

COMMITTEE STATEMENT:	ASSEMBLY:	No
	SENATE:	Yes
LEGISLATIVE FISCAL ESTIMATE:		No
SENATE COMMITTEE SUBSTITUTE		Yes
SENATE FLOOR SUBSTITUTE: (Includes statement on page 7)		Yes
VETO MESSAGE:		No
GOVERNOR'S PRESS RELEASE ON SIGNING:		Yes

FOLLOWING WERE PRINTED:

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REPORTS:	No
HEARINGS:	No
NEWSPAPER ARTICLES:	No

ASSEMBLY, No. 2146

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED FEBRUARY 28, 2000

Sponsored by:

Assemblywoman CLARE M. FARRAGHER

District 12 (Monmouth)

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

SYNOPSIS

Prohibits transfer of structured settlement rights except under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/2/2001)

1 AN ACT concerning structured settlements.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. As used in this act:

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

9 "Applicable law" means:

10 (1) The federal laws of the United States;

11 (2) The laws of this State, including principles of equity applied in
12 the courts of this State; and

13 (3) The laws of any other jurisdiction:

14 (a) Which is the domicile of the payee or any other interested
15 party;

16 (b) Under whose laws a structured settlement agreement was
17 approved by a court or responsible administrative authority; or

18 (c) In whose court a settled claim was pending when the parties
19 entered into a structured settlement agreement.

20 "Dependents" means a payee's spouse and minor children and all
21 other family members and other persons for whom the payee is legally
22 obligated to provide support, including alimony.

23 "Discounted present value" means the fair present value of future
24 payments, as determined by discounting the payments to the present
25 using the most recently published applicable federal rate for
26 determining the present value of an annuity, as issued by the United
27 States Internal Revenue Service.

28 "Expenses" means brokers' commissions, service charges,
29 application fees, processing fees, closing costs, filing fees,
30 administrative fees, legal fees, notary fees and other commissions,
31 costs, expenses and charges payable by the payee or deductible from
32 the gross consideration that would be paid to the payee in connection
33 with the transfer.

34 "Favorable tax determination" means, with respect to the proposed
35 transfer of structured settlement payment rights, any of the following
36 authorities that definitively establishes that the federal income tax
37 treatment of the structured settlement for the parties to the structured
38 settlement agreement and any qualified assignment agreement, other
39 than the payee, will not be affected by the transfer:

40 (1) A provision of Title 26 of the United States Code or a United
41 States Treasury regulation adopted pursuant thereto;

42 (2) A revenue ruling or revenue procedure issued by the United
43 States Internal Revenue Service;

44 (3) A private letter ruling by the United States Internal Revenue
45 Service with respect to the transfer; or

46 (4) A decision of the United States Supreme Court or a decision

1 of a lower federal court in which the United States Internal Revenue
2 Service has acquiesced.

3 "Federal hardship standard" means a federal standard applicable to
4 transfers of structured settlement payment rights based on findings of
5 a court or responsible administrative authority regarding the payee's
6 needs, as contained in Title 26 of the United States Code, or in a
7 United States Treasury regulation adopted pursuant thereto.

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

11 (1) Who is engaged by a payee to render advice concerning the
12 legal, tax and financial implications of a transfer of structured
13 settlement payment rights;

14 (2) Who is not in any manner affiliated with or compensated by the
15 transferee of the transfer; and

16 (3) Whose compensation for rendering advice is not affected by
17 whether a transfer occurs or does not occur.

18 "Interested parties" means, with respect to any structured
19 settlement, the payee, any beneficiary designated under the annuity
20 contract to receive payments following the payee's death, the annuity
21 issuer, the structured settlement obligor, and any other party that has
22 continuing rights or obligations under the structured settlement.

23 "Payee" means an individual who is receiving tax free damage
24 payments under a structured settlement and proposes to make a
25 transfer of payment rights thereunder.

26 "Qualified assignment agreement" means an agreement providing
27 for a qualified assignment within the meaning of 26 U.S.C. s.130.

28 "Responsible administrative authority" means, with respect to a
29 structured settlement, any government authority vested by law with
30 exclusive jurisdiction over the settled claim resolved by the structured
31 settlement.

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

34 "Structured settlement" means an arrangement for periodic payment
35 of damages for personal injuries established by settlement or judgment
36 in resolution of a tort claim or for periodic payments in settlement of
37 a workers' compensation claim.

38 "Structured settlement agreement" means the agreement, judgment,
39 stipulation, or release embodying the terms of a structured settlement,
40 including the rights of the payee to receive periodic payments.

41 "Structured settlement obligor" means, with respect to any
42 structured settlement, the party that has the continuing periodic
43 payment obligation to the payee under a structured settlement
44 agreement or a qualified assignment agreement.

45 "Structured settlement payment rights" means the rights to receive
46 periodic payments, including a lump sum payment, under a structured

1 settlement, whether from the settlement obligor or the annuity issuer,
2 if:

3 (1) The payee or any other interested party, the settlement obligor
4 or the annuity issuer is domiciled in this State;

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

7 (3) The settled claim was pending before the courts of this State
8 when the parties entered into the structured settlement agreement.

9 "Terms of the structured settlement" include, with respect to any
10 structured settlement, the terms of the structured settlement
11 agreement, the annuity contract, any qualified assignment agreement
12 and any order or approval of any court or responsible administrative
13 authority or other government authority authorizing or approving the
14 structured settlement.

15 "Transfer" means any sale, assignment, pledge, hypothecation, or
16 other form of alienation or encumbrance made by a payee for
17 consideration.

18 "Transfer agreement" means the agreement providing for transfer
19 of structured settlement payment rights from a payee to a transferee.

20 "Transferee" means any person receiving structured settlement
21 payment rights resulting from a transfer.

22

23 2. No direct or indirect transfer of structured settlement payment
24 rights shall be effective and no structured settlement obligor or annuity
25 issuer shall be required to make any payment directly or indirectly to
26 any transferee of structured settlement payment rights unless the
27 transfer has been authorized in advance by a final order of a court of
28 competent jurisdiction or a responsible administrative authority, based
29 on express findings, after a hearing, by that court or responsible
30 administrative authority that:

31 a. The transfer complies with the requirements of this act and does
32 not contravene other applicable law;

33 b. Not less than 10 days prior to the date on which the payee first
34 incurred any obligation with respect to the transfer, the transferee had
35 provided to the payee a disclosure statement in bold type, no smaller
36 than 14 points, setting forth:

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

39 (2) The aggregate amount of those payments;

40 (3) The discounted present value of those payments, together with
41 the discount rate used in determining the discounted present value;

42 (4) The gross amount payable to the payee in exchange for those
43 payments;

44 (5) An itemized listing of all expenses;

45 (6) The net amount payable to the payee after deduction of all
46 expenses;

1 (7) The quotient, expressed as a percentage, obtained by dividing
2 the net payment amount by the discounted present value of the
3 payments; and

4 (8) The amount of any penalty and the aggregate amount of any
5 liquidated damages, inclusive of penalties, payable by the payee in the
6 event of any breach of the transfer agreement by the payee;

7 c. The payee has established that the transfer is necessary to enable
8 the payee, the payee's dependents, or both, to avoid imminent financial
9 hardship, and the transfer should not be expected to subject the payee,
10 the payee's dependents, or both, to undue financial hardship in the
11 future; except that if, at the time the payee and the transferee entered
12 into the transfer agreement, a federal hardship standard is in effect,
13 then in lieu of the foregoing finding, the court or responsible
14 administrative authority shall make an express finding that the transfer
15 qualifies under that federal hardship standard;

16 d. The payee has received independent professional advice
17 regarding the legal, tax and financial implications of the transfer;

18 e. If the transfer would contravene the terms of the structured
19 settlement:

20 (1) The transfer has been expressly approved in writing by:

21 (a) Each interested party; provided, however, that if, at the time
22 the payee and the transferee entered into the transfer agreement, a
23 favorable tax determination was in effect, then the approval of the
24 annuity issuer and the structured settlement obligor shall not be
25 required if all other interested parties approve the transfer and waive
26 any and all rights to require that the transferred payments be made to
27 the payee in accordance with the terms of the structured settlement;
28 and

29 (b) Any court or government authority, other than the court or
30 responsible administrative authority from which authorization of the
31 transfer is sought under this act, which previously approved the
32 structured settlement; and

33 (2) Signed originals of all approvals required under paragraph (1)
34 of this subsection have been filed with the court or responsible
35 administrative authority from which authorization of the transfer is
36 sought under this act, and originals or copies have been furnished to
37 all interested parties; and

38 f. The transferee has given written notice of the transferee's name,
39 address and taxpayer identification number to the annuity issuer and
40 the structured settlement obligor and has filed a copy of the notice
41 with the court or responsible administrative authority.

42
43 3. a. The Superior Court shall have non-exclusive jurisdiction over
44 any application for authorization of a transfer of structured settlement
45 payment rights under this act.

46 b. Not less than 20 days prior to the scheduled hearing on any

1 application for authorization of a transfer of structured settlement
2 payment rights under section 2 of this act, the transferee shall file with
3 the court or responsible administrative authority, and serve on any
4 other government authority which previously approved the structured
5 settlement, on all interested parties, and on the Attorney General, a
6 notice of the proposed transfer and the application for its
7 authorization, including in the notice:

8 (1) A copy of the transferee's application;

9 (2) A copy of the transfer agreement;

10 (3) A copy of the disclosure statement required under subsection
11 b. of section 2 of this act;

12 (4) Notification that any interested party may support, oppose or
13 otherwise respond to the transferee's application, either in person or
14 by counsel, by submitting written comments to the court or responsible
15 administrative authority or by participating in the hearing; and

16 (5) Notification of the time and place of the hearing and
17 notification of the manner in which, and the time by which, written
18 responses to the application shall be filed, which shall be not less than
19 15 days after service of the transferee's notice, in order to be
20 considered by the court or responsible administrative authority.

