

SENATE BILL NO. 122

INTRODUCED BY WHEAT

BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE TRANSFER OF A BENEFICIARY'S
6 STRUCTURED SETTLEMENT PAYMENT RIGHTS; REQUIRING DISCLOSURE AND APPROVAL OF A
7 COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY PRIOR TO TRANSFER; OUTLINING
8 OBLIGATIONS AFTER A TRANSFER; PLACING A CONDITION ON ADDITIONAL TRANSFERS; PROVIDING
9 FOR JURISDICTION AND NOTICE; PROHIBITING WAIVER OF PROVISIONS; PROVIDING CONDITIONS
10 FOR CONTINGENT PAYMENTS; ASSIGNING RESPONSIBILITY FOR COMPLIANCE; AND PROVIDING AN
11 APPLICABILITY DATE."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Structured
16 Settlement Protection Act".

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18 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12], unless the context requires
19 otherwise, the following definitions apply:

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

22 (2) ~~(a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase~~
23 ~~of intangible property.~~

24 ~~_____ (b) Consideration does not include:~~

25 ~~_____ (i) the purchase of goods or services furnished at cost that are used in making sales and that are not~~
26 ~~for resale; or~~

27 ~~_____ (ii) a participant's time and effort expended in the pursuit of a structured settlement payment transfer~~
28 HAS THE MEANING PROVIDED IN 28-2-801.

29 (3) "Dependent" means a payee's spouse, a minor child of the payee, or any person for whom the payee
30 is legally obligated to provide support, including ~~alimony~~ SPOUSAL MAINTENANCE.

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

4 (5) "Gross advance amount" means the sum payable to the payee or to the payee's account as
5 consideration for a transfer of a structured settlement payment right before any reduction for a transfer expense
6 or any other deduction is made from the sum.

7 (6) "Independent professional advice" means advice of an attorney, a certified public accountant, an
8 actuary, or any licensed professional financial adviser.

9 (7) "Interested party" means, with respect to a structured settlement, the payee, any beneficiary
10 irrevocably designated under the annuity contract to receive a payment after the payee's death, the annuity
11 issuer, the structured settlement obligor, or any other party that has a continuing right or obligation under the
12 structured settlement.

13 (8) "Net advance amount" means the gross advance amount minus the aggregate amount of the actual
14 and estimated transfer expenses required to be disclosed under [section 3(5)].

15 (9) "Payee" means an individual who is receiving tax-free payments under a structured settlement and
16 proposes to make a transfer of the payment rights.

17 (10) "Periodic payment" includes both a recurring payment and any scheduled future lump-sum
18 payments.

19 (11) "Qualified assignment agreement" means an agreement providing for a qualified assignment ~~within~~
20 ~~the meaning of section 130 of the Internal Revenue Code, 26 U.S.C. 130, and its amendments through [the~~
21 ~~effective date of this act], AS DEFINED FOR FEDERAL TAX PURPOSES, OF THE LIABILITY TO MAKE PERIODIC PAYMENTS~~
22 UNDER A STRUCTURED SETTLEMENT.

23 (12) "Responsible administrative authority" means, with respect to a structured settlement, any
24 government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured
25 settlement.

26 (13) "Settled claim" means the original tort claim.

27 (14) "Structured settlement" means an arrangement for periodic payment of damages for personal
28 injuries or sickness established by settlement or judgment in resolution of a tort claim.

29 (15) "Structured settlement agreement" means the written agreement, judgment, stipulation, or release
30 embodying the terms of a structured settlement.

1 (16) "Structured settlement obligor" means, with respect to a structured settlement, the party that has
2 the continuing obligation to make periodic payments to the payee under a structured settlement agreement or
3 a qualified assignment agreement.

