
A BILL FOR AN ACT

RELATING TO STRUCTURED SETTLEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **STRUCTURED SETTLEMENT PROTECTION ACT**

6 § -1 **Title.** This chapter shall be known and referred to
7 as the "Structured Settlement Protection Act".

8 § -2 **Definitions.** For purposes of this chapter:

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

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

15 "Discounted present value" means the present value of
16 future payments, determined by discounting the payments to the
17 present using the most recently published Applicable Federal



1 Rate for determining the present value of an annuity, as issued
2 by the United States Internal Revenue Service.

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

8 "Independent professional advice" means advice of an
9 attorney, certified public accountant, actuary, or other
10 licensed professional adviser.

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

17 "Net advance amount" means the gross advance amount less
18 the aggregate amount of the actual and estimated transfer
19 expenses required to be disclosed under section -3(5).

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



1 "Periodic payments" includes both recurring payments and
2 scheduled future lump sum payments.

3 "Qualified assignment agreement" means an agreement
4 providing for a qualified assignment within the meaning of
5 section 130 of the United States Internal Revenue Code, United
6 States Code Title 26, as amended from time to time.

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

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

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

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

21 "Structured settlement obligor" means, with respect to any
22 structured settlement, the party that has the continuing

1 obligation to make periodic payments to the payee under a
2 structured settlement agreement or a qualified assignment
3 agreement.

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

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

12 (2) The structured settlement agreement was approved by a
13 court or responsible administrative authority in this
14 State; or

15 (3) The structured settlement agreement is expressly
16 governed by the laws of this State.

17 "Terms of the structured settlement" include, with respect
18 to any structured settlement, the terms of the structured
19 settlement agreement, the annuity contract, any qualified
20 assignment agreement, and any order or other approval of any
21 court or responsible administrative authority or other



1 government authority that authorized or approved the structured
2 settlement.

3 "Transfer" means any sale, assignment, pledge,
4 hypothecation, or other alienation or encumbrance of structured
5 settlement payment rights made by a payee for consideration;
6 provided that the term "transfer" does not include the creation
7 or perfection of a security interest in structured settlement
8 payment rights under a blanket security agreement entered into
9 with an insured depository institution, in the absence of any
10 action to redirect the structured settlement payments to such
11 insured depository institution, or an agent or successor in
12 interest, or otherwise to enforce the blanket security interest
13 against the structured settlement payment rights.

14 "Transfer agreement" means the agreement providing for a
15 transfer of structured settlement payment rights.

16 "Transfer expenses":

17 (1) Means all expenses of a transfer that are required
18 under the transfer agreement to be paid by the payee
19 or deducted from the gross advance amount, including,
20 without limitation, court filing fees, attorneys fees,
21 escrow fees, lien recordation fees, judgment and lien

1 search fees, finders' fees, commissions, and other
2 payments to a broker or other intermediary; and

3 (2) Does not include preexisting obligations of the payee
4 payable for the payee's account from the proceeds of a
5 transfer.

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

8 § -3 **Required disclosures to payee.** Not less than three
9 days prior to the date on which a payee signs a transfer
10 agreement, the transferee shall provide to the payee a separate
11 disclosure statement, in bold type no smaller than fourteen
12 points, setting forth:

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

15 (2) The aggregate amount of the payments in paragraph (1);

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

- 1 (4) The gross advance amount;
- 2 (5) An itemized listing of all applicable transfer
- 3 expenses, other than attorneys' fees and related
- 4 disbursements payable in connection with the
- 5 transferee's application for approval of the transfer,
- 6 and the transferee's best estimate of the amount of
- 7 any of the fees and disbursements stated in this
- 8 paragraph;
- 9 (6) The net advance amount;
- 10 (7) The amount of any penalties or liquidated damages
- 11 payable by the payee in the event of any breach of the
- 12 transfer agreement by the payee; and
- 13 (8) A statement that the payee has the right to cancel the
- 14 transfer agreement, without penalty or further
- 15 obligation, not later than the third business day
- 16 after the date the agreement is signed by the payee.

