

# SENATE BILL No. 541

May 26, 2005, Introduced by Senators SANBORN, CROPSEY, PATTERSON, SCHAUER, BERNERO and BRATER and referred to the Committee on Judiciary.

A bill to regulate the transfer of structured settlement rights; to place conditions on the transfer of structured settlement rights; to establish a procedure for approval of transfer of structured settlement rights; and to repeal acts and parts of acts.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3       Sec. 2. As used in this act:

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

6       (b) "Dependent" means a payee's spouse, minor child, or any  
7       other person for whom the payee is legally obligated to provide

1 support, including alimony.

2 (c) "Discounted present value" means the present value of  
3 future payments determined by discounting the payments to the  
4 present using the most recently published applicable federal rate  
5 for determining the present value of an annuity, as issued by the  
6 internal revenue service.

7 (d) "Gross advance amount" means the sum payable to the payee  
8 or for the payee's account as consideration for a transfer of  
9 structured settlement payment rights before reduction in that sum  
10 for transfer expenses or other deductions.

11 (e) "Independent professional advice" means advice of an  
12 attorney, certified public accountant, actuary, or other licensed  
13 professional adviser.

14 (f) "Interested party" means, with respect to a structured  
15 settlement, the payee, a beneficiary irrevocably designated under  
16 an annuity contract to receive payments following the payee's  
17 death, an annuity issuer, a structured settlement obligor, or any  
18 other person that has continuing rights or obligations under the  
19 structured settlement.

20 (g) "Net advance amount" means the gross advance amount less  
21 the aggregate amount of the actual and estimated transfer expenses  
22 required to be disclosed under section 3(e).

23 (h) "Payee" means an individual who receives tax free payments  
24 under a structured settlement and who proposes to make a transfer  
25 of payment rights under the structured settlement.

26 (i) "Periodic payments" means both recurring payments and  
27 scheduled future lump sum payments.

1 (j) "Qualified assignment agreement" means an agreement  
2 providing for a qualified assignment as defined in section 130 of  
3 the internal revenue code, 26 USC 130.

4 (k) "Responsible administrative authority" means, with respect  
5 to a structured settlement, a government authority vested by law  
6 with exclusive jurisdiction over the settled claim resolved by the  
7 structured settlement.

8 (l) "Settled claim" means the original tort claim resolved by a  
9 structured settlement.

10 (m) "Structured settlement" means an arrangement for periodic  
11 payment of damages for personal injuries or sickness established by  
12 settlement or judgment to resolve a tort claim. Structured  
13 settlement does not include an arrangement for periodic payments to  
14 settle a worker's compensation claim.

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

18 (o) "Structured settlement obligor" means, with respect to a  
19 structured settlement, a person that has a continuing obligation to  
20 make periodic payments to a payee under the structured settlement  
21 agreement or a qualified assignment agreement.

22 (p) "Structured settlement payment rights" means rights to  
23 receive periodic payments under a structured settlement, whether  
24 from the structured settlement obligor or the annuity issuer, if 1  
25 or more of the following conditions exist:

26 (i) The payee is domiciled in, or the domicile or principal  
27 place of business of the structured settlement obligor or the

1 annuity issuer is located in, this state.

2 (ii) The structured settlement agreement was approved by a  
3 court or responsible administrative authority in this state.

4 (iii) The structured settlement agreement is expressly governed  
5 by the laws of this state.

6 (q) "Terms of the structured settlement" means, with respect  
7 to a structured settlement, the terms of the structured settlement  
8 agreement, an annuity contract, a qualified assignment agreement,  
9 or an order or other approval of a court or responsible  
10 administrative authority that authorized or approved the structured  
11 settlement.

