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ASSEMBLY COMMITTEE ON JUDICIARY



WORK SESSION DOCUMENT

APRIL 4, 2003

ASSEMBLY JUDICIARY

DATE: 4/3/03 ROOM: 3138 EXHIBIT

SUBMITTED BY: ALLISON COMBS

V of 24

WORK SESSION

ASSEMBLY COMMITTEE ON JUDICIARY

April 4, 2003

(Please note the list of speakers and summary of the discussion on each measure contained within this document do not represent an official record of the referenced meetings. For an official record, please see the minutes from the meetings of the Assembly Committee on Judiciary, which are available through the Legislative Counsel Bureau.)

The following measures will be considered for action during the work session:

- ☐ **ASSEMBLY BILL 156** (BDR 14-131 was requested by the Assembly Committee on Judiciary). The bill was heard in Committee on March 31, 2003, and no action was taken. A subcommittee composed of Assemblyman Bernie Anderson and Assemblyman Garn Mabey was appointed, but this subcommittee has not met.

Assembly Bill 156 abolishes the plea of guilty but mentally ill and reinstates exculpation by reason of insanity.

Proponents/those testifying in support of the bill: Elizabeth Neighbors, Lakes Crossing Center; Ed Irvin, Office of the Attorney General, representing the Division of Mental Health and Developmental Services; Ben Graham, Nevada District Attorneys' Association; Howard Brooks and James Jackson, Nevada Attorneys' for Criminal Justice.

Opponents/those testifying in opposition of the bill: None.

Those testifying with a neutral position on the bill: Dr. Richard Siegel, American Civil Liberties Union of Nevada.

Discussion: Testimony indicated the measure was requested to reinstate the exculpation by reason of insanity following a recent decision of the Nevada Supreme Court that the abolishment of the insanity defense was unconstitutional. The measure returns Nevada law to the provisions that were in place prior to 1995 when the Legislature adopted the plea of guilty but mentally ill.

Proposed Amendments: The following amendments have been proposed:

1. **Specify the time frame prior to trial for entering into a plea of not guilty by reason of insanity**, proposed by Mr. Graham (attached on blue paper. Under the proposal, Mr. Graham suggests amending Section 4, subsection 4, on page 3 (lines 20 through 26) to provide that a plea of not guilty by reason of insanity must be entered into no less than 21 days prior to trial.

(Representatives of the Nevada District Attorneys' Association and the Nevada Attorneys' for Criminal Justice are in agreement on this proposal.)

2. **Delete Section 25 of the bill**, proposed by Mr. Graham. Section 25 of the bill amends NRS 178.400, which currently specifies that an incompetent person cannot be tried or adjudged to punishment for public offense. Mr. Graham's documentation suggests that the changes to this section are not necessary and:

. . .if included would have unintended consequences. Under the above-amended statute a dangerous person who has been duly convicted and sentenced, who becomes "incompetent" while incarcerated would have to be released because his incarceration is punishment. This language is not required by the US Supreme Court in *Atkins*. Such persons already have available the remedy of executive clemency—A remedy, which is evaluated on a case by case basis.

(Representatives of the Nevada District Attorneys' Association and the Nevada Attorneys' for Criminal Justice are in agreement on this proposal.)

3. **Adopt a higher standard for proving insanity**, proposed by Mr. Graham. The bill currently provides that the burden of proof is "preponderance of the evidence." The proposal would raise the burden of proof to "clear and convincing evidence."
4. **Update the language in NRS 194.010**, proposed by Mr. Graham. Revise Section 37 of the bill, which amends NRS 194.010 (Persons capable of committing crimes). The proposal would amend subsection 7 of NRS 194.010 (existing law) with regard to a person who is not liable to punishment:

Persons, unless ~~the crime is punishable with death~~ **charged with the crime of murder or attempted murder**, who committed the act or made the omission charged under *immediate* threats or menaces *to themselves or others* sufficient to show that they had reasonable cause to believe, and did believe, their lives *or the life of another* would be endangered if they refused, or that they *or the other person* would suffer great bodily harm.

5. **Revise Section 9 (Procedures following acquittal by reason of insanity)**, proposed by Ms. Neighbors. A copy of Ms. Neighbors' proposal is attached on green paper. Ms. Neighbors proposes the following:

- a. Delete the reference to a "mental health facility or hospital" and specify "Lakes Crossing Center" as the detention facility; and
- b. Require that the mandatory examination be performed by persons employed by a facility of the Division of Mental Health and Developmental Services of Nevada's Department of Human Resources.