21 c. The Attorney General shall have standing to raise, appear and be
22 heard on any matter relating to an application for authorization of a
23 transfer of structured settlement payment rights under this act.

24

25 4. The provisions of this act shall not be waived.

26

27 5. No payee who proposes to make a transfer of structured
28 settlement payment rights shall incur any penalty, forfeit any
29 application fee or other payment, or otherwise incur any liability to the
30 proposed transferee based on any failure of the transfer to satisfy the
31 conditions of section 2 of this act.

32

33 6. Nothing contained in this act shall be construed to authorize any
34 transfer of structured settlement payment rights in contravention of
35 applicable law or to give effect to any transfer of structured settlement
36 payment rights that is invalid under applicable law.

37

38 7. This act shall take effect on the 30th day following enactment
39 and shall apply to any transfer of structured settlement payment rights
40 under a transfer agreement entered into on or after the effective date.

41

42

43

STATEMENT

44

45 This bill protects recipients of long-term structured settlements
46 from aggressive marketing by factoring companies seeking to persuade

1 these people to cash out future payments at sharp discounts.
2 Structured settlements are a well-recognized means of compensating
3 victims of serious, often disabling, physical injuries. Under a
4 structured settlement, the parties reach a negotiated agreement under
5 which the injured person receives compensation in the form of a
6 stream of payments, tailored to the person's future needs. The future
7 payments are tax-free and refunded through an annuity contract or
8 U.S. Treasury obligations.

9 Structured settlements provide strong public policy benefits. They
10 provide long-term financial protection for injury victims and their
11 families. They provide against the loss or dissipation of lump sum
12 recoveries. Factoring companies, commonly using phone banks,
13 advertising and high-pressure sales to "buy" the settlement for a small
14 lump-sum payment, undermine these benefits and may exploit an
15 injured person at a time when they need cash.

16 This bill requires advance approval by the court or a responsible
17 administrative authority for all factoring transactions. To approve a
18 transaction the court must find that: the transfer will not violate other
19 applicable laws (such as state laws prohibiting the assignment of
20 workers' compensation settlements); the transfer is necessary to avoid
21 imminent financial hardship; the key economic terms of the proposed
22 transfer have been disclosed to the settlement recipient; and the
23 settlement recipient has received independent professional advice
24 concerning the transfer.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2146

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED MARCH 1, 2001

Sponsored by:

Assemblywoman **CLARE M. FARRAGHER**

District 12 (Monmouth)

Assemblyman **CHRISTOPHER "KIP" BATEMAN**

District 16 (Morris and Somerset)

Co-Sponsored by:

Senators **Cardinale, Singer, Inverso and Bucco**

SYNOPSIS

"Structured Settlement Protection Act."

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Banking and Insurance Committee.



(Sponsorship Updated As Of: 6/22/2001)

1 AN ACT concerning structured settlements.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. This act shall be known and may be cited as the "Structured
7 Settlement Protection Act."

8

9 2. For the purposes of this act:

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

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

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

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

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

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

33 "Net advance amount" means the gross advance amount less the
34 aggregate amount of the actual and estimated transfer expenses
35 required to be disclosed under subsection e. of section 3 of this act.

36 "Payee" means an individual who is receiving tax free payments
37 under a structured settlement and proposes to make a transfer of
38 payment rights thereunder.

39 "Periodic payments" includes both recurring payments and
40 scheduled future lump sum payments.

41 "Qualified assignment agreement" means an agreement providing
42 for a qualified assignment within the meaning of 26 U.S.C. s.130.

43 "Responsible administrative authority" means, with respect to a
44 structured settlement, any government authority vested by law with
45 exclusive jurisdiction over the settled claim resolved by the structured
46 settlement.

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

3 "Structured settlement" means an arrangement for periodic
4 payment of damages for personal injuries or sickness established by
5 settlement or judgment in resolution of a tort claim or for periodic
6 payments in settlement of a workers' compensation claim.

7 "Structured settlement agreement" means the agreement, judgment,
8 stipulation or release embodying the terms of a structured settlement.

9 "Structured settlement obligor" means, with respect to any
10 structured settlement, the party that has the continuing obligation to
11 make periodic payments to the payee under a structured settlement
12 agreement or a qualified assignment agreement.

13 "Structured settlement payment rights" means rights to receive
14 periodic payments under a structured settlement, whether from the
15 structured settlement obligor or the annuity issuer, if:

16 (1) the payee is domiciled in, or the domicile or principal place of
17 business of the structured settlement obligor or the annuity issuer is
18 located in, this State; or

19 (2) the structured settlement agreement was approved by a court
20 or responsible administrative authority in this State; or

21 (3) the structured settlement agreement is expressly governed by
22 the laws of this State.

23 "Terms of the structured settlement" include, with respect to any
24 structured settlement, the terms of the structured settlement
25 agreement, the annuity contract, any qualified assignment agreement
26 and any order or other approval of any court or responsible
27 administrative authority or other government authority that authorized
28 or approved the structured settlement.

29 "Transfer" means any sale, assignment, pledge, hypothecation or
30 other alienation or encumbrance of structured settlement payment
31 rights made by a payee for consideration; except that the term
32 "transfer" does not include the creation or perfection of a security
33 interest in structured settlement payment rights under a blanket
34 security agreement entered into with an insured depository institution,
35 in the absence of any action to redirect the structured settlement
36 payments to the insured depository institution, or an agent or
37 successor in interest thereof, or otherwise to enforce the blanket
38 security interest against the structured settlement payment rights.

39 "Transfer agreement" means the agreement providing for a transfer
40 of structured settlement payment rights.

41 "Transfer expenses" means all expenses of a transfer that are
42 required under the transfer agreement to be paid by the payee or
43 deducted from the gross advance amount, including, without
44 limitation, court filing fees, attorneys' fees, escrow fees, lien
45 recordation fees, judgment and lien search fees, finders' fees,
46 commissions, and other payments to a broker or other intermediary;

1 "transfer expenses" does not include preexisting obligations of the
2 payee payable for the payee's account from the proceeds of a transfer.

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

5

6 3. Not less than three days prior to the date on which a payee
7 signs a transfer agreement, the transferee shall provide to the payee a
8 separate disclosure statement, in bold type no smaller than 14 points,
9 setting forth:

10 a. the amounts and due dates of the structured settlement
11 payments to be transferred;

12 b. the aggregate amount of the payments;

13 c. the discounted present value of the payments to be transferred,
14 which shall be identified as the "calculation of current value of the
15 transferred structured settlement payments under federal standards for
16 valuing annuities" and the amount of the applicable federal rate used
17 in calculating the discounted present value;

18 d. the gross advance amount;

19 e. an itemized listing of all applicable transfer expenses, other than
20 attorneys' fees and related disbursements payable in connection with
21 the transferee's application for approval of the transfer, and the
22 transferee's best estimate of the amount of any of those fees and
23 disbursements;

24 f. the net advance amount;

25 g. the amount of any penalties or liquidated damages payable by
26 the payee in the event of any breach of the transfer agreement by the
27 payee; and

28 h. a statement that the payee has the right to cancel the transfer
29 agreement, without penalty or further obligation, not later than the
30 third business day after the date the agreement is signed by the payee.

31

32 4. No direct or indirect transfer of structured settlement payment
33 rights shall be effective and no structured settlement obligor or annuity
34 issuer shall be required to make any payment directly or indirectly to
35 any transferee of structured settlement payment rights unless the
36 transfer has been approved in advance in a final court order or order
37 of a responsible administrative authority based on express findings by
38 the court or responsible administrative authority that:

39 a. the transfer is in the best interest of the payee, taking into
40 account the welfare and support of the payee's dependents;

41 b. the payee has been advised in writing by the transferee to seek
42 independent professional advice regarding the transfer and has either
43 received the advice or knowingly waived the right to seek that advice
44 in writing; and

45 c. the transfer does not contravene any applicable statute or the
46 order of any court or other government authority.

1 5. Following a transfer of structured settlement payment rights
2 under this act:

3 a. The structured settlement obligor and the annuity issuer shall,
4 as to all parties except the transferee, be discharged and released from
5 any and all liability for the transferred payments;

6 b. The transferee shall be liable to the structured settlement
7 obligor and the annuity issuer:

8 (1) if the transfer contravenes the terms of the structured
9 settlement, for any taxes incurred by those parties as a consequence of
10 the transfer; and

11 (2) for any other liabilities or costs, including reasonable costs and
12 attorneys' fees, arising from compliance by those parties with the order
13 of the court or responsible administrative authority or arising as a
14 consequence of the transferee's failure to comply with this act;

15 c. Neither the annuity issuer nor the structured settlement obligor
16 shall be required to divide any periodic payment between the payee
17 and any transferee or assignee or between two or more transferees or
18 assignees; and

19 d. Any further transfer of structured settlement payment rights by
20 the payee shall be made in compliance with all of the requirements of
21 this act.

