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SSB-1142
Commerce

SENATE FILE SF/HF 337
Succeeded By
BY (PROPOSED COMMITTEE ON COMMERCE
BILL BY CHAIRPERSON JOHNSON)

Passed Senate, Date _____ Passed House, 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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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 Sec. 8. APPLICABILITY DATE. This Act shall apply to any
20 transfer of structured settlement payment rights under a
21 transfer agreement entered into on or after the thirtieth day
22 after the effective date of this Act. Nothing contained in
23 this Act shall imply that any transfer under a transfer
24 agreement reached prior to the thirtieth day after the
25 effective date of this Act is effective.

26 EXPLANATION

27 This bill creates new Code chapter 682, which provides for
28 requirements and procedures for the transfer of structured
29 settlement payment rights for tort and workers' compensation
30 claims. The bill provides that a structured settlement
31 payment right is the right to receive periodic payments under
32 a structured settlement if certain criteria are met.

33 The bill provides that not less than three days prior to
34 the date on which a payee signs a transfer agreement, the
35 transferee shall provide the payee with a separate disclosure

1 statement. The bill provides that the disclosure statement
2 shall include information relating to the amounts, due dates,
3 and aggregate amount of the structured settlement payments,
4 the discounted value of the payments to be transferred, the
5 gross advance amount, an itemized listing of all applicable
6 transfer expenses, the net advance amount, the amount of any
7 penalties or liquidated damages payable by the payee in the
8 event of any breach of the transfer agreement by the payee,
9 and a statement that the payee has the right to cancel the
10 transfer agreement under certain conditions.

11 The bill provides that a transfer of structured settlement
12 payment rights shall not be effective unless the transfer has
13 been approved in advance in a final court order or order of a
14 responsible administrative authority. The bill provides that
15 the order must be based on express findings regarding that the
16 transfer is in the best interest of the payee, that the payee
17 has been advised in writing by the transferee to seek
18 independent professional advice, and that the transfer does
19 not contravene any applicable statute or order of any court or
20 other governmental authority.

21 The bill provides that the structured settlement obligor
22 and the annuity issuer shall be, as to all parties except the
23 transferee, discharged and released from liability for the
24 structured payments. The bill identifies the liabilities of
25 the transferee in relation to the structured settlement
26 obligor and the annuity issuer. The bill provides that the
27 annuity issuer and the structured settlement obligor shall not
28 be required to divide periodic payments.

29 The bill provides for the procedure that shall be followed
30 in order to receive approval of a transfer of structured
31 settlement payment rights. The bill provides for the venue
32 where an application must be brought. The bill also provides
33 certain notice provisions.

34 The bill provides that the provisions of Code chapter 682
35 shall not be waived. The bill provides jurisdictional

1 provisions. The bill provides that a transfer shall not
 2 extend to payments that are life-contingent unless certain
 3 procedures are agreed to. The bill provides that a payee who
 4 proposes to make a transfer shall not incur any penalty,
 5 forfeit any fee, or incur any liability if the transfer does
 6 not meet the requirements of Code chapter 682.

7 The bill shall apply to any transfer under transfer
 8 agreement entered into on or after the thirtieth day after the
 9 effective date of this bill. The bill provides that nothing
 10 in the bill shall imply that a transfer under a transfer
 11 agreement reached prior to that date is effective.

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FILED MAR 1 '01

SENATE FILE 337
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1142)

Passed Senate, ^(P.744) Date 3/21/01 Passed House, ^(P.1260) Date 4-18-01
Vote: Ayes 44 Nays 0 Vote: Ayes 96 Nays 0
Approved 4-26-01

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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SF 337

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 Sec. 8. APPLICABILITY DATE. This Act shall apply to any
20 transfer of structured settlement payment rights under a
21 transfer agreement entered into on or after the thirtieth day
22 after the effective date of this Act. Nothing contained in
23 this Act shall imply that any transfer under a transfer
24 agreement reached prior to the thirtieth day after the
25 effective date of this Act is effective.

26 EXPLANATION

27 This bill creates new Code chapter 682, which provides for
28 requirements and procedures for the transfer of structured
29 settlement payment rights for tort and workers' compensation
30 claims. The bill provides that a structured settlement
31 payment right is the right to receive periodic payments under
32 a structured settlement if certain criteria are met.

33 The bill provides that not less than three days prior to
34 the date on which a payee signs a transfer agreement, the
35 transferee shall provide the payee with a separate disclosure

1 statement. The bill provides that the disclosure statement
2 shall include information relating to the amounts, due dates,
3 and aggregate amount of the structured settlement payments,
4 the discounted value of the payments to be transferred, the
5 gross advance amount, an itemized listing of all applicable
6 transfer expenses, the net advance amount, the amount of any
7 penalties or liquidated damages payable by the payee in the
8 event of any breach of the transfer agreement by the payee,
9 and a statement that the payee has the right to cancel the
10 transfer agreement under certain conditions.

