

By: Turner

To: Judiciary

SENATE BILL NO. 2790

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 a chancery court of competent jurisdiction
14 has expressly found 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 been fairly apprised of the
46 advantages and disadvantages of the proposed sale, and the payee
47 understands the advantages and disadvantages of the proposed sale.

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

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

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

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

61 SECTION 2. Definitions.

62 For purposes of this act:

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

66 (b) "Applicable law" means:

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

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

70 (iii) The laws of any other jurisdiction:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

126 (ii) The structured settlement agreement was

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

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

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

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

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

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

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

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

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

156 (b) A copy of the transfer agreement;

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

159 (d) Notification that any interested party is entitled

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

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

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

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

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

174 **SECTION 5. Construction.**

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

180 **SECTION 6. Effective date.**

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

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