☐ **ASSEMBLY BILL 166** (BDR 3-231 was requested by Assemblyman David Brown). The bill was heard in Committee on March 21, 2003, and no action was taken.

Assembly Bill 166 makes various changes concerning the transfer of a right to receive payment pursuant to structured settlements.

Proponents/those testifying in support of the bill: Assemblyman Brown; Patricia Law; Randy Dyer, National Structured Settlements Trade Association; Matt Sharp, Nevada Trial Lawyers Association; Alfredo Alonso on behalf of Lionel, Sawyer and Collins and the National Association of Settlement Purchasers.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested as a consumer protection measure to ensure appropriate disclosures when a person enters into an agreement to transfer the right to receive payments pursuant to a structured settlement. Speakers referenced the Model State Structured Settlement Protection Act and were asked to work on any necessary additions to the bill from the Model Act.

Proposed Amendments: The following amendments have been proposed.

1. **Adopt certain provisions of Model State Structured Settlement Protection Act**, proposed by Mr. Alonso. A copy of the Act and Mr. Alonso's proposal is attached on pink paper. Under this proposal:
 - a. **Delete** subsection 1(b) of Section 1 of A.B. 166 at page 1, lines 9 and 10 (requires the court to approve a transfer if it determines the transfer is, in addition to (a), "fair and reasonable to all interested parties under the circumstances");
 - b. **Delete** subsection 3 of Section 1 of A.B. 166 at page 2, lines 7 through 13 (Specifies who must be included as a party to the action.); and

- c. **Insert** the following language from Section 4 of the Model Act:

Approval of Transfers of Structured Settlement Payment Rights:

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly to or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that:

- i. The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;*
- ii. The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and*
- iii. The transfer does not contravene any applicable statute or the order of any court or other government authority.*

- d. **In addition, specify that the purchaser must be the party that commences the action under this section, proposed by Assemblyman Brown.**

2. **Add Procedures for Approval of Transfers from Section 6 of the Model Act, with the addition of notification for attorneys, proposed by Mr. Alonso and Mr. Sharp. In addition, decrease from 20 days to 7 days the amount of time in which the transferee must file notice of the proposed transfer with the court (See subsection 6(b) of the Model Act, below). This same time frame applies to the notice required for interested parties.**

A copy of Mr. Sharp's proposal is attached on yellow paper.

(a) An application under this Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the [county] in which the payee resides, in the [county] in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

(b) Not less than seven (7) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of the Act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties and the attorney(s) who represented the payee in the settled claim a notice of the proposed transfer and the application for its authorization, including with such notice:

- i. A copy of the transferee's application;*
- ii. A copy of the transfer agreement;*
- iii. A copy of the disclosure statement required under Section 3 of this Act;*
- iv. A listing of each of the payee's dependents, together with each dependent's age;*
- v. Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the herein; and*
- vi. Notification of the time and place of the hearing and notification of the manner in which, and the time by which written responses to the application must be filed (which shall be not less than [fifteen (15)] days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority.*

3. **Include any provisions of Section 3 of the Model Act that are not currently included in Assembly Bill 166, proposed by Assemblyman Brown.** Section 3 of the model act and subsection 4 of Section 1 of Assembly Bill 166 address required disclosures. Many of the required disclosures in the two measures overlap. Assemblyman Brown suggests an amendment to ensure that all of the required disclosures from the Model Act are also included under Assembly Bill 166.

4. **Include the applicable definitions from the Model Act, proposed by Mr. Alonso.**

☐ **ASSEMBLY BILL 347** (BDR 3-1152 was requested by Assemblyman Jason Geddes). The bill was heard in Committee on March 25, 2003, and no action was taken.

Assembly Bill 347 makes various changes concerning the civil liability of occupational licensing boards and of persons who provide information to, assist or file complaints with such boards.

Proponents/those testifying in support of the bill: Assemblyman Geddes; Dr. Steve Graybar, Board of Psychological Examiners; Fred Hillerby, State Board of Nursing, State Board of Pharmacy, and Board of Dental Examiners of Nevada; Buzz Harris, Nevada Contractors Board.

Opponents/those testifying in opposition of the bill: Laura FitzSimmons, attorney.

