

By the Committee on Insurance and Representatives Brown
and Ross

1 A bill to be entitled
2 An act relating to structured settlements;
3 specifying the purpose of the act; providing
4 definitions; providing requirements for the
5 direct or indirect transfer of structured
6 settlement payment rights; requiring court
7 approval of any such transfer; requiring a
8 court to make certain findings with respect to
9 the transfer; authorizing an interested party
10 to file an objection to a proposed transfer;
11 providing requirements for an order approving a
12 transfer; requiring that an obligor make
13 certain disclosures to a claimant in
14 negotiating a settlement of claims; requiring a
15 transferee to provide certain notice with
16 respect to a proposed transfer of structured
17 settlement payment rights; providing for
18 penalties for certain violations of the act;
19 authorizing the state attorney to bring an
20 action for injunctive relief; providing an
21 effective date.

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

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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:

- 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, as applicable in
5 interpreting the terms of a structured settlement:
- 6 1. The laws of the United States;
7 2. The laws of this state, including principles of
8 equity applied in the courts of this state; or
9 3. The laws of any other jurisdiction:
- 10 a. That is the domicile of the payee or any other
11 interested party;
- 12 b. Under which laws a structured settlement agreement
13 was approved by a court; or
- 14 c. In the courts of which a settled claim was pending
15 when the parties entered into a structured settlement
16 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 s. 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, but not limited to, 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 but not limited to:

4 1. Interest charges, discounts, or other compensation
5 for the time value of money.

6 2. All application, origination, processing,
7 underwriting, closing, filing, and notary fees and all similar
8 charges, however denominated.

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

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

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

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

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

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

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

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

1 (p) "Structured settlement payment rights" means
2 rights to receive periodic payments, including lump-sum
3 payments under a structured settlement, from the structured
4 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 structured
11 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 STRUCTURED SETTLEMENT
27 PAYMENT RIGHTS AND STRUCTURED SETTLEMENT AGREEMENTS.--
28 (a) A direct or indirect transfer of structured
29 settlement payment rights is not effective and a structured
30 settlement obligor or annuity issuer is not required to make a
31 payment directly or indirectly to a transferee of structured

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

1 from us in exchange for your future structured settlement
2 payments represent __ percent of the estimated current value
3 of the payments";
4 h. The effective annual interest rate, which shall be
5 disclosed in the following statement: "Based on the net amount
6 that you will receive from us and the amounts and timing of
7 the structured settlement payments that you are turning over
8 to us, you will, in effect, be paying interest to us at a rate
9 of __ percent per year"; and
10 i. The amount of any penalty and the aggregate amount
11 of any liquidated damages, including penalties, payable by the
12 payee in the event of a breach of the transfer agreement by
13 the payee.
14 3. The payee has established that the transfer is in
15 the best interests of the payee and the payee's dependents.
16 4. The payee has received, or waived his or her right
17 to receive, independent professional advice regarding the
18 legal, tax, and financial implications of the transfer.
19 5. The transferee has given written notice of the
20 transferee's name, address, and taxpayer identification number
21 to the annuity issuer and the structured settlement obligor
22 and has filed a copy of the notice with the court.
23 6. The transfer agreement provides that:
24 a. Any disputes between the parties will be governed
25 in accordance with the laws of this state, if the payee is
26 domiciled in this state at the time of transfer.
27 b. The domicile state of the payee is the proper venue
28 to bring any cause of action arising out of a breach of the
29 agreement.
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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 the objection, the court may
8 grant, deny, or impose conditions upon the proposed transfer
9 which the court deems just and proper given the facts and
10 circumstances and in accordance with established principles of
11 law. Any order approving a transfer shall require that the
12 transferee indemnify the annuity issuer and the structured
13 settlement obligor for any liability, including, but not
14 limited to, reasonable costs and attorney's fees, which arises
15 from compliance by the issuer or obligor with the order of the
16 court.

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

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

29 1. The amounts and due dates of the periodic payments
30 to be made under the structured settlement agreement. In the
31 case of payments that will be subject to periodic percentage

1 increases, the amounts of future payments may be disclosed by
2 identifying the base payment amount, the amount and timing of
3 scheduled increases, and the manner in which increases will be
4 compounded.

5 2. The amount of the premium payable to the annuity
6 issuer.

7 3. The discounted present value of all periodic
8 payments that are not life contingent, together with the
9 discount rate used in determining the discounted present
10 value.

11 4. The nature and amount of any costs that may be
12 deducted from any of the periodic payments.

13 5. Where applicable, that any transfer of the periodic
14 payments is prohibited by the terms of the structured
15 settlement and may otherwise be prohibited or restricted under
16 applicable law.

17 6. That any transfer of the periodic payments by the
18 claimant may subject the claimant to serious adverse tax
19 consequences.

20 (4) JURISDICTION; PROCEDURE FOR APPROVAL OF
21 TRANSFERS.--At least 20 days before the scheduled hearing on
22 an application for authorizing a transfer of structured
23 settlement payment rights under this section, the transferee
24 shall file with the court and all interested parties a notice
25 of the proposed transfer and the application for its
26 authorization. The notice shall include:

27 (a) A copy of the transferee's application to the
28 court or judge of compensation claims.

29 (b) A copy of the transfer agreement.

30 (c) A copy of the disclosure statement required under
31 paragraph (3)(a).

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.

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 shall 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, neither the
21 transferee nor any assignee may collect from the transferred
22 payments, or from the payee, any amount in excess of the net
23 advance amount and the payee may recover from the transferee
24 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.

30 3. Reasonable costs and attorney's fees.

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1 (b) If the transferee violates the disclosure
2 requirements in paragraph (3)(a), 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.

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 provision of law, an
16 action may not be brought under this section more than 1 year
17 after the due 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.

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

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

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

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