

**THE NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS  
SUPPORTS THE ENACTMENT OF MONTANA SB 122 (A STRUCTURED  
SETTLEMENT PAYMENT TRANSFER STATUTE)**

The National Association of Settlement Purchasers (NASP) supports the enactment of a structured settlement payment transfer statute in Montana in 2005. Specifically, NASP supports Montana SB 122, although we are seeking some minor amendments to SB 122 in the form it was in when passed by the Montana Senate.

SB 122 is based on a model structured settlement transfer statute promulgated and adopted by the National Conference of Insurance Legislators (NCOIL).

SB 122 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. Montana does not currently have a structured settlement transfer statute.

Montana SB 122 is very similar to the NCOIL Model Act. Approximately 38 states currently have structured settlement transfer statutes which are similar, and in many cases identical, to the NCOIL Model Act. These include states in close proximity to Montana, such as South Dakota, Idaho, Washington, Utah, and Colorado, amongst others. Additionally, structured settlement transfer legislation is currently pending in Kansas, Oregon, New Mexico, Wisconsin, Arkansas, and Alabama. By the end of 2005, it is anticipated that at least 45 states will have structured settlement transfer statutes. We are eager to do what we can to insure that Montana is one of these states.

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, 5, or 10 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% of the size of the primary market, on an annual basis.

SB 122 governs the secondary market and insures that those Montana 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, SB 122 provides for the following in connection with all transfers of structured settlement payments in the state that enacts such a statute:

- Section 3 of SB 122 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 3 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 4 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 and 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 5 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 6 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 7 also sets forth the procedure for filing the court proceeding and providing notice of same to various interested parties.
- Section 9 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.

SB 122 insures that the transactions which are subject to this statute will comply with applicable Federal law. With the enactment of this legislation Montana 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. Montana 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 Montana residents will be subject to court review and approval.

As indicated above, NASP supports the enactment of SB 122. Those Montana 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 Montana 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 SB 122 and believe it to be in the best interest of NASP members and our customers.

NASP does seek some minor amendments to SB 122 in the form that it was when passed by the Montana Senate. NASP also understands, and has been provided, other proposed amendments to be considered by the Montana House. We understand that the proposed amendments to SB 122 which have been submitted to the Montana House include the amendments that NASP is seeking and we support those amendments. However, to be clear, NASP seeks the following changes to SB 122, in the form as passed by the Montana Senate.

- Section 6, delete “or a transferee” right after “payee.” The deletion of this language is intended to insure that transferees are not required to go back to court and secure court approval of a subsequent assignment, pledge, encumbrance, or transfer of the right to receive structured settlement payment rights after the initial transfer. The purpose of this statute is to insure that a transfer of structured settlement payment rights by the original payee, i.e. the individual who entered into the structured settlement agreement and who is receiving the payments under the original settlement, is fully informed of the terms of the transfer and that such transaction is approved by a court of competent jurisdiction. If these words are not deleted, then it would be extremely difficult for transferees to secure financing to enter into these transactions as a pledge or encumbrance of the transferee’s rights to receive the payments would arguably be invalid unless such encumbrance or security interest was specifically approved in a court proceeding. Again, the purpose of the statute is to focus on the payee, not subsequent financing transactions by the transferee, after the initial transfer by the payee.
- Section 12 delete “or contract” after “law.” Because most structured settlement agreements include some boilerplate anti-assignment language, the inclusion of “or contract” would take the final authority on whether or not to approve a transfer of structured settlement payments away from the court and cause the judgment of the court and the payee to be subordinate to the insurance company obligated to make said payments, if there was boilerplate contractual anti-assignment language inserted in the underlying structured settlement documents.

NASP asks for the Montana Legislature to support and enact SB 122 in order to allow Montana 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 Montana Legislature and/or staff members who might be interested in same or with other interested parties in Montana.

National counsel for NASP is Earl S. Nesbitt. NASP is represented in Montana by Chris J. Gallus. The contact information for said individuals is set forth below.

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