

2 EHB 1347 - S COMM AMD

3 By Committee on Labor, Commerce & Financial Institutions

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5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. Sec. 1. This chapter may be known and cited as the
8 structured settlement protection act.

9 NEW SECTION. Sec. 2. The definitions in this section apply
10 throughout this chapter unless the context clearly requires otherwise.

11 (1) "Annuity issuer" means an insurer that has issued a contract to
12 fund periodic payments under a structured settlement.

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

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

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

25 (5) "Independent professional advice" means advice of an attorney,
26 certified public accountant, actuary, or other licensed professional
27 adviser.

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

1 (7) "Net advance amount" means the gross advance amount less the
2 aggregate amount of the actual and estimated transfer expenses required
3 to be disclosed under section 3(5) of this act.

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

7 (9) "Periodic payments" means (a) recurring payments and (b)
8 scheduled future lump sum payments.

9 (10) "Qualified assignment agreement" means an agreement providing
10 for a qualified assignment within the meaning of section 130 of the
11 United States Internal Revenue Code (26 U.S.C. Sec. 130), as amended.

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

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

18 (13) "Structured settlement" means an arrangement for periodic
19 payment of compensation for injuries or sickness as described in 26
20 U.S.C. Sec. 104(a)(1) or (2), as amended, or an arrangement for
21 periodic payment of benefits under a special needs trust as described
22 in 42 U.S.C. Sec. 1396p(d)(4), as amended.

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

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

30 (16) "Structured settlement payment rights" means rights to receive
31 periodic payments under a structured settlement, whether from the
32 structured settlement obligor or the annuity issuer, if:

33 (a) The payee is domiciled in, or the domicile or principal place
34 of business of the structured settlement obligor or the annuity issuer
35 is located in, this state;

36 (b) The structured settlement agreement was approved by a court or
37 responsible administrative authority in this state; or

38 (c) The structured settlement agreement is expressly governed by
39 the laws of this state.

1 (17) "Terms of the structured settlement" means, with respect to
2 any structured settlement, the terms of the structured settlement
3 agreement, the annuity contract, any qualified assignment agreement and
4 any order or other approval of any court or responsible administrative
5 authority or other government authority that authorized or approved
6 such structured settlement.

7 (18) "Transfer" means any sale, assignment, pledge, hypothecation
8 or other alienation or encumbrance of structured settlement payment
9 rights made by a payee for consideration. However, "transfer" does not
10 mean the creation or perfection of a security interest in structured
11 settlement payment rights under a blanket security agreement entered
12 into with an insured depository institution, in the absence of any
13 action to redirect the structured settlement payments to such insured
14 depository institution, or an agent or successor in interest thereof,
15 or otherwise to enforce such blanket security interest against the
16 structured settlement payment rights.

17 (19) "Transfer agreement" means the agreement providing for a
18 transfer of structured settlement payment rights.

19 (20) "Transfer expenses" means all expenses of a transfer that are
20 required under the transfer agreement to be paid by the payee or
21 deducted from the gross advance amount, including, without limitation,
22 court filing fees, attorneys' fees, escrow fees, lien recordation fees,
23 judgment and lien search fees, finders' fees, commissions, and other
24 payments to a broker or other intermediary. "Transfer expenses" does
25 not mean preexisting obligations of the payee payable for the payee's
26 account from the proceeds of a transfer.

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

29 NEW SECTION. **Sec. 3.** Not less than three days prior to the date
30 on which a payee signs a transfer agreement, the transferee shall
31 provide to the payee a separate disclosure statement, in bold type no
32 smaller than 14 points, setting forth:

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

35 (2) The aggregate amount of such payments;

36 (3) The discounted present value of the payments to be transferred,
37 which shall be identified as the "calculation of current value of the
38 transferred structured settlement payments under federal standards for

1 valuing annuities", and the amount of the applicable federal rate used
2 in calculating such discounted present value;

3 (4) The gross advance amount;

4 (5) An itemized listing of all applicable transfer expenses, other
5 than attorneys' fees and related disbursements payable in connection
6 with the transferee's application for approval of the transfer, and the
7 transferee's best estimate of the amount of any such fees and
8 disbursements;

9 (6) The net advance amount;

10 (7) The amount of any penalties or liquidated damages payable by
11 the payee in the event of any breach of the transfer agreement by the
12 payee; and

13 (8) A statement that the payee has the right to cancel the transfer
14 agreement, without penalty or further obligation, not later than the
15 third business day after the date the agreement is signed by the payee.