11 The bill provides that a transfer of structured settlement
12 payment rights shall not be effective unless the transfer has
13 been approved in advance in a final court order or order of a
14 responsible administrative authority. The bill provides that
15 the order must be based on express findings regarding that the
16 transfer is in the best interest of the payee, that the payee
17 has been advised in writing by the transferee to seek
18 independent professional advice, and that the transfer does
19 not contravene any applicable statute or order of any court or
20 other governmental authority.

21 The bill provides that the structured settlement obligor
22 and the annuity issuer shall be, as to all parties except the
23 transferee, discharged and released from liability for the
24 structured payments. The bill identifies the liabilities of
25 the transferee in relation to the structured settlement
26 obligor and the annuity issuer. The bill provides that the
27 annuity issuer and the structured settlement obligor shall not
28 be required to divide periodic payments.

29 The bill provides for the procedure that shall be followed
30 in order to receive approval of a transfer of structured
31 settlement payment rights. The bill provides for the venue
32 where an application must be brought. The bill also provides
33 certain notice provisions.

34 The bill provides that the provisions of Code chapter 682
35 shall not be waived. The bill provides jurisdictional

1 provisions. The bill provides that a transfer shall not
2 extend to payments that are life-contingent unless certain
3 procedures are agreed to. The bill provides that a payee who
4 proposes to make a transfer shall not incur any penalty,
5 forfeit any fee, or incur any liability if the transfer does
6 not meet the requirements of Code chapter 682.

7 The bill shall apply to any transfer under transfer
8 agreement entered into on or after the thirtieth day after the
9 effective date of this bill. The bill provides that nothing
10 in the bill shall imply that a transfer under a transfer
11 agreement reached prior to that date is effective.

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8-3205

- 1 Amend Senate File 337 as follows:
2 1. Page 5, line 4, by striking the word "A", and
3 inserting the following: "1. A".
4 2. Page 5, line 13, by striking the figure "1.",
5 and inserting the following: "a."
6 3. Page 5, line 16, by striking the figure "2.",
7 and inserting the following: "b."
8 4. Page 5, line 20, by striking the figure "3.",
9 and inserting the following: "c."
10 5. Page 5, by inserting after line 21 the
11 following:
12 "2. If the structured settlement agreement or
13 transfer agreement includes a provision requiring the
14 terms of the structured settlement agreement or
15 transfer agreement to remain confidential, the court
16 or responsible administrative authority shall conduct
17 in camera proceedings relating to the approval of the
18 transfer agreement and shall not include any financial
19 terms from the structured settlement agreement or the
20 transfer agreement in the order required under
21 subsection 1."
22 6. Page 7, by inserting after line 11 the
23 following:
24 "3. If a structured settlement agreement or
25 transfer agreement includes a provision requiring the
26 terms of the structured settlement agreement or
27 transfer agreement to remain confidential, the
28 financial terms of the structured settlement agreement
29 and the transfer agreement shall be made available to
30 the court or responsible administrative authority for
31 purposes of any in camera proceedings, but shall not
32 be disclosed in the copies of the transfer agreement
33 and disclosure statement filed as a part of the public
34 record."

Adopted 3/21/01 (p.743) By DONALD B. REDFERN
8-3205 FILED MARCH 20, 2001

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 1. A transfer of structured settlement payment rights
5 shall 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 a. 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 b. 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 c. The transfer does not contravene any applicable statute
21 or the order of any court or other government authority.

22 2. If the structured settlement agreement or transfer
23 agreement includes a provision requiring the terms of the
24 structured settlement agreement or transfer agreement to
25 remain confidential, the court or responsible administrative
26 authority shall conduct in camera proceedings relating to the
27 approval of the transfer agreement and shall not include any
28 financial terms from the structured settlement agreement or
29 the transfer agreement in the order required under subsection
30 1.

31 Sec. 5. NEW SECTION. 682.5 EFFECTS OF TRANSFER OF
32 STRUCTURED SETTLEMENT PAYMENT RIGHTS.

33 1. The structured settlement obligor and the annuity
34 issuer shall, as to all parties except the transferee, be
35 discharged and released from any and all liability for the

1 transferred payments.

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

5 a. If the transfer contravenes the terms of the structured
6 settlement, any taxes incurred by the structured settlement
7 obligor and the annuity issuer as a consequence of the
8 transfer.

9 b. Any other liabilities or costs, including reasonable
10 costs and attorney fees, arising from compliance by such
11 parties with the order of the court or responsible
12 administrative authority or arising as a consequence of the
13 transferee's failure to comply with this chapter.

