

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 982

Introduced by Assembly Member Tran

February 27, 2009

~~An act to amend Section 100 of the Insurance Code, relating to insurance.~~ *An act to amend Sections 10134, 10136, 10138, and 10139.5 of the Insurance Code, relating to structured settlements.*

LEGISLATIVE COUNSEL'S DIGEST

AB 982, as amended, Tran. ~~Insurance.~~ *Structured settlements: transfers.*

Existing law provides definitions, including for "interested parties," for purposes of the provisions regulating the transfer of structured settlement payment rights.

This bill would revise the definition of "interested parties" for purposes of those provisions.

Existing law provides that no transfer of structured settlement payment rights 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, unless specified conditions are satisfied.

This bill would instead provide that the provisions regulating the transfer of structured settlement payment rights applies to transfers of structured settlement payment rights if either of 2 conditions are met relating to whether the payee is or is not domiciled in California.

Existing law prohibits the inclusion of various provisions in an agreement for the transfer of structured settlement payment rights and

would make an agreement void and unenforceable if a prohibited provision is included. Among the provisions prohibited from being included in those agreements are any forum selection provision providing for jurisdiction to be in a court outside of California for any action arising under the contract and any choice-of-law provision that provides for controlling law to be other than California law in any action arising under the contract.

This bill would prohibit those 2 provisions if the payee is domiciled in California at the time that the transfer agreement is signed by the payee.

Existing law provides that a transfer of structured settlement payment rights is not effective unless the transfer has been approved in advance in a final court order based on certain findings. Existing law provides where such an application for approval shall be filed and provides for a certain notice, which is to include specified documents, to be filed with the court and served on interested parties not less than 20 days prior to the scheduled hearing on the application for approval of a transfer of structured settlement payment rights.

This bill would make specified changes to the requirements regarding the court’s written findings, the county for filing the transfer approval application, and the documents to be included with the notice.

~~Existing law specifies the different classes of insurance.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 10134 of the Insurance Code is amended
- 2 to read:
- 3 10134. For the purposes of this article, the following terms
- 4 have the following meanings:
- 5 (a) “Buyer’s first right of refusal” means any provision in the
- 6 transfer agreement or related documents that obligate the payee
- 7 to give to the buyer the first choice or option to purchase any
- 8 remaining structured settlement rights belonging to the payee.
- 9 (b) “Dependents” include the payee’s spouse and minor children
- 10 and all other family members and other persons for whom the
- 11 payee is legally obligated to provide support, including alimony.

1 (c) “Discounted present value” means the fair present value of
2 future payments, as determined by discounting those payments to
3 the present using the most recently published applicable federal
4 rate for determining the present value of an annuity, as issued by
5 the United States Internal Revenue Service.

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

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

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

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

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

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

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

1 agreement *if those continuing rights or obligations could be*
2 *affected by the proposed transfer.* If the designated beneficiary is
3 a minor, the beneficiary's parent or guardian shall be an interested
4 party *for purposes of notification of interested parties.*

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

7 (i) "Qualified assignment agreement" means an agreement
8 providing for a qualified assignment within the meaning of Section
9 130 of Title 26 of the United States Code, as amended from time
10 to time.

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

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

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

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

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

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

1 (p) “Transferee” means any person receiving structured
2 settlement payment rights resulting from a transfer.

