REVISED STRUCTURED SETTLEMENT PROTECTION ACT

Act 296 of 2006

AN ACT to regulate the transfer of structured settlement rights; to place conditions on the transfer of structured settlement rights; to establish a procedure for approval of transfer of structured settlement rights; and to repeal acts and parts of acts.

History: 2006, Act 296, Eff. Sept. 1, 2006

The People of the State of Michigan enact:

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691.1301 Short title.

Sec. 1.

This act shall be known and may be cited as the "revised structured settlement protection act".

History: 2006, Act 296, Eff. Sept. 1, 2006

691.1302 Definitions.

Sec. 2.

As used in this act:

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

(b) "Dependent" means a payee's spouse, minor child, or any other person for whom the payee is legally obligated to provide support, including alimony.

(c) "Discounted present value" means the present value of future payments determined by discounting the payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the internal revenue service.

(d) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before reduction in that sum for transfer expenses or other deductions.

(e) "Imminent financial hardship" means the inability of the payee, because of a change in the payee's circumstances after the execution of the initial structured settlement agreement, to purchase or pay for 1 or more of the following without the transfer:

(i) Medical care or a medical device for the payee or the payee's dependents.

(ii) Living quarters for the payee.

(iii) A motor vehicle necessary for the payee's transportation if the payee has no other suitable transportation options.

(iv) Education or job training expenses.

(v) Debts of the payee resulting from child support, alimony, a tax lien, funeral expenses, or a judgment.

(f) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.

(g) "Interested party" means, with respect to a structured settlement, the payee, a beneficiary irrevocably designated under an annuity contract to receive payments following the payee's death, an annuity issuer, a structured settlement obligor, or any other person that has continuing rights or obligations under the structured settlement.

(h) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under section 3(e).

(i) "Payee" means an individual who receives tax free payments under a structured settlement and who proposes

to make a transfer of payment rights under the structured settlement.

(j) "Periodic payments" means both recurring payments and scheduled future lump sum payments.

(k) "Qualified assignment agreement" means an agreement providing for a qualified assignment as defined in section 130 of the internal revenue code, 26 USC 130.

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

(m) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment to resolve a tort claim. Structured settlement does not include an arrangement for periodic payments to settle a worker's compensation claim.

(n) "Structured settlement agreement" means an agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(o) "Structured settlement obligor" means, with respect to a structured settlement, a person that has a continuing obligation to make periodic payments to a payee under the structured settlement agreement or a qualified assignment agreement.

(p) "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, if 1 or more of the following conditions exist:

(i) The payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this state.

(ii) The structured settlement agreement was approved by a court in this state.

(iii) The structured settlement agreement is expressly governed by the laws of this state.

(q) "Terms of the structured settlement" means, with respect to a structured settlement, the terms of the structured settlement agreement, an annuity contract, a qualified assignment agreement, or an order or other approval of a court that authorized or approved the structured settlement.

(r) "Transfer" means a sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights a payee makes for consideration; except that "transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, unless action has been taken to redirect the structured settlement payments to the insured depository institution or to an agent or successor in interest of the depository institution, or action has been taken to otherwise enforce the blanket security interest against the structured settlement payment rights.

(s) "Transfer agreement" means an agreement providing for a transfer of structured settlement payment rights.

(t) "Transfer expenses" means all expenses of a transfer that the transfer agreement requires the payee to pay or have deducted from the gross advance amount, including, but not limited to, court filing fees, attorney fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary. Transfer expenses do not include preexisting obligations of the payee that are payable for the payee's account from the proceeds of a transfer.

(u) "Transferee" means a person acquiring or proposing to acquire structured settlement payment rights through a transfer.

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History: 2006, Act 296, Eff. Sept. 1, 2006

691.1303 Separate disclosure statement to be provided by transferee; type; contents.

Sec. 3.

Not less than 3 days before the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement in bold type no smaller than 14 points setting forth all of the following:

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

(b) The aggregate amount of the payments.

(c) The discounted present value of the payments to be transferred, which shall be identified as the calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities, and the amount of the applicable federal rate used in calculating the discounted present value.

(d) The gross advance amount.

(e) An itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of the fees and disbursements.

(f) The net advance amount.

(g) The amount of penalties or liquidated damages payable by the payee if the payee breaches the transfer agreement.

(h) A statement that the payee has the right to cancel the transfer agreement without penalty or further obligation not later than the third business day after the date that the payee signs the agreement.

History: 2006, Act 296, Eff. Sept. 1, 2006

691.1304 Transfer of structured settlement payment rights; final court order; approval; basis; findings.

Sec. 4.

A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not required to make a payment directly or indirectly to a transferee of structured settlement payment rights unless the transfer has been approved in a final court order and the order is based on express findings of all of the following:

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

(b) The transferee has advised the payee, in writing, to seek independent professional advice regarding the transfer, and the payee has either received independent professional advice or knowingly waived in writing the opportunity to seek advice.

