

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 1294

1 AN ACT TO CREATE THE STRUCTURED SETTLEMENT PROTECTION ACT; TO  
2 DEFINE CERTAIN TERMS; TO REQUIRE THE DISCLOSURE OF CERTAIN  
3 INFORMATION TO A PAYEE; TO PROVIDE FOR THE APPROVAL OF TRANSFERS  
4 OF STRUCTURED SETTLEMENT PAYMENT RIGHTS; TO PROVIDE FOR THE  
5 EFFECTS OF THE TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS;  
6 TO PROVIDE THE PROCEDURE FOR APPROVAL OF TRANSFERS; AND FOR  
7 RELATED PURPOSES.

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

9 **SECTION 1.** This act shall be known and may be cited as the  
10 "Structured Settlement Protection Act."

11 **SECTION 2.** The following words and phrases shall have the  
12 meanings ascribed herein, unless the context clearly indicates  
13 otherwise:

14 (a) "Annuity issuer" means an insurer that has issued a  
15 contract to fund periodic payments under a structured settlement.

16 (b) "Dependents" include a payee's spouse and minor  
17 children and all other persons for whom the payee is legally  
18 obligated to provide support, including alimony.

19 (c) "Discounted present value" means the present value  
20 of future payments determined by discounting such payments to the  
21 present using the most recently published Applicable Federal Rate  
22 for determining the present value of an annuity, as issued by the  
23 United States Internal Revenue Service.

24 (d) "Gross advance amount" means the sum payable to the  
25 payee or for the payee's account as consideration for a transfer  
26 of structured settlement payment rights before any reductions for  
27 transfer expenses or other deductions to be made from such  
28 consideration.



29           (e) "Independent professional advice" means advice of  
30 an attorney, certified public accountant, actuary or other  
31 licensed professional adviser.

32           (f) "Interested parties" means, with respect to any  
33 structured settlement, the payee, any beneficiary irrevocably  
34 designated under the annuity contract to receive payments  
35 following the payee's death, the annuity issuer, the structured  
36 settlement obligor, and any other party that has continuing rights  
37 or obligations under such structured settlement.

38           (g) "Net advance amount" means the gross advance amount  
39 less the aggregate amount of the actual and estimated transfer  
40 expenses required to be disclosed under Section 3(e) of this act.

41           (h) "Payee" means an individual who is receiving  
42 tax-free payments under a structured settlement and proposes to  
43 make a transfer of payment rights thereunder.

44           (i) "Periodic payments" includes both recurring  
45 payments and scheduled future lump-sum payments.

46           (j) "Qualified assignment agreement" means an agreement  
47 providing for a qualified assignment within the meaning of 26 USCS  
48 130.

49           (k) "Responsible administrative authority" means, with  
50 respect to a structured settlement, any government authority  
51 vested by law with exclusive jurisdiction over the settled claim  
52 resolved by such structured settlement.

53           (l) "Settled claim" means the original tort claim or  
54 workers' compensation claim resolved by a structure settlement.

55           (m) "Structured settlement" means an arrangement for  
56 periodic payment of damages for personal injuries or sickness  
57 established by settlement or judgment in resolution of a tort  
58 claim or for periodic payments in settlement of a workers'  
59 compensation claim.



60 (n) "Structured settlement agreement" means the  
61 agreement, judgment, stipulation or release embodying the terms of  
62 a structured settlement.

63 (o) "Structured settlement obligor" means, with respect  
64 to any structured settlement, the party that has the continuing  
65 obligation to make periodic payments to the payee under a  
66 structured settlement agreement or a qualified assignment  
67 agreement.

68 (p) "Structured settlement payment rights" means rights  
69 to receive periodic payments under a structured settlement,  
70 whether from the structured settlement obligor or the annuity  
71 issuer, where:

72 (i) The payee is domiciled in, or the domicile or  
73 principal place of business of the structured settlement obligor  
74 or the annuity issuer is located in, this state;

75 (ii) The structured settlement agreement was  
76 approved by a court or responsible administrative authority in  
77 this state; or

78 (iii) The structured settlement agreement is  
79 expressly governed by the laws of this state.