3 SEC. 2. Section 10136 of the Insurance Code is amended to
4 read:

5 10136. (a) ~~No transfer of structured settlement payment rights,
6 either directly or indirectly, shall be effective by a payee domiciled
7 in this state, or by a payee entitled to receive payments under a
8 structured settlement funded by an insurance contract issued by
9 an insurer domiciled in this state or owned by an insurer or
10 corporation domiciled in this state, and no structured settlement
11 obligor or annuity issuer shall be required to make any payment
12 directly or indirectly to a transferee, unless all of the provisions
13 of this section are satisfied.~~*This article applies to transfers of
14 structured settlement payment rights if either of the following is
15 met:*

16 (1) *The payee is domiciled in California at the time the transfer
17 agreement is signed by the payee.*

18 (2) *The payee is not domiciled in California at the time the
19 transfer agreement is signed and the state where the payee is
20 domiciled does not have a structured settlement transfer statute,
21 but either the structured settlement obligor or annuity issuer are
22 domiciled in California.*

23 (b) Ten or more days before the payee executes a transfer
24 agreement, the transferee shall provide the payee with a separate
25 written disclosure statement, accurately completed with the
26 information that applies to the transfer agreement, in substantially
27 the following form, in at least 12-point type unless otherwise
28 indicated (bracketed instructions shall not appear in the form):

29 “Disclosure Notice Required By Law [14-point boldface type]
30 You are selling (technically called ‘transferring’) your right to
31 receive your payments under a structured settlement. You should
32 get this disclosure notice at least 10 days before you sign any
33 contract.
34
35

36 **IMPORTANT TERMS: [14-point boldface type]**

37
38 Total dollar amount of payments you are
39 selling: \$ _____
40 Present value of amount you are selling: \$ _____

1 Net amount paid to you: \$ _____

2

3 For comparison purposes:

4 If you did not sell your right to receive structured settlement
5 payments, but instead borrowed the net amount of \$_____ and paid
6 that loan back in installments with each of the payments you are
7 now selling, the equivalent interest rate you would be paying for
8 that loan would be _____% per year.

9 [The text and information set forth above under 'IMPORTANT
10 TERMS' shall be in 14-point type and circumscribed by a box
11 with a bold border]

12 To figure the net amount we are paying, we have charged you
13 for the following expenses:

14

15 [itemize in a list by type and amount]

16

17 for a total of \$_____ in expenses.

18 You should get independent professional advice about whether
19 selling your structured settlement payments is a good idea for you
20 and for your dependents.

21 You also should get independent professional advice from an
22 accountant or lawyer experienced in tax matters about any income
23 tax consequences from selling your structured settlement payments.
24 We cannot give you the name of anyone to advise you.

25 Court approval is needed [14-point boldface type]. A court must
26 approve any agreement you sign to sell your rights under a
27 structured settlement. You will not receive any money until the
28 court approves the sale. Court approval could take more than 30
29 days following the day you sign an agreement selling your rights
30 under a structured settlement.

31 You may cancel the contract before court approval [14-point
32 boldface type]. You may cancel the agreement selling (or
33 transferring) your rights under a structured settlement without any
34 cost or obligation. You may cancel at any time before the court
35 approves the contract. You will get notice of the date of the court
36 hearing.

37 If you want to cancel, you do not need any special form. But,
38 you must cancel in writing. Send your cancellation to: [insert
39 transferee's name and address].

1 If you believe that you have been treated unfairly or have been
2 misled, you should contact your local district attorney or the state
3 Attorney General.”

4

5 (c) The transfer agreement shall be written in at least 12-point
6 type and shall be complete and without blank spaces to be
7 completed after the payee’s signature. The transfer agreement shall
8 set forth clear and conspicuously, and in no less than 12-point type,
9 all of the following:

10 (1) A statement that the agreement is not effective until the date
11 on which a court enters a final order approving the transfer
12 agreement and that payment to the payee pursuant to the transfer
13 agreement will be delayed up to 30 days or more after the date the
14 payee signed the transfer agreement in order for the court to review
15 and approve the transfer agreement.

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

18 (3) The aggregate amount of the structured settlement payments
19 to be transferred. This amount shall be disclosed in the form
20 prescribed in subdivision (b) in the space for “Total dollar amount
21 of payments you are selling.”

22 (4) The aggregate amount of all expenses, if any, to be deducted
23 from the purchase price to be paid to the payee in exchange for
24 the payments to be transferred, and an itemization of all expenses
25 by type and amount.

