

By Senator Geller

29-1069-99

1 A bill to be entitled
2 An act relating to transfers of structured
3 settlement agreements; providing definitions;
4 providing that the transfer of structured
5 settlement payment rights is not effective
6 unless the transfer is authorized by a final
7 court order; requiring that the court order be
8 based on specified findings; providing
9 disclosure requirements; requiring that the
10 payee establish that the transfer is necessary
11 to avoid imminent financial hardship; requiring
12 that the payee receive independent professional
13 advice; providing requirements for a transfer
14 that contravenes the terms of the structured
15 settlement; providing that the circuit courts
16 have nonexclusive jurisdiction for authorizing
17 such transfers; providing requirements for
18 filing an application for authorization of a
19 transfer; requiring that notice be served on
20 all interested parties; providing that the
21 requirements of the act may not be waived;
22 providing that the act does not authorize
23 transfers in contravention of applicable law;
24 providing an effective date.

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26 Be It Enacted by the Legislature of the State of Florida:

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28 Section 1. Definitions.--As used in this act, the
29 term:
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1 (1) "Annuity issuer" means an insurer that has issued
2 an insurance contract used to fund periodic payments under a
3 structured settlement.

4 (2) "Applicable law" means:

5 (a) Federal law;

6 (b) The laws of this state, including principles of
7 equity applied by the courts of this state; and

8 (c) The laws of any other jurisdiction:

9 1. That is the domicile of the payee or any other
10 interested party;

11 2. Under whose laws a structured settlement agreement
12 was approved by a court or administrative authority; or

13 3. In which a settled claim was pending in the court
14 when the parties entered into a structured settlement
15 agreement.

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

20 (4) "Discounted present value" means the fair present
21 value of future payments, as determined by discounting such
22 payments to the present, using the most recently published
23 applicable federal rate for determining the present value of
24 an annuity, as issued by the United States Internal Revenue
25 Service.

26 (5) "Favorable tax determination" means, with respect
27 to a proposed transfer of structured settlement payment
28 rights, any of the following authorities that definitively
29 establishes that the federal income tax treatment of the
30 structured settlement for the parties to the structured
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1 settlement agreement and any qualified assignment agreement,
2 other than the payee, will not be affected by such transfer:

3 (a) A provision of the United States Internal Revenue
4 Code, Title 26 of the United States Code, as amended, or a
5 rule of the United States Treasury adopted pursuant thereto;

6 (b) A revenue ruling or revenue procedure issued by
7 the United States Internal Revenue Service;

8 (c) A private-letter ruling by the United States
9 Internal Revenue Service with respect to such transfer; or

10 (d) A decision of the United States Supreme Court or
11 of a lower federal court to which the United States Internal
12 Revenue Service has acquiesced.

13 (6) "Federal hardship standard" means a federal
14 standard applicable to transfers of structured settlement
15 payment rights based on findings of a court regarding the
16 payees' needs, as contained in the United States Internal
17 Revenue Code, Title 26 of the United States Code, as amended,
18 or in a rule of the United States Treasury adopted pursuant
19 thereto.

20 (7) "Independent professional advice" means the advice
21 of an attorney, a certified public accountant, an actuary, or
22 another licensed professional adviser:

23 (a) Who is engaged by a payee to render advice
24 concerning the legal, tax, and financial implications of a
25 transfer of structured settlement payment rights;

26 (b) Who is not in any manner affiliated with or
27 compensated by the transferee of such transfer; and

28 (c) Whose compensation for rendering such advice is
29 not affected by whether a transfer occurs or does not occur.

30 (8) "Interested parties" means, with respect to any
31 structured settlement, the payee, any beneficiary designated

1 under the annuity contract to receive payments following the
2 payee's death, the annuity issuer, the structured settlement
3 obligor, and any other party that has continuing rights or
4 obligations under such structured settlement.

5 (9) "Payee" means an individual who is receiving
6 tax-free damage payments under a structured settlement and
7 proposes to make a transfer of payment rights under the
8 settlement.

9 (10) "Qualified assignment agreement" means an
10 agreement that provides for a qualified assignment within the
11 meaning of section 130 of the United States Internal Revenue
12 Code, Title 26 of the United States Code, as amended.

13 (11) "Settled claim" means the original tort claim or
14 workers' compensation claim resolved by a structured
15 settlement.

16 (12) "Structured settlement" means an arrangement for
17 periodic payment of damages for personal injuries established
18 by settlement or judgment in resolution of a tort claim or for
19 periodic payments in settlement of a workers' compensation
20 claim.

21 (13) "Structured settlement agreement" means the
22 agreement, judgment, stipulation, or release that embodies the
23 terms of a structured settlement, including the rights of the
24 payee to receive periodic payments.

25 (14) "Structured settlement obligor" means, with
26 respect to any structured settlement, the party that has the
27 obligation for making continuing periodic payments to the
28 payee under a structured settlement agreement or a qualified
29 assignment agreement.

30 (15) "Structured settlement payment rights" means
31 rights to receive periodic payments, including lump-sum

1 payments, under a structured settlement, whether from the
2 settlement obligor or the annuity issuer, where:

3 (a) The payee is domiciled in this state;

4 (b) The structured settlement agreement was approved
5 by a court in this state; or

6 (c) The settled claim was pending before the court of
7 this state when the parties entered into the structured
8 settlement agreement.

9 (16) "Terms of the structured settlement" include,
10 with respect to any structured settlement, the terms of the
11 structured settlement agreement, the annuity contract, any
12 qualified assignment agreement, and any order or approval of
13 any court authorizing or approving such structured settlement.