12 (r) "Transfer" means a sale, assignment, pledge,  
13 hypothecation, or other alienation or encumbrance of structured  
14 settlement payment rights a payee makes for consideration; except  
15 that "transfer" does not include the creation or perfection of a  
16 security interest in structured settlement payment rights under a  
17 blanket security agreement entered into with an insured depository  
18 institution, unless action has been taken to redirect the  
19 structured settlement payments to the insured depository  
20 institution or to an agent or successor in interest of the  
21 depository institution, or action has been taken to otherwise  
22 enforce the blanket security interest against the structured  
23 settlement payment rights.

24 (s) "Transfer agreement" means an agreement providing for a  
25 transfer of structured settlement payment rights.

26 (t) "Transfer expenses" means all expenses of a transfer that  
27 the transfer agreement requires the payee to pay or have deducted

1 from the gross advance amount, including, but not limited to, court  
2 filing fees, attorney fees, escrow fees, lien recordation fees,  
3 judgment and lien search fees, finders' fees, commissions, and  
4 other payments to a broker or other intermediary. Transfer expenses  
5 do not include preexisting obligations of the payee that are  
6 payable for the payee's account from the proceeds of a transfer.

7 (u) "Transferee" means a person acquiring or proposing to  
8 acquire structured settlement payment rights through a transfer.

9 Sec. 3. Not less than 3 days before the date on which a payee  
10 signs a transfer agreement, the transferee shall provide to the  
11 payee a separate disclosure statement in bold type no smaller than  
12 14 points setting forth all of the following:

13 (a) The amounts and due dates of the structured settlement  
14 payments to be transferred.

15 (b) The aggregate amount of the payments.

16 (c) The discounted present value of the payments to be  
17 transferred, which shall be identified as the calculation of  
18 current value of the transferred structured settlement payments  
19 under federal standards for valuing annuities, and the amount of  
20 the applicable federal rate used in calculating the discounted  
21 present value.

22 (d) The gross advance amount.

23 (e) An itemized listing of all applicable transfer expenses,  
24 other than attorney fees and related disbursements payable in  
25 connection with the transferee's application for approval of the  
26 transfer, and the transferee's best estimate of the amount of the  
27 fees and disbursements.

1 (f) The net advance amount.

2 (g) The amount of penalties or liquidated damages payable by  
3 the payee if the payee breaches the transfer agreement.

4 (h) A statement that the payee has the right to cancel the  
5 transfer agreement without penalty or further obligation not later  
6 than the third business day after the date that the payee signs the  
7 agreement.

8 Sec. 4. A direct or indirect transfer of structured settlement  
9 payment rights is not effective and a structured settlement obligor  
10 or annuity issuer is not required to make a payment directly or  
11 indirectly to a transferee of structured settlement payment rights  
12 unless the transfer has been approved in a final court order or  
13 order of a responsible administrative authority and the order is  
14 based on express findings of all of the following:

15 (a) The transfer is in the best interest of the payee, taking  
16 into account the welfare and support of the payee's dependents.

17 (b) The transferee has advised the payee, in writing, to seek  
18 independent professional advice regarding the transfer, and the  
19 payee has either received independent professional advice or  
20 knowingly waived in writing the opportunity to seek advice.

21 (c) The transfer does not contravene an applicable statute or  
22 order of the court or other government authority.

23 (d) The discount rate or rates used in determining the  
24 discounted present value of the structured settlement payments to  
25 be transferred do not exceed 25% per year.

26 Sec. 5. A transfer of structured settlement payment rights  
27 under this act has all of the following effects:

1 (a) The structured settlement obligor and the annuity issuer  
2 are discharged and released from all liability for the transferred  
3 payments as to any person except the transferee.

4 (b) The transferee is liable to the structured settlement  
5 obligor and the annuity issuer for both of the following:

6 (i) If the transfer contravenes the terms of the structured  
7 settlement, the taxes incurred by the structured settlement obligor  
8 and the annuity issuer as a consequence of the transfer.

9 (ii) Other liabilities or costs, including reasonable costs and  
10 attorney fees, arising from the structured settlement obligor's and  
11 the annuity issuer's compliance with the order of the court or  
12 responsible administrative authority or from the transferee's  
13 failure to comply with this act.

