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HSB 11

COMMERCE AND REGULATION
Submitted by
SF/HF 31

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON COMMERCE
AND REGULATION BILL BY CHAIR-
PERSON METCALF)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to transfers of structured settlement payment
2 rights for tort and workers' compensation claims and providing
3 an effective date.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 682.1 SHORT TITLE.

2 This chapter shall be known and may be cited as the
3 "Structured Settlement Protection Act".

4 Sec. 2. NEW SECTION. 682.2 DEFINITIONS.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Annuity issuer" means an issuer that has issued an
8 insurance contract used to fund periodic payments under a
9 structured settlement.

10 2. "Applicable law" means all of the following:

11 a. The federal laws of the United States.

12 b. The laws of this state, including principles of equity
13 applied in the courts of this state.

14 c. The laws of any other jurisdiction which meet any of
15 the following criteria:

16 (1) Is the domicile of the payee or any other interested
17 party.

18 (2) Under whose laws a structured settlement agreement was
19 approved by a court or responsible administrative authority.

20 (3) In whose courts a settled claim was pending when the
21 parties entered into a structured settlement agreement.

22 3. "Dependents" means a payee's spouse and minor children
23 and all other family members and other persons for whom the
24 payee is legally obligated to provide support, including
25 alimony.

26 4. "Discounted present value" means the fair present value
27 of future payments, as determined by discounting such payments
28 to the present using the most recently published applicable
29 federal rate for determining the present value of an annuity,
30 as issued by the United States internal revenue service.

31 5. "Favorable tax determination" means, with respect to a
32 proposed transfer of structured settlement payment rights, a
33 determination by any of the following authorities that
34 definitively establishes that the federal income tax treatment
35 of the structured settlement for the parties to the structured

1 settlement agreement and any qualified assignment agreement,
2 other than the payee, will not be affected by such transfer:

3 a. A provision of the Internal Revenue Code or a United
4 States treasury regulation adopted pursuant to the Internal
5 Revenue Code.

6 b. A revenue ruling or revenue procedure issued by the
7 United States internal revenue service.

8 c. A private letter ruling by the United States internal
9 revenue service with respect to such transfer.

10 d. A decision of the United States supreme court or a
11 decision of a lower federal court in which the United States
12 internal revenue service has acquiesced.

13 6. "Federal hardship standard" means a federal standard
14 applicable to transfers of structured settlement payment
15 rights based on findings of a court or responsible
16 administrative authority regarding the payees' needs, as
17 contained in the Internal Revenue Code or in a United States
18 treasury regulation adopted pursuant to the Internal Revenue
19 Code.

20 7. "Independent professional advice" means advice of an
21 attorney, certified public accountant, actuary, or other
22 licensed professional advisor who meets all of the following
23 criteria:

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

27 b. Is not in any manner affiliated with or compensated by
28 the transferee of the transfer.

29 c. Compensation for rendering such advice is not affected
30 by whether a transfer occurs or does not occur.

31 8. "Interested parties" means, with respect to a
32 structured settlement, the payee, a beneficiary designated
33 under the annuity contract to receive payments following the
34 payee's death, the annuity issuer, the structured settlement
35 obligor, and any other party that has continuing rights or

1 obligations under the structured settlement.

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

5 10. "Qualified assignment agreement" means an agreement
6 providing for a qualified assignment within the meaning of
7 section 130 of the Internal Revenue Code.

8 11. "Responsible administrative authority" means, with
9 respect to a structured settlement, any government authority
10 vested by law with exclusive jurisdiction over the settled
11 claim resolved by the structured settlement.

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

15 13. "Structured settlement" means an arrangement for
16 periodic payment of damages for personal injuries established
17 by settlement or judgment in resolution of a tort claim or for
18 periodic payments in settlement of a workers' compensation
19 claim.

20 14. "Structured settlement agreement" means the agreement,
21 judgment, stipulation, or release embodying the terms of a
22 structured settlement, including the rights of the payee to
23 receive periodic payments.

24 15. "Structured settlement obligor" means the party that
25 has the continuing periodic payment obligation to the payee
26 under a structured settlement agreement or a qualified
27 assignment agreement.

28 16. "Structured settlement payment rights" means rights to
29 receive periodic payments, including lump sum payments, under
30 a structured settlement, whether from the structured
31 settlement obligor or the annuity issuer, if any of the
32 following exists:

33 a. The payee or any other interested party is domiciled in
34 this state.

35 b. The structured settlement agreement was approved by a

1 court or responsible administrative authority in this state.

2 c. The settled claim was pending before the courts of this
3 state when the parties entered into the structured settlement.

4 17. "Terms of the structured settlement" means, with
5 respect to a structured settlement, the terms of the
6 structured settlement agreement, the annuity contract, any
7 qualified assignment agreement, and any order or approval of
8 any court or responsible administrative authority or other
9 government authority authorizing or approving the structured
10 settlement.

