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BILL



ANALYSIS

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Senate Bill 541 (as introduced 5-25-05)
Sponsor: Senator Alan Sanborn
Committee: Judiciary

Date Completed: 11-29-05

CONTENT

The bill would enact the "Revised Structured Settlement Protection Act" and repeal the Structured Settlement Protection Act (which governs the transfer of the right to receive periodic payments of damages for personal injuries established by settlement or judgment). The bill would do the following:

- Provide that a transfer of structured settlement payment rights would not be effective unless the transfer had been approved in a final court order or order of a responsible administrative authority.**
- Require a transfer to be in the best interest of the person receiving payments under the structured settlement (the payee).**
- Require the transferee to have advised the payee to seek independent professional advice regarding the transfer.**
- Require the transferee to give a payee a disclosure statement, including the discounted present value of the payments to be transferred, at least three days before the payee signed a transfer agreement.**
- Require the transferee to file certain documents with the court or responsible administrative authority and serve them on all interested parties before the hearing on the approval of the transfer.**
- Require the filed documents to include notice that an interested party could support, oppose, or otherwise respond to the application.**

Overview of Current Act

Under the Structured Settlement Protection Act, if a person is entitled to receive periodic payments of damages for personal injuries, under a court judgment or settlement, the person (payee) may not sell, assign, or otherwise dispose of the right to receive the payments without court approval, if the transfer is prohibited or restricted in a contract or other agreement. The court may not give its approval unless it finds that the transfer is necessary for the payee and/or his or her dependents to avoid imminent financial hardship, and that the payee received independent professional advice regarding the financial and legal effects of the transfer. In addition, each "protected party" (the payee, his or her dependents and beneficiaries, an annuity issuer, the party obligated to make the payments, and any party entitled to invoke the contractual restriction on the transfer) must give the party's irrevocable consent to the transfer.

Definitions

The bill would define "structured settlement" as an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment to resolve a tort claim. The term would not include an arrangement for periodic payments to settle a worker's compensation claim.

"Structured settlement payment rights" would mean rights to receive periodic payments under a structured settlement, whether from the structured settlement

obligor or the annuity issuer, if one or more of the following conditions exist:

- The payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity insurer is located, in this State.
- The structured settlement agreement was approved by a court or responsible administrative authority in this State.
- The structured settlement agreement is expressly governed by the laws of this State.

"Structured settlement agreement" would mean an agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

"Payee" would mean the individual who receives tax free payments under a structured settlement and who proposes to make a transfer of payment rights under the structured settlement. "Structured settlement obligor" would mean a person that has a continuing obligation to make periodic payments to a payee under the structured settlement agreement or a qualified assignment agreement (an agreement providing for a qualified assignment as defined in a section of the Internal Revenue Code). An "annuity issuer" would be an insurer that has issued a contract to fund periodic payments under a structured settlement.

"Responsible administrative authority" would mean a government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

"Transfer" would mean a sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights a payee makes for consideration. The term would not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, unless action had been taken to redirect the payments to the institution, or otherwise to enforce the blanket security interest against the structured settlement payment rights.

Disclosure Statement

Under the bill, at least three days before the date on which a payee signed a transfer agreement, the transferee would have to give the payee a separate disclosure statement in at least 14-point bold type, setting forth all of the following:

- The amount and due dates of the structured settlement payments to be transferred.
- The aggregate amount of the payments.
- The discounted present value of the payments to be transferred, which would have to be identified as the calculation of current value of the transferred 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.
- The net advance amount.
- The amount of penalties or liquidated damages payable by the payee if he or she breached the transfer agreement.
- 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.
- A statement of the payee's right to cancel the transfer agreement without penalty or further obligation by the third business day after the date he or she signed the agreement.

("Discounted present value" would mean the present value of future payments determined by discounting the payments to the present using the most recently published applicable Federal rate for determining the present value of an annuity, as issued by the Internal Revenue Service. "Gross advance value" would mean the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before reduction in that sum for transfer expenses or other deductions. "Net advance amount" would mean the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed.

"Transfer expenses" would mean all expenses of a transfer that the transfer agreement required the payee to pay or have deducted from the gross advance amount, including court filing fees, attorney fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary. Transfer expenses would not include preexisting obligations of the payee that were payable for his or her account from the proceeds of a transfer.)

