

Assembly Bill No. 268

Passed the Assembly August 31, 2001

Chief Clerk of the Assembly

Passed the Senate August 30, 2001

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2001, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 10134, 10135, 10136, 10137, 10138, and 10139 of, to add Sections 10139.3 and 10139.4 to, and to add and repeal Sections 10139.1 and 10139.5 of, the Insurance Code, relating to structured settlements.

LEGISLATIVE COUNSEL'S DIGEST

AB 268, Wayne. Structured settlement payment rights.

Existing law permits a judgment awarded by a court for damages for personal injury in resolution of a tort claim to be paid in periodic payments as a structured settlement, rather than as a lump-sum payment. Existing law provides that a contract providing for a transfer of structured settlement payment rights entered into on or after January 1, 2000, is subject to certain disclosure and notice requirements and is prohibited from containing certain provisions.

This bill would revise, recast, and expand these provisions relative to those types of contracts entered into on or after January 1, 2002.

The bill would require the Attorney General to report to the Legislature not later than March 31, 2004, regarding this bill and including certain information.

The people of the State of California do enact as follows:

SECTION 1. Section 10134 of the Insurance Code is amended to read:

10134. For the purposes of this article, the following terms have the following meanings:

(a) "Buyer's first right of refusal" means any provision in the transfer agreement or related documents that obligate the payee to give to the buyer the first choice or option to purchase any remaining structured settlement rights belonging to the payee.

(b) "Dependents" include the payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony.



(c) “Discounted present value” means the fair present value of future payments, as 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.

(d) “Effective equivalent interest rate,” with respect to a transfer of structured settlement payment rights, means the annualized rate of interest on the net advance amount, calculated by treating the transferred structured settlement payments as if they were installment payments on a loan, with each payment applied first to accrued unpaid interest and then to principal.

(e) “Expenses” means all broker’s commissions, service charges, application or processing fees, closing costs, filing or administrative charges, legal fees, notary fees and other commissions, fees, costs, and charges that a payee would have to pay to transfer the structured settlement payment rights of a structured settlement agreement or that would be deducted from the gross consideration that would be paid to the payee in connection with the transfer of the structured settlement payment rights of a structured settlement agreement.

(f) “Independent professional advice” means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser meeting all of the following requirements:

(1) The adviser is engaged by a claimant or payee to render advice concerning the legal, tax, or financial implications of a structured settlement or a transfer of structured settlement payment rights.

(2) The adviser’s compensation for rendering independent professional advice is not affected by occurrence or lack of occurrence of a settlement or transfer.

(3) A particular adviser is not referred to the payee by the transferee or its agent, except that the transferee may refer the payee to a lawyer referral service or agency operated by a state or local bar association.

(g) “Interested parties” means, with respect to a structured settlement agreement, the payee, the payee’s attorney, any beneficiary designated under the annuity contract to receive payments following the payee’s death, the annuity issuer, the structured settlement obligor, and any other party who has continuing rights or obligations under the structured settlement



agreement. If the designated beneficiary is a minor, the beneficiary's parent or guardian shall be an interested party.

(h) "Payee" means an individual who received tax-free payments pursuant to a structured settlement agreement.

(i) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section 130 of Title 26 of the United States Code, as amended from time to time.

(j) "Structured settlement agreement" means an arrangement for periodic payment of damages established by settlement or judgment in resolution of a tort claim in which the payment of the judgment or award is paid in whole, or in part, in periodic tax-free payments rather than a lump-sum payment. A structured settlement agreement entered into pursuant to Section 667.7 of the Code of Civil Procedure or Section 970.6 or 984 of the Government Code is not subject to the provisions of this article other than the requirements of Section 10138.

(k) "Structured settlement obligor" means the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

(l) "Structured settlement payment rights" means rights to receive periodic payments, including lump-sum payments, pursuant to a structured settlement agreement, whether from the settlement obligor or an annuity issuer.

(m) "Terms of the structured settlement" include, with respect to a structured settlement agreement, the terms of the structured settlement agreement, annuity contract, qualified assignment agreement, and any order or approval of a court or responsible administrative authority or other governmental authority authorizing or approving the structured settlement.

(n) "Transfer" means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made for consideration.

(o) "Transfer agreement" means the agreement providing for the transfer, and any other document used to effectuate the transfer, from the payee to the transferee of structured settlement payment rights of a structured settlement agreement.

