



P-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Changes based on 2/19 teleconference and FAX received 4/5

repen cat

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

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

Amd
s. 632.44?

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

3 **SECTION 1.** Chapter 787 of the statutes is created to read:

4 **CHAPTER 787 STRUCTURED SETTLEMENTS**

5 **787.01 Definitions.** In this chapter:

6 (1) "Annuity issuer" means an insurer that has issued an insurance contract
7 used to fund periodic payments under a structured settlement.

8 (2) "Applicable law" means the law of the United States, the law of this state
9 and the law of ~~all~~ ^{any} of the following jurisdictions: *other than this state*

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

Under which
by a court or a responsible administrative agency

(b) ~~Where~~ a structured settlement agreement was approved,

~~(c) Where a settled claim was pending in a court when the parties entered into a structured settlement agreement.~~

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

(4) "Discounted present value" means the fair present value of future payments as determined by discounting the payments to the present time ~~by~~ using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service *under section 7520 of the internal revenue code*

***NOTE: This definition seems to leave something out. Do you multiply the applicable federal rate by the total value of the annuity, or by some other number? Why the "applicable" federal rate; is there more than one rate for annuities issued by the IRS?

(5) "Favorable tax determination" means a decision by ~~an appropriate~~ *definitively establishing* tax authority that the federal income tax treatment of a structured settlement and of any qualified assignment agreement ~~to~~ *for* the interested parties ~~of~~ *to* that settlement and agreement, other than ~~to~~ the payee, will not be affected by a transfer of the structured settlement payment rights.

***NOTE: The definition as suggested included language regarding tax authorities, which I removed and put in the bill as another definition. See sub. (19).

~~(6) "Federal hardship standard" means the federal standard applicable to the transfers of structured settlement payment rights based on the findings of a court of competent jurisdiction or of a responsible administrative authority regarding the payee's needs, as adopted under the Internal Revenue Code.~~

~~***NOTE: I don't understand this provision. Is a court (or responsible administrative authority) to determine the federal standard or the payee's needs or will the court use the IRS-developed standard to determine if the payee meets that standard? Or, is the IRS adopting some kind of standard based on a payee's needs, which the court must merely apply to the facts of the case?~~

1 (6) (7) "Governmental unit" means the United States; the state; any county, city,
 2 village or town; or any political subdivision, department, division, board or agency
 3 of the United States, the state or any county, city, village or town.

4 (8) "Independent professional advice" means advice provided by ~~an attorney,~~
 5 ~~certified public accountant, actuary or other~~ *an appropriate* licensed professional adviser if the
 6 person providing the advice meets all of the following criteria:

7 (a) Is requested by the payee to render advice concerning the legal, tax and
 8 financial implications of a transfer of structured settlement payment rights.

****NOTE: This limit requires the person to provide all three types of advice, but generally only an attorney is permitted to render legal advice. Should "or" be used instead of "and"?*

9 (b) Is not affiliated with or compensated by the transferee of the structured
 10 settlement payment rights.

11 (c) Receives compensation for rendering advice concerning the legal, tax and
 12 financial implications of a transfer of structured settlement payment rights that is
 13 not affected by the transfer occurring or not occurring.

****NOTE: This definition could be interpreted to include doctors, social workers and other persons who are licensed and often give financial and related advice as part of their profession. Don't you want to narrow this in some way?*

14 (9) "Interested party" means the payee, any beneficiary designated under the
 15 annuity contract to receive payments following the payee's death, the annuity issuer,
 16 the structured settlement obligor and any other person who has continuing rights
 17 or obligations under the structured settlement.

****NOTE: Are the payee's dependents included in the last part of this definition. If not, should they be listed, especially the spouse in a community property state?*

18 (10) "Internal Revenue Code" has the meaning given in s. 71.01 (6).

19 (11) "Payee" means the individual who is receiving tax-free ~~tax~~ payments
 20 for injuries under a structured settlement.

(iii) "Periodic payments" include scheduled future lump sum payments.

****NOTE: I left out the last part of the sentence because it seemed unnecessary to the draft. I also changed "damage payments" to "money payments for injuries". OK?

(12) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code.

(13) "Responsible administrative authority" means any governmental unit vested by law with exclusive jurisdiction over the settled claim resolved by a structured settlement.

****NOTE: This applies to any governmental unit; federal, state, county or local. See my definition of governmental unit in sub. (7). OK?

(14) "Settled claim" means the original tort claim, or worker's compensation claim or other claim for money damages that was resolved by a structured settlement.

****NOTE: The model act only mentioned tort or worker's compensation claims, but could there be other claims that involved large money damages, such as a civil rights or contract claim? I added "other claim for money damages". OK?

(15) "Structured settlement" means an arrangement for the periodic payments of money for personal injuries that was established by a settlement or a court judgment that resolved a tort claim, or for periodic payments in settlement of a worker's compensation claim or other claim for money damages.

****NOTE: See note for sub. (14). I changed the "payment of damages" to the "payment of money" to clarify what was actually going on. OK?

(16) "Structured settlement agreement" means the agreement, judgment, stipulation or release that includes the terms of a structured settlement, including the rights of the payee to receive periodic payments.

****NOTE: I don't think we need the phrase after the last comma, since the definition of "structured settlement" includes the periodic payment of money.

1 (17) "Structured settlement obligor" means the person who has the ^{continuing} obligation
2 to make ~~continuing~~ periodic payments to the payee under a structured settlement
3 agreement or under a qualified assignment agreement.

