

By: Representative Blackmon

To: Judiciary A

## HOUSE BILL NO. 1152

1 AN ACT TO BE ENTITLED THE STRUCTURED SETTLEMENT PROTECTION  
2 ACT; TO ENACT SAFEGUARDS FOR THE TRANSFER OF STRUCTURED SETTLEMENT  
3 PAYMENT RIGHTS; TO REQUIRE CHANCERY COURT REVIEW; TO ENACT  
4 DEFINITIONS; TO PROVIDE FOR JURISDICTION UNDER THE ACT; TO PROVIDE  
5 FOR AN EFFECTIVE DATE; AND FOR RELATED PURPOSES. BE IT ENACTED BY  
6 THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7  
8 SECTION 1. **Conditions to transfers of structured settlement**  
9 **payment rights.**

10 No direct or indirect transfer of structured settlement  
11 payment rights shall be effective and no structured settlement  
12 obligor or annuity issuer shall be required to make any payment  
13 directly or indirectly to any transferee of structured settlement  
14 payment rights unless the transfer has been authorized in advance  
15 in a final order of a chancery court of competent jurisdiction,  
16 based on express findings by such chancery court that:

17 (a) The transfer complies with the requirements of this  
18 act and will not contravene other applicable law.

19 (b) Not less than ten (10) days prior to the date on  
20 which the payee first incurred any obligation with respect to the  
21 transfer, the transferee has provided to the payee a disclosure  
22 statement in bold type, no smaller than fourteen (14) points,  
23 setting forth:

24 (i) The amounts and due dates of the structured  
25 settlement payments to be transferred;

26 (ii) The aggregate amount of such payments;

27 (iii) The discounted present value of such

28 payments, together with the discount rate used in determining such

29 discounted present value;

30 (iv) The gross amount payable to the payee in  
31 exchange for such payments;

32 (v) An itemized listing of all brokers'  
33 commissions, service charges, application fees, processing fees,  
34 closing costs, filing fees, administrative fees, legal fees,  
35 notary fees and other commissions, fees, costs, expenses and  
36 charges payable by the payee;

37 (vi) The net amount payable to the payee after  
38 deduction of all commissions, fees, costs, expenses and charges  
39 described in subparagraph (v) of this paragraph;

40 (vii) The quotient (expressed as a percentage)  
41 obtained by dividing the net payment amount by the discounted  
42 present value of the payments; and

43 (viii) The amount of any penalty and the aggregate  
44 amount of any liquidated damages (inclusive of penalties) payable  
45 by the payee in the event of any breach of the transfer agreement  
46 by the payee;

47 (c) The payee has established that the transfer is  
48 necessary to enable the payee, the payee's dependents, or both, to  
49 avoid imminent financial hardship, and the transfer should not be  
50 expected to subject the payee, the payee's dependents, or both, to  
51 undue financial hardship in the future.

52 (d) The payee has received independent professional  
53 advice regarding the legal, tax and financial implications of the  
54 transfer.

55 (e) If the transfer would contravene the terms of the  
56 structured settlement:

57 (i) The transfer has been expressly approved in  
58 writing by each interested party including the annuity issuer and  
59 the structured settlement obligor; and

60 (ii) Signed originals of all approvals required  
61 under subparagraph (i) of this paragraph have been filed with the

62 court from which authorization of the transfer is sought under  
63 this act, and originals or copies have been furnished to all  
64 interested parties;

65 (f) The transferee has given written notice of the  
66 transferee's name, address and taxpayer identification number to  
67 the annuity issuer and the structured settlement obligor and has  
68 filed a copy of such notice with the court; and

69 (g) The transferee has paid or will pay for all costs  
70 incurred in requesting approval of the transfer.

71 **SECTION 2. Definitions.**

72 For purposes of this act:

73 (a) "Annuity issuer" means an insurer that has issued  
74 an insurance contract used to fund periodic payments under a  
75 structured settlement.

76 (b) "Applicable law" means:

77 (i) The federal laws of the United States;

78 (ii) The laws of this state, including principles  
79 of equity applied in the courts of this state; and

80 (iii) The laws of any other jurisdiction:

81 A. Which is the domicile of the payee or any  
82 other interested party;

83 B. Under whose laws a structured settlement  
84 agreement was approved by a court or responsible administrative  
85 authority; or

86 C. In whose courts a settled claim was  
87 pending when the parties entered into a structured settlement  
88 agreement;

89 (c) "Dependents" include a payee's spouse and minor  
90 children and all other family members and other persons for whom  
91 the payee is legally obligated to provide support, including  
92 alimony.

