

TRANSFERS OF STRUCTURED SETTLEMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ed Mayne

House Sponsor: Stephen D. Clark

LONG TITLE

General Description:

This bill modifies provisions related to transfers of structured settlements, including rights to periodic payments under workers' compensation.

Highlighted Provisions:

This bill:

- ▶ prohibits transfers of payment rights under workers' compensation;
- ▶ removes payment rights under workers' compensation from the application of the Structured Settlement Protection Act; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-422, as last amended by Chapter 72, Laws of Utah 2004

78-59-102, as enacted by Chapter 99, Laws of Utah 2002

78-59-107, as enacted by Chapter 99, Laws of Utah 2002

Be it enacted by the Legislature of the state of Utah:



28 Section 1. Section 34A-2-422 is amended to read:

29 **34A-2-422. Compensation exempt from execution.**

30 (1) For purposes of this section:

31 (a) "Payment rights under workers' compensation" means an employee's right to
32 receive compensation under this chapter or Chapter 3, Utah Occupational Disease Act,
33 including the payment of a workers' compensation claim, award, benefit, or settlement.

34 (b) (i) Subject to Subsection (1)(b)(ii), "transfer" means:

35 (A) a sale;

36 (B) an assignment;

37 (C) a pledge;

38 (D) an hypothecation; or

39 (E) other form of encumbrance or alienation for consideration.

40 (ii) "Transfer" does not include the creation or perfection of a security interest in a right
41 to receive a payment under a blanket security agreement entered into with an insured
42 depository institution, in the absence of any action to:

43 (A) redirect the payments to:

44 (I) the insured depository institution; or

45 (II) an agent or successor in interest to the insured depository institution; or

46 (B) otherwise enforce a blanket security interest against the payment rights.

47 (2) Compensation before payment [~~shall be~~]:

48 (a) is exempt from:

49 (i) all claims of creditors[;]; and [from]

50 (ii) attachment or execution[;]; and

51 (b) shall be paid only to employees or their dependents, except as provided in Sections
52 26-19-5 and 34A-2-417.

53 (3) (a) Beginning April 30, 2007, an employee may not transfer payment rights under
54 workers' compensation.

55 (b) Beginning April 30, 2007, a person may not accept or take any action to provide for
56 a transfer of payment rights under workers' compensation.

57 Section 2. Section 78-59-102 is amended to read:

58 **78-59-102. Definitions.**

59 For purposes of this chapter:

60 (1) "Annuity issuer" means an insurer that has issued a contract to fund periodic
61 payments under a structured settlement.

62 (2) "Dependents" include:

63 (a) a payee's spouse ~~[and]~~;

64 (b) a payee's minor children; and

65 (c) all other persons for whom the payee is legally obligated to provide support,
66 including alimony.

67 (3) "Discounted present value" means the present value of future payments determined
68 by discounting the payments to the present using the most recently published Applicable
69 Federal Rate for determining the present value of an annuity, as issued by the United States
70 Internal Revenue Service.

71 (4) "Gross advance amount" means the sum payable to the payee or for the payee's
72 account as consideration for a transfer of structured settlement payment rights before any
73 reductions for transfer expenses or other deductions to be made from the consideration.

74 (5) "Independent professional advice" means advice of an attorney, certified public
75 accountant, actuary, or other licensed professional adviser.

76 (6) "Interested parties" means, with respect to any structured settlement[;]:

77 (a) the payee[;];

78 (b) any beneficiary irrevocably designated under the annuity contract to receive
79 payments following the payee's death[;];

80 (c) the annuity issuer[;];

81 (d) the structured settlement obligor[;]; and

82 (e) any other party that has continuing rights or obligations under the structured
83 settlement.

84 (7) "Net advance amount" means the gross advance amount less the aggregate amount
85 of the actual and estimated transfer expenses required to be disclosed under Subsection
86 78-59-103(5).

87 (8) "Payee" means an individual who:

88 (a) is receiving tax free payments under a structured settlement; and

89 (b) proposes to make a transfer of payment rights under the settlement.

90 (9) "Periodic payments" includes both recurring payments and scheduled future lump
91 sum payments.

92 (10) "Qualified assignment agreement" means an agreement providing for a qualified
93 assignment within the meaning of Section 130 of the United States Internal Revenue Code.

94 (11) "Responsible administrative authority" means, with respect to a structured
95 settlement, any government authority vested by law with exclusive jurisdiction over the settled
96 claim resolved by the structured settlement.

97 (12) "Settled claim" means the original tort claim [~~or workers' compensation claim~~]
98 resolved by a structured settlement.

99 (13) "Structured settlement" means an arrangement for periodic payment of damages
100 for personal injuries or sickness established by settlement or judgment in resolution of a tort
101 claim [~~or for periodic payments in settlement of a workers' compensation claim~~].

102 (14) "Structured settlement agreement" means the agreement, judgment, stipulation, or
103 release embodying the terms of a structured settlement.

104 (15) "Structured settlement obligor" means, with respect to any structured settlement,
105 the party that has the continuing obligation to make periodic payments to the payee under a
106 structured settlement agreement or a qualified assignment agreement.

