

House Study Bill 11

Bill Text

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1 1 Section 1. NEW SECTION. 682.1 SHORT TITLE.
1 2 This chapter shall be known and may be cited as the
1 3 "Structured Settlement Protection Act".
1 4 Sec. 2. NEW SECTION. 682.2 DEFINITIONS.
1 5 As used in this chapter, unless the context otherwise
1 6 requires:
1 7 1. "Annuity issuer" means an issuer that has issued an
1 8 insurance contract used to fund periodic payments under a
1 9 structured settlement.
1 10 2. "Applicable law" means all of the following:
1 11 a. The federal laws of the United States.
1 12 b. The laws of this state, including principles of equity
1 13 applied in the courts of this state.
1 14 c. The laws of any other jurisdiction which meet any of
1 15 the following criteria:
1 16 (1) Is the domicile of the payee or any other interested
1 17 party.
1 18 (2) Under whose laws a structured settlement agreement was
1 19 approved by a court or responsible administrative authority.
1 20 (3) In whose courts a settled claim was pending when the
1 21 parties entered into a structured settlement agreement.
1 22 3. "Dependents" means a payee's spouse and minor children
1 23 and all other family members and other persons for whom the
1 24 payee is legally obligated to provide support, including
1 25 alimony.
1 26 4. "Discounted present value" means the fair present value
1 27 of future payments, as determined by discounting such payments
1 28 to the present using the most recently published applicable
1 29 federal rate for determining the present value of an annuity,
1 30 as issued by the United States internal revenue service.
1 31 5. "Favorable tax determination" means, with respect to a
1 32 proposed transfer of structured settlement payment rights, a
1 33 determination by any of the following authorities that
1 34 definitively establishes that the federal income tax treatment
1 35 of the structured settlement for the parties to the structured
2 1 settlement agreement and any qualified assignment agreement,
2 2 other than the payee, will not be affected by such transfer:
2 3 a. A provision of the Internal Revenue Code or a United
2 4 States treasury regulation adopted pursuant to the Internal
2 5 Revenue Code.
2 6 b. A revenue ruling or revenue procedure issued by the
2 7 United States internal revenue service.
2 8 c. A private letter ruling by the United States internal
2 9 revenue service with respect to such transfer.
2 10 d. A decision of the United States supreme court or a
2 11 decision of a lower federal court in which the United States
2 12 internal revenue service has acquiesced.
2 13 6. "Federal hardship standard" means a federal standard
2 14 applicable to transfers of structured settlement payment
2 15 rights based on findings of a court or responsible
2 16 administrative authority regarding the payees' needs, as
2 17 contained in the Internal Revenue Code or in a United States
2 18 treasury regulation adopted pursuant to the Internal Revenue
2 19 Code.
2 20 7. "Independent professional advice" means advice of an
2 21 attorney, certified public accountant, actuary, or other

2 22 licensed professional advisor who meets all of the following
2 23 criteria:

2 24 a. Is engaged by a payee to render advice concerning the
2 25 legal, tax, and financial implications of a transfer of
2 26 structured settlement payment rights.

2 27 b. Is not in any manner affiliated with or compensated by
2 28 the transferee of the transfer.

2 29 c. Compensation for rendering such advice is not affected
2 30 by whether a transfer occurs or does not occur.

2 31 8. "Interested parties" means, with respect to a
2 32 structured settlement, the payee, a beneficiary designated
2 33 under the annuity contract to receive payments following the
2 34 payee's death, the annuity issuer, the structured settlement
2 35 obligor, and any other party that has continuing rights or
3 1 obligations under the structured settlement.

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

3 5 10. "Qualified assignment agreement" means an agreement
3 6 providing for a qualified assignment within the meaning of
3 7 section 130 of the Internal Revenue Code.

3 8 11. "Responsible administrative authority" means, with
3 9 respect to a structured settlement, any government authority
3 10 vested by law with exclusive jurisdiction over the settled
3 11 claim resolved by the structured settlement.

3 12 12. "Settled claim" means the original tort claim or
3 13 workers' compensation claim resolved by a structured
3 14 settlement.

3 15 13. "Structured settlement" means an arrangement for
3 16 periodic payment of damages for personal injuries established
3 17 by settlement or judgment in resolution of a tort claim or for
3 18 periodic payments in settlement of a workers' compensation
3 19 claim.

3 20 14. "Structured settlement agreement" means the agreement,
3 21 judgment, stipulation, or release embodying the terms of a
3 22 structured settlement, including the rights of the payee to
3 23 receive periodic payments.

3 24 15. "Structured settlement obligor" means the party that
3 25 has the continuing periodic payment obligation to the payee
3 26 under a structured settlement agreement or a qualified
3 27 assignment agreement.

3 28 16. "Structured settlement payment rights" means rights to
3 29 receive periodic payments, including lump sum payments, under
3 30 a structured settlement, whether from the structured
3 31 settlement obligor or the annuity issuer, if any of the
3 32 following exists:

3 33 a. The payee or any other interested party is domiciled in
3 34 this state.

