

THE STATE OF ALABAMA
BILL TEXT



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2006 AL H.B. 288

ALABAMA 2006 REGULAR SESSION

HOUSE BILL 288

REP(S). BY REPRESENTATIVE MCLAUGHLIN
BILL NUMBER: HB288
ENROLLED, AN ACT,

BILL TRACKING REPORT: 2006 Bill Tracking AL H.B. 288

2006 Bill Text AL H.B. 288

VERSION: Enacted

VERSION-DATE: April 27, 2006

SYNOPSIS: Relating to transfers of structured settlement payment rights; to provide definitions of terms used in this act, including a definition of the term "structured settlement" that excludes workers' compensation settlements; to provide for required disclosures to the payee; to require a disclosure statement be provided to the payee by the transferee not less than three days prior to the date on which a payee signs a transfer agreement; to prescribe the style of and what shall be set forth in the disclosure statement from the transferee to the payee; to provide that the payee has the right to cancel the transfer agreement within three business days after the date the agreement was signed; to provide for the approval of transfers of structured settlement payment rights; to require advance authorization by a court or administrative authority based on express findings made after a factual hearing by the court or administrative authority in order for a transfer of structured settlement payment rights to be effective; to prescribe the express findings on which the court or administrative authority shall base the advance authorization; to provide for the effects of transfer of structured settlement payment rights; to provide that the structured settlement obligor and the annuity issuer have no liability for the transferred payments as to all parties except the transferee; to provide the circumstances when the transferee will be liable to the structured settlement obligor and the annuity issuer; to provide that the structured settlement obligor and the annuity issuer may not be required to divide periodic payments between the payee and transferee; to prescribe the procedure for approval of transfers of structured settlement payment rights; to provide where an application for approval of a transfer of structured settlement payment rights may be brought; to require the transferee to file with the court or administrative authority and serve all interested parties with a notice of the proposed transfer and application not less than 20 days prior to the hearing; to provide what shall be set forth and provided with the notice; to provide that the provisions of this act may not be waived by a payee; to provide that a transfer agreement entered into on or after the effective date of this act by a payee who resides in this state shall provide that disputes under the transfer agreement shall be governed by the laws of this state; to provide the procedures the transferee shall establish and maintain to allow payments of structured settlement payment rights that are life-contingent; to protect a payee from liability to a proposed transferee or assignee based on any failure of the transfer to satisfy the conditions of this act; to prohibit transfers in contravention of any law; to not imply that any transfer under a transfer agreement prior to the effective date of this act is valid or invalid; to provide that certain compliance requirements and the fulfillment of certain conditions in this act are the responsibility of the transferee and not the structured settlement obligor or the annuity issuer; to provide that nothing in the act shall require or allow the disclosure of the terms of a confidential settlement; and to provide for an effective date of this act.

NOTICE: [A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]
[D> Text within these symbols is deleted <D]

TEXT: BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and referred to as the "Structured Settlement Protection Act."

Section 2. As used in this act the following words and terms shall have the following meanings:

(1) ANNUITY ISSUER. An insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) DEPENDENTS. A payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

(3) DISCOUNTED PRESENT VALUE. The present value of future payments determined by discounting the 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.

(4) GROSS ADVANCE AMOUNT. The sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from the consideration.

(5) INDEPENDENT PROFESSIONAL ADVICE. Advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.

(6) INTERESTED PARTIES. With respect to any structured settlement, the payee, any beneficiary irrevocably 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.

(7) NET ADVANCE AMOUNT. The gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 3(e) of this act.

(8) PAYEE. An individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

(9) PERIODIC PAYMENTS. Includes both recurring payments and scheduled future lump sum payments.

(10) QUALIFIED ASSIGNMENT AGREEMENT. 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.

(11) RESPONSIBLE ADMINISTRATIVE AUTHORITY. With respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement.

(12) SETTLED CLAIM. The original tort claim resolved by a structured settlement.

