

By: Blackmon

To: Judiciary A

HOUSE BILL NO. 814

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. **Conditions to transfers of structured settlement**  
8 **payment rights.**

9 No direct or indirect transfer of structured settlement  
10 payment rights shall be effective and no structured settlement  
11 obligor or annuity issuer shall be required to make any payment  
12 directly or indirectly to any transferee of structured settlement  
13 payment rights unless the transfer has been authorized in advance  
14 in a final order of a chancery court of competent jurisdiction,  
15 based on express findings by such chancery court 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 established that the transfer is  
47 necessary to enable the payee, the payee=s dependents, or both, to  
48 avoid imminent financial hardship, and the transfer should not be  
49 expected to subject the payee, the payee=s dependents, or both, to  
50 undue financial hardship in the future.

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

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

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

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

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

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

70 **SECTION 2. Definitions.**

71 For purposes of this act:

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

75 (b) "Applicable law" means:

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

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

79 (iii) The laws of any other jurisdiction:

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

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

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

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

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

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

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

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

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

107                   (f) "Interested parties" means, with respect to any  
108 structured settlement, the payee, any beneficiary designated under  
109 the annuity contract to receive payments following the payee=s

110 death, the annuity issuer, the structured settlement obligor, and  
111 any other party that has continuing rights or obligations under  
112 such structured settlement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

165                   (b) A copy of the transfer agreement;

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

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

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

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

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

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

183 **SECTION 5. Construction.**

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

189 **SECTION 6. Effective date.**

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

194 agreement reached prior to such date is effective.

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