

Senate Study Bill 1142

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. "Dependents" means a payee's spouse and minor children
1 11 and all other family members and other persons for whom the
1 12 payee is legally obligated to provide support, including
1 13 alimony.
1 14 3. "Discounted present value" means the fair present value
1 15 of future payments, as determined by discounting such payments
1 16 to the present using the most recently published applicable
1 17 federal rate for determining the present value of an annuity,
1 18 as issued by the United States internal revenue service.
1 19 4. "Gross advance amount" means the sum payable to the
1 20 payee or for the payee's account as consideration for a
1 21 transfer of structured settlement payment rights before any
1 22 reductions for transfer expenses or other deductions to be
1 23 made from such consideration.
1 24 5. "Independent professional advice" means advice of an
1 25 attorney, certified public accountant, actuary, or other
1 26 licensed professional advisor.
1 27 6. "Interested parties" means, with respect to a
1 28 structured settlement, the payee, a beneficiary irrevocably
1 29 designated under the annuity contract to receive payments
1 30 following the payee's death, the annuity issuer, the
1 31 structured settlement obligor, and any other party that has
1 32 continuing rights or obligations under the structured
1 33 settlement.
1 34 7. "Net advance amount" means the gross advance amount
1 35 less the aggregate amount of the actual and estimated transfer
2 1 expenses required to be disclosed under section 682.3,
2 2 subsection 5.
2 3 8. "Payee" means an individual who is receiving tax-free
2 4 payments under a structured settlement and proposes to make a
2 5 transfer of payment rights.
2 6 9. "Periodic payments" means both recurring payments and
2 7 scheduled future lump sum payments.
2 8 10. "Qualified assignment agreement" means an agreement
2 9 providing for a qualified assignment within the meaning of
2 10 section 130 of the Internal Revenue Code.
2 11 11. "Responsible administrative authority" means, with
2 12 respect to a structured settlement, any government authority
2 13 vested by law with exclusive jurisdiction over the settled
2 14 claim resolved by the structured settlement.
2 15 12. "Settled claim" means the original tort claim or
2 16 workers' compensation claim resolved by a structured
2 17 settlement.
2 18 13. "Structured settlement" means an arrangement for
2 19 periodic payment of damages for personal injuries established
2 20 by settlement or judgment in resolution of a tort claim or for
2 21 periodic payments in settlement of a workers' compensation

2 22 claim.

2 23 14. "Structured settlement agreement" means the agreement,
2 24 judgment, stipulation, or release embodying the terms of a
2 25 structured settlement.

2 26 15. "Structured settlement obligor" means, with respect to
2 27 a structured settlement, the party that has the continuing
2 28 periodic payment obligation to the payee under a structured
2 29 settlement agreement or a qualified assignment agreement.

2 30 16. "Structured settlement payment rights" means rights to
2 31 receive periodic payments under a structured settlement,
2 32 whether from the structured settlement obligor or the annuity
2 33 issuer, if any of the following exists:

2 34 a. One of the following is true:

2 35 (1) The payee is domiciled in this state.

3 1 (2) The domicile or principal place of business of a
3 2 structured settlement obligor or the annuity issuer is located
3 3 in this state.

3 4 b. The structured settlement agreement was approved by a
3 5 court or responsible administrative authority in this state.

3 6 c. The structured settlement agreement is expressly
3 7 governed by the laws of this state.

3 8 17. "Terms of the structured settlement" means, with
3 9 respect to a structured settlement, the terms of the
3 10 structured settlement agreement, the annuity contract, any
3 11 qualified assignment agreement, and any order or approval of
3 12 any court or responsible administrative authority or other
3 13 government authority authorizing or approving the structured
3 14 settlement.

3 15 18. "Transfer" means any sale, assignment, pledge,
3 16 hypothecation, or other alienation or encumbrance of
3 17 structured settlement payment rights made by a payee for
3 18 consideration. "Transfer" does not include the creation or
3 19 perfection of a security interest in structured settlement
3 20 payment rights under a blanket security agreement entered into
3 21 with an insured depository institution, in the absence of any
3 22 action to redirect the structured settlement payments to such
3 23 insured depository institution, or an agent or successor in
3 24 interest thereof, or otherwise to enforce such blanket
3 25 security interest against the structured settlement payment
3 26 rights.

