

SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 944

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED DECEMBER 4, 2000

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

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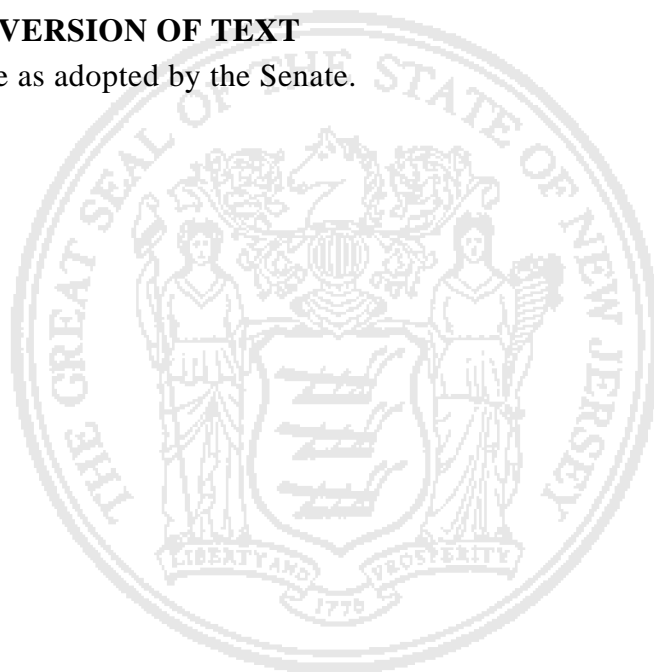
Senators Inverso and Bucco

SYNOPSIS

"Structured Settlement Protection Act."

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate.



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. This act shall be known and may be cited as the "Structured
7 Settlement Protection Act."

8

9 2. For the purposes of this act:

10 "Annuity issuer" means an insurer that has issued a contract to
11 fund periodic payments under a structured settlement.

12 "Dependents" includes a payee's spouse and minor children and all
13 other persons for whom the payee is legally obligated to provide
14 support, including alimony.

15 "Discounted present value" means the present value of future
16 payments determined by discounting those payments to the present
17 using the most recently published applicable federal rate for
18 determining the present value of an annuity, as issued by the United
19 States Internal Revenue Service.

20 "Gross advance amount" means the sum payable to the payee or
21 for the payee's account as consideration for a transfer of structured
22 settlement payment rights before any reductions for transfer expenses
23 or other deductions to be made from that consideration.

24 "Independent professional advice" means advice of an attorney,
25 certified public accountant, actuary or other licensed professional
26 adviser.

27 "Interested parties" means, with respect to any structured
28 settlement, the payee, any beneficiary irrevocably designated under the
29 annuity contract to receive payments following the payee's death, the
30 annuity issuer, the structured settlement obligor, and any other party
31 that has continuing rights or obligations under the structured
32 settlement.

33 "Net advance amount" means the gross advance amount less the
34 aggregate amount of the actual and estimated transfer expenses
35 required to be disclosed under subsection e. of section 3 of this act.

36 "Payee" means an individual who is receiving tax free payments
37 under a structured settlement and proposes to make a transfer of
38 payment rights thereunder.

39 "Periodic payments" includes both recurring payments and
40 scheduled future lump sum payments.

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

43 "Responsible administrative authority" means, with respect to a
44 structured settlement, any government authority vested by law with
45 exclusive jurisdiction over the settled claim resolved by the structured
46 settlement.

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

3 "Structured settlement" means an arrangement for periodic
4 payment of damages for personal injuries or sickness established by
5 settlement or judgment in resolution of a tort claim or for periodic
6 payments in settlement of a workers' compensation claim.

7 "Structured settlement agreement" means the agreement, judgment,
8 stipulation or release embodying the terms of a structured settlement.

9 "Structured settlement obligor" means, with respect to any
10 structured settlement, the party that has the continuing obligation to
11 make periodic payments to the payee under a structured settlement
12 agreement or a qualified assignment agreement.

13 "Structured settlement payment rights" means rights to receive
14 periodic payments under a structured settlement, whether from the
15 structured settlement obligor or the annuity issuer, if:

16 (1) the payee is domiciled in, or the domicile or principal place of
17 business of the structured settlement obligor or the annuity issuer is
18 located in, this State; or

19 (2) the structured settlement agreement was approved by a court
20 or responsible administrative authority in this State; or

21 (3) the structured settlement agreement is expressly governed by
22 the laws of this State.

23 "Terms of the structured settlement" include, with respect to any
24 structured settlement, the terms of the structured settlement
25 agreement, the annuity contract, any qualified assignment agreement
26 and any order or other approval of any court or responsible
27 administrative authority or other government authority that authorized
28 or approved the structured settlement.

