

ASSEMBLY BILL NO. 166—ASSEMBLYMEN BROWN, KNECHT, ANDERSON, ANDONOV, ARBERRY, BEERS, BUCKLEY, CARPENTER, CHOWNING, CHRISTENSEN, GEDDES, GIUNCHIGLIANI, GRADY, GRIFFIN, GUSTAVSON, HARDY, HETRICK, HORNE, MABEY, MARVEL, MCCLEARY, MORTENSON, OCEGUERA, PERKINS, SHERER AND WEBER (BY REQUEST)

FEBRUARY 20, 2003

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning transfer of right to receive payment pursuant to structured settlements. (BDR 3-231)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to structured settlements; requiring the approval of the court for the transfer of the right to receive payment pursuant to a structured settlement; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 42 of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 ***1. An agreement to transfer the right to receive payments***
4 ***pursuant to a structured settlement to a transferee is valid and***
5 ***enforceable only if the transfer is approved by a district court. The***
6 ***transferee must petition the district court for such approval and***
7 ***the court shall approve the transfer if it determines that:***
8 ***(a) The transfer is in the best interest of the payee, considering***
9 ***the totality of the circumstances, including, without limitation, the***
10 ***welfare and support of the dependents of the payee;***



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- 1 ***(b) The payee has been advised in writing by the transferee to***
- 2 ***seek independent professional advice regarding the transfer and***
- 3 ***has received such independent professional advice or has***
- 4 ***knowingly waived such advice in writing; and***
- 5 ***(c) The transfer does not violate any applicable law or the***
- 6 ***order of any court.***
- 7 ***2. An action pursuant to subsection 1 must be commenced in***
- 8 ***the district court:***
- 9 ***(a) Located where the original claim which gave rise to the***
- 10 ***structured settlement was filed; or***
- 11 ***(b) Within the county in which the payee resides.***
- 12 ***3. Not later than 7 days before a hearing on a petition***
- 13 ***pursuant to subsection 1, the transferee must file with the district***
- 14 ***court and serve on all interested parties and any attorney who***
- 15 ***represented the payee in the action which resulted in the settled***
- 16 ***claim a notice of the proposed agreement and the petition for***
- 17 ***authorization of the proposed agreement. The notice must include,***
- 18 ***without limitation:***
- 19 ***(a) A copy of the petition of the transferee;***
- 20 ***(b) A copy of the proposed agreement;***
- 21 ***(c) A copy of the disclosure required pursuant to subsection 4;***
- 22 ***(d) A list which includes the name and age of each dependent***
- 23 ***of the payee;***
- 24 ***(e) A statement that any interested party may support, oppose***
- 25 ***or otherwise respond to the petition of the transferee by appearing***
- 26 ***in person or by counsel during the hearing on the petition or by***
- 27 ***submitting written comments to the court; and***
- 28 ***(f) Notice of the time and place of the hearing, the manner in***
- 29 ***which a written response to the application must be filed and the***
- 30 ***date by which a written response to the petition must be filed for***
- 31 ***consideration by the court.***
- 32 ***4. A transferee who commences an action pursuant to***
- 33 ***subsection 1 must provide to the court with the proposed***
- 34 ***agreement a disclosure setting forth:***
- 35 ***(a) The amounts and due dates of the payments under the***
- 36 ***structured settlement proposed to be transferred;***
- 37 ***(b) The aggregate amount of the proposed payments to be***
- 38 ***transferred;***
- 39 ***(c) The amount to be paid to the payee for the transfer before***
- 40 ***deducting any expenses;***
- 41 ***(d) An itemized list of all expenses that the payee will be***
- 42 ***required to pay other than attorney's fees and which will be***
- 43 ***deducted from the amount paid to the payee for the transfer,***
- 44 ***including, without limitation, any commission owed to a broker,***
- 45 ***service charges, application or processing fees, costs of closing on***



- 1 *the agreement, filing or administrative charges and fees paid to a*
- 2 *notary public;*
- 3 *(e) The amount to be paid to the payee for the transfer after*
- 4 *deducting the expenses;*
- 5 *(f) The amount of any liquidated damages which the payee is*
- 6 *required to pay if he breaches the transfer agreement;*
- 7 *(g) The discounted present value of the payments under the*
- 8 *structured settlement that are proposed to be transferred and the*
- 9 *discount rate used to determine that value; and*
- 10 *(h) If adverse tax consequences exist, a statement which*
- 11 *informs the payee that such a transfer may subject him to adverse*
- 12 *tax consequences with regard to the payment of federal income*
- 13 *tax.*
- 14 **5. Compliance with the requirements set forth in this section**
- 15 **may not be waived.**
- 16 **6. As used in this section:**
- 17 *(a) "Annuity issuer" means an insurer who has issued a*
- 18 *contract to fund periodic payments under a structured settlement.*
- 19 *(b) "Dependents" include, without limitation, the spouse of a*
- 20 *payee, any minor child of a payee and any other person for whom*
- 21 *the payee is legally obligated to provide support, including,*
- 22 *without limitation, alimony;*
- 23 *(c) "Independent professional advice" means advice of an*
- 24 *attorney, certified public accountant, actuary or other licensed*
- 25 *professional adviser;*
- 26 *(d) "Interested parties" means the payee, any beneficiary*
- 27 *irrevocably designated under the annuity contract to receive*
- 28 *payments following the death of the payee, the annuity issuer, any*
- 29 *person who is obligated to make payments pursuant to the*
- 30 *structured settlement and any other party who has continuing*
- 31 *rights or obligations under the structured settlement;*
- 32 *(e) "Payee" means a person who is receiving tax-free*
- 33 *payments under a structured settlement and proposes to make a*
- 34 *transfer of the right to receive payments under that structured*
- 35 *settlement;*
- 36 *(f) "Periodic payments" includes, without limitation, both*
- 37 *recurring payments and scheduled future lump sum payments;*
- 38 *(g) "Settled claim" means the original tort claim or workers'*
- 39 *compensation claim resolved by a structured settlement.*
- 40 *(h) "Structured settlement" means an arrangement for*
- 41 *periodic payment of damages for personal injuries or sickness*
- 42 *established by settlement or judgment in resolution of a tort claim*
- 43 *or for periodic payments in settlement of a workers' compensation*
- 44 *claim;*