3 27 19. "Transfer agreement" means the agreement providing for
3 28 transfer of structured settlement payment rights.

3 29 20. "Transfer expenses" means all expenses of a transfer
3 30 that are required under the transfer agreement to be paid by
3 31 the payee or deducted from the gross advance amount,
3 32 including, without limitation, court filing fees, attorney
3 33 fees, escrow fees, lien recordation fees, judgment and lien
3 34 search fees, finders' fees, commissions, and other payments to
3 35 a broker or other intermediary. "Transfer expenses" does not
4 1 include preexisting obligations of the payee payable for the
4 2 payee's account from the proceeds of a transfer.

4 3 21. "Transferee" means a party acquiring or proposing to
4 4 acquire structured settlement payment rights through a
4 5 transfer.

4 6 Sec. 3. NEW SECTION. 682.3 REQUIRED DISCLOSURES TO
4 7 PAYEE.

4 8 Not less than three days prior to the date on which a payee
4 9 signs a transfer agreement, the transferee shall provide to
4 10 the payee a separate disclosure statement, in bold type no
4 11 smaller than fourteen points, setting forth all of the
4 12 following:

4 13 1. The amounts and due dates of the structured settlement
4 14 payments to be transferred.

4 15 2. The aggregate amount of the structured settlement
4 16 payments.

4 17 3. The discounted present value of the payments to be
4 18 transferred which shall be identified as the "calculation of

4 19 current value of the transferred structured settlement
4 20 payments under federal standards for valuing annuities", and
4 21 the amount of the applicable federal rate used in calculating
4 22 the discounted present value.

4 23 4. The gross advance amount.

4 24 5. An itemized listing of all applicable transfer
4 25 expenses, other than attorney fees and related disbursements
4 26 payable in connection with the transferee's application for
4 27 approval of the transfer, and the transferee's best estimate
4 28 of the amount of any such fees and disbursements.

4 29 6. The net advance amount.

4 30 7. The amount of any penalties or liquidated damages
4 31 payable by the payee in the event of any breach of the
4 32 transfer agreement by the payee.

4 33 8. A statement that the payee has the right to cancel the
4 34 transfer agreement, without penalty or further obligation, not
4 35 later than the third business day after the agreement is
5 1 signed by the payee.

5 2 Sec. 4. NEW SECTION. 682.4 APPROVAL OF TRANSFERS OF
5 3 STRUCTURED SETTLEMENT PAYMENT RIGHTS.

5 4 A transfer of structured settlement payment rights shall
5 5 not be effective and a structured settlement obligor or
5 6 annuity issuer shall not be required to make any payment
5 7 directly or indirectly to a transferee of structured
5 8 settlement payment rights unless the transfer has been
5 9 approved in advance in a final court order or order of a
5 10 responsible administrative authority based on express findings
5 11 by such court or responsible administrative authority
5 12 regarding all of the following:

5 13 1. The transfer is in the best interest of the payee,
5 14 taking into account the welfare and support of the payee's
5 15 dependents.

5 16 2. The payee has been advised in writing by the transferee
5 17 to seek independent professional advice regarding the transfer
5 18 and has either received such advice or knowingly waived such
5 19 advice in writing.

5 20 3. The transfer does not contravene any applicable statute
5 21 or the order of any court or other government authority.

5 22 Sec. 5. NEW SECTION. 682.5 EFFECTS OF TRANSFER OF
5 23 STRUCTURED SETTLEMENT PAYMENT RIGHTS.

5 24 1. The structured settlement obligor and the annuity
5 25 issuer shall, as to all parties except the transferee, be
5 26 discharged and released from any and all liability for the
5 27 transferred payments.

