

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 982**

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**Introduced by Assembly Member Tran**

February 27, 2009

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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. 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~~ *where a* transfer approval application *is required to be filed*, and the documents to be included with the notice.

Vote: majority. Appropriation: no. Fiscal committee: 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.
- 12 (c) “Discounted present value” means the fair present value of
- 13 future payments, as determined by discounting those payments to

1 the present using the most recently published applicable federal  
2 rate for determining the present value of an annuity, as issued by  
3 the United States Internal Revenue Service.

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

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

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

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

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

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

33 (g) “Interested parties” means, with respect to a structured  
34 settlement agreement, the payee, the payee’s attorney, any  
35 beneficiary irrevocably designated under the annuity contract to  
36 receive payments following the payee’s death, the annuity issuer,  
37 the structured settlement obligor, and any other party who has  
38 continuing rights or obligations under the structured settlement  
39 agreement if those continuing rights or obligations could be  
40 affected by the proposed transfer. If the designated beneficiary is

1 a minor, the beneficiary's parent or guardian shall be an interested  
2 party ~~for purposes of notification of interested parties.~~

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

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

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

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

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

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

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

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

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

1 ~~SEC. 2.~~ Section 10136 of the Insurance Code is amended to  
2 read:

3 10136. (a) This article applies to transfers of structured  
4 settlement payment rights if either of the following is met:

5 (1) The payee is domiciled in California at the time the transfer  
6 agreement is signed by the payee.

7 (2) The payee is not domiciled in California at the time the  
8 transfer agreement is signed and the state where the payee is  
9 domiciled does not have a structured settlement transfer statute,  
10 but either the structured settlement obligor or annuity issuer are  
11 domiciled in California.

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

18 “Disclosure Notice Required By Law [14-point boldface type]  
19 You are selling (technically called ‘transferring’) your right to  
20 receive your payments under a structured settlement. You should  
21 get this disclosure notice at least 10 days before you sign any  
22 contract.

23  
24

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

26

27 Total dollar amount of payments you are  
28 selling: \$ \_\_\_\_\_  
29 Present value of amount you are selling: \$ \_\_\_\_\_  
30 Net amount paid to you: \$ \_\_\_\_\_

31

32 For comparison purposes:  
33 If you did not sell your right to receive structured settlement  
34 payments, but instead borrowed the net amount of \$\_\_\_\_\_ and paid  
35 that loan back in installments with each of the payments you are  
36 now selling, the equivalent interest rate you would be paying for  
37 that loan would be \_\_\_\_\_% per year.

38 [The text and information set forth above under ‘IMPORTANT  
39 TERMS’ shall be in 14-point type and circumscribed by a box  
40 with a bold border]

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

3  
4 [itemize in a list by type and amount]

5  
6 for a total of \$\_\_\_\_\_ in expenses.

7 You should get independent professional advice about whether  
8 selling your structured settlement payments is a good idea for you  
9 and for your dependents.

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

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

20 You may cancel the contract before court approval [14-point  
21 boldface type]. You may cancel the agreement selling (or  
22 transferring) your rights under a structured settlement without any  
23 cost or obligation. You may cancel at any time before the court  
24 approves the contract. You will get notice of the date of the court  
25 hearing.

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

29 If you believe that you have been treated unfairly or have been  
30 misled, you should contact your local district attorney or the state  
31 Attorney General."

32  
33 (e) The transfer agreement shall be written in at least 12-point  
34 type and shall be complete and without blank spaces to be  
35 completed after the payee's signature. The transfer agreement shall  
36 set forth clear and conspicuously, and in no less than 12-point type,  
37 all of the following:

38 (1) A statement that the agreement is not effective until the date  
39 on which a court enters a final order approving the transfer  
40 agreement and that payment to the payee pursuant to the transfer

1 agreement will be delayed up to 30 days or more after the date the  
2 payee signed the transfer agreement in order for the court to review  
3 and approve the transfer agreement.

