AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL No. 510

Introduced by Senator Corbett

February 26, 2009

An act to amend Section 10139.5 of the Insurance Code, relating to structured settlements.

LEGISLATIVE COUNSEL'S DIGEST

SB 510, as amended, Corbett. Structured settlements: payment transfers.

Existing law provides that no direct or indirect transfer of structured settlement payment rights is effective unless the transfer has been approved in advance in a final court order based on certain written court findings.

This bill would specify circumstances the court must consider before approving the transfer. This bill would provide that every application for approval of a transfer of structured settlement payment rights shall contain ~~certain~~ specified information. This bill would also specify notice and disclosure requirements that must be complied with prior to any transfer.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 10139.5 of the Insurance Code is amended to read:

10139.5. (a) 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 any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express written findings by the court regarding all of the following:

(1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents. When determining whether the transfer is in the best interest of the payee, the court shall consider the totality of the circumstances, including all of the following:

(A) The reasonable preference of the payee in light of the payee's age, mental capacity, maturity level, or financial or legal knowledge.

(B) The stated purpose of the transfer.

(C) Whether the periodic payments of the structured settlement were intended to cover future income loss or future medical expenses.

(D) The potential need for future medical treatment.

(E) Whether the transfer is in the best interests of the payee's dependents.

(F) Whether the payee has means of support aside from the structured settlement, if the transfer is allowed to proceed, to meet his or her obligations for care, treatment, and future maintenance and support of dependents including, but not limited to, child support obligations.

(G) Whether the offered discount rate is in line with the market rate for similar transfers and is considered conscionable taking into account, among other factors, the availability of alternate financial instruments ~~and the current statutory usury rate of interest as defined by statute.~~, *the amount and sources of the payee's monthly income and financial resources, and, if presently married, the amount and sources of the monthly income and financial resources of the payee's spouse.*

(H) Whether any previous applications pertaining to the funds that are the subject of the pending application or that were a part of the original structure have been submitted in any jurisdiction, including any applications that have been submitted but later withdrawn before court determination.

(I) Whether the payee is in a hardship situation.

(J) Whether the payee has received independent legal and financial advice so as to appreciate the financial consequences of the proposed transaction.

(2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived that advice in writing. The court may deny, or may defer ruling on, the application for approval of a transfer of structured settlement payment rights if it believes that independent legal or financial advice should be obtained.

(3) The transferee has complied with subdivision (f) regarding disclosure and notification requirements, provided the payee with a disclosure form that complies with Section 10136, and the transfer agreement complies with Sections 10136 and 10138.

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

(5) The payee reasonably understands the terms of the transfer agreement, including the terms set forth in the disclosure statement required by subdivision (f) and Section 10136.

(6) The payee reasonably understands and does not wish to exercise the payee's right to cancel the transfer agreement.

(b) Every application for approval of a transfer of structured settlement payment rights shall include all of the following:

(1) The payee's name, address and age.

(2) The payee's marital status, and if married or separated, the name of the payee's spouse.

(3) The names, ages, and place or places of residence of the payee's minor children or other dependents, if any.

(4) The payee's monthly income and sources of income, and, if presently married, the monthly income and sources of income of the payee's spouse.

(5) Whether the ~~transferee~~ *payee* is currently obligated under any child support or spousal support order, and, if so, the names, addresses, and telephone numbers of all individuals who are the beneficiaries of the orders and of all agencies that have jurisdiction over the orders or payments.

(c) Following a transfer of structured settlement payment rights under this article:

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

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer if the transfer contravenes the terms of the structured settlement for the following:

(A) Any taxes incurred by those parties as a consequence of the transfer.

(B) Any other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by those parties with the order of the court or arising as a consequence of the transferee's failure to comply with this article.

(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.

(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 article.

(d) (1) An application under this article for approval of a transfer of structured settlement payment rights shall be made by the transferee and brought in the county in which the payee resides.

(2) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under this article, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization. For the purposes of this subdivision, "interested parties" includes, but is not limited to, any agency charged with enforcing the child support, the payee's attorney of record as of the time of the creation of the structured settlement at the attorney's current address on file with the State Bar of California, and the payee's current attorney. The following shall be served with that notice:

(A) A copy of the transferee's current application and any other prior applications whether approved or withdrawn.

(B) A copy of the proposed transfer agreement and disclosure statement required by paragraph (3) of subdivision (a).

(C) A listing of each of the payee's dependents, together with each dependent's age.

(D) A copy of the disclosure required in subdivision (b) of Section 10136.

(E) A copy of the annuity contract.

(F) A copy of any qualified assignment agreement.

(G) A copy of the underlying structured settlement agreement.

(H) A proof of service showing compliance with this section including the notification requirements under paragraph (3) of subdivision (a).

(I) 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 by participating in the hearing.

(J) 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 may not be less than 15 days after service of the transferee's notice, in order to be considered by the court.

(e) All court costs and filing fees shall be paid by the transferee.

(f) (1) No later than the time of filing the petition for court approval, the transferee shall advise the payee of the payee's right to seek independent counsel and financial advice in connection with the transferee's petition for court approval of the transfer agreement, and shall further advise the payee that if the payee retains counsel, a licensed certified public accountant, or a licensed actuary in connection with a petition for an order approving the transfer agreement, that the transferee shall pay the fees of the payee's counsel, accountant, or actuary, regardless of whether the transfer agreement is approved, and regardless of whether the attorney, accountant, or actuary files any document or appears at the hearing on the application for transfer, in an aggregate amount not to exceed one thousand five hundred dollars ($1,500). The transferee's accountant, counsel, or actuary may not advise the payee.

(2) The notification required by this subdivision shall include the following statement, made in writing, in a conspicuous manner, in no less that 14-point boldface type above the signature line:

A structured settlement is a guaranteed stream of payments with a fixed rate of return (interest) over a preestablished period of time. Structured settlements are often designed to provide financial security and certainty. Selling or transferring your rights to payments under a structured settlement and, as a result, to a future stream of payments, has serious financial consequences that should not be ignored.

You are entitled under the law to have independent legal and financial advice before entering into any transfer agreement. The cost of this advice up to $1,500.00 will be paid by the company to which you are considering transferring your rights to payments. The purchasing company's accountants, actuaries, and attorneys may not advise you. A sale or transfer of your rights will eliminate your claim or right to receive any future payments under the structured settlement. You will have transferred those rights to the purchasing company. You are advised to enter into a transfer agreement only after careful consideration of the consequences of entering into a transfer agreement and after receiving competent legal and financial advice.

Your current structured settlement provides a guaranteed rate of interest of ____ percent, with regular payments of $____ every week, month, or year, for a total value over time of $____. Your current structured settlement may also have significant tax benefits if it was the result of a qualified assignment as the result of a personal injury settlement such that both the interest that you are receiving as well as all of your future payments made within the structured settlement may be tax free.

Over the course of your settlement, you are guaranteed payments that will total $____. The current present value of this stream of payments, in other words, the amount needed in today's dollars to buy the rights to those payments at the same fixed rate of interest, is $____. The current amount being offered to you to purchase your rights to this stream of income is $____; this amount reflects a significant discount in the present and future values of this stream of income at a discounted rate of interest of ____ percent.

(g) The court shall retain continuing jurisdiction to interpret and monitor the implementation of the transfer agreement as justice requires.

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