Discussion: Testimony indicated the measure was requested to ensure that board members are protected from civil liability, as the threat of lawsuits has discouraged many qualified individuals from serving on licensing boards.

Proposed Amendments: The following amendments have been proposed:

- **Replace the language in the bill with new language regarding immunity from civil action for acts in good faith**, proposed by Assemblyman Geddes and Ms. FitzSimmons.

Attached on lilac paper is a proposal to revise the civil liability language for members serving on the Board of Psychological Examiners, which currently exists under NRS 641.135.

- ☐ **ASSEMBLY BILL 448** (BDR 3-448 was introduced by the Assembly Committee on Judiciary on behalf of the Office of the Attorney General). The bill was heard in Committee on March 25, 2003, and no action was taken.

Assembly Bill 448 clarifies provisions governing an arrest involving the violation of an order for protection against domestic violence.

Proponents/those testifying in support of the bill: Nancy Hart, Office of the Attorney General; Veronica Frenkel, Domestic Violence Ombudsman; Jim Nadeau, Nevada Sheriffs' and Chiefs' Association; Kristin Erickson, Nevada District Attorneys' Association.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to clarify that a law enforcement office may make an arrest in situations involving temporary or extended orders for domestic violence with or without a warrant regardless of whether the violation occurs in his presence.

Proposed Amendments: None.



OFFICE OF THE DISTRICT ATTORNEY CLARK COUNTY, NEVADA

DAVID ROGER
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County Counsel

CHRISTOPHER LAURENT
Chief Deputy District Attorney

MEMORANDUM

TO Ben Graham

FROM Christopher Laurent, David Barker, Chris Owens

DATE March 7, 2003

SUBJECT A.B. 156

After reviewing discussing the bill draft for A.B. 156 on insanity, the Clark County District Attorney's Office proposes the following amendments.

FIRST - NRS 174.035

To NRS 174.035 which A.B. 156 proposes as follows:

3-18 4. ~~[A plea of guilty but mentally ill is not a defense to the~~
 3-19 ~~alleged offense. A defendant who enters such a plea is subject to the~~
 3-20 ~~same penalties as a defendant who pleads guilty.] The defendant~~
 3-21 ~~may, in the alternative or in addition to any one of the pleas~~
 3-22 ~~permitted by subsection 1, plead not guilty by reason of insanity. A~~
 3-23 ~~defendant who has not so pleaded may offer the defense of~~
 3-24 ~~insanity during trial upon good cause shown. Under such a plea~~
 3-25 ~~or defense, the burden of proof is upon the defendant to establish~~
 3-26 ~~his insanity by a preponderance of the evidence.~~

The District Attorneys Office would amend to be:

4. *The defendant may, in the alternative or in addition to any one of the pleas permitted by subsection 1, plead not guilty by reason of insanity.*

(a) plea of not guilty by reason of insanity must be entered into no less than 21 days prior to trial.

This change would bring this statute inline with NRS 174.234, which requires the parties to a criminal action to provide 21 day notice of expert witnesses. This amendment is intended to prevent trial by ambush and will prevent unnecessary delays and expenditures that would arise if a defendant were allowed to raise this issue untimely or perhaps in the middle of trial.

Utah code of criminal procedure 77-14-4 (1) directs written notice as soon after arraignment a practicable but not fewer than 30 days before trial.

(b) The defendant bears the burden of proving his insanity by clear and convincing evidence.

This change would bring this statute in line our sister state of Arizona. As stated in Arizona Revised Statutes ARS 13-502 (C) "The defendant shall prove the defendant's insanity by clear and convincing evidence.

Our sister state of Tennessee under TRS 39-11-501

Our sister state of Alaska under ARS 12.47.090.

Our sister state of Alabama under ARS 13-A-3-1.

Our sister state of Illinois under IRS 38.3-2; 38.6-2

Our sister state of South Dakota under SDRS 22-5-10

The proposed standard is not as high a burden as the state must prove in order for a jury to find the defendant guilty

California, New Mexico, Utah have codified different definitions of insanity other than our M'Naghten language.

Montana and Idaho passed laws that abolish the insanity defense just as Nevada did in 1995.

SECOND – NRS 178.400

NRS 178.400 which A.B. 156 proposes is as follows:

19-6 Sec. 25. NRS 178.400 is hereby amended to read as follows:

19-7 178.400 1. A person may not be tried , [or] adjudged to
19-8 punishment *or punished* for a public offense while he is
19-9 incompetent.