4 (18) "Structured settlement payment right" means ~~the~~ ^a right to receive periodic
5 payments ~~and any related lump sum payments~~ under a structured settlement, either
6 from the structured settlement obligor or the annuity issuer ^{from} ~~from~~ ^{one of the following}
7 ~~applies~~

8 (a) The payee or ~~other interested party~~ is domiciled of this state.

9 (b) The structured settlement agreement was approved by a court or
10 responsible administrative authority in this state.

11 (c) The settled claim was pending before a court in this state when the parties
12 entered into the structured settlement agreement.

****NOTE: Something seems to be missing in this definition. Why does the existence
of the right to receive periodic payments under a structured settlement agreement
depend on where the payee or party resides, unless the right to enforce that right in this
state is what this definition is trying to establish. If so, the language proposed is
incomplete, especially in view of the definition of "transfer agreement" below, which does
not seem to require state jurisdiction.

13 (19) "Tax authority" means each of the following:

14 (a) A provision of the ~~Internal Revenue Code~~ or a regulation adopted under that
15 code. ^{stat.}

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 United States supreme court or a decision of a lower federal
20 court in which the internal revenue service has acquiesced.

21 (20) "Terms of a structured settlement" includes the terms of the structured
22 settlement agreement, the annuity contract, any qualified assignment agreement

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

and any order or approval of a court, a responsible administrative authority or other governmental unit authorizing or approving the structured settlement.

(21) "Transfer" means the sale, assignment, pledge or other form of alienation or encumbrance of a right for consideration.

(22) "Transfer agreement" means the agreement providing for the transfer of structured settlement payment rights from a payee to a transferee.

787.02 Conditions necessary to transfer structured settlement

payment rights. (1) A structured settlement obligor or annuity issuer shall not be required to make any payment to any transferee under a transfer agreement unless the transfer agreement has been authorized in advance by a final order of a court or a responsible administrative authority.

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

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

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

(5) The disclosure statement under sub. (4) includes all of the following:

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

(b) The aggregate amount of the structured settlement payments to be transferred.

1 (c) The discounted present value of the structured settlement payments to be
2 transferred.

3 (d) The discount rate used in determining the discounted present value of the
4 structured settlement payments to be transferred.

5 (e) The gross amount payable to the payee in exchange for the structured
6 settlement payments to be transferred.

7 (f) An itemized listing of ^{all} charges, commissions, costs, expenses and fees
8 including administrative fees, application fees, broker commissions, closing costs,
9 ~~flight fees, ~~visa~~ fees, notary fees and processing fees~~ ^{and} payable by the payee or
10 deductible from the gross amount otherwise payable to the payee in exchange for the
11 structured settlement payments being transferred.

12 (g) The net amount payable to the payee after the deduction of all of the
13 amounts described under par. (f).

14 (h) The number, expressed as a percentage, obtained by dividing the net
15 payment amount under par. (g) by the discounted present value of the structured
16 settlement payments to be transferred under par. (c).

17 (i) The amount of any penalty and the ^{or a maximum} aggregate amount of any ~~other~~
18 damages that the payee ^{is} would be required to pay in the event of the payee's breach
19 of the transfer agreement.

20 (6) The ~~payee has established to a~~ court or the responsible administrative
21 authority ^{finds} that one of the following applies. (words from Craig Ulman)

22 (a) If a federal hardship standard is not in effect on the effective date of the
23 transfer agreement, the transfer agreement is necessary to enable the payee, the
24 payee's dependents, or both, to avoid imminent financial hardship and is not

→ The extraordinary, unanticipated and imminent needs of the payee or his or her dependents make the transfer appropriate.

1 expected to subject the payee, the payee's dependents, or both, to undue financial
2 hardship in the future.

3 (b) If a federal hardship standard is in effect on the effective date of the transfer
4 agreement, the transfer agreement qualifies under the federal hardship standard.

5 (7) The payee has received independent professional advice regarding the
6 legal, tax and financial implications of the transfer ~~agreement~~.

7 (8) If the transfer ~~agreement~~ would contravene the terms of ^{the} structured
8 settlement, all of the following conditions are met:

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

16 (b) The transfer ~~agreement~~ ^{any} has been expressly approved in writing by ~~the~~ court
17 or governmental unit that previously approved the structured settlement, other than
18 the court or responsible administrative authority from which authorization of the
19 transfer agreement is sought ^{suggested} under this section.

20 (c) Signed originals of all approvals required under pars. (a) and (b) have been
21 filed with the court or responsible administrative authority from which
22 ~~authorization~~ ^{approval} of the transfer agreement is sought under this section and copies of
23 those approvals have been provided to all the interested parties.

24 (9) The transferee has given written notice of the transferee's name, address
25 and taxpayer identification number to the annuity issuer and the structured

CS
NOTE

→ par. (b) and the term "transfer agreement" in
pars. (b) and (c). I don't think that is correct, but
left them, as suggested. OK?

with the term "transfer" everywhere in the draft, then definition number 22 should be removed.

1 settlement obligor and has filed a copy of that notice with the court or responsible
2 administrative authority that has been asked to ^{approve} ~~authorize~~ the transfer ~~agreement~~.

3 ~~****NOTE: If the intent is to replace the term "transfer agreement"~~
4 **787.03 Procedure for authorizing the transfer of structured settlement**

5 **payment rights. (1)** The circuit court shall have nonexclusive jurisdiction over any

6 application for authorization of a transfer agreement under s. 787.02 (2).

Keep "authorizing" in the title and "authorization" and "transfer agreement" in sub (1) as the proposed revisions?