80 (q) "Terms of the structured settlement" includes, with  
81 respect to any structured settlement, the terms of the structured  
82 settlement agreement, the annuity contract, any qualified  
83 assignment agreement and any order or other approval of any court  
84 or responsible administrative authority or other government  
85 authority that authorized or approved such structured settlement.

86 (r) "Transfer" means any sale, assignment, pledge,  
87 hypothecation or other alienation or encumbrance of structured  
88 settlement payment rights made by a payee for consideration;  
89 provided that the term "transfer" does not include the creation or  
90 perfection of a security interest in structured settlement payment  
91 rights under a blanket security agreement entered into with an  
92 insured depository institution, in the absence of any action to



93 redirect the structured settlement payments to such insured  
94 depository institution, or an agent or successor in interest  
95 thereof, or otherwise to enforce such blanket security interest  
96 against the structured settlement payment rights.

97 (s) "Transfer agreement" means the agreement providing  
98 for a transfer of structured settlement payment rights.

99 (t) "Transfer expenses" means all expenses of a  
100 transfer that are required under the transfer agreement to be paid  
101 by the payee or deducted from the gross advance amount, including,  
102 without limitation, court filing fees, attorney's fees, escrow  
103 fees, lien recordation fees, judgment and lien search fees,  
104 finder's fees, commissions, and other payments to a broker or  
105 other intermediary; "transfer expenses" do not include preexisting  
106 obligations of the payee payable for the payee's account from the  
107 proceeds of a transfer.

108 (u) "Transferee" means a party acquiring or proposing  
109 to acquire structured settlement payment rights through a  
110 transfer.

111 **SECTION 3.** Not less than three (3) days before the date on  
112 which a payee signs a transfer agreement, the transferee shall  
113 provide to the payee a separate disclosure statement, in bold type  
114 no smaller than fourteen (14) points, setting forth:

115 (a) The amounts and due dates of the structured  
116 settlement payments to be transferred;

117 (b) The aggregate amount of such payments;

118 (c) The discounted present value of the payments to be  
119 transferred, which shall be identified as the "calculation of  
120 current value of the transferred structured settlement payments  
121 under federal standards for valuing annuities," and the amount of  
122 the Applicable Federal Rate used in calculating such discounted  
123 present value;

124 (d) The gross advance amount;



125 (e) An itemized listing of all applicable transfer  
126 expenses, other than attorney's fees and related disbursement  
127 payable in connection with the transferee's application for  
128 approval of the transfer, and the transferee's best estimate of  
129 the amount of any such fees and disbursements;

130 (f) The net advance amount;

131 (g) The amount of any penalties or liquidated damages  
132 payable by the payee in the event of any breach of the transfer  
133 agreement by the payee; and

134 (h) A statement that the payee has the right to cancel  
135 the transfer agreement, without penalty or further obligation, not  
136 later than the third business day after the date the agreement is  
137 signed by the payee.

138 **SECTION 4.** No direct or indirect transfer of structured  
139 settlement payment rights shall be effective and no structured  
140 settlement obligor or annuity issuer shall be required to make any  
141 payment directly or indirectly to any transferee of structured  
142 settlement payment rights unless the transfer has been approved in  
143 advance in a final court order or order of a responsible  
144 administrative authority based on express findings by such court  
145 or responsible administrative authority that:

146 (a) The transfer is in the best interest of the payee,  
147 taking into account the welfare and support of the payee's  
148 dependents;

149 (b) The payee has been advised in writing by the  
150 transferee to seek independent professional advice regarding the  
151 transfer and has either received such advice or knowingly waived  
152 such advice in writing; and

153 (c) The transfer does not contravene any applicable  
154 statute or the order of any court or other government authority.

155 **SECTION 5.** Following a transfer of structured settlement  
156 payment rights under this act:



157 (a) The structured settlement obligor and the annuity  
158 issuer shall, as to all parties except the transferee, be  
159 discharged and released from any and all liability for the  
160 transferred payments;

161 (b) The transferee shall be liable to the structured  
162 settlement obligor and the annuity issuer:

163 (i) If the transfer contravenes the terms of the  
164 structured settlement, for any taxes incurred by such parties as a  
165 consequence of the transfer; and

166 (ii) For any other liabilities or costs, including  
167 reasonable costs and attorney's fees, arising from compliance by  
168 such parties with the order of the court or responsible  
169 administrative authority or arising as a consequence of the  
170 transferee's failure to comply with this act;

171 (c) Neither the annuity issuer nor the structured  
172 settlement obligor may be required to divide any periodic payment  
173 between the payee and any transferee or assignee or between two  
174 (2) or more transferees or assignees; and

175 (d) Any further transfer of structured settlement  
176 payment rights by the payee may be made only after compliance with  
177 all of the requirements of this act.

