

1999 SENATE BILL 298

November 24, 1999 – Introduced by Senators BRESKE, BAUMGART, BURKE, CLAUSING and DARLING, cosponsored by Representatives HAHN, MUSSER, HASENOHRL, PLALE, M. LEHMAN, RYBA, WAUKAU, UNDERHEIM, KREUSER and YOUNG. Referred to Committee on Judiciary and Consumer Affairs.

1 AN ACT *to create* chapter 787 of the statutes; **relating to:** structured settlement
2 agreements.

Analysis by the Legislative Reference Bureau

Under current law, if a person is injured in a work-related incident and worker's compensation benefits are paid over an extended period of time, such as for a permanent disability, the payments may be made to the person on a monthly basis. In tort actions, such as medical malpractice or an automobile accident, if a person who is permanently injured is awarded damages, the court may require the responsible party to make periodic payments to the injured person over an extended period of time. These monthly or periodic payments are called structured settlement payments. Under current law, a person receiving structured settlement payments may sell the right to those payments to a third party in exchange for an immediate lump-sum payment.

This bill requires the approval of the court or the administrative agency that had exclusive jurisdiction over the original tort or worker's compensation claim before a transfer may be made of any structured settlement payments. The bill establishes certain conditions that the court or governmental agency must find before it may approve the transfer of structured settlement payments, including the following:

1. The person purchasing the structured settlement payments provided the injured party with a disclosure statement in large, bold print, at least ten days before the transfer of his or her rights to the periodic payments. The disclosure statement must list all of the following:

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1 **787.01 Definitions.** In this chapter:

2 **(1)** “Annuity issuer” means an insurer that has issued an insurance contract
3 used to fund periodic payments under a structured settlement.

4 **(2)** “Applicable law” means the law of the United States, the law of this state
5 and the law of any jurisdictions other than this state:

6 (a) Where the payee or any other interested party is domiciled.

7 (b) Under which a structured settlement agreement was approved by a court
8 or a responsible administrative authority.

9 **(3)** “Dependent” means the spouse and minor children of a payee and all other
10 persons for whom the payee is legally obligated to provide support, maintenance or
11 alimony.

12 **(4)** “Discounted present value” means the fair present value of future payments
13 as determined by discounting the payments to the present time using the most
14 recently published applicable federal rate for determining the present value of an
15 annuity, as issued by the U.S. internal revenue service under section 7520 of the
16 Internal Revenue Code.

17 **(5)** “Favorable tax determination” means a decision by a tax authority
18 definitively establishing that the federal income tax treatment of a structured
19 settlement and of any qualified assignment agreement for the interested parties to
20 that settlement and agreement, other than the payee, will not be affected by a
21 transfer of the structured settlement payment right.

22 **(6)** “Governmental unit” means the United States; the state; any county, city,
23 village or town; or any political subdivision, department, division, board or agency
24 of the United States, the state or any county, city, village or town.

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1 **(7)** “Independent professional advice” means advice provided by an
2 appropriate licensed professional adviser if the person providing the advice meets all
3 of the following criteria:

4 **(a)** Is requested by the payee to render advice concerning the legal, tax and
5 financial implications of a transfer of the structured settlement payment right.

6 **(b)** Is not affiliated with or compensated by the transferee of the structured
7 settlement payment right.

8 **(c)** Receives compensation for rendering advice concerning the legal, tax and
9 financial implications of a transfer of the structured settlement payment right that
10 is not affected by the transfer occurring or not occurring.

11 **(8)** “Interested party” means the payee, any beneficiary designated under the
12 annuity contract to receive payments following the payee’s death, the annuity issuer,
13 the structured settlement obligor and any other person who has continuing rights
14 or obligations under the structured settlement.

15 **(9)** “Internal Revenue Code” has the meaning given in s. 71.01 (6).

16 **(10)** “Payee” means the individual who is receiving tax-free payments for
17 injuries under a structured settlement.

18 **(11)** “Periodic payments” include scheduled future lump-sum payments.

19 **(12)** “Qualified assignment agreement” means an agreement providing for a
20 qualified assignment within the meaning of section 130 of the Internal Revenue
21 Code.

22 **(13)** “Responsible administrative authority” means any governmental unit
23 vested by law with exclusive jurisdiction over the original tort claim or worker’s
24 compensation claim that was resolved by a structured settlement.

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1 **(14)** “Structured settlement” means an arrangement for the periodic payments
2 of damages for personal injuries that was established by a settlement or a court
3 judgment that resolved a tort claim or for periodic payments in settlement of a
4 worker’s compensation claim.

5 **(15)** “Structured settlement agreement” means the agreement, judgment,
6 stipulation or release that includes the terms of a structured settlement.

7 **(16)** “Structured settlement obligor” means the person who has the continuing
8 obligation to make periodic payments to the payee under a structured settlement
9 agreement or under a qualified assignment agreement.

10 **(17)** “Structured settlement payment right” means a right to receive periodic
11 payments under a structured settlement, either from the structured settlement
12 obligor or from the annuity issuer.

13 **(18)** “Tax authority” means each of the following:

14 (a) A provision of the Internal Revenue Code or a regulation adopted under that
15 code.

16 (b) A revenue ruling or revenue procedure issued by the internal revenue
17 service.

18 (c) A private letter ruling issued by the internal revenue service.

19 (d) A decision of the U.S. supreme court or a decision of a lower federal court
20 in which the internal revenue service has acquiesced.

21 **(19)** “Terms of a structured settlement” includes the terms of the structured
22 settlement agreement, the annuity contract, any qualified assignment agreement
23 and any order or approval of a court, a responsible administrative authority or other
24 governmental unit authorizing or approving the structured settlement.