7 ~~****NOTE: Do you want to add that the responsible administrative authority also has nonexclusive jurisdiction, to clarify what agencies have jurisdiction to authorize the transfer agreement? See s. 787.02 (2), which includes them both. Why is authorizing used instead of approving?~~

8 **(2)** Not less than 20 days before a scheduled hearing before a court or
9 responsible administrative authority on any application for ^{approval} ~~authorization~~ of a
10 transfer ~~agreement~~ ^{of structured settlement payment rights}, the transferee shall file a notice of the proposed transfer and an
11 application for ^{approval} ~~authorization~~ of the transfer agreement with the court or responsible
12 administrative authority.

13 **(3)** Not less than 20 days before a scheduled hearing before a court or
14 responsible administrative authority on any application for ^{approval} ~~authorization~~ of a
15 transfer ~~agreement~~, the transferee shall serve notice of the proposed transfer and an
16 application for ^{approval} ~~authorization~~ of the transfer ~~agreement~~ on any other governmental
unit that previously approved the structured settlement and on all interested
parties.

I changed "authorization" to approval twice in this subsection.

****NOTE: ~~The~~ model act suggests that the notice also be served on other appropriate state agencies, such as the insurance commissioner and attorney general, but does not require that service. The model act gives those agencies served standing to appear and be heard at the authorization hearing. I do not know which, if any, state agency should be listed here and given party status. Any suggestions?

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

- 18 (a) A copy of the transferee's application.
- 19 (b) A copy of the proposed transfer agreement.
- 20 (c) A copy of the disclosure statement required under s. 787.02 (4).

language
use "approved" instead?

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

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

8 (5) Interested parties may file written responses to the transferee's application
 9 with the court or responsible administrative authority within 15 days after receipt
 10 of the notice under sub. (3).

11 **787.04 Waiver.** The rights and responsibilities created under this chapter may
 12 not be waived.

13 **787.05 Exemption from penalties and fees.** A payee who proposes to make
 14 a transfer of structured settlement payment rights shall not be required to pay the
 15 proposed transferee any penalty, forfeit any application fee or other payment made
 16 to the proposed transferee or incur any liability to the proposed transferee as the
 17 result of the failure of the proposed transfer agreement to meet the conditions under
 18 s. 787.02.

19 **787.06 Construction of chapter.** This chapter shall not ^{be} construed to
 20 authorize any transfer of structured settlement payment rights in contravention of
 21 any applicable law or to give effect to any transfer of structured settlement payment
 22 rights that is ^{cs} invalid under any applicable law.

23 **SECTION 2. Initial applicability.** **** Note: Should "or approve" be added after "authorize"? Payment*

24 (1) This act first applies to the transfer of structured settlement rights under
 25 a transfer agreement entered into on the effective date of this subsection.

1 **SECTION 3. Effective date.** 2nd

2 (1) This act takes effect on the first day of the ~~6th~~ month beginning after
3 publication.

****NOTE: The model act appears to have one provision for the initial applicability and the effective date. I delayed the effective date for 6 months. Is that too long? I did not include the proposed language about the initial applicability-effective date sections implying anything about transfers agreed to before the effective date. Those provisions never imply anything about previous behaviors unless they are specifically mentioned, such as the counting of previous offenses when determining future penalties.

4

(END)

D - Note

This draft is based on
the document received
from Pete Christianson on April 5.
There are a number of
inconsistent uses of "authorize"
versus "approve" and "transfer"
versus "transfer agreement".

RPN

NSSIA Suggested Revisions
for LRV-1195/P1

Insert 6-11

Rider 2A

pursuant to Internal Revenue Code section 7520.

* * *

Rider 4A

(11) "Periodic payments" include scheduled future lump sum payments.

* * *

Rider 6A

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

* * *

Rider 6B

12091

If the payee, the structured settlement obligor or the annuity issuer under a structured settlement is domiciled in this state, or if the structured settlement agreement was approved by a court or a responsible administrative authority in this state, then no direct or indirect transfer of structured settlement payment rights under ~~such~~ the settlement shall be effective and neither the structured settlement obligor nor the annuity issuer shall be required to make any payments directly or indirectly to any transferee of ~~such~~ ^{these} rights unless the transfer has been approved in advance by a final order of a court of competent jurisdiction or a responsible administrative authority.

* * *

END OF INSERT

Rider 6C

and does not contravene other applicable law

* * *

Rider 7A

The extraordinary, unanticipated and imminent needs of the payee or his or her dependents render the transfer appropriate.

* * *



5000 (4/12)
State of Wisconsin
1999 - 2000 LEGISLATURE
DRAFT

LRB-1195/P2 3
RPN:cmh:hmh

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Refer
back

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

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

please
insert
hand
return

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

3 SECTION 1. Chapter 787 of the statutes is created to read:

4 **CHAPTER 787 STRUCTURED SETTLEMENTS**

5 **787.01 Definitions.** In this chapter:

6 (1) "Annuity issuer" means an insurer that has issued an insurance contract
7 used to fund periodic payments under a structured settlement.

8 (2) "Applicable law" means the law of the United States, the law of this state
9 and the law of any jurisdictions other than this state:

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

1 (b) Under which a structured settlement agreement was approved by a court
2 or a responsible administrative ~~agency~~ *authority*

3 (3) "Dependent" means the spouse and minor children of a payee and all other
4 persons for whom the payee is legally obligated to provide support, maintenance or
5 alimony.

6 (4) "Discounted present value" means the fair present value of future payments
7 as determined by discounting the payments to the present time using the most
8 recently published applicable federal rate for determining the present value of an
9 annuity, as issued by the ~~United States~~ ^{U.S.} internal revenue service under section 7520
10 of the Internal Revenue Code.

no space between U. & S.

