

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

2 **895.65 Definitions.** In this subsection:

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

5 (2) “Dependents” means a payee’s spouse and minor children and all other persons for
6 whom the payee is legally obligated to provide support, maintenance, or alimony.

7 (3) “Business day” has the meaning given in s. 421.301 (6).

COMMENT: Section 421.301 (6), stats., provides that “business day”
 means any calendar day except Saturday and Sunday, and except the
 following business holidays: New Year’s Day, Martin Luther King, Jr.’s
 birthday, Washington’s birthday, Memorial Day, Independence Day,
 Labor Day, Columbus Day, Veterans Day, Thanksgiving and Christmas.

8 (4) “Discounted present value” means the present value of future payments determined
9 by discounting the payments to the present using the applicable federal rate for determining
10 the present value of an annuity, as most recently issued by the federal Internal Revenue
11 Service.

12 (5) “Gross advance amount” means the sum payable to the payee or for the payee’s
13 account as consideration for a transfer of structured settlement payment rights before any
14 reductions for transfer expenses or other deductions to be made from such consideration.

15 (6) “Independent professional advice” means advice of an attorney, certified public
16 accountant, actuary, or other licensed professional adviser.

17 (7) “Interested parties” means the payee, any beneficiary irrevocably designated under
18 the annuity contract to receive payments following the payee’s death, the annuity issuer, the
19 structured settlement obligor, and any other party that has continuing rights or obligations
20 under a structured settlement.

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

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

5 **(10)** “Periodic payments” includes both recurring payments and scheduled future lump
6 sum payments.

7 **(11)** “Qualified assignment agreement” means an agreement providing for a qualified
8 assignment within the meaning of section 130 of the federal Internal Revenue Code, Title 26,
9 USC.

10 **(12)** “Responsible administrative authority” means any government authority vested
11 by law with exclusive jurisdiction over the settled claim resolved by such structured
12 settlement.

13 **(13)** “Settled claim” means the original tort claim resolved by a structured settlement.

14 **(14)** “Structured settlement” means an arrangement for periodic payment of damages
15 for personal injuries or sickness established by settlement or judgment in resolution of a tort
16 claim.

17 **(15)** “Structured settlement agreement” means the agreement, judgment, stipulation,
18 or release embodying the terms of a structured settlement.

19 **(16)** “Structured settlement obligor” means the party that has the continuing obligation
20 to make periodic payments to the payee under a structured settlement agreement or a qualified
21 assignment agreement.

22 **(17)** “Structured settlement payment rights” means rights to receive periodic payments
23 under a structured settlement, if the payee is domiciled in this state.

1 **(18)** “Terms of the structured settlement” means the terms or conditions of the
2 structured settlement agreement, the annuity contract, any qualified assignment agreement,
3 and any order or other approval of any court or responsible administrative authority or other
4 government authority that authorized or approved the structured settlement.

5 **(19)** (a) “Transfer” means any sale, assignment, pledge, hypothecation, or other
6 alienation or encumbrance of structured settlement payment rights made by a payee for
7 consideration. Except as provided in par. (b), transfer does not include the creation or
8 perfection of a security interest in structured settlement payment rights under a blanket
9 security agreement entered into with an insured depository institution.

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

15 **(20)** “Transfer agreement” means the agreement providing for a transfer of structured
16 settlement payment rights.

17 **(21)** “Transfer expenses” means all expenses of a transfer that are required under the
18 transfer agreement to be paid by the payee or deducted from the gross advance amount,
19 including court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien
20 search fees, finders’ fees, commissions, and other payments to a broker or other intermediary.
21 Transfer expenses do not include preexisting obligations of the payee payable for the payee’s
22 account from the proceeds of a transfer.

23 **(22)** “Transferee” means a party acquiring or proposing to acquire structured settlement
24 payment rights through a transfer.

COMMENT: A definition for “business day” has been added to the bill draft based on the discussion at the September 11, 2014 meeting of the committee. All of the other definitions above are borrowed from the model act. Should any definitions be added, modified, or removed? One reason to remove definitions might be that the defined terms are commonly understood. See, for example, Oregon’s law, which includes many fewer definitions than are included in the model act.

