

By the Committee on Banking and Insurance; and Senator Geller

311-1459-01

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 requiring that the court make certain findings
 9 with respect to the transfer; authorizing an
 10 interested party to file an objection to a
 11 proposed transfer; providing requirements for
 12 an order approving a transfer; requiring that
 13 an obligor make certain disclosures to a
 14 claimant in negotiating a settlement of claims;
 15 requiring a transferee to provide certain
 16 notice with respect to a proposed transfer of
 17 structured-settlement-payment rights; providing
 18 for penalties to be imposed for certain
 19 violations of the act; authorizing the state
 20 attorney to bring an action for injunctive
 21 relief; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Transfers of structured-settlement-payment
 26 rights.--

27 (1) PURPOSE.--The purpose of this section is to
 28 protect recipients of structured settlements who are involved
 29 in the process of transferring structured-settlement-payment
 30 rights.

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

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

4 (b) "Applicable law" means any of the following, as
5 applicable in interpreting the terms of a structured
6 settlement:

7 1. The laws of the United States;

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

10 3. The laws of any other jurisdiction:

11 a. That is the domicile of the payee or any other
12 interested party;

13 b. Under whose laws a structured-settlement agreement
14 was approved by a court; or

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

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

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

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

29 (f) "Discount and finance charge" means the sum of all
30 charges that are payable directly or indirectly from assigned
31 structured-settlement payments and imposed directly or

1 indirectly by the transferee and that are incident to a
2 transfer of structured-settlement-payment rights, including:
3 1. Interest charges, discounts, or other compensation
4 for the time value of money;
5 2. All application, origination, processing,
6 underwriting, closing, filing, and notary fees and all similar
7 charges, however denominated; and
8 3. All charges for commissions or brokerage,
9 regardless of the identity of the party to whom such charges
10 are paid or payable.

11
12 The term does not include any fee or other obligation incurred
13 by a payee in obtaining independent professional advice
14 concerning a transfer of structured-settlement-payment rights.

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

21 (h) "Independent professional advice" means advice of
22 an attorney, certified public accountant, actuary, or other
23 licensed professional adviser:

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

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

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

31 (i) "Interested parties" means:

- 1 1. The payee;
2 2. Any beneficiary irrevocably designated under the
3 annuity contract to receive payments following the payee's
4 death or, if such designated beneficiary is a minor, the
5 designated beneficiary's parent or guardian;
6 3. The annuity issuer;
7 4. The structured-settlement obligor; or
8 5. Any other party who has continuing rights or
9 obligations under the structured settlement.
10 (j) "Payee" means an individual who is receiving
11 tax-free damage payments under a structured settlement and
12 proposes to make a transfer of payment rights under the
13 structured settlement.
14 (k) "Qualified-assignment agreement" means an
15 agreement providing for a qualified assignment, as authorized
16 by Title 26, section 130 of the United States Internal Revenue
17 Code, as amended.
18 (l) "Settled claim" means the original tort claim
19 resolved by a structured settlement.
20 (m) "Structured settlement" means an arrangement for
21 periodic payment of damages for personal injuries established
22 by settlement or judgment in resolution of a tort claim.
23 (n) "Structured-settlement agreement" means the
24 agreement, judgment, stipulation, or release embodying the
25 terms of a structured settlement, including the rights of the
26 payee to receive periodic payments.
27 (o) "Structured-settlement obligor" means the party
28 who is obligated to make continuing periodic payments to the
29 payee under a structured-settlement agreement or a
30 qualified-assignment agreement.
31

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

5 1. The payee or any other interested party is
6 domiciled in this state;

7 2. The structured settlement agreement was approved by
8 a court; or

9 3. The settled claim was pending before the courts of
10 this state when the parties entered into the
11 structured-settlement agreement.

12 (q) "Terms of the structured settlement" means the
13 terms of the structured-settlement agreement; the annuity
14 contract; a qualified-assignment agreement; or an order or
15 approval of a court or other government authority authorizing
16 or approving the structured settlement.

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

20 (s) "Transfer agreement" means the agreement providing
21 for transfer of structured-settlement-payment rights from a
22 payee to a transferee.

