



SPONSOR: Rep. Van Sant & Rep. Ewing

HOUSE OF REPRESENTATIVES

140th GENERAL ASSEMBLY

HOUSE BILL NO.

AN ACT TO AMEND PART IV, TITLE 10 OF THE DELAWARE CODE RELATING TO SETTLEMENTS IN CIVIL ACTIONS; AND PROVIDING FOR A STRUCTURED SETTLEMENT PROTECTION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part IV, Title 10 of the Delaware Code by adding thereto a new Chapter, designated as Chapter 66, which new Chapter shall read as follows:

"CHAPTER 66. STRUCTURED SETTLEMENTS

§6601. Conditions to transfers of structured settlement payment rights.

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or responsible administrative authority, based on express findings by such court or responsible administrative authority that:

(1) the transfer complies with the requirements of this Chapter and will not contravene other applicable law;

(2) not less than ten (10) days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no small than 14 points, setting forth:

(i) the amounts and due dates of the structured settlement payments to be transferred;

(ii) the aggregate amount of such payments;

(iii) the discounted present value of such payments, together with the discount rate used in determining such discounted present value;

(iv) the gross amount payable to the payee in exchange for such payments;

(v) an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

(vi) the net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in subparagraph (v) of this paragraph;

(vii) the quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and

(viii) the amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) the payee has established that the transfer is necessary to enable the payee, the payee's dependents, or both, to avoid imminent financial hardship, and the transfer should not be expected to subject the payee, the payee's dependents, or both, to undue financial hardship in the future; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a federal hardship standard was in effect, then, in lieu of the foregoing finding, the court or responsible administrative authority must make an express finding that the transfer qualifies under such federal hardship standard;

(4) the payee has received independent professional advice regarding the legal, tax and financial implications of the transfer;

(5) if the transfer would contravene the terms of the structured settlement:

(i) the transfer has been expressly approved in writing by:

a. each interested party; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a favorable tax

determination was in effect, then the approval of the annuity issuer and the structured settlement obligor shall not be required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

b. any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this Chapter, which previously approved the structured settlement; and

(ii) signed originals of all approvals required under subparagraph (I) of this paragraph have been filed with the court or responsible administrative authority from which authorization of the transfer is sought under this Chapter, and originals or copies have been furnished to all interested parties; and

(5) the transferee has given written notice of the transferee's name, address and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority.

#### §6602. Definitions

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

(a) "Annuity issuer" shall mean an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(b) "Applicable law" shall mean:

(i) the federal laws of the United States;

(ii) the laws of this State, including principles of equity applied in the courts of this State; and

(iii) the laws of any other jurisdiction:

a. which is the domicile of the payee or any other interested party;

b. under whose laws a structured settlement agreement was approved by  
a court; or

c. in whose courts a settled claim was pending when the parties entered  
into a structured settlement agreement;

(c) "Dependents" shall include a payee's spouse and minor children and all other family  
members and other persons for whom the payee is legally obligated to provide support, including  
alimony;

(d) "Discounted present value" shall mean the fair present value of future payments, as  
determined by discounting such payments to the present using the most recently published  
applicable federal rate for determining the present value of an annuity, as issued by the United  
States Internal Revenue Service;

(e) "Favorable tax determination" shall mean, with respect to a proposed transfer of  
structured settlement payment rights, any of the following authorities that definitively establishes  
that the federal income tax treatment of the structured settlement for the parties to the structured  
settlement agreement and any qualified assignment agreement, other than the payee, will not be  
affected by such transfer:

(i) a provision of the United States Internal Revenue Code, United States Code  
Title 26, as amended from time to time, or a United States Treasury regulation adopted  
pursuant thereto;

(ii) a revenue ruling or revenue procedure issued by the United States Internal  
Revenue Service;

(iii) a private letter ruling by the United States Internal Revenue Service with  
respect to such transfer;

(iv) a decision of the United States Supreme Court or a decision of a lower  
federal court in which the United States Internal Revenue Service has acquiesced;

(f) "Federal hardship standard" shall mean a federal standard applicable to transfers of  
structured settlement payment rights based on findings of a court or responsible administrative

authority regarding the payees' needs, as contained in the United States Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;

(g) "Independent professional advice" shall mean the advice of an attorney, certified public accountant, actuary or other licensed professional adviser:

(i) who is engaged by a payee to render advice concerning the legal, tax and financial implications of a transfer of structured settlement payment rights;

(ii) who is not in any manner affiliated with or compensated by the transferee of such transfer; and

(iii) whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur.

