

AMENDED IN ASSEMBLY JUNE 24, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 510**

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**Introduced by Senator Corbett**

February 26, 2009

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An act to amend ~~Section~~ *Sections 10134, 10135, 10136, 10137, 10138, 10139, 10139.3, and 10139.5* of the Insurance Code, relating to structured settlements.

LEGISLATIVE COUNSEL'S DIGEST

SB 510, as amended, Corbett. Structured settlements: payment transfers.

Existing law provides that no direct or indirect transfer of structured settlement payment rights is effective unless the transfer has been approved in advance in a final court order based on certain written court findings.

*This bill would specify that those provisions only apply to agreements with certain connections to California. This bill would also specify additional information that must be included in the written disclosure statement provided to the payee prior to executing the transfer agreement. This bill would specify circumstances the court must consider before approving the transfer. This bill would provide that every application for approval of a transfer of structured settlement payment rights shall contain specified information. This bill would also specify notice and disclosure requirements that must be complied with prior to any transfer.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 10134 of the Insurance Code is amended  
2 to read:

3     10134. For the purposes of this article, the following terms  
4 have the following meanings:

5     (a) “Buyer’s first right of refusal” means any provision in the  
6 transfer agreement or related documents that obligate the payee  
7 to give to the buyer the first choice or option to purchase any  
8 remaining structured settlement rights belonging to the payee.

9     (b) “Dependents” include the payee’s spouse and minor children  
10 and all other family members and other persons for whom the  
11 payee is legally obligated to provide support, including alimony.

12     (c) “Discounted present value” means the fair present value of  
13 future payments, as determined by discounting those payments to  
14 the present using the most recently published applicable federal  
15 rate for determining the present value of an annuity, as issued by  
16 the United States Internal Revenue Service.

17     (d) “Effective equivalent interest rate,” with respect to a transfer  
18 of structured settlement payment rights, means the annualized rate  
19 of interest on the net advance amount, calculated by treating the  
20 transferred structured settlement payments as if they were  
21 installment payments on a loan, with each payment applied first  
22 to accrued unpaid interest and then to principal.

23     (e) “Expenses” means all broker’s commissions, service charges,  
24 application or processing fees, closing costs, filing or administrative  
25 charges, legal fees, notary fees and other commissions, fees, costs,  
26 and charges that a payee would have to pay to transfer the  
27 structured settlement payment rights of a structured settlement  
28 agreement or that would be deducted from the gross consideration  
29 that would be paid to the payee in connection with the transfer of  
30 the structured settlement payment rights of a structured settlement  
31 agreement.

32     (f) “Independent professional advice” means advice of an  
33 attorney, certified public accountant, actuary, or other licensed  
34 professional adviser meeting all of the following requirements:

1 (1) The adviser is engaged by a claimant or payee to render  
2 advice concerning the legal, tax, or financial implications of a  
3 structured settlement or a transfer of structured settlement payment  
4 rights.

5 (2) The adviser’s compensation for rendering independent  
6 professional advice is not affected by occurrence or lack of  
7 occurrence of a settlement or transfer.

8 (3) A particular adviser is not referred to the payee by the  
9 transferee or its agent, except that the transferee may refer the  
10 payee to a lawyer referral service or agency operated by a state or  
11 local bar association.

12 (g) “Interested parties” means, with respect to a structured  
13 settlement agreement, the payee, the payee’s attorney, any  
14 beneficiary *irrevocably* designated under the annuity contract to  
15 receive payments following the payee’s death, the annuity issuer,  
16 the structured settlement obligor, and any other party who has  
17 continuing rights or obligations under the structured settlement  
18 agreement. If the designated beneficiary is a minor, the  
19 beneficiary’s parent or guardian shall be an interested party.

20 (h) “Payee” means an individual who received tax-free payments  
21 pursuant to a structured settlement agreement.

22 (i) “Qualified assignment agreement” means an agreement  
23 providing for a qualified assignment within the meaning of Section  
24 130 of Title 26 of the United States Code, as amended from time  
25 to time.

26 (j) “Structured settlement agreement” means an arrangement  
27 for periodic payment of damages established by settlement or  
28 judgment in resolution of a tort claim in which the payment of the  
29 judgment or award is paid in whole, or in part, in periodic tax-free  
30 payments rather than a lump-sum payment. A structured settlement  
31 agreement entered into pursuant to Section 667.7 of the Code of  
32 Civil Procedure or Section 970.6 or 984 of the Government Code  
33 is not subject to the provisions of this article other than the  
34 requirements of Section 10138.

35 (k) “Structured settlement obligor” means the party that has the  
36 continuing periodic payment obligation to the payee under a  
37 structured settlement agreement or a qualified assignment  
38 agreement.

39 (l) “Structured settlement payment rights” means rights to  
40 receive periodic payments, including lump-sum payments, pursuant

1 to a structured settlement agreement, whether from the settlement  
2 obligor or an annuity issuer.

3 (m) “Terms of the structured settlement” include, with respect  
4 to a structured settlement agreement, the terms of the structured  
5 settlement agreement, annuity contract, qualified assignment  
6 agreement, and any order or approval of a court or responsible  
7 administrative authority or other governmental authority  
8 authorizing or approving the structured settlement.

9 (n) “Transfer” means any sale, assignment, pledge,  
10 hypothecation, or other form of alienation or encumbrance made  
11 for consideration.

12 (o) “Transfer agreement” means the agreement providing for  
13 the transfer, and any other document used to effectuate the transfer,  
14 from the payee to the transferee of structured settlement payment  
15 rights of a structured settlement agreement.

