

SENATE, No. 1872

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MAY 10, 1999

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

SYNOPSIS

Prohibits transfer of structured settlement rights except under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning structured settlements.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. As used in this act:

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

9 "Applicable law" means:

10 (1) The federal laws of the United States;

11 (2) The laws of this State, including principles of equity applied in
12 the courts of this State; and

13 (3) The laws of any other jurisdiction:

14 (a) Which is the domicile of the payee or any other interested
15 party;

16 (b) Under whose laws a structured settlement agreement was
17 approved by a court or responsible administrative authority; or

18 (c) In whose court a settled claim was pending when the parties
19 entered into a structured settlement agreement.

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

23 "Discounted present value" means the fair present value of future
24 payments, as determined by discounting the payments to the present
25 using the most recently published applicable federal rate for
26 determining the present value of an annuity, as issued by the United
27 States Internal Revenue Service.

28 "Expenses" means brokers' commissions, service charges,
29 application fees, processing fees, closing costs, filing fees,
30 administrative fees, legal fees, notary fees and other commissions,
31 costs, expenses and charges payable by the payee or deductible from
32 the gross consideration that would be paid to the payee in connection
33 with the transfer.

34 "Favorable tax determination" means, with respect to the proposed
35 transfer of structured settlement payment rights, any of the following
36 authorities that definitively establishes that the federal income tax
37 treatment of the structured settlement for the parties to the structured
38 settlement agreement and any qualified assignment agreement, other
39 than the payee, will not be affected by the transfer:

40 (1) A provision of Title 26 of the United States Code or a United
41 States Treasury regulation adopted pursuant thereto;

42 (2) A revenue ruling or revenue procedure issued by the United
43 States Internal Revenue Service;

44 (3) A private letter ruling by the United States Internal Revenue
45 Service with respect to the transfer; or

46 (4) A decision of the United States Supreme Court or a decision

1 of a lower federal court in which the United States Internal Revenue
2 Service has acquiesced.

3 "Federal hardship standard" means a federal standard applicable to
4 transfers of structured settlement payment rights based on findings of
5 a court or responsible administrative authority regarding the payee's
6 needs, as contained in Title 26 of the United States Code, or in a
7 United States Treasury regulation adopted pursuant thereto.

8 "Independent professional advice" means advice of an attorney,
9 certified public accountant, actuary or other licensed professional
10 advisor:

11 (1) Who is engaged by a payee to render advice concerning the
12 legal, tax and financial implications of a transfer of structured
13 settlement payment rights;

14 (2) Who is not in any manner affiliated with or compensated by the
15 transferee of the transfer; and

16 (3) Whose compensation for rendering advice is not affected by
17 whether a transfer occurs or does not occur.

18 "Interested parties" means, with respect to any structured
19 settlement, the payee, any beneficiary designated under the annuity
20 contract to receive payments following the payee's death, the annuity
21 issuer, the structured settlement obligor, and any other party that has
22 continuing rights or obligations under the structured settlement.

23 "Payee" means an individual who is receiving tax free damage
24 payments under a structured settlement and proposes to make a
25 transfer of payment rights thereunder.

26 "Qualified assignment agreement" means an agreement providing
27 for a qualified assignment within the meaning of 26 U.S.C. s.130.

28 "Responsible administrative authority" means, with respect to a
29 structured settlement, any government authority vested by law with
30 exclusive jurisdiction over the settled claim resolved by the structured
31 settlement.

32 "Settled claim" means the original tort claim or workers'
33 compensation claim resolved by a structured settlement.

34 "Structured settlement" means an arrangement for periodic payment
35 of damages for personal injuries established by settlement or judgment
36 in resolution of a tort claim or for periodic payments in settlement of
37 a workers' compensation claim.

38 "Structured settlement agreement" means the agreement, judgment,
39 stipulation, or release embodying the terms of a structured settlement,
40 including the rights of the payee to receive periodic payments.

41 "Structured settlement obligor" means, with respect to any
42 structured settlement, the party that has the continuing periodic
43 payment obligation to the payee under a structured settlement
44 agreement or a qualified assignment agreement.

45 "Structured settlement payment rights" means the rights to receive
46 periodic payments, including a lump sum payment, under a structured

1 settlement, whether from the settlement obligor or the annuity issuer,
2 if:

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

5 (2) The structured settlement agreement was approved by a court
6 or responsible administrative authority in this State; or

7 (3) The settled claim was pending before the courts of this State
8 when the parties entered into the structured settlement agreement.

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

15 "Transfer" means any sale, assignment, pledge, hypothecation, or
16 other form of alienation or encumbrance made by a payee for
17 consideration.

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

20 "Transferee" means any person receiving structured settlement
21 payment rights resulting from a transfer.

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23 2. No direct or indirect transfer of structured settlement payment
24 rights shall be effective and no structured settlement obligor or annuity
25 issuer shall be required to make any payment directly or indirectly to
26 any transferee of structured settlement payment rights unless the
27 transfer has been authorized in advance by a final order of a court of
28 competent jurisdiction or a responsible administrative authority, based
29 on express findings, after a hearing, by that court or responsible
30 administrative authority that:

31 a. The transfer complies with the requirements of this act and does
32 not contravene other applicable law;

33 b. Not less than 10 days prior to the date on which the payee first
34 incurred any obligation with respect to the transfer, the transferee had
35 provided to the payee a disclosure statement in bold type, no smaller
36 than 14 points, setting forth:

37 (1) The amounts and due dates of the structured settlement
38 payments to be transferred;

39 (2) The aggregate amount of those payments;

40 (3) The discounted present value of those payments, together with
41 the discount rate used in determining the discounted present value;