19-10 2. For the purposes of this section, "incompetent" means that
19-11 the person is not of sufficient mentality to be able to understand the
19-12 nature of the criminal charges against him, and because of that
19-13 insufficiency, is not able to aid and assist his counsel in the defense
19-14 interposed upon the trial or against the pronouncement of the
19-15 judgment thereafter.

The District Attorneys Office is of the opinion that the proposed amendments are not need and in fact if included would have unintended consequences. Under the above amended statute a dangerous person who has been duly convicted and sentenced, who becomes "incompetent" while incarcerated would have to be released because his incarceration is punishment. This language is not required by the US Supreme Court decision in *Atkins*. Such persons already have available the remedy of executive clemency--A remedy, which is evaluated on a case by case basis.

THIRD - NRS 194.010

To NRS 194.010 which A.B. 156 proposes as follows:

30-25 Sec. 37. NRS 194.010 is hereby amended to read as follows:
30-26 194.010 All persons are liable to punishment except those
30-27 belonging to the following classes:
30-28 1. Children under the age of 8 years.
30-29 2. Children between the ages of 8 years and 14 years, in the
30-30 absence of clear proof that at the time of committing the act charged
30-31 against them they knew its wrongfulness.
30-32 3. *Persons who committed the act charged or made the*
30-33 *omission charged in a state of insanity.*
30-34 4. Persons who committed the act or made the omission
30-35 charged under an ignorance or mistake of fact, which disproves any
30-36 criminal intent, where a specific intent is required to constitute the
30-37 offense.
30-38 {4-} 5. Persons who committed the act charged without being
30-39 conscious thereof.
30-40 {5-} 6. Persons who committed the act or made the omission
30-41 charged, through misfortune or by accident, when it appears that
30-42 there was no evil design, intention or culpable negligence.
30-43 {6-} 7. Persons, unless the crime is punishable with death, who
30-44 committed the act or made the omission charged under threats or
30-45 menaces sufficient to show that they had reasonable cause to
31-1 believe, and did believe, their lives would be endangered if they
31-2 refused, or that they would suffer great bodily harm.

The District Attorneys Office recommends the following amendment beginning at line 30-43:

7. Persons, unless ~~the crime is punishable with death~~ charged with the crime of murder or attempt murder, who committed the act or made the omission charged under *immediate* threats or menaces *to themselves or others* sufficient to show that they had reasonable cause to believe, and did believe, that their lives *or the life of another* would be endangered if they refused, or that *they the other person* would suffer great bodily harm.

The amendment proposed by the District Attorneys Office brings this section up to date with current law. NRS 194.010 was initially passed in 1911. At that time there were many crimes that were punishable by death. Now not even every murder is punishable by death. It is clear that this defense should not be available where the in circumstances where one placed in a position of trading someone else's life for their own.

Furthermore, the statute as written would not protect a mother from committing a crime to protect her child.

Analysis of the "Finger" decision

The intent of the Nevada Supreme Court in *Finger* toward the legislature is as follows:

[7][8] The Legislature is free to decide what method to use in presenting the issue of legal insanity to a trier of fact, i.e., as an affirmative defense or rebuttal presumption of sanity. It may also determine that legal insanity be proven by the defendant by any one of the established standards. But it cannot abolish legal insanity or define it in such a way that it undermines a fundamental principle of our system of justice. (Emphasis added)

J. Leavitt, in his concurring opinion recommended that the original statutory scheme be reinstated:

The legislative scheme as set forth in S.B. 314 [FN10] must be set aside, and the law as it existed prior to its enactment be reinstated.

FN10. S.B. 314, 67th Leg. (Nev.1995), amending NRS 174.035, 193.220 and 194.010 and repealing 175.521.

The established standards or burden of proof are delineated in the opinion as follows:

Under M'Naghten, insanity is considered an affirmative defense, which must be proven by the defendant. **The burden of proof can be either: (1) by a preponderance of the evidence, (2) by clear and convincing evidence or (3) beyond a reasonable doubt.** See *Leland v. Oregon*, 343 U.S. 790, 72 S.Ct. 1002, 96 L.Ed. 1302 (1952). In contrast, other jurisdictions have determined that insanity is not an affirmative defense, but an issue of presumptions. A person is presumed to be sane. This presumption can be rebutted by the introduction of evidence tending to show that the defendant is legally insane. Once such evidence is presented, the prosecution has the burden of proving the defendant's sanity beyond a reasonable doubt. See *Davis v. United States*, 160 U.S. 469, 16 S.Ct. 353, 40 L.Ed. 499 (1895). (Emphasis added)

Conclusion

Based upon the reasons stated, we support the re-adoption on the old M'Naghten definition of insanity. So long as the proposed procedural changes are also adopted.

