

SENATE BILL NO. 122  
INTRODUCED BY M. WHEAT  
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE TRANSFER OF A BENEFICIARY'S STRUCTURED SETTLEMENT PAYMENT RIGHTS; REQUIRING DISCLOSURE AND APPROVAL OF A COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY PRIOR TO TRANSFER; OUTLINING OBLIGATIONS AFTER A TRANSFER; PLACING A CONDITION ON ADDITIONAL TRANSFERS; PROVIDING FOR JURISDICTION AND NOTICE; PROHIBITING WAIVER OF PROVISIONS; PROVIDING CONDITIONS FOR CONTINGENT PAYMENTS; ASSIGNING RESPONSIBILITY FOR COMPLIANCE; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Structured Settlement Protection Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12], unless the context requires otherwise, the following definitions apply:

(1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of a structured settlement payment transfer.

(3) "Dependent" means a payee's spouse, a minor child of the payee, or any person for whom the payee is legally obligated to provide support, including alimony.

(4) "Discounted present value" means the present value of future payments determined by discounting the future 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.

(5) "Gross advance amount" means the sum payable to the payee or to the payee's account as consideration for a transfer of a structured settlement payment right before any reduction for a transfer expense or any other deduction is made from the sum.

(6) "Independent professional advice" means advice of an attorney, a certified public accountant, an actuary, or any licensed professional financial adviser.

(7) "Interested party" means, with respect to a structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive a payment after the payee's death, the annuity issuer, the structured settlement obligor, or any other party that has a continuing right or obligation under the structured settlement.

(8) "Net advance amount" means the gross advance amount minus the aggregate amount of the actual and estimated transfer expenses required to be disclosed under [section 3(5)].

(9) "Payee" means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of the payment rights.

(10) "Periodic payment" includes both a recurring payment and any scheduled future lump-sum payments.

(11) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, 26 U.S.C. 130, and its amendments through [the effective date of this act].

(12) "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 the structured settlement.

(13) "Settled claim" means the original tort claim.

(14) "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.

(15) "Structured settlement agreement" means the written agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(16) "Structured settlement obligor" means, with respect to a 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.

(17) "Structured settlement payment right" means the right to receive period payments under a structured

settlement, whether from the structured settlement obligor or the annuity issuer, when:

(a) (i) the payee is domiciled in this state; or

(ii) the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in this state;

(b) a court or responsible administrative authority in this state approved the structured settlement agreement; or

(c) the structured settlement agreement is expressly governed by the laws of this state.

(18) "Terms of the structured settlement" means, with respect to a structured settlement, the terms of the structured settlement agreement, the annuity contract, a qualified assignment agreement, or any order or other approval of a court or responsible administrative authority or other government authority that authorized or approved the structured settlement.

(19) (a) "Transfer" means a sale, assignment, pledge, hypothecation, or other alienation or encumbrance of a structured settlement payment right made by a payee or transferee for consideration.

(b) The term does not include the creation or perfection of a security interest in a structured settlement payment right under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payment to the insured depository institution or to an agent or successor in interest of the insured depository institution or to otherwise enforce the blanket security interest against the structured settlement payment right.

(20) "Transfer agreement" means the agreement providing for a transfer of a structured settlement payment right.

(21) (a) "Transfer expenses" means all expenses of a transfer that are:

(i) required under the transfer agreement to be paid by the payee; or

(ii) deducted from the gross advance amount, including without limitation any court filing fee, attorney fee, escrow fee, lien recordation fee, judgment and lien search fee, finder's fee, commission, or other payment.

(b) Transfer expenses do not include a payee's preexisting obligations that are payable on the payee's account from the proceeds of a transfer.

(22) "Transferee" means a party acquiring or proposing to acquire a structured settlement payment right through a transfer.

**NEW SECTION. Section 3. Disclosure to payee.** No less than 3 days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a written disclosure statement

separate from the transfer agreement that sets forth in bold type no smaller than 14 points:

- (1) the amounts and the due dates of the structured settlement payment to be transferred;
- (2) the aggregate amount of the amounts in subsection (1);
- (3) the discounted present value of the payments to be transferred, which must be identified as:
  - (a) the calculation of the present value of the transferred settlement payment under federal standards for valuing annuities; and
  - (b) the amount of the applicable federal rate used in calculating the discounted present value;
- (4) the gross advance amount;
- (5) an itemized list of all applicable transfer expenses, other than attorney fees and related disbursements, based on the transferee's best estimate of the amount of fees and disbursements payable in connection with the transferee's application for approval of the transfer;
- (6) the net advance amount;
- (7) the amount of any penalty or liquidated damages payable by the payee in the event of a breach of the transfer agreement by the payee; and
- (8) a statement that the payee has the right to cancel the transfer agreement without penalty or further obligation no later than the third business day after the date on which the payee signs the agreement.