3 35 b. The structured settlement agreement was approved by a
4 1 court or responsible administrative authority in this state.

4 2 c. The settled claim was pending before the courts of this
4 3 state when the parties entered into the structured settlement.

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

4 11 18. "Transfer" means a sale, assignment, pledge,
4 12 hypothecation, or other form of alienation or encumbrance made
4 13 by a payee for consideration.

4 14 19. "Transfer agreement" means the agreement providing for
4 15 transfer of structured settlement payment rights from a payee
4 16 to a transferee.

4 17 Sec. 3. NEW SECTION. 682.3 CONDITIONS TO TRANSFERS OF
4 18 STRUCTURED SETTLEMENT PAYMENT RIGHTS.

4 19 A direct or indirect transfer of structured settlement
4 20 payment rights shall not be effective and a structured
4 21 settlement obligor or annuity issuer shall not be required to
4 22 make a payment directly or indirectly to a transferee of
4 23 structured settlement payment rights unless the transfer has
4 24 been authorized in advance in a final order of a court of
4 25 competent jurisdiction or a responsible administrative
4 26 authority, based on express findings by the court or
4 27 responsible administrative authority that all of the following
4 28 exist:

4 29 1. The transfer complies with the requirements of this
4 30 chapter and will not contravene other applicable law.

4 31 2. Not less than ten days prior to the date on which the
4 32 payee first incurs an obligation with respect to the transfer,
4 33 the transferee has provided to the payee a disclosure
4 34 statement in bold type and in a font not smaller than fourteen
4 35 points stating all of the following:

5 1 a. The amounts and due dates of the structured settlement
5 2 payments to be transferred.

5 3 b. The aggregate amount of the payments to be transferred.

5 4 c. The discounted present value of the payments to be
5 5 transferred, together with the discount rate used in
5 6 determining the discounted present value.

5 7 d. The gross amount payable to the payee in exchange for
5 8 the transfer of the payments.

5 9 e. An itemized listing of all brokers' commissions,
5 10 service charges, application fees, processing fees, closing
5 11 costs, filing fees, administrative fees, legal fees, notary
5 12 fees, and other commissions, fees, costs, expenses, and
5 13 charges payable by the payee or deductible from the gross
5 14 amount otherwise payable to the payee.

5 15 f. The net amount payable to the payee after deduction of
5 16 all commissions, fees, costs, expenses, and charges described
5 17 in paragraph "e".

5 18 g. The quotient, expressed as a percentage, obtained by
5 19 dividing the net payment amount by the discounted present
5 20 value of the payments.

5 21 h. The amount of any penalty and the aggregate amount of
5 22 any liquidated damages, inclusive of penalties, payable by the
5 23 payee in the event of a breach of the transfer agreement by
5 24 the payee.

5 25 3. The payee has established that the transfer is
5 26 necessary to enable the payee, the payee's dependents, or
5 27 both, to avoid imminent financial hardship, and the transfer
5 28 is not expected to subject the payee, the payee's dependents,
5 29 or both, to undue financial hardship in the future. However,
5 30 if at the time the payee and the transferee entered into the
5 31 transfer agreement, a federal hardship standard was in effect,
5 32 then in lieu of the foregoing finding the court or responsible
5 33 administrative authority shall make an express finding that
5 34 the transfer qualifies under such federal hardship standard.

5 35 4. The payee has received independent professional advice
6 1 regarding the legal, tax, and financial implications of the
6 2 transfer.

6 3 5. If the transfer would contravene the terms of the
6 4 structured settlement, both of the following must occur:

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

6 7 (1) Each interested party. However, if at the time the
6 8 payee and the transferee entered into the transfer agreement a
6 9 favorable tax determination was in effect, then the approval
6 10 of the annuity issuer and the structured settlement obligor
6 11 shall not be required if all other interested parties approve
6 12 the transfer and waive any and all rights to require that the
6 13 transferred payments be made to the payee in accordance with
6 14 the terms of the structured settlement.

6 15 (2) Any court or government authority, other than the

6 16 court or responsible administrative authority from which
6 17 authorization of the transfer is sought under this chapter,
6 18 which previously approved the structured settlement.

6 19 b. Signed originals of all approvals required under
6 20 paragraph "a" have been filed with the court or responsible
6 21 administrative authority from which authorization of the
6 22 transfer is sought under this chapter and originals or copies
6 23 have been furnished to all interested parties.

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

6 29 Sec. 4. NEW SECTION. 682.4 JURISDICTION PROCEDURE FOR
6 30 APPROVAL OF TRANSFERS.

6 31 1. The district court shall have jurisdiction over an
6 32 application for authorization under section 682.3 of a
6 33 transfer of structured settlement payment rights.

6 34 2. Not less than twenty days prior to the scheduled
6 35 hearing on an application for authorization of a transfer of
7 1 structured settlement payment rights under section 682.3, the
7 2 transferee shall file with the court or responsible
7 3 administrative authority and serve on any other government
7 4 authority which previously approved the structured settlement,
7 5 on all interested parties, and on the commissioner of
7 6 insurance, a notice of the proposed transfer and the
7 7 application for its authorization. The notice shall include
7 8 all of the following:

7 9 a. A copy of the transferee's application.

