

HOUSE BILL 357

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HB 1171/99 - JUD

2000 Regular Session
0lr0217

By: **Delegates Dembrow and Montague**
Introduced and read first time: February 2, 2000
Assigned to: Judiciary

Committee Report: Favorable
House action: Adopted
Read second time: February 29, 2000

CHAPTER _____

1 AN ACT concerning

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

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

15 BY adding to
16 Article - Courts and Judicial Proceedings
17 Section 5-1101 through 5-1105, inclusive, to be under the new subtitle "Subtitle
18 11. Structured Settlements"
19 Annotated Code of Maryland
20 (1998 Replacement Volume and 1999 Supplement)

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

1 **Article - Courts and Judicial Proceedings**

2 SUBTITLE 11. STRUCTURED SETTLEMENTS.

3 5-1101.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.6 (B) "DISCOUNTED PRESENT VALUE" MEANS THE FAIR PRESENT VALUE OF
7 FUTURE PAYMENTS, AS DETERMINED BY DISCOUNTING PAYMENTS TO THE PRESENT
8 USING THE MOST RECENTLY PUBLISHED APPLICABLE FEDERAL RATE FOR
9 DETERMINING THE PRESENT VALUE OF AN ANNUITY, AS ISSUED BY THE UNITED
10 STATES INTERNAL REVENUE SERVICE.11 (C) "INDEPENDENT PROFESSIONAL ADVICE" MEANS ADVICE OF AN
12 ATTORNEY, CERTIFIED PUBLIC ACCOUNTANT, ACTUARY, OR OTHER LICENSED
13 PROFESSIONAL ADVISER:14 (1) WHO IS ENGAGED BY A PAYEE TO RENDER ADVICE CONCERNING
15 THE LEGAL, TAX, AND FINANCIAL IMPLICATIONS OF A TRANSFER OF STRUCTURED
16 SETTLEMENT PAYMENT RIGHTS;17 (2) WHO IS NOT AFFILIATED WITH OR COMPENSATED BY THE
18 TRANSFEREE OF THE TRANSFER; AND19 (3) WHOSE COMPENSATION IS NOT AFFECTED BY WHETHER A
20 TRANSFER OCCURS.21 (D) "INTERESTED PARTIES" MEANS THE PAYEE, EACH BENEFICIARY
22 DESIGNATED UNDER THE ANNUITY CONTRACT TO RECEIVE PAYMENTS FOLLOWING
23 THE PAYEE'S DEATH, THE ANNUITY ISSUER, THE STRUCTURED SETTLEMENT
24 OBLIGOR, AND ANY OTHER PARTY THAT HAS CONTINUING RIGHTS OR OBLIGATIONS
25 UNDER A STRUCTURED SETTLEMENT.26 (E) "PAYEE" MEANS AN INDIVIDUAL WHO RECEIVES DAMAGE PAYMENTS
27 THAT ARE NOT SUBJECT TO INCOME TAXATION UNDER A STRUCTURED SETTLEMENT
28 AND PROPOSES TO MAKE A TRANSFER OF PAYMENT RIGHTS.29 (F) "RESPONSIBLE ADMINISTRATIVE AUTHORITY" MEANS A GOVERNMENT
30 AUTHORITY VESTED WITH EXCLUSIVE JURISDICTION OVER THE SETTLED CLAIM
31 RESOLVED BY A STRUCTURED SETTLEMENT.32 (G) (1) "STRUCTURED SETTLEMENT" MEANS AN ARRANGEMENT FOR
33 PERIODIC PAYMENT OF DAMAGES FOR PERSONAL INJURY ESTABLISHED BY A
34 SETTLEMENT OR JUDGMENT IN RESOLUTION OF A TORT CLAIM.35 (2) "STRUCTURED SETTLEMENT" DOES NOT INCLUDE AN
36 ARRANGEMENT FOR PERIODIC PAYMENT OF DAMAGES FOR PERSONAL INJURY
37 ESTABLISHED BY A JUDGMENT BY CONFESSION.

1 (H) "STRUCTURED SETTLEMENT AGREEMENT" MEANS AN AGREEMENT,
2 JUDGMENT, STIPULATION, OR RELEASE EMBODYING THE TERMS OF A STRUCTURED
3 SETTLEMENT.

