

By Senator Geller

29-75-01

1 A bill to be entitled
 2 An act relating to the transfer of structured
 3 settlements; specifying the purpose of the act;
 4 providing definitions; providing requirements
 5 for the direct or indirect transfer of
 6 structured-settlement-payment rights; requiring
 7 that any such transfer be approved by a court
 8 or judge of compensation claims; requiring that
 9 the court or judge make certain findings with
 10 respect to the transfer; authorizing an
 11 interested party to file an objection to a
 12 proposed transfer; providing requirements for
 13 an order approving a transfer; requiring that
 14 an obligor make certain disclosures to a
 15 claimant in negotiating a settlement of claims;
 16 requiring a transferee to provide certain
 17 notice with respect to a proposed transfer of
 18 structured-settlement-payment rights; providing
 19 for penalties to be imposed for certain
 20 violations of the act; authorizing the state
 21 attorney to bring an action for injunctive
 22 relief; providing that the act does not
 23 authorize transfers that contravene other
 24 applicable law; 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. Transfers of structured-settlement-payment
 29 rights.--

30 (1) PURPOSE.--The purpose of this section is to
 31 protect recipients of structured settlements who are involved

1 in the process of transferring structured-settlement-payment
2 rights.

3 (2) DEFINITIONS.--As used in this section, the term:

4 (a) "Annuity issuer" means an insurer that has issued
5 an annuity contract to be used to fund periodic payments under
6 a structured settlement.

7 (b) "Applicable law" means any of the following, as
8 applicable in interpreting the terms of a structured
9 settlement:

10 1. The laws of the United States;

11 2. The laws of this state, including principles of
12 equity applied in the courts of this state; and

13 3. The laws of any other jurisdiction:

14 a. That is the domicile of the payee or any other
15 interested party;

16 b. Under whose laws a structured-settlement agreement
17 was approved by a court or judge of compensation claims; or

18 c. In whose courts a settled claim was pending when
19 the parties entered into a structured-settlement agreement.

20 (c) "Applicable federal rate" means the most recently
21 published applicable rate for determining the present value of
22 an annuity, as issued by the United States Internal Revenue
23 Service pursuant to section 7520 of the United States Internal
24 Revenue Code, as amended.

25 (d) "Assignee" means any party that acquires
26 structured-settlement-payment rights directly or indirectly
27 from a transferee of such rights.

28 (e) "Dependents" means a payee's spouse and minor
29 children and all other family members and other persons for
30 whom the payee is legally obligated to provide support,
31 including spousal maintenance.

1 (f) "Discount and finance charge" means the sum of all
2 charges that are payable directly or indirectly from assigned
3 structured-settlement payments and imposed directly or
4 indirectly by the transferee and that are incident to a
5 transfer of structured-settlement-payment rights, including:

6 1. Interest charges, discounts, or other compensation
7 for the time value of money;

8 2. All application, origination, processing,
9 underwriting, closing, filing, and notary fees and all similar
10 charges, however denominated; and

11 3. All charges for commissions or brokerage,
12 regardless of the identity of the party to whom such charges
13 are paid or payable.

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15 The term does not include any fee or other obligation incurred
16 by a payee in obtaining independent professional advice
17 concerning a transfer of structured-settlement-payment rights.

18 (g) "Discounted present value" means, with respect to
19 a proposed transfer of structured-settlement-payment rights,
20 the fair present value of future payments, as determined by
21 discounting the payments to the present using the most
22 recently published applicable federal rate as the discount
23 rate.

24 (h) "Independent professional advice" means advice of
25 an attorney, certified public accountant, actuary, or other
26 licensed professional adviser:

27 1. Who is engaged by a payee to render advice
28 concerning the legal, tax, and financial implications of a
29 transfer of structured-settlement-payment rights;

30 2. Who is not in any manner affiliated with or
31 compensated by the transferee of the transfer; and

1 3. Whose compensation for providing the advice is not
2 affected by whether a transfer occurs or does not occur.

3 (i) "Interested parties" means:

4 1. The payee;

5 2. Any beneficiary irrevocably designated under the
6 annuity contract to receive payments following the payee's
7 death or, if such designated beneficiary is a minor, the
8 designated beneficiary's parent or guardian;

9 3. The annuity issuer;

10 4. The structured-settlement obligor; or

11 5. Any other party who has continuing rights or
12 obligations under the structured settlement.

13 (j) "Payee" means an individual who is receiving
14 tax-free damage payments under a structured settlement and
15 proposes to make a transfer of payment rights under the
16 structured settlement.

17 (k) "Qualified-assignment agreement" means an
18 agreement providing for a qualified assignment, as authorized
19 by Title 26, section 130 of the United States Internal Revenue
20 Code, as amended.

