

## CHAPTER 682

## STRUCTURED SETTLEMENT PROTECTION

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**682.1 Short title.**

This chapter shall be known and may be cited as the “*Structured Settlement Protection Act*”.

2001 Acts, ch 85, §1, 8

**682.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “*Annuity issuer*” means an issuer that has issued an insurance contract used to fund periodic payments under a structured settlement.

2. “*Dependents*” means a payee’s spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony.

3. “*Discounted present value*” means the fair present value of future payments, as determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service.

4. “*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 any reductions for transfer expenses or other deductions to be made from such consideration.

5. “*Independent professional advice*” means advice of an attorney, certified public accountant, actuary, or other licensed professional advisor.

6. “*Interested parties*” means, with respect to a structured settlement, the payee, a beneficiary irrevocably designated under the annuity contract to receive payments following the payee’s death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the structured settlement.

7. “*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 682.3, subsection 5.

8. “*Payee*” means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights.

9. “*Periodic payments*” means both recurring payments and scheduled future lump sum payments.

10. “*Qualified assignment agreement*” means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code.

11. “*Responsible administrative authority*” means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

12. “*Settled claim*” means the original tort claim or workers’ compensation claim resolved by a structured settlement.

13. “*Structured settlement*” means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers’ compensation claim.

14. “*Structured settlement agreement*” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

15. “*Structured settlement obligor*” means, with respect to a structured settlement, the

party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

16. “*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 any of the following exists:

a. One of the following is true:

(1) The payee is domiciled in this state.

(2) The domicile or principal place of business of a structured settlement obligor or the annuity issuer is located in this state.

b. The structured settlement agreement was approved by a court or responsible administrative authority in this state.

c. The structured settlement agreement is expressly governed by the laws of this state.

17. “*Terms of the structured settlement*” means, with respect to a structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving the structured settlement.

18. “*Transfer*” means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration. “*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, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

19. “*Transfer agreement*” means the agreement providing for transfer of structured settlement payment rights.

20. “*Transferee*” means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

21. “*Transfer expenses*” means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, 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*” does not include preexisting obligations of the payee payable for the payee’s account from the proceeds of a transfer.

2001 Acts, ch 85, §2, 8

### **682.3 Required disclosures to payee.**

Not less than three days prior to 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 fourteen points, setting forth all of the following:

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

2. The aggregate amount of the structured settlement payments.

3. 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.

4. The gross advance amount.

5. 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 any such fees and disbursements.

6. The net advance amount.

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

8. 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 agreement is signed by the payee.

2001 Acts, ch 85, §3, 8

Referred to in §682.2, 682.6, 682.7

#### **682.4 Approval of transfers of structured settlement payment rights.**

1. A transfer of structured settlement payment rights shall not be effective and a structured settlement obligor or annuity issuer shall not be required to make any payment directly or indirectly to a transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority regarding 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 payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing.

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

2. If the structured settlement agreement or transfer agreement includes a provision requiring the terms of the structured settlement agreement or transfer agreement to remain confidential, the court or responsible administrative authority shall conduct in camera proceedings relating to the approval of the transfer agreement and shall not include any financial terms from the structured settlement agreement or the transfer agreement in the order required under subsection 1.

2001 Acts, ch 85, §4, 8

Referred to in §682.6, 682.7

#### **682.5 Effects of transfer of structured settlement payment rights.**

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

2. The transferee shall be liable to the structured settlement obligor and the annuity issuer for all of the following:

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

b. Any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this chapter.

3. An annuity issuer and the structured settlement obligor shall not be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees.

4. Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this chapter.

2001 Acts, ch 85, §5, 8

#### **682.6 Procedure for approval of transfers.**

1. An application under this chapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought 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 in any court or before any responsible administrative authority which approved the structured settlement agreement.

2. Not less than twenty days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section 682.4, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization. All of the following shall be included with the notice:

- 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 682.3.
- d. A listing of each of the payee's dependents, together with each dependent's age.
- 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 responsible administrative authority, or by participating in the hearing.
- f. Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall not be less than fifteen days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

3. If a structured settlement agreement or transfer agreement includes a provision requiring the terms of the structured settlement agreement or transfer agreement to remain confidential, the financial terms of the structured settlement agreement and the transfer agreement shall be made available to the court or responsible administrative authority for purposes of any in camera proceedings, but shall not be disclosed in the copies of the transfer agreement and disclosure statement filed as a part of the public record.

2001 Acts, ch 85, §6, 8

#### **682.7 General provisions — construction — penalties.**

1. The provisions of this chapter shall not be waived by a payee.
2. A transfer agreement entered into on or after the thirtieth day after July 1, 2001, by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined under the laws of this state. A transfer agreement shall not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.
3. A transfer of structured settlement payment rights shall not extend to any payments that are life-contingent unless, prior to 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 any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the conditions of this chapter.
5. This chapter shall not be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to July 1, 2001, is valid or invalid.
6. Compliance with the requirements set forth in section 682.3 and fulfillment of the conditions set forth in section 682.4 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

2001 Acts, ch 85, §7