

**[No. 330]**

**(HB 5066)**

AN ACT to establish conditions to the transfer of structured settlement rights; to establish a procedure for approval of the transfer of structured settlement rights; and to create circuit court jurisdiction for proceedings for approval of structured settlement rights.

*The People of the State of Michigan enact:*

**691.1191 Short title. [M.S.A. 27.957(1)]**

Sec. 1. This act shall be known and may be cited as the “structured settlement protection act”.

**691.1192 Definitions. [M.S.A. 27.957(2)]**

Sec. 2. As used in this act:

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

(b) “Applicable law” means 1 or more of the following:

(i) The federal laws of the United States.

(ii) The laws of this state, including principles of equity applied in the courts of this state.

(iii) The laws of any other jurisdiction to which 1 or more of the following apply:

(A) The jurisdiction is the domicile of the payee.

(B) A settled claim was pending in a court in the jurisdiction when a structured settlement was reached.

(c) “Contractual assignment restriction” means a term prohibiting or restricting transfer of a structured settlement payments right in a contract or agreement including, but not limited to, an annuity contract, a structured settlement agreement, a qualified assignment agreement, or a court order or administrative order approving a structured settlement.

(d) “Dependent” includes a payee’s spouse, minor child, or other person for whom the payee is legally obligated to provide alimony or other support.

(e) “Discounted present value” means, with respect to a proposed transfer of structured settlement payment rights, the fair value of future payments, as determined by discounting the payments to the present using the most recently published applicable federal rate for determining the present value of an annuity issued by the United States internal revenue service.

(f) “Independent professional advice” means advice of an attorney, certified public accountant, or other professional who meets all of the following concerning a transfer of a structured settlement payment right:

(i) He or she is qualified to advise payees and their dependents on the legal, tax, and financial implications of the structured settlement payment right.

(ii) He or she is not affiliated in any manner with the transferee of the structured settlement payment right.

(iii) His or her compensation for rendering the advice does not depend, directly or indirectly, on whether the transfer of the structured settlement payment right occurs.

(g) “Payee” means an individual who is receiving tax-free damages payments under a structured settlement and proposes to make a transfer of his or her payment rights under the structured settlement.

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(h) "Protected party" means, with respect to a structured settlement, the payee, a dependent of the payee, a beneficiary designated to receive payments following the payee's death, an annuity issuer, a structured settlement obligor, and any other party entitled to invoke the benefit of a contractual assignment restriction applicable to the structured settlement, whether as a party to or third party beneficiary of the annuity contract, the structured settlement agreement, the qualified assignment agreement, or the court order, administrative order, or other document in which the contractual assignment restriction appears.

(i) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the internal revenue code of 1986.

(j) "Settled claim" means the original tort claim resolved by a structured settlement.

(k) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim. Structured settlement does not include an arrangement for periodic payments in settlement of a worker's compensation claim.

(l) "Structured settlement agreement" means the agreement, judgment, stipulation, or release establishing the right of the payee to receive periodic payments and other terms of a structured settlement.

(m) "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

(n) "Structured settlement payment right" means a right to receive periodic payments including, but not limited to, lump sum payments under a structured settlement from the settlement obligor or the annuity issuer, where 1 or more of the following apply:

(i) The payee or a protected party is a resident of this state.

(ii) The settled claim was pending before a court of this state when the structured settlement was reached.

(o) "Transfer" means a sale, transfer, assignment, pledge, hypothecation, or other form of disposition, alienation, or encumbrance made for consideration.

(p) "Transfer agreement" means an agreement providing for transfer of a structured settlement payment right from a payee.

### **691.1193 Structured settlement payment subject to contractual assignment restriction; transfer of right; conditions; responsibilities of transferee before court hearing. [M.S.A. 27.957(3)]**

Sec. 3. (1) If a structured settlement payment right is subject to a contractual assignment restriction, a transfer of the structured settlement payment right is not effective and a structured settlement obligor or annuity issuer is not required to make payment directly or indirectly to a transferee of the structured settlement payment right transfer unless all of the following conditions are satisfied:

(a) Subject to section 4, a court of competent jurisdiction approves the transfer in advance in a final order. To approve the transfer, the court must expressly find all of the following:

(i) The transfer complies with the requirements of this act and will not contravene other applicable law.