14 3. An annuity issuer and the structured settlement obligor
15 shall not be required to divide any periodic payment between
16 the payee and any transferee or assignee or between two or
17 more transferees or assignees.

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

21 Sec. 6. NEW SECTION. 682.6 PROCEDURE FOR APPROVAL OF
22 TRANSFERS.

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

31 2. Not less than twenty days prior to the scheduled
32 hearing on any application for approval of a transfer of
33 structured settlement payment rights under section 682.4, the
34 transferee shall file with the court or responsible
35 administrative authority and serve on all interested parties a

1 notice of the proposed transfer and the application for its
2 authorization. All of the following shall be included with
3 the notice:

4 a. A copy of the transferee's application.

5 b. A copy of the transfer agreement.

6 c. A copy of the disclosure statement required under
7 section 682.3.

8 d. A listing of each of the payee's dependents, together
9 with each dependent's age.

10 e. Notification that any interested party is entitled to
11 support, oppose, or otherwise respond to the transferee's
12 application, either in person or by counsel, by submitting
13 written comments to the court or responsible administrative
14 authority, or by participating in the hearing.

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

21 3. If a structured settlement agreement or transfer
22 agreement includes a provision requiring the terms of the
23 structured settlement agreement or transfer agreement to
24 remain confidential, the financial terms of the structured
25 settlement agreement and the transfer agreement shall be made
26 available to the court or responsible administrative authority
27 for purposes of any in camera proceedings, but shall not be
28 disclosed in the copies of the transfer agreement and
29 disclosure statement filed as a part of the public record.

30 Sec. 7. NEW SECTION. 682.7 GENERAL PROVISIONS --
31 CONSTRUCTION -- PENALTIES.

32 1. The provisions of this chapter shall not be waived by a
33 payee.

34 2. A transfer agreement entered into on or after the
35 thirtieth day after the effective date of this Act by a payee

1 who resides in this state shall provide that disputes under
2 the transfer agreement, including any claim that the payee has
3 breached the agreement, shall be determined under the laws of
4 this state. A transfer agreement shall not authorize the
5 transferee or any other party to confess judgment or consent
6 to entry of judgment against the payee.

7 3. A transfer of structured settlement payment rights
8 shall not extend to any payments that are life-contingent
9 unless, prior to the date on which the payee signs the
10 transfer agreement, the transferee has established and has
11 agreed to maintain procedures reasonably satisfactory to the
12 annuity issuer and the structured settlement obligor for both
13 of the following:

- 14 a. Periodically confirming the payee's survival.
- 15 b. Giving the annuity issuer and the structured settlement
16 obligor prompt written notice in the event of the payee's
17 death.

18 4. A payee who proposes to make a transfer of structured
19 settlement payment rights shall not incur any penalty, forfeit
20 any application fee or other payment, or otherwise incur any
21 liability to the proposed transferee or any assignee based on
22 any failure of the transfer to satisfy the conditions of this
23 chapter.

24 5. This chapter shall not be construed to authorize any
25 transfer of structured settlement payment rights in
26 contravention of any law or to imply that any transfer under a
27 transfer agreement entered into prior to the effective date of
28 this Act is valid or invalid.

29 6. Compliance with the requirements set forth in section
30 682.3 and fulfillment of the conditions set forth in section
31 682.4 shall be solely the responsibility of the transferee in
32 any transfer of structured settlement payment rights, and
33 neither the structured settlement obligor nor the annuity
34 issuer shall bear any responsibility for, or any liability
35 arising from, noncompliance with the requirements or failure

1 to fulfill the conditions.

2 Sec. 8. APPLICABILITY DATE. This Act shall apply to any
3 transfer of structured settlement payment rights under a
4 transfer agreement entered into on or after the thirtieth day
5 after the effective date of this Act. Nothing contained in
6 this Act shall imply that any transfer under a transfer
7 agreement reached prior to the thirtieth day after the
8 effective date of this Act is effective.

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1 who resides in this state shall provide that disputes under
2 the transfer agreement, including any claim that the payee has
3 breached the agreement, shall be determined under the laws of
4 this state. A transfer agreement shall not authorize the
5 transferee or any other party to confess judgment or consent
6 to entry of judgment against the payee.

7 3. A transfer of structured settlement payment rights
8 shall not extend to any payments that are life-contingent
9 unless, prior to the date on which the payee signs the
10 transfer agreement, the transferee has established and has
11 agreed to maintain procedures reasonably satisfactory to the
12 annuity issuer and the structured settlement obligor for both
13 of the following:

- 14 a. Periodically confirming the payee's survival.
- 15 b. Giving the annuity issuer and the structured settlement
16 obligor prompt written notice in the event of the payee's
17 death.