16 (p) “Transferee” means any person receiving structured  
17 settlement payment rights resulting from a transfer.

18 *SEC. 2. Section 10135 of the Insurance Code is amended to*  
19 *read:*

20 10135. (a) This article is only applicable to transfers entered  
21 into on or after January 1, 2000.

22 (b) Notwithstanding subdivision (a), the changes to this article  
23 made by the act amending this section in the 2001–02 Regular  
24 Session shall only be applicable to transfers entered into on or after  
25 January 1, 2002.

26 (c) *This article is only applicable to transfers of structured*  
27 *settlement payment rights if one of the following requirements is*  
28 *met:*

29 (1) *The payee is domiciled in California at the time the transfer*  
30 *agreement is signed by the payee.*

31 (2) *The payee is not domiciled in California at the time the*  
32 *transfer agreement is signed and the state where the payee is*  
33 *domiciled does not have a structured settlement transfer statute,*  
34 *but either the structured settlement obligor or annuity issuer is*  
35 *domiciled in California.*

36 *SEC. 3. Section 10136 of the Insurance Code is amended to*  
37 *read:*

38 10136. (a) No *direct or indirect* transfer of structured  
39 settlement payment rights, ~~either directly or indirectly,~~ shall be  
40 effective by a payee ~~domiciled in this state,~~ or by a payee entitled

1 ~~to receive payments under a structured settlement funded by an~~  
 2 ~~insurance contract issued by an insurer domiciled in this state or~~  
 3 ~~owned by an insurer or corporation domiciled in this state, to which~~  
 4 *this article applies* and no structured settlement obligor or annuity  
 5 issuer shall be required to make any payment directly or indirectly  
 6 to a transferee, unless all of the provisions of this section are  
 7 satisfied.

8 (b) Ten or more days before the payee executes a transfer  
 9 agreement, the transferee shall provide the payee with a separate  
 10 written disclosure statement, accurately completed with the  
 11 information that applies to the transfer agreement, in substantially  
 12 the following form, in at least 12-point type unless otherwise  
 13 indicated (bracketed instructions shall not appear in the form):

14  
 15 “Disclosure Notice Required By Law [14-point boldface type]  
 16 You are selling (technically called ‘transferring’) your right to  
 17 receive your payments under a structured settlement. You should  
 18 get this disclosure notice at least 10 days before you sign any  
 19 contract.

20  
 21 **IMPORTANT TERMS: [14-point boldface type ]**

22  
 23 Total dollar amount of payments you are  
 24 selling: \$ \_\_\_\_\_  
 25 Present value of amount you are selling: \$ \_\_\_\_\_  
 26 Net amount paid to you: \$ \_\_\_\_\_  
 27 *Value you are giving up by this sale or*  
 28 *transfer:* \$ \_\_\_\_\_

29  
 30 For comparison purposes:  
 31 If you did not sell your right to receive structured settlement  
 32 payments, but instead borrowed the net amount of \$\_\_\_\_ and paid  
 33 that loan back in installments with each of the payments you are  
 34 now selling, the equivalent interest rate you would be paying for  
 35 that loan would be \_\_\_\_% per year.

36 [The text and information set forth above under ‘IMPORTANT  
 37 TERMS’ shall be in 14-point type and circumscribed by a box  
 38 with a bold border]

39 To figure the net amount we are paying, we have charged you  
 40 for the following expenses:

[itemize in a list by type and amount]

for a total of \$\_\_\_\_ in expenses.

You should get independent professional advice about whether selling your structured settlement payments is a good idea for you and for your dependents.

You also should get independent professional advice from an accountant or lawyer experienced in tax matters about any income tax consequences from selling your structured settlement payments.

We cannot give you the name of anyone to advise you.

Court approval is needed [14-point boldface type]. A court must approve any agreement you sign to sell your rights under a structured settlement. You will not receive any money until the court approves the sale. Court approval could take more than 30 days following the day you sign an agreement selling your rights under a structured settlement.

You may cancel the contract before court approval [14-point boldface type]. You may cancel the agreement selling (or transferring) your rights under a structured settlement without any cost or obligation. You may cancel at any time before the court approves the contract. You will get notice of the date of the court hearing.

If you want to cancel, you do not need any special form. But, you must cancel in writing. Send your cancellation to: [insert transferee’s name and address].

If you believe that you have been treated unfairly or have been misled, you should contact your local district attorney or the state Attorney General.”

(c) The transfer agreement shall be written in at least 12-point type and shall be complete and without blank spaces to be completed after the payee’s signature. The transfer agreement shall set forth clear and conspicuously, and in no less than 12-point type, all of the following:

(1) A statement that the agreement is not effective until the date on which a court enters a final order approving the transfer agreement and that payment to the payee pursuant to the transfer agreement will be delayed up to 30 days or more after the date the payee signed the transfer agreement in order for the court to review and approve the transfer agreement.

1 (2) The amounts and due dates of the structured settlement  
2 payments to be transferred.

3 (3) The aggregate amount of the structured settlement payments  
4 to be transferred. This amount shall be disclosed in the form  
5 prescribed in subdivision (b) in the space for “Total dollar amount  
6 of payments you are selling.”

7 (4) The aggregate amount of all expenses, if any, to be deducted  
8 from the purchase price to be paid to the payee in exchange for  
9 the payments to be transferred, and an itemization of all expenses  
10 by type and amount.

11 (5) The amount payable to the payee, net of all expenses, in  
12 exchange for the payments to be transferred. This amount shall be  
13 disclosed in the form prescribed in subdivision (b) in the spaces  
14 for “Net amount paid to you” and “net amount.”

