
ENGROSSED HOUSE BILL 1347

AS AMENDED BY THE SENATE

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By Representatives Benson and Hatfield

Read first time 01/24/2001. Referred to Committee on Financial
Institutions & Insurance.

1 AN ACT Relating to creating the structured settlement protection
2 act; and adding a new chapter to Title 19 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the
5 structured settlement protection act.

6 NEW SECTION. **Sec. 2.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise.

8 (1) "Annuity issuer" means an insurer that has issued a contract to
9 fund periodic payments under a structured settlement.

10 (2) "Dependents" means a payee's spouse and minor children and all
11 other persons for whom the payee is legally obligated to provide
12 support, including alimony.

13 (3) "Discounted present value" means the present value of future
14 payments determined by discounting such payments to the present using
15 the most recently published applicable federal rate for determining the
16 present value of an annuity, as issued by the United States internal
17 revenue service.

1 (4) "Gross advance amount" means the sum payable to the payee or
2 for the payee's account as consideration for a transfer of structured
3 settlement payment rights before any reductions for transfer expenses
4 or other deductions to be made from such consideration.

5 (5) "Independent professional advice" means advice of an attorney,
6 certified public accountant, actuary, or other licensed professional
7 adviser.

8 (6) "Interested parties" means, with respect to any structured
9 settlement, the payee, any beneficiary irrevocably designated under the
10 annuity contract to receive payments following the payee's death, the
11 annuity issuer, the structured settlement obligor, and any other party
12 that has continuing rights or obligations under such structured
13 settlement.

14 (7) "Net advance amount" means the gross advance amount less the
15 aggregate amount of the actual and estimated transfer expenses required
16 to be disclosed under section 3(5) of this act.

17 (8) "Payee" means an individual who is receiving tax-free payments
18 under a structured settlement and proposes to make a transfer of
19 payment rights thereunder.

20 (9) "Periodic payments" means (a) recurring payments and (b)
21 scheduled future lump sum payments.

22 (10) "Qualified assignment agreement" means an agreement providing
23 for a qualified assignment within the meaning of section 130 of the
24 United States Internal Revenue Code (26 U.S.C. Sec. 130), as amended.

25 (11) "Responsible administrative authority" means, with respect to
26 a structured settlement, any government authority vested by law with
27 exclusive jurisdiction over the settled claim resolved by such
28 structured settlement.

29 (12) "Settled claim" means the original tort claim or workers'
30 compensation claim resolved by a structured settlement.

31 (13) "Structured settlement" means an arrangement for periodic
32 payment of compensation for injuries or sickness as described in 26
33 U.S.C. Sec. 104(a)(1) or (2), as amended, or an arrangement for
34 periodic payment of benefits under a special needs trust as described
35 in 42 U.S.C. Sec. 1396p(d)(4), as amended.

36 (14) "Structured settlement agreement" means the agreement,
37 judgment, stipulation, or release embodying the terms of a structured
38 settlement.

1 (15) "Structured settlement obligor" means, with respect to any
2 structured settlement, the party that has the continuing obligation to
3 make periodic payments to the payee under a structured settlement
4 agreement or a qualified assignment agreement.

5 (16) "Structured settlement payment rights" means rights to receive
6 periodic payments under a structured settlement, whether from the
7 structured settlement obligor or the annuity issuer, if:

8 (a) The payee is domiciled in, or the domicile or principal place
9 of business of the structured settlement obligor or the annuity issuer
10 is located in, this state;

11 (b) The structured settlement agreement was approved by a court or
12 responsible administrative authority in this state; or

13 (c) The structured settlement agreement is expressly governed by
14 the laws of this state.

15 (17) "Terms of the structured settlement" means, with respect to
16 any structured settlement, the terms of the structured settlement
17 agreement, the annuity contract, any qualified assignment agreement and
18 any order or other approval of any court or responsible administrative
19 authority or other government authority that authorized or approved
20 such structured settlement.

21 (18) "Transfer" means any sale, assignment, pledge, hypothecation
22 or other alienation or encumbrance of structured settlement payment
23 rights made by a payee for consideration. However, "transfer" does not
24 mean the creation or perfection of a security interest in structured
25 settlement payment rights under a blanket security agreement entered
26 into with an insured depository institution, in the absence of any
27 action to redirect the structured settlement payments to such insured
28 depository institution, or an agent or successor in interest thereof,
29 or otherwise to enforce such blanket security interest against the
30 structured settlement payment rights.

31 (19) "Transfer agreement" means the agreement providing for a
32 transfer of structured settlement payment rights.

33 (20) "Transfer expenses" means all expenses of a transfer that are
34 required under the transfer agreement to be paid by the payee or
35 deducted from the gross advance amount, including, without limitation,
36 court filing fees, attorneys' fees, escrow fees, lien recordation fees,
37 judgment and lien search fees, finders' fees, commissions, and other
38 payments to a broker or other intermediary. "Transfer expenses" does

1 not mean preexisting obligations of the payee payable for the payee's
2 account from the proceeds of a transfer.

