

PROPOSED

HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

H.B. NO. 1977
H.D. 1
S.D. 2

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:

"CHAPTER

STRUCTURED SETTLEMENT PROTECTION ACT

6 § -1 **Definitions.** As used in this chapter, unless the
7 context otherwise requires:

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

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

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

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PROPOSED

H.B. NO. 1977
H.D. 1
S.D. 2

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

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

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

15 "Net advance amount" means the gross advance amount less
16 the aggregate amount of the actual and estimated transfer
17 expenses required to be disclosed under section -2(5).

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

21 "Periodic payments" includes both recurring payments and
22 scheduled future lump sum payments.



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

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

9 "Settled claim" means the original tort claim resolved by a
10 structured settlement.

11 "Structured settlement" means an arrangement for periodic
12 payment of damages for personal injuries or sickness established
13 by settlement or judgment in resolution of a tort claim.

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

17 "Structured settlement obligor" means, with respect to any
18 structured settlement, the party that has the continuing
19 obligation to make periodic payments to the payee under a
20 structured settlement agreement or a qualified assignment
21 agreement.



PROPOSED

H.B. NO. 1977
H.D. 1
S.D. 2

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

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

9 (2) The structured settlement agreement was approved by a
10 court or responsible administrative authority in this
11 State; or

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

14 "Terms of the structured settlement" include, with respect
15 to any structured settlement, the terms of the structured
16 settlement agreement, the annuity contract, any qualified
17 assignment agreement, and any order or other approval of any
18 court or responsible administrative authority or other
19 government authority that authorized or approved the structured
20 settlement.

21 "Transfer" means any sale, assignment, pledge,
22 hypothecation, or other alienation or encumbrance of structured



PROPOSED

H.B. NO. 1977
H.D. 1
S.D. 2

1 settlement payment rights made by a payee for consideration;
 2 provided that the term "transfer" shall not include the creation
 3 or perfection of a security interest in structured settlement
 4 payment rights under a blanket security agreement entered into
 5 with an insured depository institution, in the absence of any
 6 action to redirect the structured settlement payments to such
 7 insured depository institution, or an agent or successor in
 8 interest, or otherwise to enforce the blanket security interest
 9 against the structured settlement payment rights.

10 "Transfer agreement" means the agreement providing for a
 11 transfer of structured settlement payment rights.

12 "Transfer expenses" means all expenses of a transfer that
 13 are required under the transfer agreement to be paid by the
 14 payee or deducted from the gross advance amount, including,
 15 without limitation, court filing fees, attorneys fees, escrow
 16 fees, lien recordation fees, judgment and lien search fees,
 17 finders' fees, commissions, and other payments to a broker or
 18 other intermediary. "Transfer expenses" shall not include
 19 preexisting obligations of the payee payable for the payee's
 20 account from the proceeds of a transfer.

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



1 § -2 **Required disclosures to payee.** Not less than three
2 days prior to the date on which a payee signs a transfer
3 agreement, the transferee shall provide to the payee a separate
4 disclosure statement, in bold type no smaller than fourteen
5 points, setting forth:

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

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

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

16 (4) The gross advance amount;

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



- 1 any of the fees and disbursements stated in this
- 2 paragraph;
- 3 (6) The net advance amount;
- 4 (7) The amount of any penalties or liquidated damages
- 5 payable by the payee in the event of any breach of the
- 6 transfer agreement by the payee; and
- 7 (8) A statement that the payee has the right to cancel the
- 8 transfer agreement, without penalty or further
- 9 obligation, not later than the third business day
- 10 after the date the agreement is signed by the payee.

11 § -3 **Approval of transfers of structured settlement**

12 **payment rights.** No direct or indirect transfer of structured
13 settlement payment rights shall be effective and no structured
14 settlement obligor or annuity issuer shall be required to make
15 any payment directly or indirectly to any transferee of
16 structured settlement payment rights, unless the transfer has
17 been approved in advance in a final court order or order of a
18 responsible administrative authority based upon express findings
19 by the court or responsible administrative authority that:

- 20 (1) The transfer is in the best interest of the payee,
- 21 taking into account the welfare and support of the
- 22 payee's dependents;

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

5 (3) The transfer does not contravene any applicable
 6 statute or the order of any court or other government
 7 authority.

