

By: Senator(s) Turner

To: Judiciary

SENATE BILL NO. 2912

1 AN ACT TO CREATE THE STRUCTURED SETTLEMENT PROTECTION ACT;  
2 TO ENACT DEFINITIONS; TO REQUIRE CERTAIN DISCLOSURES; TO REQUIRE  
3 APPROVAL OF TRANSFERS; TO SPECIFY THE EFFECT OF TRANSFER; TO  
4 SPECIFY THE PROCEDURE FOR APPROVAL; TO PROVIDE FOR CONSTRUCTION;  
5 AND FOR RELATED PURPOSES.

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

7 **SECTION 1. Title.**

8 This act shall be known and referred to as the "Structured  
9 Settlement Protection Act."

10 **SECTION 2. Definitions.**

11 For purposes of this act:

12 (a) "Annuity issuer" means an insurer that has issued a  
13 contract to fund periodic payments under a structured settlement;

14 (b) "Dependents" means a payee's spouse and minor  
15 children and all other persons for whom the payee is legally  
16 obligated to provide support, including alimony;

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

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



27           (e) "Independent professional advice" means advice of  
28 an attorney, certified public accountant, actuary or other  
29 licensed professional adviser;

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

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

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

42           (i) "Periodic payments" includes both recurring  
43 payments and scheduled future lump sum payments;

44           (j) "Qualified assignment agreement" means an agreement  
45 providing for a qualified assignment within the meaning of  
46 section 130 of the United States Internal Revenue Code, United  
47 States Code Title 26, as amended from time to time;

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

52           (l) "Settled claim" means the original tort claim or  
53 workers' compensation claim resolved by a structured settlement;

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



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

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

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

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

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

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

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

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



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

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

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

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

110 **SECTION 3. Required disclosures to payee.**

111 Not less than three (3) days prior to the date on which a  
112 payee signs a transfer agreement, the transferee shall provide to  
113 the payee a separate disclosure statement, in bold type no smaller  
114 than 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 attorneys' fees and related disbursements  
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. Approval of transfers of structured settlement**  
139 **payment rights.**

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

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

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

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



157           **SECTION 5. Effects of transfer of structured settlement**

158 **payment rights.**

159           (1) Following a transfer of structured settlement payment  
160 rights under this act:

161                 (a) The structured settlement obligor and the annuity  
162 issuer shall, as to all parties except the transferee, be  
163 discharged and released from any and all liability for the  
164 transferred payments;

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

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

170                         (ii) For any other liabilities or costs, including  
171 reasonable costs and attorneys' fees, arising from compliance by  
172 such parties with the order of the court or responsible  
173 administrative authority or arising as a consequence of the  
174 transferee's failure to comply with this act.

175           (2) (a) Neither the annuity issuer nor the structured  
176 settlement obligor may be required to divide any periodic payment  
177 between the payee and any transferee or assignee or between two  
178 (or more) transferees or assignees; and

179                 (b) Any further transfer of structured settlement  
180 payment rights by the payee may be made only after compliance with  
181 all of the requirements of this act.

182           **SECTION 6. Procedure for approval of transfers.**

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



190 (2) Not less than twenty (20) days prior to the scheduled  
191 hearing on any application for approval of a transfer of  
192 structured settlement payment rights under Section 4 of this act,  
193 the transferee shall file with the court or responsible  
194 administrative authority and serve on all interested parties a  
195 notice of the proposed transfer and the application for its  
196 authorization, including with such notice:

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

198 (b) A copy of the transfer agreement;

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

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

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

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

214 **SECTION 7. General provisions; construction.**

215 (1) The provisions of this act may not be waived by any  
216 payee.

217 (2) Any transfer agreement entered into on or after the  
218 effective date of this act by a payee who resides in this state  
219 shall provide that disputes under such transfer agreement,  
220 including any claim that the payee has breached the agreement,  
221 shall be determined in and under the laws of this state. No such  
222 transfer agreement shall authorize the transferee or any other



223 party to confess judgment or consent to entry of judgment against  
224 the payee.

225 (3) No transfer of structured settlement payment rights  
226 shall extend to any payments that are life-contingent unless,  
227 prior to the date on which the payee signs the transfer agreement,  
228 the transferee has established and has agreed to maintain  
229 procedures reasonably satisfactory to the annuity issuer and the  
230 structured settlement obligor for (i) periodically confirming the  
231 payee's survival, and (ii) giving the annuity issuer and the  
232 structured settlement obligor prompt written notice in the event  
233 of the payee's death.

234 (4) No payee who proposes to make a transfer of structured  
235 settlement payment rights shall incur any penalty, forfeit any  
236 application fee or other payment, or otherwise incur any liability  
237 to the proposed transferee or any assignee based on any failure of  
238 such transfer to satisfy the conditions of this act.

239 (5) Nothing contained in this act shall be construed to  
240 authorize any transfer of structured settlement payment rights in  
241 contravention of any law or to imply that any transfer under a  
242 transfer agreement entered into prior to the effective date of  
243 this act is valid or invalid.

244 (6) Compliance with the requirements set forth in Section 3  
245 of this act and fulfillment of the conditions set forth in  
246 Section 4 of this act shall be solely the responsibility of the  
247 transferee in any transfer of structured settlement payment  
248 rights, and neither the structured settlement obligor nor the  
249 annuity issuer shall bear any responsibility for, or any liability  
250 arising from, non-compliance with such requirements or failure to  
251 fulfill such conditions.

252 **SECTION 8. Effective date.**

253 This act shall apply to any transfer of structured settlement  
254 payment rights under a transfer agreement entered into on or after  
255 July 1, 2002; provided, however, that nothing contained herein





256 shall imply that any transfer under a transfer agreement reached  
257 prior to such date is either effective or ineffective.

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

