

By: Senator(s) Turner

To: Judiciary

SENATE BILL NO. 2841  
(As Passed the Senate)

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.