(13) STRUCTURED SETTLEMENT. An arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

(14) STRUCTURED SETTLEMENT AGREEMENT. The agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(15) STRUCTURED SETTLEMENT OBLIGOR. With respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(16) STRUCTURED SETTLEMENT PAYMENT RIGHTS. Rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

a. The payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this state.

b. The structured settlement agreement was approved by a court or responsible administrative authority in this state.

c. The structured settlement agreement is expressly governed by the laws of this state.

(17) TERMS OF THE STRUCTURED SETTLEMENT. 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 other approval of any court or responsible administrative authority or other government authority that authorized or approved the structured settlement.

(18) TRANSFER. Any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term does not include the creation or perfection of a security interest in structured settlement payment rights under a security agreement entered into with a bank or other insured depository institution or a subsidiary or affiliate of a bank or other insured depository institution ("secured party") until and unless the secured party redirects the structured settlement payments to such secured party, or an agent or successor in interest thereof, or otherwise enforces the security interest against the structured settlement payment rights.

(19) TRANSFER AGREEMENT. The agreement providing for a transfer of structured settlement payment rights.

(20) TRANSFER EXPENSES. All expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys' fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary; the term does not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

(21) TRANSFEREE. A party acquiring or proposing to acquire structured settlement payment rights through a transfer; provided that the term does not include a secured party who has not received a transfer of the structured settlement payment rights as the term "transfer" is defined in subdivision (18).

Section 3. Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth all of the following:

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

(2) The aggregate amount of the payments.

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

(4) The gross advance amount.

(5) An itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of the fees and disbursements.

(6) The net advance amount.

(7) The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee.

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

Section 4. 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 approved in advance in a final court order or order of a responsible administrative authority based on express findings by the court or responsible administrative authority determined after a factual hearing that include all of the following:

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

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

(3) The transfer does not contravene any applicable [D> law <D] [A> STATUTE <A] or the order of any court or other government authority.

Section 5. (a) Following a transfer of structured settlement payment rights under this act:

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

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer in the following cases:

a. If the transfer contravenes the terms of the structured settlement, for any federal or state income taxes, interest, fees, and penalties incurred by the parties, including the annuity issuer and structured settlement obligor, as a consequence of the transfer.

b. For any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by the parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this act.

(b) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees.

(c) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this act.

Section 6. (a) An application under this act for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

(b) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of this act, the transferee shall file with the court or responsible administrative authority a notice of the proposed transfer and the application for its authorization. Such notice and application shall include all of the following:

(1) A copy of the transferee's application.

(2) A copy of the transfer agreement.

(3) A copy of the disclosure statement required under Section 3 of this act.

(4) A listing of each of the payee's dependents, together with each dependent's age.

(5) 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 a written response to the court or responsible administrative authority or by participating in the hearing.

(6) 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 15 days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

(c) The notice and application required by Section 6(b) above shall be served on all interested parties in the manner provided by the Alabama Rules of Civil Procedure for the service of process.

Section 7. (a) The provisions of this act may not be waived by any payee.

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

(c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(d) 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 or any assignee based on any failure of the transfer to satisfy the conditions of this act.

(e) Nothing contained in this act shall be constructed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this act is valid or invalid.

(f) Compliance with the requirements set forth in Section 3 of this act and fulfillment of the conditions set forth in Section 4 of this act shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

Section 8. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the 30th day after the effective date of this act; provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is either effective or ineffective.

Section 9. Nothing in this act shall be construed to apply to any settlement under the Alabama Workers' Compensation Law.

Section 10. Nothing in this act is intended to, or shall, require or allow the disclosure, publication, or dissemination of the terms of a settlement which is confidential, whether the confidentiality is created by agreement of the parties or by order of the court, or by both.

Section 11. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

SPONSOR: McLaughlin

SUBJECT: SETTLEMENT & COMPROMISE (90%); APPROVALS (90%); LEGISLATORS (59%); LITIGATION (59%); LAW COURTS & TRIBUNALS (59%); LEGISLATION (59%); REGULATORY COMPLIANCE (59%); US FEDERAL GOVERNMENT (59%);

COUNTRY: NORTH AMERICA (93%); UNITED STATES (93%);

STATE: ALABAMA, USA (93%);

LOAD-DATE: April 28, 2006