Amend A.B. 156 Section 9 as follows:

1. Where on a trial a defense of insanity is interposed by the defendant and he is acquitted by reason of that defense, the finding of the jury pending the judicial determination pursuant to subsection 2 has the same effect as if he were regularly adjudged insane, and the judge must:

(a) Order a peace officer to take the person into protective custody and transport him to *Lakes Crossing center* ~~[a mental health facility or hospital]~~ for detention pending a hearing to determine his mental health;

(b) ~~[Appoint]~~ *Order the examination of the person by two psychiatrists, two psychologists, or one psychiatrist and one psychologist, [to examine the person.] employed by a division facility, as defined by NRS 433.094 and designated by 433.233. NRS 178.435 and NRS 178.440 will apply; and*

(c) At a hearing in open court, receive the report of the examining advisers and allow counsel for the State and for the person to examine the advisers, introduce other evidence and cross-examine witnesses.

2. If the court finds, after the hearing:

(a) That there is not clear and convincing evidence that the person is a mentally ill person, the court must order his discharge;

or

(b) That there is clear and convincing evidence that the person is a mentally ill person, the court must order that he be committed to the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Human

Resources until he is regularly discharged therefrom in accordance with law. The court shall issue its finding within 90 days after the defendant is acquitted.

3. The Administrator shall make the same reports and the court shall proceed in the same manner in the case of a person committed to the custody of the Division of Mental Health and Developmental Services pursuant to this section as of a person committed because he is incompetent to stand trial pursuant to NRS 178.400 to 178.460, inclusive, except that the determination to be made by the Administrator and the district judge on the question of release is whether the person has recovered from his mental illness or has improved to such an extent that he is no longer a mentally ill person.

4. As used in this section, unless the context otherwise requires, "mentally ill person" has the meaning ascribed to it in NRS 433A.115.

Memorandum

TO: David Brown
FROM: Alfredo Alonso
DATE: April 1, 2003

RE: AB166

The following are comments from the Structured Settlement Association with respect to AB166 and what provisions of the Model Act should be included in the final version of the bill.

1. Delete section 1.1(b) and 1.3 and replace with Section 4 of the Model Act.
2. Add section 6 of the Model Act in its entirety including the Trial Bar's amendments for notification.
3. Add the Model Act's definitions (Section 2) if possible.

As you can see, the above issues mirror our discussions with Matt Sharp. The Association agrees that the definitions are helpful but not critical, however, the deletion of section 1.1 and 1.3 is.

April 4th

Proposed
MODEL STATE STRUCTURED SETTLEMENT
PROTECTION ACT

SECTION 1. TITLE. This Act shall be known and referred to as the "Structured Settlement Protection Act."

SECTION 2. DEFINITIONS. For purposes of this Act--

- (a) "annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement;
- (b) "dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;
- (c) "discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service;
- (d) "gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration;
- (e) "independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;
- (f) "interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;
- (g) "net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 3(e) of this Act;
- (h) "payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

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(i) "periodic payments" includes both recurring payments and scheduled future lump sum payments;

(j) "qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time;

(k) "responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(l) "settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement;

(m) "structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(n) "structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement;

(o) "structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

(p) "structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where -

(i) the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this State; or

(ii) the structured settlement agreement was approved by a court or responsible administrative authority in this State; or

(iii) the structured settlement agreement is expressly governed by the laws of this State;

(q) "terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the

annuity contract, any qualified assignment agreement and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement;

(r) "transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term "transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights;

(s) "transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(t) "transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer;

(u) "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer;

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SECTION 3. REQUIRED DISCLOSURES TO PAYEE. Not less than three (3) days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth —

(a) the amounts and due dates of the structured settlement payments to be transferred;

(b) the aggregate amount of such payments;

(c) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the Applicable Federal Rate used in calculating such discounted present value;

(d) the gross advance amount;

(e) an itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

(f) the net advance amount;

(g) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and

(h) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

SECTION 4. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that —

(i) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

(ii) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and

(iii) the transfer does not contravene any applicable statute or the order of any court or other government authority;

SECTION 5. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS. Following a transfer of structured settlement payment rights under this Act:

- (a) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;
- (b) The transferee shall be liable to the structured settlement obligor and the annuity issuer:
 - (i) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and
 - (ii) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this Act;
- (c) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two (or more) transferees or assignees; and
- (d) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this Act.

