

PA Factoring Law

THE GENERAL ASSEMBLY OF PENNSYLVANIA
SENATE BILL No. 818 Session of 1999
INTRODUCED BY HOLL, GREENLEAF AND CORMAN, APRIL 16, 1999

AN ACT

Regulating certain transfers of structured settlement payments.
The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

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

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Annuity issuer." An insurer, or subsidiary or affiliate thereof, that has issued an insurance contract used to fund periodic payments under a structured settlement.

"Applicable law." The laws of the United States, the laws of this Commonwealth and the laws of any other jurisdiction under whose laws a structured settlement agreement was approved by a court or responsible administrative authority.

"Best interests." The standard applicable to transfers of structured settlement payment rights based on judicial findings regarding the payee and his dependents, as required by section 3(3), unless if at the time the payee and the transferee enter into the transfer agreement, a different standard is contained in the Internal Revenue Code of 1986 (Public law 99-514, 26 U.S.C. § 1 et seq.) or in a United States Treasury regulation adopted pursuant thereto, then such different standard.

"Dependents." Include 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.

"Discounted present value." 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.

"Favorable tax determination." With respect to a proposed transfer of structured settlement payment rights, any of the following authorities that is binding on the parties to such transfer and on the parties to the structured settlement agreement and any qualified assignment agreement and that definitively establishes that the Federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the payee, will not be affected by such transfer:

- (1) a provision of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or United States Treasury regulation;
- (2) a published ruling by the United States Internal Revenue Service;
- (3) a private letter ruling by the United States Internal Revenue Service with respect to such transfer; or
- (4) other controlling legal authority that is binding on the United States Internal Revenue Service.

"Payee." A person domiciled in this Commonwealth who is receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

"Periodic payments." Payments made pursuant to a structured settlement agreement, including scheduled future lump sum payments.

"Qualified assignment agreement." An agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

"Settled claim." The original personal injury or sickness claim or workers' compensation claim resolved by a structured settlement.

"Structured settlement." An arrangement for periodic payment of damages established by settlement, judgment or decree in resolution of a settled claim.

"Structured settlement agreement." The agreement, judgment, decree, stipulation or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments.

"Structured settlement obligor." With respect to any structured settlement, the party that has the continuing obligation to provide periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

"Structured settlement payment rights." Rights to receive periodic payments under a structured settlement, whether from the settlement obligor or the annuity issuer, where the payee is domiciled in this Commonwealth.

"Terms of the structured settlement." Include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order, decree or approval of any court, or responsible administrative authority authorizing or approving such structured settlement.

"Transfer." Any direct or indirect sale, assignment, pledge, hypothecation or other form of alienation, redirection or encumbrance made by a payee for consideration, provided, however, that this shall not apply to a blanket security agreement used to secure a loan originating from a

Federal or State-chartered lending institution. Any transfer made or agreed to under this act shall be considered to be a consumer transaction.

"Transfer agreement." The agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

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

Section 3. Conditions to transfers of structured settlement payment rights.

(a) Petition.--No transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment to any transferee of structured settlement payment rights unless the payee has filed a petition requesting such transfer and the petition has been granted by final order or decree of a court of competent jurisdiction based on such court's express written findings that:

