

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

265E0257

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1185 - 02/06/2001

Introduced by: Representative Derby and Senator McCracken

1 FOR AN ACT ENTITLED, An Act to provide certain protections for structured settlements.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Annuity issuer," an insurer that has issued a contract to fund periodic payments
5 under a structured settlement;

6 (2) "Dependents," a payee's spouse and any minor child and any other person for whom
7 the payee is legally obligated to provide support, including alimony;

8 (3) "Discounted present value," the present value of future payments determined by
9 discounting such payments to the present using the most recently published applicable
10 federal rate for determining the present value of an annuity, as issued by the United
11 States Internal Revenue Service;

12 (4) "Gross advance amount," the sum payable to the payee or for the payee's account as
13 consideration for a transfer of structured settlement payment rights before any
14 reductions for transfer expenses or other deductions to be made from such
15 consideration;

- 1 (5) "Independent professional advice," advice of an attorney, certified public accountant,
2 actuary, or other licensed professional advisor;
- 3 (6) "Interested parties," with respect to any structured settlement, the payee, any
4 beneficiary irrevocably designated under the annuity contract to receive payments
5 following the payee's death, the annuity issuer, the structured settlement obligor, and
6 any other party that has continuing rights or obligations under such structured
7 settlement;
- 8 (7) "Net advance amount," the gross advance amount less the aggregate amount of the
9 actual and estimated transfer expenses required to be disclosed under subdivision (5)
10 of section 2 of this Act;
- 11 (8) "Payee," an individual who is receiving tax free payments under a structured
12 settlement and proposes to make a transfer of payment rights thereunder;
- 13 (9) "Periodic payments," includes both recurring payments and scheduled future lump
14 sum payments;
- 15 (10) "Qualified assignment agreement," an agreement providing for a qualified assignment
16 within the meaning of section 130 of the United States Internal Revenue Code, United
17 States Code Title 26, as of January 1, 2001;
- 18 (11) "Responsible administrative authority," with respect to a structured settlement, any
19 governmental authority vested by law with exclusive jurisdiction over the settled claim
20 resolved by such structured settlement;
- 21 (12) "Settled claim," the original tort claim or workers' compensation claim resolved by a
22 structured settlement;
- 23 (13) "Structured settlement," an arrangement for periodic payment of damages for
24 personal injuries or sickness established by settlement or judgment in resolution of a

- 1 tort claim or for periodic payments in settlement of a workers' compensation claim;
- 2 (14) "Structured settlement agreement," the agreement, judgment, stipulation, or release
3 embodying the terms of a structured settlement;
- 4 (15) "Structured settlement obligor," with respect to any structured settlement, the party
5 that has the continuing obligation to make periodic payments to the payee under a
6 structured settlement agreement or a qualified assignment agreement;
- 7 (16) "Structured settlement payment rights," rights to receive periodic payments under a
8 structured settlement, whether from the structured settlement obligor or the annuity
9 issuer, if at least one of the following applies:
- 10 (a) The payee is domiciled in, or the domicile or principal place of business of the
11 structured settlement obligor or the annuity issuer is located in, this state; or
- 12 (b) The structured settlement agreement was approved by a court or responsible
13 administrative authority in this state; or
- 14 (c) The structured settlement agreement is expressly governed by the laws of this
15 state;
- 16 (17) "Terms of the structured settlement," include, with respect to any structured
17 settlement, the terms of the structured settlement agreement, the annuity contract, any
18 qualified assignment agreement, and any order or other approval of any court or
19 responsible administrative authority or other government authority that authorized or
20 approved such structured settlement;
- 21 (18) "Transfer," any sale, assignment, pledge, hypothecation, or other alienation or
22 encumbrance of structured settlement payment rights made by a payee for
23 consideration. The term, transfer, does not include the creation of perfection of a
24 security interest in structured settlement payment rights under a blanket security

1 agreement entered into with an insured depository institution, in the absence of any
2 action to redirect the structured settlement payments to such insured depository
3 institution, or an agent or successor in interest thereof, or otherwise to enforce such
4 blanket security interest against the structured settlement payment rights;

5 (19) "Transfer agreement," the agreement providing for a transfer of structured settlement
6 payment rights;

7 (20) "Transfer expenses," any expenses of a transfer that are required under the transfer
8 agreement to be paid by the payee or deducted from the gross advance amount,
9 including court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment
10 and lien search fees, finders' fees, commissions, and other payments to a broker or
11 other intermediary. Transfer expenses do not include preexisting obligations of the
12 payee payable for the payee's account from the proceeds of a transfer;

13 (21) "Transferee," a party acquiring or proposing to acquire structured settlement payment
14 rights through a transfer.