29 "Transfer" means any sale, assignment, pledge, hypothecation or
30 other alienation or encumbrance of structured settlement payment
31 rights made by a payee for consideration; except that the term
32 "transfer" does not include the creation or perfection of a security
33 interest in structured settlement payment rights under a blanket
34 security agreement entered into with an insured depository institution,
35 in the absence of any action to redirect the structured settlement
36 payments to the insured depository institution, or an agent or
37 successor in interest thereof, or otherwise to enforce the blanket
38 security interest against the structured settlement payment rights.

39 "Transfer agreement" means the agreement providing for a transfer
40 of structured settlement payment rights.

41 "Transfer expenses" means all expenses of a transfer that are
42 required under the transfer agreement to be paid by the payee or
43 deducted from the gross advance amount, including, without
44 limitation, court filing fees, attorneys' fees, escrow fees, lien
45 recordation fees, judgment and lien search fees, finders' fees,
46 commissions, and other payments to a broker or other intermediary;

1 "transfer expenses" does not include preexisting obligations of the
2 payee payable for the payee's account from the proceeds of a transfer.

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

5

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

10 a. the amounts and due dates of the structured settlement
11 payments to be transferred;

12 b. the aggregate amount of the payments;

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

18 d. the gross advance amount;

19 e. an itemized listing of all applicable transfer expenses, other than
20 attorneys' fees and related disbursements payable in connection with
21 the transferee's application for approval of the transfer, and the
22 transferee's best estimate of the amount of any of those fees and
23 disbursements;

24 f. the net advance amount;

25 g. the amount of any penalties or liquidated damages payable by
26 the payee in the event of any breach of the transfer agreement by the
27 payee; and

28 h. a statement that the payee has the right to cancel the transfer
29 agreement, without penalty or further obligation, not later than the
30 third business day after the date the agreement is signed by the payee.

31

32 4. No direct or indirect transfer of structured settlement payment
33 rights shall be effective and no structured settlement obligor or annuity
34 issuer shall be required to make any payment directly or indirectly to
35 any transferee of structured settlement payment rights unless the
36 transfer has been approved in advance in a final court order or order
37 of a responsible administrative authority based on express findings by
38 the court or responsible administrative authority that:

39 a. the transfer is in the best interest of the payee, taking into
40 account the welfare and support of the payee's dependents;

41 b. the payee has been advised in writing by the transferee to seek
42 independent professional advice regarding the transfer and has either
43 received the advice or knowingly waived the right to seek that advice
44 in writing; and

45 c. the transfer does not contravene any applicable statute or the
46 order of any court or other government authority.

1 5. Following a transfer of structured settlement payment rights
2 under this act:

3 a. The structured settlement obligor and the annuity issuer shall,
4 as to all parties except the transferee, be discharged and released from
5 any and all liability for the transferred payments;

6 b. The transferee shall be liable to the structured settlement
7 obligor and the annuity issuer:

8 (1) if the transfer contravenes the terms of the structured
9 settlement, for any taxes incurred by those parties as a consequence of
10 the transfer; and

11 (2) for any other liabilities or costs, including reasonable costs and
12 attorneys' fees, arising from compliance by those parties with the order
13 of the court or responsible administrative authority or arising as a
14 consequence of the transferee's failure to comply with this act;

15 c. Neither the annuity issuer nor the structured settlement obligor
16 shall be required to divide any periodic payment between the payee
17 and any transferee or assignee or between two or more transferees or
18 assignees; and

19 d. Any further transfer of structured settlement payment rights by
20 the payee shall be made in compliance with all of the requirements of
21 this act.

22

23 6. a. An application under this act to a court or responsible
24 administrative authority for approval of a transfer of structured
25 settlement payment rights shall be made by the transferee and may be
26 brought in the jurisdiction in which the payee resides, in the
27 jurisdiction in which the structured settlement obligor or the annuity
28 issuer maintains its principal place of business, or in any court or
29 before any responsible administrative authority which approved the
30 structured settlement agreement.

31 b. Not less than 20 days prior to the scheduled hearing on any
32 application for approval of a transfer of structured settlement payment
33 rights under section 4 of this act, the transferee shall file with the court
34 or responsible administrative authority and serve on all interested
35 parties a notice of the proposed transfer and the application for its
36 authorization, including with the notice:

37 (1) a copy of the transferee's application;

38 (2) a copy of the transfer agreement;

39 (3) a copy of the disclosure statement required under section 3 of
40 this act;

41 (4) a listing of each of the payee's dependents, together with each
42 dependent's age;

43 (5) notification that any interested party is entitled to support,
44 oppose or otherwise respond to the transferee's application, either in
45 person or by counsel, by submitting written comments to the court or
46 responsible administrative authority or by participating in the hearing;
47 and

1 (6) notification of the time and place of the hearing and
2 notification of the manner in which, and the time by which, written
3 responses to the application shall be filed, which shall be not less than
4 15 days after service of the transferee's notice, in order to be
5 considered by the court or responsible administrative authority.

6
7 7. a. The provisions of this act shall not be waived by any payee.

8 b. Any transfer agreement entered into on or after the effective
9 date of this act by a payee who resides in this State shall provide that
10 disputes under the transfer agreement, including any claim that the
11 payee has breached the agreement, shall be determined in and under
12 the laws of this State. No transfer agreement shall authorize the
13 transferee or any other party to confess judgment or consent to entry
14 of judgment against the payee.

15 c. No transfer of structured settlement payment rights shall extend
16 to any payments that are life-contingent unless, prior to the date on
17 which the payee signs the transfer agreement, the transferee has
18 established and has agreed to maintain procedures reasonably
19 satisfactory to the annuity issuer and the structured settlement obligor
20 for: (1) periodically confirming the payee's survival; and (2) giving the
21 annuity issuer and the structured settlement obligor prompt written
22 notice in the event of the payee's death.

23 d. No payee who proposes to make a transfer of structured
24 settlement payment rights shall incur any penalty, forfeit any
25 application fee or other payment, or otherwise incur any liability to the
26 proposed transferee or any assignee based on any failure of the
27 transfer to satisfy the conditions of this act.

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

32 f. Compliance with the requirements set forth in section 3 of this
33 act and fulfillment of the conditions set forth in section 4 of this act
34 shall be solely the responsibility of the transferee in any transfer of
35 structured settlement payment rights, and neither the structured
36 settlement obligor nor the annuity issuer shall bear any responsibility
37 for, or any liability arising from, non-compliance with those
38 requirements or failure to fulfill those conditions.

39
40 8. This act shall take effect on the 30th day following enactment
41 and shall apply to any transfer of structured settlement payment rights
42 under a transfer agreement entered into on or after the effective date
43 of this act; provided, however, that nothing contained herein shall
44 imply that any transfer under a transfer agreement reached prior to that
45 date is either effective or ineffective.

STATEMENT

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3 This bill, a Senate Substitute for Senate Committee Substitute for
4 Senate Bill No. 944, provides for the regulation of the transfer of
5 structured settlement payment rights by recipients thereof (known as
6 payees in the bill) to factoring companies (known as transferees in the
7 bill).

8 The bill provides that the transfer of structured settlement payment
9 rights is not effective and the structured settlement obligor and annuity
10 issuer are not obligated to pay a factoring company unless a court or
11 responsible administrative authority approves the transfer. To approve
12 the transfer, the court or responsible administrative authority must find
13 that:

- 14 1. the transfer is in the best interest of the payee, taking into
15 account the welfare and support of the payee's dependents;
- 16 2. the payee has been advised in writing by the factoring company
17 to seek independent professional advice regarding the transfer and has
18 either received the advice or knowingly waived the right to seek that
19 advice in writing; and
- 20 3. the transfer does not contravene any applicable statute or an
21 order of any court or other government authority.

22 The bill provides that a factoring company must provide to a
23 prospective payee, at least three days prior to the date on which the
24 payee signs a transfer agreement, a separate disclosure statement
25 including the following:

- 26 1. the aggregate amount of payments transferred;
- 27 2. the present value of the payments transferred as determined
28 using the applicable federal rate for valuing annuities;
- 29 3. the gross amount to be received from the factoring company,
30 the listing of all applicable transfer expenses and the net amount to be
31 received;
- 32 4. the amount of any penalties or liquidated damages payable by
33 the payee in the event of any breach of the transfer agreement by the
34 payee; and
- 35 5. the right to cancel the transfer agreement, without penalty, not
36 later than the third business day after the date the agreement is signed
37 by the payee.

38 The bill provides that following an approved transfer of structured
39 settlement payment rights, the factoring company is liable to an
40 annuity issuer and structured settlement obligor for any taxes incurred
41 by those parties if the transfer contravenes the terms of the structured
42 settlement and for other liabilities and costs arising from compliance
43 by those parties with an order of the court or responsible
44 administrative authority or arising as a consequence of the factoring
45 company's failure to comply with the provisions of this bill. In
46 addition, neither the annuity issuer nor the structured settlement

- 1 obligor may be required to divide any periodic payment, nor are they
- 2 liable for any double payments with respect to transferred payments.
- 3 Finally, the bill prohibits confessed or consent judgments under
- 4 factoring agreements.