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SENATE BILL NO. 638

Offered January 18, 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.

Patron—Lucas

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, spousal support, and child support.

"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 the Commonwealth~~; ~~or the structured~~
63 ~~settlement agreement is expressly governed by the laws of this 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 7. 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 9. *The amounts or reasonable value of any advance or inducement paid by the transferee to the*
107 *payee as an inducement for the transfer. No transferee shall have any right to seek reimbursement,*
108 *setoff, or collection against a payee for any such inducement received by a payee unless such advance*
109 *or inducement is specifically identified in the disclosure statement, with the value of such inducement*
110 *clearly stated, notwithstanding any separate promises to repay such inducement that have been*
111 *otherwise agreed to, whether orally or in writing, by and between the payee and transferee, or by any*
112 *individual or agent acting at the behest of the transferee; and*

113 8. 10. A statement that the payee has the right to cancel the transfer agreement, without penalty or
114 further obligation, not later than the third business day after the date the agreement is signed by the
115 payee.

116 **§ 59.1-476. Approval of transfers of structured settlement payment rights.**

117 No direct or indirect transfer of structured settlement payment rights shall be effective and no
118 structured settlement obligor or annuity issuer shall be required to make any payment directly or
119 indirectly to any transferee *or assignee* of structured settlement payment rights unless the transfer has
120 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 *shall 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 or before the responsible administrative authority 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, not to exceed 60 days from the date of filing, unless additional time is specifically requested by the payee or transferee. 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, in which event the payee shall provide an affidavit setting forth the reasons for his unavailability, together with the reasons he asserts in support of his best interests for approval of the transfer. 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~~ *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

182 *affiliate to an assignee, within the two years preceding the date of the transfer agreement and any*
183 *proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an*
184 *affiliate, applications for approval of which were denied within the two years preceding the date of the*
185 *transfer agreement; and*

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

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

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

200 **§ 59.1-477.1. General provisions, construction.**

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

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

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

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

216 E. Nothing contained in this chapter shall be construed to authorize any transfer of structured
217 settlement payment rights in contravention of any law ~~or to imply that any transfer under a transfer~~
218 ~~agreement entered into prior to July 1, 2001, is valid or invalid. A court shall not be precluded from~~
219 *hearing and approving an application for approval of a transfer of payment rights under a structured*
220 *settlement where the terms of the structured settlement otherwise prohibit the sale, assignment, or*
221 *encumbrance of such payment rights, except that interested parties shall be precluded from waiving or*
222 *asserting their rights under those terms absent a specific showing that their rights or interests would be*
223 *prejudiced by such transfer.* The provisions of this chapter shall not be applicable to transfers of
224 workers' compensation claims, awards, benefits, settlements or payments made or payable pursuant to
225 Title 65.2.

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

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