

HOUSE BILL 357

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2000 Regular Session
(01r0217)

ENROLLED BILL
-- Judiciary/Judicial Proceedings --

Introduced by **Delegates Dembrow and Montague**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Courts - Transfer of Structured Settlement Payment Rights**

3 FOR the purpose of ~~providing for~~ *establishing* certain conditions under which a direct
4 or indirect transfer of certain structured settlement payment rights is effective;
5 ~~requiring a certain~~ *prohibiting a structured settlement* obligor or annuity issuer
6 ~~to make from making~~ payments to a transferee of structured settlement
7 payment rights ~~if~~ *unless* the transfer is authorized in an order of a court based
8 on certain findings; providing for ~~the~~ jurisdiction in cases involving transfers of
9 structured settlement payment rights; requiring a certain transferee to ~~provide~~
10 ~~certain information to a court and certain parties~~ *file with a court and serve on*
11 *certain parties a certain notice and application*; providing certain immunity to a
12 structured settlement obligor or annuity issuer when a payee makes a transfer
13 of structured settlement payment rights in ~~violation of this subtitle~~; *accordance*
14 *with this Act; prohibiting waiver of the provisions of this Act*; defining certain
15 terms; providing for the application and construction of this Act; and generally
16 relating to the transfer of structured settlement payment rights.

17 BY adding to

1 Article - Courts and Judicial Proceedings
2 Section 5-1101 through 5-1105, inclusive, to be under the new subtitle "Subtitle
3 11. Structured Settlements"
4 Annotated Code of Maryland
5 (1998 Replacement Volume and 1999 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article - Courts and Judicial Proceedings**

9 **SUBTITLE 11. STRUCTURED SETTLEMENTS.**

10 5-1101.

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

13 (B) "DISCOUNTED PRESENT VALUE" MEANS THE FAIR PRESENT VALUE OF
14 FUTURE PAYMENTS, AS DETERMINED BY DISCOUNTING PAYMENTS TO THE PRESENT
15 USING THE MOST RECENTLY PUBLISHED APPLICABLE FEDERAL RATE FOR
16 DETERMINING THE PRESENT VALUE OF AN ANNUITY, AS ISSUED BY THE UNITED
17 STATES INTERNAL REVENUE SERVICE.

18 (C) "INDEPENDENT PROFESSIONAL ADVICE" MEANS ADVICE OF AN
19 ATTORNEY, CERTIFIED PUBLIC ACCOUNTANT, ACTUARY, OR OTHER LICENSED
20 PROFESSIONAL ADVISER:

21 (1) WHO IS ENGAGED BY A PAYEE TO RENDER ADVICE CONCERNING
22 THE LEGAL, TAX, AND FINANCIAL IMPLICATIONS OF A TRANSFER OF STRUCTURED
23 SETTLEMENT PAYMENT RIGHTS;

24 (2) WHO IS NOT AFFILIATED WITH OR COMPENSATED BY THE
25 TRANSFEREE OF THE TRANSFER; AND

26 (3) WHOSE COMPENSATION IS NOT AFFECTED BY WHETHER A
27 TRANSFER OCCURS.

28 (D) "INTERESTED PARTIES" MEANS THE PAYEE, EACH BENEFICIARY
29 DESIGNATED UNDER THE ANNUITY CONTRACT TO RECEIVE PAYMENTS FOLLOWING
30 THE PAYEE'S DEATH, THE ANNUITY ISSUER, THE STRUCTURED SETTLEMENT
31 OBLIGOR, AND ANY OTHER PARTY THAT HAS CONTINUING RIGHTS OR OBLIGATIONS
32 UNDER A STRUCTURED SETTLEMENT.

33 (E) "PAYEE" MEANS AN INDIVIDUAL WHO RECEIVES DAMAGE PAYMENTS
34 THAT ARE NOT SUBJECT TO INCOME TAXATION UNDER A STRUCTURED SETTLEMENT
35 AND PROPOSES TO MAKE A TRANSFER OF PAYMENT RIGHTS.