(p) "Transferee" means any person receiving structured settlement payment rights resulting from a transfer.



SEC. 2. Section 10135 of the Insurance Code is amended to read:

10135. (a) This article is only applicable to transfers entered into on or after January 1, 2000.

(b) Notwithstanding subdivision (a), the changes to this article made by the act amending this section in the 2001–02 Regular Session shall only be applicable to transfers entered into on or after January 1, 2002.

SEC. 3. Section 10136 of the Insurance Code is amended to read:

10136. No transfer of structured settlement payment rights, either directly or indirectly, shall be effective by a payee domiciled in this state, or by a payee entitled to receive payments under a structured settlement funded by an insurance contract issued by an insurer domiciled in this state or owned by an insurer or corporation domiciled in this state, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to a transferee, unless all of the following subdivisions are satisfied:

(a) Ten or more days prior to the effective date of a transfer agreement, the transferee provides the payee with a separate written disclosure statement, in at least 14-point boldface type, disclosing all of the following:

(1) The effective date of the transfer.

(2) The amounts and due dates of the structured settlement payments to be transferred.

(3) The aggregate amount of the structured settlement payments to be transferred.

(4) The gross amount of all expenses, if any, to be deducted from the amount to be paid to the payee in exchange for the payments to be transferred.

(5) The amount payable to the payee, net of all expenses, in exchange for the payments to be transferred.

(6) The discounted present value of all structured settlement payments to be transferred and the discount rate used in determining that discounted present value.

(7) The effective equivalent interest rate, which shall be disclosed in the following statement:



“YOU WILL BE PAYING THE EQUIVALENT TO AN INTEREST RATE OF ____ % PER YEAR.

Based on the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, if the transferred structured settlement payments were installment payments on a loan, with each payment applied first to accrued unpaid interest and then to principal, it would be as if you were paying interest to us of ____ % per year, assuming funding on the effective date of transfer.”

(8) The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments.

(9) A statement that the payee should obtain independent professional advice regarding any federal and state income tax consequences arising from the proposed transfer, and that the transferee may not refer the payee to any specific adviser for that purpose.

(10) A statement of the payee’s irrevocable and nonwaivable right of rescission pursuant to paragraph (2) of subdivision (b).

(11) The following statement in capital letters: “IF YOU BELIEVE YOU WERE TREATED UNFAIRLY OR WERE MISLED AS TO THE NATURE OF THE OBLIGATIONS YOU ASSUMED UPON ENTERING INTO THIS AGREEMENT, YOU SHOULD REPORT THOSE CIRCUMSTANCES TO YOUR LOCAL DISTRICT ATTORNEY OR THE OFFICE OF THE ATTORNEY GENERAL.”

(12) If court approval of the transfer agreement is required, all of the following shall apply:

(A) The effective date of the transfer agreement shall be deemed to be the date that the agreement was signed by the payee.

(B) The payee shall be advised that payment to the payee pursuant to the transfer agreement is contingent upon court approval of the transfer agreement.

(C) The payee shall be advised that payment to the payee pursuant to the transfer agreement will be delayed up to 30 days or more in order for the court to review and approve the transfer agreement.

No contract for the transfer of structured settlement payment rights shall be valid unless the seller has separately acknowledged



that he or she has read all of the disclosures required by this subdivision.

(b) (1) The transferee provides written notice of the proposed transfer to all other interested parties 10 or more days prior to the date specified in the transfer agreement as the date on which the transfer agreement first becomes binding upon the payee and 60 or more days prior to the date on which the first payment is due under a schedule established by the structured settlement agreement.

Notice shall not be required by this paragraph if court approval of the transfer is required and notice is given pursuant to paragraph (6) of subdivision (c) of Section 10139.5.

(2) At any time prior to the date on which the transfer agreement first becomes binding upon the payee, the payee may cancel the transfer agreement without cost or further obligation, by providing written notice of cancellation to the transferee.

(3) The notice to interested parties shall include the effective date of the transfer and identify the structured settlement payment rights being transferred and the due dates of those payments.

(4) Any notice required by this subdivision shall be deemed to have been given if addressed to the recipient's last known address and deposited, first-class postage prepaid, in the United States mail not less than five calendar days prior to the date on which the notice is required to be provided.