107 (16) "Structured settlement payment rights" means rights to receive periodic payments
108 under a structured settlement, whether from the structured settlement obligor or the annuity
109 issuer[~~, where~~] if:

110 (a) (i) the payee is domiciled in[~~;~~] this state; or

111 (ii) the domicile or principal place of business of the structured settlement obligor or
112 the annuity issuer is located in this state;

113 (b) the structured settlement agreement [~~was~~] is approved by a court in this state; or

114 (c) the structured settlement agreement is expressly governed by the laws of this state.

115 (17) "Terms of the structured settlement" include, with respect to any structured
116 settlement, the terms of:

117 (a) the structured settlement agreement[~~;~~];

118 (b) the annuity contract[~~;~~];

119 (c) any qualified assignment agreement; and

120 (d) any order or other approval of any court or other government authority that

121 authorized or approved the structured settlement.

122 (18) (a) [~~"Transfer"~~] Subject to Subsection (18)(b), "transfer" means any sale,
123 assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement
124 payment rights made by a payee for consideration[~~; provided that the term "transfer"~~].

125 (b) "Transfer" does not include the creation or perfection of a security interest in
126 structured settlement payment rights under a blanket security agreement entered into with an
127 insured depository institution, in the absence of any action to:

128 (i) redirect the structured settlement payments to:

129 (A) the insured depository institution[;]; or

130 (B) an agent or successor in interest [~~thereof;~~] to the insured depository institution; or

131 (ii) otherwise [~~to~~] enforce a blanket security interest against the structured settlement
132 payment rights.

133 (19) "Transfer agreement" means the agreement providing for a transfer of structured
134 settlement payment rights.

135 (20) (a) [~~"Transfer"~~] Subject to Subsection (20)(b), "transfer expenses" means all
136 expenses of a transfer that are required under the transfer agreement to be paid by the payee or
137 deducted from the gross advance amount, including[~~; without limitation;~~]:

138 (i) court filing fees[~~; attorneys'~~];

139 (ii) attorney fees[;];

140 (iii) escrow fees[;];

141 (iv) lien recordation fees[;];

142 (v) judgment and lien search fees[;];

143 (vi) finders' fees[;];

144 (vii) commissions[;]; and

145 (viii) other payments to a broker or other intermediary.

146 (b) "Transfer expenses" do not include preexisting obligations of the payee payable for
147 the payee's account from the proceeds of a transfer.

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

150 Section 3. Section **78-59-107** is amended to read:

151 **78-59-107. General provisions -- Construction.**

152 (1) The provisions of this chapter may not be waived by any payee.

153 (2) (a) Any transfer agreement entered into on or after May 6, 2002 by a payee who
154 resides in this state shall provide that disputes under the transfer agreement, including any
155 claim that the payee has breached the agreement, shall be determined in and under the laws of
156 this state.

157 (b) A transfer agreement may not authorize the transferee or any other party to confess
158 judgment or consent to entry of judgment against the payee.

159 (3) The transfer of structured settlement payment rights may not extend to any
160 payments that are life-contingent unless, [~~prior to~~] before the date on which the payee signs the
161 transfer agreement, the transferee [~~has established~~] establishes and [~~has agreed~~] agrees to
162 maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement
163 obligor for:

164 (a) periodically confirming the payee's survival; and

165 (b) giving the annuity issuer and the structured settlement obligor prompt written
166 notice in the event of the payee's death.

167 (4) A payee who proposes to make a transfer of structured settlement payment rights
168 may not incur any of the following on the basis of a failure of the transfer to satisfy the
169 requirements of this chapter:

170 (a) a penalty [~~forfeiture~~];

171 (b) a forfeiture of any application fee or other payment [~~;~~]; or [~~otherwise incur~~]

172 (c) any liability to the proposed transferee or any assignee based on any failure of the
173 transfer to satisfy the requirements of this chapter.

174 (5) (a) [~~Nothing contained in this~~] This chapter [~~shall~~] may not be construed to
175 authorize any transfer of structured settlement payment rights in contravention of any law or to
176 imply that any transfer under a transfer agreement entered into [~~prior to~~] before May 6, 2002 is
177 valid or invalid.

178 (b) This chapter does not apply to a transfer of payment rights under workers'
179 compensation, as defined in Section 34A-2-422, that takes effect on or after April 30, 2006.

180 (6) Compliance with [~~the requirements set forth in~~] Section 78-59-103 and fulfillment
181 of the conditions set forth in Section 78-59-104 shall be solely the responsibility of the
182 transferee in any transfer of structured settlement payment rights, and neither the structured

183 settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising
184 from, noncompliance with the requirements or failure to fulfill the conditions.

Legislative Review Note
as of 12-21-06 9:51 AM

Office of Legislative Research and General Counsel

S.B. 109 - Transfers of Structured Settlements

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Individuals would lose the right to convert their structured settlement into a lump sum payment. Businesses that convert structured settlements into lump sum payments would lose that portion of their business.

1/9/2007, 11:18:04 AM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst