

- SUBJECT:** Regulating the offer and transfer of structured settlements
- COMMITTEE:** Civil Practices — committee substitute recommended
- VOTE:** 5 ayes — Bosse, Janek, Goodman, Hope, Smithee
0 nays
4 absent — Alvarado, Dutton, Nixon, Zbranek
- WITNESSES:** For — Josephine Grillo; Christian Grillo Sullivan
Against — None
- BACKGROUND:** A structured settlement is any settlement in which a person receives periodic payments instead of a lump sum. Such settlements are common in personal injury and workers' compensation claims, but they also apply to lottery winnings or other guarantees of future income. Such payments are excluded from the recipient's gross income under Internal Revenue Service rules.
- DIGEST:** CSSB 731 would regulate the offer of structured settlements and the transfer of structured settlement agreements by sale, assignment, or other form of alienation or encumbrance made by the recipient of a structured settlement for consideration. It would apply to settlements governed by a judgment or a settled claim arising out of a civil action or by an administrative proceeding of another state to resolve a workers' compensation claim.
- Before a person who had been incapacitated or had sustained substantially disabling injuries as the result of a personal injury could agree to a structured settlement, the offer of such a settlement would have to be made in writing and presented to the claimant's attorney. The attorney would have to present the offer to the claimant as soon as practicable after receiving the offer. The attorney would have to advise the claimant of the terms of the settlement and of the appropriateness of the offer.
- A recipient of a structured settlement could not enter into a transfer agreement before the later of the fifth anniversary of the original structured settlement or the recipient's 25th birthday. To enter into a transfer agreement before the

later of those dates, the transfer would have to be approved by the court of original jurisdiction, a statutory county court, or a responsible administrative authority. Those courts or authorities would have to find that the transfer was fair and reasonable and in the best interest of the settlement recipient; that the transfer recipient had provided a disclosure statement as specified in the bill; and that the transfer recipient had given written notice of the transferee's name, address, and taxpayer identification number to the annuity insurer and structured settlement obligor and had filed a copy of the notice with the court or responsible authority. The disclosure statement would have to be in bold type, at least 14 points in size, and would have to state:

- ! the amounts and due dates of payments to be transferred;
- ! the aggregate amount of the payments;
- ! the discounted present value and the discount rate;
- ! the gross amount payable in exchange for the payments;
- ! an itemized listing of all commission, fees, costs, expenses, and charges payable or deductible;
- ! the net amount payable after all deductions; and
- ! the amount of any penalty or liquidated damages, payable in the event of a breach of the transfer agreement.

In any action to ask for approval of a transfer agreement, the transfer recipient would have to provide notice of the proposed transfer, at least 20 days before a hearing on the application, to the court, to any responsible administrative authority, and to each interested party. The notice would have to include:

- ! a copy of the transfer recipient's application;
- ! a copy of the disclosure statement provided to the settlement recipient;
- ! notice that any interested party could respond to the application; and
- ! notice of the time and place of the hearing.

An interested party would have to be allowed at least 15 days to respond to this notice.

CSSB 731 would require the transfer recipient to indemnify the structured settlement recipient for any additional taxes owed as a result of the transfer of settlement payments. The duty to indemnify would apply without regard to the method of transfer and in addition to any other duty owed under law. The

settlement recipient would have to give the transfer recipient reasonable notice of the additional taxes or other losses due to the transfer.

CSSB 731 also would apply to settlements not governed by a judgment or a settled claim arising out of a civil action or an administrative proceeding to resolve a workers' compensation claim. Such transfers would be allowed if the transfer recipient provided the disclosure statement at least 10 days before the transfer was to become effective. The settlement recipient could rescind or cancel an agreement without penalty or obligation by sending written notice within seven days after the agreement was made.

The provisions of CSSB 731 could not be waived. Also, a settlement recipient could not incur any penalty or other liability for failure of a transfer to comply with the bill's provisions.

The bill would take effect September 1, 1999, and would apply only to a transfer agreement entered into after that date.

**SUPPORTERS
SAY:**

Structured settlements consistently are used for permanent injuries to allow the injured person to receive a guaranteed income for a term of years. When large lump sums of money are awarded and are intended to compensate victims for life, those sums often are spent quickly, leaving the victim with little to show after a few years. Structured settlements allow the victims to receive a portion of the payments over time, guaranteeing them income. Congress recognized the benefits of structured settlements and created income-tax breaks for payments received under such settlements.

The problem with structured settlements is that they are inflexible. To solve this, structured settlement companies, often called factoring companies, have been created to buy the future right to payments under a structured settlement in exchange for an immediate cash payment. The cash payment is discounted to the present value of the future payments. While this offers victims some flexibility to make a large purchase, such as starting a business or going to college, many settlement recipients do not have a good understanding of the amount of money they are giving up to receive cash immediately. Since factoring companies do not necessarily grant loans, they are not always regulated, nor always subject to usury limitations. This lack of regulation can result in companies charging effective interest rates of up to 50 percent or more.

CSSB 731 would allow people who wished to transfer their structured settlement payments to get a much better understanding of what they were agreeing to when they made such a transfer. Spelling out clearly the effective interest rates and the actual amounts of money they were giving up and receiving would help them make informed decisions. A judge or administrative body still would have to determine that it was in the best interest of the settlement recipient to make the transfer.

Additional protections in the bill would prevent the settlement recipient from incurring any tax penalties should the Internal Revenue Service change the tax status of transferred structured settlements. The bill would prohibit any penalty against a settlement recipient for a failed transfer. In many transfer agreements, the settlement recipient signs a confession of judgment allowing the factoring company to sue the recipient for the full value of the payments that were to have been transferred, even though the present cash value is substantially less. The bill also would provide significant protections to people transferring nonjudicial structured settlements, such as lottery winnings.

In many cases, the insurance company paying the structured settlement could give the settlement recipient a larger cash payment than a factoring company could give. Allowing all interested parties to have notice of the hearing to transfer a structured settlement would enable the insurance company to raise any objections to the settlement and to make the recipient a competing offer.

CSSB 731 is not meant to put factoring companies out of business or to impose unreasonable limitations on the way they conduct business. It is designed to protect settlement recipients, many of whom are not financially sophisticated, from being swayed by offers of large cash payments without realizing what they are giving up.

**OPPONENTS
SAY:**

CSSB 731 would impose an overly burdensome set of regulations that would hamper factoring companies' ability to provide financial flexibility and independence to persons constrained by the terms of a structured settlement agreement. Many settlement recipients could not have overcome significant

costs without the services of factoring companies that allowed them to use money owed to them in the way they saw fit.

The interest rate charged by factoring companies is around 15 percent or less. It could be significantly lower if the insurance companies that pay out the settlements would recognize the validity of these transfers immediately and not fight against transfers. Such conflicts often increase the cost of providing this valuable service to settlement recipients.

OTHER
OPPONENTS
SAY:

Transfers of structured settlements should be limited to very specific circumstances, such as using the money for education, buying a home, or starting a business. All interested parties to the structured settlement agreement should have to agree to such a transfer to make it valid.

NOTES:

A nearly identical bill, HB 2691 by Counts, passed the House on May 6. The bill was not reported by the Senate Jurisprudence Committee. The committee substitute added the provisions of HB 2691 relating to the offer of structured settlements.

The committee substitute also removed provisions relating to allowing an attorney ad litem to be appointed to represent the interests of the claimant when the claimant's guardian ad litem is not adequately performing the duties of that office. The substitute also added provisions relating to transfer of structured settlements.