15 (6) The discounted present value of all structured settlement  
16 payments to be transferred and a statement that “This is the value  
17 of your structured settlement in current dollars.” This amount shall  
18 be disclosed in the form prescribed in subdivision (b) in the space  
19 for “Present value of amount you are selling.”

20 (7) The federal rate, as described in subdivision (c) of Section  
21 10134, used in determining the discounted present value.

22 (8) The effective equivalent interest rate, which shall be  
23 disclosed in the following statement:

24  
25 “YOU WILL BE PAYING THE EQUIVALENT OF AN  
26 INTEREST RATE OF \_\_\_\_% PER YEAR.

27 Based on the net amount that you will receive from us and the  
28 amounts and timing of the structured settlement payments that you  
29 are transferring to us, if the transferred structured settlement  
30 payments were installment payments on a loan, with each payment  
31 applied first to accrued unpaid interest and then to principal, it  
32 would be as if you were paying interest to us of \_\_\_\_% per year,  
33 assuming funding on the effective date of transfer.”

34 This percentage amount shall be disclosed in the form prescribed  
35 in subdivision (b) in the space for “the equivalent interest rate you  
36 would be paying for this loan would be \_\_\_\_% per year.”

37  
38 (9) The quotient (expressed as a percentage) obtained by  
39 dividing the net payment amount by the discounted present value  
40 of the payments.

1 (10) A statement that the payee should obtain independent  
2 professional advice regarding any federal and state income tax  
3 consequences arising from the proposed transfer, and that the  
4 transferee may not refer the payee to any specific adviser for that  
5 purpose.

6 (11) A statement that the court approving the transfer agreement  
7 retains continuing jurisdiction to interpret and monitor  
8 implementation of the agreement as justice may require.

9 (12) The following statement: “If you believe you were treated  
10 unfairly or were misled as to the nature of the obligations you  
11 assumed upon entering into this agreement, you should report those  
12 circumstances to your local district attorney or the office of the  
13 Attorney General.”

14 (13) The following statement printed in 14-point type,  
15 circumscribed by a box with a bold border, and set forth  
16 immediately above or adjacent to the space reserved for the payee’s  
17 signature: “You have the right to cancel this agreement without  
18 any cost or obligation until the date the court approves this  
19 agreement. You will receive notice of the court hearing date when  
20 approval may occur. You must cancel in writing and send your  
21 cancellation to [insert transferee’s name and address].”

22 (d) The contract for transferring the structured settlement  
23 payment rights may not violate Section 10138.

24 (e) At any time before the date on which a court enters a final  
25 order approving the transfer agreement pursuant to Section  
26 10139.5, the payee may cancel the transfer agreement, without  
27 cost or further obligation, by providing written notice of  
28 cancellation to the transferee.

29 *SEC. 4. Section 10137 of the Insurance Code is amended to*  
30 *read:*

31 10137. A transfer of structured settlement payment rights is  
32 void unless ~~all~~ *of a court reviews and approves the transfer and*  
33 *finds* the following conditions are met:

34 (a) The transfer of the structured settlement payment rights is  
35 fair and reasonable and in the best interest of the payee, taking  
36 into account the welfare and support of his or her dependents.

37 (b) The transfer complies with the requirements of this article,  
38 will not contravene other applicable law, and ~~is~~ *the court has*  
39 *reviewed and approved* ~~by a court~~ *the transfer* as provided in  
40 Section 10139.5.

1     *SEC. 5. Section 10138 of the Insurance Code is amended to*  
2 *read:*

3     10138. (a) A transfer agreement, as defined in subdivision (o)  
4 of Section 10134, shall not include any provision described in the  
5 paragraphs below. Any inclusion of a prohibited provision, with  
6 respect to a seller who is a California resident, shall make the  
7 contract void and unenforceable.

8     (1) Any provision that waives the seller's right to sue under any  
9 law, or in which the seller agrees not to sue, or that waives  
10 jurisdiction or standing to sue under the contract.

11     (2) Any provision that requires the seller to indemnify and hold  
12 harmless the buyer, or to pay the buyer's costs of defense, in any  
13 claim or action brought by the seller or on the seller's behalf  
14 contesting the sale for any reason.

15     (3) Any provision that waives benefits or rights conferred by  
16 law with respect to garnishment of wages.

17     (4) Any provision providing that the contract is confidential or  
18 proprietary, belonging to the buyer.

19     (5) Any provision in which the seller stipulates to a confession  
20 of judgment.

21     (6) Any provision requiring the seller to pay the buyer's  
22 attorney's fees and costs if the purchase agreement is not  
23 completed.

24     (7) Any provision requiring the seller to pay any tax liability  
25 arising under the federal tax laws, other than the seller's own tax  
26 liability, if any, that results from the transfer.

27     (8) Any provision providing for brokerage fees incurred in the  
28 contract to be deducted from the purchase price disclosed pursuant  
29 to paragraph (5) of subdivision (b) of Section 10136.

30     (9) ~~Any~~ *If the payee is domiciled in California at the time that*  
31 *the transfer agreement is signed by the payee, any forum selection*  
32 *provision providing for jurisdiction to be in a court outside of*  
33 *California for any action arising under the contract.*

34     (10) ~~Any~~ *If the payee is domiciled in California at the time that*  
35 *the transfer agreement is signed by the payee, any choice-of-law*  
36 *provision that provides for controlling law to be other than*  
37 *California law in any action arising under the contract.*

38     (11) A provision that provides the transferee with a security  
39 interest or collateral interest in any structured settlement payment

1 rights that exceed the actual dollar amount of the structured  
2 settlement payment rights being transferred.

