

REPRINT

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5066**

(As Passed the Senate November 14, 2000)

A bill to establish conditions to the transfer of structured settlement rights; to establish a procedure for approval of the transfer of structured settlement rights; and to create circuit court jurisdiction for proceedings for approval of structured settlement rights.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "structured settlement protection act".

3 Sec. 2. As used in this act:

4 (a) "Annuity issuer" means an insurer that has issued an
5 annuity contract used to fund periodic payments under a struc-
6 tured settlement.

7 (b) "Applicable law" means 1 or more of the following:

8 (i) The federal laws of the United States.

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1 (ii) The laws of this state, including principles of equity
2 applied in the courts of this state.

3 (iii) The laws of any other jurisdiction to which 1 or more
4 of the following apply:

5 (A) The jurisdiction is the domicile of the payee.

6 (B) A settled claim was pending in a court in the jurisdic-
7 tion when a structured settlement was reached.

8 (c) "Contractual assignment restriction" means a term pro-
9 hibiting or restricting transfer of a structured settlement pay-
10 ments right in a contract or agreement including, but not limited
11 to, an annuity contract, a structured settlement agreement, a
12 qualified assignment agreement, or a court order or administra-
13 tive order approving a structured settlement.

14 (d) "Dependent" includes a payee's spouse, minor child, or
15 other person for whom the payee is legally obligated to provide
16 alimony or other support.

17 (e) "Discounted present value" means, with respect to a pro-
18 posed transfer of structured settlement payment rights, the fair
19 value of future payments, as determined by discounting the pay-
20 ments to the present using the most recently published applicable
21 federal rate for determining the present value of an annuity
22 issued by the United States internal revenue service.

23 (f) "Independent professional advice" means advice of an
24 attorney, certified public accountant,
25 or other professional who meets all of the following con-
26 cerning a transfer of a structured settlement payment right:

1 (i) He or she is qualified to advise payees and their
2 dependents on the legal, tax, and financial implications of the
3 structured settlement payment right.

4 (ii) He or she is not affiliated in any manner with the
5 transferee of the structured settlement payment right.

6 (iii) His or her compensation for rendering the advice does
7 not depend, directly or indirectly, on whether the transfer of
8 the structured settlement payment right occurs.

9 (g) "Payee" means an individual who is receiving tax-free
10 damages payments under a structured settlement and proposes to
11 make a transfer of his or her payment rights under the structured
12 settlement.

13 (h) "Protected party" means, with respect to a structured
14 settlement, the payee, a dependent of the payee, a beneficiary
15 designated to receive payments following the payee's death, an
16 annuity issuer, a structured settlement obligor, and any other
17 party entitled to invoke the benefit of a contractual assignment
18 restriction applicable to the structured settlement, whether as a
19 party to or third party beneficiary of the annuity contract, the
20 structured settlement agreement, the qualified assignment agree-
21 ment, or the court order, administrative order, or other document
22 in which the contractual assignment restriction appears.

23 (i) "Qualified assignment agreement" means an agreement pro-
24 viding for a qualified assignment within the meaning of section
25 130 of the internal revenue code of 1986.

26 (j) "Settled claim" means the original tort claim resolved
27 by a structured settlement.

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1 (k) "Structured settlement" means an arrangement for
2 periodic payment of damages for personal injuries established by
3 settlement or judgment in resolution of a tort claim. Structured
4 settlement does not include an arrangement for periodic payments
5 in settlement of a worker's compensation claim.

6 (l) "Structured settlement agreement" means the agreement,
7 judgment, stipulation, or release establishing the right of the
8 payee to receive periodic payments and other terms of a struc-
9 tured settlement.

10 (m) "Structured settlement obligor" means, with respect to
11 any structured settlement, the party that has the continuing
12 periodic payment obligation to the payee under a structured set-
13 tlement agreement or a qualified assignment agreement.

14 (n) "Structured settlement payment right" means a right to
15 receive periodic payments including, but not limited to, lump sum
16 payments under a structured settlement from the settlement obli-
17 gor or the annuity issuer, where 1 or more of the following
18 apply:

19 (i) The payee or a protected party is a resident of this
20 state.

21 (ii) The settled claim was pending before a court of this
22 state when the structured settlement was reached.

23 (o) "Transfer" means a sale, transfer, assignment, pledge,
24 hypothecation, or other form of disposition, alienation, or
25 encumbrance made for consideration.

26 (p) "Transfer agreement" means an agreement providing for
27 transfer of a structured settlement payment right from a payee.

1 Sec. 3. (1) If a structured settlement payment right is
2 subject to a contractual assignment restriction, a transfer of
3 the structured settlement payment right is not effective and a
4 structured settlement obligor or annuity issuer is not required
5 to make payment directly or indirectly to a transferee of the
6 structured settlement payment right transfer unless all of the
7 following conditions are satisfied:

8 (a) Subject to section 4, a court of competent jurisdiction
9 approves the transfer in advance in a final order. To approve
10 the transfer, the court must expressly find all of the
11 following:

12 (i) The transfer complies with the requirements of this act
13 and will not contravene other applicable law.