1 (i) "Transfer" means any sale, assignment, pledge,
2 hypothecation or other alienation or encumbrance by a payee for
3 consideration of the right to receive payments pursuant to a
4 structured settlement; and

5 (j) "Transferee" means a party acquiring or proposing to
6 acquire the right to payments pursuant to a structured settlement
7 through a transfer.

8 **Sec. 2.** NRS 104.9406 is hereby amended to read as follows:

9 104.9406 1. Subject to subsections 2 to 8, inclusive, an
10 account debtor on an account, chattel paper or a payment intangible
11 may discharge its obligation by paying the assignor until, but not
12 after, the account debtor receives a notification, authenticated by the
13 assignor or the assignee, that the amount due or to become due has
14 been assigned and that payment is to be made to the assignee. After
15 receipt of the notification, the account debtor may discharge its
16 obligation by paying the assignee and may not discharge the
17 obligation by paying the assignor.

18 2. Subject to subsection 8, notification is ineffective under
19 subsection 1:

20 (a) If it does not reasonably identify the rights assigned;

21 (b) To the extent that an agreement between an account debtor
22 and a seller of a payment intangible limits the account debtor's duty
23 to pay a person other than the seller and the limitation is effective
24 under law other than this article; or

25 (c) At the option of an account debtor, if the notification notifies
26 the account debtor to make less than the full amount of any
27 installment or other periodic payment to the assignee, even if:

28 (1) Only a portion of the account, chattel paper or payment
29 intangible has been assigned to that assignee;

30 (2) A portion has been assigned to another assignee; or

31 (3) The account debtor knows that the assignment to that
32 assignee is limited.

33 3. Subject to subsection 8, if requested by the account debtor,
34 an assignee shall seasonably furnish reasonable proof that the
35 assignment has been made. Unless the assignee complies, the
36 account debtor may discharge its obligation by paying the assignor,
37 even if the account debtor has received a notification under
38 subsection 1.

39 4. Except as otherwise provided in subsection 5 and NRS
40 104.9407 and 104A.2303, and subject to subsection 8, a term in an
41 agreement between an account debtor and an assignor or in a
42 promissory note is ineffective to the extent that it:

43 (a) Prohibits, restricts or requires the consent of the account
44 debtor or person obligated on the promissory note to the assignment
45 or transfer of, or the creation, attachment, perfection or enforcement



1 of a security interest in, the account, chattel paper, payment
2 intangible or promissory note; or

3 (b) Provides that the assignment or transfer, or the creation,
4 attachment, perfection or enforcement of the security interest may
5 give rise to a default, breach, right of recoupment, claim, defense,
6 termination, right of termination, or remedy under the account,
7 chattel paper, payment intangible or promissory note.

8 5. Subsection 4 does not apply to the sale of a payment
9 intangible or promissory note.

10 6. Subject to subsections 7 and 8, a rule of law, statute, or
11 regulation, that prohibits, restricts, or requires the consent of a
12 government, governmental body or official, or account debtor to the
13 assignment or transfer of, or creation of a security interest in, an
14 account or chattel paper is ineffective to the extent that the rule of
15 law, statute or regulation:

16 (a) Prohibits, restricts, or requires the consent of the
17 government, governmental body or official, or account debtor to the
18 assignment or transfer of, or the creation, attachment, perfection, or
19 enforcement of a security interest in, the account or chattel paper; or

20 (b) Provides that the assignment or transfer, or the creation,
21 attachment, perfection, or enforcement of the security interest may
22 give rise to a default, breach, right of recoupment, claim, defense,
23 termination, right of termination, or remedy under the account or
24 chattel paper.

25 7. Subject to subsection 8, an account debtor may not waive or
26 vary its option under paragraph (c) of subsection 2.

27 8. This section is subject to law other than this article which
28 establishes a different rule for an account debtor who is an
29 individual and who incurred the obligation primarily for personal,
30 family or household purposes.

31 9. This section does not apply to an assignment of a health-
32 care-insurance receivable ~~§~~ *or to a transfer of a right to receive*
33 *payments pursuant to section 1 of this act.*