3 (12) Any provision that creates a “buyer’s first right of refusal”  
4 to purchase any remaining structured payment rights that the payee  
5 may desire to sell in the future.

6 (b) The provisions in this section may not be waived by  
7 agreement of the parties.

8 *SEC. 6. Section 10139 of the Insurance Code is amended to*  
9 *read:*

10 10139. (a) At the time of filing a petition pursuant to Section  
11 10139.5 for court approval, the transferee shall file with the  
12 Attorney General a copy of the transferee’s petition for approval,  
13 a copy of the written disclosure statement required by subdivision  
14 (a) of Section 10136, a copy of the transfer agreement as defined  
15 in subdivision (o) of Section 10134, *and, if available*, a copy of  
16 the annuity contract, ~~a copy of any qualified assignment agreement,~~  
17 ~~a copy of the underlying structured settlement agreement,~~ ~~a copy~~  
18 ~~of or~~ any order or approval of any court or responsible  
19 administrative authority authorizing or approving the structured  
20 settlement, *and* a copy and proof of notice to the interested parties,  
21 and a verified statement from the transferee stating that all of the  
22 conditions set forth in Sections 10136, 10137, and 10138 have  
23 been met.

24 (b) The Attorney General may, but is not required to, review  
25 any transfer agreement in order to ensure that the transfer meets  
26 the requirements of this article.

27 (c) The Attorney General may charge a reasonable fee for the  
28 filing of the transfer agreement as provided in this section. The  
29 fee shall be paid by the transferee.

30 (d) This section does not apply to a transfer by a payee who is  
31 not a resident of California at the time the payee executes the  
32 transfer agreement.

33 *SEC. 7. Section 10139.3 of the Insurance Code is amended to*  
34 *read:*

35 10139.3. (a) None of the provisions of this article may be  
36 waived *by the payee*.

37 (b) Compliance with the requirements set forth in Sections  
38 10136, 10137, and 10138 shall be solely the responsibility of the  
39 transferee in any transfer of structured settlement payment rights.

1 (c) A payee who proposes to make a transfer of structured  
2 settlement payment rights shall not incur any penalty, shall not  
3 forfeit any application fee or other payment, and shall not otherwise  
4 incur any liability to the proposed transferee based on any failure  
5 of that transfer to satisfy the requirements of Sections 10136,  
6 10137, and 10138.

7 (d) The transferee and any assignee shall be liable to the  
8 structured settlement obligor and the annuity issuer for any and  
9 all taxes incurred as a consequence of the transfer or as a  
10 consequence of any failure of the transferee or assignee to comply  
11 with this article or the terms of the structured settlement agreement.

12 (e) Neither the annuity issuer nor the structured settlement  
13 obligor may be required to divide any structured settlement  
14 payment between the payee and any transferee or assignee or  
15 between two or more transferees or assignees.

16 *SEC. 8. Section 10139.5 of the Insurance Code is amended to*  
17 *read:*

18 10139.5. (a) A direct or indirect transfer of structured  
19 settlement payment rights is not effective and a structured  
20 settlement obligor or annuity issuer is not required to make any  
21 payment directly or indirectly to any transferee of structured  
22 settlement payment rights unless the transfer has been approved  
23 in advance in a final court order based on express written findings  
24 by the court that:

25 (1) The transfer is in the best interest of the payee, taking into  
26 account the welfare and support of the payee's dependents.

27 (2) The payee has been advised in writing by the transferee to  
28 seek independent professional advice regarding the transfer and  
29 has either received that advice or knowingly waived ~~that advice,~~  
30 in writing, *the opportunity to receive the advice.*

31 (3) The transferee *has complied with the notification*  
32 *requirements pursuant to paragraph (2) of subdivision (f), the*  
33 *transferee* has provided the payee with a disclosure form that  
34 complies with Section 10136, and the transfer agreement complies  
35 with Sections 10136 and 10138.

36 (4) The transfer does not contravene any applicable statute or  
37 the order of any court or other government authority.

38 (5) The payee ~~reasonably~~ understands the terms of the transfer  
39 agreement, including the terms set forth in the disclosure statement  
40 required by Section 10136.

1 (6) The payee—~~reasonably~~ understands and does not wish to  
2 exercise the payee’s right to cancel the transfer agreement.

3 (b) *When determining whether the proposed transfer should be*  
4 *approved, including whether the transfer is fair, reasonable, and*  
5 *in the payee’s best interest, the court shall consider the totality of*  
6 *the circumstances, including, but not limited to, all of the following:*

7 (1) *The reasonable preference and desire of the payee to*  
8 *complete the proposed transaction, taking into account the payee’s*  
9 *age, mental capacity, legal knowledge, and apparent maturity*  
10 *level.*

11 (2) *The stated purpose of the transfer.*

12 (3) *The payee’s financial and economic situation.*

13 (4) *The terms of the transaction, including whether the payee*  
14 *is transferring monthly or lump sum payments or all or a portion*  
15 *of his or her future payments.*

16 (5) *Whether, when the settlement was completed, the future*  
17 *periodic payments that are the subject of the proposed transfer*  
18 *were intended to pay for the future medical care and treatment of*  
19 *the payee relating to injuries sustained by the payee in the incident*  
20 *that was the subject of the settlement and whether the payee still*  
21 *needs those future payments to pay for that future care and*  
22 *treatment.*

23 (6) *The effect of the transfer on the welfare and support of the*  
24 *payee’s dependents.*

25 (7) *Whether, when the settlement was completed, the future*  
26 *periodic payments that are the subject of the proposed transfer*  
27 *were intended to provide for the necessary living expenses of the*  
28 *payee and whether the payee still needs the future structured*  
29 *settlement payments to pay for future necessary living expenses.*

30 (8) *Whether the payee is, at the time of the proposed transfer,*  
31 *likely to require future medical care and treatment for the injuries*  
32 *that the payee sustained in connection with the incident that was*  
33 *the subject of the settlement and whether the payee lacks other*  
34 *resources, including insurance, sufficient to cover those future*  
35 *medical expenses.*

36 (9) *Whether the payee has other means of income or support,*  
37 *aside from the structured settlement payments that are the subject*  
38 *of the proposed transfer, sufficient to meet the payee’s future*  
39 *financial obligations for maintenance and support of the payee’s*

1 dependents, specifically including, but not limited to, the payee's  
2 child support obligations, if any.

