

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 2215 of the Regular Session

1 State of Arkansas

As Engrossed: H3/15/05

2 85th General Assembly

A Bill

3 Regular Session, 2005

HOUSE BILL 2614

4
5 By: Representative Bright

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7
8 **For An Act To Be Entitled**

9 AN ACT CONCERNING STRUCTURED SETTLEMENT
10 PROTECTION; AND FOR OTHER PURPOSES.

11
12 **Subtitle**

13 AN ACT CONCERNING STRUCTURED SETTLEMENT
14 PROTECTION.

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16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18
19 *SECTION 1. Arkansas Code Title 23, Chapter 81, is amended to add an*
20 *additional subchapter to read as follows:*

21 *23-81-701. Title.*

22 *This subchapter shall be known and may be cited as the "Structured*
23 *Settlement Protection Act".*

24
25 *23-81-702. Definitions.*

26 *As used in this subchapter:*

27 *(1) "Annuity issuer" means an insurer that has issued a contract*
28 *to fund periodic payments under a structured settlement;*

29 *(2) "Dependents" includes a payee's spouse and minor children*
30 *and all other persons for whom the payee is legally obligated to provide*
31 *support, including alimony;*

32 *(3) "Discounted present value" means the present value of future*
33 *payments determined by discounting such payments to the present using the*
34 *most recently published applicable federal rate for determining the present*
35 *value of an annuity, as issued by the Internal Revenue Service;*



1 (4) “Gross advance amount” means the sum payable to the payee or
2 for the payee’s account as consideration for a transfer of structured
3 settlement payment rights before any reductions for transfer expenses or
4 other deductions are made from the consideration;

5 (5) “Independent professional advice” means advice of an
6 attorney, certified public accountant, actuary, or other licensed
7 professional adviser;

8 (6) “Interested parties” means, with respect to any structured
9 settlement, the payee, any beneficiary irrevocably designated under the
10 annuity contract to receive payments following the payee’s death, the annuity
11 issuer, the structured settlement obligor, and any other party that has
12 continuing rights or obligations under the structured settlement;

13 (7) “Net advance amount” means the gross advance amount less the
14 aggregate amount of the actual and estimated transfer expenses required to be
15 disclosed under § 23-81-703(5);

16 (8) “Payee” means an individual who is receiving tax free
17 payments under a structured settlement and proposes to make a transfer of
18 payment rights under the structured settlement;

19 (9) “Periodic payments” includes both recurring payments and
20 scheduled future lump sum payments;

21 (10) “Qualified assignment agreement” means an agreement
22 providing for a qualified assignment within the meaning of Section 130 of the
23 Internal Revenue Code of 1986, as in existence on January 1, 2005;

24 (11) “Responsible administrative authority” means, with respect
25 to a structured settlement, any government authority vested by law with
26 exclusive jurisdiction over the settled claim resolved by the structured
27 settlement;

28 (12) “Settled claim” means the original tort claim or workers’
29 compensation claim resolved by a structured settlement;

30 (13) “Structured settlement” means an arrangement for periodic
31 payment of damages for personal injuries or sickness established by
32 settlement or judgment in resolution of a tort claim or for periodic payments
33 in settlement of a workers’ compensation claim;

34 (14) “Structured settlement agreement” means the agreement,
35 judgment, stipulation, or release embodying the terms of a structured
36 settlement;

1 (15) “Structured settlement obligor” means, with respect to any
2 structured settlement, the party that has the continuing obligation to make
3 periodic payments to the payee under a structured settlement agreement or a
4 qualified assignment agreement;

5 (16) “Structured settlement payment rights” means rights to
6 receive periodic payments under a structured settlement, whether from the
7 structured settlement obligor or the annuity issuer, when:

8 (A) The payee is domiciled in, or the domicile or
9 principal place of business of the structured settlement obligor or the
10 annuity issuer is located in, this state;