**NEW SECTION. Section 4. Transfer of structured settlement payment right -- conditions.** A direct or indirect transfer of a structured settlement payment right is effective and a structured settlement obligor or annuity issuer is required to make a payment directly or indirectly to a transferee of a structured settlement payment right only if a final court order or order of a responsible administrative authority has approved the transfer in advance based on written findings by the court or responsible administrative authority that:

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

**NEW SECTION. Section 5. Obligations after transfer.** (1) After the transfer of a structured settlement

payment right pursuant to [sections 1 through 12], the structured settlement obligor and the annuity issuer are discharged and released from liability for the transferred payments to all parties except to the transferee.

(2) The transferee is liable to the structured settlement obligor and the annuity issuer:

(a) if the transfer contravenes the terms of the structured settlement for any tax incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer; and

(b) for any other liability or cost, including reasonable costs and attorney fees, arising:

(i) from compliance by the structured settlement obligor and annuity issuer with the order of the court or responsible administrative authority; or

(ii) as a consequence of the transferee's failure to comply with [sections 1 through 12].

**NEW SECTION. Section 6. Additional transfers.** A payee or a transferee shall comply with all of the requirements of [sections 1 through 12] before making a further transfer of a structured settlement payment right.

**NEW SECTION. Section 7. Jurisdiction -- notice.** (1) A transferee may apply under [sections 1 through 12] for approval of a transfer of a structured settlement payment right:

(a) in the county in which the payee resides;

(b) in the county in which the structured settlement obligor or the annuity issuer maintains a principal place of business; or

(c) in any court or before any responsible administrative authority that approved the structured settlement agreement.

(2) Not less than 20 days prior to a scheduled hearing on an application for approval of a transfer of a structured settlement payment right under [section 4], 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 an authorized transfer. The notice must include the following:

(a) a copy of the transferee's application;

(b) a copy of the transfer agreement;

(c) a copy of the disclosure statement required under [section 3];

(d) a listing of each of the payee's dependents, if any, together with the age of each dependent;

(e) 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

(f) notification of the time and the place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed. The filing deadline may not be less than 15 days after the transferee's notice has been served.

NEW SECTION. **Section 8. Waiver not allowed.** A payee may not waive the provisions of [sections 1 through 12].

NEW SECTION. **Section 9. Disputes -- entry of judgment.** (1) A transfer agreement entered into on or after [the effective date of this act] by a payee who resides in this state must provide that disputes under the transfer agreement, including a claim that the payee has breached the agreement, must be determined in this state under the laws of this state.

(2) A transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

NEW SECTION. **Section 10. Contingent payment conditions.** A transfer of a structured settlement payment right may not extend to a payment that is contingent upon the life of a payee unless prior to the date on which the payee signs the transfer agreement the transferee has established and agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:

- (1) periodically confirming the payee's survival; and
- (2) giving the annuity issuer and the structured settlement obligor prompt written notice upon the payee's death.

NEW SECTION. **Section 11. Responsibility for compliance -- liability.** (1) Compliance with the requirements in [section 3] and fulfillment of the conditions in [section 4] are the sole responsibility of the transferee in any transfer of a structured settlement payment right. Neither the structured settlement obligor nor the annuity issuer bears responsibility for or liability arising from noncompliance with [section 3] or failure to fulfill the conditions of [section 4].

(2) A payee who proposes to make a transfer of a structured settlement payment right may not incur a penalty, forfeit an application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on a failure of a transfer agreement to satisfy the conditions of [sections 1 through 12].

NEW SECTION. **Section 12. Construction.** [Sections 1 through 12] may not be construed to authorize a transfer of a structured settlement payment right 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.

NEW SECTION. **Section 13. Applicability.** [This act] applies to any transfer of structured settlement payment rights under a transfer agreement executed on or after October 1, 2005.

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