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TORTS Damages: Regulate the Transfer of Structured Settlement Payment Rights; Provide that No Such Transfer Shall Be Effective Unless Certain Disclosures Are Made; Provide for a Right of Rescission with Respect to Such Transactions; Provide for Enforcement

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TORTS

Damages: Regulate the Transfer of Structured Settlement Payment Rights; Provide that No Such Transfer Shall Be Effective Unless Certain Disclosures Are Made; Provide for a Right of Rescission with Respect to Such Transactions; Provide for Enforcement

CODE SECTIONS:	O.C.G.A. §§ 51-12-70 to -77 (new)
BILL NUMBER:	SB 130
ACT NUMBER:	412
GEORGIA LAWS:	1999 Ga. Laws 853
SUMMARY:	The Act requires certain disclosures to structured settlement sellers, including discount rates, fees and other costs. The Act further provides for a "cool-off" period after parties execute such a transfer, during which a seller may rescind the contract without penalty. A violation of this Act shall also violate the Georgia Fair Business Practices Act (GFBPA). The Administrator of the GFBPA may enforce the provisions of this Act through administrative fines or a court-ordered injunction, if necessary.
EFFECTIVE DATE:	July 1, 1999

History

Structured settlements were developed as a way to meet the long-term financial needs of injured plaintiffs.[1] In a structured settlement, the defendant-settlement obligor places a sum of money in an annuity and the annuity issuer makes period payments to the plaintiff-obligee.[2] The money is thus systematically available to the injured party to pay medical and other expenses.[3]

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1. *See* Interview with Sen. Michael Meyer von Bremen, Senate District No. 12 (Feb. 20, 1999) [hereinafter Meyer von Bremen Interview]; Martha Neil, *Lure of Quick Cash De-structures Some Settlements*, CHICAGO DAILY LAW BULL., Jan. 5, 1998, at 1.
2. *See* Meyer von Bremen Interview, *supra* note 1; Neil, *supra* note 1.
3. *See* Meyer von Bremen Interview, *supra* note 1; Neil, *supra* note 1.

A new industry has developed over the last decade in which companies purchase a portion or all of the obligee's payment rights at a discounted value.[4] These structured settlement buyers pay the present value of such rights, less certain fees and expenses, and the payments are typically discounted at double-digit discount rates.[5] The number of buyers has grown and buyers now resort to aggressive television advertising campaigns that promise fast cash for settlements to attract more sellers.[6]

The industry has operated largely without regulation, and purchasers have carefully avoided being deemed "lenders."[7] The increase in buying activity, advertising, and seller discontent, coupled with the absence of regulation and disclosure requirements, prompted the National Structured Settlement Trade Association to draft model legislation and encourage regulation by the states.[8] Moreover, professional journals and the popular media have published articles about the pitfalls for sellers.[9] The General Assembly followed the lead of other state legislatures by passing new legislation regulating the structured settlement industry.[10] The primary sponsor of the Georgia bill took notice of the industry's aggressive advertising, which featured toll-free numbers and promises of fast cash.[11]

The Act

Section 1

The Act provides that a transfer of payment rights is not valid unless the Act's conditions are met.[12] Section 1 imposes several restrictions and requirements on buyers of structured settlements.[13] The buyer must provide an informational pamphlet on transfers to a

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4. *See* Robert T. Garrett, *Bill Targets Settlement Buyouts*, COURIER-JOURNAL, Feb. 20, 1998 at A1; Neil, *supra* note 1.
5. *See* Neil, *supra* note 1, at 20.
6. *See* Meyer von Bremen Interview, *supra* note 1; Neil, *supra* note 1.
7. *See* Meyer von Bremen Interview, *supra* note 1.
8. *See id.*; Garrett, *supra* note 4, at A9.
9. *See* Randy Dyer, *Commentary, Unsettling Trend: Sale of Structured Settlements for Quick Cash Carries Serious Tax Risks*, FULTON COUNTY DAILY REP., June 12, 1997; Garrett, *supra* note 4; Neil, *supra* note 1.
10. *See* KY. REV. STAT. ANN. §§ 454.430-454.435 (Michie Supp. 1998); Garrett, *supra* note 4. Kentucky was the first state to pass legislation regulating structured settlement transfers. *See* Garrett, *supra* note 4.
11. *See* Meyer von Bremen Interview, *supra* note 1.
12. *See* O.C.G.A. § 51-12-71 (Supp. 1999).
13. *See id.*