18 4. A payee who proposes to make a transfer of structured
19 settlement payment rights shall not incur any penalty, forfeit
20 any application fee or other payment, or otherwise incur any
21 liability to the proposed transferee or any assignee based on
22 any failure of the transfer to satisfy the conditions of this
23 chapter.

24 5. This chapter shall not be construed to authorize any
25 transfer of structured settlement payment rights in
26 contravention of any law or to imply that any transfer under a
27 transfer agreement entered into prior to the effective date of
28 this Act is valid or invalid.

29 6. Compliance with the requirements set forth in section
30 682.3 and fulfillment of the conditions set forth in section
31 682.4 shall be solely the responsibility of the transferee in
32 any transfer of structured settlement payment rights, and
33 neither the structured settlement obligor nor the annuity
34 issuer shall bear any responsibility for, or any liability
35 arising from, noncompliance with the requirements or failure

1 to fulfill the conditions.

2 Sec. 8. APPLICABILITY DATE. This Act shall apply to any
3 transfer of structured settlement payment rights under a
4 transfer agreement entered into on or after the thirtieth day
5 after the effective date of this Act. Nothing contained in
6 this Act shall imply that any transfer under a transfer
7 agreement reached prior to the thirtieth day after the
8 effective date of this Act is effective.

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SENATE FILE 337

AN ACT

RELATING TO TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS FOR TORT AND WORKERS' COMPENSATION CLAIMS, PROVIDING CIVIL REMEDIES, AND AN APPLICABILITY DATE.

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

Section 1. NEW SECTION. 682.1 SHORT TITLE.

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

Sec. 2. NEW SECTION. 682.2 DEFINITIONS.

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

1. "Annuity issuer" means an issuer that has issued an insurance contract used to fund periodic payments under a structured settlement.
2. "Dependents" means a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony.
3. "Discounted present value" means the fair present value of future payments, as determined by discounting such 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" means 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 such consideration.
5. "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional advisor.

6. "Interested parties" means, with respect to a structured settlement, the payee, a 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 the structured settlement.

7. "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under section 682.3, subsection 5.

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

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

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

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

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

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

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

15. "Structured settlement obligor" means, with respect to a structured settlement, the party that has the continuing

periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

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

a. One of the following is true:

(1) The payee is domiciled in this state.

(2) The domicile or principal place of business of a 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" means, with respect to a structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving the structured settlement.

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

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

20. "Transfer expenses" means 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, attorney fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary. "Transfer expenses" does not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

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

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

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 fourteen 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 structured settlement 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 attorney 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 any such 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 agreement is signed by the payee.

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

1. A transfer of structured settlement payment rights shall not be effective and a structured settlement obligor or annuity issuer shall not be required to make any payment directly or indirectly to a 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 such court or responsible administrative authority regarding all of the following:

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

b. 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.

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

2. If the structured settlement agreement or transfer agreement includes a provision requiring the terms of the structured settlement agreement or transfer agreement to remain confidential, the court or responsible administrative authority shall conduct in camera proceedings relating to the approval of the transfer agreement and shall not include any financial terms from the structured settlement agreement or the transfer agreement in the order required under subsection 1.

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

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 for all of the following:

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

b. Any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by such 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 chapter.

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

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

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

1. An application under this chapter 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.

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

- a. A copy of the transferee's application.
- b. A copy of the transfer agreement.
- c. A copy of the disclosure statement required under section 682.3.
- d. A listing of each of the payee's dependents, together with each dependent's age.
- e. 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 written comments to the court or responsible administrative authority, or by participating in the hearing.
- f. 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 not be less than fifteen days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

3. If a structured settlement agreement or transfer agreement includes a provision requiring the terms of the structured settlement agreement or transfer agreement to remain confidential, the financial terms of the structured settlement agreement and the transfer agreement shall be made available to the court or responsible administrative authority for purposes of any in camera proceedings, but shall not be disclosed in the copies of the transfer agreement and disclosure statement filed as a part of the public record.

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

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

2. A transfer agreement entered into on or after the thirtieth day 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 under the laws of this state. A transfer agreement shall not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

3. A transfer of structured settlement payment rights shall not 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 both of the following:

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

4. A payee who proposes to make a transfer of structured settlement payment rights shall not 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 chapter.

5. This chapter shall not be construed 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.

6. Compliance with the requirements set forth in section 682.3 and fulfillment of the conditions set forth in section 682.4 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.

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

MARY E. KRAMER
President of the Senate

BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 337, Seventy-ninth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved 4/26, 2001

THOMAS J. VILSACK
Governor