14 (c) An annuity issuer or a structured settlement obligor is  
15 not required to divide a periodic payment between the payee and a  
16 transferee or assignee or between 2 or more transferees or  
17 assignees.

18 (d) A payee may make a further transfer of structured  
19 settlement payment rights only after complying with all of the  
20 requirements of this act.

21 Sec. 6. (1) The transferee may apply for approval of a  
22 transfer of structured settlement payment rights with the court or  
23 responsible administrative authority in the county in which the  
24 payee resides, in the county in which the structured settlement  
25 obligor or the annuity issuer maintains its principal place of  
26 business, or with the court or responsible administrative authority  
27 that approved the structured settlement agreement.

1           (2) Not less than 20 days before the scheduled hearing on an  
2 application for approval of a transfer of structured settlement  
3 payment rights under section 4, the transferee shall file with the  
4 court or responsible administrative authority and serve on all  
5 interested parties a notice of the proposed transfer and the  
6 application for its authorization, and shall include with the  
7 notice all of the following:

8           (a) A copy of the transferee's application.

9           (b) A copy of the transfer agreement.

10          (c) A copy of the disclosure statement required under section  
11 3.

12          (d) A listing of each of the payee's dependents and each  
13 dependent's age.

14          (e) Notice that any interested party is entitled to support,  
15 oppose, or otherwise respond to the transferee's application,  
16 either in person or by counsel, by submitting written comments to  
17 the court or responsible administrative authority or by  
18 participating in the hearing.

19          (f) Notice of the time and place of the hearing and of the  
20 manner in which and the time by which written responses to the  
21 application must be filed to be considered by the court or  
22 responsible administrative authority. The time for filing written  
23 responses shall be not less than 15 days after service of the  
24 transferee's notice.

25          Sec. 7. (1) A payee shall not waive a provision of this act.

26          (2) A transfer agreement entered into on or after the  
27 effective date of this act by a payee who resides in this state



1 shall provide that disputes under the transfer agreement, including  
2 a claim that the payee has breached the agreement, shall be  
3 determined in and under the laws of this state. A transfer  
4 agreement shall not authorize the transferee or any other person to  
5 confess judgment or consent to entry of judgment against the payee.

6 (3) A transfer of structured settlement payment rights that  
7 are life-contingent is not effective unless, before the date on  
8 which the payee signs the transfer agreement, the transferee has  
9 established and has agreed to maintain procedures reasonably  
10 satisfactory to the annuity issuer and the structured settlement  
11 obligor for both of the following:

12 (a) Periodically confirming the payee's survival.

13 (b) Giving the annuity issuer and the structured settlement  
14 obligor prompt written notice in the event of the payee's death.

15 (4) A payee who proposes to make a transfer of structured  
16 settlement payment rights shall not incur a penalty, forfeit an  
17 application fee or other payment, or otherwise incur liability to  
18 the proposed transferee or assignee based on the failure of the  
19 transfer to satisfy the conditions of this act.

20 (5) This act does not authorize a transfer of structured  
21 settlement payment rights in contravention of law or validate or  
22 invalidate a transfer under a transfer agreement entered into  
23 before the effective date of this act.

24 (6) The transferee has sole responsibility for complying with  
25 the requirements in section 3 and fulfilling the conditions in  
26 section 4 in a transfer of structured settlement payment rights. A  
27 structured settlement obligor or annuity issuer is not responsible

1 or liable for a transferee's failure to comply with those  
2 requirements or to fulfill those conditions.

3       Sec. 8. This act applies to a transfer of structured  
4 settlement payment rights under a transfer agreement entered into  
5 on or after the thirtieth day after the effective date of this act.

6       Enacting section 1. The structured settlement protection act,  
7 2000 PA 330, MCL 691.1191 to 691.1197, is repealed effective 30  
8 days after the effective date of this act.