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## WISCONSIN LEGISLATIVE COUNCIL

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### TRANSFER OF STRUCTURED SETTLEMENT PAYMENTS

Room 225 Northwest  
State Capitol  
Madison, WI

October 9, 2014  
9:00 a.m. – 2:20 p.m.

[The following is a summary of the October 9, 2014 meeting of the Study Committee on the Transfer of Structured Settlement Payments. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc.>]

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#### Call to Order and Roll Call

Chair Ott called the committee to order. The roll was called and a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Jim Ott, Chair; Rep. Dana Wachs, Vice Chair; Rep. Michael Schraa; Sen. Lena Taylor; and Public Members Bruce Bachhuber, Michael Fitzpatrick, Catherine La Fleur, Benjamin Malsch, and Elizabeth Nevitt, and Gerald Ptacek.

COUNCIL STAFF PRESENT: Anna Henning and Brian Larson, Staff Attorneys.

#### Approval of the Minutes of the September 11, 2014 Meeting

The committee members approved the minutes of the September 11, 2014 meeting by unanimous consent.

#### Discussion of Committee Assignment

The committee discussed WLC: 0011/1, a bill draft relating to the transfer of structured settlement payments.

### Definitions

Following a discussion, committee members agreed that Legislative Council staff should make the following changes in SECTION 2 of the bill draft, relating to definitions, for review at the next meeting of the committee:

- Remove the definition of “responsible administrative authority” and all instances of that phrase throughout the bill draft.
- In the definition for “independent professional advice,” replace the word “licensed” with the word “qualified.”

### Disclosures

Next, committee members discussed SECTION 3 of the bill draft, relating to information that a transferee must disclose to a payee before an agreement to transfer rights to structured settlement payments may be signed. Committee members agreed that the third business day was the appropriate timeline for a right to cancel a disclosure agreement after it is signed. There was also general consensus that the following changes should be made in SECTION 3 of the bill draft:

- A provision requiring the disclosure of a price quote from the original annuity issuer or two other annuity issuers should be removed.
- A provision requiring the disclosure of the following statement should be added: “The transferee’s attorney does not represent the payee in connection with the proposed transfer.”
- In a provision regarding disclosure of financial consequences of a transfer and advising a payee to seek independent financial advice, the following language should be added: “The failure to obtain such advice may constitute a waiver.”

The committee also discussed potential changes to disclosures regarding the discounted present value of the payments to be transferred and the discount rate. Members suggested that a definition for the term “discount rate” should be added to the bill draft. Suggestions regarding the discounted present value disclosure included removing all language after the word “transferred” or revising the language after the word “transferred” to read “calculated using the rate used by the Internal Revenue Service to determine the present value of an annuity.” It was determined that those suggestions would be held over for further discussion at the committee’s next meeting.

### Approval Standards

Committee members then discussed SECTION 4 of the bill draft, relating to the approval of structured settlement transfer agreements. Committee members agreed that the following changes should be made in that section:

- On Page 7, Line 15 of the bill draft, replace the word “all” with the word “any.”
- On Page 7, Line 18, add the word “into” after “entering.”
- In the provision authorizing courts to consider whether a payee is delinquent in any payments required to be made pursuant to a restitution order, exclude restitution orders arising in civil proceedings from consideration by limiting the consideration to restitution orders in criminal and juvenile delinquency cases.
- The considerations in s. 895.67 (3), applicable in cases in which a payee is a minor or has been adjudicated incompetent, should be made mandatory considerations.
- Paragraphs (b) through (d) in s. 895.67 (4) should be moved to SECTION 7 of the bill draft and par. (e) in that subsection should be moved to SECTION 5 of the bill draft.

The committee also discussed possible changes to par. (a) in s. 895.67 (4), regarding the transfer of payments that are part of a Medicaid special needs trust or a Medicare set-aside arrangement. With respect to payments in a Medicaid special needs trust, some concerns were raised about a blanket exclusion. It was suggested that a transfer could be appropriate under some circumstances. Some committee members stated that in their experience the trust itself has been required to act as the payee, and suggested that the issue described in Memo No. 2, related to a possible impact on Medicaid eligibility, was not likely to be an issue. Committee members generally agreed that the reference to Medicaid special needs trusts should be removed from the bill draft.

With respect to the reference in s. 895.67 (4) (a) to Medicare set-aside arrangements, it was suggested that the provision should be made into a mandatory consideration under the “best interest” standard, and should be removed from sub. (4). Several additional concerns were raised about the interaction of state and federal law in this area, and committee members agreed to discuss that provision again at the next committee meeting.

### Procedures

The committee then discussed SECTION 6 of the bill draft, which provides various procedures applicable to judicial review of structured settlement transfer agreements. Ms. Henning explained that the term “application” had been replaced with the term “petition” throughout the section, to correspond with the terminology typically used for court filings in Wisconsin.

The committee members agreed that the following changes should be made in SECTION 6 of the bill draft:

- In a provision generally requiring that a payee appear in person at a hearing on a transfer agreement, an exception should be added for instances in which the court finds that good cause exists for the payee not to appear.
- A provision should be added to specify that, notwithstanding the general service of process requirements under s. 801.11, Stats., service by certified mail or overnight mail with proof of delivery or its equivalent constitutes adequate service of process for purposes of the notice requirement in s. 895.69 (3).

### **Initial Applicability**

Finally, the committee discussed the initial applicability provision in the bill draft. Members discussed potential interactions between the initial applicability provision and another provision that provides that any further transfers of structured settlement payment rights may be made only after compliance with the requirements of the bill. A question was raised regarding a potential unintended consequence for payments that are part of a Medicare set-aside arraignment. Legislative Council staff agreed to research that issue.

### **Adjournment**

Chair Ott thanked the members for their participation and reminded members that the next meeting of the committee is scheduled for 9:00 a.m. on November 6, 2014. He adjourned the meeting at 2:20 p.m.

AH:jal