17 § -4 **Approval of transfers of structured settlement**
18 **payment rights.** No direct or indirect transfer of structured
19 settlement payment rights shall be effective and no structured
20 settlement obligor or annuity issuer shall be required to make
21 any payment directly or indirectly to any transferee of
22 structured settlement payment rights, unless the transfer has

1 been approved in advance in a final court order or order of a
2 responsible administrative authority based upon express findings
3 by the court or responsible administrative authority that:

4 (1) The transfer is in the best interest of the payee,
5 taking into account the welfare and support of the
6 payees dependents;

7 (2) The payee has been advised in writing by the
8 transferee to seek independent professional advice
9 regarding the transfer and has either received the
10 advice or knowingly waived the advice in writing; and

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

14 § -5 **Effects of transfer of structured settlement**

15 **payment rights.** Following a transfer of structured settlement
16 payment rights under this chapter:

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

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

- 1 (A) For any taxes incurred by the parties as a
- 2 consequence of the transfer, if the transfer
- 3 contravenes the terms of the structured
- 4 settlement; and
- 5 (B) For any other liabilities or costs, including
- 6 reasonable costs and attorneys' fees, arising
- 7 from compliance by the parties with the order of
- 8 the court or responsible administrative
- 9 authority, or arising as a consequence of the
- 10 transferee's failure to comply with this chapter;
- 11 (3) Neither the annuity issuer nor the structured
- 12 settlement obligor may be required to divide any
- 13 periodic payment between the payee and any transferee
- 14 or assignee or between two or more transferees or
- 15 assignees: and
- 16 (4) Any further transfer of structured settlement payment
- 17 rights by the payee may be made only after compliance
- 18 with all of the requirements of this chapter.

19 § -6 Procedure for approval of transfers. (a) An
20 application under this chapter for approval of a transfer of
21 structured settlement payment rights shall be made by the

1 transferee and may be brought in any court or before any
2 responsible administrative authority:

- 3 (1) In the county in which the payee resides;
- 4 (2) In the county in which the structured settlement
5 obligor or the annuity issuer maintains its principal
6 place of business; or
- 7 (3) That approved the structured settlement agreement.

8 (b) Not less than twenty days prior to the scheduled
9 hearing on any application for approval of a transfer of
10 structured settlement payment rights under section -4, the
11 transferee shall file with the court or responsible
12 administrative authority and serve on all interested parties a
13 notice of the proposed transfer and the application for its
14 authorization, including with the notice:

- 15 (1) A copy of the transferee's application;
- 16 (2) A copy of the transfer agreement;
- 17 (3) A copy of the disclosure statement required under
18 section -3;
- 19 (4) A listing of each of the payee's dependents, together
20 with each dependent's age;
- 21 (5) Notification that any interested party is entitled to
22 support, oppose, or otherwise respond to the

1 transferee's application, either in person or by
2 counsel, by submitting written comments to the court
3 or responsible administrative authority or by
4 participating in the hearing; and

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

12 § -7 **General provisions construction.** (a) The
13 provisions of this chapter may not be waived by any payee.

14 (b) Any transfer agreement entered into on or after the
15 effective date of this chapter by a payee who resides in this
16 State shall provide that disputes under the transfer agreement,
17 including any claim that the payee has breached the agreement,
18 shall be determined in and under the laws of this State. No
19 transfer agreement shall authorize the transferee or any other
20 party to confess judgment or consent to entry of judgment
21 against the payee.

1 (c) No transfer of structured settlement payment rights
2 shall extend to any payments that are life-contingent unless,
3 prior to the date on which the payee signs the transfer
4 agreement, the transferee has established and has agreed to
5 maintain procedures reasonably satisfactory to the annuity
6 issuer and the structured settlement obligor for:

- 7 (1) Periodically confirming the payee's survival; and
- 8 (2) Giving the annuity issuer and the structured
9 settlement obligor prompt written notice in the event
10 of the payee's death.

11 (d) No payee who proposes to make a transfer of structured
12 settlement payment rights shall incur any penalty, forfeit any
13 application fee or other payment, or otherwise incur any
14 liability to the proposed transferee or any assignee based on
15 any failure of the transfer to satisfy the conditions of this
16 chapter.

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

1 (f) Compliance with the requirements set forth in section
2 -3 and fulfillment of the conditions set forth in section
3 -4 shall be solely the responsibility of the transferee in
4 any transfer of structured settlement payment rights, and
5 neither the structured settlement obligor nor the annuity issuer
6 shall bear any responsibility for, or any liability arising
7 from, non-compliance with the requirements or failure to fulfill
8 the conditions."

9 SECTION 2. This Act shall take effect upon its approval.
10

INTRODUCED BY: *DW*

JAN 20 2006

HB 1977

Report Title:

Torts; Annuities

Description:

Establishes procedures for the creation of annuities used as settlement proceeds in structured settlements.