22

23 6. a. An application under this act to a court or responsible
24 administrative authority for approval of a transfer of structured
25 settlement payment rights shall be made by the transferee and may be
26 brought in the jurisdiction in which the payee resides, in the
27 jurisdiction in which the structured settlement obligor or the annuity
28 issuer maintains its principal place of business, or in any court or
29 before any responsible administrative authority which approved the
30 structured settlement agreement.

31 b. Not less than 20 days prior to the scheduled hearing on any
32 application for approval of a transfer of structured settlement payment
33 rights under section 4 of this act, the transferee shall file with the court
34 or responsible administrative authority and serve on all interested
35 parties a notice of the proposed transfer and the application for its
36 authorization, including with the notice:

37 (1) a copy of the transferee's application;

38 (2) a copy of the transfer agreement;

39 (3) a copy of the disclosure statement required under section 3 of
40 this act;

41 (4) a listing of each of the payee's dependents, together with each
42 dependent's age;

43 (5) notification that any interested party is entitled to support,
44 oppose or otherwise respond to the transferee's application, either in
45 person or by counsel, by submitting written comments to the court or
46 responsible administrative authority or by participating in the hearing;

1 and

2 (6) notification of the time and place of the hearing and
3 notification of the manner in which, and the time by which, written
4 responses to the application shall be filed, which shall be not less than
5 15 days after service of the transferee's notice, in order to be
6 considered by the court or responsible administrative authority.

7

8 7. a. The provisions of this act shall not be waived by any payee.

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

16 c. No transfer of structured settlement payment rights shall extend
17 to any payments that are life-contingent unless, prior to the date on
18 which the payee signs the transfer agreement, the transferee has
19 established and has agreed to maintain procedures reasonably
20 satisfactory to the annuity issuer and the structured settlement obligor
21 for: (1) periodically confirming the payee's survival; and (2) giving the
22 annuity issuer and the structured settlement obligor prompt written
23 notice in the event of the payee's death.

24 d. No payee who proposes to make a transfer of structured
25 settlement payment rights shall incur any penalty, forfeit any
26 application fee or other payment, or otherwise incur any liability to the
27 proposed transferee or any assignee based on any failure of the
28 transfer to satisfy the conditions of this act.

29 e. Nothing contained in this act shall be construed to authorize any
30 transfer of structured settlement payment rights in contravention of
31 any law or to imply that any transfer under a transfer agreement
32 entered into prior to the effective date of this act is valid or invalid.

33 f. Compliance with the requirements set forth in section 3 of this
34 act and fulfillment of the conditions set forth in section 4 of this act
35 shall be solely the responsibility of the transferee in any transfer of
36 structured settlement payment rights, and neither the structured
37 settlement obligor nor the annuity issuer shall bear any responsibility
38 for, or any liability arising from, non-compliance with those
39 requirements or failure to fulfill those conditions.

40

41 8. This act shall take effect on the 30th day following enactment
42 and shall apply to any transfer of structured settlement payment rights
43 under a transfer agreement entered into on or after the effective date
44 of this act; provided, however, that nothing contained herein shall
45 imply that any transfer under a transfer agreement reached prior to that
46 date is either effective or ineffective.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2146

STATE OF NEW JERSEY

DATED: MARCH 1, 2001

The Assembly Banking and Insurance Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2146.

This bill, an Assembly Committee Substitute for Assembly Bill No. 2146, provides for the regulation of the transfer of structured settlement payment rights by recipients thereof (known as payees in the bill) to factoring companies (known as transferees in the bill).

The bill provides that the transfer of structured settlement payment rights is not effective and the structured settlement obligor and annuity issuer are not obligated to pay a factoring company unless a court or responsible administrative authority approves the transfer. To approve the transfer, the court or responsible administrative authority must find that:

1. the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
2. the payee has been advised in writing by the factoring company to seek independent professional advice regarding the transfer and has either received the advice or knowingly waived the right to seek that advice in writing; and
3. the transfer does not contravene any applicable statute or an order of any court or other government authority.

The bill provides that a factoring company must provide to a prospective payee, at least three days prior to the date on which the payee signs a transfer agreement, a separate disclosure statement including the following:

1. the aggregate amount of payments transferred;
2. the present value of the payments transferred as determined using the applicable federal rate for valuing annuities;
3. the gross amount to be received from the factoring company, the listing of all applicable transfer expenses and the net amount to be received;
4. the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
5. the right to cancel the transfer agreement, without penalty, not later than the third business day after the date the agreement is signed

by the payee.

The bill provides that following an approved transfer of structured settlement payment rights, the factoring company is liable to an annuity issuer and structured settlement obligor for any taxes incurred by those parties if the transfer contravenes the terms of the structured settlement and for other liabilities and costs arising from compliance by those parties with an order of the court or responsible administrative authority or arising as a consequence of the factoring company's failure to comply with the provisions of this bill. In addition, neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment, nor are they liable for any double payments with respect to transferred payments.

Finally, the bill prohibits confessed or consent judgments under factoring agreements.

As reported, by the committee, this bill is identical to the Senate Substitute for Senate Bill No. 944(SCS)(SS).

SENATE, No. 944

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED FEBRUARY 10, 2000

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Co-Sponsored by:

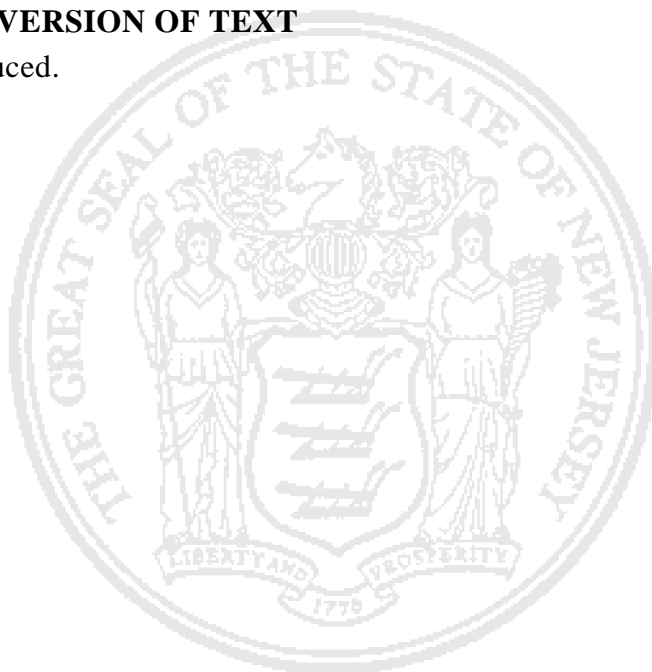
Senators Inverso and Bucco

SYNOPSIS

Prohibits transfer of structured settlement rights except under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning structured settlements.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. As used in this act:

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

9 "Applicable law" means:

10 (1) The federal laws of the United States;

11 (2) The laws of this State, including principles of equity applied in
12 the courts of this State; and

13 (3) The laws of any other jurisdiction:

14 (a) Which is the domicile of the payee or any other interested
15 party;

16 (b) Under whose laws a structured settlement agreement was
17 approved by a court or responsible administrative authority; or

18 (c) In whose court a settled claim was pending when the parties
19 entered into a structured settlement agreement.

20 "Dependents" means a payee's spouse and minor children and all
21 other family members and other persons for whom the payee is legally
22 obligated to provide support, including alimony.

23 "Discounted present value" means the fair present value of future
24 payments, as determined by discounting the payments to the present
25 using the most recently published applicable federal rate for
26 determining the present value of an annuity, as issued by the United
27 States Internal Revenue Service.

28 "Expenses" means brokers' commissions, service charges,
29 application fees, processing fees, closing costs, filing fees,
30 administrative fees, legal fees, notary fees and other commissions,
31 costs, expenses and charges payable by the payee or deductible from
32 the gross consideration that would be paid to the payee in connection
33 with the transfer.

34 "Favorable tax determination" means, with respect to the proposed
35 transfer of structured settlement payment rights, any of the following
36 authorities that definitively establishes that the federal income tax
37 treatment of the structured settlement for the parties to the structured
38 settlement agreement and any qualified assignment agreement, other
39 than the payee, will not be affected by the transfer:

40 (1) A provision of Title 26 of the United States Code or a United
41 States Treasury regulation adopted pursuant thereto;

42 (2) A revenue ruling or revenue procedure issued by the United
43 States Internal Revenue Service;

44 (3) A private letter ruling by the United States Internal Revenue
45 Service with respect to the transfer; or

46 (4) A decision of the United States Supreme Court or a decision

1 of a lower federal court in which the United States Internal Revenue
2 Service has acquiesced.

3 "Federal hardship standard" means a federal standard applicable to
4 transfers of structured settlement payment rights based on findings of
5 a court or responsible administrative authority regarding the payee's
6 needs, as contained in Title 26 of the United States Code, or in a
7 United States Treasury regulation adopted pursuant thereto.

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

11 (1) Who is engaged by a payee to render advice concerning the
12 legal, tax and financial implications of a transfer of structured
13 settlement payment rights;

14 (2) Who is not in any manner affiliated with or compensated by the
15 transferee of the transfer; and

16 (3) Whose compensation for rendering advice is not affected by
17 whether a transfer occurs or does not occur.

18 "Interested parties" means, with respect to any structured
19 settlement, the payee, any beneficiary designated under the annuity
20 contract to receive payments following the payee's death, the annuity
21 issuer, the structured settlement obligor, and any other party that has
22 continuing rights or obligations under the structured settlement.