4 (17) "Structured settlement payment right" means the right to receive ~~period~~ PERIODIC payments under
5 a structured settlement, whether from the structured settlement obligor or the annuity issuer, when:

6 (a) (i) the payee is domiciled in this state; or

7 (ii) the domicile or principal place of business of the structured settlement obligor or the annuity issuer
8 is located in this state;

9 (b) a court or responsible administrative authority in this state approved the structured settlement
10 agreement; or

11 (c) the structured settlement agreement is expressly governed by the laws of this state.

12 (18) "Terms of the structured settlement" means, with respect to a structured settlement, the terms of
13 the structured settlement agreement, the annuity contract, a qualified assignment agreement, or any order or
14 other approval of a court or responsible administrative authority or other government authority that authorized
15 or approved the structured settlement.

16 (19) (a) "Transfer" means a sale, assignment, pledge, hypothecation, or other alienation or encumbrance
17 of a structured settlement payment right made by a payee ~~or transferee~~ for consideration.

18 (b) The term does not include the creation or perfection of a security interest in a structured settlement
19 payment right under a blanket security agreement entered into with an insured depository institution in the
20 absence of any action:

21 (i) to redirect the structured settlement payment to the insured depository institution or ~~to an~~ ITS agent
22 or successor in interest of ~~the insured depository institution~~; or

23 (ii) to otherwise enforce the blanket security interest against the structured settlement payment right.

24 (20) "Transfer agreement" means the agreement providing for a transfer of a structured settlement
25 payment right.

26 (21) (a) "Transfer expenses" means all expenses of a transfer that are:

27 (i) required under the transfer agreement to be paid by the payee; or

28 (ii) deducted from the gross advance amount, including without limitation any court filing fee, attorney
29 fee, escrow fee, lien recordation fee, judgment and lien search fee, finder's fee, commission, ~~or other payment~~

30 AND OTHER PAYMENTS TO A BROKER OR OTHER INTERMEDIARY.

1 (b) Transfer expenses do not include a payee's preexisting obligations that are payable on the payee's
2 account from the proceeds of a transfer.

3 (22) "Transferee" means a party acquiring or proposing to acquire a structured settlement payment right
4 through a transfer.

5
6 **NEW SECTION. Section 3. Disclosure to payee.** No less than 3 days prior to the date on which a
7 payee signs a transfer agreement, the transferee shall provide to the payee a written disclosure statement
8 separate from the transfer agreement that sets forth in bold type no smaller than 14 points:

9 (1) the amounts and the due dates of the structured settlement payment to be transferred;

10 (2) the aggregate amount of the amounts in subsection (1);

11 (3) the discounted present value of the payments to be transferred, which must be identified as:

12 (a) the calculation of the present value of the transferred STRUCTURED settlement payment under federal
13 standards for valuing annuities; and

14 (b) the amount of the applicable federal rate used in calculating the discounted present value;

15 (4) the gross advance amount;

16 (5) an itemized list of all applicable transfer expenses, other than attorney fees and related
17 disbursements, based on the transferee's best estimate of the amount of fees and disbursements payable in
18 connection with the transferee's application for approval of the transfer;

19 (6) the net advance amount;

20 (7) the amount of any penalty or liquidated damages payable by the payee in the event of a breach of
21 the transfer agreement by the payee; and

22 (8) a statement that the payee has the right to cancel the transfer agreement without penalty or further
23 obligation no later than the third business day after the date on which the payee signs the agreement.

24
25 **NEW SECTION. Section 4. Transfer of structured settlement payment right -- conditions.** A direct
26 or indirect transfer of a structured settlement payment right is NOT effective and a structured settlement obligor
27 or annuity issuer is NOT required to make a payment directly or indirectly to a transferee of a structured
28 settlement payment right ~~only if~~ UNLESS a final court order or order of a responsible administrative authority has
29 approved the transfer in advance based on written findings by the court or responsible administrative authority
30 that:

1 (1) the transfer is in the best interest of the payee, taking into account the welfare and support of the
2 payee's dependents, if any;

3 (2) the payee has been advised in writing by the transferee to seek independent professional advice
4 regarding the transfer and either has received independent professional advice or knowingly waived independent
5 professional advice in writing; and

6 (3) the transfer does not contravene any applicable statute or the order of any court or other government
7 authority.

