

House of Representatives, April 8, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING STRUCTURED SETTLEMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (a) For purposes of this
2 section:

3 (1) "Annuity issuer" means an insurer that
4 has issued any insurance contract used to fund
5 periodic payments under a structured settlement;

6 (2) "Interested parties" means, with respect
7 to any structured settlement, the payee, the
8 payee's dependents, if any, any beneficiary
9 designated to receive payments following the
10 payee's death, the annuity issuer, the structured
11 settlement obligor and any other party to such
12 structured settlement whether as a party to or
13 third party beneficiary of the annuity contract,
14 the structured settlement agreement, the qualified
15 assignment agreement or the court or
16 administrative order or other document in which
17 such contractual assignment restrictions appear;

18 (3) "Payee" means an individual who is
19 receiving payments under a structured settlement
20 and proposes to make a transfer of payment rights
21 thereunder;

22 (4) "Structured settlement" means an
23 arrangement for periodic payment of damages

24 established by settlement or judgment in
25 resolution of a tort claim or for periodic
26 payments in settlement of a workers' compensation
27 claim;

28 (5) "Structured settlement obligor" means,
29 with respect to any structured settlement, the
30 party that has the continuing periodic payment
31 obligation to the payee under a structured
32 settlement agreement or under an agreement
33 providing for a qualified assignment within the
34 meaning of Section 130 of the Internal Revenue
35 Code of 1986, or any subsequent corresponding
36 internal revenue code of the United States, as
37 from time to time amended;

38 (6) "Structured settlement payment rights"
39 means rights to receive periodic payments,
40 including lump sum payments, under a structured
41 settlement, whether from the settlement obligor or
42 the annuity issuer;

43 (7) "Transfer" means any sale, assignment,
44 pledge, hypothecation or other form of alienation
45 or encumbrance made for consideration;

46 (8) "Transfer agreement" means the agreement
47 providing for transfer of structured settlement
48 payment rights from a payee to a transferee; and

49 (9) "Transferee" means any person receiving
50 structured settlement payment rights resulting
51 from a transfer.

52 (b) No transfer of structured settlement
53 payment rights, either directly or indirectly,
54 shall be effective by any payee domiciled in this
55 state or by any payee entitled to receive payments
56 under a structured settlement funded by an
57 insurance contract issued by an insurer domiciled
58 in this state or owned by an insurer or
59 corporation domiciled in this state and no
60 structured settlement obligor or annuity issuer
61 shall be required to make any payment directly or
62 indirectly to any transferee of any such transfer
63 unless each interested party has given its
64 irrevocable written consent to the transfer,
65 including such party's waiver of all rights under
66 applicable contractual transfer restrictions and,
67 in the case of each interested party other than
68 the annuity issuer and the structured settlement
69 obligor, such party's waiver of all rights with
70 respect to the transferred payments and such
71 party's release of all claims against other

72 interested parties with respect to the transferred
73 payments. The transferee shall (1) be responsible
74 for obtaining all such consents, (2) provide
75 signed originals of all such consents to the
76 annuity issuer and the structured settlement
77 obligor, and (3) provide copies of all such
78 consents to any other interested party that so
79 requests.

80 (c) If any interested party fails to provide
81 irrevocable written consent pursuant to subsection
82 (b) of this section within sixty days after a
83 written request has been delivered to such party,
84 the payee entitled to receive payments under such
85 structured settlement may commence a declaratory
86 judgment action pursuant to section 52-29 of the
87 general statutes or, if the payee is a party in
88 any proceeding pending in a probate court, make
89 application to that probate court for a
90 determination as to whether the transfer of such
91 structured settlement payment rights is in the
92 best interests of the payee and is fair and
93 reasonable to all interested parties under all of
94 the circumstances then existing. All interested
95 parties shall be made parties to such action or
96 proceeding. If the court determines, after
97 hearing, that such transfer should be allowed, it
98 shall order such transfer upon such terms and
99 conditions as it deems appropriate.

100 (d) Nothing contained in this section shall
101 imply that any transfer under a transfer agreement
102 dated prior to the effective date of this act is
103 binding upon any interested party or that any
104 annuity issuer or structured settlement obligor is
105 under any obligation to make transferred payments
106 to the transferee of any such prior transfer.

107 Sec. 2. This act shall take effect from its
108 passage.

109 JUD COMMITTEE VOTE: YEA 37 NAY 2 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5548

STATE IMPACT Absorbable Workload Increase, see explanation below

MUNICIPAL IMPACT None

STATE AGENCY(S) Judicial Department

EXPLANATION OF ESTIMATES:

STATE IMPACT: A "structured settlement" means an arrangement for a periodic payment of damages stemming from a tort claim or settlement of a worker's compensation claim. "Structured settlement payment rights" means rights to receive periodic payments, including lump sum payments under a structured settlement.