(c) The contract for transferring the structured settlement payment rights does not violate the provisions of Section 10138.

SEC. 4. Section 10137 of the Insurance Code is amended to read:

10137. A transfer of structured settlement payment rights is void unless all of the following conditions are met:

(a) The transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, taking into account the welfare and support of his or her dependents.

(b) The transfer complies with the requirements of this article and will not contravene other applicable law.

(c) Notice is given in compliance with subdivision (b) of Section 10136 or, when applicable, court approval of the transfer is required and notice is given pursuant to paragraph (6) of subdivision (c) of Section 10139.5.



SEC. 5. Section 10138 of the Insurance Code is amended to read:

10138. (a) A transfer agreement, as defined in subdivision (o) of Section 10134, shall not include any provision described in the paragraphs below. Any inclusion of a prohibited provision, with respect to a seller who is a California resident, shall make the contract void and unenforceable.

(1) Any provision that waives the seller's right to sue under any law, or in which the seller agrees not to sue, or that waives jurisdiction or standing to sue under the contract.

(2) Any provision that requires the seller to indemnify and hold harmless the buyer, or to pay the buyer's costs of defense, in any claim or action brought by the seller or on the seller's behalf contesting the sale for any reason.

(3) Any provision that waives benefits or rights conferred by law with respect to garnishment of wages.

(4) Any provision providing that the contract is confidential or proprietary, belonging to the buyer.

(5) Any provision in which the seller stipulates to a confession of judgment.

(6) Any provision requiring the seller to pay the buyer's attorney's fees and costs if the purchase agreement is not completed.

(7) Any provision requiring the seller to pay any tax liability arising under the federal tax laws, other than the seller's own tax liability, if any, that results from the transfer.

(8) Any provision providing for brokerage fees incurred in the contract to be deducted from the purchase price disclosed pursuant to paragraph (5) of subdivision (a) of Section 10136.

(9) Any forum selection provision providing for jurisdiction to be in a court outside of California for any action arising under the contract.

(10) Any choice-of-law provision that provides for controlling law to be other than California law in any action arising under the contract.

(11) A provision that provides the transferee with a security interest or collateral interest in any structured settlement payment rights that exceed the actual dollar amount of the structured settlement payment rights being transferred.



(12) Any provision that creates a “buyer’s first right of refusal” to purchase any remaining structured payment rights that the payee may desire to sell in the future.

(b) The provisions in this section may not be waived by agreement of the parties.

SEC. 6. Section 10139 of the Insurance Code is amended to read:

10139. (a) At the time notice is provided to interested parties pursuant to subdivision (b) of Section 10136, or subdivision (c) of Section 10137, or, when applicable, at the time of filing a petition pursuant to paragraph (5) of subdivision (c) of Section 10139.5 for court approval when court approval of the transfer agreement is required, the transferee shall file with the Attorney General a copy of the transferee’s petition for approval, a copy of the written disclosure statement required by subdivision (a) of Section 10136, a copy of the transfer agreement as defined in subdivision (o) of Section 10134, a copy of the annuity contract, a copy of any qualified assignment agreement, a copy of the underlying structured settlement agreement, a copy of any order or approval of any court or responsible administrative authority authorizing or approving the structured settlement, a copy and proof of notice to the interested parties, and a verified statement from the transferee stating that all of the conditions set forth in Sections 10136, 10137, and 10138 have been met.

(b) The Attorney General may, but is not required to, review any transfer agreement in order to ensure that the transfer meets the requirements of this article.

(c) The Attorney General may charge a reasonable fee for the filing of the transfer agreement as provided in this section. The fee shall be paid by the transferee.

SEC. 7. Section 10139.1 of the Insurance Code is repealed.

SEC. 8. Section 10139.1 is added to the Insurance Code, to read:

10139.1. Any subsequent transfer of any additional structured settlement payments between the payee and transferee may be made only after compliance with all of the requirements of this article.

SEC. 9. Section 10139.3 is added to the Insurance Code, to read:



10139.3. (a) None of the provisions of this article may be waived.

(b) Compliance with the requirements set forth in Sections 10136, 10137, and 10138 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights.

