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JUDICIARY

HOUSE FILE 175

BY JENKINS

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to transfers of structured settlement payment
2 rights for tort and workers' compensation claims, providing
3 civil remedies, and an applicability date.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 175

1 Section 1. NEW SECTION. 682.1 SHORT TITLE.

2 This chapter shall be known and may be cited as the
3 "Structured Settlement Protection Act".

4 Sec. 2. NEW SECTION. 682.2 DEFINITIONS.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Annuity issuer" means an issuer that has issued an
8 insurance contract used to fund periodic payments under a
9 structured settlement.

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

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

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

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

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

34 7. "Net advance amount" means the gross advance amount
35 less the aggregate amount of the actual and estimated transfer

1 expenses required to be disclosed under section 682.3,
2 subsection 5.

3 8. "Payee" means an individual who is receiving tax-free
4 payments under a structured settlement and proposes to make a
5 transfer of payment rights.

6 9. "Periodic payments" means both recurring payments and
7 scheduled future lump sum payments.

8 10. "Qualified assignment agreement" means an agreement
9 providing for a qualified assignment within the meaning of
10 section 130 of the Internal Revenue Code.

11 11. "Responsible administrative authority" means, with
12 respect to a structured settlement, any government authority
13 vested by law with exclusive jurisdiction over the settled
14 claim resolved by the structured settlement.

15 12. "Settled claim" means the original tort claim or
16 workers' compensation claim resolved by a structured
17 settlement.

18 13. "Structured settlement" means an arrangement for
19 periodic payment of damages for personal injuries established
20 by settlement or judgment in resolution of a tort claim or for
21 periodic payments in settlement of a workers' compensation
22 claim.

23 14. "Structured settlement agreement" means the agreement,
24 judgment, stipulation, or release embodying the terms of a
25 structured settlement.

26 15. "Structured settlement obligor" means, with respect to
27 a structured settlement, the party that has the continuing
28 periodic payment obligation to the payee under a structured
29 settlement agreement or a qualified assignment agreement.

30 16. "Structured settlement payment rights" means rights to
31 receive periodic payments under a structured settlement,
32 whether from the structured settlement obligor or the annuity
33 issuer, if any of the following exists:

34 a. One of the following is true:

35 (1) The payee is domiciled in this state.

1 (2) The domicile or principal place of business of a
2 structured settlement obligor or the annuity issuer is located
3 in this state.

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

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

8 17. "Terms of the structured settlement" means, with
9 respect to a structured settlement, the terms of the
10 structured settlement agreement, the annuity contract, any
11 qualified assignment agreement, and any order or approval of
12 any court or responsible administrative authority or other
13 government authority authorizing or approving the structured
14 settlement.

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

27 19. "Transfer agreement" means the agreement providing for
28 transfer of structured settlement payment rights.

29 20. "Transfer expenses" means all expenses of a transfer
30 that are required under the transfer agreement to be paid by
31 the payee or deducted from the gross advance amount,
32 including, without limitation, court filing fees, attorney
33 fees, escrow fees, lien recordation fees, judgment and lien
34 search fees, finders' fees, commissions, and other payments to
35 a broker or other intermediary. "Transfer expenses" does not

1 include preexisting obligations of the payee payable for the
2 payee's account from the proceeds of a transfer.

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

6 Sec. 3. NEW SECTION. 682.3 REQUIRED DISCLOSURES TO
7 PAYEE.

8 Not less than three days prior to the date on which a payee
9 signs a transfer agreement, the transferee shall provide to
10 the payee a separate disclosure statement, in bold type no
11 smaller than fourteen points, setting forth all of the
12 following:

13 1. The amounts and due dates of the structured settlement
14 payments to be transferred.

15 2. The aggregate amount of the structured settlement
16 payments.

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

23 4. The gross advance amount.

24 5. An itemized listing of all applicable transfer
25 expenses, other than attorney fees and related disbursements
26 payable in connection with the transferee's application for
27 approval of the transfer, and the transferee's best estimate
28 of the amount of any such fees and disbursements.

29 6. The net advance amount.

30 7. The amount of any penalties or liquidated damages
31 payable by the payee in the event of any breach of the
32 transfer agreement by the payee.

33 8. A statement that the payee has the right to cancel the
34 transfer agreement, without penalty or further obligation, not
35 later than the third business day after the agreement is

1 signed by the payee.