8 § -4 **Effects of transfer of structured settlement**

9 **payment rights.** Following a transfer of structured settlement
 10 payment rights under this chapter:

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

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

17 (A) For any taxes incurred by the parties as a
 18 consequence of the transfer, if the transfer
 19 contravenes the terms of the structured
 20 settlement; and

21 (B) For any other liabilities or costs, including
 22 reasonable costs and attorneys' fees, arising



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

5 (3) Neither the annuity issuer nor the structured
 6 settlement obligor may be required to divide any
 7 periodic payment between the payee and any transferee
 8 or assignee or between two or more transferees or
 9 assignees; and

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

13 **§ -5 Procedure for approval of transfers.** (a) An
 14 application under this chapter for approval of a transfer of
 15 structured settlement payment rights shall be made by the
 16 transferee and may be brought in any court or before any
 17 responsible administrative authority:

- 18 (1) In the county in which the payee resides;
- 19 (2) In the county in which the structured settlement
 20 obligor or the annuity issuer maintains its principal
 21 place of business; or
- 22 (3) That approved the structured settlement agreement.

PROPOSED

H.B. NO. 1977
H.D. 1
S.D. 2

1 (b) To apply for approval of a transfer of structured
2 settlement payment rights under section -3, the transferee
3 shall file with the court or responsible administrative
4 authority and serve on all interested parties a notice of the
5 proposed transfer and the application for its authorization.

6 The notice shall include:

- 7 (1) A copy of the transferee's application;
- 8 (2) A copy of the transfer agreement;
- 9 (3) A copy of the disclosure statement required under
10 section -2;
- 11 (4) A listing of each of the payee's dependents, together
12 with each dependent's age;
- 13 (5) Notification that any interested party is entitled to
14 support, oppose, or otherwise respond to the
15 transferee's application, either in person or by
16 counsel, by submitting written comments to the court
17 or responsible administrative authority or by
18 participating in the hearing; and
- 19 (6) Notification of the time and place of the hearing and
20 notification of the manner in which and the time by
21 which written responses to the application shall be
22 filed, to be considered by the court or responsible



1 administrative authority; provided that the written
2 responses shall be filed not less than fifteen days
3 after service of the transferee's notice.

4 § -6 General provisions construction. (a) The
5 provisions of this chapter may not be waived by any payee.

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

14 (c) No transfer of structured settlement payment rights
15 shall extend to any payments that are life-contingent unless,
16 prior to the date on which the payee signs the transfer
17 agreement, the transferee has established and has agreed to
18 maintain procedures reasonably satisfactory to the annuity
19 issuer and the structured settlement obligor for:

20 (1) Periodically confirming the payee's survival; and



1 (2) Giving the annuity issuer and the structured
2 settlement obligor prompt written notice in the event
3 of the payee's death.

4 (d) No payee who proposes to make a transfer of structured
5 settlement payment rights shall incur any penalty, forfeit any
6 application fee or other payment, or otherwise incur any
7 liability to the proposed transferee or any assignee based on
8 any failure of the transfer to satisfy the conditions of this
9 chapter.

10 (e) Nothing contained in this chapter shall be construed
11 to authorize any transfer of structured settlement payment
12 rights in contravention of any law or to imply that any transfer
13 under a transfer agreement entered into prior to the effective
14 date of this Act is valid or invalid.

15 (f) Compliance with the requirements set forth in section
16 -2 and fulfillment of the conditions set forth in section
17 -3 shall be solely the responsibility of the transferee in
18 any transfer of structured settlement payment rights, and
19 neither the structured settlement obligor nor the annuity issuer
20 shall bear any responsibility for, or any liability arising
21 from, non-compliance with the requirements or failure to fulfill



PROPOSE

H.B. NO. 1977
H.D. 1
S.D. 2

1 the conditions."

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



PROPOSED

Report Title:

Structured Settlement Payment Rights; Transfer

Description:

Establishes procedures for the transfer of structured settlement payment rights. (SD2)