1 (F) "RESPONSIBLE ADMINISTRATIVE AUTHORITY" MEANS A GOVERNMENT
2 AUTHORITY VESTED WITH EXCLUSIVE JURISDICTION OVER THE SETTLED CLAIM
3 RESOLVED BY A STRUCTURED SETTLEMENT.

4 (G) (1) "STRUCTURED SETTLEMENT" MEANS AN ARRANGEMENT FOR
5 PERIODIC PAYMENT OF DAMAGES FOR PERSONAL INJURY ESTABLISHED BY A
6 SETTLEMENT OR JUDGMENT IN RESOLUTION OF A TORT CLAIM.

7 (2) "STRUCTURED SETTLEMENT" DOES NOT INCLUDE AN
8 ARRANGEMENT FOR PERIODIC PAYMENT OF DAMAGES FOR PERSONAL INJURY
9 ESTABLISHED BY A JUDGMENT BY CONFESSION.

10 (H) "STRUCTURED SETTLEMENT AGREEMENT" MEANS AN AGREEMENT,
11 JUDGMENT, STIPULATION, OR RELEASE EMBODYING THE TERMS OF A STRUCTURED
12 SETTLEMENT.

13 (I) "STRUCTURED SETTLEMENT OBLIGOR" MEANS A PARTY WHO HAS THE
14 CONTINUING PERIODIC PAYMENT OBLIGATION TO THE PAYEE UNDER A
15 STRUCTURED SETTLEMENT AGREEMENT OR A QUALIFIED ASSIGNMENT
16 AGREEMENT.

17 (J) "STRUCTURED SETTLEMENT PAYMENT RIGHTS" MEANS THE RIGHTS TO
18 RECEIVE PERIODIC PAYMENTS, INCLUDING LUMP-SUM PAYMENTS UNDER A
19 STRUCTURED SETTLEMENT, WHETHER FROM THE SETTLEMENT OBLIGOR OR THE
20 ANNUITY ISSUER, IF:

21 (1) AN INTERESTED PARTY IS DOMICILED IN THIS STATE;

22 (2) THE STRUCTURED SETTLEMENT AGREEMENT WAS APPROVED BY A
23 COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY IN THIS STATE; OR

24 (3) THE SETTLED CLAIM WAS PENDING BEFORE A COURT OF THIS STATE
25 WHEN THE PARTIES ENTERED INTO THE STRUCTURED SETTLEMENT AGREEMENT.

26 (K) "TERMS OF THE STRUCTURED SETTLEMENT" INCLUDES THE TERMS OF
27 THE STRUCTURED SETTLEMENT AGREEMENT, THE ANNUITY CONTRACT, A
28 QUALIFIED ASSIGNMENT, AND AN ORDER OR APPROVAL OF A COURT OR
29 RESPONSIBLE ADMINISTRATIVE AUTHORITY AUTHORIZING OR APPROVING A
30 STRUCTURED SETTLEMENT.

31 (L) "TRANSFER" MEANS A SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION, OR
32 OTHER FORM OF ALIENATION OR ENCUMBRANCE MADE BY A PAYEE FOR
33 CONSIDERATION.

34 (M) "TRANSFER AGREEMENT" MEANS THE AGREEMENT PROVIDING FOR THE
35 TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS FROM A PAYEE TO A
36 TRANSFEREE.

1 5-1102.

2 (A) A DIRECT OR INDIRECT TRANSFER OF STRUCTURED SETTLEMENT
3 PAYMENT RIGHTS TO A TRANSFEREE IS EFFECTIVE AS PROVIDED IN THIS SUBTITLE.