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

6 ~~(3) The aggregate amount of the structured settlement payments  
7 to be transferred. This amount shall be disclosed in the form  
8 prescribed in subdivision (b) in the space for “Total dollar amount  
9 of payments you are selling.”~~

10 ~~(4) The aggregate amount of all expenses, if any, to be deducted  
11 from the purchase price to be paid to the payee in exchange for  
12 the payments to be transferred, and an itemization of all expenses  
13 by type and amount.~~

14 ~~(5) The amount payable to the payee, net of all expenses, in  
15 exchange for the payments to be transferred. This amount shall be  
16 disclosed in the form prescribed in subdivision (b) in the spaces  
17 for “Net amount paid to you” and “net amount.”~~

18 ~~(6) The discounted present value of all structured settlement  
19 payments to be transferred and a statement that “This is the value  
20 of your structured settlement in current dollars.” This amount shall  
21 be disclosed in the form prescribed in subdivision (b) in the space  
22 for “Present value of amount you are selling.”~~

23 ~~(7) The federal rate, as described in subdivision (c) of Section  
24 10134, used in determining the discounted present value.~~

25 ~~(8) The effective equivalent interest rate, which shall be  
26 disclosed in the following statement:~~

27  
28 ~~“YOU WILL BE PAYING THE EQUIVALENT OF AN  
29 INTEREST RATE OF \_\_\_\_% PER YEAR.~~

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

37 ~~This percentage amount shall be disclosed in the form prescribed  
38 in subdivision (b) in the space for “the equivalent interest rate you  
39 would be paying for this loan would be \_\_\_\_% per year.”~~

40

1 ~~(9) The quotient (expressed as a percentage) obtained by~~  
2 ~~dividing the net payment amount by the discounted present value~~  
3 ~~of the payments.~~

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

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

12 ~~(12) The following statement: "If you believe you were treated~~  
13 ~~unfairly or were misled as to the nature of the obligations you~~  
14 ~~assumed upon entering into this agreement, you should report those~~  
15 ~~circumstances to your local district attorney or the office of the~~  
16 ~~Attorney General."~~

17 ~~(13) The following statement printed in 14-point type,~~  
18 ~~circumscribed by a box with a bold border, and set forth~~  
19 ~~immediately above or adjacent to the space reserved for the payee's~~  
20 ~~signature: "You have the right to cancel this agreement without~~  
21 ~~any cost or obligation until the date the court approves this~~  
22 ~~agreement. You will receive notice of the court hearing date when~~  
23 ~~approval may occur. You must cancel in writing and send your~~  
24 ~~cancellation to [insert transferee's name and address]."~~

25 ~~(d) The contract for transferring the structured settlement~~  
26 ~~payment rights may not violate Section 10138.~~

27 ~~(e) At any time before the date on which a court enters a final~~  
28 ~~order approving the transfer agreement pursuant to Section~~  
29 ~~10139.5, the payee may cancel the transfer agreement, without~~  
30 ~~cost or further obligation, by providing written notice of~~  
31 ~~cancellation to the transferee.~~

32 ~~SEC. 3.~~

33 ~~SEC. 2. Section 10138 of the Insurance Code is amended to~~  
34 ~~read:~~

35 ~~10138. (a) A transfer agreement, as defined in subdivision (o)~~  
36 ~~of Section 10134, shall not include any provision described in the~~  
37 ~~paragraphs below. Any inclusion of a prohibited provision, with~~  
38 ~~respect to a seller who is a California resident, shall make the~~  
39 ~~contract void and unenforceable.~~

