

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Brown offered the following:

Amendment (with title amendment)

On page 5, line 1 through page 11, line 29
remove from the bill: all of said lines

and insert in lieu

thereof: (p) "Structured-settlement-payment rights" means
rights to receive periodic payments, including lump-sum
payments under a structured settlement, whether from the
structured-settlement obligor or the annuity issuer, if:

- 1. The payee or any other interested party is domiciled in this state;
- 2. The structured settlement agreement was approved by a court of this state; or
- 3. The settled claim was pending before the courts of this state when the parties entered into the structured-settlement agreement.

(q) "Terms of the structured settlement" means the terms of the structured-settlement agreement; the annuity contract; a qualified-assignment agreement; or an order or

1 approval of a court or other government authority authorizing
2 or approving the structured settlement.

3 (r) "Transfer" means a sale, assignment, pledge,
4 hypothecation, or other form of alienation or encumbrance made
5 by a payee for consideration.

6 (s) "Transfer agreement" means the agreement providing
7 for transfer of structured-settlement-payment rights from a
8 payee to a transferee.

9 (t) "Transferee" means a person who is receiving or
10 who will receive structured-settlement-payment rights
11 resulting from a transfer.

12 (3) CONDITIONS TO TRANSFERS OF
13 STRUCTURED-SETTLEMENT-PAYMENT RIGHTS AND STRUCTURED-SETTLEMENT
14 AGREEMENTS.--

15 (a) A direct or indirect transfer of
16 structured-settlement-payment rights is not effective and a
17 structured-settlement obligor or annuity issuer is not
18 required to make a payment directly or indirectly to a
19 transferee of structured-settlement-payment rights unless the
20 transfer is authorized in advance in a final order by a court
21 of competent jurisdiction which is based on the written
22 express findings by the court that:

23 1. The transfer complies with this section and does
24 not contravene other applicable law;

25 2. At least 10 days before the date on which the payee
26 first incurred an obligation with respect to the transfer, the
27 transferee provided to the payee a disclosure statement in
28 bold type, no smaller than 14 points in size, which specifies:

29 a. The amounts and due dates of the
30 structured-settlement payments to be transferred;

31 b. The aggregate amount of the payments;

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1 c. The discounted present value of the payments,
2 together with the discount rate used in determining the
3 discounted present value;

4 d. The gross amount payable to the payee in exchange
5 for the payments;

6 e. An itemized listing of all brokers' commissions,
7 service charges, application fees, processing fees, closing
8 costs, filing fees, referral fees, administrative fees, legal
9 fees, and notary fees and other commissions, fees, costs,
10 expenses, and charges payable by the payee or deductible from
11 the gross amount otherwise payable to the payee;

12 f. The net amount payable to the payee after deducting
13 all commissions, fees, costs, expenses, and charges described
14 in sub-subparagraph e.;

15 g. The quotient, expressed as a percentage, obtained
16 by dividing the net payment amount by the discounted present
17 value of the payments, which must be disclosed in the
18 following statement: "The net amount that you will receive
19 from us in exchange for your future structured-settlement
20 payments represent percent of the estimated current value
21 of the payments based upon the discounted value using the
22 applicable federal rate";

23 h. The effective annual interest rate, which must be
24 disclosed in the following statement: "Based on the net amount
25 that you will receive from us and the amounts and timing of
26 the structured-settlement payments that you are turning over
27 to us, you will, in effect, be paying interest to us at a rate
28 of percent per year"; and

29 i. The amount of any penalty and the aggregate amount
30 of any liquidated damages, including penalties, payable by the
31 payee in the event of a breach of the transfer agreement by

1 the payee;

2 3. The payee has established that the transfer is in
3 the best interests of the payee, taking into account the
4 welfare and support of the payee's dependents;

5 4. The payee has received, or waived his or her right
6 to receive, independent professional advice regarding the
7 legal, tax, and financial implications of the transfer;

8 5. The transferee has given written notice of the
9 transferee's name, address, and taxpayer identification number
10 to the annuity issuer and the structured-settlement obligor
11 and has filed a copy of the notice with the court;

12 6. The transfer agreement provides that if the payee
13 is domiciled in this state, any disputes between the parties
14 will be governed in accordance with the laws of this state and
15 that the domicile state of the payee is the proper venue to
16 bring any cause of action arising out of a breach of the
17 agreement; and

18 7. The court has determined that the net amount
19 payable to the payee is fair, just, and reasonable under the
20 circumstances then existing.

21 (b) If a proposed transfer would contravene the terms
22 of the structured settlement, upon the filing of a written
23 objection by any interested party and after considering the
24 objection and any response to it, the court may grant, deny,
25 or impose conditions upon the proposed transfer which the
26 court deems just and proper given the facts and circumstances
27 and in accordance with established principles of law. Any
28 order approving a transfer must require that the transferee
29 indemnify the annuity issuer and the structured-settlement
30 obligor for any liability, including reasonable costs and
31 attorney's fees, which arises from compliance by the issuer or

1 obligor with the order of the court.

