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STRUCTURED SETTLEMENT PROTECTION ACT

House Bill 5066 (Substitute H-1)
Sponsor: Rep. Andrew Richner
Committee: Family and Civil Law

Complete to 2-29-00

A SUMMARY OF HOUSE BILL 5066 (SUBSTITUTE H-1)

The bill would create the Structured Settlement Protection Act to establish conditions for the transfer of rights to payments made under a structured settlement. A structured settlement would be defined as an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim.

The bill would prohibit the transfer of an individual's right to receive a structured settlement payment if the structured settlement agreement contained a contractual assignment restriction (a term that prohibits or restricts the transfer of a structured settlement payments right in a contract or agreement), unless the transfer met certain conditions. Those conditions would include approval of a court in advance of a final order and the provision, in writing, of certain consents and waivers from each protected party.

The act would apply only to those transfers of a right to receive structured settlement payments under a transfer agreement that was reached on or after the thirty-first day after the act took effect. The act would not affect the enforceability or effectiveness of any transfer agreements that were reached before the act's effective date, nor would it affect the enforceability of any obligation to make a payment to a transferee under an agreement that was reached before the act took effect. Further, the act would specify that it was not to be construed as authorizing any transfer of a structured settlement payment right that was in contravention of applicable law or as giving effect to any transfer of a structured settlement payment right that would be void under applicable law. (Applicable laws would include federal law, the laws and principles of equity of this state, the laws of any of the following: the domicile of the payee or other protected party, the jurisdiction where a settled claim was pending before a court when the structured settlement was reached, or a settled claim for worker's compensation was brought under the jurisdiction's worker's compensation statute.)

Court Approval. The circuit court would have jurisdiction over an application for approval of a transfer of structured settlement payment rights under the act. No less than 20 days before a hearing on such an application, the person to whom the payments would be transferred (the transferee) would be required to file with the court and serve each of the protected parties with all of the following: a) notice of the proposed transfer and application for court approval, b) a copy of the transferee's application to the circuit court, c) a copy of the transfer agreement, d) a copy of the disclosure statement, d) 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

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written comments to the court and/or by participating in the hearing, f) notice of the time and place of the hearing, and g) notification of the manner in which and time by which written responses to the application must be filed (this could not be less than 10 days after the service of the transferee's notice), in order to be considered by the court.

A proposed transfer would not be approved unless the court found that the transfer met the requirements of the act and would not violate any other applicable laws. The court would also have to determine that the transfer was needed to enable the payee or the payee's dependents, or both, to avoid imminent financial hardship and that the transfer was not expected to subject the payee and/or his or her dependents to undue financial hardship in the future.

In addition, the court would have to determine that the transferee had provided the payee and each of the payee's dependents with a disclosure statement. That disclosure statement would have to be supplied to the payee and each of his or her dependents no less than ten days before the date that the payee entered into the transfer agreement. The disclosure statement would have to be in boldfaced type no smaller than 14-point and include all of the following information:

- The amounts and due dates of the structured settlement payments that would be transferred and the aggregate amount of the payments that would be transferred.
- The discounted present value of the structured settlement payments that would be transferred and the discount rate or rates used to determine that value.
- The gross amount that would be paid to the payee in exchange for transfer of the structured settlement payments and an itemized listing of any commissions, fees, costs, expenses, and charges that the payee would be responsible for or would be paid out of the gross amount payable to the payee and the resultant net amount to be paid to the payee. The statement would also have explain, as a percentage, net payment divided by the discounted present value.
- The amount of any penalty and the aggregate amount of any liquidated damages and penalties that the payee would be required to pay in the event that the payee was in breach of the transfer agreement.

Protected Party Waivers and Consent. All protected parties would have to provide, in writing, an irrevocable consent to the transfer, a waiver of all rights under each contractual transfer, a waiver of all rights with respect to the transferred payments, and a release of all claims against the other protected parties with respect to the transferred structured settlement payments. Protected parties would mean the payee, his or her dependents and beneficiaries designated to receive payments following the payee's death, an annuity issuer, a structured settlement obligor, and any other party (including third party beneficiaries) entitled to invoke the benefit of a contractual assignment restriction. However, a protected party could only waive those rights that he or she was allowed to waive under the act and could not waive the requirements of the act. Furthermore, a contractual assignment restriction could only be waived in writing.

The transferee of a structured settlement payment would be required to obtain and file signed originals with the court of the consents and waivers of all of the protected parties (including the annuity issuer and structured settlement obligor). The transferee would also have to provide signed originals of the consents and waivers to the annuity issuer and the structured settlement obligor and provide copies of the consents and waivers to any protected party who requested them.

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.