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

(d) 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.

(e) If the transfer is inconsistent with a restriction against assignment in the structured settlement agreement and if the structured settlement obligor objects to the transfer based on the restriction against assignment before the hearing on the application for approval of the transfer, all of the following:

(i) The payee will suffer imminent financial hardship if the transfer is not approved.

(ii) The transfer will not render the payee unable to pay current or future normal living expenses.

(iii) The transfer order will restrict payment of the gross advance amount to direct payment to the provider of the goods or services that are the subject of the imminent financial hardship. If the total cost of the goods or services cannot be readily determined at the time of or within a reasonable time after the transfer, the court may exercise reasonable discretion in ordering such direct payments.

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History: 2006, Act 296, Eff. Sept. 1, 2006

691.1305 Transfer of structured settlement payment rights; effects.

Sec. 5.

A transfer of structured settlement payment rights under this act has all of the following effects:

(a) The structured settlement obligor and the annuity issuer are discharged and released from all liability for the transferred payments as to any person except the transferee.

(b) The transferee is liable to the structured settlement obligor and the annuity issuer for both of the following:

(i) If the transfer contravenes the terms of the structured settlement, the taxes incurred by the structured settlement obligor and the annuity issuer as a consequence of the transfer.

(ii) Other liabilities or costs, including reasonable costs and attorney fees, arising from the structured settlement obligor's and the annuity issuer's compliance with the order of the court or from the transferee's failure to comply with this act.

(c) An annuity issuer or a structured settlement obligor is not required to divide a periodic payment between the payee and a transferee or assignee or between 2 or more transferees or assignees.

(d) A payee may make a further transfer of structured settlement payment rights only after complying with all of the requirements of this act.

History: 2006, Act 296, Eff. Sept. 1, 2006

691.1306 Transfer of structured settlement payment rights; application for approval; court jurisdiction; notice of proposed transfer.

Sec. 6.

(1) The transferee may apply for approval of a transfer of structured settlement payment rights with the court in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or with the court that approved the structured settlement agreement.

(2) Not less than 20 days before the scheduled hearing on an application for approval of a transfer of structured settlement payment rights under section 4, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, and shall include with the notice all of the following:

(a) A copy of the transferee's application.

(b) A copy of the transfer agreement.

(c) A copy of the disclosure statement required under section 3.

(d) A listing of each of the payee's dependents and each dependent's age.

(e) Notice 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.

(f) Notice of the time and place of the hearing and of the manner in which and the time by which written responses to the application must be filed to be considered by the court. The time for filing written responses shall be not less than 15 days after service of the transferee's notice.

History: 2006, Act 296, Eff. Sept. 1, 2006

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691.1307 Waiver prohibited; scope and effect of act; failure to comply with act.

Sec. 7.

(1) A payee shall not waive a provision of this act.

(2) A transfer agreement entered into on or after the effective date of this act by a payee who resides in this state shall provide that disputes under the transfer agreement, including a claim that the payee has breached the agreement, shall be determined in and under the laws of this state. A transfer agreement shall not authorize the transferee or any other person to confess judgment or consent to entry of judgment against the payee.

(3) A transfer of structured settlement payment rights that are life-contingent is not effective unless, before the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for both of the following:

(a) Periodically confirming the payee's survival.

(b) Giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(4) A payee who proposes to make a transfer of structured settlement payment rights shall not incur a penalty, forfeit an application fee or other payment, or otherwise incur liability to the proposed transferee or assignee based on the failure of the transfer to satisfy the conditions of this act.

(5) This act does not authorize a transfer of structured settlement payment rights in contravention of law or validate or invalidate a transfer under a transfer agreement entered into before the effective date of this act.

(6) The transferee has sole responsibility for complying with the requirements in section 3 and fulfilling the conditions in section 4 in a transfer of structured settlement payment rights. A structured settlement obligor or annuity issuer shall not bear any responsibility or liability arising from a transferee's failure to comply with those requirements or to fulfill those conditions.

History: 2006, Act 296, Eff. Sept. 1, 2006

691.1308 Applicability of act.

Sec. 8.

This act applies to a transfer of structured settlement payment rights under any transfer agreement entered into on or after the thirtieth day after the effective date of this act.

History: 2006, Act 296, Eff. Sept. 1, 2006

691.1309 Repeal of MCL 691.1191 to 691.1197.

Sec. 9.

The structured settlement protection act, 2000 PA 330, MCL 691.1191 to 691.1197, is repealed effective 30 days after the effective date of this act.

History: 2006, Act 296, Eff. Sept. 1, 2006

691.1310 Effective date.

Sec. 10.

This act takes effect September 1, 2006.

History: 2006, Act 296, Eff. Sept. 1, 2006

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