

Amendment No. 01 (for drafter's use only)

| | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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The Committee on Judicial Oversight offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof:

Section 1. Transfers of structured-settlement-payment rights.--

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

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

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

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

1. The laws of the United States;
2. The laws of this state, including principles of

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- 1 equity applied in the courts of this state; and
2 3. The laws of any other jurisdiction:
3 a. That is the domicile of the payee or any other
4 interested party;
5 b. Under whose laws a structured-settlement agreement
6 was approved by a court; or
7 c. In whose courts a settled claim was pending when
8 the parties entered into a structured-settlement agreement.
9 (c) "Applicable federal rate" means the most recently
10 published applicable rate for determining the present value of
11 an annuity, as issued by the United States Internal Revenue
12 Service pursuant to section 7520 of the United States Internal
13 Revenue Code, as amended.
14 (d) "Assignee" means any party that acquires
15 structured-settlement-payment rights directly or indirectly
16 from a transferee of such rights.
17 (e) "Dependents" means a payee's spouse and minor
18 children and all other family members and other persons for
19 whom the payee is legally obligated to provide support,
20 including spousal maintenance.
21 (f) "Discount and finance charge" means the sum of all
22 charges that are payable directly or indirectly from assigned
23 structured-settlement payments and imposed directly or
24 indirectly by the transferee and that are incident to a
25 transfer of structured-settlement-payment rights, including:
26 1. Interest charges, discounts, or other compensation
27 for the time value of money;
28 2. All application, origination, processing,
29 underwriting, closing, filing, and notary fees and all similar
30 charges, however denominated; and
31 3. All charges for commissions or brokerage,

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1 regardless of the identity of the party to whom such charges
2 are paid or payable.

3
4 The term does not include any fee or other obligation incurred
5 by a payee in obtaining independent professional advice
6 concerning a transfer of structured-settlement-payment rights.

7 (g) "Discounted present value" means, with respect to
8 a proposed transfer of structured-settlement-payment rights,
9 the fair present value of future payments, as determined by
10 discounting the payments to the present using the most
11 recently published applicable federal rate as the discount
12 rate.

13 (h) "Independent professional advice" means advice of
14 an attorney, certified public accountant, actuary, or other
15 licensed professional adviser:

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

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

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

23 (i) "Interested parties" means:

24 1. The payee;

25 2. Any beneficiary irrevocably designated under the
26 annuity contract to receive payments following the payee's
27 death or, if such designated beneficiary is a minor, the
28 designated beneficiary's parent or guardian;

29 3. The annuity issuer;

30 4. The structured-settlement obligor; or

31 5. Any other party who has continuing rights or

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1 obligations under the structured settlement.

2 (j) "Payee" means an individual who is receiving
3 tax-free damage payments under a structured settlement and
4 proposes to make a transfer of payment rights under the
5 structured settlement.

6 (k) "Qualified-assignment agreement" means an
7 agreement providing for a qualified assignment, as authorized
8 by Title 26, section 130 of the United States Internal Revenue
9 Code, as amended.

10 (l) "Settled claim" means the original tort claim
11 resolved by a structured settlement.

12 (m) "Structured settlement" means an arrangement for
13 periodic payment of damages for personal injuries established
14 by settlement or judgment in resolution of a tort claim.

15 (n) "Structured-settlement agreement" means the
16 agreement, judgment, stipulation, or release embodying the
17 terms of a structured settlement, including the rights of the
18 payee to receive periodic payments.

19 (o) "Structured-settlement obligor" means the party
20 who is obligated to make continuing periodic payments to the
21 payee under a structured-settlement agreement or a
22 qualified-assignment agreement.

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

27 1. The payee or any other interested party is
28 domiciled in this state;

29 2. The structured settlement agreement was approved by
30 a court; or

31 3. The settled claim was pending before the courts of

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1 this state when the parties entered into the
2 structured-settlement agreement.

3 (q) "Terms of the structured settlement" means the
4 terms of the structured-settlement agreement; the annuity
5 contract; a qualified-assignment agreement; or an order or
6 approval of a court or other government authority authorizing
7 or approving the structured settlement.

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

11 (s) "Transfer agreement" means the agreement providing
12 for transfer of structured-settlement-payment rights from a
13 payee to a transferee.

14 (t) "Transferee" means a person who is receiving or
15 who will receive structured-settlement-payment rights
16 resulting from a transfer.