prospective seller not less than ten days prior to the execution of a transfer.[14] In addition, the buyer must provide a separate disclosure statement containing the following: (1) amounts and due dates of structured settlement payments; (2) the aggregate amount of such payments; (3) the discounted present value of the payments and the discount rate used to calculate them; (4) the gross amount payable to the seller in exchange for payment rights; (5) an itemized list of brokerage commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees and legal fees; (6) the net amount payable after deduction of all commissions, fees, expenses, costs and charges noted above; (7) a calculation that discloses the amount the buyer will pay as a percentage of the discounted present value of all payments after all deductions; and (8) the amount of any penalty or liquidated damages payable to the seller in the event of a default.[15]

The purchaser must provide the annuity issuer and settlement obligor with written notice at least two business days prior to the execution of the transfer agreement.[16] The buyer must also provide these parties with its name, address, and taxpayer identification number.[17]

Any transfer agreement must be made in writing and cannot be executed until the end of the ten-day period following disclosure to the seller.[18] A prospective seller cannot incur any obligation prior to the written execution of the transfer agreement.[19] The seller has a twenty-one-day "cool-off" period following execution of the agreement during which he or she may rescind the contract.[20] A notice of this cancellation right must appear on a separate cover sheet and must substantially comply with the model notice provided in the statute.[21] The statute sets forth the font, letter size, and spacing requirements for this notice.[22] To rescind the contract, the prospective sellers need only sign the line on the notice that manifests cancellation and return

14. *See id.* § 51-12-71(2).
15. *See id.* § 51-12-71(2)(A)-(H).
16. *See id.* § 51-12-71(3).
17. *See id.* § 51-12-71(4).
18. *See id.* § 51-12-72(a).
19. *See id.* § 51-12-72(b).
20. *See id.* § 51-12-72(c).
21. *See id.*
22. *See id.*

it to the buyer.[23] A prospective seller cannot waive his or her rights under the Act.[24]

The Administrator of the GFBPA has the authority to promulgate rules and regulations to implement this statute.[25] The Georgia Administrative Procedure Act generally applies to all of the Administrator's rulemaking actions and proceedings;[26] he or she may bring a civil action in superior court to enjoin violations or threatened violations of the Act.[27] Moreover, after a hearing on the alleged infractions, the Administrator may impose a fine not to exceed $1000 per violation.[28] The hearing and any judicial review of a decision are to be conducted in accordance with the Administrative Practices Act.[29]

Section 2

Section 2 of the Act provides that the Code sections involving promulgation and enforcement activity by the Administrator will take effect only after the General Assembly appropriates funds for such activity.[30]

SB 130

Introduction

SB 130's sponsors introduced it in the Senate on February 8, 1999 and it was referred to the Senate Judiciary Committee.[31] The Senate passed the bill on March 2, 1999 in the same form in which it was introduced.[32] The bill was introduced in the House on March 3, 1999 and subsequently assigned to the House Judiciary Committee.[33]

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23. *See id.*
24. *See id.* § 51-12-76(a).
25. *See id.* § 51-12-73.
26. *See id.* § 51-12-74(a).
27. *See id.* § 51-12-74(b).
28. *See id.* § 51-12-75(a).
29. *See id.* § 51-12-75(b).
30. *See id.* §§ 51-12-73 to -75.
31. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.
32. *See id.*
33. *See id.*

Committee Substitute

The House Judiciary Committee introduced a substitute on March 18, 1999, that made three principal changes.[34] First, the Committee changed the cool-off period from ten to twenty-one days, thus giving a potential seller more time to reconsider.[35] Second, the Committee added a provision that entitles the annuity issuer and settlement obligor to a two-business-day notice prior to execution of the transfer.[36] Finally, the substitute bill made the Administrator of the GFBPA responsible for the Act's enforcement only when the General Assembly appropriates funds for that specific purpose.[37] Committee members made this third change to avoid an unfunded mandate.[38]

