



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2015 Assembly Bill 129**

**Assembly Amendment 1**

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2015 Assembly Bill 129 was recommended for introduction by the Joint Legislative Council's Study Committee on the Transfer of Structured Settlement Payments.

### **2015 ASSEMBLY BILL 129**

Federal law imposes a 40% excise tax on transactions to transfer rights to structured settlement payments, unless a transaction is approved by a court (or, in some states, an applicable administrative body). Assembly Bill 129 creates a new subchapter in ch. 895, Stats., to govern the transfer of structured settlement payments in Wisconsin.

The bill requires purchasers of rights to structured settlement payments to make certain disclosures and sets forth standards governing judicial review of transfers of structured settlement payment rights. It also provides procedures, legal effects, and general provisions relating to the approval of such transfers.

### **ASSEMBLY AMENDMENT 1**

Assembly Amendment 1 makes the following substantive changes to Assembly Bill 129:

- **Medicare set-aside funds.** The amendment removes a provision of the bill that expressly prohibits Wisconsin courts from approving the transfer of payments that are part of a Medicare set-aside arrangement established under federal law. As amended, the bill would not specifically address judicial approval of transfers of such funds. It is possible that courts would nevertheless decline to approve the transfer of such funds on more general grounds provided in the bill or pursuant to future federal regulations.

- **Scope of application.** The bill applies to transfers of “structured settlement payment rights,” defined to mean “rights to receive periodic payments under a structured settlement.”<sup>1</sup> The amendment adds to that definition to specify that the bill applies to such rights in any of the following situations: (1) the payee is domiciled in this state; (2) the structured settlement obligor or annuity issuer’s principal place of business is located in this state; (3) the structured settlement agreement was approved by a court in this state; or (4) the structured settlement agreement is expressly governed by the laws of this state. Federal law generally requires a transfer of structured settlement payment rights to be approved by a court in the state in which the payee (i.e., current holder of the payment rights) is domiciled, but it provides an exception to that requirement for situations in which a payee is not domiciled in a state that has a statute governing such transfers. The effect of change made by the amendment would be to clarify that the bill applies in all circumstances authorized under federal law.
- **Venue.** The bill requires a petition for approval of an agreement to transfer structured settlement rights to be brought in the county in which the payee resides. The amendment modifies the venue requirement to make it consistent with the changes to the scope of the bill’s application, described above. Specifically, the amendment specifies that if a payee is not domiciled in this state, then the petition must be brought in the county in which the structured settlement obligor or annuity issuer maintains its principal place of business, or in any court that approved the structured settlement agreement.
- **Waiver of opportunity to seek financial advice.** The amendment removes language stating that the failure to obtain independent professional advice regarding a proposed transfer of structured settlement payment rights may constitute a waiver. Other provisions of the bill indicate that such advice may be waived only knowingly and in writing.
- **Service of process.** For purposes of providing notice of a proposed transfer of structured settlement payment rights to the relevant court and interested parties, the bill provides that service by certified mail or overnight mail with proof of delivery or its equivalent constitute adequate service of process. The amendment removes certified mail as an option for service of process under the bill.

## **BILL HISTORY**

Assembly Bill 129 was introduced by the Joint Legislative Council on March 27, 2015. Assembly Amendment 1 to Assembly Bill 129 was introduced on April 28, 2015, by Representative Jim Ott and Representative Dana Wachs, who served as chair and vice-chair, respectively, of the Joint Legislative Council Study Committee on the Transfer of Structured

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<sup>1</sup> The bill further defines the term “structured settlement” to mean “an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.”

Settlement Payments. On May 7, 2015, the Assembly Committee on Judiciary voted unanimously to recommend adoption of the amendment. On the same date, the committee voted to recommend passage of the bill, as amended, also on a unanimous vote.

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