16 NEW SECTION. **Sec. 4.** A direct or indirect transfer of structured
17 settlement payment rights is not effective and a structured settlement
18 obligor or annuity issuer is not required to make any payment directly
19 or indirectly to any transferee of structured settlement payment rights
20 unless the transfer has been approved in advance in a final court order
21 or order of a responsible administrative authority based on express
22 findings by such court or responsible administrative authority that:

23 (1) The transfer is in the best interest of the payee, taking into
24 account the welfare and support of the payee's dependents;

25 (2) The payee has been advised in writing by the transferee to seek
26 independent professional advice regarding the transfer and has either
27 received such advice or knowingly waived such advice in writing; and

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

30 NEW SECTION. **Sec. 5.** Following a transfer of structured
31 settlement payment rights under this chapter:

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

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

1 (a) If the transfer contravenes the terms of the structured
2 settlement, for any taxes incurred by such parties as a consequence of
3 the transfer; and

4 (b) For any other liabilities or costs, including reasonable costs
5 and attorneys' fees, arising from compliance by such parties with the
6 order of the court or responsible administrative authority or arising
7 as a consequence of the transferee's failure to comply with this
8 chapter;

9 (3) Neither the annuity issuer nor the structured settlement
10 obligor may be required to divide any periodic payment between the
11 payee and any transferee or assignee or between two, or more,
12 transferees or assignees; and

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

16 NEW SECTION. **Sec. 6.** (1) An application under this chapter for
17 approval of a transfer of structured settlement payment rights shall be
18 made by the transferee and may be brought in the county in which the
19 payee resides, in the county in which the structured settlement obligor
20 or the annuity issuer maintains its principal place of business, or in
21 any court or before any responsible administrative authority which
22 approved the structured settlement agreement.

23 (2) Not less than twenty days prior to the scheduled hearing on any
24 application for approval of a transfer of structured settlement payment
25 rights under section 4 of this act, the transferee shall file with the
26 court or responsible administrative authority and serve on all
27 interested parties a notice of the proposed transfer and the
28 application for its authorization, including with such notice:

29 (a) A copy of the transferee's application;

30 (b) A copy of the transfer agreement;

31 (c) A copy of the disclosure statement required under section 3 of
32 this act;

33 (d) A listing of each of the payee's dependents, together with each
34 dependent's age;

35 (e) Notification that any interested party is entitled to support,
36 oppose, or otherwise respond to the transferee's application, either in
37 person or by counsel, by submitting written comments to the court or

1 responsible administrative authority or by participating in the
2 hearing; and

3 (f) Notification of the time and place of the hearing and
4 notification of the manner in which and the time by which written
5 responses to the application must be filed, which may not be less than
6 fifteen days after service of the transferee's notice, in order to be
7 considered by the court or responsible administrative authority.

8 NEW SECTION. **Sec. 7.** (1) The provisions of this chapter may not
9 be waived by any payee.

10 (2) Any transfer agreement entered into on or after the effective
11 date of this act by a payee who resides in this state shall provide
12 that disputes under such transfer agreement, including any claim that
13 the payee has breached the agreement, shall be determined in and under
14 the laws of this state. Such a transfer agreement may not authorize
15 the transferee or any other party to confess judgment or consent to
16 entry of judgment against the payee.

17 (3) Transfer of structured settlement payment rights do not extend
18 to any payments that are life contingent unless, prior to the date on
19 which the payee signs the transfer agreement, the transferee has
20 established and has agreed to maintain procedures reasonably
21 satisfactory to the annuity issuer and the structured settlement
22 obligor for (a) periodically confirming the payee's survival, and (b)
23 giving the annuity issuer and the structured settlement obligor prompt
24 written notice in the event of the payee's death.

25 (4) No payee who proposes to make a transfer of structured
26 settlement payment rights may incur any penalty, forfeit any
27 application fee or other payment, or otherwise incur any liability to
28 the proposed transferee or any assignee based on any failure of such a
29 transfer to satisfy the conditions of this chapter.

30 (5) This chapter does not authorize any transfer of structured
31 settlement payment rights in contravention of any law, nor does it
32 imply that any transfer under a transfer agreement entered into prior
33 to the effective date of this act is valid or invalid.

34 (6) Compliance with the requirements set forth in section 3 of this
35 act and fulfillment of the conditions set forth in section 4 of this
36 act is the sole responsibility of the transferee in any transfer of
37 structured settlement payment rights, and neither the structured
38 settlement obligor nor the annuity issuer bear any responsibility for,

1 or any liability arising from, noncompliance with the requirements or
2 failure to fulfill the conditions.

3 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute
4 a new chapter in Title 19 RCW."

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8 On page 1, line 2 of the title, after "act;" strike the remainder
9 of the title and insert "and adding a new chapter to Title 19 RCW."

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