11 (5) "Favorable tax determination" means a decision by a tax authority
12 definitively establishing that the federal income tax treatment of a structured
13 settlement and of any qualified assignment agreement for the interested parties to
14 that settlement and agreement, other than the payee, will not be affected by a
15 transfer of the structured settlement payment rights.

16 (6) "Governmental unit" means the United States; the state; any county, city,
17 village or town; or any political subdivision, department, division, board or agency
18 of the United States, the state or any county, city, village or town.

19 (7) "Independent professional advice" means advice provided by an
20 appropriate licensed professional adviser if the person providing the advice meets all
21 of the following criteria:

22 (a) Is requested by the payee to render advice concerning the legal, tax and
23 financial implications of a transfer of ^{the} structured settlement payment rights.

24 (b) Is not affiliated with or compensated by the transferee of the structured
25 settlement payment rights.

1 (c) Receives compensation for rendering advice concerning the legal, tax and
2 financial implications of a transfer of ^{the} structured settlement payment right~~s~~ that is
3 not affected by the transfer occurring or not occurring.

4 (8) "Interested party" means the payee, any beneficiary designated under the
5 annuity contract to receive payments following the payee's death, the annuity issuer,
6 the structured settlement obligor and any other person who has continuing rights
7 or obligations under the structured settlement.

8 (9) "Internal Revenue Code" has the meaning given in s. 71.01 (6).

9 (10) "Payee" means the individual who is receiving tax-free payments for
10 injuries under a structured settlement.

11 (11) "Periodic payments" include scheduled future lump sum payments.

12 (12) "Qualified assignment agreement" means an agreement providing for a
13 qualified assignment within the meaning of section 130 of the Internal Revenue
14 Code.

15 (13) "Responsible administrative authority" means any governmental unit
16 vested by law with exclusive jurisdiction over the ~~settled claim~~ resolved by a
17 structured settlement.

18 ~~(14) "Settled claim" means the original tort claim or worker's compensation~~
19 ~~claim that was resolved by a structured settlement.~~

20 (15) "Structured settlement" means an arrangement for the periodic payments
21 of damages for personal injuries that was established by a settlement or a court
22 judgment that resolved a tort claim or for periodic payments in settlement of a
23 worker's compensation claim.

24 (16) "Structured settlement agreement" means the agreement, judgment,
25 stipulation or release that includes the terms of a structured settlement.

add hyphen

add hyphen

1 (B) - 16 (17) "Structured settlement obligor" means the person who has the continuing
 2 obligation to make periodic payments to the payee under a structured settlement
 3 agreement or under a qualified assignment agreement.

4 (D) - 17 (18) "Structured settlement payment right" means ^{the} a right to receive periodic
 5 payments under a structured settlement, either from the structured settlement
 6 obligor or from the annuity issuer.

7 (B) - 18 (19) "Tax authority" means each of the following:

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

10 (b) A revenue ruling or revenue procedure issued by the internal revenue
 11 service.

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

13 (13) (d) A decision of the ^{U.S.} United States supreme court or a decision of a lower federal
 14 court in which the internal revenue service has acquiesced.

15 (B) - 19 (20) "Terms of a structured settlement" includes the terms of the structured
 16 settlement agreement, the annuity contract, any qualified assignment agreement
 17 and any order or approval of a court, a responsible administrative authority or other
 18 governmental unit ^{U.S.} authorizing approving the structured settlement.

19 (P) - 20 (21) "Transfer" means the sale, assignment, pledge or other form of alienation
 20 or encumbrance of a right for consideration.

21 (B) - 21 (22) "Transfer agreement" means the agreement providing for the transfer of
 22 ^{the} structured settlement payment rights from a payee to a transferee.

23 (B) - 22 (23) "Transferee" means a party acquiring or proposing to acquire ^{the} structured
 24 settlement payment rights through a transfer of ^{that} ~~such~~ rights.

no space between U.S.

this is a subject

**** NOTE: I removed "authorizing" in subject*

1 **787.02 Conditions necessary to transfer** ^{the} **structured settlement**

2 **payment rights** (1) If the payee, the structured settlement obligor or the annuity
3 issuer under a structured settlement is domiciled in this state, or if the structured
4 settlement agreement was approved by a court or a responsible administrative
5 authority in this state, then no direct or indirect transfer of ^{the} structured settlement
6 payment rights under the settlement shall be effective and neither the structured
7 settlement obligor nor the annuity issuer shall be required to make any payments
8 directly or indirectly to any transferee of ^{that} ~~these~~ rights unless the transfer has been
9 approved in advance by a final order of a court of competent jurisdiction or a
10 responsible administrative authority.

11 (2) A court or responsible administrative authority may approve a transfer of
12 ^a structured settlement payment rights only if the court or authority makes express
13 findings that all of the conditions in subs. (3) to (9) are met.

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

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

20 (5) The disclosure statement under sub. (4) includes all of the following:

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

23 (b) The aggregate amount of the structured settlement payments to be
24 transferred.

1 (c) The discounted present value of the structured settlement payments to be
2 transferred.

3 (d) The discount rate used in determining the discounted present value of the
4 structured settlement payments to be transferred.

5 (e) The gross amount payable to the payee in exchange for the structured
6 settlement payments to be transferred.

7 (f) An itemized listing of all charges, commissions, costs, expenses and fees
8 payable by the payee or deductible from the gross amount otherwise payable to the
9 payee in exchange for the structured settlement payments being transferred.

10 (g) The net amount payable to the payee after the deduction of all of the
11 amounts described under par. (f).

12 (h) The number, expressed as a percentage, obtained by dividing the net
13 payment amount under par. (g) by the discounted present value of the structured
14 settlement payments to be transferred under par. (c).