23 "Payee" means an individual who is receiving tax free damage
24 payments under a structured settlement and proposes to make a
25 transfer of payment rights thereunder.

26 "Qualified assignment agreement" means an agreement providing
27 for a qualified assignment within the meaning of 26 U.S.C. s.130.

28 "Responsible administrative authority" means, with respect to a
29 structured settlement, any government authority vested by law with
30 exclusive jurisdiction over the settled claim resolved by the structured
31 settlement.

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

34 "Structured settlement" means an arrangement for periodic payment
35 of damages for personal injuries established by settlement or judgment
36 in resolution of a tort claim or for periodic payments in settlement of
37 a workers' compensation claim.

38 "Structured settlement agreement" means the agreement, judgment,
39 stipulation, or release embodying the terms of a structured settlement,
40 including the rights of the payee to receive periodic payments.

41 "Structured settlement obligor" means, with respect to any
42 structured settlement, the party that has the continuing periodic
43 payment obligation to the payee under a structured settlement
44 agreement or a qualified assignment agreement.

45 "Structured settlement payment rights" means the rights to receive
46 periodic payments, including a lump sum payment, under a structured

1 settlement, whether from the settlement obligor or the annuity issuer,
2 if:

3 (1) The payee or any other interested party, the settlement obligor
4 or the annuity issuer is domiciled in this State;

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

7 (3) The settled claim was pending before the courts of this State
8 when the parties entered into the structured settlement agreement.

9 "Terms of the structured settlement" include, with respect to any
10 structured settlement, the terms of the structured settlement
11 agreement, the annuity contract, any qualified assignment agreement
12 and any order or approval of any court or responsible administrative
13 authority or other government authority authorizing or approving the
14 structured settlement.

15 "Transfer" means any sale, assignment, pledge, hypothecation, or
16 other form of alienation or encumbrance made by a payee for
17 consideration.

18 "Transfer agreement" means the agreement providing for transfer
19 of structured settlement payment rights from a payee to a transferee.

20 "Transferee" means any person receiving structured settlement
21 payment rights resulting from a transfer.

22

23 2. No direct or indirect transfer of structured settlement payment
24 rights shall be effective and no structured settlement obligor or annuity
25 issuer shall be required to make any payment directly or indirectly to
26 any transferee of structured settlement payment rights unless the
27 transfer has been authorized in advance by a final order of a court of
28 competent jurisdiction or a responsible administrative authority, based
29 on express findings, after a hearing, by that court or responsible
30 administrative authority that:

31 a. The transfer complies with the requirements of this act and does
32 not contravene other applicable law;

33 b. Not less than 10 days prior to the date on which the payee first
34 incurred any obligation with respect to the transfer, the transferee had
35 provided to the payee a disclosure statement in bold type, no smaller
36 than 14 points, setting forth:

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

39 (2) The aggregate amount of those payments;

40 (3) The discounted present value of those payments, together with
41 the discount rate used in determining the discounted present value;

42 (4) The gross amount payable to the payee in exchange for those
43 payments;

44 (5) An itemized listing of all expenses;

45 (6) The net amount payable to the payee after deduction of all
46 expenses;

1 (7) The quotient, expressed as a percentage, obtained by dividing
2 the net payment amount by the discounted present value of the
3 payments; and

4 (8) The amount of any penalty and the aggregate amount of any
5 liquidated damages, inclusive of penalties, payable by the payee in the
6 event of any breach of the transfer agreement by the payee;

7 c. The payee has established that the transfer is necessary to enable
8 the payee, the payee's dependents, or both, to avoid imminent financial
9 hardship, and the transfer should not be expected to subject the payee,
10 the payee's dependents, or both, to undue financial hardship in the
11 future; except that if, at the time the payee and the transferee entered
12 into the transfer agreement, a federal hardship standard is in effect,
13 then in lieu of the foregoing finding, the court or responsible
14 administrative authority shall make an express finding that the transfer
15 qualifies under that federal hardship standard;

16 d. The payee has received independent professional advice
17 regarding the legal, tax and financial implications of the transfer;

18 e. If the transfer would contravene the terms of the structured
19 settlement:

20 (1) The transfer has been expressly approved in writing by:

21 (a) Each interested party; provided, however, that if, at the time
22 the payee and the transferee entered into the transfer agreement, a
23 favorable tax determination was in effect, then the approval of the
24 annuity issuer and the structured settlement obligor shall not be
25 required if all other interested parties approve the transfer and waive
26 any and all rights to require that the transferred payments be made to
27 the payee in accordance with the terms of the structured settlement;
28 and

29 (b) Any court or government authority, other than the court or
30 responsible administrative authority from which authorization of the
31 transfer is sought under this act, which previously approved the
32 structured settlement; and

33 (2) Signed originals of all approvals required under paragraph (1)
34 of this subsection have been filed with the court or responsible
35 administrative authority from which authorization of the transfer is
36 sought under this act, and originals or copies have been furnished to
37 all interested parties; and

38 f. The transferee has given written notice of the transferee's name,
39 address and taxpayer identification number to the annuity issuer and
40 the structured settlement obligor and has filed a copy of the notice
41 with the court or responsible administrative authority.

42
43 3. a. The Superior Court shall have non-exclusive jurisdiction over
44 any application for authorization of a transfer of structured settlement
45 payment rights under this act.

46 b. Not less than 20 days prior to the scheduled hearing on any

1 application for authorization of a transfer of structured settlement
2 payment rights under section 2 of this act, the transferee shall file with
3 the court or responsible administrative authority, and serve on any
4 other government authority which previously approved the structured
5 settlement, on all interested parties, and on the Attorney General, a
6 notice of the proposed transfer and the application for its
7 authorization, including in the notice:

- 8 (1) A copy of the transferee's application;
- 9 (2) A copy of the transfer agreement;
- 10 (3) A copy of the disclosure statement required under subsection
11 b. of section 2 of this act;
- 12 (4) Notification that any interested party may support, oppose or
13 otherwise respond to the transferee's application, either in person or
14 by counsel, by submitting written comments to the court or responsible
15 administrative authority or by participating in the hearing; and
- 16 (5) Notification of the time and place of the hearing and
17 notification of the manner in which, and the time by which, written
18 responses to the application shall be filed, which shall be not less than
19 15 days after service of the transferee's notice, in order to be
20 considered by the court or responsible administrative authority.

21 c. The Attorney General shall have standing to raise, appear and be
22 heard on any matter relating to an application for authorization of a
23 transfer of structured settlement payment rights under this act.

24
25 4. The provisions of this act shall not be waived.

26
27 5. No payee who proposes to make a transfer of structured
28 settlement payment rights shall incur any penalty, forfeit any
29 application fee or other payment, or otherwise incur any liability to the
30 proposed transferee based on any failure of the transfer to satisfy the
31 conditions of section 2 of this act.

32
33 6. Nothing contained in this act shall be construed to authorize any
34 transfer of structured settlement payment rights in contravention of
35 applicable law or to give effect to any transfer of structured settlement
36 payment rights that is invalid under applicable law.

37
38 7. This act shall take effect on the 30th day following enactment
39 and shall apply to any transfer of structured settlement payment rights
40 under a transfer agreement entered into on or after the effective date.

41

42

43

STATEMENT

44

45 This bill protects recipients of long-term structured settlements
46 from aggressive marketing by factoring companies seeking to persuade

1 these people to cash out future payments at sharp discounts.
2 Structured settlements are a well-recognized means of compensating
3 victims of serious, often disabling, physical injuries. Under a
4 structured settlement, the parties reach a negotiated agreement under
5 which the injured person receives compensation in the form of a
6 stream of payments, tailored to the person's future needs. The future
7 payments are tax-free and refunded through an annuity contract or
8 U.S. Treasury obligations.

9 Structured settlements provide strong public policy benefits. They
10 provide long-term financial protection for injury victims and their
11 families. They provide against the loss or dissipation of lump sum
12 recoveries. Factoring companies, commonly using phone banks,
13 advertising and high-pressure sales to "buy" the settlement for a small
14 lump-sum payment, undermine these benefits and may exploit an
15 injured person at a time when they need cash.

16 This bill requires advance approval by the court or a responsible
17 administrative authority for all factoring transactions. To approve a
18 transaction the court must find that: the transfer will not violate other
19 applicable laws (such as state laws prohibiting the assignment of
20 workers' compensation settlements); the transfer is necessary to avoid
21 imminent financial hardship; the key economic terms of the proposed
22 transfer have been disclosed to the settlement recipient; and the
23 settlement recipient has received independent professional advice
24 concerning the transfer.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 944

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED JUNE 15, 2000

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Co-Sponsored by:

Senators Inverso and Bucco

SYNOPSIS

Prohibits transfer of structured settlement payment rights under certain circumstances.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Commerce Committee.



1 AN ACT concerning structured settlements.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. As used in this act:

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

9 "Court" means the Superior Court of New Jersey.

10 "Discounted present value" means the fair present value of future
11 payments, as determined by discounting the payments to the present
12 using the most recently published applicable federal rate for
13 determining the present value of an annuity, as issued by the United
14 States Internal Revenue Service.

15 "Expenses" means brokers' commissions, service charges,
16 application fees, processing fees, closing costs, filing fees,
17 administrative fees, legal fees, notary fees and other commissions,
18 costs, expenses and charges payable by the payee or deductible from
19 the gross consideration that would be paid to the payee in connection
20 with the transfer.

