

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Vice-Chairman Eric Carter at 3:30 P.M. on February 10, 2005 in Room 527-S of the Capitol.

All members were present except:

- Representative Clark Shultz- excused
- Representative Ray Cox- excused
- Representative Scott Schwab- excused

Committee staff present:

- Melissa Calderwood, Kansas Legislative Research Department
- Terri Weber, Kansas Legislative Research Department
- Ken Wilke, Revisor of Statutes Office
- Sue Fowler, Committee Secretary

Conferees appearing before the committee:

- Bill Sneed, Legal Counsel for NASB Association, Topeka, KS
- Michael Damore, Executive Director of NASB Association, Loomis, CA

Others attending:

See attached list.

Hearing on:

HB 2160: Structured settlement protection act.

Proponents:

Bill Sneed, Legal Counsel for NASB Association, (Attachment #1), appeared before the committee in support of **HB 2160**.

Michael Damore, Executive Director of NASB Association, (Attachment #2), presented testimony in support of **HB 2160**.

Hearing was closed on **HB 2160**.

Next meeting will be Tuesday, February 15, 2005.

Meeting adjourned at 3:53.

**House Insurance Committee
Guest Sign Sheet
Thursday, February 10, 2005**

Name	Representing
Bill SNEED	NASP
Michael Damore	NASP
Natalie Haag	Security Benefit
David Hanson	Ks Insur Assn / PCI
Pamela Anshauer	KAHP

Memorandum

TO: THE HONORABLE CLARK SHULTZ, CHAIRMAN
HOUSE INSURANCE COMMITTEE

FROM: WILLIAM W. SNEED, LEGISLATIVE COUNSEL
NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS

RE: HOUSE BILL 2160

DATE: FEBRUARY 11, 2005

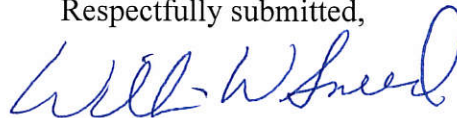
Mr. Chairman, Members of the committee: My name is William Sneed and I represent National Association of Settlement Purchasers ("NASP"). NASP is a trade group made up of companies and entities that are involved in the "secondary market" for structured settlements. NASP members provide liquidity options for individuals who are receiving structured settlements over a long period of time. These liquidity options are typically provided to individuals who are entitled to receive structured settlement payments in the future through a transfer or assignment of all or a portion of the individual's future structured settlement payments in return for the payment of a lump sum. All such proceedings are completed through a court-ordered decision. At our request, this committee introduced House Bill 2160.

Attached to this is my client's testimony. In addition, we found a typo on page 5, line 37. There is an extra word, "that". This word is not needed and we request it be deleted.

Based on the forgoing, we respectfully request that the committee favorably pass the bill.

With that, allow me to introduce Michael Damore of Novation Capital who, as a member of NASP, will speak on their behalf.

Respectfully submitted,



William W. Sneed

WWS:pmk

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1 (3) a copy of the disclosure statement required under section 2 and
2 amendments thereto;

3 (4) a listing of each of the payee's dependents, together with each
4 dependent's age;

5 (5) notification that any interested party is entitled to support, oppose
6 or otherwise respond to the transferee's application, either in person or
7 by counsel, by submitting written comments to the court or responsible
8 administrative authority or by participating in the hearing; and

9 (6) notification of the time and place of the hearing and notification
10 of the manner in which and the time, which shall not be less than 15 days
11 after service of the transferee's notice, by which written responses to the
12 application must be filed in order to be considered by the court or re-
13 sponsible administrative authority.

14 Sec. 6. (a) The provisions of this act may not be waived by any payee.

15 (b) Any transfer agreement entered into by a payee who resides in
16 this state on or after the effective date of this act shall provide that dis-
17 puts under such transfer agreement, including any claim that the payee
18 has breached the agreement, shall be determined in and under the laws
19 of this state. No such transfer agreement shall authorize the transferee
20 or any other party to confess judgment or consent to entry of judgment
21 against the payee.

22 (c) No transfer of structured settlement payment rights shall extend
23 to any payments that are life-contingent unless, prior to the date on which
24 the payee signs the transfer agreement, the transferee has established and
25 has agreed to maintain procedures reasonably satisfactory to the annuity
26 issuer and the structured settlement obligor for:

27 (1) Periodically confirming the payee's survival; and

28 (2) giving the annuity issuer and the structured settlement obligor
29 prompt written notice in the event of the payee's death.

30 (d) No payee who proposes to make a transfer of structured settle-
31 ment payment rights shall incur any penalty, forfeit any application fee
32 or other payment, or otherwise incur any liability to the proposed trans-
33 feree or any assignee based on any failure of such transfer to satisfy the
34 conditions of this act.

35 (e) No provision of this act shall be construed to authorize any trans-
36 fer of structured settlement payment rights in contravention of any law
37 or to imply ~~that~~ the validity of any transfer under a transfer agreement
38 entered into prior to the effective date of this act.