15 (i) The amount of any penalty and the maximum amount of any liquidated
16 damages that the payee could be required to pay in the event of the payee's breach
17 of the transfer agreement.

18 (6) The extraordinary, unanticipated and imminent needs of the payee or his
19 or her dependents make the transfer appropriate.

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

22 (8) If the transfer would contravene the terms of ~~the~~^a structured settlement, all
23 of the following conditions are met:

24 (a) The transfer has been expressly approved in writing by each interested
25 party, except that if at the time that the payee and the transferee entered into the

1 transfer agreement, a favorable tax determination was in effect, then the approval
2 of the annuity issuer and the structured settlement obligor is not required under this
3 paragraph if all of the other interested parties approve the transfer agreement and
4 waive any rights to require that the transferred payments be made to the payee in
5 accordance with the terms of the structured settlement.

6 (b) The transfer has been expressly approved in writing by any court or
7 governmental unit that previously approved the structured settlement, other than
8 the court or responsible administrative authority from which ~~authorization~~^{approval} of the
9 transfer agreement is sought under this section.

****NOTE: The NSSTA suggested revisions kept the word "authorization" in par. (b)
and the term "transfer agreement" in pars. (b) and (c). ~~Don't think that is correct~~, but
left ~~them~~ as suggested. OK?

I changed "authorization" to "approval"

"transfer agreement"

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

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

****NOTE: If the intent is to replace the term "transfer agreement" with the term
"transfer" everywhere in the draft, then definition number 21 should be removed.

18 **787.03 Procedure for ~~authorizing~~^{approving} the transfer of structured**
19 **settlement payment rights.** (1) The circuit court shall have nonexclusive
20 jurisdiction over any application for ~~authorization~~^{the approval} of a transfer agreement under s.

21 787.02 (2).

SECTION 1

Do you want to keep?

I changed

in the text to "approving" and "approval"?

****NOTE: Do you want to keep "authorizing" in the title and "authorization" and "transfer agreement" in sub. (1), as in the proposed revisions?

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

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

****NOTE: I changed "authorization" to approval twice in this subsection.

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

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

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

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

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

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

1 (5) Interested parties may file written responses to the transferee's application
2 with the court or responsible administrative authority within 15 days after receipt
3 of the notice under sub. (3).

4 **787.04 Waiver.** The rights and responsibilities created under this chapter may
5 not be waived.

6 **787.05 Exemption from penalties and fees.** A payee who proposes to make
7 a transfer of ^astructured settlement payment rights shall not be required to pay the
8 proposed transferee any penalty, forfeit any application fee or other payment made
9 to the proposed transferee or incur any liability to the proposed transferee as the
10 result of the failure of the proposed transfer agreement to meet the conditions under
11 s. 787.02.

12 **787.06 Construction of chapter.** This chapter shall not be construed to
13 ~~authorize~~ ^{approve} any transfer of ^astructured settlement payment rights in contravention of
14 any applicable law or to give effect to any transfer of ^astructured settlement payment
15 rights that is invalid under any applicable law.

*I changed "authorize" to "approve".
****NOTE: Should "or approve" be added after "authorize" or?
OK?*

16 **SECTION 2. Initial applicability.**

17 (1) This act first applies to the transfer of ^astructured settlement payment rights
18 under a transfer agreement entered into on the effective date of this subsection.

19 **SECTION 3. Effective date.**

20 (1) This act takes effect on the first day of the 2nd month beginning after
21 publication.

22 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

3
LRB-1195/PZ/dn
RPN:cmh:hmh

cmh

April 7, 1999

This draft is based on the document received from Pete Christianson on April 5. There are a number of inconsistent uses of ~~assignment~~ versus ~~agreement~~ and "transfer" versus "transfer agreement". See my **** NOTES.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

CS

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1195/P3dn
RPN:cmh:km

April 14, 1999

This draft is based on the document received from Pete Christianson on April 5. There are a number of inconsistent uses of "transfer" versus "transfer agreement". See my ****NOTES.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

ROGER BRESKE

STATE SENATOR

12th District

Capitol Address:
State Capitol
P.O. Box 7882
Madison, WI 53707-7882
(608) 266-2509



Home Address:
8800 Hwy. 29
Eland, WI 54427
(715) 454-6575

Legislative Hotline:
1 (800) 362-9472

FACSIMILE COVER SHEET

DATE: 4/14/99

PLEASE DELIVER TO: PETE CHRISTENSEN

ORGANIZATION: _____

FAX NUMBER: () 251-9166

PAGES (INCLUDING COVER SHEET): 12

FROM: VAUGHN

NOTES: _____

IN THE EVENT OF DELIVERY PROBLEMS, PLEASE CONTACT SENATOR BRESKE'S OFFICE AT
608/266-2509.

STATE SENATOR ROGER BRESKE
THE STATE CAPITOL
POST OFFICE BOX 7882
MADISON, WISCONSIN 53707-7882
608/266-2509

Recycled paper

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 4/14/99

To: Senator Breske

Relating to LRB drafting number: LRB-1195

Topic

Structured settlement model protection act

Subject(s)

Courts - civil procedure, Courts - miscellaneous

1. **JACKET** the draft for introduction _____

in the **Senate** _____ or the **Assembly** _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-7511

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1195/P8dn
RPN:emb:km

April 14, 1999

This draft is based on the document received from Pete Christianson on April 5. There are a number of inconsistent uses of "transfer" versus "transfer agreement". See my ****NOTES.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Substantive approval
approved
U.S. except page*

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

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

3 **SECTION 1.** Chapter 787 of the statutes is created to read:

4 **CHAPTER 787**

5 **STRUCTURED SETTLEMENTS**

6 **787.01 Definitions.** In this chapter:

7 (1) "Annuity issuer" means an insurer that has issued an insurance contract
8 used to fund periodic payments under a structured settlement.