8
9 **NEW SECTION. Section 5. Obligations after transfer.** ~~(1)~~ After the transfer of a structured settlement
10 payment right pursuant to [sections 1 through 12];:

11 (1) the structured settlement obligor and the annuity issuer are discharged and released from liability
12 for the transferred payments to all parties except to the transferee;

13 (2) ~~The~~ THE transferee is liable to the structured settlement obligor and the annuity issuer:

14 (a) if the transfer contravenes the terms of the structured settlement for any tax incurred by the
15 structured settlement obligor or annuity issuer as a consequence of the transfer; and

16 (b) for any other liability or cost, including reasonable costs and attorney fees, arising:

17 (i) from compliance by the structured settlement obligor and annuity issuer with the order of the court
18 or responsible administrative authority; or

19 (ii) as a consequence of the transferee's failure to comply with [sections 1 through 12]; AND

20 (3) NEITHER THE STRUCTURED SETTLEMENT OBLIGOR NOR THE ANNUITY ISSUER MAY BE REQUIRED TO DIVIDE
21 A PERIODIC PAYMENT BETWEEN A PAYEE AND A TRANSFEREE OR ASSIGNEE OR BETWEEN TWO OR MORE TRANSFEREES
22 OR ASSIGNEES.

23
24 **NEW SECTION. Section 6. Additional transfers.** ~~A payee or a transferee shall comply with~~ AFTER
25 THE TRANSFER OF A STRUCTURED SETTLEMENT PAYMENT RIGHT PURSUANT TO [SECTIONS 1 THROUGH 12], ANY FURTHER
26 TRANSFER BY THE PAYEE IS SUBJECT TO all of the requirements of [sections 1 through 12] ~~before making a further~~
27 ~~transfer of a structured settlement payment right.~~

28
29 **NEW SECTION. Section 7. Jurisdiction -- notice.** (1) A transferee may apply under [sections 1
30 through 12] for approval of a transfer of a structured settlement payment right:

- 1 (a) in the county in which the payee resides;
- 2 (b) in the county in which the structured settlement obligor or the annuity issuer maintains a principal
3 place of business; or
- 4 (c) in any court or before any responsible administrative authority that approved the structured settlement
5 agreement.
- 6 (2) Not less than 20 days prior to a scheduled hearing on an application for approval of a transfer of a
7 structured settlement payment right under [section 4], the transferee shall file with the court or responsible
8 administrative authority and serve on all interested parties a notice of the proposed transfer and the application
9 for an authorized transfer. The notice must include the following:
- 10 (a) a copy of the transferee's application;
- 11 (b) a copy of the transfer agreement;
- 12 (c) a copy of the disclosure statement required under [section 3];
- 13 (d) a listing of each of the payee's dependents, if any, together with the age of each dependent;
- 14 (e) notification that any interested party is entitled to support, oppose, or otherwise respond to the
15 transferee's application either in person or by counsel by submitting written comments to the court or responsible
16 administrative authority or by participating in the hearing; and
- 17 (f) notification of the time and the place of the hearing and notification of the manner in which and the
18 time by which written responses to the application must be filed. The filing deadline may not be less than 15 days
19 after the transferee's notice has been served.

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21 **NEW SECTION. Section 8. Waiver not allowed.** A payee may not waive the provisions of [sections
22 1 through 12].

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24 **NEW SECTION. Section 9. Disputes -- entry of judgment.** (1) A transfer agreement entered into on
25 or after [the effective date of this act] by a payee who resides in this state must provide that disputes under the
26 transfer agreement, including a claim that the payee has breached the agreement, must be determined in this
27 state under the laws of this state.

28 (2) A transfer agreement may not authorize the transferee or any other party to confess judgment or
29 consent to entry of judgment against the payee.

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