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

5 NEW SECTION. **Sec. 3.** Not less than three days prior to the date
6 on which a payee signs a transfer agreement, the transferee shall
7 provide to the payee a separate disclosure statement, in bold type no
8 smaller than 14 points, setting forth:

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

11 (2) The aggregate amount of such payments;

12 (3) The discounted present value of the payments to be transferred,
13 which shall be identified as the "calculation of current value of the
14 transferred structured settlement payments under federal standards for
15 valuing annuities", and the amount of the applicable federal rate used
16 in calculating such discounted present value;

17 (4) The gross advance amount;

18 (5) An itemized listing of all applicable transfer expenses, other
19 than attorneys' fees and related disbursements payable in connection
20 with the transferee's application for approval of the transfer, and the
21 transferee's best estimate of the amount of any such fees and
22 disbursements;

23 (6) The net advance amount;

24 (7) The amount of any penalties or liquidated damages payable by
25 the payee in the event of any breach of the transfer agreement by the
26 payee; and

27 (8) A statement that the payee has the right to cancel the transfer
28 agreement, without penalty or further obligation, not later than the
29 third business day after the date the agreement is signed by the payee.

30 NEW SECTION. **Sec. 4.** A direct or indirect transfer of structured
31 settlement payment rights is not effective and a structured settlement
32 obligor or annuity issuer is not required to make any payment directly
33 or indirectly to any transferee of structured settlement payment rights
34 unless the transfer has been approved in advance in a final court order
35 or order of a responsible administrative authority based on express
36 findings by such court or responsible administrative authority that:

1 (1) The transfer is in the best interest of the payee, taking into
2 account the welfare and support of the payee's dependents;

3 (2) The payee has been advised in writing by the transferee to seek
4 independent professional advice regarding the transfer and has either
5 received such advice or knowingly waived such advice in writing; and

6 (3) The transfer does not contravene any applicable statute or the
7 order of any court or other government authority.

8 NEW SECTION. **Sec. 5.** Following a transfer of structured
9 settlement payment rights under this chapter:

10 (1) The structured settlement obligor and the annuity issuer shall,
11 as to all parties except the transferee, be discharged and released
12 from any and all liability for the transferred payments;

13 (2) The transferee shall be liable to the structured settlement
14 obligor and the annuity issuer:

15 (a) If the transfer contravenes the terms of the structured
16 settlement, for any taxes incurred by such parties as a consequence of
17 the transfer; and

18 (b) For any other liabilities or costs, including reasonable costs
19 and attorneys' fees, arising from compliance by such parties with the
20 order of the court or responsible administrative authority or arising
21 as a consequence of the transferee's failure to comply with this
22 chapter;

23 (3) Neither the annuity issuer nor the structured settlement
24 obligor may be required to divide any periodic payment between the
25 payee and any transferee or assignee or between two, or more,
26 transferees or assignees; and

27 (4) Any further transfer of structured settlement payment rights by
28 the payee may be made only after compliance with all of the
29 requirements of this chapter.

30 NEW SECTION. **Sec. 6.** (1) An application under this chapter for
31 approval of a transfer of structured settlement payment rights shall be
32 made by the transferee and may be brought in the county in which the
33 payee resides, in the county in which the structured settlement obligor
34 or the annuity issuer maintains its principal place of business, or in
35 any court or before any responsible administrative authority which
36 approved the structured settlement agreement.

1 (2) Not less than twenty days prior to the scheduled hearing on any
2 application for approval of a transfer of structured settlement payment
3 rights under section 4 of this act, the transferee shall file with the
4 court or responsible administrative authority and serve on all
5 interested parties a notice of the proposed transfer and the
6 application for its authorization, including with such notice:

7 (a) A copy of the transferee's application;

8 (b) A copy of the transfer agreement;

9 (c) A copy of the disclosure statement required under section 3 of
10 this act;

11 (d) A listing of each of the payee's dependents, together with each
12 dependent's age;

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

18 (f) Notification of the time and place of the hearing and
19 notification of the manner in which and the time by which written
20 responses to the application must be filed, which may not be less than
21 fifteen days after service of the transferee's notice, in order to be
22 considered by the court or responsible administrative authority.

23 NEW SECTION. **Sec. 7.** (1) The provisions of this chapter may not
24 be waived by any payee.

25 (2) Any transfer agreement entered into on or after the effective
26 date of this act by a payee who resides in this state shall provide
27 that disputes under such transfer agreement, including any claim that
28 the payee has breached the agreement, shall be determined in and under
29 the laws of this state. Such a transfer agreement may not authorize
30 the transferee or any other party to confess judgment or consent to
31 entry of judgment against the payee.

32 (3) Transfer of structured settlement payment rights do not extend
33 to any payments that are life contingent unless, prior to the date on
34 which the payee signs the transfer agreement, the transferee has
35 established and has agreed to maintain procedures reasonably
36 satisfactory to the annuity issuer and the structured settlement
37 obligor for (a) periodically confirming the payee's survival, and (b)

1 giving the annuity issuer and the structured settlement obligor prompt
2 written notice in the event of the payee's death.

3 (4) No payee who proposes to make a transfer of structured
4 settlement payment rights may incur any penalty, forfeit any
5 application fee or other payment, or otherwise incur any liability to
6 the proposed transferee or any assignee based on any failure of such a
7 transfer to satisfy the conditions of this chapter.

8 (5) This chapter does not authorize any transfer of structured
9 settlement payment rights in contravention of any law, nor does it
10 imply that any transfer under a transfer agreement entered into prior
11 to the effective date of this act is valid or invalid.

12 (6) Compliance with the requirements set forth in section 3 of this
13 act and fulfillment of the conditions set forth in section 4 of this
14 act is the sole responsibility of the transferee in any transfer of
15 structured settlement payment rights, and neither the structured
16 settlement obligor nor the annuity issuer bear any responsibility for,
17 or any liability arising from, noncompliance with the requirements or
18 failure to fulfill the conditions.

19 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute
20 a new chapter in Title 19 RCW.

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