



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2015 Wisconsin Act 94**  
[2015 Assembly Act 129]

**Transfer of Structured Settlement  
Payment Rights**

2015 Wisconsin Act 94 creates a state law governing the transfer of structured settlement payment rights.

### **BACKGROUND**

The Act was recommended for introduction by the Joint Legislative Council's Special Committee on the Transfer of Structured Settlements. Key provisions of the Act are summarized below. The Act is based on and modifies the Model State Structured Settlement Protection Act, a model law developed by the National Structured Settlements Trade Association and the National Association of Settlement Purchasers.

Federal law imposes a 40% 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. Under prior state law, Wisconsin courts that approved such transactions did so by applying laws from other states.

### **REQUIRED DISCLOSURES**

The Act requires a prospective purchaser of structured settlement payment rights ("transferee") to disclose all of the following information to the person who currently holds those rights ("payee") not less than five business days before a payee signs an agreement for transfer of such rights:

- The amounts and due dates of the structured settlement payments to be transferred.
- The aggregate amount of the payments.
- 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.

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

- The gross advance amount.
- 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.
- The net advance amount.
- 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.
- A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.
- 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."
- A statement that the transferee's attorney does not represent the payee in connection with the proposed transfer.
- 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.

### **STANDARD OF REVIEW**

In order for a transfer of structured settlement payment rights to take effect, the Act requires the transfer to have been approved in a final court order, based on express findings by the court that all of the following are true:

- The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.
- 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.
- The transfer does not contravene any applicable statute or the order of any court or other government authority.

The Act provides that a court may consider any of the following factors when determining whether a proposed transfer is in the best interest of the payee:

- Whether the payee understands the financial ramifications of the transfer agreement and is entering into the agreement voluntarily.
- The financial terms of the transfer agreement.

- 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.
- Any other considerations the court deems appropriate.

In addition, in cases in which a payee is a minor or has been adjudicated incompetent in Wisconsin, the reviewing court must consider all of the following factors when determining whether a transfer is in the payee's best interest:

- The physical and mental health of the payee.
- The payee's overall financial situation.

### **PROCEDURAL REQUIREMENTS**

The Act establishes certain procedures governing judicial actions for approval of agreements to transfer structured settlement payment rights. The Act requires that a hearing be held on a petition for court approval, and it requires the payee to 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.

The Act also requires a transferee to file and serve on all interested parties a notice of the proposed transfer not less than 20 days prior to the hearing on the transfer. The following information must be included with the notice:

- A copy of the transferee's petition.
- A copy of the transfer agreement.
- A copy of the disclosure statement required under s. 895.66, Stats.
- A listing of each of the payee's dependents, together with each dependent's age.
- 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.
- 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.
- 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.

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*Prepared by:* Anna Henning, Senior Staff Attorney

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