

By: Reeves

To: Judiciary A

HOUSE BILL NO. 313

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.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 SECTION 1. No direct or indirect transfer of structured  
8 settlement payment rights shall be effective and no structured  
9 settlement obligor or annuity issuer shall be required to make any  
10 payment directly or indirectly to any transferee of structured  
11 settlement payment rights unless the transfer has been authorized  
12 in advance in a final order of a chancery court of competent  
13 jurisdiction, based on express findings by such chancery court  
14 that:

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

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

22 (i) The amounts and due dates of the structured

23 settlement payments to be transferred;

24           (ii) The aggregate amount of such payments;

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

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

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

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

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

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

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

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

53           (e) If the transfer would contravene the terms of the

54 structured settlement:

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

58 (ii) Signed originals of all approvals required  
59 under subparagraph (i) of this paragraph have been filed with the  
60 court from which authorization of the transfer is sought under  
61 this act, and originals or copies have been furnished to all  
62 interested parties;

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

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

69 SECTION 2. For purposes of this act:

70 (a) "Annuity issuer" means an insurer that has issued  
71 an insurance contract used to fund periodic payments under a  
72 structured settlement.

73 (b) "Applicable law" means:

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

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

77 (iii) The laws of any other jurisdiction:

78 A. Which is the domicile of the payee or any  
79 other interested party;

80 B. Under whose laws a structured settlement  
81 agreement was approved by a court or responsible administrative

82 authority; or

83 C. In whose courts a settled claim was  
84 pending when the parties entered into a structured settlement  
85 agreement.

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

90 (d) "Discounted present value" means the fair present  
91 value of future payments, as determined by discounting such  
92 payments to the present using the most recently published  
93 applicable federal rate for determining the present value of an  
94 annuity, as issued by the United States Internal Revenue Service.

95 (e) "Independent professional advice" means advice of  
96 an attorney, certified public accountant, actuary or other  
97 licensed professional adviser:

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

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

103 (iii) Whose compensation for rendering such advice  
104 is not affected by whether a transfer occurs or does not occur.

105 (f) "Interested parties" means, with respect to any  
106 structured settlement, the payee, any beneficiary designated under  
107 the annuity contract to receive payments following the payee=s  
108 death, the annuity issuer, the structured settlement obligor, and  
109 any other party that has continuing rights or obligations under

110 such structured settlement.

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

114 (h) "Settled claim" means the original tort claim or  
115 workers= compensation claim resolved by a structured settlement.

116 (i) "Structured settlement" means an arrangement for  
117 periodic payment of damages for personal injuries established by  
118 settlement or judgment in resolution of a tort claim or for  
119 periodic payments in settlement of a workers= compensation claim.

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

124 (k) "Structured settlement obligor" means, with respect  
125 to any structured settlement, the party that has the continuing  
126 periodic payment obligation to the payee under a structured  
127 settlement agreement or a qualified assignment agreement.

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

132 (i) The payee is a resident of this state;

133 (ii) The structured settlement agreement was  
134 approved by a court or responsible administrative authority in  
135 this state; or

136 (iii) The settled claim was pending before the  
137 courts of this State when the parties entered into the structured

138 settlement agreement.

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

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

148 (o) "Transfer agreement" means the agreement providing  
149 for transfer of structured settlement payment rights from a payee  
150 to a transferee.

151 SECTION 3. (1) The chancery courts shall have jurisdiction  
152 over any application for authorization under Section 1 of this act  
153 of a transfer of structured settlement payment rights.

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

160 (a) A copy of the transferee=s application;

161 (b) A copy of the transfer agreement;

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

164 (d) Notification that any interested party is entitled  
165 to support, oppose or otherwise respond to the transferee=s

166 application, either in person or by counsel, by submitting written  
167 comments to the court or by participating in the hearing; and

168 (e) Notification of the time and place of the hearing  
169 and notification of the manner in which and the time by which  
170 written responses to the application must be filed in order to be  
171 considered by the court.

172 SECTION 4. (1) The provisions of this act may not be  
173 waived.

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

179 SECTION 5. Nothing contained in this act shall be construed  
180 to authorize any transfer of structured settlement payment rights  
181 in contravention of applicable law or to give effect to any  
182 transfer of structured settlement payment rights that is invalid  
183 under applicable law.

184 SECTION 6. This act shall apply to any transfer of  
185 structured settlement payment rights under a transfer agreement  
186 entered into on or after the date of enactment of this act;  
187 provided, however, that nothing contained herein shall imply that  
188 any transfer under a transfer agreement reached prior to such date  
189 is effective.

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