

1 AMENDMENT TO HOUSE BILL 3582

2 AMENDMENT NO. _____. Amend House Bill 3582, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 1. Short title. This Act may be cited as the
6 Structured Settlement Protection Act.

7 Section 5. Definitions. For purposes of this Act:

8 "Annuity issuer" means an insurer that has issued a
9 contract to fund periodic payments under a structured
10 settlement.

11 "Dependents" include a payee's spouse and minor children
12 and all other persons for whom the payee is legally obligated
13 to provide support, including alimony.

14 "Discounted present value" means the present value of
15 future payments determined by discounting such payments to
16 the present using the most recently published Applicable
17 Federal Rate for determining the present value of an annuity,
18 as issued by the United States Internal Revenue Service.

19 "Gross advance amount" means the sum payable to the payee
20 or for the payee's account as consideration for a transfer of
21 structured settlement payment rights before any reductions
22 for transfer expenses or other deductions to be made from

1 such consideration.

2 "Independent professional advice" means advice of an
3 attorney, certified public accountant, actuary, or other
4 licensed professional adviser.

5 "Interested parties" means, with respect to any
6 structured settlement, the payee, any beneficiary irrevocably
7 designated under the annuity contract to receive payments
8 following the payee's death, the annuity issuer, the
9 structured settlement obligor, and any other party that has
10 continuing rights or obligations under such structured
11 settlement.

12 "Net advance amount" means the gross advance amount less
13 the aggregate amount of the actual and estimated transfer
14 expenses required to be disclosed under item (5) of Section
15 10 of this Act.

16 "Payee" means an individual who is receiving tax free
17 payments under a structured settlement and proposes to make a
18 transfer of payment rights thereunder.

19 "Periodic payments" includes both recurring payments and
20 scheduled future lump sum payments.

21 "Qualified assignment agreement" means an agreement
22 providing for a qualified assignment within the meaning of
23 Section 130 of the United States Internal Revenue Code,
24 United States Code Title 26, as amended from time to time.

25 "Responsible administrative authority" means, with
26 respect to a structured settlement, any government authority
27 vested by law with exclusive jurisdiction over the settled
28 claim resolved by such structured settlement.

29 "Settled claim" means the original tort claim or workers'
30 compensation claim resolved by a structured settlement.

31 "Structured settlement" means an arrangement for periodic
32 payment of damages for personal injuries or sickness
33 established by settlement or judgment in resolution of a tort
34 claim or for periodic payments in settlement of a workers'

1 compensation claim.

2 "Structured settlement agreement" means the agreement,
3 judgment, stipulation, or release embodying the terms of a
4 structured settlement.

5 "Structured settlement obligor" means, with respect to
6 any structured settlement, the party that has the continuing
7 obligation to make periodic payments to the payee under a
8 structured settlement agreement or a qualified assignment
9 agreement.

10 "Structured settlement payment rights" means rights to
11 receive periodic payments under a structured settlement,
12 whether from the structured settlement obligor or the annuity
13 issuer, when:

14 (1) the payee is domiciled in, or the domicile or
15 principal place of business of the structured settlement
16 obligor or the annuity issuer is located in, this State;

17 (2) the structured settlement agreement was
18 approved by a court or responsible administrative
19 authority in this State; or

20 (3) the structured settlement agreement is
21 expressly governed by the laws of this State.

22 "Terms of the structured settlement" include, with
23 respect to any structured settlement, the terms of the
24 structured settlement agreement, the annuity contract, any
25 qualified assignment agreement, and any order or other
26 approval of any court or responsible administrative authority
27 or other government authority that authorized or approved
28 such structured settlement.

29 "Transfer" means any sale, assignment, pledge,
30 hypothecation, or other alienation or encumbrance of
31 structured settlement payment rights made by a payee for
32 consideration; provided that the term "transfer" does not
33 include the creation or perfection of a security interest in
34 structured settlement payment rights under a blanket security

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

7 "Transfer agreement" means the agreement providing for a
8 transfer of structured settlement payment rights.

9 "Transfer expenses" means all expenses of a transfer that
10 are required under the transfer agreement to be paid by the
11 payee or deducted from the gross advance amount, including,
12 without limitation, court filing fees, attorneys fees, escrow
13 fees, lien recordation fees, judgment and lien search fees,
14 finders' fees, commissions, and other payments to a broker or
15 other intermediary; "transfer expenses" do not include
16 preexisting obligations of the payee payable for the payee's
17 account from the proceeds of a transfer.

18 "Transferee" means a party acquiring or proposing to
19 acquire structured settlement payment rights through a
20 transfer.

21 Section 10. Required disclosures to payee. Not less than
22 3 days prior to the date on which a payee signs a transfer
23 agreement, the transferee shall provide to the payee a
24 separate disclosure statement, in bold type no smaller than
25 14 points, setting forth all of the following:

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

28 (2) the aggregate amount of the payments;

29 (3) the discounted present value of the payments to
30 be transferred, which shall be identified as the
31 "calculation of current value of the transferred
32 structured settlement payments under federal standards
33 for valuing annuities", and the amount of the Applicable

1 Federal Rate used in calculating the discounted present
2 value;

3 (4) the gross advance amount;

4 (5) an itemized listing of all applicable transfer
5 expenses, other than attorneys' fees and related
6 disbursements payable in connection with the transferee's
7 application for approval of the transfer, and the
8 transferee's best estimate of the amount of any such fees
9 and disbursements;

10 (6) the net advance amount;

11 (7) the amount of any penalties or liquidated
12 damages payable by the payee in the event of any breach
13 of the transfer agreement by the payee; and

14 (8) a statement that the payee has the right to
15 cancel the transfer agreement, without penalty or further
16 obligation, not later than the third business day after
17 the date the agreement is signed by the payee.