5 28 2. The transferee shall be liable to the structured
5 29 settlement obligor and the annuity issuer for all of the
5 30 following:

5 31 a. If the transfer contravenes the terms of the structured
5 32 settlement, any taxes incurred by the structured settlement
5 33 obligor and the annuity issuer as a consequence of the
5 34 transfer.

5 35 b. Any other liabilities or costs, including reasonable
6 1 costs and attorney fees, arising from compliance by such
6 2 parties with the order of the court or responsible
6 3 administrative authority or arising as a consequence of the
6 4 transferee's failure to comply with this chapter.

6 5 3. An annuity issuer and the structured settlement obligor
6 6 shall not be required to divide any periodic payment between
6 7 the payee and any transferee or assignee or between two or
6 8 more transferees or assignees.

6 9 4. Any further transfer of structured settlement payment
6 10 rights by the payee may be made only after compliance with all
6 11 of the requirements of this chapter.

6 12 Sec. 6. NEW SECTION. 682.6 PROCEDURE FOR APPROVAL OF
6 13 TRANSFERS.

6 14 1. An application under this chapter for approval of a
6 15 transfer of structured settlement payment rights shall be made

6 16 by the transferee and may be brought in the county in which
6 17 the payee resides, in the county in which the structured
6 18 settlement obligor or the annuity issuer maintains its
6 19 principal place of business, or in any court or before any
6 20 responsible administrative authority which approved the
6 21 structured settlement agreement.

6 22 2. Not less than twenty days prior to the scheduled
6 23 hearing on any application for approval of a transfer of
6 24 structured settlement payment rights under section 682.4, the
6 25 transferee shall file with the court or responsible
6 26 administrative authority and serve on all interested parties a
6 27 notice of the proposed transfer and the application for its
6 28 authorization. All of the following shall be included with
6 29 the notice:

6 30 a. A copy of the transferee's application.

6 31 b. A copy of the transfer agreement.

6 32 c. A copy of the disclosure statement required under
6 33 section 682.3.

6 34 d. A listing of each of the payee's dependents, together
6 35 with each dependent's age.

7 1 e. Notification that any interested party is entitled to
7 2 support, oppose, or otherwise respond to the transferee's
7 3 application, either in person or by counsel, by submitting
7 4 written comments to the court or responsible administrative
7 5 authority, or by participating in the hearing.

7 6 f. Notification of the time and place of the hearing and
7 7 notification of the manner in which and the time by which
7 8 written responses to the application must be filed, which
7 9 shall not be less than fifteen days after service of the
7 10 transferee's notice, in order to be considered by the court or
7 11 responsible administrative authority.

7 12 Sec. 7. NEW SECTION. 682.7 GENERAL PROVISIONS

7 13 CONSTRUCTION PENALTIES.

7 14 1. The provisions of this chapter shall not be waived by a
7 15 payee.

7 16 2. A transfer agreement entered into on or after the
7 17 thirtieth day after the effective date of this Act by a payee
7 18 who resides in this state shall provide that disputes under
7 19 the transfer agreement, including any claim that the payee has
7 20 breached the agreement, shall be determined under the laws of
7 21 this state. A transfer agreement shall not authorize the
7 22 transferee or any other party to confess judgment or consent
7 23 to entry of judgment against the payee.

7 24 3. A transfer of structured settlement payment rights
7 25 shall not extend to any payments that are life-contingent
7 26 unless, prior to the date on which the payee signs the
7 27 transfer agreement, the transferee has established and has
7 28 agreed to maintain procedures reasonably satisfactory to the
7 29 annuity issuer and the structured settlement obligor for both
7 30 of the following:

7 31 a. Periodically confirming the payee's survival.

7 32 b. Giving the annuity issuer and the structured settlement
7 33 obligor prompt written notice in the event of the payee's
7 34 death.

7 35 4. A payee who proposes to make a transfer of structured
8 1 settlement payment rights shall not incur any penalty, forfeit
8 2 any application fee or other payment, or otherwise incur any
8 3 liability to the proposed transferee or any assignee based on
8 4 any failure of the transfer to satisfy the conditions of this
8 5 chapter.