93 (d) "Discounted present value" means the fair present  
94 value of future payments, as determined by discounting such

95 payments to the present using the most recently published  
96 applicable federal rate for determining the present value of an  
97 annuity, as issued by the United States Internal Revenue Service.

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

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

104 (ii) Who is not in any manner affiliated with or  
105 compensated by the transferee of such transfer; and

106 (iii) Whose compensation for rendering such advice  
107 is not affected by whether a transfer occurs or does not occur;

108 (f) "Interested parties" means, with respect to any  
109 structured settlement, the payee, any beneficiary designated under  
110 the annuity contract to receive payments following the payee's  
111 death, the annuity issuer, the structured settlement obligor, and  
112 any other party that has continuing rights or obligations under  
113 such structured settlement.

114 (g) "Payee" means an individual who is receiving tax  
115 free damage payments under a structured settlement and proposes to  
116 make a transfer of payment rights thereunder.

117 (h) "Settled claim" means the original tort claim or  
118 workers' compensation claim resolved by a structured settlement.

119 (i) "Structured settlement" means an arrangement for  
120 periodic payment of damages for personal injuries established by  
121 settlement or judgment in resolution of a tort claim or for  
122 periodic payments in settlement of a workers' compensation claim.

123 (j) "Structured settlement agreement" means the  
124 agreement, judgment, stipulation, or release embodying the terms  
125 of a structured settlement, including the rights of the payee to  
126 receive periodic payments.

127 (k) "Structured settlement obligor" means, with respect

128 to any structured settlement, the party that has the continuing  
129 periodic payment obligation to the payee under a structured  
130 settlement agreement or a qualified assignment agreement.

131 (l) "Structured settlement payment rights" means rights  
132 to receive periodic payments (including lump sum payments) under a  
133 structured settlement, whether from the settlement obligor or the  
134 annuity issuer, where:

135 (i) The payee is a resident of this State;

136 (ii) The structured settlement agreement was  
137 approved by a court or responsible administrative authority in  
138 this State; or

139 (iii) The settled claim was pending before the  
140 courts of this State when the parties entered into the structured  
141 settlement agreement;

142 (m) "Transfer" means any sale, assignment, pledge,  
143 hypothecation, or other form of alienation or encumbrance made by  
144 a payee for consideration.

145 (n) "Terms of the structured settlement" include, with  
146 respect to any structured settlement, the terms of the structured  
147 settlement agreement, the annuity contract, any qualified  
148 assignment agreement and any order or approval of any court or  
149 responsible administrative authority or other government authority  
150 authorizing or approving such structured settlement.

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

154 **SECTION 3. Jurisdiction; procedure for approval of**  
155 **transfers.**

156 (1) The Chancery Courts shall have jurisdiction over any  
157 application for authorization under Section 1 of this act of a  
158 transfer of structured settlement payment rights.

159 (2) Not less than twenty (20) days prior to the scheduled  
160 hearing on any application for authorization of a transfer of

161 structured settlement payment rights under Section 1 of this act,  
162 the transferee shall file with the court and serve on all  
163 interested parties a notice of the proposed transfer and the  
164 application for its authorization, including in such notice:

165 (a) A copy of the transferee's application;

166 (b) A copy of the transfer agreement;

167 (c) A copy of the disclosure statement required under  
168 Section 1(b) of this act;

169 (d) Notification that any interested party is entitled  
170 to support, oppose or otherwise respond to the transferee's  
171 application, either in person or by counsel, by submitting written  
172 comments to the court or by participating in the hearing; and

173 (e) Notification of the time and place of the hearing  
174 and notification of the manner in which and the time by which  
175 written responses to the application must be filed in order to be  
176 considered by the court.

177 **SECTION 4. No waiver; no penalties.**

178 (1) The provisions of this act may not be waived.

179 (2) No payee who proposes to make a transfer of structured  
180 settlement payment rights shall incur any penalty, forfeit any  
181 application fee or other payment, or otherwise incur any liability  
182 to the proposed transferee based on any failure of such transfer  
183 to satisfy the conditions of Section 1 of this act.

184 **SECTION 5. Construction.**

185 Nothing contained in this act shall be construed to authorize  
186 any transfer of structured settlement payment rights in  
187 contravention of applicable law or to give effect to any transfer  
188 of structured settlement payment rights that is invalid under  
189 applicable law.

190 **SECTION 6. Effective date.**

191 This act shall apply to any transfer of structured settlement  
192 payment rights under a transfer agreement entered into on or after  
193 the date of enactment of this act; provided, however, that nothing

194 contained herein shall imply that any transfer under a transfer  
195 agreement reached prior to such date is effective.

196 SECTION 7. This act shall take effect and be in force from  
197 and after its passage.