39 (f) Compliance with the requirements of section 2, and amendments
40 thereto, and fulfillment of the conditions of section 3, and amendments
41 thereto, shall be solely the responsibility of the transferee in any transfer
42 of structured settlement payment rights. Neither the structured settle-
43 ment obligor nor the annuity issuer shall bear any responsibility for, or

1 for a qualified assignment within the meaning of section 130 of the United
2 States internal revenue code.

3 (k) "Responsible administrative authority" means, with respect to a
4 structured settlement, any government authority vested by law with ex-
5 clusive jurisdiction over the settled claim resolved by such structured
6 settlement.

7 (l) "Settled claim" means the original tort claim ~~or workers' compen-~~
8 ~~sation claim~~ resolved by a structured settlement.

9 (m) "Structured settlement" means an arrangement for periodic pay-
10 ment of damages for personal injuries or sickness established by settle-
11 ment or judgment in resolution of a tort claim ~~or for periodic payments~~
12 ~~in settlement of a workers' compensation claim.~~ (delete)

13 (n) "Structured settlement agreement" means the agreement, judg-
14 ment, stipulation or release embodying the terms of a structured
15 settlement.

16 (o) "Structured settlement obligor" means, with respect to any struc-
17 tured settlement, the party that has the continuing obligation to make
18 periodic payments to the payee under a structured settlement agreement
19 or a qualified assignment agreement.

20 (p) "Structured settlement payment rights" means rights to receive
21 periodic payments under a structured settlement, whether from the struc-
22 tured settlement obligor or the annuity issuer, where:

23 (1) The payee is domiciled in this state or the domicile or principal
24 place of business of the structured settlement obligor or the annuity issuer
25 is located in this state;

26 (2) the structured settlement agreement was approved by a court or
27 responsible administrative authority in this state; or

28 (3) the structured settlement agreement is expressly governed by the
29 laws of this state.

30 (q) "Terms of the structured settlement" include the terms of the
31 structured settlement agreement, the annuity contract, any qualified as-
32 signment agreement and any order or other approval of any court or
33 responsible administrative authority or other government authority that
34 authorized or approved such structured settlement.

35 (r) "Transfer" means any sale, assignment, pledge, hypothecation or
36 other alienation or encumbrance of structured settlement payment rights
37 made by a payee for consideration. Transfer does not include the creation
38 or perfection of a security interest in structured settlement payment rights
39 under a blanket security agreement entered into with an insured depos-
40 itory institution, in the absence of any action to redirect the structured
41 settlement payments to such insured depository institution, or an agent
42 or successor in interest thereof, or otherwise to enforce such blanket
43 security interest against the structured settlement payment rights.

1 any liability arising from, non-compliance with such requirements or fail-
2 ure to fulfill such conditions.

3 Sec. 7. Sections 1 through 7, and amendments thereto, shall be
4 known as and may be cited as the structured settlement protection act.

5 Sec. 8. This act shall take effect and be in force from and after its
6 publication in the statute book.

No provision of this Act shall apply
to any settlement of any claim for or
any award of workers' compensation.

**WRITTEN STATEMENT OF NATIONAL ASSOCIATION OF SETTLEMENT
PURCHASERS IN SUPPORT OF KANSAS HB NO. 2160**

The National Association of Settlement Purchasers (NASP) supports the enactment of HB No. 2160 in Kansas. HB 2160 requires certain disclosures and admonishments to individuals who are considering a transfer of future structured settlement payment rights in return for a lump sum cash payment and provides for court review of such transactions to insure compliance with applicable state and Federal laws and to insure that the transaction is in the best interest of the transferee.

In 2002 the United States Congress enacted legislation (26 USC § 5891) that confirms that transfers of structured settlement payment rights do not violate Federal law or public policy and encouraged the states to enact state statutes that provide for a court review procedure for such transactions. Congress encouraged the enactment of applicable state transfer statutes by imposing a 40% excise tax on transactions that are not completed pursuant to an applicable state statute. Specifically, 26 USC § 5891 provides that transfers of structured settlement payment rights that are completed pursuant to an “applicable state statute” will not be subject to a 40% excise tax. Kansas does not currently have a structured settlement transfer statute.

Approximately 38 states currently have structured settlement transfer statutes similar to HB 2160, including states in close proximity to Kansas such as Missouri, Nebraska, Oklahoma, South Dakota, Iowa, Illinois, Colorado, and Utah. Additionally, structured settlement transfer legislation is currently pending in Oregon, New Mexico, Wisconsin, Montana, and Alabama, in addition to Kansas, and it is anticipated that such legislation will shortly be introduced in Arkansas and perhaps a couple of other states. By the end of 2005, it is anticipated that at least 45 states will have structured settlement transfer statutes.

The National Coalition of Insurance Legislators (NCOIL) has addressed the issue of structured settlement transfers and adopted a model structured settlement transfer statute. HB 2160 tracks the NCOIL model act.

