

Regular Session, 2001

ACT No. 597

HOUSE BILL NO. 883

BY REPRESENTATIVE RIDDLE

AN ACT

To enact R.S. 9:2715, relative to the transfer of structured settlement payment rights; to provide for definitions; to provide for a procedure for transfer; to provide for ex parte orders; to provide for requirements for transfer; to provide for the payment of costs; to provide for the effect of certain provisions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:2715 is hereby enacted to read as follows:

§2715. Transfer of structured settlement rights

A. As used in this Section, the following terms shall mean:

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

(2) "Discounted present value" means the fair present value of future payments, as determined by discounting 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.

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

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

(b) Who is not affiliated with or compensated by the transferee of the transfer; and

(c) Whose compensation is not affected by whether a transfer occurs.

(4) "Interested parties" means the payee, each beneficiary 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 a structured settlement.

(5) "Payee" means an individual who receives damage payments that are not subject to income taxation under a structured settlement and proposes to make a transfer of payment rights.

(6) "Structured settlement" means an arrangement for periodic payment of damages for personal injury established by a settlement or judgment in resolution of a tort claim. "Structured settlement" does not include an arrangement for periodic payment of damages for personal injury established by a judgment of confession.

(7) "Structured settlement agreement" means an agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(8) "Structured settlement obligor" means a party who has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

(9) "Structured settlement payment rights" means the rights to receive periodic payments, including lump-sum payments under a structured settlement, whether from the settlement obligor or the annuity issuer, if:

(a) The transferee or payee is domiciled in this state;

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

(c) The settled claim was pending before a court of this state when the parties entered into the structured settlement agreement.

(10) "Terms of the structured settlement" includes the terms of the structured settlement agreement, the annuity contract, a qualified assignment, and an order or approval of a court or responsible administrative authority authorizing or approving a structured settlement.

(11) "Transfer" means a sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration.

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

(13) "Transferee" means a person who is receiving or will receive structured settlement payment rights from a payee.

B. The direct or indirect transfer of structured settlement payment rights shall not be effective nor shall a structured settlement obligor or annuity issuer be required to make a payment directly or indirectly to a transferee of structured settlement payment rights unless all of the following requirements are met:

(1) The transfer of structured settlement payment rights has been authorized in advance by ex parte order of a court of competent jurisdiction which had jurisdiction over the original tort or workers' compensation claim resolved by the structured settlement or in which the original tort or workers' compensation claim could have been brought. At least twenty days prior to the issuance of the order the transferee shall file a petition for transfer with the caption "Ex Parte Petition for Transfer of Structured Settlement Rights by (name of Transferee)."

(2) The transferee shall include with the petition, a copy of the transferee's application, a copy of the transfer agreement, and a disclosure statement to the payee in bold type, no smaller than 14 points, acknowledged by the payee specifying the following:

(a) The amounts and due dates of the structured settlement payments to be transferred.

(b) The aggregate amount of the payments.

(c) The discounted present value of the payments, together with the discount rate used in determining the discounted present value.

(d) The gross amount payable to the payee in exchange for the payments and an itemized listing of all brokers' commissions, service

charges, application fees, processing fees, closing costs, filing fees, referral fees, administrative fees, legal fees, notary fees, and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee.

(e) The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in Subparagraph (d) of this Paragraph.

(f) The quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments, which shall be disclosed in the following statement: "The net amount that you will receive from us in exchange for your future structured settlement payments represents ___ % of the estimated current value of the payments".

(g) The effective annual interest rate, which rate shall be disclosed in the following statement: "Based on the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are turning over to us, you will, in effect, be paying interest to us at a rate of ___ % per year".

(h) The amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of a breach of the transfer agreement by the payee.

(i) 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.

(j) The transfer agreement provides that if the payee is domiciled in this state, any disputes between the parties will be governed, interpreted, construed, and enforced in accordance with the

laws of this state and that the domicile state of the payee is the proper place of venue to bring any cause of action arising out of a breach of the agreement.

C. The court shall enter an order approving the transfer based on a finding of all of the following:

(1) That the payee received independent professional advice regarding the legal, tax, and financial implications of the transfer.

(2) That the transferee disclosed to the payee the discounted present value.

D. All costs of court for filing the petition for transfer of structured settlement rights shall be paid by the transferee.

E. If a transfer of structure settlement payment rights has been authorized under this Section, neither the annuity issuer nor the structured settlement obligor shall have any liability to the payee or to any other party for any payment made to the transferee in accordance with the authorization.

F. The provisions of this Section may not be waived.

G. This Section shall not be construed to authorize a transfer of structured settlement payment rights in contravention of applicable law or to give effect to a transfer of structured settlement payment rights that is invalid under applicable law.

H. A provision in a transfer agreement giving a transferee power to confess judgment against a payee is unenforceable to the extent that the amount of the judgment would exceed the amount paid by the transferee to the payee, less any payments received from the structured settlement obligor or the payee.

I. This Section shall not be construed to authorize any transfer of workers' compensation payment rights in contravention of applicable law or to give effect to any transfer of workers' compensation or other payment rights that is invalid under applicable law.

Section 2. The provisions of this Act shall have prospective application only and shall not apply to transfers occurring before the effective date.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____