

HOUSE BILL REPORT

EHB 1347

As Amended by the Senate

Title: An act relating to creating the structured settlement protection act.

Brief Description: Creating the structured settlement protection act.

Sponsors: By Representatives Benson and Hatfield.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/6/01, 2/9/01 [DP].

Floor Activity:

Passed House: 3/9/01, 93-0.

Senate Amended.

Passed Senate: 4/10/01, 46-0.

Brief Summary of Engrossed Bill

A process is created by which a third party must first obtain court approval before acquiring the rights of the original beneficiary to receive annuity payments under a structured settlement agreement. Before the court will approve such an acquisition, a third party must make specified disclosures to the original beneficiary and comply with notice requirements. The court cannot approve a proposed acquisition without entering a finding that the transaction is in the best interests of the original beneficiary.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 12 members: Representatives Benson, Republican Co-Chair; Hatfield, Democratic Co-Chair; Bush, Republican Vice Chair; McIntire, Democratic Vice Chair; Barlean, Cairnes, DeBolt, Keiser, Miloscia, Roach, Santos and Simpson.

Staff: Thamas Osborn (786-7129).

Background:

In the settlement of large tort claims, damages are often paid by a defendant to a plaintiff

in the form of what is called a "structured settlement.— In its simplest form, a structured settlement typically involves the initial payment of a lump sum, followed by a series of subsequent smaller payments that are made at specified intervals over a period of years (an "annuity").

This approach to the payment of damages can be advantageous to both parties. Structured settlements are usually paid by an insurance company (the "obligor"), that obtains a benefit by paying off the obligation in installments over a long period of time, rather than as a single lump sum. The recipient of the proceeds of a structured settlement (the "payee") can benefit as well, since the annuity payments are not subject to federal income tax and the receipt of payments over the long term can provide financial security.

It has become commonplace for a payee to transfer his or her right to receive the annuity to a third party corporation (the "transferee"), via a contract called a "transfer agreement.— In return, the payee receives a single lump sum payment representing the discounted present value of the annuity.

Currently, state law does not specifically regulate the practice of companies acquiring the rights to receive the annuity proceeds of structured settlement agreements.

Summary of Bill:

The bill creates a new chapter under Title 19 RCW, to be entitled the "Structured Settlement Protection Act.—

The payee's right to receive annuity payments from an obligor under a structured settlement agreement cannot be acquired from the payee by the transferee absent a formal application by the transferee which requires approval via court order. A transfer agreement that is not ratified by court order cannot be enforced against the obligor.

The burden of acquiring the court order is on the transferee, who must arrange a court hearing and serve all interested parties, including the payee and obligor, with at least 20 days advance notice. The notice must describe the proposed transfer, contain a copy of the transfer agreement, list the names and ages of the payee's dependents, and describe the procedural rights of the parties.

A court may not enter an order approving a transfer agreement without first making factual findings that 1) the agreement is in the best interests of the payee and his or her dependents, 2) the payee received professional advice about the transfer or knowingly waived such advice in writing, and 3) the transfer does not violate any court order, statute or government regulation.

The transferee is required to provide specific written disclosures to the payee not less

than three days prior to the date on which the payee signs the transfer agreement. The disclosures must include: 1) the amount of the lump sum payment to be received by the payee and an itemization of any deductions for expenses; 2) the aggregate amount of the payments being transferred; 3) the discounted present value of the payments being transferred; 4) the amount of penalties or liquidated damages for which the payee may be liable in the event of breach of the agreement by the payee; and 5) the statement that the payee may cancel the agreement not later than the third business day after signing.

The legal requirements set forth in the bill cannot be waived by a payee, and any such waiver is thus void.

Once a transfer agreement has been formally approved via court order, the obligor is relieved of any legal obligation towards the payee with respect to the transferred payments. The legal obligations between the obligor and transferee are specified with respect to costs, fees and taxes.

The bill allows for the transfer agreement approval process to be undertaken through administrative proceedings rather than court action.

EFFECT OF SENATE AMENDMENT(S):

The striking amendment adds provisions making the transferee responsible for compliance with the act and which impose on the transferee all risks associated with noncompliance. The payee may not be held liable or in any way penalized for a transfer that violates the provisions of the act. The act is declared to have no affect with respect to transfer agreements in existence prior to the effective date of the act.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Fifteen other states have enacted similar laws. The bill is a benefit to consumers/payees because it has disclosure requirements and provides judicial oversight over the entire process. The bill ensures that payees are treated fairly and are able to make informed decisions. Structured settlements are a useful tool that can provide a disabled person with necessary care over a lifetime. This bill will help resolve conflicts between insurance companies and the industry that purchases the annuity rights of payees.

Testimony Against: None

Testified: Basil Badley, American Council of Life Insurers.