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1 **(20)** “Transfer” means the sale, assignment, pledge or other form of alienation
2 or encumbrance of a right for consideration.

3 **(21)** “Transfer agreement” means the agreement providing for the transfer of
4 a structured settlement payment right from a payee to a transferee.

5 **(22)** “Transferee” means a party acquiring or proposing to acquire a structured
6 settlement payment right through a transfer of that right.

7 **787.02 Conditions necessary to transfer the structured settlement**
8 **payment right. (1)** If the payee, the structured settlement obligor or the annuity
9 issuer under a structured settlement is domiciled in this state, or if the structured
10 settlement agreement was approved by a court or a responsible administrative
11 authority in this state, then no direct or indirect transfer of a structured settlement
12 payment right under the settlement shall be effective and neither the structured
13 settlement obligor nor the annuity issuer shall be required to make any payments
14 directly or indirectly to any transferee of that right unless the transfer has been
15 approved in advance by a final order of a court of competent jurisdiction or a
16 responsible administrative authority.

17 **(2)** A court or responsible administrative authority may approve a transfer of
18 a structured settlement payment right only if the court or authority makes express
19 findings that all of the conditions in subs. (3) to (9) are met.

20 **(3)** The transfer complies with the requirements under this chapter and does
21 not contravene other applicable law.

22 **(4)** Not less than ten days before the date on which the payee first incurs any
23 obligation with respect to the transfer, the transferee provides the payee with a
24 disclosure statement written in bold print, in a type size that is no smaller than 14
25 point.

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- 1 **(5)** The disclosure statement under sub. (4) includes all of the following:
- 2 (a) The amounts and due dates of the structured settlement payments to be
3 transferred.
- 4 (b) The aggregate amount of the structured settlement payments to be
5 transferred.
- 6 (c) The discounted present value of the structured settlement payments to be
7 transferred.
- 8 (d) The discount rate used in determining the discounted present value of the
9 structured settlement payments to be transferred.
- 10 (e) The gross amount payable to the payee in exchange for the structured
11 settlement payments to be transferred.
- 12 (f) An itemized listing of all charges, commissions, costs, expenses and fees
13 payable by the payee or deductible from the gross amount otherwise payable to the
14 payee in exchange for the structured settlement payments being transferred.
- 15 (g) The net amount payable to the payee after the deduction of all of the
16 amounts described under par. (f).
- 17 (h) The number, expressed as a percentage, obtained by dividing the net
18 payment amount under par. (g) by the discounted present value of the structured
19 settlement payments to be transferred under par. (c).
- 20 (i) The amount of any penalty and the maximum amount of any liquidated
21 damages that the payee could be required to pay in the event of the payee's breach
22 of the transfer agreement.
- 23 **(6)** The extraordinary, unanticipated and imminent needs of the payee or his
24 or her dependents make the transfer appropriate.

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1 **(7)** The payee has received independent professional advice regarding the
2 legal, tax and financial implications of the transfer.

3 **(8)** If the transfer would contravene the terms of the structured settlement, all
4 of the following conditions are met:

5 (a) The transfer has been expressly approved in writing by each interested
6 party, except that if at the time that the payee and the transferee entered into the
7 transfer agreement, a favorable tax determination was in effect, then the approval
8 of the annuity issuer and the structured settlement obligor is not required under this
9 paragraph if all of the other interested parties approve the transfer and waive any
10 rights to require that the transferred payments be made to the payee in accordance
11 with the terms of the structured settlement.

12 (b) The transfer has been expressly approved in writing by any court or
13 governmental unit that previously approved the structured settlement, other than
14 the court or responsible administrative authority from which approval of the
15 transfer is sought under this section.

16 (c) Signed originals of all approvals required under pars. (a) and (b) have been
17 filed with the court or responsible administrative authority from which approval of
18 the transfer is sought under this section and copies of those approvals have been
19 provided to all the interested parties.

20 **(9)** The transferee has given written notice of the transferee's name, address
21 and taxpayer identification number to the annuity issuer and the structured
22 settlement obligor and has filed a copy of that notice with the court or responsible
23 administrative authority that has been asked to approve the transfer.

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1 **787.03 Procedure for approving the transfer of the structured**
2 **settlement payment right. (1)** The circuit court shall have nonexclusive
3 jurisdiction over any application for the approval of a transfer under s. 787.02 (2).

4 **(2)** Not less than 20 days before a scheduled hearing before a court or
5 responsible administrative authority on any application for approval of a transfer of
6 a structured settlement payment right, the transferee shall file a notice of the
7 proposed transfer and an application for approval of the transfer with the court or
8 responsible administrative authority.

9 **(3)** Not less than 20 days before a scheduled hearing before a court or
10 responsible administrative authority on any application for approval of a transfer of
11 a structured settlement payment right, the transferee shall serve notice of the
12 proposed transfer and an application for approval of the transfer on any other
13 governmental unit that previously approved the structured settlement and on all
14 interested parties.

15 **(4)** The notice under sub. (3) shall include all of the following:

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

17 (b) A copy of the proposed transfer agreement.

18 (c) A copy of the disclosure statement required under s. 787.02 (4).

19 (d) A statement that any interested party may support, oppose or otherwise
20 respond to the transferee's application, either personally or by counsel, by
21 submitting written comments to the court or responsible administrative authority
22 or by participating at the hearing.

23 (e) A statement of the time and place of the hearing and of the manner in which
24 and time by which written responses to the transferee's application shall be filed in
25 order to be considered by the court or responsible administrative authority.