9 (2) "Applicable law" means the law of the United States, the law of this state
10 and the law of any jurisdictions other than this state:

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

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

4 (3) "Dependent" means the spouse and minor children of a payee and all other
5 persons for whom the payee is legally obligated to provide support, maintenance or
6 alimony.

7 (4) "Discounted present value" means the fair present value of future payments
8 as determined by discounting the payments to the present time using the most
9 recently published applicable federal rate for determining the present value of an
10 annuity, as issued by the U.S. internal revenue service under section 7520 of the
11 Internal Revenue Code.

12 (5) "Favorable tax determination" means a decision by a tax authority
13 definitively establishing that the federal income tax treatment of a structured
14 settlement and of any qualified assignment agreement for the interested parties to
15 that settlement and agreement, other than the payee, will not be affected by a
16 transfer of the structured settlement payment right.

17 (6) "Governmental unit" means the United States; the state; any county, city,
18 village or town; or any political subdivision, department, division, board or agency
19 of the United States, the state or any county, city, village or town.

20 (7) "Independent professional advice" means advice provided by an
21 appropriate licensed professional adviser if the person providing the advice meets all
22 of the following criteria:

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

1 (b) Is not affiliated with or compensated by the transferee of the structured
2 settlement payment right.

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

6 (8) "Interested party" means the payee, any beneficiary designated under the
7 annuity contract to receive payments following the payee's death, the annuity issuer,
8 the structured settlement obligor and any other person who has continuing rights
9 or obligations under the structured settlement.

10 (9) "Internal Revenue Code" has the meaning given in s. 71.01 (6).

11 (10) "Payee" means the individual who is receiving tax-free payments for
12 injuries under a structured settlement.

13 (11) "Periodic payments" include scheduled future lump-sum payments.

14 (12) "Qualified assignment agreement" means an agreement providing for a
15 qualified assignment within the meaning of section 130 of the Internal Revenue
16 Code.

17 (13) "Responsible administrative authority" means any governmental unit
18 vested by law with exclusive jurisdiction over the original tort claim or worker's
19 compensation claim that was resolved by a structured settlement.

20 (14) "Structured settlement" means an arrangement for the periodic payments
21 of damages for personal injuries that was established by a settlement or a court
22 judgment that resolved a tort claim or for periodic payments in settlement of a
23 worker's compensation claim.

24 (15) "Structured settlement agreement" means the agreement, judgment,
25 stipulation or release that includes the terms of a structured settlement.

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

4 (17) "Structured settlement payment right" means the right to receive periodic
5 payments under a structured settlement, either from the structured settlement
6 obligor or from the annuity issuer.

7 (18) "Tax authority" means each of the following:

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

10 (b) A revenue ruling or revenue procedure issued by the internal revenue
11 service.

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

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

15 (19) "Terms of a structured settlement" includes the terms of the structured
16 settlement agreement, the annuity contract, any qualified assignment agreement
17 and any order or approval of a court, a responsible administrative authority or other
18 governmental unit authorizing or approving the structured settlement.

leave a note!
....NOTE: I removed "authorizing" in this subsection.

19 (20) "Transfer" means the sale, assignment, pledge or other form of alienation
20 or encumbrance of a right for consideration.

21 (21) "Transfer agreement" means the agreement providing for the transfer of
22 the structured settlement payment right from a payee to a transferee.

23 (22) "Transferee" means a party acquiring or proposing to acquire
24 structured settlement payment right through a transfer of that right.

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

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

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

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

20 (5) The disclosure statement under sub. (4) includes all of the following:

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

23 (b) The aggregate amount of the structured settlement payments to be
24 transferred.

1 (c) The discounted present value of the structured settlement payments to be
2 transferred.

3 (d) The discount rate used in determining the discounted present value of the
4 structured settlement payments to be transferred.

5 (e) The gross amount payable to the payee in exchange for the structured
6 settlement payments to be transferred.

7 (f) An itemized listing of all charges, commissions, costs, expenses and fees
8 payable by the payee or deductible from the gross amount otherwise payable to the
9 payee in exchange for the structured settlement payments being transferred.

10 (g) The net amount payable to the payee after the deduction of all of the
11 amounts described under par. (f).

12 (h) The number, expressed as a percentage, obtained by dividing the net
13 payment amount under par. (g) by the discounted present value of the structured
14 settlement payments to be transferred under par. (c).

15 (i) The amount of any penalty and the maximum amount of any liquidated
16 damages that the payee could be required to pay in the event of the payee's breach
17 of the transfer agreement.

18 (6) The extraordinary, unanticipated and imminent needs of the payee or his
19 or her dependents make the transfer appropriate.

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

22 (8) If the transfer would contravene the terms of structured settlement, all
23 of the following conditions are met:

24 (a) The transfer has been expressly approved in writing by each interested
25 party, except that if at the time that the payee and the transferee entered into the

transfer agreement is the
~~transfer agreement~~

1 transfer agreement, a favorable tax determination was in effect, then the approval
2 of the annuity issuer and the structured settlement obligor is not required under this
3 paragraph if all of the other interested parties approve the transfer ~~_____~~ and
4 waive any rights to require that the transferred payments be made to the payee in
5 accordance with the terms of the structured settlement.

6 (b) The transfer has been expressly approved in writing by any court or
7 governmental unit that previously approved the structured settlement, other than
8 the court or responsible administrative authority from which approval of the
9 transfer ~~_____~~ is sought under this section.