14 (17) "Transfer" means any sale, assignment, pledge,
15 hypothecation, or other form of alienation or encumbrance made
16 by a payee for consideration.

17 (18) "Transfer agreement" means the agreement that
18 provides for transfer of structured settlement payment rights
19 from a payee to a transferee.

20 Section 2. Conditions to transfers of structured
21 settlement payment rights.--Any direct or indirect transfer of
22 structured settlement payment rights is not effective and the
23 structured settlement obligor or annuity issuer is not
24 required to make any payment directly or indirectly to any
25 transferee of structured settlement payment rights unless the
26 transfer has been authorized in advance in a final court
27 order. The court order must be based on express findings that:

28 (1) The transfer complies with this act and does not
29 contravene other applicable law.

30 (2) The transferee has provided to the payee a
31 disclosure statement in bold type, of at least 14 point in

1 size, at least 10 days before the date on which the payee
2 first incurred any obligation with respect to the transfer.
3 The disclosure statement must include all of the following:
4 (a) The amounts and due dates of the structured
5 settlement payments to be transferred.
6 (b) The aggregate amount of such payments.
7 (c) The discounted present value of such payments,
8 together with the discount rate used in determining the
9 discounted present value.
10 (d) The gross amount payable to the payee in exchange
11 for such payments.
12 (e) An itemized listing of all brokers' commissions;
13 service charges; application fees; processing fees; closing
14 costs; filing fees; administrative fees; legal fees; notary
15 fees; and other commissions, fees, costs, expenses, and
16 charges payable by the payee or deductible from the gross
17 amount otherwise payable to the payee.
18 (f) The net amount payable to the payee after
19 deducting all commissions, fees, costs, expenses, and charges
20 described in paragraph (e).
21 (g) The quotient, expressed as a percentage, obtained
22 by dividing the net payment amount by the discounted present
23 value of the payments.
24 (h) The amount of any penalty and the aggregate amount
25 of any liquidated damages, inclusive of penalties, payable by
26 the payee upon any breach of the transfer agreement by the
27 payee.
28 (3) The payee has established that the transfer is
29 necessary to enable the payee, the payee's dependents, or
30 both, to avoid imminent financial hardship, and the transfer
31 is not expected to subject the payee, the payee's dependents,

1 or both, to undue financial hardship in the future. However,
2 if, at the time the payee and the transferee entered into the
3 transfer agreement, a federal hardship standard was in effect,
4 then, in lieu of this finding, the court must make an express
5 finding that the transfer qualified under the federal hardship
6 standard.

7 (4) The payee has received independent professional
8 advice regarding the legal, tax, and financial implications of
9 the transfer.

10 (5) If the transfer would contravene the terms of the
11 structured settlement:

12 (a) The transfer has been expressly approved in
13 writing by:

14 1. Each interested party. However, if, at the time the
15 payee and the transferee entered into the transfer agreement,
16 a favorable tax determination was in effect, the approval of
17 the annuity issuer and the structured settlement obligor is
18 not required if all other interested parties approve the
19 transfer and waive any and all rights to require that the
20 transferred payments be made to the payee in accordance with
21 the terms of the structured settlement; and

22 2. The court, other than the court from which
23 authorization of the transfer is sought under this act, which
24 previously approved the structured settlement.

25 (b) Signed originals of all approvals required under
26 paragraph (a) have been filed with the court from which
27 authorization of the transfer is sought, and originals or
28 copies have been furnished to all interested parties.

29 (6) The transferee has given written notice of the
30 transferee's name, address, and taxpayer identification number
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1 to the annuity issuer and the structured settlement obligor,
2 and has filed a copy of such notice with the court.

3 Section 3. Jurisdiction; procedure for approval of
4 transfers; construction.--

5 (1) The circuit courts of this state have nonexclusive
6 jurisdiction over any application for authorization of a
7 transfer of structured settlement payment rights.

8 (2) Not less than 20 days before the scheduled hearing
9 on any application for authorization of a transfer of
10 structured settlement payment rights, the transferee shall
11 file with the court, and serve on all interested parties, a
12 notice of the proposed transfer and the application for its
13 authorization, including:

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

15 (b) A copy of the transfer agreement;

16 (c) A copy of the disclosure statement required under
17 subsection (2) of section 2;

18 (d) Notification that any interested party is entitled
19 to support, oppose, or otherwise respond to the transferee's
20 application, either in person or by counsel, by submitting
21 written comments to the court or by participating in the
22 hearing; and

23 (e) Notification of the time and place of the hearing
24 and notification that a response to the application must be
25 filed within 15 days after service of the transferee's notice.

26 (3)(a) The provisions of this act may not be waived.

27 (b) A payee who proposes to transfer structured
28 settlement payment rights does not incur any penalty, forfeit
29 any application for other payment, or otherwise incur any
30 liability to the proposed transferee based on any failure of
31 such transfer to satisfy the conditions of section 2.

1 (4) This act does not authorize any transfer of
2 structured settlement payment rights in contravention of
3 applicable law and does not give effect to any transfer of
4 structured settlement payment rights which is invalid under
5 applicable law.

6 Section 4. This act shall take effect July 1, 1999.

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SENATE SUMMARY

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Provides procedures under which a person may transfer the right to receive payments under a structured settlement agreement. Requires that any such agreement be approved by the circuit court. Provides that the transferee make certain disclosures to the payee. Requires that the court determine that the transfer is necessary to avoid imminent financial hardship to the payee. Requires that the payee receive independent professional advice. Provides requirements for filing an application with the court for the authorization of such a transfer. Requires that notice be served on all interested parties. (See bill for details.)