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F I S C A L I M P A C T R E P O R T

SPONSOR Cervantes **DATE TYPED** 02/25/05 **HB** 495/aHJC

SHORT TITLE Structured Settlement Protection Act **SB**

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Minimal – See Narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Administrative Office of the Courts (AOC)
Attorney General (AGO)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment makes a grammatical change and specifies that an application for approval of a transfer of a structured settlement shall be made in court, rather than "an appropriate court." This serves to clarify that the application must be made in the court pursuant to the definition in the bill.

Synopsis of Original Bill

House Bill 495 enacts the Structured Settlement Protection Act, which requires court approval for the transfer of structured settlements and provides the procedures for the transfer of structured settlements.

Definitions

The bill creates definitions for terms used in the Act, including:

- "annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

- "payee" means an individual who is receiving tax-free payments under a structured settlement and proposes to transfer payment rights under the structured settlement.
- "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

Required Disclosures

The Act requires the transferee to provide specific disclosures in a separate statement to the payee at least three days before the payee signs the transfer agreement. Among others, the requirements include the discounted present value of the payments, an itemized list of expenses, and a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the close of the third business day after the date the agreement is signed by the payee.

Court Approval and Procedures:

The Act requires a transfer of a structured settlement to be approved by a court based on findings that:

- The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
- The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received the advice or knowingly waived the advice in writing; and
- The transfer does not contravene any applicable statute or any order of any court or other governmental authority.

The Act also specifies the procedures the transferee must follow to obtain court approval which includes a required notification to all interested parties at least 20 days before the scheduled court hearing. Interested parties shall be entitled to provide input on the proposed transfer.

Liability and Responsibility

The Act establishes that the transferee, not the payee, obligor or annuity issuer, is responsible for taxes, costs and other liabilities that may arise from the transfer if the transfer contravenes the terms of the structured settlement.

The Act also establishes that it is the responsibility of the transferee to comply with the conditions of the Act. Neither the obligor nor the annuity issuer bears any responsibility for, or liability arising from, noncompliance.

<u>Significant Issues</u>

AOC notes that the bill is intended to protect persons who should benefit from a structured settlement from ill-considered transfers.

AGO writes: "There is a substantial potential for abuse or undue influence when a payee or the injured person's guardian seeks to convert periodic payments from a structured settlement of a damages award or a workers' compensation settlement that is designed to provide for support and care of the injured person over life or a term of years into cash."

FISCAL IMPLICATIONS

The bill may increase costs to the courts as a result of the requirement that transfers be approved by the courts. The total fiscal impact will depend on the number of applications for approval. AGO notes that the bill may also save the state money by preventing ill-advised transfers that could cause individuals to seek public assistance, such as Medicaid, in the future.

OTHER SUBSTANTIVE ISSUES

The AGO raises a number of issues with the drafting of the bill. First, it notes that the bill requires court approval of any transfer, but the approval procedures do not require that the court actually hold an evidentiary hearing to determine if the proposed transfer meets the requirements.

Next, the AGO notes that Section 4(B) allows the payee to waive independent professional advice, which may lead to transferees preparing boilerplate waiver language for the payee's for signature. The AGO suggests that the bill require the court to determine that the waiver was intelligent and informed.

Finally, the AGO raises a concern regarding transfers made by a parent or guardian on behalf of a minor or an incapacitated person. The AGO suggests that the bill could require the court to appoint its own independent professional, at the transferee's expense, to review the merits of the transfer to provide better protections. Along these lines, the bill could be strengthened by requiring a physician's statement of the injured person's mental and physical condition and long-term prognosis.

EF/yr:sb