4 (I) "STRUCTURED SETTLEMENT OBLIGOR" MEANS A PARTY WHO HAS THE
5 CONTINUING PERIODIC PAYMENT OBLIGATION TO THE PAYEE UNDER A
6 STRUCTURED SETTLEMENT AGREEMENT OR A QUALIFIED ASSIGNMENT
7 AGREEMENT.

8 (J) "STRUCTURED SETTLEMENT PAYMENT RIGHTS" MEANS THE RIGHTS TO
9 RECEIVE PERIODIC PAYMENTS, INCLUDING LUMP-SUM PAYMENTS UNDER A
10 STRUCTURED SETTLEMENT, WHETHER FROM THE SETTLEMENT OBLIGOR OR THE
11 ANNUITY ISSUER, IF:

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

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

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

17 (K) "TERMS OF THE STRUCTURED SETTLEMENT" INCLUDES THE TERMS OF
18 THE STRUCTURED SETTLEMENT AGREEMENT, THE ANNUITY CONTRACT, A
19 QUALIFIED ASSIGNMENT, AND AN ORDER OR APPROVAL OF A COURT OR
20 RESPONSIBLE ADMINISTRATIVE AUTHORITY AUTHORIZING OR APPROVING A
21 STRUCTURED SETTLEMENT.

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

25 (M) "TRANSFER AGREEMENT" MEANS THE AGREEMENT PROVIDING FOR THE
26 TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS FROM A PAYEE TO A
27 TRANSFEREE.

28 5-1102.

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

31 (B) A STRUCTURED SETTLEMENT OBLIGOR OR ANNUITY ISSUER SHALL MAKE
32 ANY PAYMENT DIRECTLY OR INDIRECTLY TO A TRANSFEREE OF STRUCTURED
33 SETTLEMENT PAYMENT RIGHTS IF:

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

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

4 (3) THE PAYEE RECEIVED INDEPENDENT PROFESSIONAL ADVICE
5 REGARDING THE LEGAL, TAX, AND FINANCIAL IMPLICATIONS OF THE TRANSFER;
6 AND

7 (4) THE TRANSFEREE DISCLOSED TO THE PAYEE THE DISCOUNTED
8 PRESENT VALUE.

9 5-1103.

10 (A) THE CIRCUIT COURT THAT HAS JURISDICTION OVER A PERSON OR THE
11 COUNTY IN WHICH THE ORIGINAL CLAIM OCCURRED SHALL HAVE NONEXCLUSIVE
12 JURISDICTION OVER AN APPLICATION FOR A TRANSFER OF STRUCTURED
13 SETTLEMENT PAYMENT RIGHTS UNDER § 5-1102 OF THIS SUBTITLE.

14 (B) A TRANSFEREE SHALL FILE WITH THE COURT AND SERVE ON THE
15 INTERESTED PARTIES, A NOTICE OF THE PROPOSED TRANSFER AND AN
16 APPLICATION FOR ITS AUTHORIZATION, INCLUDING:

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

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

19 (3) NOTIFICATION:

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

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

25 5-1104.

26 IF A PAYEE MAKES A TRANSFER OF STRUCTURED SETTLEMENT PAYMENT
27 RIGHTS IN VIOLATION OF THIS SUBTITLE, THE STRUCTURED SETTLEMENT OBLIGOR
28 OR ANNUITY ISSUER MAY NOT INCUR ANY ADDITIONAL LIABILITY.

29 5-1105.

30 NOTHING CONTAINED IN THIS SUBTITLE MAY BE CONSTRUED TO AUTHORIZE A
31 TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS IN CONTRAVENTION OF
32 APPLICABLE LAW OR TO GIVE EFFECT TO A TRANSFER OF STRUCTURED
33 SETTLEMENT PAYMENT RIGHTS THAT IS INVALID UNDER APPLICABLE LAW.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to
35 any transfer of structured settlement payment rights under a transfer agreement
36 entered into on or after the effective date of this Act; provided, however, that nothing

1 contained in this section shall imply that any transfer under a transfer agreement
2 entered into prior to the effective date of this Act is ineffective.

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