178 **SECTION 6.** (1) An application under this act for approval  
179 of a transfer of structured settlement payment rights shall be  
180 made by the transferee and may be brought in the county in which  
181 the payee resides, in the county in which the structured  
182 settlement obligor or the annuity issuer maintains its principal  
183 place of business, or in any court or before any responsible  
184 administrative authority which approved the structured settlement  
185 agreement.

186 (2) Not less than twenty (20) days prior to the scheduled  
187 hearing on any application for approval of a transfer of  
188 structured settlement payment rights under Section 4 of this act,  
189 the transferee shall file with the court or responsible



190 administrative authority and serve on all interested parties a  
191 notice of the proposed transfer and the application for its  
192 authorization, including with such notice:

193 (a) A copy of the transferee's application;

194 (b) A copy of the transfer agreement;

195 (c) A copy of the disclosure statement required under  
196 Section 3 of this act;

197 (d) A listing of each of the payee's dependents,  
198 together with each dependent's age;

199 (e) Notification that any interested party is entitled  
200 to support, oppose or otherwise respond to the transferee's  
201 application, either in person or by counsel, by submitting written  
202 comments to the court or responsible administrative authority or  
203 by participating in the hearing; and

204 (f) Notification of the time and place of the hearing  
205 and notification of the manner in which and the time by which  
206 written responses to the application must be filed which shall be  
207 not less than fifteen (15) days after service of the transferee's  
208 notice in order to be considered by the court or responsible  
209 administrative authority.

210 **SECTION 7.** (1) The provisions of this act may not be waived  
211 by any payee.

212 (2) Any transfer agreement entered into on or after the  
213 effective date of this act by a payee who resides in this state  
214 shall provide that disputes under such transfer agreement,  
215 including any claim that the payee has breached the agreement,  
216 shall be determined in and under the laws of this state. No such  
217 transfer agreement shall authorize the transferee or any other  
218 party to confess judgment or consent to entry of judgment against  
219 the payee.

220 (3) No transfer of structured settlement payment rights  
221 shall extend to any payments that are life-contingent unless,  
222 prior to the date on which the payee signs the transfer agreement,



223 the transferee has established and has agreed to maintain  
224 procedures reasonably satisfactory to the annuity issuer and the  
225 structured settlement obligor for (a) periodically confirming the  
226 payee's survival, and (b) giving the annuity issuer and the  
227 structured settlement obligor prompt written notice in the event  
228 of the payee's death.

229 (4) No payee who proposes to make a transfer of structured  
230 settlement payment rights shall incur any penalty, forfeit any  
231 application fee or other payment, or otherwise incur any liability  
232 to be proposed transferee or any assignee based on any failure of  
233 such transfer to satisfy the conditions of this act.

234 (5) Nothing contained in this act shall be construed to  
235 authorize any transfer of structured settlement payment rights in  
236 contravention of any law or to imply that any transfer under a  
237 transfer agreement entered into before the effective date of this  
238 act is valid or invalid.

239 (6) Compliance with the requirements set forth in Section 3  
240 of this act and fulfillment of the conditions set forth in Section  
241 4 of this act shall be solely the responsibility of the transferee  
242 in any transfer of structured settlement payment rights, and  
243 neither the structured settlement obligor nor the annuity issuer  
244 shall bear any responsibility for, or any liability arising from,  
245 noncompliance with such requirements or failure to fulfill such  
246 conditions.

247 **SECTION 8.** This act shall apply to any transfer of  
248 structured settlement payment rights under a transfer agreement  
249 entered into on or after August 1, 2002; provided, however, that  
250 nothing contained herein shall imply that any transfer under a  
251 transfer agreement reached before such date is either effective or  
252 ineffective.

253 **SECTION 9.** This act shall take effect and be in force from  
254 and after July 1, 2002.