14 (ii) Not less than 10 days before the date on which the
15 payee entered into the transfer agreement, the transferee has
16 provided to the payee and each dependent of the payee a disclo-
17 sure statement in boldfaced type not smaller than 14-point that
18 contains all of the following:

19 (A) The amounts and due dates of the structured settlement
20 payments to be transferred.

21 (B) The aggregate amount of the structured settlement pay-
22 ments to be transferred.

23 (C) The discounted present value of the structured settle-
24 ment payments to be transferred and the discount rate or rates
25 used in determining the discounted present value.

26 (D) The gross amount payable to the payee in exchange for
27 the structured settlement payments to be transferred.

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1 (E) An itemized listing of all brokers' commissions, service
2 charges, application or processing fees, closing costs, filing or
3 administrative charges, legal fees, notary fees and other commis-
4 sions, fees, costs, expenses, and charges payable by the payee or
5 deductible from the gross amount payable to the payee in exchange
6 for the structured settlement payments to be transferred.

7 (F) The net amount payable to the payee after deduction of
8 all commissions, fees, costs, expenses, and charges described in
9 sub-subparagraph (E).

10 (G) The quotient, expressed as a percentage, obtained by
11 dividing the net payment amount described in sub-subparagraph (F)
12 by the discounted present value of the payments described in
13 sub-subparagraph (C).

14 (H) The amount of any penalty and the aggregate amount of
15 any liquidated damages and penalties payable by the payee in the
16 event of any breach of the transfer agreement by the payee.

17 (iii) The payee has established that the transfer is neces-
18 sary to enable the payee or the payee's dependents, or both, to
19 avoid imminent financial hardship and the transfer is not
20 expected to subject the payee or the payee's dependents, or both,
21 to undue financial hardship in the future.

22 (iv) The payee has received independent professional advice
23 regarding the financial and legal effects and consequences of the
24 transfer.

25 (v) The transferee has given written notice of the
26 transferee's name, address, and taxpayer identification number to

1 the annuity issuer and the structured settlement obligor and has
2 filed a copy of the notice with the court.

3 (vi) The discount rate or rates used in determining the dis-
4 counted present value of the structured settlement payments to be
5 transferred do not exceed 25% per year.

6 (b) Each protected party has given all of the following in
7 writing:

8 (i) The protected party's irrevocable consent to the
9 transfer.

10 (ii) The protected party's waiver of all rights under each
11 contractual transfer restriction applicable to it.

12 (iii) The protected party's waiver of all rights with
13 respect to the transferred payments.

14 (iv) The protected party's release of all claims against
15 other protected parties with respect to the transferred struc-
16 tured settlement payments.

17 (2) The transferee of the structured settlement payment is
18 responsible for all of the following before the hearing on an
19 application for court approval under subsection (1)(a):

20 (a) Obtaining all consents, waivers, and releases required
21 under subsection (1)(b).

22 (b) Filing signed originals of all consents, waivers, and
23 releases required under subsection (1)(b) with the court from
24 which approval of the transfer is sought under subsection
25 (1)(a).

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1 (c) Providing signed originals of all consents, waivers, and
2 releases required under subsection (1)(b) to the annuity issuer
3 and the structured settlement obligor.

4 (d) Providing copies of all consents, waivers, and releases
5 required under subsection (1)(b) to any protected party that
6 requests copies.

7 Sec. 4. The circuit court has subject matter jurisdiction
8 for an application for court approval under section 3(1)(a) of a
9 transfer of a structured settlement payment right. Not less than
10 21 days before the scheduled hearing on an application for court
11 approval of a transfer of a structured settlement payment right
12 under section 3(1)(a), the transferee must file with the circuit
13 court and serve on all protected parties all of the following:

14 (a) Notice of the proposed transfer and application for
15 court approval.

16 (b) A copy of the transferee's application to the circuit
17 court.

18 (c) A copy of the transfer agreement.

19 (d) A copy of the disclosure statement required under sec-
20 tion 3(1)(a).

21 (e) Notification that any interested party is entitled to
22 support, oppose, or otherwise respond to the transferee's appli-
23 cation, either in person or by counsel, by submitting written
24 comments to the court or by participating in the hearing, or
25 both.

26 (f) Notice of the time and place of the hearing.

1 (g) Notification of the manner in which and the time by
2 which written responses to the application must be filed, which
3 shall be not less than 10 days after service of the transferee's
4 notice, in order to be considered by the court.

5 Sec. 5. (1) A protected party may not waive the require-
6 ments of this act.

7 (2) A protected party may only waive a contractual assign-
8 ment restriction in writing.

9 Sec. 6. This act shall not be construed to authorize any
10 transfer of a structured settlement payment right in contraven-
11 tion of applicable law or to give effect to any transfer of a
12 structured settlement payment right that is void under applicable
13 law.

14 Sec. 7. This act applies to each transfer of a structured
15 settlement payment right under a transfer agreement reached on or
16 after the thirty-first day after the effective date of this act.
17 This act does not affect the enforceability of a transfer agree-
18 ment reached before the date this act applies, the effectiveness
19 of a transfer under a transfer agreement reached before the date
20 this act applies, or the enforceability of an obligation to make
21 payment to a transferee under a transfer agreement reached before
22 the date this act applies.