SECTION 6. PROCEDURE FOR APPROVAL OF TRANSFERS.

(a) An application under this Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the [county] in which the payee resides, in the [county] in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

(b) Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of this Act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

- (i) a copy of the transferee's application;
- (ii) a copy of the transfer agreement;
- (iii) a copy of the disclosure statement required under Section 3 of this Act;
- (iv) a listing of each of the payee's dependents, together with each dependent's age;
- (v) notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (vi) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed (which shall be not less than [fifteen (15)] days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority.

a unless an extension is granted for good cause shown.

SECTION 7. GENERAL PROVISIONS; CONSTRUCTION.

- (a) The provisions of this Act may not be waived by any payee.
- (b) Any transfer agreement entered into on or after the effective date of this Act by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this State. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.
- (c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(6)

(d) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this Act.

(e) Nothing contained in this Act shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this Act is valid or invalid.

(f) Compliance with the requirements set forth in Section 3 of this Act and fulfillment of the conditions set forth in Section 4 of this Act shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with such requirements or failure to fulfill such conditions.

EFFECTIVE DATE. This Act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the [thirtieth (30th)] day after the date of enactment of this Act; provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is either effective or ineffective.

YELLOW

Allison Combs
Principal Research Analyst
Legislative Counsel Bureau

Re: AB 166
NTLA Proposed Amendment

Dear Allison:

Per the March 21, 2003, Assembly Judiciary Committee meeting, our proposed amendment is as follows:

Section 6 (b) to the Model State Structures Settlement Protection Act after "all interested parties" insert "and the attorney(s) who represent the payee in the settled claim"

Section 6 (b) will read:

Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of this Act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties and the attorney(s) who represent the payee in the settled claim a notice of the proposed transfer and the application for its authorization, including with such notice:

Matt Sharp

LILAC

Laura Wightman FitzSimmons
Lawyer

April 2, 2003

Assemblyman Jason Geddes
Chairman Anderson and
Members of the Assembly Judiciary Committee
c/o Assemblyman Geddes

Re: AB 347

Dear Assemblyman Geddes:

I have spent a long time puzzling over the points you raised in our meeting and comparing the language you submitted to the language that emerged in your bill. I agree that the language you began with is preferable to the language contained in the bill. I am including your original idea below, with my proposed changes. Since I am in Las Vegas, would it be possible for you make copies of this and provide it to the Committee Secretary for distribution?

NRS 641.135 Civil Liability

A member of a board or an employee or agent of the board is immune from any civil action and from any damages for any act performed without malicious intent *in good faith* and within the scope of the duties of the board pursuant to the provisions of this chapter. Any person or organization which initiates or assists in any lawful investigation or proceeding concerning the licensing of an applicant or the disciplining of a psychologist licensee is immune from any civil action for that initiation or assistance or any damages, if that person or organization acted without malicious intent *in good faith*. *Members of boards, and their employees and agents are entitled to a presumption that their actions were taken in good faith.*

~~In all averments of malicious intent, the acts demonstrating malicious intent must be set forth specifically and with particularity against each individual, the board, or the organization named as a defendant. The Board, and individual, or any defendant in such civil action may not be required to defend such civil action or be subject to discovery in any such civil action unless a court of competent jurisdiction finds that the plaintiff has produced admissible evidence of malicious intent sufficient to survive a motion for summary judgment on the claims for relief set forth in the complaint.~~

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Laura Wightman FitzSimmons

A plaintiff in a civil action against a member of a board or its employees or agents must set forth in the complaint acts alleging bad faith or unlawful conduct specifically and particularity against each defendant named. The complaint must be verified and each allegation of fact must be supported by admissible evidence. The Court before which the proceeding is brought shall grant a motion to dismiss the complaint against any defendant if the Court finds that the allegations contained in the complaint are not sufficient to overcome the presumption that the action of that defendant was taken in good faith.

I think that my proposal meets your goals. Please call me if you would like to discuss this further. Thank you.

Sincerely


Laura Wightman FitzSimmons

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