26 (5) The amount payable to the payee, net of all expenses, in
27 exchange for the payments to be transferred. This amount shall be
28 disclosed in the form prescribed in subdivision (b) in the spaces
29 for “Net amount paid to you” and “net amount.”

30 (6) The discounted present value of all structured settlement
31 payments to be transferred and a statement that “This is the value
32 of your structured settlement in current dollars.” This amount shall
33 be disclosed in the form prescribed in subdivision (b) in the space
34 for “Present value of amount you are selling.”

35 (7) The federal rate, as described in subdivision (c) of Section
36 10134, used in determining the discounted present value.

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

39

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

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

10 This percentage amount shall be disclosed in the form prescribed
11 in subdivision (b) in the space for “the equivalent interest rate you
12 would be paying for this loan would be ____% per year.”

13
14 (9) The quotient (expressed as a percentage) obtained by
15 dividing the net payment amount by the discounted present value
16 of the payments.

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

22 (11) A statement that the court approving the transfer agreement
23 retains continuing jurisdiction to interpret and monitor
24 implementation of the agreement as justice may require.

25 (12) The following statement: “If you believe you were treated
26 unfairly or were misled as to the nature of the obligations you
27 assumed upon entering into this agreement, you should report those
28 circumstances to your local district attorney or the office of the
29 Attorney General.”

30 (13) The following statement printed in 14-point type,
31 circumscribed by a box with a bold border, and set forth
32 immediately above or adjacent to the space reserved for the payee’s
33 signature: “You have the right to cancel this agreement without
34 any cost or obligation until the date the court approves this
35 agreement. You will receive notice of the court hearing date when
36 approval may occur. You must cancel in writing and send your
37 cancellation to [insert transferee’s name and address].”

38 (d) The contract for transferring the structured settlement
39 payment rights may not violate Section 10138.

1 (e) At any time before the date on which a court enters a final
2 order approving the transfer agreement pursuant to Section
3 10139.5, the payee may cancel the transfer agreement, without
4 cost or further obligation, by providing written notice of
5 cancellation to the transferee.

6 *SEC. 3. Section 10138 of the Insurance Code is amended to*
7 *read:*

8 10138. (a) A transfer agreement, as defined in subdivision (o)
9 of Section 10134, shall not include any provision described in the
10 paragraphs below. Any inclusion of a prohibited provision, with
11 respect to a seller who is a California resident, shall make the
12 contract void and unenforceable.

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

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

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

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

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

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

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

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

35 (9) ~~Any~~ *If the payee is domiciled in California at the time that*
36 *the transfer agreement is signed by the payee, any forum selection*
37 *provision providing for jurisdiction to be in a court outside of*
38 *California for any action arising under the contract.*

39 (10) ~~Any~~ *If the payee is domiciled in California at the time that*
40 *the transfer agreement is signed by the payee, any choice-of-law*

1 provision that provides for controlling law to be other than
2 California law in any action arising under the contract.

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

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

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

12 *SEC. 4. Section 10139.5 of the Insurance Code is amended to*
13 *read:*

14 10139.5. (a) A direct or indirect transfer of structured
15 settlement payment rights is not effective and a structured
16 settlement obligor or annuity issuer is not required to make any
17 payment directly or indirectly to any transferee of structured
18 settlement payment rights unless the transfer has been approved
19 in advance in a final court order based on express written findings
20 by the court that:

21 (1) The transfer is in the best interest of the payee, taking into
22 account the welfare and support of the payee’s dependents.

23 (2) The payee has been advised in writing by the transferee to
24 seek independent professional advice regarding the transfer and
25 has either received that advice or knowingly waived *the opportunity*
26 *to seek and receive* that advice in writing.

27 (3) The transferee has provided the payee with a disclosure form
28 that complies with Section 10136 and the transfer agreement
29 complies with Sections 10136 and 10138.