23 (t) "Transferee" means a person who is receiving or
24 who will receive structured-settlement-payment rights
25 resulting from a transfer.

26 (3) CONDITIONS TO TRANSFERS OF
27 STRUCTURED-SETTLEMENT-PAYMENT RIGHTS AND STRUCTURED-SETTLEMENT
28 AGREEMENTS.--

29 (a) A direct or indirect transfer of
30 structured-settlement-payment rights is not effective and a
31 structured-settlement obligor or annuity issuer is not

1 required to make a payment directly or indirectly to a
2 transferee of structured-settlement-payment rights unless the
3 transfer is authorized in advance in a final order by a court
4 of competent jurisdiction which is based on the written
5 express findings by the court that:
6 1. The transfer complies with this section and does
7 not contravene other applicable law;
8 2. At least 10 days before the date on which the payee
9 first incurred an obligation with respect to the transfer, the
10 transferee provided to the payee a disclosure statement in
11 bold type, no smaller than 14 points in size, which specifies:
12 a. The amounts and due dates of the
13 structured-settlement payments to be transferred;
14 b. The aggregate amount of the payments;
15 c. The discounted present value of the payments,
16 together with the discount rate used in determining the
17 discounted present value;
18 d. The gross amount payable to the payee in exchange
19 for the payments;
20 e. An itemized listing of all brokers' commissions,
21 service charges, application fees, processing fees, closing
22 costs, filing fees, referral fees, administrative fees, legal
23 fees, and notary fees and other commissions, fees, costs,
24 expenses, and charges payable by the payee or deductible from
25 the gross amount otherwise payable to the payee;
26 f. The net amount payable to the payee after deducting
27 all commissions, fees, costs, expenses, and charges described
28 in sub-subparagraph e.;
29 g. The quotient, expressed as a percentage, obtained
30 by dividing the net payment amount by the discounted present
31 value of the payments, which must be disclosed in the

1 following statement: "The net amount that you will receive
2 from us in exchange for your future structured-settlement
3 payments represent __ percent of the estimated current value
4 of the payments";

5 h. The effective annual interest rate, which must be
6 disclosed in the following statement: "Based on the net amount
7 that you will receive from us and the amounts and timing of
8 the structured-settlement payments that you are turning over
9 to us, you will, in effect, be paying interest to us at a rate
10 of __ percent per year"; and

11 i. The amount of any penalty and the aggregate amount
12 of any liquidated damages, including penalties, payable by the
13 payee in the event of a breach of the transfer agreement by
14 the payee;

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

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

20 5. The transferee has given written notice of the
21 transferee's name, address, and taxpayer identification number
22 to the annuity issuer and the structured-settlement obligor
23 and has filed a copy of the notice with the court or judge of
24 compensation claims;

25 6. The transfer agreement provides that if the payee
26 is domiciled in this state, any disputes between the parties
27 will be governed in accordance with the laws of this state and
28 that the domicile state of the payee is the proper venue to
29 bring any cause of action arising out of a breach of the
30 agreement; and

31

1 7. The court has determined that the net amount
2 payable to the payee is fair, just, and reasonable under the
3 circumstances then existing.

4 (b) If a proposed transfer would contravene the terms
5 of the structured settlement, upon the filing of a written
6 objection by any interested party and after considering the
7 objection and any response to it, the court may grant, deny,
8 or impose conditions upon the proposed transfer which the
9 court deems just and proper given the facts and circumstances
10 and in accordance with established principles of law. Any
11 order approving a transfer must require that the transferee
12 indemnify the annuity issuer and the structured-settlement
13 obligor for any liability, including reasonable costs and
14 attorney's fees, which arises from compliance by the issuer or
15 obligor with the order of the court.

16 (c) Any provision in a transfer agreement which gives
17 a transferee power to confess judgment against a payee is
18 unenforceable to the extent that the amount of the judgment
19 would exceed the amount paid by the transferee to the payee,
20 less any payments received from the structured-settlement
21 obligor or payee.