17 (3) CONDITIONS TO TRANSFERS OF
18 STRUCTURED-SETTLEMENT-PAYMENT RIGHTS AND STRUCTURED-SETTLEMENT
19 AGREEMENTS.--

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

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

30 2. At least 10 days before the date on which the payee
31 first incurred an obligation with respect to the transfer, the

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1 transferee provided to the payee a disclosure statement in
2 bold type, no smaller than 14 points in size, which specifies:
3 a. The amounts and due dates of the
4 structured-settlement payments to be transferred;
5 b. The aggregate amount of the payments;
6 c. The discounted present value of the payments,
7 together with the discount rate used in determining the
8 discounted present value;
9 d. The gross amount payable to the payee in exchange
10 for the payments;
11 e. An itemized listing of all brokers' commissions,
12 service charges, application fees, processing fees, closing
13 costs, filing fees, referral fees, administrative fees, legal
14 fees, and notary fees and other commissions, fees, costs,
15 expenses, and charges payable by the payee or deductible from
16 the gross amount otherwise payable to the payee;
17 f. The net amount payable to the payee after deducting
18 all commissions, fees, costs, expenses, and charges described
19 in sub-subparagraph e.;
20 g. The quotient, expressed as a percentage, obtained
21 by dividing the net payment amount by the discounted present
22 value of the payments, which must be disclosed in the
23 following statement: "The net amount that you will receive
24 from us in exchange for your future structured-settlement
25 payments represent __ percent of the estimated current value
26 of the payments";
27 h. The effective annual interest rate, which must be
28 disclosed in the following statement: "Based on the net amount
29 that you will receive from us and the amounts and timing of
30 the structured-settlement payments that you are turning over
31 to us, you will, in effect, be paying interest to us at a rate

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1 of ___ percent per year"; and

2 i. The amount of any penalty and the aggregate amount
3 of any liquidated damages, including penalties, payable by the
4 payee in the event of a breach of the transfer agreement by
5 the payee;

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

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

11 5. The transferee has given written notice of the
12 transferee's name, address, and taxpayer identification number
13 to the annuity issuer and the structured-settlement obligor
14 and has filed a copy of the notice with the court or judge of
15 compensation claims;

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

22 7. The court has determined that the net amount
23 payable to the payee is fair, just, and reasonable under the
24 circumstances then existing.

25 (b) If a proposed transfer would contravene the terms
26 of the structured settlement, upon the filing of a written
27 objection by any interested party and after considering the
28 objection and any response to it, the court may grant, deny,
29 or impose conditions upon the proposed transfer which the
30 court deems just and proper given the facts and circumstances
31 and in accordance with established principles of law. Any

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1 order approving a transfer must require that the transferee
2 indemnify the annuity issuer and the structured-settlement
3 obligor for any liability, including reasonable costs and
4 attorney's fees, which arises from compliance by the issuer or
5 obligor with the order of the court.

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

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

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

25 2. The amount of the premium payable to the annuity
26 issuer;

27 3. The discounted present value of all periodic
28 payments that are not life-contingent, together with the
29 discount rate used in determining the discounted present
30 value;

31 4. The nature and amount of any costs that may be

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1 deducted from any of the periodic payments;

2 5. Where applicable, that any transfer of the periodic
3 payments is prohibited by the terms of the structured
4 settlement and may otherwise be prohibited or restricted under
5 applicable law; and

6 6. That any transfer of the periodic payments by the
7 claimant may subject the claimant to serious adverse tax
8 consequences.

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

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

18 (b) A copy of the transfer agreement;

19 (c) A copy of the disclosure statement required under
20 subsection (3);

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

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

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

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

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

7 (6) NONCOMPLIANCE.--

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

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

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

19 3. Reasonable costs and attorney's fees.

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

23 1. A penalty in an amount determined by the court, but
24 not in excess of three times the amount of the discount and
25 finance charge; and

26 2. Reasonable costs and attorney's fees.

27 (c) A transferee or assignee is not liable for any
28 penalty in any action brought under this section if the
29 transferee or assignee establishes by a preponderance of
30 evidence that the violation was not intentional and resulted
31 from a bona fide error, notwithstanding the transferee's

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1 maintenance of procedures reasonably designed to avoid such
2 errors.

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

6 1. The last transferred structured-settlement payment,
7 in the case of a violation of the requirements for stipulating
8 the discount and finance charge provided for in subsection
9 (3).

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

13 (e) When the state attorney has reason to believe that
14 any transferee has violated this section, the state attorney
15 may bring a civil action for injunctive relief, penalties, and
16 any other relief that is appropriate to secure compliance with
17 this section.

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

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

22 And the title is amended as follows:

23 remove from the title of the bill: the entire title

24

25 and insert in lieu thereof:

26 A bill to be entitled

27 An act relating to the transfer of structured
28 settlements; specifying the purpose of the act;
29 providing definitions; providing requirements
30 for the direct or indirect transfer of
31 structured-settlement-payment rights; requiring

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1 that any such transfer be approved by a court;
2 requiring that the court make certain findings
3 with respect to the transfer; authorizing an
4 interested party to file an objection to a
5 proposed transfer; providing requirements for
6 an order approving a transfer; requiring that
7 an obligor make certain disclosures to a
8 claimant in negotiating a settlement of claims;
9 requiring a transferee to provide certain
10 notice with respect to a proposed transfer of
11 structured-settlement-payment rights; providing
12 for penalties to be imposed for certain
13 violations of the act; authorizing the state
14 attorney to bring an action for injunctive
15 relief; providing an effective date.

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