- (1) The transfer complies with the requirements of this act and will not contravene other applicable Federal or State statutes or regulations or any applicable law limiting the transfer of workers' compensation claims.
- (2) Not less than ten days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement setting forth all of the following:
 - (i) The amounts and due dates of the structured settlement payments to be transferred.
 - (ii) The aggregate amount of such payments.
 - (iii) The discounted present value of such payments, together with the discount rate or rates used in determining such discounted present value.
 - (iv) The gross amount payable to the payee in exchange for such payments.
 - (v) An itemized listing of all brokers' commissions, service charges, application or processing fees, closing costs, filing or administrative charges, legal fees, notary fees and other commissions, fees, costs, expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee.
 - (vi) The net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in subclause (v).
 - (vii) The quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments.
 - (viii) The amount of any penalty and the aggregate amount of any liquidated damages, inclusive of penalties, payable by the payee in the event of any breach of the transfer agreement by the payee.
- (3) The payee has established that the transfer is in the best interests of the payee or his dependents.
- (4) The payee has received or expressly waived, in a separate written acknowledgment signed by the payee, independent legal advice regarding the implications of the transfer, including consideration of the tax ramifications of the transfer.
- (5) If the transfer would contravene the terms of the structured settlement:
 - (i) the transfer has been expressly approved in writing by:
 - (A) the payee, the structured settlement obligor and the annuity issuer; provided, however, that such approval may not be unreasonably withheld; and, further provided that the structured settlement obligor and the annuity issuer shall be required to consent to the transfer if the transferee has agreed to indemnify the structured settlement obligor and annuity issuer from all liabilities arising from the factoring transaction and compliance or noncompliance with this act and further provided that if at the time the payee and the transferee propose to enter into the transfer agreement, a favorable tax result is in effect, then the approval of the annuity issuer and the structured settlement obligor shall not be required; and
 - (B) any court or responsible administrative authority that previously approved the structured

settlement; and

(ii) signed originals of all approvals required under subparagraph (i) have been filed with the court from which the authorization of the transfer is being sought, and originals or copies have been furnished to the payee, the structured settlement obligor and the annuity issuer.

(6) The payee has given written notice of the transferee's name, address and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court.

(b) Notice.--Prior to entering into any agreement to make a transfer under this act, the payee shall be provided with a written notice on a separate sheet that contains the following, in bold print and at least 12-point type:

IMPORTANT NOTICE: You are strongly urged to consult with an attorney who can advise you of the potential tax consequences of this transaction.

(c) Bonds.--If the indemnity in subsection (a)(5)(i)(A) is offered, the court shall require that the transferee obtain a surety bond or an irrevocable standby letter of credit to secure the indemnity obligation. In considering the necessity and amount of any bond, the court shall consider the size of the underlying transaction and the potential liabilities of the structured settlement obligor and annuity issuer.

Section 4. Jurisdiction; procedure for approval of transfers.

The court of common pleas of the judicial district in which the payee is domiciled shall have jurisdiction over any petition as required under section 3 for a transfer of structured settlement payment rights. Not less than 20 days prior to the scheduled hearing on any petition for authorization of a transfer of structured settlement payment rights under section 3, the payee shall file with the court and serve on the transferee a notice of the proposed transfer and the application for its authorization, including in such notice a copy of the payee's petition to the court, a copy of the transfer agreement, a copy of the disclosure statement required under section 3, notification that the transferee, the structured settlement obligor or the annuity issuer is entitled to support, oppose or otherwise respond to the payee's petition, either in person or by counsel, by submitting written comments to the court or by participating in the hearing and 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 petition must be filed, which shall be not less than 20 days after service of the payee's notice, in order to be considered by the court.

Section 5. Discharge of structured settlement obligor and annuity issuer.

Upon an appropriate judicial order approving a petition for a transfer of structured settlement payment rights, the structured settlement obligor and annuity issuer shall be discharged from all liability for the payments and portions thereof transferred as to all parties except the transferee.

Section 6. No waiver; no penalties.

(a) Waiver.--The provisions of this act may not be waived.

(b) Penalties.--No payee who files a petition for the transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of section 3.

Section 7. Penalty.

A violation of this act shall be deemed a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

Section 8. Construction.

Nothing contained in this act shall be construed to authorize any transfer of structured settlement

payment rights in contravention of applicable State statutes or regulations or to give effect to any transfer to structured settlement payment rights that is void under applicable State statutes or regulations.

Section 9. Applicability.

This act shall apply to any petition for the transfer of structured settlement payment rights under a transfer agreement sought on or after the effective date of this act, provided, however, that nothing contained in this act shall imply that any transfer under a transfer agreement reached prior to such date is effective or that any party is under any obligation to make transferred payments to the transferee of any such prior transfer.

Section 10. Effective date.

This act shall take effect in 60 days.