42 (4) The gross amount payable to the payee in exchange for those
43 payments;

44 (5) An itemized listing of all expenses;

45 (6) The net amount payable to the payee after deduction of all
46 expenses;

1 (7) The quotient, expressed as a percentage, obtained by dividing
2 the net payment amount by the discounted present value of the
3 payments; and

4 (8) The amount of any penalty and the aggregate amount of any
5 liquidated damages, inclusive of penalties, payable by the payee in the
6 event of any breach of the transfer agreement by the payee;

7 c. The payee has established that the transfer is necessary to enable
8 the payee, the payee's dependents, or both, to avoid imminent financial
9 hardship, and the transfer should not be expected to subject the payee,
10 the payee's dependents, or both, to undue financial hardship in the
11 future; except that if, at the time the payee and the transferee entered
12 into the transfer agreement, a federal hardship standard is in effect,
13 then in lieu of the foregoing finding, the court or responsible
14 administrative authority shall make an express finding that the transfer
15 qualifies under that federal hardship standard;

16 d. The payee has received independent professional advice
17 regarding the legal, tax and financial implications of the transfer;

18 e. If the transfer would contravene the terms of the structured
19 settlement:

20 (1) The transfer has been expressly approved in writing by:

21 (a) Each interested party; provided, however, that if, at the time
22 the payee and the transferee entered into the transfer agreement, a
23 favorable tax determination was in effect, then the approval of the
24 annuity issuer and the structured settlement obligor shall not be
25 required if all other interested parties approve the transfer and waive
26 any and all rights to require that the transferred payments be made to
27 the payee in accordance with the terms of the structured settlement;
28 and

29 (b) Any court or government authority, other than the court or
30 responsible administrative authority from which authorization of the
31 transfer is sought under this act, which previously approved the
32 structured settlement; and

33 (2) Signed originals of all approvals required under paragraph (1)
34 of this subsection have been filed with the court or responsible
35 administrative authority from which authorization of the transfer is
36 sought under this act, and originals or copies have been furnished to
37 all interested parties; and

38 f. The transferee has given written notice of the transferee's name,
39 address and taxpayer identification number to the annuity issuer and
40 the structured settlement obligor and has filed a copy of the notice
41 with the court or responsible administrative authority.

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43 3. a. The Superior Court shall have non-exclusive jurisdiction over
44 any application for authorization of a transfer of structured settlement
45 payment rights under this act.

46 b. Not less than 20 days prior to the scheduled hearing on any

1 application for authorization of a transfer of structured settlement
2 payment rights under section 2 of this act, the transferee shall file with
3 the court or responsible administrative authority, and serve on any
4 other government authority which previously approved the structured
5 settlement, on all interested parties, and on the Attorney General, a
6 notice of the proposed transfer and the application for its
7 authorization, including in the notice:

8 (1) A copy of the transferee's application;

9 (2) A copy of the transfer agreement;

10 (3) A copy of the disclosure statement required under subsection
11 b. of section 2 of this act;

12 (4) Notification that any interested party may support, oppose or
13 otherwise respond to the transferee's application, either in person or
14 by counsel, by submitting written comments to the court or responsible
15 administrative authority or by participating in the hearing; and

16 (5) Notification of the time and place of the hearing and
17 notification of the manner in which, and the time by which, written
18 responses to the application shall be filed, which shall be not less than
19 15 days after service of the transferee's notice, in order to be
20 considered by the court or responsible administrative authority.

21 c. The Attorney General shall have standing to raise, appear and be
22 heard on any matter relating to an application for authorization of a
23 transfer of structured settlement payment rights under this act.

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25 4. The provisions of this act shall not be waived.

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27 5. No payee who proposes to make a transfer of structured
28 settlement payment rights shall incur any penalty, forfeit any
29 application fee or other payment, or otherwise incur any liability to the
30 proposed transferee based on any failure of the transfer to satisfy the
31 conditions of section 2 of this act.

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33 6. Nothing contained in this act shall be construed to authorize any
34 transfer of structured settlement payment rights in contravention of
35 applicable law or to give effect to any transfer of structured settlement
36 payment rights that is invalid under applicable law.

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38 7. This act shall take effect on the 30th day following enactment
39 and shall apply to any transfer of structured settlement payment rights
40 under a transfer agreement entered into on or after the effective date.

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43 STATEMENT

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45 This bill protects recipients of long-term structured settlements
46 from aggressive marketing by factoring companies seeking to persuade

1 these people to cash out future payments at sharp discounts.
2 Structured settlements are a well-recognized means of compensating
3 victims of serious, often disabling, physical injuries. Under a
4 structured settlement, the parties reach a negotiated agreement under
5 which the injured person receives compensation in the form of a
6 stream of payments, tailored to the person's future needs. The future
7 payments are tax-free and refunded through an annuity contract or
8 U.S. Treasury obligations.

9 Structured settlements provide strong public policy benefits. They
10 provide long-term financial protection for injury victims and their
11 families. They provide against the loss or dissipation of lump sum
12 recoveries. Factoring companies, commonly using phone banks,
13 advertising and high-pressure sales to "buy" the settlement for a small
14 lump-sum payment, undermine these benefits and may exploit an
15 injured person at a time when they need cash.

16 This bill requires advance approval by the court or a responsible
17 administrative authority for all factoring transactions. To approve a
18 transaction the court must find that: the transfer will not violate other
19 applicable laws (such as state laws prohibiting the assignment of
20 workers' compensation settlements); the transfer is necessary to avoid
21 imminent financial hardship; the key economic terms of the proposed
22 transfer have been disclosed to the settlement recipient; and the
23 settlement recipient has received independent professional advice
24 concerning the transfer.