

2015 WISCONSIN ACT 94

AN ACT *to create* subchapter III (title) of chapter 895 [precedes 895.65], 895.65, 895.66, 895.67, 895.68, 895.69 and 895.70 of the statutes; **relating to:** structured settlement factoring transactions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on the Transfer of Structured Settlement Payments. The bill creates a new subchapter in ch. 895, stats., to govern the transfer of structured settlement payments in Wisconsin. The bill is based on and modifies the Model State Structured Settlement Protection Act, a model law that was developed in 2000 by the National Structured Settlements Trade Association and the National Association of Settlement Purchasers.

Federal law imposes a 40 percent excise tax on transactions to transfer rights to structured settlement payments, unless the transactions are approved by a court or relevant administrative body in the state in which the current recipient of the payments resides. [26 USC 5891.] In response to the federal law, 48 other states have enacted statutes governing judicial review of transfers of structured settlement payments. Many of the other state statutes are based on the model law, although some states have made significant modifications to the model law.

This bill creates all of the following with respect to transfers of structured settlement payments in Wisconsin: definitions of key terms relating to such transfers; requirements for mandatory disclosures that must be made by a proposed purchaser of rights to structured settlement payments; standards governing judicial review of transfers of structured settlement payments; and procedures, legal effects, and general provisions relating to the approval of such transfers.

SECTION 1. Subchapter III (title) of chapter 895 [precedes 895.65] of the statutes is created to read:

CHAPTER 895

SUBCHAPTER III

STRUCTURED SETTLEMENT TRANSFERS

SECTION 2. 895.65 of the statutes is created to read:

895.65 Definitions. In this subchapter:

- (1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.
- (2) "Business day" has the meaning given in s. 421.301 (6).
- (3) "Dependents" means a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, maintenance, or alimony.
- (4) "Discounted present value" means the present value of future payments determined by discounting the payments to the present using the applicable federal rate for determining the present value of an annuity, as most recently issued by the federal Internal Revenue Service.
- (5) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.
- (6) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.
- (7) "Interested parties" means the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement

obligor, and any other party that has continuing rights or obligations under a structured settlement. If the payee is a trust that names the state as a remainder beneficiary, or the payee is a trustee of such a trust, the secretary of health services is an interested party.

(8) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under s. 895.66 (5).

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

(10) "Periodic payments" includes both recurring payments and scheduled future lump sum payments.

(11) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the federal Internal Revenue Code, Title 26, USC.

(12) "Settled claim" means the original tort claim resolved by a structured settlement.

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

(14) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(15) "Structured settlement obligor" means the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(16) "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement if any of the following applies:

(a) The payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this state.

(b) The structured settlement agreement was approved by a court in this state.

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

(17) "Terms of the structured settlement" means the terms or conditions of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or other approval of any court that authorized or approved the structured settlement.

(18) (a) "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration. Except as provided in par. (b), transfer does 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.

(b) "Transfer" includes the creation or perfection, by an insured depository institution, of a security interest in structured settlement payment rights if there is an action to redirect the structured settlement payments to the insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce a blanket security interest against the structured settlement payment rights.

(19) "Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(20) "Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or 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 do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

(21) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

SECTION 3 . 895.66 of the statutes is created to read:

895.66 Mandatory disclosures. Not less than 5 business days before a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, that contains all of the following:

- (1) The amounts and due dates of the structured settlement payments to be transferred.
- (2) The aggregate amount of the payments.
- (3) The discounted present value of the payments to be transferred and the amount of the applicable federal rate used in calculating the discounted present value.
- (4) The gross advance amount.
- (5) An itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's petition for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements.
- (6) The net advance amount.
- (7) The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee.
- (8) A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the 3rd business day after the date the agreement is signed by the payee.
- (9) The effective annualized rate of interest on the net advance amount, calculated by treating the transferred structured settlement payments as if they were installment payments on a loan, with each payment applied first to accrued unpaid interest and then to principal, and written in the following format: "YOU WILL BE PAYING THE EQUIVALENT OF AN INTEREST RATE OF __% PER YEAR."
- (10) A statement that the transferee's attorney does not represent the payee in connection with the proposed transfer.
- (11) A statement informing the payee that structured settlement transfers have financial consequences and advising the payee to seek independent professional advice regarding the transfer agreement.

