*

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

118 4. The payee has been advised in writing by the transferee to seek received independent
119 professional advice regarding the legal, tax, and financial implications of the transfer and has either
120 received such advice or knowingly waived such advice in writing; and

5. 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;

6. The discount rate used in determining the net amount payable to the payee, as stated in the disclosure statement pursuant to subdivision 10 of § 59.1-475.1, does not exceed an annual percentage rate of prime plus five percentage points calculated as if the net amount payable to the payee was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan. For purposes of this subdivision, the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the month in which the transfer agreement is signed by both the payee and the transferee, except when the transfer agreement is signed prior to the first Monday of that month, in which case the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the preceding month;

7. Any transfer expenses do not exceed two percent of the net amount payable to the payee;

8. The transfer of structured settlement payment rights is fair and reasonable; and

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

§ 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~~ and shall be brought (i) if the payee resides in the Commonwealth, in the state circuit court for the city or county in which the payee resides; or (ii) if the payee does not reside in the Commonwealth, in a court of appropriate venue in the state in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority that approved the structured settlement agreement the payee resides. Applications brought in Virginia shall be brought in may be referred by the 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. Not less than ~~twenty~~ 30 days prior to the scheduled hearing on any 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 (i) all interested parties, (ii) any other government authority that previously approved the structured settlement, and (iii) the Attorney General a notice of the proposed transfer and the application for its approval, including with such notice:

1. A copy of the transferee's application;

2. A copy of the transfer agreement;

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

4. A listing of each of the payee's dependents, together with each dependent's age;

5. A summary of (i) each prior transfer, if any, made by the payee to any person and (ii) each proposed transfer, if any, by the payee to any person for which an application for approval was denied of which the transferee has, or in the exercise of reasonable diligence should have had, knowledge;

6. 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

7. 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 days after service of the transferee's notice~~) in order to be considered by the court or the responsible administrative authority.

C. The circuit court shall not approve an application under this chapter for approval of a transfer of structured settlement payment rights if the payee fails to appear in person at the hearing unless (i) the payee is represented at the hearing by counsel and (ii) the circuit court finds that the failure to appear is due to the payee's incarceration, hospitalization, or similar circumstances that prevent the payee's personal appearance.

D. The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this chapter.

§ 59.1-477.1. General provisions, construction; action for damages.

A. 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

182 disputes under such transfer agreement, including any claim that the payee has breached the agreement,
183 shall be determined in and under the laws of ~~this~~ *the* Commonwealth. No such transfer agreement shall
184 authorize the transferee or any other party to confess judgment or consent to entry of judgment against
185 the payee.

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

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

194 E. Nothing contained in this chapter shall be construed to authorize any transfer of structured
195 settlement payment rights in contravention of any law or to imply that any transfer under a transfer
196 agreement entered into prior to July 1, 2001, is valid or invalid. The provisions of this chapter shall not
197 be applicable to transfers of workers' compensation claims, awards, benefits, settlements or payments
198 made or payable pursuant to Title 65.2.

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

204 *G. If any transfer of structured settlement payment rights is made without the transferee's compliance*
205 *with the provisions of this chapter, the payee shall be entitled to initiate an action to recover actual*
206 *damages or \$500, whichever is greater. In addition to any damages awarded, the payee also may be*
207 *awarded reasonable attorney fees and court costs. In addition, all unpaid structured settlement payment*
208 *rights transferred in violation of this chapter by any transferee shall be reconveyed to the payee.*