15 Section 2. Not less than three days before the date on which a payee signs a transfer
16 agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type
17 no smaller than 14 points, setting forth the following information:

18 (1) The amounts and due dates of the structured settlement payments to be transferred;

19 (2) The aggregate amount of such payments;

20 (3) The discounted present value of the payments to be transferred, which shall be
21 identified as the "calculation of current value of the transferred structured settlement
22 payments under federal standards for valuing annuities" and the amount of the
23 applicable federal rate used in calculating such discounted present value;

24 (4) The gross advance amount;

- 1 (5) An itemized listing of all applicable transfer expenses, other than attorneys' fees and
2 related disbursements payable in connection with the transferee's application for
3 approval of the transfer, and the transferee's best estimate of the amount of any such
4 fees and disbursements;
- 5 (6) The net advance amount;
- 6 (7) The amount of any penalties or liquidated damages payable by the payee in the event
7 of any breach of the transfer agreement by the payee; and
- 8 (8) A statement that the payee has the right to cancel the transfer agreement, without
9 penalty or further obligation, not later than the third business day after the date the
10 agreement is signed by the payee.

11 Section 3. No direct or indirect transfer of structured settlement payment rights is effective
12 and no structured settlement obligor or annuity issuer is required to make any payment directly
13 or indirectly to any transferee of structured settlement payment rights unless the transfer has been
14 approved in advance in a final court order or order of a responsible administrative authority
15 based on the following express findings by such court or responsible administrative authority:

- 16 (1) The transfer is in the best interest of the payee, taking into account the welfare and
17 support of the payee's dependents;
- 18 (2) The payee has been advised in writing by the transferee to seek independent
19 professional advice regarding the transfer and has either received such advice or
20 knowingly waived such advice in writing; and
- 21 (3) The transfer does not contravene any applicable statute or the order of any court or
22 other government authority.

23 Section 4. Following a transfer of structured settlement payment rights under this Act:

- 24 (1) The structured settlement obligor and the annuity issuer shall, as to all parties except

1 the transferee, be discharged and released from any liability for the transferred
2 payments;

3 (2) The transferee is liable to the structured settlement obligor and the annuity issuer:

4 (a) If the transfer contravenes the terms of the structured settlement, for any taxes
5 incurred by such parties as a consequence of the transfer; and

6 (b) For any other liabilities or costs, including reasonable costs and attorneys' fees,
7 arising from compliance by such parties with the order of the court or
8 responsible administrative authority or arising as a consequence of the
9 transferee's failure to comply with this Act;

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

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

15 Section 5. An application under this Act for approval of a transfer of structured settlement
16 payment rights shall be made by the transferee and may be brought in the county in which the
17 payee resides, in the county in which the structured settlement obligor or the annuity issuer
18 maintains its principal place of business, or in any court or before any responsible administrative
19 authority which approved the structured settlement agreement.

20 Not less than twenty days prior to the scheduled hearing on any application for approval of
21 a transfer of structured settlement payment rights under section 3 of this Act, the transferee shall
22 file with the court or responsible administrative authority and serve on all interested parties a
23 notice of the proposed transfer and the application for its authorization, including the following
24 with such notice:

- 1 (1) A copy of the transferee's application;
- 2 (2) A copy of the transfer agreement;
- 3 (3) A copy of the disclosure statement required under section 2 of this Act;
- 4 (4) A listing of each of the payee's dependents, together with each dependent's age;
- 5 (5) Notification that any interested party is entitled to support, oppose, or otherwise
6 respond to the transferee's application, either in person or by counsel, by submitting
7 written comments to the court or responsible administrative authority or by
8 participating in the hearing; and
- 9 (6) Notification of the time and place of the hearing and notification of the manner in
10 which, and the time by which written responses to the application must be filed, which
11 may not be less than fifteen days after service of the transferee's notice, in order to be
12 considered by the court or responsible administrative authority.

13 Section 6. The provisions of this Act may not be waived by any payee.

14 Section 7. Any transfer agreement entered into on or after the effective date of this Act by
15 a payee who resides in this state shall provide that disputes under such transfer agreement,
16 including any claim that the payee has breached the agreement, shall be determined in and under
17 the laws of this state. No such transfer agreement may authorize the transferee or any other party
18 to confess judgment or consent to entry of judgment against the payee.

19 Section 8. No transfer of structured settlement payment rights may extend to any payments
20 that are life-contingent unless, prior to the date on which the payee signs the transfer agreement,
21 the transferee has established and has agreed to maintain procedures reasonably satisfactory to
22 the annuity issuer and the structured settlement obligor for periodically confirming the payee's
23 survival and giving the annuity issuer and the structured settlement obligor prompt written notice
24 in the event of the payee's death.

1 Section 9. No payee who proposes to make a transfer of structured settlement payment rights
2 may incur any penalty, forfeit any application fee or other payment, or otherwise incur any
3 liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy
4 the conditions of this Act.

5 Section 10. Nothing contained in this Act authorizes any transfer of structured settlement
6 payment rights in contravention of any law or to imply that any transfer under a transfer
7 agreement entered into prior to the effective date of this Act is valid or invalid.

8 Section 11. Compliance with the requirements set forth in section 2 of this Act and fulfillment
9 of the conditions set forth in section 3 of this Act shall be solely the responsibility of the
10 transferee in any transfer of structured settlement payment rights, and neither the structured
11 settlement obligor nor the annuity issuer bears any responsibility for, or any liability arising from,
12 noncompliance with such requirements or failure to fulfill such conditions.

13 Section 12. This Act applies to any transfer of structured settlement payment rights under
14 a transfer agreement entered into on or after July 1, 2001. Nothing contained in this Act implies
15 that any transfer under a transfer agreement reached prior to such date is either effective or
16 ineffective.