21 "Independent professional advice" means advice of an attorney,
22 certified public accountant, actuary or other licensed professional
23 advisor:

24 (1) Who is engaged by a payee to render advice concerning the
25 legal, tax and financial implications of a transfer of structured
26 settlement payment rights;

27 (2) Who is not in any manner affiliated with or compensated by
28 the transferee of the transfer; and

29 (3) Whose compensation for rendering advice is not affected by
30 whether a transfer occurs or does not occur.

31 "Interested party" means, with respect to any structured
32 settlement, the payee, any beneficiary irrevocably designated under the
33 annuity contract to receive payments following the payee's death, the
34 annuity issuer and the structured settlement obligor.

35 "Payee" means an individual who is receiving payments under a
36 structured settlement and proposes to make a transfer of payment
37 rights thereunder.

38 "Structured settlement" means an arrangement for periodic
39 payment of damages for personal injuries established by settlement or
40 judgment in resolution of a tort claim.

41 "Structured settlement agreement" means the agreement, judgment,
42 stipulation or release embodying the terms of a structured settlement,
43 including the rights of the payee to receive periodic payments.

44 "Structured settlement obligor" means, with respect to any
45 structured settlement, the party that has the continuing periodic
46 payment obligation to the payee under a structured settlement

1 agreement.

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

5 (1) The payee or transferee is domiciled in this State; or

6 (2) The structured settlement agreement was approved by a court
7 in this State; or

8 (3) The structured settlement agreement was entered into in
9 connection with an action filed in this State.

10 "Terms of the structured settlement" include, with respect to any
11 structured settlement, the terms of the structured settlement
12 agreement, the annuity contract and any order of any court authorizing
13 or approving the structured settlement.

14 "Transfer" means any sale, assignment, pledge, hypothecation,
15 grant of power of attorney by a payee to a transferee for purposes of
16 a transfer agreement or other form of alienation or encumbrance made
17 by a payee for consideration.

18 "Transfer agreement" means the agreement providing for transfer
19 of structured settlement payment rights from a payee to a transferee.

20 "Transferee" means any person receiving structured settlement
21 payment rights resulting from a transfer.

22

23 2. A transfer of structured settlement payment rights shall be
24 effective only if it has been approved in advance in a final court order
25 with express findings that:

26 a. The transfer complies with the provisions of this act;

27 b. The payee has received the disclosure statement as required by
28 section 4 of this act;

29 c. The transfer is fair and reasonable;

30 d. The payee does not seek assignment for the purpose of evading
31 creditors, judgments or obligations for child support and the
32 assignment does not contravene any court order or statute;

33 e. The payee has adequate means of support exclusive of the funds
34 subject to the proposed transfer agreement, including a finding that the
35 transfer would not be likely to result in financial hardship for the
36 payee's dependents.

37 f. The payee has received independent professional advice, which
38 professional shall not directly or indirectly be recommended or
39 facilitated by the transferee, regarding the legal, tax and financial
40 implications of the transfer or has waived such advice in writing.

41 g. The transfer has been expressly approved in writing by each
42 interested party except the annuity issuer and the structured settlement
43 obligor.

44

45 3. a. The Superior Court of New Jersey shall have exclusive
46 jurisdiction over any application for authorization of a transfer of

1 structured settlement payment rights under this act if the payee is
2 domiciled in this State.

3 b. A request for authorization to transfer structured settlement
4 payment rights may be made by the transferee or by the payee and
5 transferee jointly. Not less than 15 days prior to the scheduled hearing
6 on any application for authorization of a transfer of structured
7 settlement payment rights under this act, the applicant shall file and
8 serve on all interested parties a notice of the proposed transfer and an
9 application to the court for approval of the proposed transfer and shall
10 include in the notice:

11 (1) A copy of the transfer agreement;

12 (2) A copy of the disclosure statement required by section 4 of
13 this act;

14 (3) A statement that any interested party may support, oppose or
15 otherwise respond to the transferee's application in writing and the
16 time by which such submissions shall be made; and

17 (4) Notification of the time and place of the hearing if, in the
18 discretion of the court, a hearing is deemed necessary.

19 c. Any interested party, after proper notice, shall be bound by the
20 court's ruling and shall comply therewith.

21 d. The court may impose costs and reasonable attorney's fees
22 against any interested party or transferee who fails to make a good
23 faith effort to comply with the provisions of this act.

24 e. At the discretion of the court and considering all facts and
25 circumstances, any court proceeding pursuant to this section may be
26 treated as a summary proceeding.

27 f. Neither the annuity issuer nor the structured settlement obligor
28 shall have any liability to any other person for making payments
29 pursuant to an order granted by the court pursuant to this act.

30

31 4. Not less than 10 days prior to the date on which a payee enters
32 into a transfer agreement, or an agreement to enter into a transfer
33 agreement, the transferee shall provide a disclosure statement to the
34 payee in bold type, no smaller than 12 points, setting forth:

35 a. The transferee's name, address and taxpayer identification
36 number;

37 b. The amounts and due dates of the structured settlement
38 payments to be transferred;

39 c. The aggregate amount of those payments;

40 d. The discounted present value of those payments, together with
41 the discount rate used in determining the discounted present value;

42 e. The gross amount payable to the payee in exchange for those
43 payments;

44 f. An itemized listing of all expenses;

45 g. The net amount payable to the payee after deduction of all
46 expenses;

1 h. The quotient, expressed as a percentage, obtained by dividing
2 the net payment amount by the discounted present value of the
3 payments;

4 i. The amount of any penalty and the aggregate amount of any
5 liquidated damages, inclusive of penalties, payable by the payee in the
6 event of any breach of the transfer agreement by the payee; and

7 j. The statement of the right of the payee to cancel the transfer
8 agreement pursuant to subsection a. of section 5 of this act.

9
10 5. a. (1) The payee shall have the right to cancel a transfer
11 agreement without cost until midnight five business days after the day
12 on which the transfer agreement is executed. Notice of cancellation
13 shall be given by the payee by regular first class mail or other mail,
14 postage paid, to the transferee, structured settlement obligor and
15 annuity issuer, if any, and notice shall be deemed given when deposited
16 in a mailbox.

17 (2) The payee's right to cancel a transfer agreement shall be
18 contained in the disclosure statement required pursuant to section 4 of
19 this act and shall provide as follows:

20 "You have the right to cancel this transfer agreement without cost
21 to you until midnight five business days after the day on which the
22 transfer agreement is executed.

23 Cancellation occurs when you give notice by regular first class mail
24 or other mail, postage paid, to the transferee and notice is deemed
25 given when deposited in a mailbox."

26 b. No payee who proposes to make a transfer of structured
27 settlement payment rights shall incur any penalty, forfeit any
28 application fee or other payment, or otherwise incur any liability to the
29 proposed transferee based on any failure of the transfer to satisfy the
30 conditions of section 2 of this act.

31 c. No transfer agreement shall contain any provision granting to
32 the transferee a right of first refusal or similar contractual right.

33 d. The provisions of this act shall not be waived.
34

35 6. This act shall be liberally construed to authorize the transfer of
36 structured settlement payment rights only if such transfer is made in
37 accordance with the provisions of this act.
38

39 7. Except when inconsistent with the provisions of this act, the
40 provisions of P.L.1960, c.39 (C.56:8-1 et seq.) shall apply to
41 transactions under this act.
42

43 8. This act shall take effect on the 30th day following enactment
44 and shall apply to any transfer of structured settlement payment rights
45 under a transfer agreement entered into on or after the effective date.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 944**

STATE OF NEW JERSEY

DATED: JUNE 15, 2000

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill No. 944.

This bill, a Senate Committee Substitute for Senate, No. 944, provides that a transfer of structured settlement payment rights is effective only if the transfer has been approved in advance in a final court order with express findings that:

- a. The transfer complies with the provisions of this bill;
- b. The payee has received the disclosure statement required by section 4 of the bill spelling out the key financial terms of the proposed transfer at least 10 days prior to entering into the transfer agreement, including the discount present value of the payments to be transferred; the itemized listing of all expenses payable by the payee or deductible from the amount otherwise payable to the payee; the net amount payable to the payee; and the amount of any penalty payable by the payee if the payee breaches the transfer agreement;
- c. The transfer is fair and reasonable;
- d. The payee is not making the assignment for the purpose of evading creditors, judgments or obligations for child support and the assignment does not contravene any court order or statute;
- e. The payee has adequate means of support exclusive of the funds subject to the proposed transfer agreement, including a finding that the transfer would not result in financial hardship for the payee's dependents;
- f. The payee has received independent professional advice concerning the legal, tax and financial implications of the proposed transfer or has waived such in writing; and
- g. The transfer has been expressly approved in writing by each interested party except the annuity issuer and the structured settlement obligor.

The Superior Court of New Jersey has exclusive jurisdiction over any application for authorization of a transfer of structured settlement payment rights if the payee is domiciled in this State. An application for authorization of a transfer of structured settlement payment rights may be filed with the court if the structured settlement agreement was approved by a court in this State or was entered into in connection

with an action filed in this State, or the payee or transferee is domiciled in this State.

Besides the comprehensive court review of a transfer of structured settlement payment rights, there are numerous consumer protections contained in the bill. The payee has the right to cancel a transfer agreement without cost until midnight, five business days after executing the transfer agreement. The transfer agreement is prohibited from granting to the transferee a right of first refusal on the sale of future structured settlement payment rights. In addition, the bill applies the provisions of the "consumer fraud law" to the provisions of the bill and provides that no provision of the bill may be waived.

SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 944

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED DECEMBER 4, 2000

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Co-Sponsored by:

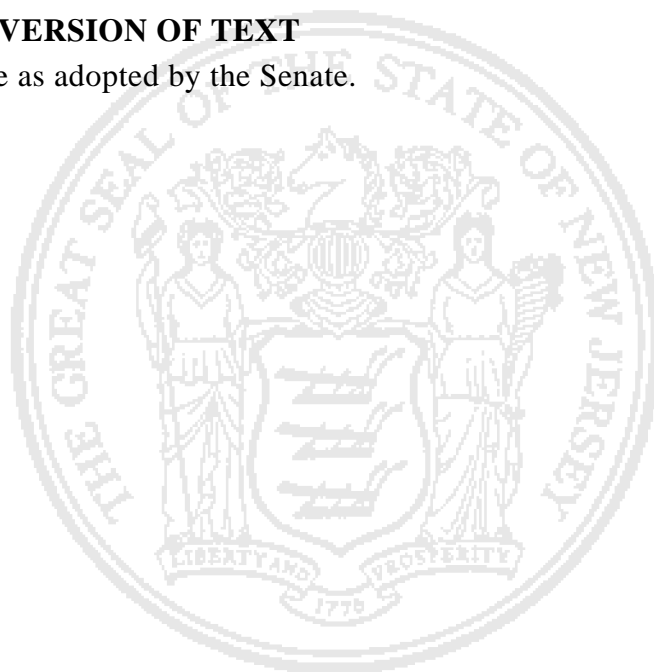
Senators Inverso and Bucco

SYNOPSIS

"Structured Settlement Protection Act."

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate.



1 AN ACT concerning structured settlements.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. This act shall be known and may be cited as the "Structured
7 Settlement Protection Act."

8

9 2. For the purposes of this act:

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

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

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

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

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

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

33 "Net advance amount" means the gross advance amount less the
34 aggregate amount of the actual and estimated transfer expenses
35 required to be disclosed under subsection e. of section 3 of this act.

36 "Payee" means an individual who is receiving tax free payments
37 under a structured settlement and proposes to make a transfer of
38 payment rights thereunder.

39 "Periodic payments" includes both recurring payments and
40 scheduled future lump sum payments.

41 "Qualified assignment agreement" means an agreement providing
42 for a qualified assignment within the meaning of 26 U.S.C. s.130.

43 "Responsible administrative authority" means, with respect to a
44 structured settlement, any government authority vested by law with
45 exclusive jurisdiction over the settled claim resolved by the structured
46 settlement.

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

3 "Structured settlement" means an arrangement for periodic
4 payment of damages for personal injuries or sickness established by
5 settlement or judgment in resolution of a tort claim or for periodic
6 payments in settlement of a workers' compensation claim.

7 "Structured settlement agreement" means the agreement, judgment,
8 stipulation or release embodying the terms of a structured settlement.

9 "Structured settlement obligor" means, with respect to any
10 structured settlement, the party that has the continuing obligation to
11 make periodic payments to the payee under a structured settlement
12 agreement or a qualified assignment agreement.

13 "Structured settlement payment rights" means rights to receive
14 periodic payments under a structured settlement, whether from the
15 structured settlement obligor or the annuity issuer, if:

16 (1) the payee is domiciled in, or the domicile or principal place of
17 business of the structured settlement obligor or the annuity issuer is
18 located in, this State; or

19 (2) the structured settlement agreement was approved by a court
20 or responsible administrative authority in this State; or

21 (3) the structured settlement agreement is expressly governed by
22 the laws of this State.

23 "Terms of the structured settlement" include, with respect to any
24 structured settlement, the terms of the structured settlement
25 agreement, the annuity contract, any qualified assignment agreement
26 and any order or other approval of any court or responsible
27 administrative authority or other government authority that authorized
28 or approved the structured settlement.

29 "Transfer" means any sale, assignment, pledge, hypothecation or
30 other alienation or encumbrance of structured settlement payment
31 rights made by a payee for consideration; except that the term
32 "transfer" does not include the creation or perfection of a security
33 interest in structured settlement payment rights under a blanket
34 security agreement entered into with an insured depository institution,
35 in the absence of any action to redirect the structured settlement
36 payments to the insured depository institution, or an agent or
37 successor in interest thereof, or otherwise to enforce the blanket
38 security interest against the structured settlement payment rights.

39 "Transfer agreement" means the agreement providing for a transfer
40 of structured settlement payment rights.

41 "Transfer expenses" means all expenses of a transfer that are
42 required under the transfer agreement to be paid by the payee or
43 deducted from the gross advance amount, including, without
44 limitation, court filing fees, attorneys' fees, escrow fees, lien
45 recordation fees, judgment and lien search fees, finders' fees,
46 commissions, and other payments to a broker or other intermediary;

1 "transfer expenses" does not include preexisting obligations of the
2 payee payable for the payee's account from the proceeds of a transfer.

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

5

6 3. Not less than three days prior to the date on which a payee
7 signs a transfer agreement, the transferee shall provide to the payee a
8 separate disclosure statement, in bold type no smaller than 14 points,
9 setting forth:

10 a. the amounts and due dates of the structured settlement
11 payments to be transferred;

12 b. the aggregate amount of the payments;

13 c. the discounted present value of the payments to be transferred,
14 which shall be identified as the "calculation of current value of the
15 transferred structured settlement payments under federal standards for
16 valuing annuities" and the amount of the applicable federal rate used
17 in calculating the discounted present value;

18 d. the gross advance amount;

19 e. an itemized listing of all applicable transfer expenses, other than
20 attorneys' fees and related disbursements payable in connection with
21 the transferee's application for approval of the transfer, and the
22 transferee's best estimate of the amount of any of those fees and
23 disbursements;

24 f. the net advance amount;

25 g. the amount of any penalties or liquidated damages payable by
26 the payee in the event of any breach of the transfer agreement by the
27 payee; and

28 h. a statement that the payee has the right to cancel the transfer
29 agreement, without penalty or further obligation, not later than the
30 third business day after the date the agreement is signed by the payee.

31

32 4. No direct or indirect transfer of structured settlement payment
33 rights shall be effective and no structured settlement obligor or annuity
34 issuer shall be required to make any payment directly or indirectly to
35 any transferee of structured settlement payment rights unless the
36 transfer has been approved in advance in a final court order or order
37 of a responsible administrative authority based on express findings by
38 the court or responsible administrative authority that:

39 a. the transfer is in the best interest of the payee, taking into
40 account the welfare and support of the payee's dependents;

41 b. the payee has been advised in writing by the transferee to seek
42 independent professional advice regarding the transfer and has either
43 received the advice or knowingly waived the right to seek that advice
44 in writing; and

45 c. the transfer does not contravene any applicable statute or the
46 order of any court or other government authority.

1 5. Following a transfer of structured settlement payment rights
2 under this act:

3 a. The structured settlement obligor and the annuity issuer shall,
4 as to all parties except the transferee, be discharged and released from
5 any and all liability for the transferred payments;

6 b. The transferee shall be liable to the structured settlement
7 obligor and the annuity issuer:

8 (1) if the transfer contravenes the terms of the structured
9 settlement, for any taxes incurred by those parties as a consequence of
10 the transfer; and

11 (2) for any other liabilities or costs, including reasonable costs and
12 attorneys' fees, arising from compliance by those parties with the order
13 of the court or responsible administrative authority or arising as a
14 consequence of the transferee's failure to comply with this act;

15 c. Neither the annuity issuer nor the structured settlement obligor
16 shall be required to divide any periodic payment between the payee
17 and any transferee or assignee or between two or more transferees or
18 assignees; and

19 d. Any further transfer of structured settlement payment rights by
20 the payee shall be made in compliance with all of the requirements of
21 this act.

22

23 6. a. An application under this act to a court or responsible
24 administrative authority for approval of a transfer of structured
25 settlement payment rights shall be made by the transferee and may be
26 brought in the jurisdiction in which the payee resides, in the
27 jurisdiction in which the structured settlement obligor or the annuity
28 issuer maintains its principal place of business, or in any court or
29 before any responsible administrative authority which approved the
30 structured settlement agreement.

31 b. Not less than 20 days prior to the scheduled hearing on any
32 application for approval of a transfer of structured settlement payment
33 rights under section 4 of this act, the transferee shall file with the court
34 or responsible administrative authority and serve on all interested
35 parties a notice of the proposed transfer and the application for its
36 authorization, including with the notice:

37 (1) a copy of the transferee's application;

38 (2) a copy of the transfer agreement;

39 (3) a copy of the disclosure statement required under section 3 of
40 this act;

41 (4) a listing of each of the payee's dependents, together with each
42 dependent's age;

43 (5) notification that any interested party is entitled to support,
44 oppose or otherwise respond to the transferee's application, either in
45 person or by counsel, by submitting written comments to the court or
46 responsible administrative authority or by participating in the hearing;
47 and

1 (6) notification of the time and place of the hearing and
2 notification of the manner in which, and the time by which, written
3 responses to the application shall be filed, which shall be not less than
4 15 days after service of the transferee's notice, in order to be
5 considered by the court or responsible administrative authority.

6
7 7. a. The provisions of this act shall not be waived by any payee.