21 (l) "Settled claim" means the original tort claim or
22 workers' compensation claim resolved by a structured
23 settlement.

24 (m) "Structured settlement" means an arrangement for
25 periodic payment of damages for personal injuries or sickness
26 established by settlement or judgment in resolution of a tort
27 claim or for periodic payments in settlement of a workers'
28 compensation claim.

29 (n) "Structured-settlement agreement" means the
30 agreement, judgment, stipulation, or release embodying the

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1 terms of a structured settlement, including the rights of the
2 payee to receive periodic payments.

3 (o) "Structured-settlement obligor" means the party
4 who is obligated to make continuing periodic payments to the
5 payee under a structured-settlement agreement or a
6 qualified-assignment agreement.

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

11 1. The payee or any other interested party is
12 domiciled in this state;

13 2. The structured settlement agreement was approved by
14 a court or judge of compensation claims; or

15 3. The settled claim was pending before the courts of
16 this state when the parties entered into the
17 structured-settlement agreement.

18 (q) "Terms of the structured settlement" means the
19 terms of the structured-settlement agreement; the annuity
20 contract; a qualified-assignment agreement; or an order or
21 approval of a court, judge of compensation claims, or other
22 government authority authorizing or approving the structured
23 settlement.

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

27 (s) "Transfer agreement" means the agreement providing
28 for transfer of structured-settlement-payment rights from a
29 payee to a transferee.

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1 (t) "Transferee" means a person who is receiving or
2 who will receive structured-settlement-payment rights
3 resulting from a transfer.

4 (3) CONDITIONS TO TRANSFERS OF
5 STRUCTURED-SETTLEMENT-PAYMENT RIGHTS AND STRUCTURED-SETTLEMENT
6 AGREEMENTS.--

7 (a) A direct or indirect transfer of
8 structured-settlement-payment rights is not effective and a
9 structured-settlement obligor or annuity issuer is not
10 required to make a payment directly or indirectly to a
11 transferee of structured-settlement-payment rights unless the
12 transfer is authorized in advance in a final order by a court
13 of competent jurisdiction or a judge of compensation claims
14 which is based on the written express findings by the court or
15 judge of compensation claims that:

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

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

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

24 b. The aggregate amount of the payments;

25 c. The discounted present value of the payments,
26 together with the discount rate used in determining the
27 discounted present value;

28 d. The gross amount payable to the payee in exchange
29 for the payments;

30 e. An itemized listing of all brokers' commissions,
31 service charges, application fees, processing fees, closing

1 costs, filing fees, referral fees, administrative fees, legal
2 fees, and notary fees and other commissions, fees, costs,
3 expenses, and charges payable by the payee or deductible from
4 the gross amount otherwise payable to the payee;

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

8 g. The quotient, expressed as a percentage, obtained
9 by dividing the net payment amount by the discounted present
10 value of the payments, which must be disclosed in the
11 following statement: "The net amount that you will receive
12 from us in exchange for your future structured-settlement
13 payments represent ___ percent of the estimated current value
14 of the payments";

15 h. The effective annual interest rate, which must be
16 disclosed in the following statement: "Based on the net amount
17 that you will receive from us and the amounts and timing of
18 the structured-settlement payments that you are turning over
19 to us, you will, in effect, be paying interest to us at a rate
20 of ___ percent per year"; and

21 i. The amount of any penalty and the aggregate amount
22 of any liquidated damages, including penalties, payable by the
23 payee in the event of a breach of the transfer agreement by
24 the payee;

25 3. The payee has established that the transfer is in
26 the best interests of the payee and the payee's dependents;

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

30 5. The transferee has given written notice of the
31 transferee's name, address, and taxpayer identification number

1 to the annuity issuer and the structured-settlement obligor
2 and has filed a copy of the notice with the court or judge of
3 compensation claims;

4 6. The transfer agreement provides that if the payee
5 is domiciled in this state, any disputes between the parties
6 will be governed in accordance with the laws of this state and
7 that the domicile state of the payee is the proper venue to
8 bring any cause of action arising out of a breach of the
9 agreement; and

10 7. The court or judge of compensation claims has
11 determined that the net amount payable to the payee is fair,
12 just, and reasonable under the circumstances then existing.

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

26 (c) Any provision in a transfer agreement which gives
27 a transferee power to confess judgment against a payee is
28 unenforceable to the extent that the amount of the judgment
29 would exceed the amount paid by the transferee to the payee,
30 less any payments received from the structured-settlement
31 obligor or payee.