3 (10) Whether the financial terms of the transaction, including  
4 the discount rate applied to determine the amount to be paid to  
5 the payee, the expenses and costs of the transaction for both the  
6 payee and the transferee, the size of the transaction, the available  
7 financial alternatives to the payee to achieve the payee's stated  
8 objectives, are fair and reasonable.

9 (11) Whether the payee completed previous transactions  
10 involving the payee's structured settlement payments and the timing  
11 and size of the previous transactions and whether the payee was  
12 satisfied with any previous transaction.

13 (12) (A) Whether the transferee attempted previous transactions  
14 involving the payee's structured settlement payments that were  
15 denied.

16 (B) Whether the transferee attempted previous transactions  
17 involving the payee's structured settlement payments that were  
18 dismissed prior to a decision on the merits of the previous  
19 transaction within the four years prior to the current proposed  
20 transfer.

21 (13) (A) Whether, to the best of the transferee's knowledge after  
22 making inquiry with the payee, the payee attempted previous  
23 structured settlement payment transfer transactions with another  
24 person or entity, other than the transferee, that were denied.

25 (B) Whether, to the best of the transferee's knowledge after  
26 making inquiry with the payee, the payee attempted previous  
27 structured settlement payment transfer transactions with another  
28 person or entity, other than the transferee, that were dismissed or  
29 withdrawn prior to a decision on the merits by a court within the  
30 four years prior to the current proposed transfer.

31 (14) Whether the payee, or his or her family or dependents, are  
32 in or are facing a hardship situation.

33 (15) Whether the payee received independent legal or financial  
34 advice regarding the transaction. The court may deny or defer  
35 ruling on the petition for approval of a transfer of structured  
36 settlement payment rights if the court believes that the payee does  
37 not fully understand the proposed transaction and that independent  
38 legal or financial advice regarding the transaction should be  
39 obtained by the payee.

1     (16) Any other factors or facts that the payee, the transferee,  
2     or any other interested party calls to the attention of the reviewing  
3     court or that the court determines should be considered in  
4     reviewing the transfer.

5     (c) Every petition for approval of a transfer of structured  
6     settlement payment rights, except as provided in subdivision (d),  
7     shall include, to the extent known after the transferee has made  
8     reasonable inquiry with the payee, all of the following:

9     (1) The payee's name, address, and age.

10    (2) The payee's marital status, and, if married or separated,  
11    the name of the payee's spouse.

12    (3) The names, ages, and place or places of residence of the  
13    payee's minor children or other dependents, if any.

14    (4) The amounts and sources of the payee's monthly income  
15    and financial resources and, if presently married, the amounts and  
16    sources of the monthly income and financial resources of the  
17    payee's spouse.

18    (5) Whether the payee is currently obligated under any child  
19    support or spousal support order, and, if so, the names, addresses,  
20    and telephone numbers of any individual, entity, or agency that is  
21    receiving child or spousal support from the payee under that order  
22    or that has jurisdiction over the order or the payments in question.

23    (6) Information regarding previous transfers or attempted  
24    transfers, as described in paragraph (11), (12), or (13) of  
25    subdivision (b). The transferee or payee may choose to provide  
26    this information by providing copies of pleadings, transaction  
27    documents, or orders involving any previous attempted or  
28    completed transfer or by providing the court a summary of  
29    available information regarding any previous transfer or attempted  
30    transfer, such as the date of the transfer or attempted transfer, the  
31    payments transferred or attempted to be transferred by the payee  
32    in the earlier transaction, the amount of money received by the  
33    payee in connection with the previous transaction, and generally  
34    the payee's reasons for pursuing or completing a previous  
35    transaction. The transferee's inability to provide the information  
36    required by this paragraph shall not preclude the court from  
37    approving the proposed transfer, if the court determines that the  
38    information is not available to the transferee after the transferee  
39    has made a reasonable effort to secure the information, including  
40    making an inquiry with the payee.

1 (d) *With respect to the information required to be included in*  
2 *every petition for approval of a transfer of structured settlement*  
3 *payment rights pursuant to paragraphs (2), (3), (4), (5), and (6),*  
4 *that information shall be deemed to be included in the petition if*  
5 *it is provided at any scheduled hearing on the proposed transfer*  
6 *through oral testimony or papers filed with the court for the court's*  
7 *consideration.*

8 ~~(b)~~

9 (e) Following a transfer of structured settlement payment rights  
10 under this article:

11 (1) The structured settlement obligor and the annuity issuer  
12 shall, as to all parties except the transferee, be discharged and  
13 released from any and all liability for the transferred payments.

14 (2) The transferee shall be liable to the structured settlement  
15 obligor and the annuity issuer if the transfer contravenes the terms  
16 of the structured settlement for the following:

17 (A) Any taxes incurred by those parties as a consequence of the  
18 transfer.