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

15 c. No transfer of structured settlement payment rights shall extend
16 to any payments that are life-contingent unless, prior to the date on
17 which the payee signs the transfer agreement, the transferee has
18 established and has agreed to maintain procedures reasonably
19 satisfactory to the annuity issuer and the structured settlement obligor
20 for: (1) periodically confirming the payee's survival; and (2) giving the
21 annuity issuer and the structured settlement obligor prompt written
22 notice in the event of the payee's death.

23 d. No payee who proposes to make a transfer of structured
24 settlement payment rights shall incur any penalty, forfeit any
25 application fee or other payment, or otherwise incur any liability to the
26 proposed transferee or any assignee based on any failure of the
27 transfer to satisfy the conditions of this act.

28 e. Nothing contained in this act shall be construed to authorize any
29 transfer of structured settlement payment rights in contravention of
30 any law or to imply that any transfer under a transfer agreement
31 entered into prior to the effective date of this act is valid or invalid.

32 f. Compliance with the requirements set forth in section 3 of this
33 act and fulfillment of the conditions set forth in section 4 of this act
34 shall be solely the responsibility of the transferee in any transfer of
35 structured settlement payment rights, and neither the structured
36 settlement obligor nor the annuity issuer shall bear any responsibility
37 for, or any liability arising from, non-compliance with those
38 requirements or failure to fulfill those conditions.

39
40 8. This act shall take effect on the 30th day following enactment
41 and shall apply to any transfer of structured settlement payment rights
42 under a transfer agreement entered into on or after the effective date
43 of this act; provided, however, that nothing contained herein shall
44 imply that any transfer under a transfer agreement reached prior to that
45 date is either effective or ineffective.

STATEMENT

1
2
3 This bill, a Senate Substitute for Senate Committee Substitute for
4 Senate Bill No. 944, provides for the regulation of the transfer of
5 structured settlement payment rights by recipients thereof (known as
6 payees in the bill) to factoring companies (known as transferees in the
7 bill).

8 The bill provides that the transfer of structured settlement payment
9 rights is not effective and the structured settlement obligor and annuity
10 issuer are not obligated to pay a factoring company unless a court or
11 responsible administrative authority approves the transfer. To approve
12 the transfer, the court or responsible administrative authority must find
13 that:

- 14 1. the transfer is in the best interest of the payee, taking into
15 account the welfare and support of the payee's dependents;
- 16 2. the payee has been advised in writing by the factoring company
17 to seek independent professional advice regarding the transfer and has
18 either received the advice or knowingly waived the right to seek that
19 advice in writing; and
- 20 3. the transfer does not contravene any applicable statute or an
21 order of any court or other government authority.

22 The bill provides that a factoring company must provide to a
23 prospective payee, at least three days prior to the date on which the
24 payee signs a transfer agreement, a separate disclosure statement
25 including the following:

- 26 1. the aggregate amount of payments transferred;
- 27 2. the present value of the payments transferred as determined
28 using the applicable federal rate for valuing annuities;
- 29 3. the gross amount to be received from the factoring company,
30 the listing of all applicable transfer expenses and the net amount to be
31 received;
- 32 4. the amount of any penalties or liquidated damages payable by
33 the payee in the event of any breach of the transfer agreement by the
34 payee; and
- 35 5. the right to cancel the transfer agreement, without penalty, not
36 later than the third business day after the date the agreement is signed
37 by the payee.

38 The bill provides that following an approved transfer of structured
39 settlement payment rights, the factoring company is liable to an
40 annuity issuer and structured settlement obligor for any taxes incurred
41 by those parties if the transfer contravenes the terms of the structured
42 settlement and for other liabilities and costs arising from compliance
43 by those parties with an order of the court or responsible
44 administrative authority or arising as a consequence of the factoring
45 company's failure to comply with the provisions of this bill. In
46 addition, neither the annuity issuer nor the structured settlement

- 1 obligor may be required to divide any periodic payment, nor are they
- 2 liable for any double payments with respect to transferred payments.
- 3 Finally, the bill prohibits confessed or consent judgments under
- 4 factoring agreements.

Title 2A.
Chapter 16.
Article 10. (New)
Structured
Settlements
§§1-7 -
C.2A:16-63
to 2A:16-69
§8 - Note to
§§1-7

P.L. 2001, CHAPTER 139, *approved July 2, 2001*
Assembly Committee Substitute for
Assembly, No. 2146

1 **AN ACT** concerning structured settlements.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. This act shall be known and may be cited as the "Structured
7 Settlement Protection Act."

8

9 2. For the purposes of this act:

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

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

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

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

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

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

33 "Net advance amount" means the gross advance amount less the
34 aggregate amount of the actual and estimated transfer expenses
35 required to be disclosed under subsection e. of section 3 of this act.

36 "Payee" means an individual who is receiving tax free payments

1 under a structured settlement and proposes to make a transfer of
2 payment rights thereunder.

3 "Periodic payments" includes both recurring payments and
4 scheduled future lump sum payments.

5 "Qualified assignment agreement" means an agreement providing
6 for a qualified assignment within the meaning of 26 U.S.C. s.130.

7 "Responsible administrative authority" means, with respect to a
8 structured settlement, any government authority vested by law with
9 exclusive jurisdiction over the settled claim resolved by the structured
10 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 by
15 settlement or judgment in resolution of a tort claim or for periodic
16 payments in settlement of a workers' compensation claim.

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

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

23 "Structured settlement payment rights" means rights to receive
24 periodic payments under a structured settlement, whether from the
25 structured settlement obligor or the annuity issuer, if:

26 (1) the payee is domiciled in, or the domicile or principal place of
27 business of the structured settlement obligor or the annuity issuer is
28 located in, this State; or

29 (2) the structured settlement agreement was approved by a court
30 or responsible administrative authority in this State; or

31 (3) the structured settlement agreement is expressly governed by
32 the laws of this State.

33 "Terms of the structured settlement" include, with respect to any
34 structured settlement, the terms of the structured settlement
35 agreement, the annuity contract, any qualified assignment agreement
36 and any order or other approval of any court or responsible
37 administrative authority or other government authority that authorized
38 or approved the structured settlement.

39 "Transfer" means any sale, assignment, pledge, hypothecation or
40 other alienation or encumbrance of structured settlement payment
41 rights made by a payee for consideration; except that the term
42 "transfer" does not include the creation or perfection of a security
43 interest in structured settlement payment rights under a blanket
44 security agreement entered into with an insured depository institution,
45 in the absence of any action to redirect the structured settlement
46 payments to the insured depository institution, or an agent or

1 successor in interest thereof, or otherwise to enforce the blanket
2 security interest against the structured settlement payment rights.

3 "Transfer agreement" means the agreement providing for a transfer
4 of structured settlement payment rights.

5 "Transfer expenses" means all expenses of a transfer that are
6 required under the transfer agreement to be paid by the payee or
7 deducted from the gross advance amount, including, without
8 limitation, court filing fees, attorneys' fees, escrow fees, lien
9 recordation fees, judgment and lien search fees, finders' fees,
10 commissions, and other payments to a broker or other intermediary;
11 "transfer expenses" does not include preexisting obligations of the
12 payee payable for the payee's account from the proceeds of a transfer.

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

15

16 3. Not less than three days prior to the date on which a payee
17 signs a transfer agreement, the transferee shall provide to the payee a
18 separate disclosure statement, in bold type no smaller than 14 points,
19 setting forth:

20 a. the amounts and due dates of the structured settlement
21 payments to be transferred;

22 b. the aggregate amount of the payments;

23 c. the discounted present value of the payments to be transferred,
24 which shall be identified as the "calculation of current value of the
25 transferred structured settlement payments under federal standards for
26 valuing annuities" and the amount of the applicable federal rate used
27 in calculating the discounted present value;

28 d. the gross advance amount;

29 e. an itemized listing of all applicable transfer expenses, other than
30 attorneys' fees and related disbursements payable in connection with
31 the transferee's application for approval of the transfer, and the
32 transferee's best estimate of the amount of any of those fees and
33 disbursements;

34 f. the net advance amount;

35 g. the amount of any penalties or liquidated damages payable by
36 the payee in the event of any breach of the transfer agreement by the
37 payee; and

38 h. a statement that the payee has the right to cancel the transfer
39 agreement, without penalty or further obligation, not later than the
40 third business day after the date the agreement is signed by the payee.

41

42 4. No direct or indirect transfer of structured settlement payment
43 rights shall be effective and no structured settlement obligor or annuity
44 issuer shall be required to make any payment directly or indirectly to
45 any transferee of structured settlement payment rights unless the
46 transfer has been approved in advance in a final court order or order

1 of a responsible administrative authority based on express findings by
2 the court or responsible administrative authority that:

3 a. the transfer is in the best interest of the payee, taking into
4 account the welfare and support of the payee's dependents;

5 b. the payee has been advised in writing by the transferee to seek
6 independent professional advice regarding the transfer and has either
7 received the advice or knowingly waived the right to seek that advice
8 in writing; and

9 c. the transfer does not contravene any applicable statute or the
10 order of any court or other government authority.

11

12 5. Following a transfer of structured settlement payment rights
13 under this act:

14 a. The structured settlement obligor and the annuity issuer shall,
15 as to all parties except the transferee, be discharged and released from
16 any and all liability for the transferred payments;

17 b. The transferee shall be liable to the structured settlement
18 obligor and the annuity issuer:

19 (1) if the transfer contravenes the terms of the structured
20 settlement, for any taxes incurred by those parties as a consequence of
21 the transfer; and

22 (2) for any other liabilities or costs, including reasonable costs and
23 attorneys' fees, arising from compliance by those parties with the order
24 of the court or responsible administrative authority or arising as a
25 consequence of the transferee's failure to comply with this act;

26 c. Neither the annuity issuer nor the structured settlement obligor
27 shall be required to divide any periodic payment between the payee
28 and any transferee or assignee or between two or more transferees or
29 assignees; and

30 d. Any further transfer of structured settlement payment rights by
31 the payee shall be made in compliance with all of the requirements of
32 this act.

