

The seal of the Commonwealth of Pennsylvania Office of Attorney General is a large, circular emblem in the background. It features the state coat of arms in the center, which includes a shield with a ship, a plow, and a sheaf of wheat, topped by an eagle with wings spread. The shield is flanked by two olive branches. The outer ring of the seal contains the text "COMMONWEALTH OF PENNSYLVANIA" at the top and "OFFICE OF ATTORNEY GENERAL" at the bottom.

**Testimony Before the House Judiciary Committee
Subcommittee on Courts**

on

**Senate Bill 818 and House Bill 825
Structured Settlements**

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July 19, 1999

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Good morning, Chairman Clark. Thank you Mr. Chairman and members of the committee for the opportunity to provide comment on Senate Bill 818 and House Bill 825, the proposed structured settlement legislation. My name is Douglas Yauger and I am director of the Bureau of Consumer Protection in the Office of Pennsylvania Attorney General Mike Fisher.

Before addressing the specifics of the proposed legislation, I would like to say a few words about the value of structured settlements in today's society. As opposed to a single lump-sum payment, a structured settlement provides for payments over a period of time, usually a number of years. There are undeniable benefits to such a plan in certain circumstances. By investing present value into an annuity, a payor can realize significant savings while ensuring that the payee receives an acceptable sum in settlement of his or her claim. On the other side of the issue, when a payee is likely to run through his money if given a lump sum, the payment over time through a structured settlement ensures that the payee

continues to receive the benefits of his settlement and, essentially, protects the payee from himself. The non-transferability of these settlements serves to protect these valid interests.

What is happening, however, is that certain beneficiaries of structured settlements are seeking to reduce them to lump-sum payments. They do so through arrangements with third parties who pay a lump sum somewhat related to the present value of the annuity or settlement in exchange for the beneficiary's promise to forward the periodic payments as received. This practice has caused several concerns to Attorney General Fisher and the Bureau of Consumer Protection. First, it may defeat the legitimate purpose of a structured settlement, that is, the protection of the beneficiary from himself. Second, the beneficiary faces the temptation, with the receipt of each payment, of not forwarding the payment to the third party and thereby becoming embroiled in litigation. Third, since the settlement is not actually sold, it is quite possible that the lump-sum payment made to the beneficiary by the third party is actually a loan, and would require all the disclosures of the Truth-in-Lending

Act and related legislation. Fourth, it is a common practice of third party settlement purchasers to require the beneficiary to execute a confession of judgment clause, which means that the purchaser's attorney can actually represent the beneficiary in court and allow a judgment to be entered against the beneficiary. This practice not allowed in Pennsylvania consumer transactions. Finally, there may be adverse tax consequences of which the beneficiary is unaware.

We believe Senate Bill 818 and House Bill 825, if amended similar to the Senate Bill, adequately addresses these issues without an adverse impact upon the industry. The legislation provides for judicial review of a purchase of a structured settlement. This will ensure that the beneficiary is protected in the transaction, as a demonstration of financial hardship is required. We believe this to be a very important requirement. The legislation also provides for an itemization of the calculations involved in the purchase, so that a beneficiary enters into such a transaction with his eyes open.

Under the legislation, the transferee would actually take possession of the right to receive payments, thereby eliminating the possibility that the transaction was a loan - and removing the temptation for the beneficiary to retain future payments rather than forward them. As an outright purchase, the use of confession of judgment clauses would be eliminated. As well, the court must be satisfied that the beneficiary has received appropriate tax advice.

As I mentioned earlier, the office of Attorney General has suggested some changes which have already been incorporated in the Senate version of the legislation. We have attempted to fine-tune several of the definitions, most importantly broadening the definition of "transfer" by deeming the transaction to be a consumer transaction. We have also suggested that the word "petition" be substituted for the word "application", since petition is more readily recognizable by the court. We strongly suggest that the purchaser be required to provide a 12-point boldface notice to the beneficiary that there may be tax consequences and

that an attorney or accountant should be consulted.

We have also suggested language which would make a violation of this act a violation of the Unfair Trade Practices and Consumer Protection Law, which is the principal act enforced by the Bureau of Consumer Protection. While we believe this to be the case regardless of whether this language appears, it makes it all the more clear to a court that the two acts are related. Since we believe the Consumer Protection Law already applies, insertion of this section does not subject a violator to any additional penalties.

The Office of Attorney General thanks you for this opportunity to address the subcommittee today. I will be pleased to answer any questions which you might have.