

[TENNESSEE CODE ANNOTATED
TITLE 47. COMMERCIAL INSTRUMENTS AND TRANSACTIONS
CHAPTER 18. CONSUMER PROTECTION
PART 26. STRUCTURED SETTLEMENT PROTECTION

47-18-2601. Short title. (2016)]

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

History

[Acts 2000, ch. 758, § 2.](#)

47-18-2602. Part definitions.

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" includes 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 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 to the structured settlement that has continuing rights or obligations to receive or make payments 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 [26 U.S.C. § 130](#), 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) "Terms of the structured settlement" includes, 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;
- (16) "Transfer" means any sale, assignment, pledge, hypothecation, commutation, advance or other form of alienation or encumbrance made by a payee for consideration; and
- (17) "Transfer agreement" means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

History

[Acts 2000, ch. 758, § 3](#); [2016, ch. 795, § 1](#).

Annotations

Notes

Compiler's Notes.

[Acts 2016, ch. 795, § 4](#) provided that the act, which amended this section, shall apply to filings of an application of approval of a transfer of structured settlement payment rights filed on or after April 14, 2016.

Amendments.

The 2016 amendment substituted "any other party to the structured settlement that has continuing rights or obligations to receive or make payments" for "any other party that has continuing rights or obligations" in the definition of "Interested parties".

Effective Dates.

[Acts 2016, ch. 795, § 4](#). April 14, 2016.

Case Notes

1. "Applicable Law."

Approval of a transfer of a payee's structured settlement payment rights, which allegedly violated prior court orders, did not violate [T.C.A. § 47-18-2603](#) by violating "applicable law" because "applicable law" was defined as a state or federal statute, which did not include court orders. [In re A Transfer of Structured Settlement Payment Rights by Laurel J. Shanks, -- S.W.3d --, 2014 Tenn. App. LEXIS 301](#) (Tenn. Ct. App. May 27, 2014).

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47-18-2603. Transfer agreement -- Requirements.

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 requirements 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 (2)(E); and
- (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; 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.

History

[Acts 2000, ch. 758, § 4.](#)

Annotations

Case Notes

1. "Applicable Law."

Approval of a transfer of a payee's structured settlement payment rights, which allegedly violated prior court orders, did not violate [T.C.A. § 47-18-2603](#) by violating "applicable law" because "applicable law" was defined as a state or federal statute, which did not include court orders. [In re A Transfer of Structured Settlement Payment Rights by Laurel J. Shanks, -- S.W.3d --, 2014 Tenn. App. LEXIS 301](#) (Tenn. Ct. App. May 27, 2014).

Approval of a transfer of a payee's structured settlement payment rights did not violate "applicable law" by allegedly violating [26 U.S.C. § 5891\(b\)\(2\)\(A\)\(i\)](#) because that statute merely said certain transfers did not qualify for an exception from taxation and did not mean an unqualified transfer violated the statute. [In re A Transfer of Structured Settlement Payment Rights by Laurel J. Shanks, -- S.W.3d --, 2014 Tenn. App. LEXIS 301](#) (Tenn. Ct. App. May 27, 2014).

Research References & Practice Aids

Section to Section References.

This section is referred to in [§§ 47-18-2604, 47-18-2605](#).

47-18-2604. Circuit court jurisdiction -- Requirements for notice -- Best interest standard -- Fees.

(a)

- (1) The circuit court shall have nonexclusive jurisdiction over any approval of a transfer of structured settlement payment rights.
- (2) An application under this part for approval of transfer of structured settlement payment rights shall be made by the transferee and may be brought:

(A) In the county in which the payee resides or where the settlement was approved or judgment rendered in the underlying tort claim; or

(B) In any court or before any responsible administrative authority that approved the structured settlement agreement.

(3)

(A) Upon the filing of an application of approval of a transfer of structured settlement payment rights, any interested party may request a hearing. If a hearing is requested, the court shall conduct a hearing within sixty (60) days from such request.

(B) The payee shall appear in person at the hearing, unless the court determines upon the motion of an interested party that good cause exists to excuse the payee from the hearing.

(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 [§ 47-18-2603](#), 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 [§ 47-18-2603\(2\)](#);

(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;

(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; and

(6) A sworn statement detailing whether there have been any requested, proposed, or approved transfers of the structured settlement payment rights prior to the instant filing.

(c) In determining whether the transfer is in the payee's best interest under [§ 47-18-2603\(3\)](#), the court should consider:

(1) The terms of the transfer;

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

- (3) 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
- (4) 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 (2) 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.

History

[Acts 2000, ch. 758, § 5](#); [2016, ch. 795, §§ 2, 3](#).

Annotations

Notes

Compiler's Notes.

[Acts 2016, ch. 795, § 4](#) provided that the act, which amended this section, shall apply to filings of an application of approval of a transfer of structured settlement payment rights filed on or after April 14, 2016.

Amendments.

The 2016 amendment substituted "any approval" for "any application for authorization under [§ 47-18-2603](#)" in (a)(1); and added (a)(2), (a)(3), and (b)(6).

Effective Dates.

[Acts 2016, ch. 795, § 4](#). April 14, 2016.

Case Notes

1. Multiple Transferees.

Approving a payee's request to order a company receiving the payee's structured settlement payments to remit the payee's portion of those payments to another financial services company did not violate [T.C.A. § 47-18-2604](#) because the statute's bar against requiring an annuity issuer or structured settlement obligor to divide structured settlement payments between a payee and a transferee did not apply to transferees. [In](#)

[re A Transfer of Structured Settlement Payment Rights by Laurel J. Shanks, -- S.W.3d --, 2014 Tenn. App. LEXIS 301](#) (Tenn. Ct. App. May 27, 2014).

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47-18-2605. Waiver -- Failure to satisfy conditions.

- (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 [§ 47-18-2603](#).

History

[Acts 2000, ch. 758, § 6](#).

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47-18-2606. Other statutory provisions remain valid.

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.

History

[Acts 2000, ch. 758, § 7](#).

Annotations

Case Notes

1. "Applicable Law."

Approval of a transfer of a payee's structured settlement payment rights did not violate "applicable law" by allegedly violating [26 U.S.C. § 5891\(b\)\(2\)\(A\)\(i\)](#) because that statute merely said certain transfers did not qualify for an exception from taxation and did not mean an unqualified transfer violated the statute. [In re A Transfer of Structured Settlement Payment Rights by Laurel J. Shanks, -- S.W.3d --, 2014 Tenn. App. LEXIS 301](#) (Tenn. Ct. App. May 27, 2014).

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47-18-2607. Applicability.

This part shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after June 23, 2000; provided, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to June 23, 2000 is ineffective.

History

[Acts 2000, ch. 758, § 8.](#)

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