The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 458

INTRODUCER: Senator Richter

SUBJECT: Transfers of Structured Settlement Payment Rights

DATE: December 1, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maida	Cibula	JU	**Favorable**
2.	Matiyow	Knudson	BI	**Pre-meeting**
3.			RC	

I. Summary:

SB 458 revises the law governing the sale or transfer of the right to receive payments under a structured settlement agreement. A structured settlement agreement is an arrangement for the periodic payment of damages for personal injuries in connection with a tort claim or personal injury lawsuit. The purpose of existing law is to protect the recipients of structured settlements, and the law provides procedures for courts to approve the transfer of the right to receive payments under a structured settlement agreement.

The changes made by the bill:

- Specify that the court having jurisdiction over an application to transfer structured settlement payment rights is the court where the payee resides or, if the payee does not reside in this state, the court that approved the structured settlement agreement or the court in which a claim was pending which led to the structured settlement agreement.
- Require an applicant seeking to receive the payments under a structured settlement agreement to provide additional information about the payee in its application to the court.
- Require the payee to appear in court for the hearing on the application unless good cause exists to excuse the payee's attendance.
- Grant immunity to structured settlement obligors and annuity issuers that act in reliance on court orders approving the transfer of a structured settlement agreement.
- Make structured settlement obligors and annuity issuers immune from liability for a transferee's failure to provide required disclosures to the payee or to provide all the required information in its application to the court.
- Allow the transfer of structured settlement payments notwithstanding the terms of a structured settlement agreement prohibiting those transfers.

II. Present Situation:

A structured settlement is an agreement for the periodic payment of damages for personal injuries, the payments of which are established by a settlement or judgment in resolution of a tort claim.[1] This arrangement typically involves one party paying a lump-sum premium to an insurance company to purchase an annuity in the name of the injured victim (the payee). Once the annuity is purchased, the insurance company begins to make periodic payments to the payee for a negotiated period of time. In addition to the long-term financial stability this may provide the payee, structured settlement payments confer tax benefits on their beneficiaries[2] and annuity issuers.[3]

Instead of making the payments itself, the insurance company may instead decide to assign its payment obligations to a structured settlement company. In exchange for accepting its new payment obligations, the structured settlement company typically receives from the insurance company a lump-sum payment equivalent to the present value of all future payments owed to the payee.[4] In order to obtain the necessary liquidity to make its newly-obligated periodic payments, the structured settlement company may use this lump-sum to purchase an annuity from a life insurance company.[5]

The payee’s financial circumstances may change. For example, the payee’s periodic payments may be insufficient to pay for an immediate, large financial need. As such, instead of receiving payments under a structured settlement plan, the payee may wish to transfer his or her rights to payments to another organization—known as a transferee—in exchange for a lump sum.[6] In 2001, the Legislature created s. 626.99296, F.S., to protect recipients of structured settlements during the transfer process.[7] Fundamentally, the statute requires such transfers to receive prior court approval.[8] This approval must be conditioned upon statutorily-enumerated factors, including an explicit finding by the court that the transfer is “in the best interests of the” individual opting to sell his or her settlement rights in order to receive a lump sum.[9] Under existing law, an entity contracting to receive structured settlement rights must file an application with the court at least 20 days before the application hearing[10] and make a series of disclosures to the would-be payee.[11] One of the required disclosures is the “quotient” of the transaction.[12] The

[1] *See* s. 626.99296(m), F.S.
[2] 26 U.S.C. § 104 (providing that, for taxation purposes, gross income does not include the amount of damages received on account of personal physical injuries or physical sickness); s. 626.99296(2)(j), F.S. (defining “payee” as an individual receiving tax-free damage payments under a structured settlement).
[3] *See* 26 U.S.C. § 130; *First Providian, LLC v. Evans*, 852 So. 2d 908 (Fla. 4th DCA 2003).
[4] Gregg D. Polksy and Brant J. Hellwig, *Taxing Structured Settlements*, 51 B.C. L. REV. 39, 41-2 (January 2010).
[5] *Id*.
[6] *See, e.g., First Providian, LLC v. Evans*, 852 So. 2d 908 (Fla. 4th DCA 2003).
[7] Section 626.99296, F.S.
[8] *Id*. at subsection (3); *Rapid Settlements, Ltd. v. Dickerson*, 941 So. 2d 1275, 1276-77 (Fla. 4th DCA 2006) (affirming lower court decision to deny petition, noting that “[t]ransfers of structured settlement rights are regulated by statute and court approval is required before a transfer may go forward.”).
[9] Section 626.99296(3), F.S.
[10] *Id.* at subsection (4).
[11] *Id*. at subsection (3).
[12] *Id*.

"quotient" is described by statute as "a percentage, obtained by dividing the net payment amount by the discounted present value of the payments."[13]

Despite the requirement that a structured settlement transfer occur or not occur under the supervision of a court, forum shopping[14] is not expressly prohibited by Florida's structured settlement transfer law.[15] This could result in a transferee obtaining a settlement transfer venue with greater ties to the transferee, as opposed to the payee.

III. Effect of Proposed Changes:

This bill makes the following changes to the laws governing the transfer of a structured settlement agreement:

- Eliminates the requirement that the transferee disclose to the payee the "quotient" of the transaction.
- Provides venue certainty and prevents "forum shopping" by requiring structured settlement transfer applications to be made in the circuit court of the county where the payee is located. If the payee is not domiciled in Florida, the application may be filed in the Florida court that approved the initial structured settlement agreement, or the court where the original claim was pending when the parties entered into their settlement.
- Provides additional information to the court by requiring the payee to appear personally in court during the application hearing. Further, the bill requires that additional information be provided on the transferee's application. This includes the payee's age, number and ages of the payee's dependents, and additional financial history of the payee.
- Provides that, upon a court order approving the settlement transfer, both settlement obligors and annuity issuers may rely on the court's order in redirecting future structured settlement payments and are released from liability as to all parties to the settlement except for the transferee and the transferee's potential future assignee.[16]
- Confirms that, regardless of any anti-assignment language in the original structured settlement agreement, the parties to the agreement may waive or assert their rights, and the court can safely construe the anti-assignment language and apply the law to such situations.

The bill takes effect upon becoming a law.

[13] *Id*.

[14] *See, e.g.*, Kelly McGann, *It's My Money and I Want it Now, Your Honor*, 48 MD. B.J. 36, 39-40 (May/June 2015).

[15] Section 626.99296, F.S., is silent as to which court—or venue—the initial settlement transfer petition must be filed.

[16] *Compare* Fla R. Civ. P 1.1540(b) which states that a judgment may be set aside for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) that the judgment or decree is void; or (5) that the judgment or decree has been satisfied, released, or discharged, or a prior judgment or decree upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or decree should have prospective application.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may result in more favorable terms for payees who seek to sell the right to payments under their structured settlement agreements. This result may occur because courts will have more information about payees and because payees will generally be required to attend court hearings on applications to transfer structured settlement payment rights.

The bill will also increase the marketability of structured settlement payment rights by ensuring that structured settlement obligors and annuity issuers have no liability for acting in reliance on court orders approving the transfer of a structured settlement.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 626.99296 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.