33

34 6. a. An application under this act to a court or responsible
35 administrative authority for approval of a transfer of structured
36 settlement payment rights shall be made by the transferee and may be
37 brought in the jurisdiction in which the payee resides, in the
38 jurisdiction in which the structured settlement obligor or the annuity
39 issuer maintains its principal place of business, or in any court or
40 before any responsible administrative authority which approved the
41 structured settlement agreement.

42 b. Not less than 20 days prior to the scheduled hearing on any
43 application for approval of a transfer of structured settlement payment
44 rights under section 4 of this act, the transferee shall file with the court
45 or responsible administrative authority and serve on all interested
46 parties a notice of the proposed transfer and the application for its

- 1 authorization, including with the notice:
- 2 (1) a copy of the transferee's application;
- 3 (2) a copy of the transfer agreement;
- 4 (3) a copy of the disclosure statement required under section 3 of
- 5 this act;
- 6 (4) a listing of each of the payee's dependents, together with each
- 7 dependent's age;
- 8 (5) notification that any interested party is entitled to support,
- 9 oppose or otherwise respond to the transferee's application, either in
- 10 person or by counsel, by submitting written comments to the court or
- 11 responsible administrative authority or by participating in the hearing;
- 12 and
- 13 (6) notification of the time and place of the hearing and
- 14 notification of the manner in which, and the time by which, written
- 15 responses to the application shall be filed, which shall be not less than
- 16 15 days after service of the transferee's notice, in order to be
- 17 considered by the court or responsible administrative authority.
- 18
- 19 7. a. The provisions of this act shall not be waived by any payee.
- 20 b. Any transfer agreement entered into on or after the effective
- 21 date of this act by a payee who resides in this State shall provide that
- 22 disputes under the transfer agreement, including any claim that the
- 23 payee has breached the agreement, shall be determined in and under
- 24 the laws of this State. No transfer agreement shall authorize the
- 25 transferee or any other party to confess judgment or consent to entry
- 26 of judgment against the payee.
- 27 c. No transfer of structured settlement payment rights shall extend
- 28 to any payments that are life-contingent unless, prior to the date on
- 29 which the payee signs the transfer agreement, the transferee has
- 30 established and has agreed to maintain procedures reasonably
- 31 satisfactory to the annuity issuer and the structured settlement obligor
- 32 for: (1) periodically confirming the payee's survival; and (2) giving the
- 33 annuity issuer and the structured settlement obligor prompt written
- 34 notice in the event of the payee's death.
- 35 d. No payee who proposes to make a transfer of structured
- 36 settlement payment rights shall incur any penalty, forfeit any
- 37 application fee or other payment, or otherwise incur any liability to the
- 38 proposed transferee or any assignee based on any failure of the
- 39 transfer to satisfy the conditions of this act.
- 40 e. Nothing contained in this act shall be construed to authorize any
- 41 transfer of structured settlement payment rights in contravention of
- 42 any law or to imply that any transfer under a transfer agreement
- 43 entered into prior to the effective date of this act is valid or invalid.
- 44 f. Compliance with the requirements set forth in section 3 of this
- 45 act and fulfillment of the conditions set forth in section 4 of this act
- 46 shall be solely the responsibility of the transferee in any transfer of

1 structured settlement payment rights, and neither the structured
2 settlement obligor nor the annuity issuer shall bear any responsibility
3 for, or any liability arising from, non-compliance with those
4 requirements or failure to fulfill those conditions.

5

6 8. This act shall take effect on the 30th day following enactment
7 and shall apply to any transfer of structured settlement payment rights
8 under a transfer agreement entered into on or after the effective date
9 of this act; provided, however, that nothing contained herein shall
10 imply that any transfer under a transfer agreement reached prior to that
11 date is either effective or ineffective.

12

13

14

15

16 "Structured Settlement Protection Act."

CHAPTER 139

AN ACT concerning structured settlements.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.2A:16-63 Short title.

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

C.2A:16-64 Definitions relative to structured settlements.

2. For the purposes of this act:

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

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

"Discounted present value" means the present value of future payments determined by discounting those 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.

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

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

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

"Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under subsection e. of section 3 of this act.

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

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

"Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of 26 U.S.C. s.130.

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

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

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

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

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

"Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, if:

- (1) the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this State; or
- (2) the structured settlement agreement was approved by a court or responsible administrative authority in this State; or
- (3) the structured settlement agreement is expressly governed by the laws of this State.

"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 or other approval of any court or responsible administrative authority or other government authority that authorized or approved the structured settlement.

"Transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; except that the term "transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to the insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce the blanket security interest against the structured settlement payment rights.

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

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

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

C.2A:16-65 Provision of separate disclosure statement to payee, contents.

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

- a. the amounts and due dates of the structured settlement payments to be transferred;
- b. the aggregate amount of the payments;
- c. the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities" and the amount of the applicable federal rate used in calculating the discounted present value;
- d. the gross advance amount;
- e. an itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any of those fees and disbursements;
- f. the net advance amount;
- g. the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
- h. a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

C.2A:16-66 Approval required for payment.

4. No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by the court or responsible administrative authority that:

- a. the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
- b. the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received the advice or knowingly waived the right to seek that advice in writing; and
- c. the transfer does not contravene any applicable statute or the order of any court or other

government authority.

C.2A:16-67 Procedures following transfer.

5. Following a transfer of structured settlement payment rights under this act:

a. The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

b. The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(1) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by those parties as a consequence of the transfer; and

(2) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by those parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this act;

c. Neither the annuity issuer nor the structured settlement obligor shall be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and

d. Any further transfer of structured settlement payment rights by the payee shall be made in compliance with all of the requirements of this act.

C.2A:16-68 Application for approval of transfer, procedure.

6. a. An application under this act to a court or responsible administrative authority for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the jurisdiction in which the payee resides, in the jurisdiction in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

b. Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section 4 of this act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with the notice:

(1) a copy of the transferee's application;

(2) a copy of the transfer agreement;

(3) a copy of the disclosure statement required under section 3 of this act;

(4) a listing of each of the payee's dependents, together with each dependent's age;

(5) notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(6) 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 application shall be filed, which shall be not less than 15 days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

C.2A:16-69 Provisions of act not waivable; controlling law; prohibitions.

7. a. The provisions of this act shall not be waived by any payee.

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

c. No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for: (1) periodically confirming the payee's survival; and (2) giving the annuity issuer and the structured settlement obligor prompt written

notice in the event of the payee's death.

d. No payee who proposes to make a 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 or any assignee based on any failure of the transfer to satisfy the conditions of this act.

e. Nothing contained in this act shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this act is valid or invalid.

f. Compliance with the requirements set forth in section 3 of this act and fulfillment of the conditions set forth in section 4 of this act shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with those requirements or failure to fulfill those conditions.

8. This act shall take effect on the 30th day following enactment and shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the effective date of this act; provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to that date is either effective or ineffective.

Approved July 2, 2001.

PO BOX 004
TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

CONTACT: Rae Hutton
609-777-2600

RELEASE: July 2 , 2001

Acting Governor Donald T. DiFrancesco signed the following legislation today:

A-126, sponsored by Senator Anthony Bucco (R-Morris) and Assemblymen Richard Merkt (R-Morris) and Chris Connors (R-Atlantic/Burlington/Ocean), permits counties and municipalities, by resolution, to establish permanent snow removal funds so that unused monies budgeted annually for snow and ice removal during low-demand years may be "banked" by those local units for use in budget years when weather conditions are more serious.

A-2442, sponsored by Senators Joseph Kyrillos (R-Middlesex/Monmouth) and Louis Kosco (R-Bergen) and Assemblyman Samuel Thompson (R-Middlesex/ Monmouth), This bill would permit municipalities to distribute funds from one-time revenues, such as the sale of municipal property, as a credit against property taxes owed for that local budget year. A direct distribution to real property taxpayers, as permitted under this bill, would help to avoid potentially misleading changes to the real property tax rate caused by one-time revenues.

Landlords of multifamily dwellings would be required to "pass-through" to tenants any savings in property taxes realized under the bill's provisions as if the credit against taxes were a property tax reduction under the Tenants' Property Tax Rebate Act.

A-2146, sponsored by Senators Robert Singer (R-Burlington/Monmouth/ Ocean) and Gerald Cardinale (R-Bergen) and Assembly members Clare Farragher (R-Monmouth) and Kip Bateman (R-Morris/Somerset), provides that the transfer of structured settlement payment rights is not effective and the structured settlement obligor and annuity issuer are not obligated to pay a factoring company unless a court or responsible administrative authority approves the transfer.

S-2113, sponsored by Senators Peter Inverso (R-Mercer/Middlesex) and Wayne Bryant (D-Camden/Gloucester) and Assemblyman Leonard Lance (R-Warren/Hunterdon/ Mercer), transfers administrative control of the State Library to Thomas Edison State College. While all administrative control will be transferred to the college the library will remain in, not of, the State Department. The State Library building and the State Library for the Blind and Handicapped will remain the property of the State of New Jersey.