****NOTE: The NSSTA suggested revisions kept the word "authorization" in par. (b)
and the term "transfer agreement" in pars. (b) and (c). I changed "authorization" to
"approval", but left "transfer agreement", as suggested. OK?

10 (c) Signed originals of all approvals required under pars. (a) and (b) have been
11 filed with the court or responsible administrative authority from which approval of
12 the transfer ~~_____~~ is sought under this section and copies of those approvals
13 have been provided to all the interested parties.

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

****NOTE: If the intent is to replace the term "transfer agreement" with the term
"transfer" everywhere in the draft, then definition number 21 should be removed.

18 **787.03 Procedure for approving the transfer of the structured**
19 **settlement payment right.** (1) The circuit court shall have nonexclusive
20 jurisdiction over any application for the approval of a transfer ~~_____~~ under s.
21 787.02 (2).

2 places where TA should stay
P. 6 L 17 (refer to document
P. 8 L 14 (not underlying transfer)

****NOTE: I changed "authorizing" in the title and "authorization" in the text to "approving" and "approval". Do you want to keep "transfer agreement" in sub. (1), as in the proposed revisions?

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

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

****NOTE: I changed "authorization" to approval twice in this subsection.

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

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

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

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

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

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

1 (5) Interested parties may file written responses to the transferee's application
2 with the court or responsible administrative authority within 15 days after receipt
3 of the notice under sub. (3).

4 **787.04 Waiver.** The rights and responsibilities created under this chapter may
5 not be waived.

6 **787.05 Exemption from penalties and fees.** A payee who proposes to make
7 a transfer of a structured settlement payment right shall not be required to pay the
8 proposed transferee any penalty, forfeit any application fee or other payment made
9 to the proposed transferee or incur any liability to the proposed transferee as the
10 result of the failure of the proposed transfer agreement to meet the conditions under
11 s. 787.02.

12 **787.06 Construction of chapter.** This chapter shall not be construed to
13 ~~authorize~~ any transfer of a structured settlement payment right in contravention of
14 any applicable law or to give effect to any transfer of a structured settlement
15 payment right that is invalid under any applicable law.

****NOTE: I changed "authorize" to "approve". OK? NO inappropriate here.

16 **SECTION 2. Initial applicability.**

17 (1) This act first applies to the transfer of a structured settlement payment
18 right under a transfer agreement entered into on the effective date of this subsection.

19 **SECTION 3. Effective date.**

20 (1) This act takes effect on the first day of the 2nd month beginning after
21 publication.

22 (END)

*big deal now in
current cases. factoring
can now try to
use such language
laws*

*intended to say
the statute doesn't
change existing law
on @ of whether or
not any SS is
transferable.*



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1195/28
RPN:cmh:km

D-Note

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

1999 BILL

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

new act.

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

*INSERT
AND* →

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

3 **SECTION 1.** Chapter 787 of the statutes is created to read:

4 **CHAPTER 787**

5 **STRUCTURED SETTLEMENTS**

6 **787.01 Definitions.** In this chapter:

7 (1) "Annuity issuer" means an insurer that has issued an insurance contract
8 used to fund periodic payments under a structured settlement.

9 (2) "Applicable law" means the law of the United States, the law of this state
10 and the law of any jurisdictions other than this state:

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

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

4 (3) "Dependent" means the spouse and minor children of a payee and all other
5 persons for whom the payee is legally obligated to provide support, maintenance or
6 alimony.

7 (4) "Discounted present value" means the fair present value of future payments
8 as determined by discounting the payments to the present time using the most
9 recently published applicable federal rate for determining the present value of an
10 annuity, as issued by the U.S. internal revenue service under section 7520 of the
11 Internal Revenue Code.

12 (5) "Favorable tax determination" means a decision by a tax authority
13 definitively establishing that the federal income tax treatment of a structured
14 settlement and of any qualified assignment agreement for the interested parties to
15 that settlement and agreement, other than the payee, will not be affected by a
16 transfer of the structured settlement payment right.

17 (6) "Governmental unit" means the United States; the state; any county, city,
18 village or town; or any political subdivision, department, division, board or agency
19 of the United States, the state or any county, city, village or town.

20 (7) "Independent professional advice" means advice provided by an
21 appropriate licensed professional adviser if the person providing the advice meets all
22 of the following criteria:

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

1 (b) Is not affiliated with or compensated by the transferee of the structured
2 settlement payment right.

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

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

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

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

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

14 (12) “Qualified assignment agreement” means an agreement providing for a
15 qualified assignment within the meaning of section 130 of the Internal Revenue
16 Code.

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

20 (14) “Structured settlement” means an arrangement for the periodic payments
21 of damages for personal injuries that was established by a settlement or a court
22 judgment that resolved a tort claim or for periodic payments in settlement of a
23 worker’s compensation claim.

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

SECTION 1

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

(4) (17) "Structured settlement payment right" means ~~the~~^a right to receive periodic
5 payments under a structured settlement, either from the structured settlement
6 obligor or from the annuity issuer.

7 (18) "Tax authority" means each of the following:

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

10 (b) A revenue ruling or revenue procedure issued by the internal revenue
11 service.

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

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

15 (19) "Terms of a structured settlement" includes the terms of the structured
16 settlement agreement, the annuity contract, any qualified assignment agreement
17 and any order or approval of a court, a responsible administrative authority or other
18 governmental unit authorizing or approving the structured settlement.

X ~~"which is removed" authorizing" in this subsection.~~

19 (20) "Transfer" means the sale, assignment, pledge or other form of alienation
20 or encumbrance of a right for consideration.