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

14 19. "Transfer agreement" means the agreement providing for
15 transfer of structured settlement payment rights from a payee
16 to a transferee.

17 Sec. 3. NEW SECTION. 682.3 CONDITIONS TO TRANSFERS OF
18 STRUCTURED SETTLEMENT PAYMENT RIGHTS.

19 A direct or indirect transfer of structured settlement
20 payment rights shall not be effective and a structured
21 settlement obligor or annuity issuer shall not be required to
22 make a payment directly or indirectly to a transferee of
23 structured settlement payment rights unless the transfer has
24 been authorized in advance in a final order of a court of
25 competent jurisdiction or a responsible administrative
26 authority, based on express findings by the court or
27 responsible administrative authority that all of the following
28 exist:

29 1. The transfer complies with the requirements of this
30 chapter and will not contravene other applicable law.

31 2. Not less than ten days prior to the date on which the
32 payee first incurs an obligation with respect to the transfer,
33 the transferee has provided to the payee a disclosure

34 statement in bold type and in a font not smaller than fourteen
35 points stating all of the following:

- 1 a. The amounts and due dates of the structured settlement
2 payments to be transferred.
- 3 b. The aggregate amount of the payments to be transferred.
- 4 c. The discounted present value of the payments to be
5 transferred, together with the discount rate used in
6 determining the discounted present value.
- 7 d. The gross amount payable to the payee in exchange for
8 the transfer of the payments.
- 9 e. An itemized listing of all brokers' commissions,
10 service charges, application fees, processing fees, closing
11 costs, filing fees, administrative fees, legal fees, notary
12 fees, and other commissions, fees, costs, expenses, and
13 charges payable by the payee or deductible from the gross
14 amount otherwise payable to the payee.
- 15 f. The net amount payable to the payee after deduction of
16 all commissions, fees, costs, expenses, and charges described
17 in paragraph "e".
- 18 g. The quotient, expressed as a percentage, obtained by
19 dividing the net payment amount by the discounted present
20 value of the payments.
- 21 h. The amount of any penalty and the aggregate amount of
22 any liquidated damages, inclusive of penalties, payable by the
23 payee in the event of a breach of the transfer agreement by
24 the payee.
- 25 3. The payee has established that the transfer is
26 necessary to enable the payee, the payee's dependents, or
27 both, to avoid imminent financial hardship, and the transfer
28 is not expected to subject the payee, the payee's dependents,
29 or both, to undue financial hardship in the future. However,
30 if at the time the payee and the transferee entered into the
31 transfer agreement, a federal hardship standard was in effect,
32 then in lieu of the foregoing finding the court or responsible
33 administrative authority shall make an express finding that
34 the transfer qualifies under such federal hardship standard.
- 35 4. The payee has received independent professional advice

1 regarding the legal, tax, and financial implications of the
2 transfer.

3 5. If the transfer would contravene the terms of the
4 structured settlement, both of the following must occur:

5 a. The transfer has been expressly approved in writing by
6 all of the following:

7 (1) Each interested party. However, if at the time the
8 payee and the transferee entered into the transfer agreement a
9 favorable tax determination was in effect, then the approval
10 of the annuity issuer and the structured settlement obligor
11 shall not be required if all other interested parties approve
12 the transfer and waive any and all rights to require that the
13 transferred payments be made to the payee in accordance with
14 the terms of the structured settlement.

15 (2) Any court or government authority, other than the
16 court or responsible administrative authority from which
17 authorization of the transfer is sought under this chapter,
18 which previously approved the structured settlement.

19 b. Signed originals of all approvals required under
20 paragraph "a" have been filed with the court or responsible
21 administrative authority from which authorization of the
22 transfer is sought under this chapter and originals or copies
23 have been furnished to all interested parties.

24 6. The transferee has given written notice of the
25 transferee's name, address, and taxpayer identification number
26 to the annuity issuer and the structured settlement obligor
27 and has filed a copy of such notice with the court or
28 responsible administrative authority.

29 Sec. 4. NEW SECTION. 682.4 JURISDICTION -- PROCEDURE FOR
30 APPROVAL OF TRANSFERS.

31 1. The district court shall have jurisdiction over an
32 application for authorization under section 682.3 of a
33 transfer of structured settlement payment rights.

34 2. Not less than twenty days prior to the scheduled
35 hearing on an application for authorization of a transfer of

1 structured settlement payment rights under section 682.3, the
2 transferee shall file with the court or responsible
3 administrative authority and serve on any other government
4 authority which previously approved the structured settlement,
5 on all interested parties, and on the commissioner of
6 insurance, a notice of the proposed transfer and the
7 application for its authorization. The notice shall include
8 all of the following:

- 9 a. A copy of the transferee's application.
- 10 b. A copy of the transfer agreement.
- 11 c. A copy of the disclosure statement required under
12 section 682.3, subsection 2.
- 13 d. Notification that an interested party is entitled to
14 support, oppose, or otherwise respond to the transferee's
15 application, either in person or by counsel, by submitting
16 written comments to the court or responsible administrative
17 authority or by participating in the hearing.
- 18 e. Notification of the time and place of the hearing and
19 notification of the manner in which and the time by which
20 written responses to the application must be filed, which
21 shall not be less than fifteen days after service of the
22 transferee's notice, in order to be considered by the court or
23 responsible administrative authority.

24 3. The commissioner of insurance shall have standing to
25 raise, appear, and be heard on any matter relating to an
26 application for authorization of a transfer of structured
27 settlement payment rights under this chapter.

28 Sec. 5. NEW SECTION. 682.5 WAIVER -- PENALTIES.

- 29 1. The provisions of this chapter shall not be waived.
- 30 2. A payee who proposes to make a transfer of structured
31 settlement payment rights shall not incur a penalty, forfeit
32 an application fee or other payment, or otherwise incur any
33 liability to the proposed transferee based on a failure of
34 such transfer to satisfy the conditions of section 682.3.

35 Sec. 6. NEW SECTION. 682.6 CONSTRUCTION.

1 This chapter shall not be construed to authorize a transfer
2 of structured settlement payment rights in contravention of
3 applicable law or to give effect to a transfer of structured
4 settlement payment rights that is invalid under applicable
5 law.

6 Sec. 7. NEW SECTION. 85.35A TRANSFER OF STRUCTURED
7 SETTLEMENT PAYMENT RIGHTS.

8 Any transfer of structured settlement payment rights is
9 subject to or controlled by chapter 682. "Structured
10 settlement payment rights" means the same as defined in
11 section 682.2.

12 Sec. 8. NEW SECTION. 668.14A TRANSFER OF STRUCTURED
13 SETTLEMENT PAYMENT RIGHTS.

14 Any transfer of structured settlement payment rights is
15 subject to or controlled by chapter 682. "Structured
16 settlement payment rights" means the same as defined in
17 section 682.2.

18 Sec. 9. APPLICABILITY DATE. This Act shall apply to any
19 transfer of structured settlement payment rights under a
20 transfer agreement entered into on or after the effective date
21 of this Act. Nothing contained in this Act shall imply that
22 any transfer under a transfer agreement reached prior to the
23 effective date of this Act is effective.

24 EXPLANATION

25 This bill creates new Code chapter 682 which provides for
26 requirements and procedures for the transfer of structured
27 settlement payment rights for tort and workers' compensation
28 claims. The bill provides that a structured settlement
29 payment right is the right to receive periodic payments under
30 a structured settlement.

31 The bill provides that a transfer of a structured
32 settlement payment right shall not be effective unless the
33 transfer has been authorized in advance in a final order of a
34 court or responsible administrative authority and the final
35 order is based on several specific findings. These findings

1 include the following:

2 1. The transfer complies with the requirements new Code
3 chapter 682.

4 2. A disclosure statement containing certain specified
5 information is provided to the payee prior to any obligation
6 incurred pursuant to the transfer. The payee is the party
7 receiving payments under a structured settlement and proposing
8 to transfer the payment rights.

9 3. The payee must transfer the structured settlement
10 payment rights in order to avoid imminent financial hardship
11 and the transfer is not expected to subject the payee to undue
12 financial hardship in the future.

13 4. The payee has received independent professional advice
14 regarding the legal, tax, and financial implications of the
15 transfer.

16 5. If the transfer would contravene the terms of the
17 structured settlement, the transfer must be expressly approved
18 in writing by each interested party and the court or
19 government authority that originally approved the structured
20 settlement, and all written approvals must be filed with the
21 court or government authority that originally approved the
22 structured settlement.

23 6. The transferee has given written notice of the
24 transferee's name, address, and taxpayer identification number
25 to the annuity issuer and structured settlement obligor and
26 has filed a copy of the notice with the court.

27 The bill provides that the district court shall have
28 jurisdiction over any application for authorization of a
29 transfer of structured settlement payment rights. The bill
30 provides notice requirements for a scheduled hearing on an
31 application for authorization of a transfer. The bill
32 provides that the insurance commissioner shall have standing
33 to raise, appear, and be heard on any matter relating to an
34 application for authorization of a transfer. The bill
35 provides that the provisions of new Code chapter 682 shall not

1 be waived and that a payee who proposes to make a transfer
2 shall not incur any penalty, forfeit any application fee or
3 other payment, or otherwise incur any liability to the
4 proposed transferee based on any failure of such transfer to
5 satisfy the conditions of the chapter.

6 The bill shall apply to any transfer of structured
7 settlement payment rights under a transfer agreement entered
8 into on or after July 1, 1999. The bill provides that nothing
9 in the bill shall imply that any transfer under a transfer
10 agreement reached prior to July 1, 1999, is effective.

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