Floor Amendment

The House amended the bill on the floor on March 23, 1999.[39] The floor amendment, like the committee substitute, made three changes to the bill.[40] First, the amendment deleted the definition of the term "dependents" from the bill.[41] Second, the amendment removed the definition of "favorable tax determination."[42] Finally, the House added the word "agreement" after "structured settlement" within the definition of the term "interested parties."[43]

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34. *Compare* SB 130, as introduced, 1999 Ga. Gen. Assem., *with* SB 130 (HCS), 1999 Ga. Gen. Assem.
35. *Compare* SB 130, as introduced, 1999 Ga. Gen. Assem., *with* SB 130 (HCS), 1999 Ga. Gen. Assem.
36. *Compare* SB 130, as introduced, 1999 Ga. Gen. Assem., *with* SB 130 (HCS), 1999 Ga. Gen. Assem.
37. *Compare* SB 130, as introduced, 1999 Ga. Gen. Assem., *with* SB 130 (HCS), 1999 Ga. Gen. Assem.
38. *See* Telephone Interview with Sen. Michael Meyer von Bremen, Senate District No. 12 (June 9, 1999).
39. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.
40. *Compare* SB 130 (HCS), 1999 Ga. Gen. Assem., *with* SB 130 (HCSFA), 1999 Ga. Gen. Assem.
41. *Compare* SB 130 (HCS), 1999 Ga. Gen. Assem., *with* SB 130 (HCSFA), 1999 Ga. Gen. Assem.
42. *Compare* SB 130 (HCS), 1999 Ga. Gen. Assem., *with* SB 130 (HCSFA), 1999 Ga. Gen. Assem.
43. *Compare* SB 130 (HCS), 1999 Ga. Gen. Assem., *with* SB 130 (HCSFA), 1999 Ga. Gen. Assem.

Final Version

The Senate approved the final version of the bill on March 24, 1999.[44] This version provided for a longer cool-off period than the sponsor had originally proposed.[45] Unlike the original version of the bill, the final version does not deal with federal tax implications.[46] Furthermore, it does not require a court to approve a structured settlement before the seller transfers it, although this was a requirement the sponsor originally considered.[47]

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44. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.

45. *Compare* SB 130, as introduced, 1999 Ga. Gen. Assem., *with* O.C.G.A. § 51-12-72(c) (Supp. 1999).

46. *Compare* SB 130, as introduced, 1999 Ga. Gen. Assem., *with* O.C.G.A. §§ 51-12-70 to -77 (Supp. 1999). Some raised concerns about the tax implications of a structured settlement transfer. *See* Dyer, *supra* note 9. The concern revolves around the tax-free status that I.R.C. § 130 grants to long-term funding arrangements for personal injury damages. *See id.* Members of the United States Congress have proposed federal regulation of structured settlement transfers for this reason. *See* Interview with Dick Dorsey, Vice President, American Insurance Association (June 11, 1999) [hereinafter Dorsey Interview]; *U.S. Treasury Urges Penalty on Structured Settlement Sales*, DOW JONES NEWS SERV., Mar. 18, 1999 [hereinafter *U.S. Treasury Urges Penalty*]. The proposed measures include an excise tax, but would permit hardship sales if a court reviewed and approved the transfer. *See id.*

47. *See* Meyer von Bremen Interview, *supra* note 1. The sponsor of SB 130 originally considered a court approval procedure and a requirement that the transferee obtain professional advice before selling. *See id.* He abandoned the court approval prerequisite because of concerns about workloads for the courts and abandoned the advice requirement because some believed it was too onerous. *See id.* Other states have included this requirement in their statutes. *See* CONN. GEN. STAT. ANN. § 52-225f (West 1999); 215 ILL. COMP. STAT. ANN. § 5/155.34(a) (West 1999); KY. REV. STAT. ANN. § 454.431 (Michie 1998). The American Insurance Association supports a court approval requirement of all structured settlement transfers. *See* Dorsey Interview, *supra* note 46. The AIA plans to lobby the General Assembly again to add the requirement regardless of what the United States Congress does, but the passage of a federal statute would force Georgia to adopt such a measure. *See id.; U.S. Treasury Urges Penalty, supra* note 46.