The bill specifies that a transfer of structured settlement payment rights cannot be made without an irrevocable consent by both interested parties. If an interested party does not provide an irrevocable written consent, the payee entitled to payments may commence a declaratory judgement.

The passage of this bill would result in an absorbable workload increase for the court system, which would be dependent upon the amount of declaratory judgement actions commenced by persons entitled to receive payments. The court can, after conducting a hearing, order a transfer of structured settlement payment rights if it determines that such transfer is fair and reasonable to all interested parties.

Since the bill addresses private contractual rights, it has no workload impact for the Insurance Department.

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OLR BILL ANALYSIS

sHB 5548

AN ACT CONCERNING STRUCTURED SETTLEMENTS

SUMMARY: This bill makes the transfer of structured settlement payment rights ineffective unless each interested party has given its irrevocable written consent. Under the bill a structured settlement is an arrangement for periodic payments of damages established by settlement or judgement in a tort claim or a worker's compensation claim.

The bill authorizes the person entitled to receive payments under a structured settlement to seek a court order if any interested party does not provide written consent within 60 days after a written request is delivered to him.

The bill specifies that nothing in it implies that (1) any transfer under a transfer agreement dated prior to the bill's passage is binding on any interested party or (2) any annuity issuers or anyone obligated to make structured settlement (2) payments is under any obligation to make transferred payments under such transfer agreement.

EFFECTIVE DATE: Upon passage

FURTHER EXPLANATION**Scope of the Bill**

The bill applies to (1) those entitled to receive structured settlement payments whose permanent residence is in Connecticut and (2) payees not domiciled here who are entitled to receive payments under a structured settlement funded by an insurance contract issued by an insurer domiciled in Connecticut or owned by an insurer or corporation domiciled in Connecticut. (The term "domicile" is not defined by the bill. Apparently, with respect to insurers and other corporations it means the state of incorporation.)

The bill covers any sale, assignment, pledge, or other

transfer of structured settlement payment rights by a payee for value.

Irrevocable Consents by Interested Parties

The bill requires that the following parties sign an irrevocable consent for a transfer of structured settlement payment rights to be effective:

1. the payee (person entitled to receive the payments);
2. the payee's dependents;
3. any beneficiary designated to receive payments following the payee's death;
4. the annuity issuer (an insurer that has issued any insurance contract used to fund periodic payments under a structured settlement);
5. the structured settlement obligor (the person or entity that has the obligation to make the periodic payments under a structured settlement);
6. any other party to the structured settlement including a party to or third party beneficiary of the annuity contract, the structured settlement agreement, the qualified assignment agreement, or other court or administrative order or other document in which the contractual assignment restrictions appear.

These consents must include a waiver of all rights under applicable contractual transfer restrictions. For all parties other than the annuity issuer and the structured settlement obligor, it must also include a waiver of all rights with respect to the transferred payments and a release of all claims to the transferred payments against other interested parties.

The bill requires the party receiving the structured settlement payment rights to (1) obtain all the consents, (2) provide signed originals to the annuity issuer and the structured settlement obligor; and (3) provide copies to any other interested party who asks

for it.

Court Order

The bill authorizes the Superior Court or probate court to order a transfer of structured settlement payment rights if it determines, after hearing, that such transfer should be allowed. The bill authorizes the person entitled to receive payments to commence a declaratory judgement action in Superior Court or, if he is a party to any proceeding in probate court, to make application there for a determination as to whether the transfer is in his best interest and if it is fair and reasonable to all interested parties under all the circumstances then existing. (The bill does not explicitly state that these are the only factors the court must consider in reaching its decision.) The bill requires that all interested parties be made parties to the declaratory judgement action or probate court proceeding.

BACKGROUND

Tort Claims

A "tort" is a private or civil wrong or injury resulting from a breach of a legal duty existing by virtue of society's expectations regarding interpersonal conduct other than by contract or some other private relationship. The essential elements of a tort are the existence of a legal duty owed by a defendant to a plaintiff, a breach of that duty, and a causal relation between the defendant's conduct and the resulting damage to plaintiff. For example a lawsuit against someone for the negligent or reckless operation of a motor vehicle is a tort case.

Declaratory Judgement

The Superior Court in any action or proceeding may declare rights and other legal relations on request for such a declaration. The declaration has the force of a final judgement (CGS Sec. 52-29).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 37 Nay 2