

SENATE BILL REPORT

EHB 1347

As Reported By Senate Committee On:
Labor, Commerce & Financial Institutions, March 29, 2001

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: Labor, Commerce & Financial Institutions: 3/20/01, 3/29/01 [DPA].

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Benton, Franklin, Hochstatter, Honeyford, Patterson, Rasmussen, Regala, West and Winsley.

Staff: Dave Cheal (786-7576)

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 Amended Bill: A new chapter is created 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 must 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 transfer agreement approval process may be undertaken through administrative proceedings rather than court action.

Amended Bill Compared to Original Bill: The striking amendment adds provisions which place responsibility for compliance, and the risk of noncompliance with the act with the transferee. The act is declared to have no affect on prior transfer agreements.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The disclosure requirements and judicial oversight are important protections for persons who wish to sell their structured settlement payment rights. Disabled persons

who need the payments for long term care can be protected from improvident lump sum payments. The interests of beneficiaries and dependents can also be protected by the court.

Testimony Against: None.

Testified: David Stillman, DSHS, Division of Child Support (pro); Basil Badley, ACU (pro).