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**SFA****BILL ANALYSIS**

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House Bill 5066 (Substitute H-2 as passed by the House)  
Sponsor: Representative Andrew Richner  
House Committee: Family and Civil Law  
Senate Committee: Financial Services

Date Completed: 9-20-00

## **CONTENT**

The bill would create the “Structured Settlement Protection Act” to provide that, unless a court approved the transfer of a structured settlement payment right that was subject to a contractual assignment restriction, a transfer would not be effective and a structured settlement obligor or annuity insurer would not be required to make payment directly or indirectly to a transferee. (In other words, if a person were entitled to receive periodic payments of damages for personal injuries, under a court judgment or settlement, that person (the payee) could not sell, assign, or otherwise dispose of the right to receive the payments without court approval, if such a transfer were prohibited or restricted in a contract or other agreement.) The court could not give its approval unless it found that the transfer was necessary for the payee and/or his or her dependents to avoid financial hardship. The person who would receive the transfer would have to obtain the consent of the payee, his or her dependents and beneficiaries, the party obligated to make the payments, and anyone who could invoke the contractual restriction on the transfer.

The following is a detailed description of the bill.

### **Definitions**

“Structural settlement” would mean an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim, but not in settlement of a worker’s compensation claim. “Structured settlement payment right” would mean a right to receive periodic payments including lump sum payments under a structured settlement from the settlement obligor or the annuity insurer, where the payee or a protected party was a State resident, or the settled claim was pending before a State court when the structured settlement was reached. “Structured settlement obligor” would mean the party that had the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

“Contractual assignment restriction” would mean a term prohibiting or restricting transfer of a structured settlement payments right in a contract or agreement, including an annuity contract, a structured settlement agreement, a qualified assignment agreement, or a court order or administrative order approving a structured settlement.

“Transfer” would mean a sale, transfer, assignment, pledge, hypothecation, or other form of disposition, alienation, or encumbrance made for consideration.

### **Transfer Approval**

To approve the transfer of a structured settlement payment right that was subject to a contractual assignment restriction, the court would have to find all of the following:

- The transfer complied with the bill's requirements and would not contravene other applicable law.
- The payee had established that the transfer was necessary to enable the payee or the payee's dependents, or both, to avoid imminent financial hardship and the transfer was not expected to subject the payee and/or the dependents to undue financial hardship in the future.
- The payee had received independent professional advice regarding the financial and legal effects and consequences of the transfer.
- The transferee had given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and had filed a copy of the notice with the court.
- The discount rate or rates used in determining the discounted present value of the structured settlement payments to be transferred did not exceed 25% per year.

The court also would have to find that, at least 10 days before the date on which the payee entered into the transfer agreement, the transferee had provided to the payee and each dependent a disclosure statement that contained all of the following:

- The amounts and due dates of the structured settlement payments to be transferred.
- The aggregate amount of the structured settlement payments to be transferred.
- The discounted present value of the structured settlement payments to be transferred and the discount rate or rates used in determining that value.
- The gross amount payable to the payee in exchange for the structured settlement payments to be transferred.
- 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.
- The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described above.
- The quotient, expressed as a percentage, obtained by dividing the net payment amount as described above, by the discounted present value of the payments to be transferred.
- 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.

In addition, the court would have to find that each protected party had given, in writing, its irrevocable consent to the transfer; the party's waiver of all rights under each contractual transfer restriction applicable to it; the party's waiver of all rights with respect to the transferred payments; and the party's release of all claims against other protected parties with respect to the transferred structured settlement payments. ("Protected party" would mean the payee, a dependent of the payee, a beneficiary designated to receive payments following the payee's death, an annuity insurer, a structured settlement obligor, and any other party entitled to invoke the benefit of a contractual assignment restriction, whether as a party to or as a third party beneficiary of the annuity contract, structured settlement agreement, qualified assignment agreement, or the court order, administrative order, or other document in which the contractual assignment restriction appeared.)

Under the bill, the transferee would be responsible for obtaining all consents and waivers required from each protected party; filing signed originals of all consents and waivers with the court from which approval of the transfer was sought; providing signed originals of all consents and waivers to the annuity issuer and the structured settlement obligor; and providing copies of all consents and waivers to any protected party that requested copies.

#### Court Approval Application

The circuit court would have subject matter jurisdiction for an application for court approval of a transfer of a structured settlement payment right. At least 21 days before the scheduled hearing on an application for court approval, the transferee would have to file with the circuit court and serve on all protected parties all of the following:

- Notice of the proposed transfer and application for court approval.
- A copy of the transferee's application to the circuit court.
- A copy of the transfer agreement.
- A copy of the disclosure statement.
- Notification that any interested party would be 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.
- Notice of the time and place of the hearing.
- Notification of the manner and time by which written responses to the application would have to be filed (which would have to be at least 10 days after service of the transferee's notice) in order to be considered by the court.

#### Other Provisions

The bill provides that a protected party could not waive the bill's requirements. A protected party could waive a contractual assignment restriction in writing only.

The bill could 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 was void under applicable law.

The bill would apply to each transfer agreement reached on or after the 31st day after the bill's effective date, but would not affect the enforceability of a transfer agreement reached before the bill applied. The bill would not affect the effectiveness of a transfer, or the enforceability of an obligation to make payment to a transferee, under a transfer agreement that was reached before the bill applied.

Legislative Analyst: N. Nagata

#### **FISCAL IMPACT**

The bill would have a minimal impact on local courts regarding the process for approving the transfer of structured settlement payments.

Fiscal Analyst: B. Bowerman