2 (c) Any provision in a transfer agreement which gives
3 a transferee power to confess judgment against a payee is
4 unenforceable to the extent that the amount of the judgment
5 would exceed the amount paid by the transferee to the payee,
6 less any payments received from the structured-settlement
7 obligor or payee.

8 (d) In negotiating a structured settlement of claims
9 brought by or on behalf of a claimant who is domiciled in this
10 state, the structured-settlement obligor must disclose in
11 writing to the claimant or the claimant's legal representative
12 all of the following information that is not otherwise
13 specified in the structured-settlement agreement:

14 1. The amounts and due dates of the periodic payments
15 to be made under the structured-settlement agreement. In the
16 case of payments that will be subject to periodic percentage
17 increases, the amounts of future payments may be disclosed by
18 identifying the base payment amount, the amount and timing of
19 scheduled increases, and the manner in which increases will be
20 compounded;

21 2. The amount of the premium payable to the annuity
22 issuer;

23 3. The discounted present value of all periodic
24 payments that are not life-contingent, together with the
25 discount rate used in determining the discounted present
26 value;

27 4. The nature and amount of any costs that may be
28 deducted from any of the periodic payments;

29 5. Where applicable, that any transfer of the periodic
30 payments is prohibited by the terms of the structured
31 settlement and may otherwise be prohibited or restricted under

1 applicable law; and

2 6. That any transfer of the periodic payments by the
3 claimant may subject the claimant to serious adverse tax
4 consequences.

5 (4) JURISDICTION; PROCEDURE FOR APPROVAL OF
6 TRANSFERS.--At least 20 days before the scheduled hearing on
7 an application for authorizing a transfer of
8 structured-settlement-payment rights under this section, the
9 transferee must file with the court and all interested parties
10 a notice of the proposed transfer and the application for its
11 authorization. The notice must include:

12 (a) A copy of the transferee's application to the
13 court;

14 (b) A copy of the transfer agreement;

15 (c) A copy of the disclosure statement required under
16 subsection (3);

17 (d) Notification that an interested party may support,
18 oppose, or otherwise respond to the transferee's application,
19 in person or by counsel, by submitting written comments to the
20 court or by participating in the hearing; and

21 (e) Notification of the time and place of the hearing
22 and notification of the manner in which and the time by which
23 any written response to the application must be filed in order
24 to be considered by the court. A written response to an
25 application must be filed within 15 days after service of the
26 transferee's notice.

27 (5) WAIVER PROHIBITED; NO PENALTIES INCURRED.--

28 (a) The provisions of this section may not be waived.

29 (b) If a transfer of structured-settlement-payment
30 rights fails to satisfy the conditions of subsection (3), the
31 payee who proposed the transfer does not incur any penalty,

1 forfeit any application fee or other payment, or otherwise
2 incur any liability to the proposed transferee.

3 (6) NONCOMPLIANCE.--

4 (a) If a transferee violates the requirements for
5 stipulating the discount and finance charge provided for in
6 subsection (3), neither the transferee nor any assignee may
7 collect from the transferred payments, or from the payee, any
8 amount in excess of the net advance amount, and the payee may
9 recover from the transferee or any assignee:

10 1. A refund of any excess amounts previously received
11 by the transferee or any assignee;

12 2. A penalty in an amount determined by the court, but
13 not in excess of three times the aggregate amount of the
14 discount and finance charge; and

15 3. Reasonable costs and attorney's fees.

16 (b) If the transferee violates the disclosure
17 requirements in subsection (3), the transferee and any
18 assignee are liable to the payee for:

19 1. A penalty in an amount determined by the court, but
20 not in excess of three times the amount of the discount and
21 finance charge; and

22 2. Reasonable costs and attorney's fees.

23 (c) A transferee or assignee is not liable for any
24 penalty in any action brought under this section if the
25 transferee or assignee establishes by a preponderance of
26 evidence that the violation was not intentional and resulted
27 from a bona fide error, notwithstanding the transferee's
28 maintenance of procedures reasonably designed to avoid such
29 errors.

30 (d) Notwithstanding any other law, an action may not
31 be brought under this section more than 1 year after the due

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1 date of:

2 1. The last transferred structured-settlement payment,
3 in the case of a violation of the requirements for stipulating
4 the discount and finance charge provided for in subsection
5 (3).

6 2. The first transferred structured-settlement
7 payment, in the case of a violation of the disclosure
8 requirements of subsection (3).

9 (e) When any interested party has reason to believe
10 that any transferee has violated this section, any interested
11 party may bring a civil action for injunctive relief,
12 penalties, and any other relief that is appropriate to secure
13 compliance with this section.

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16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 On page 1, lines 19-20
19 remove from the title of the bill: all of said lines

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21 and insert in lieu thereof:

22 violations of the act; authorizing an
23 interested party to bring an action for
24 injunctive

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