Structured settlements typically arise from the settlement of a tort claim or lawsuit where the plaintiff or claimant receives, in lieu of or in addition to a lump sum cash payment, periodic structured settlement payments over many years. The periodic structured settlement payments may be monthly payments or periodic lump sum payments (i.e. payments every 3 or 5 years) or a combination of monthly and periodic lump sum payments. The obligation to make the future structured settlement payments is usually assigned by the defendant/casualty insurance company who settled the case to a third party (structured settlement obligor). The structured settlement obligor will then typically purchase an annuity from a life insurance company (the annuity issuer) to fund the obligation to receive the future structured settlement payments. This market is typically referred to as the “primary” market for structured settlements. Structured

settlements began in the early 1980's. In the beginning, structured settlements were used primarily to settle large cases or cases involving minors. However, today structured settlements are used in all kinds of cases, both large and small, and with all kinds of claimants. According to the National Structured Settlement Trade Association (the NSSTA) the nationwide "primary" market for structured settlements is over Six Billion Dollars per year.

One of the problems with structured settlements is their lack of flexibility and liquidity. Because the structured settlement obligors and annuity issuers receive significant tax benefits for accepting the obligation to make future structured settlement payments, such companies are prohibited by Federal law from accelerating, altering, or cashing out the future payments. Thus, if a structured settlement recipient's life or financial circumstances change after they receive a structured settlement (through a death, illness, divorce, financial problems, bankruptcy, etc.) or if they simply need or desire some flexibility or liquidity with respect to their future structured settlement payments, the individual must look to the "secondary" market as a release valve for such liquidity and flexibility. NASP is an organization of companies that provide this liquidity and flexibility. The secondary market is approximately 3-5% the size of the primary market, on an annual basis.

HB 2160 governs the secondary market and insures that those Kansas residents who are receiving structured settlement payments and who need or desire some flexibility or liquidity with respect to their future structured settlement payments have available a procedure and process whereby they can transfer, assign, mortgage, or encumber portions of their future property rights (i.e. their future structured settlement payment rights) to a third party in a transaction that insures that the transferor is well-informed about the terms of the transaction, is admonished to seek professional advice regarding the transaction, and that the transaction is reviewed and approved by an impartial Judge in an open court proceeding.

Briefly, HB 2160 provides for the following in connection with all transfers of structured settlement payments in Kansas:

- Section 2 of HB 2160 requires the transferee to provide to the "payee" (the individual who is considering transferring, assigning, encumbering their future structured settlement payment rights) a disclosure statement that sets forth the main financial terms of the transaction, including the specific payments to be transferred, the total amount to be transferred, the gross amount to be paid to the payee in return for the transfer, and the expenses of the transaction for which the payee will be responsible.
- Section 2 provides that the disclosure statement must be provided to the payee at least three (3) days PRIOR to the date that the payee signs a contract and must include a provision notifying the payee that they will have a three (3) day rescission period after they sign a contract during which they can cancel the transaction without penalty

- Section 3 provides that the transfer must be approved by a court based on findings by the Court that the transfer
 - is in the best interest of the payee, taking into account the welfare support of the payee's dependents;
 - the payee has been advised in writing to seek independent professional advice regarding the transfer and has either received such advice or waived their right to receive such advice; and
 - the transfer does not contravene any applicable statute or the order of any court or other governmental authority.
- Section 4 provides that once the transfer is approved by the court the structured settlement obligor and annuity issuer are relieved from liability to make the payments which were the subject of the transfer application to anyone other than the transferee and imposes some indemnity obligations on the transferee flowing to such parties.
- Section 5 sets forth the places where the application for approval may be filed or brought – which is in the county in which the payee resides, the county in which the structured settlement obligor or annuity issuer maintains its principal place of business, or the county where the original structured settlement was approved, if it was approved by a previous court
- Section 5 also sets forth the procedure for filing the court proceeding and providing notice of same to various interested parties.
- Section 6 addresses choice of law provisions and prohibits confessions of judgment in transfer agreements and addresses life-contingent payments and the division of payments and other miscellaneous and procedural issues.

HB 2160 insures that the transactions which are subject to this statute will comply with applicable Federal law. With the enactment of HB 2160 Kansas residents who desire to complete transactions of this nature will be able to do so in accordance with applicable Federal law and such transactions will not be subject to a 40% excise tax. Kansas residents will be able to evaluate the main financial terms of such transactions, via the disclosure statement, prior to signing any binding contract and all future transactions of this nature involving Kansas residents will be subject to court review and approval.

NASP supports HB 2160. Those Kansas residents who in the future desire some liquidity and flexibility with respect to their future structured settlement payment rights are our customers. Obviously, NASP wants to be able to do business in Kansas in a manner that complies with all applicable laws and in a manner that will benefit both NASP members and our customers. NASP accepts the obligations of HB 2160 and believe it to be in the best interest of NASP members and our customers.

NASP asks for the Kansas Legislature to support and enact HB 2160 to allow Kansas residents to have flexibility and control over their property rights and future, while insuring that all secondary market transactions are completed in a manner that insures that such transactions are reasonable and appropriate and that the individuals who go forward with such transactions are well-informed and treated fairly.

NASP welcomes the opportunity to address this legislation with members of the Kansas Legislature and/or staff members who might be interested in same.

Thank you for your support and if you have any questions I will be happy to answer them for you.

Respectfully submitted

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