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

32 (5) The payee reasonably understands the terms of the transfer
33 agreement, including the terms set forth in the disclosure statement
34 required by Section 10136.

35 (6) The payee reasonably understands and does not wish to
36 exercise the payee’s right to cancel the transfer agreement.

37 (b) Following a transfer of structured settlement payment rights
38 under this article:

1 (1) The structured settlement obligor and the annuity issuer
2 shall, as to all parties except the transferee, be discharged and
3 released from any and all liability for the transferred payments.

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

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

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

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

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

20 (c) (1) An application under this article for approval of a transfer
21 of structured settlement payment rights shall be made by the
22 transferee and brought in the county in which the payee resides *at*
23 *the time the transfer agreement is signed by the payee or, if the*
24 *payee is not domiciled in California, the county where the*
25 *structured settlement obligor or annuity issuer is domiciled.*

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

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

33 (B) A copy of the transfer agreement.

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

36 (D) A copy of the disclosure required in subdivision (b) of
37 Section 10136.

38 (E) A copy of the annuity contract, *if available.*

39 (F) A copy of any qualified assignment agreement, *if available.*

1 (G) A copy of the underlying structured settlement agreement,
 2 *if available.*

3 (H) Notification that any interested party is entitled to support,
 4 oppose, or otherwise respond to the transferee’s application, either
 5 in person or by counsel, by submitting written comments to the
 6 court or by participating in the hearing.

7 (I) Notification of the time and place of the hearing and
 8 notification of the manner in which and the time by which written
 9 responses to the application must be filed, which may not be less
 10 than 15 days after service of the transferee’s notice, in order to be
 11 considered by the court.

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

13 (e) No later than the time of filing the petition for court approval,
 14 the transferee shall advise the payee of the payee’s right to seek
 15 independent counsel and financial advice in connection with the
 16 transferee’s petition for court approval of the transfer agreement,
 17 and shall further advise the payee that if the payee retains counsel,
 18 a licensed certified public accountant, or a licensed actuary in
 19 connection with a petition for an order approving the transfer
 20 agreement, that the transferee shall pay the fees of the payee’s
 21 counsel, accountant, or actuary, regardless of whether the transfer
 22 agreement is approved, and regardless of whether the attorney,
 23 accountant, or actuary files any document or appears at the hearing
 24 on the application for transfer, in an aggregate amount not to
 25 exceed one thousand five hundred dollars (\$1,500). The transferee’s
 26 accountant, counsel, or actuary may not advise the payee.

27 (f) The court shall retain continuing jurisdiction to interpret and
 28 monitor the implementation of the transfer agreement as justice
 29 requires.

30 ~~SECTION 1. Section 100 of the Insurance Code is amended~~
 31 ~~to read:~~

32 ~~100. Insurance in this state is divided into the following classes:~~

- 33 ~~(1) Life.~~
- 34 ~~(2) Fire.~~
- 35 ~~(3) Marine.~~
- 36 ~~(4) Title.~~
- 37 ~~(5) Surety.~~
- 38 ~~(6) Disability.~~
- 39 ~~(7) Plate glass.~~
- 40 ~~(8) Liability.~~

- 1 ~~(9) Workers' compensation.~~
- 2 ~~(10) Common carrier liability.~~
- 3 ~~(11) Boiler and machinery.~~
- 4 ~~(12) Burglary.~~
- 5 ~~(13) Credit.~~
- 6 ~~(14) Sprinkler.~~
- 7 ~~(15) Team and vehicle.~~
- 8 ~~(16) Automobile.~~
- 9 ~~(17) Mortgage.~~
- 10 ~~(18) Aircraft.~~
- 11 ~~(19) Mortgage guaranty.~~
- 12 ~~(19.5) Insolvency.~~
- 13 ~~(19.6) Legal insurance.~~
- 14 ~~(20) Miscellaneous.~~

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