19 (B) Any other liabilities or costs, including reasonable costs  
20 and attorney's fees, arising from compliance by those parties with  
21 the order of the court or arising as a consequence of the transferee's  
22 failure to comply with this article.

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

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

30 ~~(e)~~

31 (f) (1) ~~An application~~ *A petition* under this article for approval  
32 of a transfer of structured settlement payment rights shall be made  
33 by the transferee and brought in the county in which the payee  
34 resides *at the time the transfer agreement is signed by the payee,*  
35 *or, if the payee is not domiciled in California, in the county in*  
36 *which the payee resides or in the county where the structured*  
37 *settlement obligor or annuity issuer is domiciled.*

38 (2) Not less than 20 days prior to the scheduled hearing on any  
39 ~~application~~ *petition* for approval of a transfer of structured  
40 settlement payment rights under this article, the transferee shall

1 file with the court and serve on all interested parties, *including any*  
 2 *spouse or domestic partner who the payee owes or to whom the*  
 3 *payee is paying child support, via regular mail at the parties*  
 4 *current or last known address, a notice of the proposed transfer*  
 5 *and the application petition for its authorization, and shall include*  
 6 *the following with that notice:*

7 (A) A copy of the transferee's ~~application~~ *current petition and*  
 8 *any other prior petition whether approved or withdrawn.*

9 (B) A copy of the *proposed transfer agreement and disclosure*  
 10 *statement required by paragraph (3) of subdivision (a).*

11 (C) A listing of each of the payee's dependents, together with  
 12 each dependent's age.

13 (D) A copy of the disclosure required in subdivision (b) of  
 14 Section 10136.

15 (E) A copy of the annuity contract, *if available.*

16 (F) A copy of any qualified assignment agreement, *if available.*

17 (G) A copy of the underlying structured settlement agreement,  
 18 *if available.*

19 (H) *If a copy of a document described in subparagraph (E),*  
 20 *(F), or (G) are unavailable or cannot be located, then the*  
 21 *transferee is not required to attach a copy of that document to the*  
 22 *petition or notice of the proposed transfer if the transferee confirms*  
 23 *to the court that reasonable efforts to locate and secure a copy of*  
 24 *the document have been made, including making inquiry with the*  
 25 *payee. If the documents are available, but contain a confidentiality*  
 26 *or nondisclosure provision, then the transferee may summarize in*  
 27 *the petition the payments due and owing to the payee, and, if*  
 28 *requested by the court, shall provide copies of the documents to*  
 29 *the court at a scheduled hearing.*

30 (I) *Proof of service showing compliance with the notification*  
 31 *requirements of this paragraph.*

32 ~~(H)~~

33 (J) Notification that any interested party is entitled to support,  
 34 oppose, or otherwise respond to the transferee's ~~application~~  
 35 *petition*, either in person or by counsel, by submitting written  
 36 comments to the court or by participating in the hearing.

37 ~~(H)~~

38 (K) Notification of the time and place of the hearing and  
 39 notification of the manner in which and the time by which written  
 40 responses to the ~~application~~ *petition* must be filed, which may not

1 be less than 15 days after service of the transferee’s notice, in order  
2 to be considered by the court.

3 *(L) If the payee entered into the structured settlement at issue*  
4 *within \_\_\_\_ years prior to the date of the transfer agreement and*  
5 *the purchase price to be received by the payee is more than \$\_\_\_\_,*  
6 *then the transferee shall provide the following notice to the payee’s*  
7 *attorney of record at the time the structured settlement was created,*  
8 *if the attorney is licensed to practice in California, at the attorney’s*  
9 *address on file with the State Bar of California. The notice shall*  
10 *be delivered by regular mail and shall contain the following*  
11 *language:*

12  
13 *“Your former client, (insert name, address and telephone number*  
14 *of payee), the ‘payee,’ has entered into a contract with (insert*  
15 *name of transferee) to transfer and assign certain future structured*  
16 *settlement payment rights. The transaction is subject to court*  
17 *review and approval under California law. As the payee’s former*  
18 *attorney, you are entitled to receive this notice. You are not*  
19 *required to represent, advise, or consult with the payee in*  
20 *connection with the proposed transaction. You are not required*  
21 *to take any action at all in response to this notice. You may, but*  
22 *are not required to, contact the payee regarding the transaction.*  
23 *The payee is not required to consult with you or provide you any*  
24 *information regarding the transaction, but the payee may do so if*  
25 *he or she wishes.”*

26  
27 ~~(d)~~

28 (g) All court costs and filing fees shall be paid by the transferee.

29 ~~(e)~~

30 (h) No later than the time of filing the petition for court approval,  
31 the transferee shall advise the payee of the payee’s right to seek  
32 independent counsel and financial advice in connection with the  
33 transferee’s petition for court approval of the transfer agreement,  
34 and shall further advise the payee that if the payee retains counsel,  
35 a licensed certified public accountant, or a licensed actuary in  
36 connection with a petition for an order approving the transfer  
37 agreement, that the transferee shall pay the fees of the payee’s  
38 counsel, accountant, or actuary, regardless of whether the transfer  
39 agreement is approved, and regardless of whether the attorney,  
40 accountant, or actuary files any document or appears at the hearing

1 on the ~~application~~ *petition* for transfer, in an aggregate amount not  
2 to exceed one thousand five hundred dollars (\$1,500). The  
3 transferee’s accountant, counsel, or actuary may not advise the  
4 payee.

5 (f)

6 (i) The court shall retain continuing jurisdiction to interpret and  
7 monitor the implementation *and closing of the transaction that is*  
8 *the subject* of the transfer agreement as justice requires.