18 Section 15. Approval of transfers of structured
19 settlement payment rights. No direct or indirect transfer of
20 structured settlement payment rights shall be effective and
21 no structured settlement obligor or annuity issuer shall be
22 required to make any payment directly or indirectly to any
23 transferee of structured settlement payment rights unless the
24 transfer has been approved in advance in a final court order
25 or order of a responsible administrative authority based on
26 express findings by such court or responsible administrative
27 authority that:

28 (1) the transfer is in the best interest of the
29 payee, taking into account the welfare and support of the
30 payee's dependents;

31 (2) the payee has been advised in writing by the
32 transferee to seek independent professional advice
33 regarding the transfer and has either received such

1 advice or knowingly waived such advice in writing; and

2 (3) the transfer does not contravene any applicable
3 statute or the order of any court or other government
4 authority.

5 Section 20. Effects of transfer of structured settlement
6 payment rights. Following a transfer of structured settlement
7 payment rights under this Act:

8 (1) the structured settlement obligor and the
9 annuity issuer shall, as to all parties except the
10 transferee, be discharged and released from any and all
11 liability for the transferred payments;

12 (2) the transferee shall be liable to the
13 structured settlement obligor and the annuity issuer:

14 (A) if the transfer contravenes the terms of
15 the structured settlement, for any taxes incurred by
16 the parties as a consequence of the transfer; and

17 (B) for any other liabilities or costs,
18 including reasonable costs and attorneys' fees,
19 arising from compliance by the parties with the
20 order of the court or responsible administrative
21 authority or arising as a consequence of the
22 transferee's failure to comply with this Act;

23 (3) neither the annuity issuer nor the structured
24 settlement obligor may be required to divide any periodic
25 payment between the payee and any transferee or assignee
26 or between 2 or more transferees or assignees; and

27 (4) any further transfer of structured settlement
28 payment rights by the payee may be made only after
29 compliance with all of the requirements of this Act.

30 Section 25. Procedure for approval of transfers.

31 (a) No annuity issuer or structured settlement obligor
32 may make payments on a structured settlement to anyone other

1 than the payee or beneficiary of the payee without prior
2 approval of the circuit court or responsible administrative
3 authority. No payee or beneficiary of a payee of a
4 structured settlement may assign in any manner the structured
5 settlement payment rights without the prior approval of the
6 circuit court or responsible administrative authority.

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

16 Section 30. General provisions; construction.

17 (a) The provisions of this Act may not be waived by any
18 payee.

19 (b) Any transfer agreement entered into on or after the
20 effective date of this Act by a payee who resides in this
21 State shall provide that disputes under the transfer
22 agreement, including any claim that the payee has breached
23 the agreement, shall be determined in and under the laws of
24 this State. No such transfer agreement shall authorize the
25 transferee or any other party to confess judgment or consent
26 to entry of judgment against the payee.

27 (c) No transfer of structured settlement payment rights
28 shall extend to any payments that are life-contingent unless,
29 prior to the date on which the payee signs the transfer
30 agreement, the transferee has established and has agreed to
31 maintain procedures reasonably satisfactory to the annuity
32 issuer and the structured settlement obligor for (1)
33 periodically confirming the payee's survival, and (2) giving

1 the annuity issuer and the structured settlement obligor
2 prompt written notice in the event of the payee's death.

3 (d) No payee who proposes to make a transfer of
4 structured settlement payment rights shall incur any penalty,
5 forfeit any application fee or other payment, or otherwise
6 incur any liability to the proposed transferee or any
7 assignee based on any failure of the transfer to satisfy the
8 conditions of this Act.

9 (e) Nothing contained in this Act shall be construed to
10 authorize any transfer of structured settlement payment
11 rights in contravention of any law or to imply that any
12 transfer under a transfer agreement entered into prior to the
13 effective date of this Act is valid or invalid.

14 (f) Compliance with the requirements set forth in
15 Section 10 of this Act and fulfillment of the conditions set
16 forth in Section 15 of this Act shall be solely the
17 responsibility of the transferee in any transfer of
18 structured settlement payment rights, and neither the
19 structured settlement obligor nor the annuity issuer shall
20 bear any responsibility for, or any liability arising from,
21 non-compliance with those requirements or failure to fulfill
22 those conditions.

23 Section 35. Applicability. This Act shall apply to any
24 transfer of structured settlement payment rights under a
25 transfer agreement entered into on or after the 30th day
26 after the effective date of this Act; provided, however, that
27 nothing contained herein shall imply that any transfer under
28 a transfer agreement reached prior to that date is either
29 effective or ineffective.

30 (215 ILCS 5/155.34 rep.)

31 Section 97. The Illinois Insurance Code is amended by
32 repealing Section 155.34."