2 Sec. 4. NEW SECTION. 682.4 APPROVAL OF TRANSFERS OF
3 STRUCTURED SETTLEMENT PAYMENT RIGHTS.

4 A transfer of structured settlement payment rights shall
5 not be effective and a structured settlement obligor or
6 annuity issuer shall not be required to make any payment
7 directly or indirectly to a transferee of structured
8 settlement payment rights unless the transfer has been
9 approved in advance in a final court order or order of a
10 responsible administrative authority based on express findings
11 by such court or responsible administrative authority
12 regarding all of the following:

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

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

20 3. The transfer does not contravene any applicable statute
21 or the order of any court or other government authority.

22 Sec. 5. NEW SECTION. 682.5 EFFECTS OF TRANSFER OF
23 STRUCTURED SETTLEMENT PAYMENT RIGHTS.

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

28 2. The transferee shall be liable to the structured
29 settlement obligor and the annuity issuer for all of the
30 following:

31 a. If the transfer contravenes the terms of the structured
32 settlement, any taxes incurred by the structured settlement
33 obligor and the annuity issuer as a consequence of the
34 transfer.

35 b. Any other liabilities or costs, including reasonable

1 costs and attorney fees, arising from compliance by such
2 parties with the order of the court or responsible
3 administrative authority or arising as a consequence of the
4 transferee's failure to comply with this chapter.

5 3. An annuity issuer and the structured settlement obligor
6 shall not be required to divide any periodic payment between
7 the payee and any transferee or assignee or between two or
8 more transferees or assignees.

9 4. Any further transfer of structured settlement payment
10 rights by the payee may be made only after compliance with all
11 of the requirements of this chapter.

12 Sec. 6. NEW SECTION. 682.6 PROCEDURE FOR APPROVAL OF
13 TRANSFERS.

14 1. An application under this chapter for approval of a
15 transfer of structured settlement payment rights shall be made
16 by the transferee and may be brought in the county in which
17 the payee resides, in the county in which the structured
18 settlement obligor or the annuity issuer maintains its
19 principal place of business, or in any court or before any
20 responsible administrative authority which approved the
21 structured settlement agreement.

22 2. Not less than twenty days prior to the scheduled
23 hearing on any application for approval of a transfer of
24 structured settlement payment rights under section 682.4, the
25 transferee shall file with the court or responsible
26 administrative authority and serve on all interested parties a
27 notice of the proposed transfer and the application for its
28 authorization. All of the following shall be included with
29 the notice:

- 30 a. A copy of the transferee's application.
- 31 b. A copy of the transfer agreement.
- 32 c. A copy of the disclosure statement required under
33 section 682.3.
- 34 d. A listing of each of the payee's dependents, together
35 with each dependent's age.

1 e. Notification that any interested party is entitled to
2 support, oppose, or otherwise respond to the transferee's
3 application, either in person or by counsel, by submitting
4 written comments to the court or responsible administrative
5 authority, or by participating in the hearing.

6 f. Notification of the time and place of the hearing and
7 notification of the manner in which and the time by which
8 written responses to the application must be filed, which
9 shall not be less than fifteen days after service of the
10 transferee's notice, in order to be considered by the court or
11 responsible administrative authority.

12 Sec. 7. NEW SECTION. 682.7 GENERAL PROVISIONS --
13 CONSTRUCTION -- PENALTIES.

14 1. The provisions of this chapter shall not be waived by a
15 payee.

16 2. A transfer agreement entered into on or after the
17 thirtieth day after the effective date of this Act by a payee
18 who resides in this state shall provide that disputes under
19 the transfer agreement, including any claim that the payee has
20 breached the agreement, shall be determined under the laws of
21 this state. A transfer agreement shall not authorize the
22 transferee or any other party to confess judgment or consent
23 to entry of judgment against the payee.

24 3. A transfer of structured settlement payment rights
25 shall not extend to any payments that are life-contingent
26 unless, prior to the date on which the payee signs the
27 transfer agreement, the transferee has established and has
28 agreed to maintain procedures reasonably satisfactory to the
29 annuity issuer and the structured settlement obligor for both
30 of the following:

31 a. Periodically confirming the payee's survival.
32 b. Giving the annuity issuer and the structured settlement
33 obligor prompt written notice in the event of the payee's
34 death.

35 4. A payee who proposes to make a transfer of structured

1 settlement payment rights shall not incur any penalty, forfeit
2 any application fee or other payment, or otherwise incur any
3 liability to the proposed transferee or any assignee based on
4 any failure of the transfer to satisfy the conditions of this
5 chapter.

6 5. This chapter shall not be construed to authorize any
7 transfer of structured settlement payment rights in
8 contravention of any law or to imply that any transfer under a
9 transfer agreement entered into prior to the effective date of
10 this Act is valid or invalid.

11 6. Compliance with the requirements set forth in section
12 682.3 and fulfillment of the conditions set forth in section
13 682.4 shall be solely the responsibility of the transferee in
14 any transfer of structured settlement payment rights, and
15 neither the structured settlement obligor nor the annuity
16 issuer shall bear any responsibility for, or any liability
17 arising from, noncompliance with the requirements or failure
18 to fulfill the conditions.

19 7. Any transfer made in violation of this chapter shall be
20 null and void. Any payment advanced or made by a transferee
21 to a payee pursuant to a null and void transfer shall be
22 retained by the payee. In addition, the payee shall receive
23 liquidated damages from the transferee in an amount equal to
24 twice the difference between any payment advanced or made by
25 the transferee pursuant to the null and void transfer and the
26 discounted present value of the structured settlement at the
27 time of the transfer and shall also receive attorney fees and
28 court costs.

29 Sec. 8. APPLICABILITY DATE. This Act shall apply to any
30 transfer of structured settlement payment rights under a
31 transfer agreement entered into on or after the thirtieth day
32 after the effective date of this Act. Nothing contained in
33 this Act shall imply that any transfer under a transfer
34 agreement reached prior to the thirtieth day after the
35 effective date of this Act is effective.

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EXPLANATION

2 This bill creates new Code chapter 682, which provides for
3 requirements and procedures for the transfer of structured
4 settlement payment rights for tort and workers' compensation
5 claims. The bill provides that a structured settlement
6 payment right is the right to receive periodic payments under
7 a structured settlement if certain criteria are met.

8 The bill provides that not less than three days prior to
9 the date on which a payee signs a transfer agreement, the
10 transferee shall provide the payee with a separate disclosure
11 statement. The bill provides that the disclosure statement
12 shall include information relating to the amounts, due dates,
13 and aggregate amount of the structured settlement payments,
14 the discounted value of the payments to be transferred, the
15 gross advance amount, an itemized listing of all applicable
16 transfer expenses, the net advance amount, the amount of any
17 penalties or liquidated damages payable by the payee in the
18 event of any breach of the transfer agreement by the payee,
19 and a statement that the payee has the right to cancel the
20 transfer agreement under certain conditions.

21 The bill provides that a transfer of structured settlement
22 payment rights shall not be effective unless the transfer has
23 been approved in advance in a final court order or order of a
24 responsible administrative authority. The bill provides that
25 the order must be based on express findings regarding that the
26 transfer is in the best interest of the payee, that the payee
27 has been advised in writing by the transferee to seek
28 independent professional advice, and that the transfer does
29 not contravene any applicable statute or order of any court or
30 other governmental authority.

31 The bill provides that the structured settlement obligor
32 and the annuity issuer shall be, as to all parties except the
33 transferee, discharged and released from liability for the
34 structured payments. The bill identifies the liabilities of
35 the transferee in relation to the structured settlement

1 obligor and the annuity issuer. The bill provides that the
2 annuity issuer and the structured settlement obligor shall not
3 be required to divide periodic payments.

4 The bill provides for the procedure that shall be followed
5 in order to receive approval of a transfer of structured
6 settlement payment rights. The bill provides for the venue
7 where an application must be brought. The bill also provides
8 certain notice provisions.

9 The bill provides that the provisions of Code chapter 682
10 shall not be waived. The bill provides jurisdictional
11 provisions. The bill provides that a transfer shall not
12 extend to payments that are life-contingent unless certain
13 procedures are agreed to. The bill provides that a payee who
14 proposes to make a transfer shall not incur any penalty,
15 forfeit any fee, or incur any liability if the transfer does
16 not meet the requirements of Code chapter 682. The bill
17 provides that, if a transfer is made in violation of Code
18 chapter 682, the transfer is null and void, any payments made
19 pursuant to the null and void transfer shall be retained by
20 the payee, and the payee shall receive liquidated damages and
21 attorney fees and court costs.

22 The bill shall apply to any transfer under transfer
23 agreement entered into on or after the thirtieth day after the
24 effective date of this bill. The bill provides that nothing
25 in the bill shall imply that a transfer under a transfer
26 agreement reached prior to that date is effective.

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