

BILL TEXT:

STATE OF NEW YORK

8139

IN SENATE

May 2, 2008

Introduced by Sen. DeFRANCISCO -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to court approvals of transfers of structured settlements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Section 5-1705 of the general obligations law, as added by
2 chapter 537 of the laws of 2002, is amended to read as follows:
3 § 5-1705. Procedure for approval of transfers. (a) An action for
4 approval of a transfer of a structured settlement shall be by a special
5 proceeding brought on only by order to show cause.
6 (b) Such proceeding shall be commenced to obtain approval of a trans-
7 fer of structured settlement payment rights. Such proceeding shall be
8 commenced:
9 (i) in the supreme court of the county in which the payee resides; or
10 (ii) in any court which approved the structured settlement agreement.
11 (c) A copy of the [~~notice of petition and petition or~~] order to show
12 cause and petition shall be served upon all interested parties at least
13 twenty days before the time at which the petition is noticed to be
14 heard. A response shall be served at least seven days before the peti-
15 tion is noticed to be heard.
16 (d) A petition for approval of a transfer of structured settlement
17 payment rights shall include:
18 (i) a copy of the transfer agreement;
19 (ii) a copy of the disclosure statement and proof of notice of that
20 statement required under section 5-1703 of this title; [~~and~~]
21 (iii) a listing of each of the payee's dependents, together with each
22 dependent's age; and
23 (iv) a statement setting forth whether there have been any previous
24 transfers or applications for transfer of the structured settlement
25 payment rights and giving details of all such transfers or applications
26 for transfer.

EXPLANATION--Matter in italics (underscoring) is new; matter in brackets [~~-~~] is old law to be omitted.

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- 1 (e) On the hearing, the payee shall attend before the court unless
2 attendance is excused for good cause.
3 § 2. This act shall take effect on the first of January next succeed-
4 ing the date on which it shall have become a law.

SPONSORS MEMO:

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S8139

SPONSOR: DEFRANCISCO

TITLE OF BILL:

An act to amend the general obligations law, in relation to court approvals of transfers of structured settlements

This is one in a series of measures being introduced at the request of the Chief Administrative Judge on the recommendation of her Advisory Committee on Civil Practice.

This measure would amend section 5-1705 of the General Obligations Law in relation to the procedure for obtaining court approval for the transfer of a structured settlement.

In a structured settlement the recipient does not receive all the proceeds at the time of settlement. Rather, all or a portion are paid out in scheduled periodic payments over a course of time. Usually a structured settlement agreement restricts the recipient from transferring the rights to these future payments. Nonetheless, a market has developed whereby entities commonly referred to as structured settlement factoring companies - purchase the rights to future payments for a present cash payment. (See generally, Daniel W. Hindert and Craig H. Ulman, Transfers of Structured Settlement Payment Rights: What Judges Should Know About Structured Settlement Protection Acts, A.B.A. Judges' Journal, Spring 2005.) The structured settlement recipient (referred to statutorily as the "payee") is typically charged a high discount rate by the factoring company in exchange for the present cash payment.

As part of the Structured Settlement Protection Act of 2002, section 51705 sets forth the procedure for obtaining court approval for transferring away the rights to future payments under a structured settlement agreement. The instant measure aims to assist courts in determining whether the transfer is "in the best interests of the payee," (GAL §5-1706(b)). Accordingly, it proposes the following amendments to section 5-1705:

First:

Section 5-1705(a) would add the requirement that the action for approval of a transfer be

INITIATED ONLY BY ORDER TO SHOW CAUSE.CT.

This addition would aid in assigning the action, particularly in counties where one judge handles all such applications. Requiring that the action be brought on by order to show cause does not reduce the minimum notice period of 20 days specified in §5-1705(c).

Second:

Section 5-1705(d)(iv) would be added to provide that the petition for approval of a transfer include:

A STATEMENT SETTING FORTH WHETHER THERE HAVE BEEN ANY PREVIOUS TRANSFERS OR APPLICATIONS FOR TRANSFER OF THE STRUCTURED SETTLEMENT AND GIVING DETAILS OF ALL SUCH TRANSFERS OR APPLICATIONS FOR TRANSFER.CT.

This information is obviously useful to the Court, but hopefully will also have the effect of deterring the practice of filing a petition seeking a transfer in one venue after it has already been denied in a different venue. (See, e.g., In re: Angel L. Claudio, Jr., Index #7063/2006, Supreme Court, Dutchess County, Order of Hon. Christine A. Sproat, J.S.C. 01/18/07.)

Third:

Section 5-1705(e) would be added:

ON THE HEARING, THE PAYEE SHALL ATTEND BEFORE THE COURT UNLESS ATTENDANCE IS EXCUSED FOR GOOD CAUSE.CT.

This new language is adopted from CPLR 1208(d). It is not intended that the "hearing" described in new subdivision (e) necessarily be a formal hearing that is "on the record" and involve the reception of evidence, but is used in the broader sense with the expectation that the court will direct such formalities as it deems advisable.

This measure, which would have no fiscal impact on the State, would take effect on the first day of January next succeeding the date on which it shall become law.

LEGISLATIVE HISTORY:

None. New proposal.