7 10 b. A copy of the transfer agreement.

7 11 c. A copy of the disclosure statement required under
7 12 section 682.3, subsection 2.

7 13 d. Notification that an interested party is entitled to
7 14 support, oppose, or otherwise respond to the transferee's
7 15 application, either in person or by counsel, by submitting
7 16 written comments to the court or responsible administrative
7 17 authority or by participating in the hearing.

7 18 e. Notification of the time and place of the hearing and
7 19 notification of the manner in which and the time by which
7 20 written responses to the application must be filed, which
7 21 shall not be less than fifteen days after service of the
7 22 transferee's notice, in order to be considered by the court or
7 23 responsible administrative authority.

7 24 3. The commissioner of insurance shall have standing to
7 25 raise, appear, and be heard on any matter relating to an
7 26 application for authorization of a transfer of structured
7 27 settlement payment rights under this chapter.

7 28 Sec. 5. NEW SECTION. 682.5 WAIVER PENALTIES.

7 29 1. The provisions of this chapter shall not be waived.

7 30 2. A payee who proposes to make a transfer of structured
7 31 settlement payment rights shall not incur a penalty, forfeit
7 32 an application fee or other payment, or otherwise incur any
7 33 liability to the proposed transferee based on a failure of
7 34 such transfer to satisfy the conditions of section 682.3.

7 35 Sec. 6. NEW SECTION. 682.6 CONSTRUCTION.

8 1 This chapter shall not be construed to authorize a transfer
8 2 of structured settlement payment rights in contravention of
8 3 applicable law or to give effect to a transfer of structured
8 4 settlement payment rights that is invalid under applicable
8 5 law.

8 6 Sec. 7. NEW SECTION. 85.35A TRANSFER OF STRUCTURED
8 7 SETTLEMENT PAYMENT RIGHTS.

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

8 12 Sec. 8. NEW SECTION. 668.14A TRANSFER OF STRUCTURED

8 13 SETTLEMENT PAYMENT RIGHTS.

8 14 Any transfer of structured settlement payment rights is
8 15 subject to or controlled by chapter 682. "Structured
8 16 settlement payment rights" means the same as defined in
8 17 section 682.2.

8 18 Sec. 9. APPLICABILITY DATE. This Act shall apply to any
8 19 transfer of structured settlement payment rights under a
8 20 transfer agreement entered into on or after the effective date
8 21 of this Act. Nothing contained in this Act shall imply that
8 22 any transfer under a transfer agreement reached prior to the
8 23 effective date of this Act is effective.

8 24 EXPLANATION

8 25 This bill creates new Code chapter 682 which provides for
8 26 requirements and procedures for the transfer of structured
8 27 settlement payment rights for tort and workers' compensation
8 28 claims. The bill provides that a structured settlement
8 29 payment right is the right to receive periodic payments under
8 30 a structured settlement.

8 31 The bill provides that a transfer of a structured
8 32 settlement payment right shall not be effective unless the
8 33 transfer has been authorized in advance in a final order of a
8 34 court or responsible administrative authority and the final
8 35 order is based on several specific findings. These findings

9 1 include the following:

9 2 1. The transfer complies with the requirements new Code
9 3 chapter 682.

9 4 2. A disclosure statement containing certain specified
9 5 information is provided to the payee prior to any obligation
9 6 incurred pursuant to the transfer. The payee is the party
9 7 receiving payments under a structured settlement and proposing
9 8 to transfer the payment rights.

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

9 13 4. The payee has received independent professional advice
9 14 regarding the legal, tax, and financial implications of the
9 15 transfer.

9 16 5. If the transfer would contravene the terms of the
9 17 structured settlement, the transfer must be expressly approved
9 18 in writing by each interested party and the court or
9 19 government authority that originally approved the structured
9 20 settlement, and all written approvals must be filed with the
9 21 court or government authority that originally approved the
9 22 structured settlement.

9 23 6. The transferee has given written notice of the
9 24 transferee's name, address, and taxpayer identification number
9 25 to the annuity issuer and structured settlement obligor and
9 26 has filed a copy of the notice with the court.

9 27 The bill provides that the district court shall have
9 28 jurisdiction over any application for authorization of a
9 29 transfer of structured settlement payment rights. The bill
9 30 provides notice requirements for a scheduled hearing on an
9 31 application for authorization of a transfer. The bill
9 32 provides that the insurance commissioner shall have standing
9 33 to raise, appear, and be heard on any matter relating to an
9 34 application for authorization of a transfer. The bill
9 35 provides that the provisions of new Code chapter 682 shall not
10 1 be waived and that a payee who proposes to make a transfer
10 2 shall not incur any penalty, forfeit any application fee or
10 3 other payment, or otherwise incur any liability to the
10 4 proposed transferee based on any failure of such transfer to
10 5 satisfy the conditions of the chapter.

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

10 10 agreement reached prior to July 1, 1999, is effective.

10 11 LSB 1478HC 78

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