Legislative Analysis

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TRANSFERS OF STRUCTURED SETTLEMENTS

House Bill 6309
Sponsor: Rep. Randy Richardville
Committee: Insurance

Complete to 11-8-04

A SUMMARY OF HOUSE BILL 6309 AS INTRODUCED 11-4-04

The bill would create a new act entitled "The Revised Structured Settlement Protection Act." The existing act on structured settlements (Public Act 330 of 2000) would be repealed 30 days after the new law took effect. The current act establishes conditions for the transfer of rights to payments made under a structured settlement agreement. The new act would address the same topic. The new act would apply to a transfer of payment rights under a transfer agreement entered into on or after the 30th day after the new act's effective date.

The term "structured settlement", generally speaking, describes the settlement of a tort claim through a series of installment payments rather than through a lump-sum payment. Neither the current act nor the proposed replacement would apply to periodic payments to settle a worker's compensation claim.

The transfers addressed by the bill allow an individual to receive a lump sum payment at a discounted rate for the transfer of the future rights to the structured settlement payments. The transfers involve 1) the individual receiving tax free payments under a structured settlement who proposes to transfer the rights to the payments — known as the "payee", and 2) the person acquiring the payment rights — known as "the transferee".

<u>Disclosure statement.</u> Not less than three days before the date on which a payee signs a transfer agreement, the transferee must provide the payee a separate disclosure statement in bold type no smaller than 14 points setting forth all of the following:

** The amounts and due dates of the payments to be transferred.

** The aggregate amount of the payments.

** The discounted present value of the payments being transferred, which would be identified as the calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities and the amount of the applicable federal rate used in calculating the discounted present value.

** The gross advance amount (defined as the sum payable to the payee or payee's account as consideration for a transfer of payments rights before reduction for transfer expenses and other deductions).

** An itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of the fees and disbursements.

** The net advance amount (which would be the gross advance payment minus the deductions cited in the paragraph above).

** The amount of penalties or liquidated damages payable by the payee to be paid if the payee breached the transfer agreement.

** A statement that the payee has the right to cancel the transfer agreement without penalty or further obligation not later than the third business day after the date the payee signed the agreement.

<u>Order by Court or Responsible Administrative Authority.</u> A direct or indirect transfer of structured settlement payment rights would not be effective, and payments would not have to made to a transferee, unless the transfer had been approved in a final court order or in the order of a responsible administrative authority. The order would have to be based on express findings of all of the following: that the transfer was in the best interest of the payee, taking into account the welfare and support of the payee's dependents; the transferee advised the payee in writing to seek independent professional advice and the payee has either received advice or waived the opportunity in writing; the transfer did not contravene an applicable statute or order of the court or other government authority; and the discount rate used to determine discounted present value of the payments to be transferred did not exceed 25 percent per year.

<u>Effects of Transfer.</u> A transfer of payment rights would have the following effects: 1) the obligor and annuity issuer (those making the payments) would be discharged and released from liability for transferred payments as to any person other than the transferee; 2) if the transfer contravened the terms of the structured settlement, the transferee would be liable to the obligor and annuity issuer for taxes incurred as a consequence, as well as other liabilities and costs; 3) an annuity issuer or settlement obligor would not be required to divided a periodic payment between a payee and a transferee or assignee or between two or more transferees and assignees; and 4) a payee could make a further transfer only after complying with the new act.

<u>Transfer Approval Procedure.</u> The transferee could apply for approval of a transfer of payment rights with the court or responsible administrative authority in the county in which the payee resided, the county in which the obligor or annuity issuer maintained its principal place of business, or with the court or authority that had approved the original structured settlement agreement.

At least 20 days before the scheduled hearing on a transfer, the transferee would have to file a notice of the proposed transfer and an application for authorization of the transfer with the court or responsible authority (and serve them on all interested parties). The notice would have to include a copy of the transferee's application; a copy of the transfer agreement; a copy of the required disclosure statement; a listing of each of the payee's dependents, along with their ages; notice that an interested party was entitled to support, oppose, or otherwise respond to the application, either in person or by counsel, by submitting written comments to the court or authority, or by appearing at the hearing; and notice of the time and place of the hearing, as well as the manner in which and the time by which written responses would have to be filed. The time for filing responses could not be less than 15 days after the service of the notice.

Limitations on Transfers. The following limitations and rules of construction would apply to transfers in the new act.

** A payee could not waive a provision of the act.

** The transfer agreement entered into by a payee residing in Michigan would have to provide that disputes under the agreement, including claims that the payee had breached the agreement, would be determined in and under the laws of Michigan.

** A transfer of payment rights would not extend to payments that were life-contingent unless, before the payee signed the agreement, the transferee had established and agreed to maintain procedures reasonably satisfactory to the annuity issuer and the settlement obligor 1) periodically confirming the payee's survival and 2) giving the issuer and obligor prompt written notice of the payee's death.

** A payee who proposed to make a transfer of rights would not incur a penalty, forfeit an application fee or other payment, or otherwise incur liability to the proposed transferee or assignee based on the failure of the transfer to satisfy the conditions of the act.

** The new act would not authorize a transfer of payment rights in contravention of law or validate or invalidate a transfer agreement entered into prior to the new act's effective date.

** The transferee would have sole responsibility for complying with the act's disclosure statement requirements and conditions for obtaining approval of a transfer. A settlement obligor or annuity issuer would not be responsible or liable for a transferee's failure to comply with those requirements or to fulfill those conditions.

FISCAL IMPACT:

There is no fiscal impact on the Department of Labor and Economic Growth, or any other State of Michigan government entity.

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■ 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.