

By: Senator(s) Turner

To: Judiciary

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2841

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:
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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 a chancery court of competent jurisdiction
15 has expressly found that:

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

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

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

25 (ii) The aggregate amount of such payments;

26 (iii) The discounted present value of such
27 payments, together with the discount rate used in determining such
28 discounted present value;

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

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

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

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

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

46 (c) The payee has been fairly apprised of the
47 advantages and disadvantages of the proposed sale, and the payee
48 understands the advantages and disadvantages of the proposed sale.

49 (d) The payee has received independent professional
50 advice regarding the legal, tax and financial implications of the
51 transfer.

52 (e) If the transfer would contravene the terms of the
53 structured settlement, the transfer has been expressly approved in
54 writing by each interested party including the annuity issuer and
55 the structured settlement obligor.

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

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

62 SECTION 2. Definitions.

63 For purposes of this act:

64 (a) "Annuity issuer" means an insurer that has issued
65 an insurance contract used to fund periodic payments under a
66 structured settlement.

67 (b) "Applicable law" means:

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

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

71 (iii) The laws of any other jurisdiction:

72 A. Which is the domicile of the payee or any
73 other interested party;

74 B. Under whose laws a structured settlement
75 agreement was approved by a court or responsible administrative
76 authority; or

77 C. In whose courts a settled claim was
78 pending when the parties entered into a structured settlement
79 agreement;

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

84 (d) "Discounted present value" means the fair present
85 value of future payments, as determined by discounting such
86 payments to the present using the most recently published
87 applicable federal rate for determining the present value of an
88 annuity, as issued by the United States Internal Revenue Service.

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

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

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

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

99 (f) "Interested parties" means, with respect to any
100 structured settlement, the payee, any beneficiary designated under
101 the annuity contract to receive payments following the payee's
102 death, the annuity issuer, the structured settlement obligor, and
103 any other party that has continuing rights or obligations under
104 such structured settlement.

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

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

110 (i) "Structured settlement" means an arrangement for
111 periodic payment of damages for personal injuries established by
112 settlement or judgment in resolution of a tort claim or for
113 periodic payments in settlement of a workers' compensation claim.

114 (j) "Structured settlement agreement" means the
115 agreement, judgment, stipulation, or release embodying the terms
116 of a structured settlement, including the rights of the payee to
117 receive periodic payments.

118 (k) "Structured settlement obligor" means, with respect
119 to any structured settlement, the party that has the continuing
120 periodic payment obligation to the payee under a structured
121 settlement agreement or a qualified assignment agreement.

122 (l) "Structured settlement payment rights" means rights
123 to receive periodic payments (including lump sum payments) under a
124 structured settlement, whether from the settlement obligor or the
125 annuity issuer, where:

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

127 (ii) The structured settlement agreement was

128 approved by a court or responsible administrative authority in
129 this State; or

130 (iii) The settled claim was pending before the
131 courts of this State when the parties entered into the structured
132 settlement agreement;

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

136 (n) "Terms of the structured settlement" include, with
137 respect to any structured settlement, the terms of the structured
138 settlement agreement, the annuity contract, any qualified
139 assignment agreement and any order or approval of any court or
140 responsible administrative authority or other government authority
141 authorizing or approving such structured settlement.

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

145 **SECTION 3. Jurisdiction; procedure for approval of**
146 **transfers.**

147 (1) The Chancery Courts shall have jurisdiction over any
148 application for review under Section 1 of this act of a transfer
149 of structured settlement payment rights.

150 (2) Not less than twenty (20) days prior to the scheduled
151 hearing on any application for review of a transfer of structured
152 settlement payment rights under Section 1 of this act, the
153 transferee shall file with the court and serve on all interested
154 parties a notice of the proposed transfer and the application for
155 its authorization, including in such notice:

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

157 (b) A copy of the transfer agreement;

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

160 (d) Notification that any interested party is entitled

161 to support, oppose or otherwise respond to the transferee's
162 application, either in person or by counsel, by submitting written
163 comments to the court or by participating in the hearing; and

164 (e) Notification of the time and place of the hearing
165 and notification of the manner in which and the time by which
166 written responses to the application must be filed in order to be
167 considered by the court.

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

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

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

175 **SECTION 5. Construction.**

176 Nothing contained in this act shall be construed to authorize
177 any transfer of structured settlement payment rights in
178 contravention of applicable law or to give effect to any transfer
179 of structured settlement payment rights that is invalid under
180 applicable law.

181 **SECTION 6. Effective date.**

182 This act shall apply to any transfer of structured settlement
183 payment rights under a transfer agreement entered into on or after
184 the date of enactment of this act; provided, however, that nothing
185 contained herein shall imply that any transfer under a transfer
186 agreement reached prior to such date is effective.

187 **SECTION 7.** This act shall take effect and be in force from
188 and after its passage.