4 (B) A STRUCTURED SETTLEMENT OBLIGOR OR ANNUITY ISSUER ~~SHALL~~ MAY
5 NOT MAKE ANY PAYMENT DIRECTLY OR INDIRECTLY TO A TRANSFEREE OF
6 STRUCTURED SETTLEMENT PAYMENT RIGHTS ~~IF~~ UNLESS THE TRANSFER IS
7 AUTHORIZED IN AN ORDER OF A COURT BASED ON A FINDING THAT:

8 (1) ~~THE TRANSFER IS AUTHORIZED IN AN ORDER OF A COURT BASED ON~~
9 ~~A FINDING THAT~~ THE TRANSFER IS NECESSARY, REASONABLE, OR APPROPRIATE;

10 (2) THE TRANSFER IS NOT EXPECTED TO SUBJECT THE PAYEE, THE
11 PAYEE'S DEPENDENTS, OR BOTH, TO UNDUE OR UNREASONABLE FINANCIAL
12 HARDSHIP IN THE FUTURE;

13 (3) THE PAYEE RECEIVED INDEPENDENT PROFESSIONAL ADVICE
14 REGARDING THE LEGAL, TAX, AND FINANCIAL IMPLICATIONS OF THE TRANSFER;
15 AND

16 (4) THE TRANSFEREE DISCLOSED TO THE PAYEE THE DISCOUNTED
17 PRESENT VALUE.

18 5-1103.

19 (A) THE CIRCUIT COURT THAT HAS JURISDICTION OVER ~~A PERSON AN~~
20 INTERESTED PARTY OR THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE
21 ORIGINAL CLAIM OCCURRED SHALL HAVE NONEXCLUSIVE JURISDICTION OVER AN
22 APPLICATION FOR A TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS
23 UNDER § 5-1102 OF THIS SUBTITLE.

24 (B) A TRANSFEREE SHALL FILE WITH THE COURT AND SERVE ON THE
25 INTERESTED PARTIES AT LEAST 20 DAYS BEFORE THE HEARING ON THE
26 APPLICATION, A NOTICE OF THE PROPOSED TRANSFER AND AN APPLICATION FOR ITS
27 AUTHORIZATION, INCLUDING:

28 (1) A COPY OF THE TRANSFEREE'S APPLICATION;

29 (2) A COPY OF THE TRANSFER AGREEMENT; AND

30 (3) NOTIFICATION:

31 (I) OF THE TIME AND PLACE OF THE HEARING; AND

32 (II) THAT EACH INTERESTED PARTY IS ENTITLED TO SUPPORT,
33 OPPOSE, OR OTHERWISE RESPOND TO THE TRANSFEREE'S APPLICATION, IN PERSON
34 OR BY COUNSEL, BY SUBMITTING WRITTEN COMMENTS TO THE COURT OR BY
35 PARTICIPATING IN THE HEARING.

1 5-1104.

2 ~~IF A PAYEE MAKES A TRANSFER OF STRUCTURED SETTLEMENT PAYMENT~~
3 ~~RIGHTS IN VIOLATION OF THIS SUBTITLE, THE STRUCTURED SETTLEMENT OBLIGOR~~
4 ~~OR ANNUITY ISSUER MAY NOT INCUR ANY ADDITIONAL LIABILITY. IF A TRANSFER OF~~
5 ~~STRUCTURE SETTLEMENT PAYMENT RIGHTS HAS BEEN AUTHORIZED UNDER THIS~~
6 ~~SUBTITLE, NEITHER THE ANNUITY ISSUER NOR THE STRUCTURED SETTLEMENT~~
7 ~~OBLIGOR SHALL HAVE ANY LIABILITY TO THE PAYEE OR TO ANY OTHER PARTY FOR~~
8 ~~ANY PAYMENT MADE TO THE TRANSFEREE IN ACCORDANCE WITH THE~~
9 ~~AUTHORIZATION.~~

10 5-1105.

11 (A) THE PROVISIONS OF THIS SUBTITLE MAY NOT BE WAIVED.

12 (B) NOTHING CONTAINED IN THIS SUBTITLE MAY BE CONSTRUED TO
13 AUTHORIZE A TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS IN
14 CONTRAVENTION OF APPLICABLE LAW OR TO GIVE EFFECT TO A TRANSFER OF
15 STRUCTURED SETTLEMENT PAYMENT RIGHTS THAT IS INVALID UNDER APPLICABLE
16 LAW.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to
18 any transfer of structured settlement payment rights under a transfer agreement
19 entered into on or after the effective date of this Act; provided, however, that nothing
20 contained in this section shall imply that any transfer under a transfer agreement
21 entered into prior to the effective date of this Act is ineffective.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2000.