SECTION 4 . 895.67 of the statutes is created to read:

895.67 Approval of transfers of structured settlement payment rights. (1) No direct or indirect transfer of structured settlement payment rights may take effect and no structured settlement obligor or annuity issuer may be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless, after the hearing required under s. 895.69 (2), the transfer has been approved in advance in a final court order based on express findings by the court that all of the following are true:

- (a) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.
- (b) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived in writing the opportunity to seek and receive such advice.

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

(2) A court may consider any of the following when making a determination under sub. (1) (a):

(a) Whether the payee understands the financial ramifications of the transfer agreement and is entering into the agreement voluntarily.

(b) The financial terms of the transfer agreement.

(c) Whether the payee is delinquent in the payment of taxes in this state or in any payments required to be made pursuant to a restitution order in a criminal or juvenile delinquency proceeding, or pursuant to a child support order.

(d) Any other considerations the court deems appropriate.

(3) In addition to the considerations in sub. (2), if the payee is a minor or has been adjudicated incompetent, the court shall consider all of the following when making a determination under sub. (1) (a):

(a) The physical and mental health of the payee.

(b) The payee's overall financial situation.

SECTION 5. 895.68 of the statutes is created to read:

895.68 Effects of transfer of structured settlement payment rights. A transfer of structured settlement payment rights under this subchapter includes the following effects:

(1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments.

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer for all of the following:

(a) Any taxes incurred by such parties as a consequence of the transfer, if the transfer contravenes the terms of the structured settlement.

(b) Any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the parties with the order of the court or arising as a consequence of the transferee's failure to comply with this subchapter.

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between multiple transferees or assignees.

SECTION 6. 895.69 of the statutes is created to read:

895.69 Procedure. (1) A petition for approval of a transfer of structured settlement payment rights shall be brought by the transferee in the county in which the payee is domiciled at the time the transfer agreement is signed by the payee or, if the payee is not domiciled in this state, then in the county in this state in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court that approved the structured settlement agreement.

(2) A hearing must be held on a petition for approval of a transfer agreement. The payee must attend the hearing in person unless the court determines that appearance via audiovisual technology is appropriate or that good cause exists for the payee not to appear.

(3) Not less than 20 days prior to the hearing required under sub. (2), the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the petition for its authorization, including with the notice all of the following:

(a) A copy of the transferee's petition.

(b) A copy of the transfer agreement.

- (c) A copy of the disclosure statement required under s. 895.66.
 - (d) A listing of each of the payee's dependents, together with each dependent's age.
 - (e) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's petition, either in person or by counsel, by submitting written comments to the court or by participating in the hearing.
 - (f) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the petition must be filed in order to be considered by the court. Written responses may not be due less than 15 days after service of the notice.
 - (g) An affidavit from the payee stating whether the payee is delinquent in the payment of taxes in this state or in any payments required to be made pursuant to a restitution order in a criminal or juvenile delinquency proceeding, or pursuant to a child support order.
- (4) Notwithstanding the general service of process requirements under s. 801.11, service by overnight mail with proof of delivery or its equivalent constitutes adequate service of process for purposes of the notice requirement under sub. (3).

SECTION 7. 895.70 of the statutes is created to read:

895.70 General provisions. (1) The provisions of this subchapter may not be waived by any payee.

(2) Any transfer agreement entered into by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, may be determined in and under the laws of this state. No transfer agreement may authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(3) No transfer of structured settlement payment rights shall extend to any payments that are life contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for periodically confirming the payee's survival, and giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(4) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this subchapter.

(5) This subchapter may not be construed to authorize any transfer of structured settlement payment rights in contravention of any law.

(6) Compliance with the requirements set forth in ss. 895.66 and 895.67 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with such requirements or failure to fulfill such conditions.

(7) Following any transfer of structured settlement payment rights under this subchapter, any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this subchapter, at the time of such further transfer.

SECTION 8. Initial applicability.

(1) This act first applies to transfer agreements entered into on the effective date of this subsection.