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

2 **895.66 Mandatory disclosures.** Not less than 5 business days before a payee signs a
3 transfer agreement, the transferee shall provide to the payee a separate disclosure statement,
4 in bold type no smaller than 14 points, that contains all of the following:

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

6 (2) The aggregate amount of the payments.

7 (3) The discounted present value of the payments to be transferred and the amount of
8 the applicable federal rate used in calculating the discounted present value.

9 (4) The gross advance amount.

10 (5) An itemized listing of all applicable transfer expenses, other than attorneys’ fees and
11 related disbursements payable in connection with the transferee’s application for approval of
12 the transfer, and the transferee’s best estimate of the amount of any such fees and
13 disbursements.

14 (6) The net advance amount.

15 (7) The amount of any penalties or liquidated damages payable by the payee in the event
16 of any breach of the transfer agreement by the payee.

17 (8) A statement that the payee has the right to cancel the transfer agreement, without
18 penalty or further obligation, not later than the 3rd business day after the date the agreement
19 is signed by the payee.

COMMENT: The disclosure required under sub. 8 provides the timeline for a right to cancellation. Is the third business day following the execution of a transfer agreement the appropriate timeline for a right to cancellation? Some states have specified longer timeframes for a right to cancel a transfer agreement.

1 **(9)** The discount rate.

COMMENT: Does the term “discount rate” require a definition or any additional description?

2 **(10)** The effective annualized rate of interest on the net advance amount, calculated by
3 treating the transferred structured settlement payments as if they were installment payments
4 on a loan, with each payment applied first to accrued unpaid interest and then to principal, and
5 written in the following format: “YOU WILL BE PAYING THE EQUIVALENT OF AN
6 INTEREST RATE OF __% PER YEAR.”.

7 **(11)** The price quote from the original annuity issuer or, if such price quote is not readily
8 available from the original annuity issuer, then a price quote from 2 other annuity issuers that
9 reflects the current cost of purchasing a comparable annuity for the aggregate amount of
10 payments to be transferred.

11 **(12)** A statement informing the payee that structured settlement transfers have financial
12 consequences and advising the payee to seek independent professional advice regarding the
13 transfer agreement.

COMMENT: Subsections (9) through (12) above were added to the list of disclosures that a transferee must provide to a payee under the model act based on the discussion during the September 11, 2014 meeting of the committee. Do those additional disclosures reflect the committee’s intent? Should any additional disclosures be added? For example, among other disclosures, Oregon’s law requires a statement that the transferee’s attorney does not represent the payee in connection with the proposed transfer.

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

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

8 (a) The transfer is in the best interest of the payee, taking into account the welfare and
9 support of the payee's dependents.

10 (b) The payee has been advised in writing by the transferee to seek independent
11 professional advice regarding the transfer and has either received such advice or knowingly
12 waived such advice in writing.

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

15 (2) A court or responsible administrative authority may consider all of the following
16 when making a determination under sub. (1) (a):

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

19 (b) The financial terms of the transfer agreement.

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

22 (d) Any other considerations the court or responsible administrative body deems
23 appropriate.

COMMENT: The considerations enumerated in sub. (2) were added based on the discussion at the September 11, 2014 meeting of the committee. As drafted, the considerations are discretionary; a court **may** take them into account. Does that reflect the committee's intent?

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

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

5 (b) The payee's overall financial situation.

COMMENT: The considerations enumerated in sub. (3) apply only to transfer agreements in which the payee is a minor or has been adjudicated incompetent. Does that application reflect the committee's intent? Should there be any additional situations in which those considerations apply?

6 (4) Notwithstanding subs. (1) to (3), no court or responsible administrative agency may
7 approve any of the following:

8 (a) The transfer of payments that are part of a valid Medicaid special needs trust, as
9 described under 42 USC 1396p (d) (4), or a Medicare set-aside arrangement established under
10 42 USC 1395y (b) (2).

11 (b) The transfer of payments under a transfer agreement that does not provide that
12 disputes under such agreement, including any claim that the payee has breached the
13 agreement, shall be determined in and under the laws of this state.

14 (c) The transfer of payments under a transfer agreement that authorizes the transferee
15 or any other party to confess judgment or consent to entry of judgment against the payee.