8 6 5. This chapter shall not be construed to authorize any
8 7 transfer of structured settlement payment rights in
8 8 contravention of any law or to imply that any transfer under a
8 9 transfer agreement entered into prior to the effective date of
8 10 this Act is valid or invalid.

8 11 6. Compliance with the requirements set forth in section
8 12 682.3 and fulfillment of the conditions set forth in section

8 13 682.4 shall be solely the responsibility of the transferee in
8 14 any transfer of structured settlement payment rights, and
8 15 neither the structured settlement obligor nor the annuity
8 16 issuer shall bear any responsibility for, or any liability
8 17 arising from, noncompliance with the requirements or failure
8 18 to fulfill the conditions.

8 19 Sec. 8. APPLICABILITY DATE. This Act shall apply to any
8 20 transfer of structured settlement payment rights under a
8 21 transfer agreement entered into on or after the thirtieth day
8 22 after the effective date of this Act. Nothing contained in
8 23 this Act shall imply that any transfer under a transfer
8 24 agreement reached prior to the thirtieth day after the
8 25 effective date of this Act is effective.

8 26 EXPLANATION

8 27 This bill creates new Code chapter 682, which provides for
8 28 requirements and procedures for the transfer of structured
8 29 settlement payment rights for tort and workers' compensation
8 30 claims. The bill provides that a structured settlement
8 31 payment right is the right to receive periodic payments under
8 32 a structured settlement if certain criteria are met.

8 33 The bill provides that not less than three days prior to
8 34 the date on which a payee signs a transfer agreement, the
8 35 transferee shall provide the payee with a separate disclosure
9 1 statement. The bill provides that the disclosure statement
9 2 shall include information relating to the amounts, due dates,
9 3 and aggregate amount of the structured settlement payments,
9 4 the discounted value of the payments to be transferred, the
9 5 gross advance amount, an itemized listing of all applicable
9 6 transfer expenses, the net advance amount, the amount of any
9 7 penalties or liquidated damages payable by the payee in the
9 8 event of any breach of the transfer agreement by the payee,
9 9 and a statement that the payee has the right to cancel the
9 10 transfer agreement under certain conditions.

9 11 The bill provides that a transfer of structured settlement
9 12 payment rights shall not be effective unless the transfer has
9 13 been approved in advance in a final court order or order of a
9 14 responsible administrative authority. The bill provides that
9 15 the order must be based on express findings regarding that the
9 16 transfer is in the best interest of the payee, that the payee
9 17 has been advised in writing by the transferee to seek
9 18 independent professional advice, and that the transfer does
9 19 not contravene any applicable statute or order of any court or
9 20 other governmental authority.

9 21 The bill provides that the structured settlement obligor
9 22 and the annuity issuer shall be, as to all parties except the
9 23 transferee, discharged and released from liability for the
9 24 structured payments. The bill identifies the liabilities of
9 25 the transferee in relation to the structured settlement
9 26 obligor and the annuity issuer. The bill provides that the
9 27 annuity issuer and the structured settlement obligor shall not
9 28 be required to divide periodic payments.

9 29 The bill provides for the procedure that shall be followed
9 30 in order to receive approval of a transfer of structured
9 31 settlement payment rights. The bill provides for the venue
9 32 where an application must be brought. The bill also provides
9 33 certain notice provisions.

9 34 The bill provides that the provisions of Code chapter 682
9 35 shall not be waived. The bill provides jurisdictional
10 1 provisions. The bill provides that a transfer shall not
10 2 extend to payments that are life-contingent unless certain
10 3 procedures are agreed to. The bill provides that a payee who
10 4 proposes to make a transfer shall not incur any penalty,
10 5 forfeit any fee, or incur any liability if the transfer does
10 6 not meet the requirements of Code chapter 682.

10 7 The bill shall apply to any transfer under transfer
10 8 agreement entered into on or after the thirtieth day after the
10 9 effective date of this bill. The bill provides that nothing

10 10 in the bill shall imply that a transfer under a transfer
10 11 agreement reached prior to that date is effective.
10 12 LSB 1808SC 79
10 13 tm/gg/8