Application for Approval

A transferee could apply for approval of a transfer of structured settlement payment rights with the court or responsible administrative authority in the county in which the payee resided or in which the structured settlement obligor or the annuity issuer maintained its principal place of business, or with the court or responsible administrative authority that approved the structured settlement agreement.

At least 20 days before the scheduled hearing on the application, the transferee would have to file with the court or responsible administrative authority, and serve on all interested parties, a notice of the proposed transfer and the application for its authorization, and include all of the following with the notice:

- A copy of the transferee's application.
- A copy of the transfer agreement.
- A copy of the disclosure statement.
- A listing of each of the payee's dependents and each dependent's age.
- Notice that any interested party would be entitled to support, oppose, or otherwise respond to the application, in person or by counsel, by submitting written comments to the court or administrative authority or by participating in the hearing.
- Notice of the time and place of the hearing and of the manner in which and the time by which written responses would have to be filed to be considered by the court or administrative authority.

The time for filing written responses would have to be at least 15 days after service of the notice.

("Interested party" would mean the payee, a beneficiary irrevocably designated under an annuity contract to receive payments following the payee's death, an annuity issuer, a structured settlement obligor, or any other person with continuing rights or obligations under the structured settlement.)

Approval of Transfer

A direct or indirect transfer of structured settlement payment rights would not be effective, and a structured settlement obligor or annuity issuer would not be required to make a payment directly or indirectly to a transferee of structured settlement payment rights, unless the transfer had been approved in a final court order or order of a responsible administrative authority. The order would have to be based on express findings of all of the following:

- The transfer was in the payee's best interest, taking into account the welfare and support of his or her dependents.
- The transferee had advised the payee, in writing, to seek independent professional advice regarding the transfer, and the payee had received advice or knowingly waived in writing the opportunity to seek advice.
- The transfer did not contravene an applicable statute or order of the court or other governmental authority.
- The discount rate or rates used in determining the discounted present value of the structured settlement payments to be transferred did not exceed 25% per year.

("Independent professional advice" would mean advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.)

Effects of Transfer

A transfer of structured settlement payment rights would have the effect of discharging and releasing the structured settlement obligor and the annuity issuer from all liability for the transferred payments as to any person except the transferee.

The transferee would be liable to the obligor and annuity issuer for the taxes they incurred as a consequence of the transfer if it contravened the terms of the structured

settlement. The transferee also would be liable to the obligor and annuity issuer for other liabilities or costs, including reasonable costs and attorney fees, arising from the obligor's and annuity issuer's compliance with the order of the court or responsible administrative authority or from the transferee's failure to comply with the proposed Act.

An annuity issuer or a structured settlement obligor would not be required to divide a periodic payment between the payee and a transferee or assignee or between two or more transferees or assignees.

A payee could make a further transfer of structured settlement payment rights only after complying with all of the requirements of the Act.

Other Provisions

A payee could not waive a provision of the proposed Act.

A transfer agreement entered into on or after the Act's effective date by a payee residing in this State would have to provide that disputes under the agreement, including a claim that the payee had breached the agreement, would be determined in and under the laws of Michigan. A transfer agreement could not authorize the transferee or any other person to confess judgment or consent to entry or judgment against the payee.

A transfer of structured settlement payment rights that were life-contingent would not be effective unless, before the payee signed the transfer agreement, the transferee had established and agreed to maintain procedures reasonably satisfactory to the structured settlement obligor and the annuity issuer for periodically confirming the payee's survival, and for giving the obligor and the annuity issuer prompt notice in the event of the payee's death.

A payee who proposed to make a transfer of structured settlement payment rights could 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 proposed Act.

A transferee would have sole responsibility for complying with the requirements for a disclosure statement and fulfilling the conditions for approval of the transfer. A structured 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.

The proposed Act would not authorize a transfer of structured settlement payment rights in contravention of law or validate or invalidate a transfer under an agreement entered into before the Act's effective date.

Application of Act

The proposed Act would apply to a transfer of structured settlement payment rights under an agreement entered into on or after the 30th day following the Act's effective date.

The existing Act would be repealed effective 30 days after the effective date of the proposed Act.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have a minimal impact on local courts regarding the process for approving the transfer of structured settlement payment rights. The terms laid out in the bill pertain primarily to the requirements of the parties.

Fiscal Analyst: Stephanie Yu

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.