9 ~~SECTION 1. Section 10139.5 of the Insurance Code is~~  
10 ~~amended to read:~~

11 ~~10139.5. (a) A direct or indirect transfer of structured~~  
12 ~~settlement payment rights is not effective and a structured~~  
13 ~~settlement obligor or annuity issuer is not required to make any~~  
14 ~~payment directly or indirectly to any transferee of structured~~  
15 ~~settlement payment rights unless the transfer has been approved~~  
16 ~~in advance in a final court order based on express written findings~~  
17 ~~by the court regarding all of the following:~~

18 ~~(1) The transfer is in the best interest of the payee, taking into~~  
19 ~~account the welfare and support of the payee’s dependents. When~~  
20 ~~determining whether the transfer is in the best interest of the payee,~~  
21 ~~the court shall consider the totality of the circumstances, including~~  
22 ~~all of the following:~~

23 ~~(A) The reasonable preference of the payee in light of the~~  
24 ~~payee’s age, mental capacity, maturity level, or financial or legal~~  
25 ~~knowledge.~~

26 ~~(B) The stated purpose of the transfer.~~

27 ~~(C) Whether the periodic payments of the structured settlement~~  
28 ~~were intended to cover future income loss or future medical~~  
29 ~~expenses.~~

30 ~~(D) The potential need for future medical treatment.~~

31 ~~(E) Whether the transfer is in the best interests of the payee’s~~  
32 ~~dependents.~~

33 ~~(F) Whether the payee has means of support aside from the~~  
34 ~~structured settlement, if the transfer is allowed to proceed, to meet~~  
35 ~~his or her obligations for care, treatment, and future maintenance~~  
36 ~~and support of dependents including, but not limited to, child~~  
37 ~~support obligations.~~

38 ~~(G) Whether the offered discount rate is in line with the market~~  
39 ~~rate for similar transfers and is considered conscionable taking~~  
40 ~~into account, among other factors, the availability of alternate~~

1 ~~financial instruments, the amount and sources of the payee's~~  
2 ~~monthly income and financial resources, and, if presently married,~~  
3 ~~the amount and sources of the monthly income and financial~~  
4 ~~resources of the payee's spouse.~~

5 ~~(H) Whether any previous applications pertaining to the funds~~  
6 ~~that are the subject of the pending application or that were a part~~  
7 ~~of the original structure have been submitted in any jurisdiction,~~  
8 ~~including any applications that have been submitted but later~~  
9 ~~withdrawn before court determination.~~

10 ~~(I) Whether the payee is in a hardship situation.~~

11 ~~(J) Whether the payee has received independent legal and~~  
12 ~~financial advice so as to appreciate the financial consequences of~~  
13 ~~the proposed transaction.~~

14 ~~(2) The payee has been advised in writing by the transferee to~~  
15 ~~seek independent professional advice regarding the transfer and~~  
16 ~~has either received that advice or knowingly waived that advice~~  
17 ~~in writing. The court may deny, or may defer ruling on, the~~  
18 ~~application for approval of a transfer of structured settlement~~  
19 ~~payment rights if it believes that independent legal or financial~~  
20 ~~advice should be obtained.~~

21 ~~(3) The transferee has complied with subdivision (f) regarding~~  
22 ~~disclosure and notification requirements, provided the payee with~~  
23 ~~a disclosure form that complies with Section 10136, and the~~  
24 ~~transfer agreement complies with Sections 10136 and 10138.~~

25 ~~(4) The transfer does not contravene any applicable statute or~~  
26 ~~the order of any court or other government authority.~~

27 ~~(5) The payee reasonably understands the terms of the transfer~~  
28 ~~agreement, including the terms set forth in the disclosure statement~~  
29 ~~required by subdivision (f) and Section 10136.~~

30 ~~(6) The payee reasonably understands and does not wish to~~  
31 ~~exercise the payee's right to cancel the transfer agreement.~~

32 ~~(b) Every application for approval of a transfer of structured~~  
33 ~~settlement payment rights shall include all of the following:~~

34 ~~(1) The payee's name, address and age.~~

35 ~~(2) The payee's marital status, and if married or separated, the~~  
36 ~~name of the payee's spouse.~~

37 ~~(3) The names, ages, and place or places of residence of the~~  
38 ~~payee's minor children or other dependents, if any.~~

1     ~~(4) The payee’s monthly income and sources of income, and,~~  
2 ~~if presently married, the monthly income and sources of income~~  
3 ~~of the payee’s spouse.~~

4     ~~(5) Whether the payee is currently obligated under any child~~  
5 ~~support or spousal support order, and, if so, the names, addresses,~~  
6 ~~and telephone numbers of all individuals who are the beneficiaries~~  
7 ~~of the orders and of all agencies that have jurisdiction over the~~  
8 ~~orders or payments.~~

9     ~~(e) Following a transfer of structured settlement payment rights~~  
10 ~~under this article:~~

11     ~~(1) The structured settlement obligor and the annuity issuer~~  
12 ~~shall, as to all parties except the transferee, be discharged and~~  
13 ~~released from any and all liability for the transferred payments.~~

14     ~~(2) The transferee shall be liable to the structured settlement~~  
15 ~~obligor and the annuity issuer if the transfer contravenes the terms~~  
16 ~~of the structured settlement for the following:~~

17     ~~(A) Any taxes incurred by those parties as a consequence of the~~  
18 ~~transfer.~~

19     ~~(B) Any other liabilities or costs, including reasonable costs~~  
20 ~~and attorney’s fees, arising from compliance by those parties with~~  
21 ~~the order of the court or arising as a consequence of the transferee’s~~  
22 ~~failure to comply with this article.~~