1 (d) In negotiating a structured settlement of claims
2 brought by or on behalf of a claimant who is domiciled in this
3 state, the structured-settlement obligor must disclose in
4 writing to the claimant or the claimant's legal representative
5 all of the following information that is not otherwise
6 specified in the structured-settlement agreement:

7 1. The amounts and due dates of the periodic payments
8 to be made under the structured-settlement agreement. In the
9 case of payments that will be subject to periodic percentage
10 increases, the amounts of future payments may be disclosed by
11 identifying the base payment amount, the amount and timing of
12 scheduled increases, and the manner in which increases will be
13 compounded;

14 2. The amount of the premium payable to the annuity
15 issuer;

16 3. The discounted present value of all periodic
17 payments that are not life-contingent, together with the
18 discount rate used in determining the discounted present
19 value;

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

22 5. Where applicable, that any transfer of the periodic
23 payments is prohibited by the terms of the structured
24 settlement and may otherwise be prohibited or restricted under
25 applicable law; and

26 6. That any transfer of the periodic payments by the
27 claimant may subject the claimant to serious adverse tax
28 consequences.

29 (4) JURISDICTION; PROCEDURE FOR APPROVAL OF
30 TRANSFERS.--At least 20 days before the scheduled hearing on
31 an application for authorizing a transfer of

1 structured-settlement-payment rights under this section, the
2 transferee must file with the court or judge of compensation
3 claims and all interested parties a notice of the proposed
4 transfer and the application for its authorization. The notice
5 must include:

6 (a) A copy of the transferee's application to the
7 court or judge of compensation claims;

8 (b) A copy of the transfer agreement;

9 (c) A copy of the disclosure statement required under
10 subsection (3);

11 (d) Notification that an interested party may support,
12 oppose, or otherwise respond to the transferee's application,
13 in person or by counsel, by submitting written comments to the
14 court or judge of compensation claims or by participating in
15 the hearing; and

16 (e) Notification of the time and place of the hearing
17 and notification of the manner in which and the time by which
18 any written response to the application must be filed in order
19 to be considered by the court or judge of compensation claims.
20 A written response to an application must be filed within 15
21 days after service of the transferee's notice.

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

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

24 (b) If a transfer of structured-settlement-payment
25 rights fails to satisfy the conditions of subsection (3), the
26 payee who proposed the transfer does not incur any penalty,
27 forfeit any application fee or other payment, or otherwise
28 incur any liability to the proposed transferee.

29 (6) NONCOMPLIANCE.--

30 (a) If a transferee violates the requirements for
31 stipulating the discount and finance charge provided for in

1 subsection (3), the transferee and any assignee may collect
2 from the transferred payments, or from the payee, any amount
3 in excess of the net advance amount, and the payee may recover
4 from the transferee or any assignee:
5 1. A refund of any excess amounts previously received
6 by the transferee or any assignee;
7 2. A penalty in an amount determined by the court, but
8 not in excess of times the aggregate amount of the discount
9 and finance charge; and
10 3. Reasonable costs and attorney's fees.
11 (b) If the transferee violates the disclosure
12 requirements in subsection (3), the transferee and any
13 assignee are liable to the payee for:
14 1. A penalty in an amount determined by the court, but
15 not in excess of times the amount of the discount and
16 finance charge; and
17 2. Reasonable costs and attorney's fees.
18 (c) A transferee or assignee is not liable for any
19 penalty in any action brought under this section if the
20 transferee or assignee establishes by a preponderance of
21 evidence that the violation was not intentional and resulted
22 from a bona fide error, notwithstanding the transferee's
23 maintenance of procedures reasonably designed to avoid such
24 errors.
25 (d) Notwithstanding any other law, an action may not
26 be brought under this section more than 1 year after the due
27 date of:
28 1. The last transferred structured-settlement payment,
29 in the case of a violation of the requirements for stipulating
30 the discount and finance charge provided for in subsection
31 (3).

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

4 (e) When the state attorney has reason to believe that
5 any transferee has violated this section, the state attorney
6 may bring a civil action for injunctive relief, penalties, and
7 any other relief that is appropriate to secure compliance with
8 this section.

9 (7) CONSTRUCTION.--This section does not authorize any
10 transfer of payment rights to workers' compensation which
11 contravenes applicable law or which gives effect to any
12 transfer of workers' compensation or other payment rights
13 which is invalid under applicable law.

14 Section 2. This act shall take effect October 1, 2001.

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17 SENATE SUMMARY

18 Provides procedures for transferring
19 structured-settlement-payment rights. Requires that a
20 court or judge of compensation claims make certain
21 findings and give prior approval to such transfers.
22 Provides for certain parties to file an objection to a
23 proposed transfer. Requires that an obligor make certain
24 disclosures to a claimant in negotiating a settlement of
25 claims. Provides notice requirements. Provides for
26 certain refunds and for penalties to be imposed for
27 certain violations of the act. Provides for injunctive
28 relief. (See bill for details.)
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