

By: Senator(s) Turner

To: Judiciary

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:

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.