

CHAPTER NO. 758

SENATE BILL NO. 484

By Haynes

Substituted for: House Bill No. 1143

By McMillan, Sharp

AN ACT To amend Tennessee Code Annotated, Title 47, Chapter 18, relative to the protection of individuals receiving structured settlement payments.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding Sections 2-8 of this act as an appropriately numbered new part.

SECTION 2. This part shall be known and may be cited as the "Structured Settlement Protection Act".

SECTION 3. As used in this part, unless the context otherwise requires:

(1) "Annuity insurer" means an insurer that has issued an insurance policy or annuity contract used to fund periodic payments under a structured settlement;

(2) "Applicable law" means state or federal statutes of the United States;

(3) "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;

(4) "Discounted present value" means the 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, and the present value of the payments to be transferred by the payee using the actual discount rate applied to the transfer, stated as an annual percentage rate;

(5) "Independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

(6) "Interested parties" means, with respect to any structured settlement, the payee, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

(7) "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;

(8) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time;

(9) "Responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(10) "Settled claim" means the original tort claim;

(11) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim;

(12) "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;

(13) "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;

(14) "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:

(A) the payee is domiciled in this state;

(B) the structured settlement agreement was approved by a court or responsible administrative authority in this state; or

(C) the structured settlement agreement is governed by the laws of this state;

(15) "Transfer" means any sale, assignment, pledge, hypothecation, commutation, advance or other form of alienation or encumbrance made by a payee for consideration;

(16) "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 or responsible administrative authority or other government authority authorizing or approving such structured settlement; and

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

SECTION 4. 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, and complies with all of the following:

(1) The transfer complies with the requirement of this part and will not contravene other applicable law;

(2) Not less than ten (10) days prior to the date on which the payee executes the transfer agreement, the transferee has provided to the payee a disclosure statement in bold type, no smaller than fourteen (14) 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) an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, notary fees and other commissions, fees, costs, expenses and charges, and a good faith estimate of all legal fees and court costs 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 (5) of this subsection;

(G) 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 payee has established that the transfer is fair and reasonable and in the best interest of the payee.

(4) The payee has been advised by the transferee, in writing, to seek independent professional advice regarding the financial, legal and tax implications of the transfer.

(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.

SECTION 5. (a) The circuit court shall have non-exclusive jurisdiction over any application for authorization under Section 4 of this act of a transfer of structured settlement payment rights.

(b) Not less than twenty (20) days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under Section 4 of this act, the transferee shall file with the court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, and 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;

(2) a copy of the transfer agreement;

(3) a copy of the disclosure statement required under Section 4(b) of this act;

(4) 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

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

(c) In determining whether the transfer is in the payee's best interest under Section 4 (3), the court should consider:

(i) the terms of the transfer;

(ii) whether the payee has other sources of income, other than the structured settlement payment rights to be transferred;

(iii) the effect of the transfer, if any, on the payee's dependents and whether the transfer would be likely to result in financial hardship for such dependents; and

(iv) if a payee is currently required by a court order, judgment, or decree to pay child support or alimony, the effect of the transfer on the payee's ability to continue to pay such support or alimony.

(d) The structured settlement obligor and annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

(e) The transferee and any assignee shall be liable to the structured settlement obligor and the annuity issuer for any and all taxes and other costs and liabilities, other than costs incurred in opposing the transfer, incurred as a result of complying with the court order approving the transfer.

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

(g) If any party acting in bad faith withholds consent to the transfer, the court may, in its discretion, award the prevailing party reasonable attorney fees and costs.

SECTION 6. (a) The provisions of this part may not be waived.

(b) 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 Section 4 of this act.

SECTION 7. Nothing contained in this part shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law.

SECTION 8. This part shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the thirty-first (31st) day after the effective date of this part; provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is ineffective.

SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 15, 2000


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 23rd day of May 2000


DON SUNDQUIST, GOVERNOR