(ii) Not less than 10 days before the date on which the payee entered into the transfer agreement, the transferee has provided to the payee and each dependent of the payee a

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disclosure statement in boldfaced type not smaller than 14-point that contains 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.

(C) The discounted present value of the structured settlement payments to be transferred and the discount rate or rates used in determining the discounted present value.

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

(E) An itemized listing of all brokers' commissions, service charges, application or processing fees, closing costs, filing or administrative charges, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount payable to the payee in exchange for the structured settlement payments to be transferred.

(F) The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subparagraph (E).

(G) The quotient, expressed as a percentage, obtained by dividing the net payment amount described in sub-subparagraph (F) by the discounted present value of the payments described in sub-subparagraph (C).

(H) The amount of any penalty and the aggregate amount of any liquidated damages and penalties payable by the payee in the event of any breach of the transfer agreement by the payee.

(iii) The payee has established that the transfer is necessary to enable the payee or the payee's dependents, or both, to avoid imminent financial hardship and the transfer is not expected to subject the payee or the payee's dependents, or both, to undue financial hardship in the future.

(iv) The payee has received independent professional advice regarding the financial and legal effects and consequences of the transfer.

(v) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of the notice with the court.

(vi) The discount rate or rates used in determining the discounted present value of the structured settlement payments to be transferred do not exceed 25% per year.

(b) Each protected party has given all of the following in writing:

(i) The protected party's irrevocable consent to the transfer.

(ii) The protected party's waiver of all rights under each contractual transfer restriction applicable to it.

(iii) The protected party's waiver of all rights with respect to the transferred payments.

(iv) The protected party's release of all claims against other protected parties with respect to the transferred structured settlement payments.

(2) The transferee of the structured settlement payment is responsible for all of the following before the hearing on an application for court approval under subsection (1)(a):

(a) Obtaining all consents, waivers, and releases required under subsection (1)(b).

(b) Filing signed originals of all consents, waivers, and releases required under subsection (1)(b) with the court from which approval of the transfer is sought under subsection (1)(a).

(c) Providing signed originals of all consents, waivers, and releases required under subsection (1)(b) to the annuity issuer and the structured settlement obligor.

(d) Providing copies of all consents, waivers, and releases required under subsection (1)(b) to any protected party that requests copies.

**691.1194 Jurisdiction of court; filing; service.**  
**[M.S.A. 27.957(4)]**

Sec. 4. The circuit court has subject matter jurisdiction for an application for court approval under section 3(1)(a) of a transfer of a structured settlement payment right. Not less than 21 days before the scheduled hearing on an application for court approval of a transfer of a structured settlement payment right under section 3(1)(a), the transferee must file with the circuit court and serve on all protected parties all of the following:

(a) Notice of the proposed transfer and application for court approval.

(b) A copy of the transferee's application to the circuit court.

(c) A copy of the transfer agreement.

(d) A copy of the disclosure statement required under section 3(1)(a).

(e) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing, or both.

(f) Notice of the time and place of the hearing.

(g) Notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than 10 days after service of the transferee's notice, in order to be considered by the court.

**691.1195 Waiver by protected party. [M.S.A. 27.957(5)]**

Sec. 5. (1) A protected party may not waive the requirements of this act.

(2) A protected party may only waive a contractual assignment restriction in writing.

**691.1196 Construction of act. [M.S.A. 27.957(6)]**

Sec. 6. This act shall not be construed to authorize any transfer of a structured settlement payment right in contravention of applicable law or to give effect to any transfer of a structured settlement payment right that is void under applicable law.

**691.1197 Applicability of act; enforcement of agreement or obligation.**  
**[M.S.A. 27.957(7)]**

Sec. 7. This act applies to each transfer of a structured settlement payment right under a transfer agreement reached on or after the thirty-first day after the effective date of this act. This act does not affect the enforceability of a transfer agreement reached before the date this act applies, the effectiveness of a transfer under a transfer agreement reached before the date this act applies, or the enforceability of an obligation to make payment to a transferee under a transfer agreement reached before the date this act applies.

This act is ordered to take immediate effect.

Approved December 13, 2000.

Filed with Secretary of State December 14, 2000.

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