(c) A payee who proposes to make a transfer of structured settlement payment rights shall not incur any penalty, shall not forfeit any application fee or other payment, and shall not otherwise incur any liability to the proposed transferee based on any failure of that transfer to satisfy the requirements of Sections 10136, 10137, and 10138.

(d) The transferee and any assignee shall be liable to the structured settlement obligor and the annuity issuer for any and all taxes incurred as a consequence of the transfer or as a consequence of any failure of the transferee or assignee to comply with this article or the terms of the structured settlement agreement.

(e) Neither the annuity issuer nor the structured settlement obligor may be required to divide any structured settlement payment between the payee and any transferee or assignee or between two or more transferees or assignees.

SEC. 10. Section 10139.4 is added to the Insurance Code, to read:

10139.4. A violation of this article by a transferee shall constitute an unfair business practice pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code and shall be subject to the penalties and other remedies of that chapter.

SEC. 11. Section 10139.5 is added to the Insurance Code, to read:

10139.5. (a) This section shall become operative only upon enactment into law of amendments to the Federal Internal Revenue Code to impose an excise tax on a transfer of structured settlement payment rights if the transfer is not approved by a court.

This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

(b) A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not 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 based on express findings by the court 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 transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived that advice in writing.

(3) The transferee has provided the payee with a disclosure form consistent with Section 10136 and the transfer agreement complies with Section 10138.

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

(c) Following a transfer of structured settlement payment rights under this article:

(1) 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.

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer if the transfer contravenes the terms of the structured settlement for the following:

(A) Any taxes incurred by those parties as a consequence of the transfer.

(B) Any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by those parties with the order of the court or arising as a consequence of the transferee's failure to comply with this article.

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

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

(5) An application under this article for approval of a transfer of structured settlement payment rights shall be made by the transferee and brought in the county in which the payee resides if the payee is a resident of California. If the payee is not a resident of California, the application for approval of a transfer of



structured settlement payment rights shall be made by the transferee and may be brought as follows:

(A) In the county in which the payee resides.

(B) In the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business.

(C) In any court that approved the structured settlement agreement.

(6) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under this article, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, and shall include the following with that notice:

(A) A copy of the transferee's application.

(B) A copy of the transfer agreement.

(C) A listing of each of the payee's dependents, together with each dependent's age.

(D) A copy of the disclosure required in subdivision (a) of Section 10136.

(E) A copy of the annuity contract.

(F) A copy of any qualified assignment agreement.

(G) A copy of the underlying structured settlement agreement.

(H) 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 by participating in the hearing.

(I) 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 must be filed, which may not be less than 15 days after service of the transferee's notice, in order to be considered by the court .

(7) All court costs and filing fees shall be paid by the transferee.

(8) No later than the time of filing the petition for court approval, the transferee shall advise the payee of the payee's right to seek counsel in connection with the transferee's petition for court approval of the transfer agreement, and shall further advise the payee that if the payee retains counsel in connection with a petition for an order approving the transfer agreement, that the transferee shall pay the payee's counsel's fees, regardless of



whether the transfer agreement is approved, in an amount not to exceed one thousand five hundred dollars (\$1,500).

(d) The transferee shall, within 30 days of obtaining final court approval, file with the Attorney General a copy of any final court order approving or denying the transfer of structured settlement payment rights. The transferee shall specify in written form the following information:

(1) Whether the payee was represented by an attorney and the costs paid or owed to that attorney by the transferee and, if known, by the payee.

(2) The county and judicial district where the court approval was filed.

(3) For approved agreements, whether any changes were made to the transfer agreement.

(4) For rejected agreements, the general category for the rejection.

(5) The total court costs and attorney's fees paid by the transferor to obtain court approval.

(6) The purchase prices of the transfer agreement and its effective interest rate.

(e) Not later than March 31, 2004, the Attorney General shall file a report with the Legislature to assist in the evaluation of the impact of this section. The report shall include, based on information the Attorney General has received from transferees, the following:

(1) The number of petitions filed.

(2) The number of petitions approved without change.

(3) The number of petitions approved with changes and the general category of the changes requested.

(4) The number of petitions rejected and the general categories for rejection.

(5) The range of purchase prices, mean purchase price, median purchase price mean, effective interest rate and median effective interest rate.

(6) The number of petitions in which the payee was represented by counsel, and if known, the amount of compensation paid to counsel by the transferee and the payee.



Approved _____, 2001

Governor

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