11 (B) The structured settlement agreement was approved by a
12 court or responsible administrative authority in this state; or

13 (C) The structured settlement agreement is expressly
14 governed by the laws of this state;

15 (17) “Terms of the structured settlement” includes, with respect
16 to any structured settlement, the terms of the structured settlement
17 agreement, the annuity contract, any qualified assignment agreement, and any
18 order or other approval of any court or responsible administrative authority
19 or other government authority that authorized or approved the structured
20 settlement;

21 (18)(A) “Transfer” means any sale, assignment, pledge,
22 hypothecation, or other alienation or encumbrance of structured settlement
23 payment rights made by a payee for consideration.

24 (B) However, “transfer” does not include the creation or
25 perfection of a security interest in structured settlement payment rights
26 under a blanket security agreement entered into with an insured depository
27 institution, in the absence of any action to redirect the structured
28 settlement payments to the insured depository institution or an agent or
29 successor in interest, or otherwise to enforce the blanket security interest
30 against the structured settlement payment rights;

31 (19) “Transfer agreement” means the agreement providing for a
32 transfer of structured settlement payment rights;

33 (20)(A) “Transfer expenses” means all expenses of a transfer
34 that are required under the transfer agreement to be paid by the payee or
35 deducted from the gross advance amount, including, without limitation, court
36 filing fees, attorney’s fees, escrow fees, lien recordation fees, judgment

1 and lien search fees, finders' fees, commissions, and other payments to a
2 broker or other intermediary.

3 (B) "Transfer expenses" does not include preexisting
4 obligations of the payee payable for the payee's account from the proceeds of
5 a transfer; and

6 (21) "Transferee" means a party acquiring or proposing to
7 acquire structured settlement payment rights through a transfer.

8
9 23-81-703. Required disclosures to payee.

10 Not less than three (3) days prior to the date on which a payee signs a
11 transfer agreement, the transferee shall provide to the payee a separate
12 disclosure statement in bold type no smaller than fourteen (14) points,
13 setting forth:

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

16 (2) The aggregate amount of the payments;

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

22 (4) The gross advance amount;

23 (5) An itemized listing of all applicable transfer expenses,
24 other than attorney's fees and related disbursements payable in connection
25 with the transferee's application for approval of the transfer, and the
26 transferee's best estimate of the amount of any such fees and disbursements;

27 (6) The net advance amount;

28 (7) The amount of any penalties or liquidated damages payable by
29 the payee in the event of any breach of the transfer agreement by the payee;
30 and

31 (8) A statement that the payee has the right to cancel the
32 transfer agreement, without penalty or further obligation, not later than the
33 third business day after the date the agreement is signed by the payee.

34
35 23-81-704. Approval of transfers of structured settlement payment
36 rights.

1 No direct or indirect transfer of structured settlement payment rights
2 shall be effective and no structured settlement obligor or annuity issuer
3 shall be required to make any payment directly or indirectly to any
4 transferee of structured settlement payment rights unless the transfer has
5 been approved in advance in a final court order or order of a responsible
6 administrative authority based on express findings by the court or
7 responsible administrative authority that:

8 (1) The transfer is in the best interest of the payee, taking
9 into account the welfare and support of the payee's dependents;

10 (2) The payee has been advised in writing by the transferee to
11 seek independent professional advice regarding the transfer and has either
12 received the advice or knowingly waived the advice in writing; and

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

15
16 23-81-705. Effects of transfer of structured settlement payment
17 rights.

18 Following a transfer of structured settlement payment rights under this
19 subchapter:

20 (1) The structured settlement obligor and the annuity issuer
21 shall be discharged and released from any and all liability for the
22 transferred payments as to all parties except the transferee;

23 (2) The transferee shall be liable to the structured settlement
24 obligor and the annuity issuer:

25 (A) If the transfer contravenes the terms of the
26 structured settlement, for any taxes incurred by such parties as a
27 consequence of the transfer; and

28 (B) For any other liabilities or costs, including
29 reasonable costs and attorney's fees, arising from compliance by the parties
30 with the order of the court or responsible administrative authority or
31 arising as a consequence of the transferee's failure to comply with this
32 subchapter;

33 (3) Neither the annuity issuer nor the structured settlement
34 obligor may be required to divide any periodic payment between the payee and
35 any transferee or assignee or between two (2) or more transferees or
36 assignees; and

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

4
5 23-81-706. Procedure for approval of transfers.