21 (21) "Transfer agreement" means the agreement providing for the transfer of
22 ~~the~~^a structured settlement payment right from a payee to a transferee.

(23) (22) "Transferee" means a party acquiring or proposing to acquire ~~the~~^a
24 structured settlement payment right through a transfer of that right.

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

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

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

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

20 **(5)** The disclosure statement under sub. (4) includes all of the following:

21 **(a)** The amounts and due dates of the structured settlement payments to be
22 transferred.

23 **(b)** The aggregate amount of the structured settlement payments to be
24 transferred.

1 (c) The discounted present value of the structured settlement payments to be
2 transferred.

3 (d) The discount rate used in determining the discounted present value of the
4 structured settlement payments to be transferred.

5 (e) The gross amount payable to the payee in exchange for the structured
6 settlement payments to be transferred.

7 (f) An itemized listing of all charges, commissions, costs, expenses and fees
8 payable by the payee or deductible from the gross amount otherwise payable to the
9 payee in exchange for the structured settlement payments being transferred.

10 (g) The net amount payable to the payee after the deduction of all of the
11 amounts described under par. (f).

12 (h) The number, expressed as a percentage, obtained by dividing the net
13 payment amount under par. (g) by the discounted present value of the structured
14 settlement payments to be transferred under par. (c).

15 (i) The amount of any penalty and the maximum amount of any liquidated
16 damages that the payee could be required to pay in the event of the payee's breach
17 of the transfer agreement.

18 (6) The extraordinary, unanticipated and imminent needs of the payee or his
19 or her dependents make the transfer appropriate.

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

22 (8) If the transfer would contravene the terms of ^{the} structured settlement, all
23 of the following conditions are met:

24 (a) The transfer has been expressly approved in writing by each interested
25 party, except that if at the time that the payee and the transferee entered into the

1 transfer agreement, a favorable tax determination was in effect, then the approval
2 of the annuity issuer and the structured settlement obligor is not required under this
3 paragraph if all of the other interested parties approve the transfer ~~agreement~~ and
4 waive any rights to require that the transferred payments be made to the payee in
5 accordance with the terms of the structured settlement.

6 (b) The transfer has been expressly approved in writing by any court or
7 governmental unit that previously approved the structured settlement, other than
8 the court or responsible administrative authority from which approval of the
9 transfer ~~agreement~~ is sought under this section.

X ****NOTE: The NSSTA suggested revisions kept the word "authorization" in par. (b)
and the term "transfer agreement" in pars. (b) and (c). I changed "authorization" to
"approval", but left "transfer agreement", as suggested. OK?

10 (c) Signed originals of all approvals required under pars. (a) and (b) have been
11 filed with the court or responsible administrative authority from which approval of
12 the transfer ~~agreement~~ is sought under this section and copies of those approvals
13 have been provided to all the interested parties.

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

X ****NOTE: If the intent is to replace the term "transfer agreement" with the term
"transfer" everywhere in the draft, then definition number 21 should be removed.

18 **787.03 Procedure for approving the transfer of the structured**
19 **settlement payment right.** (1) The circuit court shall have nonexclusive
20 jurisdiction over any application for the approval of a transfer ~~agreement~~ under s.
21 787.02 (2).

****NOTE: I changed "authorizing" in the title and "authorization" in the text to "approving" and "approval". Do you want to keep "transfer agreement" in sub. (1) as in the proposed revisions?

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

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

****NOTE: I changed "authorization" to approval twice in this subsection.

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

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

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

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

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

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

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1195/lins
RPN:cmh:km

insert anl:

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:

- a. The amounts and due dates of the structured settlement payments to be transferred.
- b. The total amount of the payments transferred.
- c. The discounted present value of those payments.
- d. The discount rate used to determine that discounted present value.
- e. The gross amount payable to the injured party in exchange for those transferred payments.
- f. A listing of all the charges, commissions and other expenses deductible from the gross amount payable.
- g. The resulting net amount payable.
- h. The percentage obtained by dividing the net amount payable by the discounted present value.

i. Any penalties for breaching the agreement to transfer the payments.

2. The extraordinary, unanticipated and imminent needs of the injured party or his or her dependents makes the transfer of the payments appropriate.

3. The injured party has received independent professional advice regarding the legal, tax and financial implications of the transfer of the payments.

4. If the transfer would contravene the terms of the structured settlement, the transfer has been approved in writing by each interested party and by any other court or administrative agency that previously approved the structured settlement and copies of those approvals are filed with the approving court or administrative agency.

The bill also requires the person purchasing the structured settlement payments, not less than 20 days before the hearing on an application to approve the transfer of the structured settlement payments, to file a notice of the proposed transfer and application for approval with the appropriate court or administrative agency and to serve a copy of that notice on any other governmental unit that previously approved the structured settlement and on all interested parties. The notice, under the bill, must include a copy of the application for approval of the transfer, the proposed transfer agreement and the disclosure statement and a statement of the time and place of the hearing and that any interested party may submit written comments to the court or administrative agency regarding the proposed transfer.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1195/1dn
RPN:cmh:km

Please review this draft carefully, including the analysis, to ensure that it complies with your intent and is accurate.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1195/1dn
RPN:cmh:km

May 4, 1999

Please review this draft carefully, including the analysis, to ensure that it complies with your intent and is accurate.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 5/4/99

To: Senator Breske

Relating to LRB drafting number: LRB-1195

Topic

Structured settlement model protection act

Subject(s)

Courts - civil procedure, Courts - miscellaneous

1. **JACKET** the draft for introduction

Roger Breske / uf.

in the **Senate** or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-7511