22 (d) In negotiating a structured settlement of claims
23 brought by or on behalf of a claimant who is domiciled in this
24 state, the structured-settlement obligor must disclose in
25 writing to the claimant or the claimant's legal representative
26 all of the following information that is not otherwise
27 specified in the structured-settlement agreement:

28 1. The amounts and due dates of the periodic payments
29 to be made under the structured-settlement agreement. In the
30 case of payments that will be subject to periodic percentage
31 increases, the amounts of future payments may be disclosed by

1 identifying the base payment amount, the amount and timing of
2 scheduled increases, and the manner in which increases will be
3 compounded;
4 2. The amount of the premium payable to the annuity
5 issuer;
6 3. The discounted present value of all periodic
7 payments that are not life-contingent, together with the
8 discount rate used in determining the discounted present
9 value;
10 4. The nature and amount of any costs that may be
11 deducted from any of the periodic payments;
12 5. Where applicable, that any transfer of the periodic
13 payments is prohibited by the terms of the structured
14 settlement and may otherwise be prohibited or restricted under
15 applicable law; and
16 6. That any transfer of the periodic payments by the
17 claimant may subject the claimant to serious adverse tax
18 consequences.
19 (4) JURISDICTION; PROCEDURE FOR APPROVAL OF
20 TRANSFERS.--At least 20 days before the scheduled hearing on
21 an application for authorizing a transfer of
22 structured-settlement-payment rights under this section, the
23 transferee must file with the court and all interested parties
24 a notice of the proposed transfer and the application for its
25 authorization. The notice must include:
26 (a) A copy of the transferee's application to the
27 court or judge of compensation claims;
28 (b) A copy of the transfer agreement;
29 (c) A copy of the disclosure statement required under
30 subsection (3);
31

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

5 (e) Notification of the time and place of the hearing
6 and notification of the manner in which and the time by which
7 any written response to the application must be filed in order
8 to be considered by the court. A written response to an
9 application must be filed within 15 days after service of the
10 transferee's notice.

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

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

13 (b) If a transfer of structured-settlement-payment
14 rights fails to satisfy the conditions of subsection (3), the
15 payee who proposed the transfer does not incur any penalty,
16 forfeit any application fee or other payment, or otherwise
17 incur any liability to the proposed transferee.

18 (6) NONCOMPLIANCE.--

19 (a) If a transferee violates the requirements for
20 stipulating the discount and finance charge provided for in
21 subsection (3), neither the transferee nor any assignee may
22 collect from the transferred payments, or from the payee, any
23 amount in excess of the net advance amount, and the payee may
24 recover from the transferee or any assignee:

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

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

30 3. Reasonable costs and attorney's fees.

31

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

4 1. A penalty in an amount determined by the court, but
5 not in excess of three times the amount of the discount and
6 finance charge; and

7 2. Reasonable costs and attorney's fees.

8 (c) A transferee or assignee is not liable for any
9 penalty in any action brought under this section if the
10 transferee or assignee establishes by a preponderance of
11 evidence that the violation was not intentional and resulted
12 from a bona fide error, notwithstanding the transferee's
13 maintenance of procedures reasonably designed to avoid such
14 errors.

15 (d) Notwithstanding any other law, an action may not
16 be brought under this section more than 1 year after the due
17 date of:

18 1. The last transferred structured-settlement payment,
19 in the case of a violation of the requirements for stipulating
20 the discount and finance charge provided for in subsection
21 (3).

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

25 (e) When the state attorney has reason to believe that
26 any transferee has violated this section, the state attorney
27 may bring a civil action for injunctive relief, penalties, and
28 any other relief that is appropriate to secure compliance with
29 this section.

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

31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 108

The Committee Substitute for Senate Bill 108 provides the following changes:

1. Revises the requirement that all transfers of structured settlements, including workers' compensation, be approved by a court or judge of compensation claims compensation by eliminating the requirement that transfers of workers' compensation structured settlements must be approved by a judge of compensation claims, since such transfers are prohibited pursuant to s. 440.22, F.S.; and
2. Revises the penalty provisions for transferees or assignees who violate the requirements for disclosure or stipulating the discount and finance charge to provide that the transferee and any assignee are liable to the payee for a penalty not in excess of 3 times the amount of the discount and finance charge.