23     ~~(3) Neither the annuity issuer nor the structured settlement~~  
24 ~~obligor may be required to divide any periodic payment between~~  
25 ~~the payee and any transferee or assignee or between two, or more,~~  
26 ~~transferees or assignees.~~

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

30     ~~(d) (1) An application under this article for approval of a~~  
31 ~~transfer of structured settlement payment rights shall be made by~~  
32 ~~the transferee and brought in the county in which the payee resides.~~

33     ~~(2) Not less than 20 days prior to the scheduled hearing on any~~  
34 ~~application for approval of a transfer of structured settlement~~  
35 ~~payment rights under this article, the transferee shall file with the~~  
36 ~~court and serve on all interested parties a notice of the proposed~~  
37 ~~transfer and the application for its authorization. For the purposes~~  
38 ~~of this subdivision, “interested parties” includes, but is not limited~~  
39 ~~to, any agency charged with enforcing the child support, the~~  
40 ~~payee’s attorney of record as of the time of the creation of the~~

1 structured settlement at the attorney's current address on file with  
2 the State Bar of California, and the payee's current attorney. The  
3 following shall be served with that notice:

4 (A) A copy of the transferee's current application and any other  
5 prior applications whether approved or withdrawn.

6 (B) A copy of the proposed transfer agreement and disclosure  
7 statement required by paragraph (3) of subdivision (a).

8 (C) A listing of each of the payee's dependents, together with  
9 each dependent's age.

10 (D) A copy of the disclosure required in subdivision (b) of  
11 Section 10136.

12 (E) A copy of the annuity contract.

13 (F) A copy of any qualified assignment agreement.

14 (G) A copy of the underlying structured settlement agreement.

15 (H) A proof of service showing compliance with this section  
16 including the notification requirements under paragraph (3) of  
17 subdivision (a).

18 (I) Notification that any interested party is entitled to support,  
19 oppose, or otherwise respond to the transferee's application, either  
20 in person or by counsel, by submitting written comments to the  
21 court or by participating in the hearing.

22 (J) Notification of the time and place of the hearing and  
23 notification of the manner in which and the time by which written  
24 responses to the application must be filed, which may not be less  
25 than 15 days after service of the transferee's notice, in order to be  
26 considered by the court.

27 (e) All court costs and filing fees shall be paid by the transferee.

28 (f) (1) No later than the time of filing the petition for court  
29 approval, the transferee shall advise the payee of the payee's right  
30 to seek independent counsel and financial advice in connection  
31 with the transferee's petition for court approval of the transfer  
32 agreement, and shall further advise the payee that if the payee  
33 retains counsel, a licensed certified public accountant, or a licensed  
34 actuary in connection with a petition for an order approving the  
35 transfer agreement, that the transferee shall pay the fees of the  
36 payee's counsel, accountant, or actuary, regardless of whether the  
37 transfer agreement is approved, and regardless of whether the  
38 attorney, accountant, or actuary files any document or appears at  
39 the hearing on the application for transfer, in an aggregate amount  
40 not to exceed one thousand five hundred dollars (\$1,500). The

1 transferee’s accountant, counsel, or actuary may not advise the  
2 payee.

3 (2) The notification required by this subdivision shall include  
4 the following statement, made in writing, in a conspicuous manner,  
5 in no less than 14-point boldface type above the signature line:

6  
7 A structured settlement is a guaranteed stream of payments with  
8 a fixed rate of return (interest) over a preestablished period of time.  
9 Structured settlements are often designed to provide financial  
10 security and certainty. Selling or transferring your rights to  
11 payments under a structured settlement and, as a result, to a future  
12 stream of payments, has serious financial consequences that should  
13 not be ignored.

14 You are entitled under the law to have independent legal and  
15 financial advice before entering into any transfer agreement. The  
16 cost of this advice up to \$1,500.00 will be paid by the company  
17 to which you are considering transferring your rights to payments.  
18 The purchasing company’s accountants, actuaries, and attorneys  
19 may not advise you. A sale or transfer of your rights will eliminate  
20 your claim or right to receive any future payments under the  
21 structured settlement. You will have transferred those rights to the  
22 purchasing company. You are advised to enter into a transfer  
23 agreement only after careful consideration of the consequences of  
24 entering into a transfer agreement and after receiving competent  
25 legal and financial advice.

26 Your current structured settlement provides a guaranteed rate  
27 of interest of \_\_\_\_ percent, with regular payments of \$ \_\_\_\_ every  
28 week, month, or year, for a total value over time of \$ \_\_\_\_\_. Your  
29 current structured settlement may also have significant tax benefits  
30 if it was the result of a qualified assignment as the result of a  
31 personal injury settlement such that both the interest that you are  
32 receiving as well as all of your future payments made within the  
33 structured settlement may be tax free.

34 Over the course of your settlement, you are guaranteed payments  
35 that will total \$ \_\_\_\_\_. The current present value of this stream of  
36 payments, in other words, the amount needed in today’s dollars to  
37 buy the rights to those payments at the same fixed rate of interest,  
38 is \$ \_\_\_\_\_. The current amount being offered to you to purchase  
39 your rights to this stream of income is \$ \_\_\_\_\_; this amount reflects

1 a significant discount in the present and future values of this stream  
2 of income at a discounted rate of interest of \_\_\_\_\_ percent.  
3  
4 ~~(g) The court shall retain continuing jurisdiction to interpret and~~  
5 ~~monitor the implementation of the transfer agreement as justice~~  
6 ~~requires.~~

O