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HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS

BILL #: HB 767

RELATING TO: Transfer of Structured Settlements

SPONSOR(S): Representatives Brown and Ross

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
(2) INSURANCE
(3) SMARTER GOVERNMENT
(4)
(5)

I. SUMMARY:

Structured settlements are increasingly being used as means to settle personal injury claims. The structured settlement provides periodic payments for future medical expenses and wage replacement. As an alternative to continuing to receive these long-term payments, some individuals may assign or sell their settlement payments to a factoring company for a discounted, lump-sum payment. The bill would require court review and approval for all such transfers of structured settlements. In addition, the bill would require such transfer agreements to contain specific disclosures regarding the costs of the transactions and a comparison of the amount to be received in the transfer in comparison to the amount to be received through the structured settlement.

The bill takes effect October 1, 2001.

The Committee on Judicial Oversight approved a strike-all amendment that removed references to workers compensation from the bill. The workers compensation statute prohibits the transfer of structured settlements. The amendment also increased the penalties for violation of the new statute. The amendment is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No [x]	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

The bill increases government involvement by requiring court approval of activities that do not currently require court approval.

B. PRESENT SITUATION:

Structured Settlements

A structured settlement is an arrangement to satisfy a legal liability, which involves the periodic payment of money through an annuity (or other financial product). Under a structured settlement involving an annuity arrangement, one party pays a lump sum premium to an insurance company to purchase an annuity in the name of the claimant. The premium varies depending on the number and length of payments. The insurance company then makes periodic payments to the claimant for the negotiated period of time. The use of structured settlements has increased in recent years for wrongful death or injury awards. A structured settlement may be agreed to in a pre-trial settlement or it may be required by a court order, particularly in the case of judgments involving minors.

Structured settlements are commonly used as an alternative to simple lump sum settlements. Structured settlements can offer some advantages to both parties involved in the settlement. For claimants, a structured settlement can provide long-term financial protection and income, which may be necessary for claimants with long-term medical needs and dependents. Also, money paid to a claimant through a structured settlement receives more favorable federal tax treatment. Unlike investment earnings on a lump sum payment, which are taxable, payments made under a structured settlement are not taxable. However, claimants must weigh these advantages against the disadvantage of not having access at any one time to the entire amount of money received in the settlement.

For the paying party, structured settlements can provide a more cost effective means of extinguishing the legal liability. For example, a $2 million lump sum payment would cost $2 million. However, $2 million paid over time through a structured settlement might be accomplished through purchasing an annuity that costs less than $2 million.

Transfer of Structured Settlements

In recent years, concerns have been raised regarding the transfer or factoring of structured settlements. Settlement purchasing companies buy the remaining payments due under the settlement in exchange for a smaller lump-sum payment. Concerns have been raised that the long-term financial security of the injured claimant is at risk, if the claimant does not understand the terms or consequences of such a financial transaction. Although the individual is provided with a lump-sum payment, the amount of the payment may not meet the long-term medical costs, living expenses, and dependent financial support the individual ultimately needs. However, due to changes in an individual's circumstances, a lump-sum payment may meet their current needs.

Chapter 440, F.S., regulates workers compensation in Florida. Section 440.22, F.S., prohibits the assignment, release, or commutation of workers compensation or benefits due or payable under that chapter, except as provided by that chapter. Section 440.20(11)(a), F.S., authorizes lump-sum payments in exchange for the employer's or carrier's release from liability for future medical expenses, as well as future payments of compensation expenses. The lump-sum payment is authorized at any time in any case in which the employer or carrier has filed a written notice of denial within 120 days after the date of injury, and the judge finds a justiciable controversy as to legal or medical compensability of the claimed injury or alleged accident. Upon the joint petition of all interested parties and after giving consideration of all interested parties, a judge of compensation claims may enter a compensation order approving and discharging the employer's liability by the payment of a lump-sum. Lump sum payments are also authorized at any time in any case after the injured worker has reached maximum medical improvement.

C. EFFECT OF PROPOSED CHANGES:

The bill adds new requirements that must be fulfilled in order to transfer or assign structured settlements and creates a new definitions section provided specific statutory definitions for the new statute. Each portion of the bill will be discussed in turn.

<u>Requirements that Must be Met Before a Structured Settlement Can be Transferred</u>

A transfer of a structured settlement agreement is not effective unless the transfer is authorized in advance in a final order by a court of competent jurisdiction or judge of compensation claims. Such a final order would be based on the written express findings by the court that the transfer complies with this statute and does not contravene applicable law. The court must also find the following:

1. the payee has established that the transfer is in the best interests of the payee and the payee's dependents;

2. the payee has received, or waived his right to receive, independent professional advice regarding the legal, tax, and financial implications of the transfer;

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

4. the transfer agreement provides that if the payee is domiciled in Florida, any disputes between the parties will be governed by the laws of Florida;

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

If the proposed transfer contravenes the terms of the structured settlement, upon the filing of a written objection by any interested party, the court or judge of compensation claims may grant, deny, or impose conditions upon the proposed transfer. Any order approving a transfer must require the transferee to indemnify the annuity issuer and the structured settlement obligor for any liabilities, including reasonable costs and attorney fees, which arise from compliance by the issuer or obligor with the order of the court.

