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SOUTH CAROLINA ADVANCE LEGISLATIVE SERVICE
STATENET

SOUTH CAROLINA 114TH SESSION OF THE SOUTH CAROLINA GENERAL ASSEMBLY

HOUSE BILL NO. 3943

RATIFICATION NO. 300

2001 S.C. H.B. 3943; 2001 S.C. R. 300

SYNOPSIS: AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 50 TO TITLE 15 SO AS TO ENACT THE "STRUCTURED SETTLEMENT PROTECTION ACT", WHICH PROVIDES PROCEDURES TO REGULATE THE TRANSFER OF STRUCTURED SETTLEMENTS, INCLUDING PROVISIONS REQUIRING COURT OR ADMINISTRATIVE AUTHORITY APPROVAL IN ADVANCE FOR THE TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS, AND ESTABLISHING DISCLOSURE REQUIREMENTS.

Be it enacted by the General Assembly of the State of South Carolina:
Structured Settlement Protection Act

[*1] SECTION 1. Title 15 of the 1976 Code is amended by adding:

"CHAPTER 50

Structured Settlement

Section 15-50-10. This act may be cited as the 'Structured Settlement Protection Act'.

Section 15-50-20. As used in this chapter:

(1) 'Annuity issuer' means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) 'Dependents' include a payee's spouse and minor children and all other persons for whom the payee legally is obligated to provide support, including alimony.

(3) 'Discounted present value' means the present value of future payments determined by discounting the 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.

(4) '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 a reduction for transfer expenses or other deduction is made from the consideration.

(5) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed professional advisor.

(6) 'Interested parties' means, with respect to a structured settlement, the payee, a beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and another party that has continuing rights or obligations under the structured settlement.

(7) 'Net advance amount' means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses that must be disclosed pursuant to Section 15-50-30(5).

(8) 'Payee' means an individual who is receiving tax-free payments under a structured settlement and who proposes to make a transfer of payment rights under the settlement.

(9) 'Periodic payments' includes recurring payments and scheduled future lump-sum payments.

(10) '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.

(11) 'Settled claim' means the original tort claim resolved by a structured settlement.

(12) '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.

(13) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(14) 'Structured settlement obligor' means, with respect to a 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.

(15) 'Structured settlement payment rights' means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, if the:

(a) 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 State; or

(b) structured settlement agreement was approved by a court in this State; or

(c) structured settlement agreement is governed expressly by the laws of this State.

(16) 'Terms of the structured settlement' include the terms of the structured settlement agreement, the annuity contract, a qualified assignment agreement, and an order or other approval of a court.

(17) 'Transfer' means the sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; except that the term 'transfer' does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of an action to redirect the structured settlement payments to the insured depository institution, or an agent or successor in interest of it, or otherwise to enforce the blanket security interest against the structured settlement payment rights.

(18) 'Transfer agreement' means the agreement providing for a transfer of structured settlement payment rights.

(19) 'Transfer expenses' means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount including, without limitation, court filing fees, attorneys' fees, escrow fees, lien recordation fees, judgment and lien search fees, finder's fees, commissions, and other payments to a broker or other intermediary. 'Transfer expenses' do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

(22) 'Transferee' means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

Section 15-50-30. Not less than three days before the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than fourteen points, including:

(1) amounts and due dates of the structured settlement payments being transferred;

(2) aggregate amount of the payments;

(3) discounted present value of the payments being transferred, which must be identified as the 'calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities', and the amount of the applicable federal rate used in calculating the discounted present value;

(4) gross advance amount;

(5) itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of the fees and disbursements;

(6) net advance amount;

(7) amount of penalties or liquidated damages payable by the payee if the payee breaches the transfer agreement; and

(8) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

Section 15-50-40. A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not required to make a payment directly or indirectly to a transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by the court that the:

(1) transfer is in the best interests of the payee, taking into account the welfare and support of the payee's dependents;

(2) payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer or knowingly and in writing has waived receipt of that advice; and

(3) transfer does not contravene an applicable statute or the order of any court or other government authority.

Section 15-50-50. Following a transfer of structured settlement payment rights pursuant to this chapter:

(1) the structured settlement obligor and the annuity issuer, as to all parties except the transferee, are discharged and released from liability for the transferred payments; and

(2) the transferee is liable to the structured settlement obligor and the annuity issuer:

(a) for taxes incurred by the parties as a consequence of the transfer if the transfer contravenes the terms of the structured settlement; and

(b) for other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by the parties with the order of the court or arising as a consequence of the transferee's failure to comply with this chapter;

(3) neither the annuity issuer nor the structured settlement obligor is required to divide a 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 the requirements of this chapter.

Section 15-50-60. (A) An application pursuant to this chapter for approval of a transfer of structured settlement payment rights may be made by the transferee and may be brought in a court of competent jurisdiction, including the probate court if the transferee is a minor or the original settlement was approved by the probate court, in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court which approved the structured settlement agreement.

(B) Not less than twenty days before the scheduled hearing on an application for approval of a transfer of structured settlement payment rights pursuant to Section 15-50-40, the transferee must file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization. The notice must include:

(1) a copy of the transferee's application;

(2) a copy of the transfer agreement;

(3) a copy of the disclosure statement required pursuant to Section 15-50-30;

(4) a listing of each of the payee's dependents, and each dependent's age;

(5) notification that an interested party may support, oppose, or otherwise respond to the transferee's application, in person or by counsel, by submitting written comments to the court, or by participating in the hearing; and

(6) notification of the time and place of the hearing and notification of the manner and the time for filing written responses to the application, which must be not less than fifteen days after service of the transferee's notice, for consideration by the court.

Section 15-50-70. (A) The provisions of this chapter may not be waived by a payee.

(B) A transfer agreement entered into on or after the effective date of this chapter by a payee who resides in this State must provide that disputes under the transfer agreement, including a claim that the payee has breached the agreement, must be determined pursuant to the laws of this State. A transfer agreement may not authorize the transferee or another party to confess judgment or consent to entry of judgment against the payee.

(C) Transfer of structured settlement payment rights do not extend to payments that are life-contingent unless, before the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:

(1) periodically confirming the payee's survival; and

(2) giving the annuity issuer and the structured settlement obligor prompt written notice if the payee dies.

(D) A payee who proposes to make a transfer of structured settlement payment rights does not incur any penalty, forfeit any application fee or other payment, or otherwise incur a liability to the proposed transferee or an assignee based on a failure of the transfer to satisfy the conditions of this chapter.

(E) This chapter does not authorize a transfer of structured settlement payment rights in contravention of law nor imply that a transfer under a

transfer agreement entered into before the effective date of this chapter is valid or invalid.

(F) Compliance with the requirements of Section 15-50-30 and fulfillment of the conditions in Section 15-50-40 are the sole responsibility of the transferee in a transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer bears responsibility for, or liability arising from, noncompliance with the requirements or failure to fulfill the conditions."

Application

[*2] SECTION 2. This act applies to a transfer of structured settlement payment rights under a transfer agreement entered into on or after thirty days of the date of enactment of this act; except that nothing contained in this act implies that a transfer under a transfer agreement reached before that date is either effective or ineffective.

Time effective

[*3] SECTION 3. This act takes effect upon approval by the Governor.

HISTORY:

Approved by the Governor on May 14, 2002

SPONSOR: Harrison