6 (a) An application under this subchapter for approval of a transfer of
7 structured settlement payment rights shall be made by the transferee and may
8 be brought in the county in which the payee resides, in the county in which
9 the structured settlement obligor or the annuity issuer maintains its
10 principal place of business, or in any court or before any responsible
11 administrative authority which approved the structured settlement agreement.

12 (b) Not less than twenty (20) days prior to the scheduled hearing on
13 any application for approval of a transfer of structured settlement payment
14 rights under § 23-83-704, the transferee shall file with the court or
15 responsible administrative authority and serve on all interested parties a
16 notice of the proposed transfer and the application for its authorization,
17 including with the notice:

18 (1) A copy of the transferee's application;

19 (2) A copy of the transfer agreement;

20 (3) A copy of the disclosure statement required under § 23-83-
21 703;

22 (4) A listing of each of the payee's dependents and each
23 dependent's age;

24 (5) Notification that any interested party is entitled to
25 support, oppose, or otherwise respond to the transferee's application, either
26 in person or by counsel, by submitting written comments to the court or
27 responsible administrative authority or by participating in the hearing; and

28 (6)(A) Notification of:

29 (i) The time and place of the hearing; and

30 (ii) The manner in which and the time by which
31 written responses to the application must be filed in order to be considered
32 by the court or responsible administrative authority.

33 (B) The time by which written responses to the application
34 must be filed shall be not less than twenty (20) days after service of the
35 transferee's notice.

36

1 23-81-707. General provisions – Construction.

2 (a) The provisions of this subchapter may not be waived by any payee.

3 (b)(1) Any transfer agreement entered into on or after the effective
4 date of this subchapter by a payee who resides in this state shall provide
5 that disputes under the transfer agreement, including any claim that the
6 payee has breached the agreement, shall be determined in and under the laws
7 of the State of Arkansas.

8 (2) No transfer agreement shall authorize the transferee or any
9 other party to confess judgment or consent to entry of judgment against the
10 payee.

11 (c) No transfer of structured settlement payment rights shall extend
12 to any payments that are life-contingent unless, prior to the date on which
13 the payee signs the transfer agreement, the transferee has established and
14 has agreed to maintain procedures reasonably satisfactory to the annuity
15 issuer and the structured settlement obligor for:

16 (1) Periodically confirming the payee's survival; and

17 (2) Giving the annuity issuer and the structured settlement
18 obligor prompt written notice in the event of the payee's death.

19 (d) No payee who proposes to make a transfer of structured settlement
20 payment rights shall incur any penalty, forfeit any application fee or other
21 payment, or otherwise incur any liability to the proposed transferee or any
22 assignee based on any failure of the transfer to satisfy the conditions of
23 this subchapter.

24 (e) Nothing contained in this subchapter shall be construed to
25 authorize any transfer of structured settlement payment rights in
26 contravention of any law or to imply that any transfer under a transfer
27 agreement entered into prior to the effective date of this subchapter is
28 valid or invalid.

29 (f) Compliance with the requirements set forth in § 23-83-703 and
30 fulfillment of the conditions set forth in § 23-83-704 shall be solely the
31 responsibility of the transferee in any transfer of structured settlement
32 payment rights, and neither the structured settlement obligor nor the annuity
33 issuer shall bear any responsibility for, or any liability arising from, non-
34 compliance with such requirements or failure to fulfill such conditions.

35
36 /s/ Bright

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APPROVED: 4/13/2005