The bill requires specific disclosures that must be made by the transferee to the payee and the court must review the disclosures. In order to approve the transfer, the court must find that the transferee provided a disclosure statement to the payee containing the following information:

1. the amounts and due dates of the structured settlement payments to be transferred;

2. the aggregate amount of the payments;

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

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

5. an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, referral fees, administrative fees, legal fees, and notary fees and other commissions, fees, costs, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

6. the net amount payable to the payee after deducting all commissions, fees, costs, expenses, and charges described above;

7. the quotient, expressed as a percentage, of the net payment amount divided by the discounted present value of the payments, which must be disclosed in the following statement, "The net amount that you will receive in exchange for your future structured settlement payments represents __ percent of the estimated current value of the payments";

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

9. the amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of a breach of the transfer agreement by the payee;

The bill provides that any provision in a transfer agreement which gives a transferee power to confess judgment against a payee is unenforceable to the extent that the amount of the judgment would exceed the amount paid by the transferee to the payee, less any payments received from the structured settlement agreement.

In negotiating a structured settlement of claims, the obligor must disclose in writing that any transfer of the periodic payments by the claimant may subject the claimant to serious adverse tax consequences.

The bill requires that at least 20 days before the scheduled hearing on an application for authorizing a transfer, the transferee must file with the court and all interested parties a notice of the proposed transfer and the application for its authorization. The notice must also include a copy of the transfer agreement, the disclosure statement, and notification that an interested party may support or oppose the application by submitting written comments to the court or judge of compensation claims or by participating in the hearing, and notification of the time and place of the hearing and the manner in which and the deadline for filing any written response in order to be considered by the court. A written response to an application must be filed within 15 days after service of the transferee's notice.

The bill prohibits the waiver of any of its provisions. In the event the transfer fails to meet court approval, the payee who proposed the transfer would not incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee.

The bill provides that if a transferee violates the requirements for stipulating the discount and finance charge, neither the transferee or any assignee may collect from the transferred payments, or from the payee, any amount in excess of the net advance amount. The payee would be authorized to recover from the transferee or any assignee a refund of any excess amounts previously received by the transferee or any assignee, reasonable costs and attorney fees, and a penalty in an amount determined by the court, but not in excess of two times the amount of the discount and finance charge.

If the transferee violates the disclosure requirements, the transferee and any assignee are liable to the payee for reasonable costs and attorney fees and a penalty in an amount to be determined by the court, but not in excess of two times the amount of the discount and finance charge.

The bill also provides that, notwithstanding any other law, an action may not be brought more than one year after the due date of the last transferred payment, in the case of a violation of the requirements for stipulating the discount and finance charge, or the first transferred payment in the case of a violation of the disclosure requirements.

The subsection authorizes the state attorney to bring a civil action for injunctive relief, penalties, and any other relief that is appropriate to secure compliance with this section.

<u>Definitions</u>

The bill provides definitions for terms used in a transfer of a structured settlement. Some of the definitions are discussed below.

"Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in a workers' compensation claim.

"Terms of the structured settlement" means the terms of the agreement, the annuity contract, a qualified assignment agreement; or an order of approval of a court or other government authority authorizing or approving the structured settlement.

"Transfer" means a sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration.

"Transfer agreement" means the agreement providing for transfer of structured-settlement payment rights from a payee to a transferee.

"Transferee" means a person who is receiving or who will receive structured-settlement-payment rights resulting from a transfer.

"Assignee" means any party that acquires structured settlement payment rights directly or indirectly from a transferee of such rights.

"Discount and finance charge" means the sum of all charges that are payable directly or indirectly from assigned structured settlement payments and imposed directly or indirectly by the transferee and that are incident to a transfer of structured settlement payment rights, including:

1. Interest charges, discounts, or other compensation for the time value of money;
2. All application, origination, processing, underwriting, closing, filing, and notary fees and all similar charges; and
3. All charges for commissions or brokerage, regardless of the identity of the party to whom such charges are paid or payable.

However, the term does not include any fee or other obligation incurred by a payee in obtaining independent professional advice concerning a transfer of structured settlement payment rights.

"Discounted present value" means, with respect to a proposed transfer of a structured settlement payment rights, the fair present value of future payments, as determined by discounting the payments to the present using the most recently published applicable federal rate as the discount rate.

"Independent professional advice" means the advice of an attorney, certified public accountant, actuary, or other licensed professional advisor.

"Payee" means an individual who is receiving tax-free damage payment under a structured settlement and proposes to make a transfer of payment rights under the structured settlement.

"Settled claim" means the original tort or workers' compensation claim resolved by a structured settlement.

Section 2 of the bill provides that this act shall take effect October 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

   N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments

D. FISCAL COMMENTS:

The fiscal impact on the state is indeterminate. The bill will require judicial review of transfers of structured settlements. There could be increased costs if such reviews take significant court time. In addition, parties who wish to make transfer agreements regarding structured settlements will incur costs in presenting these settlements to the courts. It is unknown how much the cost of court proceedings will impact the transfer of structured settlements.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds, or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce that revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Throughout the bill, there are references to workers' compensation settlements and the restrictions placed on structured settlements involving workers' compensation payments or benefits. Subsection 7 of the proposed statute seems to contradict those statements by stating that the section does not authorize the transfer of payment rights to workers' compensation or benefits that contravenes applicable law. Section 440.22, F.S., specifically states that only assignments of compensation or benefits permitted under chapter 440 are valid. It is unclear whether this bill would permit the transfer of workers' compensation benefits or allow such transfers.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 20, 2001, the Committee on Judicial Oversight approved a strike-all amendment that removed references to workers compensation from the bill. The workers compensation statute prohibits the transfer of structured settlements. The amendment also increased the penalties for violation of the new statute. It provides that the transferee or assignee may be penalized three times the amount of the discount and finance charge for noncompliance with the requirements for stipulating the discount and finance charge or for noncompliance with the disclosure requirements. The amendment is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:	Staff Director:
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