- 1 (1) Any provision that waives the seller’s right to sue under any  
2 law, or in which the seller agrees not to sue, or that waives  
3 jurisdiction or standing to sue under the contract.
- 4 (2) Any provision that requires the seller to indemnify and hold  
5 harmless the buyer, or to pay the buyer’s costs of defense, in any  
6 claim or action brought by the seller or on the seller’s behalf  
7 contesting the sale for any reason.
- 8 (3) Any provision that waives benefits or rights conferred by  
9 law with respect to garnishment of wages.
- 10 (4) Any provision providing that the contract is confidential or  
11 proprietary, belonging to the buyer.
- 12 (5) Any provision in which the seller stipulates to a confession  
13 of judgment.
- 14 (6) Any provision requiring the seller to pay the buyer’s  
15 attorney’s fees and costs if the purchase agreement is not  
16 completed.
- 17 (7) Any provision requiring the seller to pay any tax liability  
18 arising under the federal tax laws, other than the seller’s own tax  
19 liability, if any, that results from the transfer.
- 20 (8) Any provision providing for brokerage fees incurred in the  
21 contract to be deducted from the purchase price disclosed pursuant  
22 to paragraph (5) of subdivision (b) of Section 10136.
- 23 (9) If the payee is domiciled in California at the time that the  
24 transfer agreement is signed by the payee, any forum selection  
25 provision providing for jurisdiction to be in a court outside of  
26 California for any action arising under the contract.
- 27 (10) If the payee is domiciled in California at the time that the  
28 transfer agreement is signed by the payee, any choice-of-law  
29 provision that provides for controlling law to be other than  
30 California law in any action arising under the contract.
- 31 (11) A provision that provides the transferee with a security  
32 interest or collateral interest in any structured settlement payment  
33 rights that exceed the actual dollar amount of the structured  
34 settlement payment rights being transferred.
- 35 (12) Any provision that creates a “buyer’s first right of refusal”  
36 to purchase any remaining structured payment rights that the payee  
37 may desire to sell in the future.
- 38 (b) The provisions in this section may not be waived by  
39 agreement of the parties.

1     ~~SEC. 4.~~

2     *SEC. 3.* Section 10139.5 of the Insurance Code is amended to  
3 read:

4     10139.5. (a) A direct or indirect transfer of structured  
5 settlement payment rights is not effective and a structured  
6 settlement obligor or annuity issuer is not required to make any  
7 payment directly or indirectly to any transferee of structured  
8 settlement payment rights unless the transfer has been approved  
9 in advance in a final court order based on express written findings  
10 by the court that:

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

13       (2) The payee has been advised in writing by the transferee to  
14 seek independent professional advice regarding the transfer and  
15 has either received that advice or knowingly waived the opportunity  
16 to seek and receive that advice in writing.

17       (3) The transferee has provided the payee with a disclosure form  
18 that complies with Section 10136 and the transfer agreement  
19 complies with Sections 10136 and 10138.

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

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

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

27     (b) Following a transfer of structured settlement payment rights  
28 under this article:

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

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

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

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

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

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

8 (c) (1) An application under this article for approval of a transfer  
9 of structured settlement payment rights shall be made by the  
10 transferee and brought in the county in which the payee resides at  
11 the time the transfer agreement is signed by the payee or, if the  
12 payee is not domiciled in California, the county where the  
13 structured settlement obligor or annuity issuer is domiciled.

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

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

21 (B) A copy of the transfer agreement.

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

24 (D) A copy of the disclosure required in subdivision (b) of  
25 Section 10136.

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

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

28 (G) A copy of the underlying structured settlement agreement,  
29 if available.

30 (H) Notification that any interested party is entitled to support,  
31 oppose, or otherwise respond to the transferee's application, either  
32 in person or by counsel, by submitting written comments to the  
33 court or by participating in the hearing.

34 (I) Notification of the time and place of the hearing and  
35 notification of the manner in which and the time by which written  
36 responses to the application must be filed, which may not be less  
37 than 15 days after service of the transferee's notice, in order to be  
38 considered by the court.

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

1 (e) No later than the time of filing the petition for court approval,  
2 the transferee shall advise the payee of the payee’s right to seek  
3 independent counsel and financial advice in connection with the  
4 transferee’s petition for court approval of the transfer agreement,  
5 and shall further advise the payee that if the payee retains counsel,  
6 a licensed certified public accountant, or a licensed actuary in  
7 connection with a petition for an order approving the transfer  
8 agreement, that the transferee shall pay the fees of the payee’s  
9 counsel, accountant, or actuary, regardless of whether the transfer  
10 agreement is approved, and regardless of whether the attorney,  
11 accountant, or actuary files any document or appears at the hearing  
12 on the application for transfer, in an aggregate amount not to  
13 exceed one thousand five hundred dollars (\$1,500). The transferee’s  
14 accountant, counsel, or actuary may not advise the payee.  
15 (f) The court shall retain continuing jurisdiction to interpret and  
16 monitor the implementation of the transfer agreement as justice  
17 requires.

O