16 (d) The transfer of payments that are life contingent unless, prior to the date on which
17 the payee signs the transfer agreement, the transferee has established and has agreed to
18 maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement

1 obligor for periodically confirming the payee's survival, and giving the annuity issuer and the
2 structured settlement obligor prompt written notice in the event of the payee's death.

3 (e) A transfer of payments that would require an annuity issuer or the structured
4 settlement obligor to divide any periodic payment between the payee and any transferee or
5 assignee or between multiple transferees or assignees.

COMMENT: Subsections (2), (3), and (4) have been added to the provisions of the model act based on the discussion at the September 11, 2014 meeting. Subsection (2) enumerates considerations that a court or responsible administrative authority may take into account when determining whether a proposed transfer is in a payee's best interest. Subsection (3) creates additional considerations that may be taken into account when a payee is a minor or has been adjudicated incompetent. Subsection (4) prohibits the approval of transfers of rights to payments that are part of a Medicaid special needs trust or a Medicare set-aside arrangement, and incorporates several provisions of the model act that were previously included in SECTIONS 5 and 7 of the draft.

Do those provisions reflect the committee's intended approach to the approval of transfer agreements?

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

7 **895.68 Effects of transfer of structured settlement payment rights.** A transfer of
8 structured settlement payment rights under this subchapter includes the following effects:

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

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

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

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

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

5 **895.69 Procedure. (1)** A petition for approval of a transfer of structured settlement
6 payment rights shall be brought by the transferee in the county in which the payee resides.

7 (2) A hearing must be held on a petition for approval of a transfer agreement. The payee
8 must attend the hearing in person unless the court or responsible administrative authority
9 determines that appearance via audiovisual technology is appropriate.

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

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

15 (b) A copy of the transfer agreement.

16 (c) A copy of the disclosure statement required under s. 895.66.

17 (d) A listing of each of the payee's dependents, together with each dependent's age.

18 (e) Notification that any interested party is entitled to support, oppose, or otherwise
19 respond to the transferee's petition, either in person or by counsel, by submitting written
20 comments to the court or responsible administrative authority or by participating in the
21 hearing.

22 (f) Notification of the time and place of the hearing and notification of the manner in
23 which and the time by which written responses to the petition must be filed in order to be

1 considered by the court or responsible administrative authority. Written responses may not
2 be due less than 15 days after service of the notice.

3 (g) An affidavit from the payee stating whether the payee is delinquent on any taxes in
4 this state or on any payments owed under an order for child support or restitution.

COMMENT: Based on the discussion at the September 11, 2014 meeting, the following changes were made in SECTION 6 of the bill draft: (1) the term for a transferee's filing was changed from "application" to "petition"; (2) a provision was added to require a payee to attend the hearing on a proposed transfer agreement, unless a court determines that appearance by audiovisual technology is appropriate; and (3) a provision was added for the submission of an affidavit from a payee regarding whether the payee is delinquent on any payments owed under an order for child support or restitution.

Do those changes reflect the committee's intent?

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

6 **895.70 General provisions.** (1) The provisions of this subchapter may not be waived
7 by any payee.

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

12 (3) This subchapter may not be construed to authorize any transfer of structured
13 settlement payment rights in contravention of any law or to imply that any transfer under a
14 transfer agreement entered into prior to the effective date of this subchapter is valid or invalid.

15 (4) Compliance with the requirements set forth in s. 895.66 and s. 895.67 shall be solely
16 the responsibility of the transferee in any transfer of structured settlement payment rights, and
17 neither the structured settlement obligor nor the annuity issuer shall bear any responsibility

1 for, or any liability arising from, noncompliance with such requirements or failure to fulfill
2 such conditions.

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

COMMENT: Subsections (2) to (4) have been renumbered, and were
previously included in this SECTION of the draft as subsections (4) to (6).
Subsection (5) was previously included in SECTION 5 of draft and has
been added above in a modified form.

7 **SECTION 8. Initial applicability.**

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

COMMENT: As drafted, the bill first applies to transfer agreements
entered into on the date the act becomes effective. Is that the appropriate
date for initial applicability? Is the execution of a transfer agreement the
appropriate point of reference for initial applicability?

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(END)