(h) "Interested parties" shall mean, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

(i) "Payee" shall mean an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(j) "Qualified assignment agreement" shall mean an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code.

United States Code Title 26, as amended from time to time;

(k) "Responsible administrative authority" shall mean, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(l) "Settled claim" shall mean the original tort claim or workers' compensation claim resolved by a structured settlement;

(m) "Structured settlement" shall mean an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(n) "Structured settlement agreement" shall mean the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(o) "Structured settlement obligor" shall mean, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(p) "Structured settlement payment rights" shall mean rights to receive periodic payments (including lump sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

(i) the payee, the settlement obligor, the annuity issuer, or any other interested party is domiciled in this State;

(ii) the structured settlement agreement was approved by a court or responsible administrative authority in this State; or

(iii) the settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(q) "Transfer" shall mean any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration; and

(r) "Terms of the structured settlement" shall include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement;

(s) "Transfer agreement" shall mean the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

§6603. Jurisdiction; procedure for approval of transfers.

(a) The Superior Court shall have non-exclusive jurisdiction over any application for authorization, under §6601 of this Chapter, of a transfer of structured settlement payment rights.

(b) Not less than twenty (20) days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under §6601 of this Chapter, the transferee shall file with the court and serve on any other government authority which previously approved the structured settlement, on all interested parties, and on the Office of the Attorney General, the Director of the Consumer Affairs Unit, the Insurance Commissioner and any known State official who is vested with discretionary authority to be heard in proceedings under this Chapter, a notice of the proposed transfer and the application for its authorization, including in such notice:

(i) a copy of the transferee's application;

(ii) a copy of the transfer agreement;

(iii) a copy of the disclosure statement required under §6601(b) of this Chapter;

(iv) notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(v) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed (which shall be not less than fifteen (15) days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority.

(c) Those parties, persons and officials named in §6603(b) shall have standing to raise, appear and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Chapter.

§6604. No waiver; no penalties.

(a) The provisions of this Chapter shall not be waived.

(b) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of §6601 of this Chapter.

## Section 2. CONSTRUCTION.

Nothing contained in this Chapter shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law.

## Section 3. EFFECTIVE DATE.

This Chapter shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the thirty-first (31st) day after the date of enactment of this Chapter; provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is effective.

## SYNOPSIS

In the last several years specialized financing firms, sometimes called factoring companies, have promoted unregulated secondary market "purchases" of structured settlement payments from injury victims, often at steep discounts. These purchases, referred to as factoring transactions, harm both the settlement recipients and the other parties to structured settlements. The Model Structured Settlement Protection Act, which has provided the pattern for statutes enacted in Kentucky, Virginia and West Virginia and under consideration in other states, protects all parties to structured settlements by regulating transfers of structured settlement payments while upholding their fundamental purpose.

This Act is the Model Structured Settlement Act. It requires Court approval as a pre-condition to the effectiveness of any transfer of "structured settlement payment rights," and sets forth the findings that the Court must make in order to approve a transfer. For example, the Court must find that:

- 1) The structured settlement recipient has established that the transfer is necessary to enable the recipient and/or his dependents to avoid imminent financial hardship.
- 2) The structured settlement recipient has received a disclosure statement setting out the key economic terms of the proposed transfer, including the amount of the discount.
- 3) The recipient has received "independent professional advice" concerning the proposed transfer.
- 4) The proposed transfer complies with the requirements of this Act and will not contravene other applicable law.

This Act would also explicitly protect annuity issuers and owners from tax and double liability risks by assuring that all appropriate parties have approved any transfer of structured settlement payments.

Structured settlements are widely used to provide long-term financial security to victims of serious injuries. Lump sum payments in compensation for serious personal injuries are often dissipated, leaving the injury victims to depend on state and federal assistance programs. Structured settlements provided a better choice, permitting injury victims to receive assured tax-free payments tailored to meet their continuing needs and backed by annuity contracts



issued by highly rated insurers. Because structured settlements are intended to protect injury victims against dissipation risks and potential tax liability based on "constructive receipt" of annuity values, structured settlement recipients are prohibited by contract from transferring their payments, and ownership of the annuity contracts is vested in insurance companies or their affiliates.