

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.

