



# HOUSE BILL No. 5066

October 27, 1999, Introduced by Reps. Richner and Tabor and referred to the Committee on Family and Civil Law.

A bill 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:

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

3       Sec. 2. As used in this act:

4       (a) "Annuity issuer" means an insurer that has issued an  
5 annuity contract used to fund periodic payments under a struc-  
6 tured settlement.

7       (b) "Applicable law" means 1 or more of the following:

8       (i) The federal laws of the United States.

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

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

5       (A) The jurisdiction is the domicile of the payee or any  
6 other party that is a protected party under a structured  
7 settlement.

8       (B) A settled claim was pending in a court in the jurisdic-  
9 tion when a structured settlement was reached.

10       (C) A settled claim for worker's compensation was brought  
11 under the jurisdiction's worker's compensation statute.

12       (c) "Contractual assignment restriction" means a term pro-  
13 hibiting or restricting transfer of a structured settlement pay-  
14 ments right in a contract or agreement including, but not limited  
15 to, an annuity contract, a structured settlement agreement, a  
16 qualified assignment agreement, or a court order or administra-  
17 tive order approving a structured settlement.

18       (d) "Dependent" includes a payee's spouse, minor child, or  
19 other family member or person for whom the payee is legally obli-  
20 gated to provide alimony or other support.

21       (e) "Favorable tax determination" means a United States  
22 treasury regulation, a private letter ruling regarding a specific  
23 transfer of a structured settlement payment right, a ruling other  
24 than a private letter ruling by the internal revenue service, or  
25 other controlling legal authority definitively establishing that  
26 the federal income tax treatment of a structured settlement for  
27 the parties other than the payee to the structured settlement

1 agreement and any qualified assignment agreement that will be  
2 unaffected by the transfer of a structured settlement payment  
3 right under the structured settlement.

4 (f) "Independent professional advice" means advice of an  
5 attorney, certified public accountant, certified financial plan-  
6 ner, or other professional who meets all of the following con-  
7 cerning a transfer of a structured settlement payment right:

8 (i) He or she is qualified to advise payees and their depen-  
9 dents on the legal, tax, and financial implications of the struc-  
10 tured settlement payment right.

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

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

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

20 (h) "Protected party" means, with respect to a structured  
21 settlement, the payee, a dependent of the payee, a beneficiary  
22 designated to receive payments following the payee's death, an  
23 annuity issuer, a structured settlement obligor, and any other  
24 party entitled to invoke the benefit of a contractual assignment  
25 restriction applicable to the structured settlement, whether as a  
26 party to or third party beneficiary of the annuity contract, the  
27 structured settlement agreement, the qualified assignment



1 agreement, or the court order, administrative order, or other  
2 document in which the contractual assignment restriction  
3 appears.

4 (i) "Qualified assignment agreement" means an agreement pro-  
5 viding for a qualified assignment within the meaning of section  
6 130 of the internal revenue code of 1986.

7 (j) "Settled claim" means the original tort claim or  
8 worker's compensation claim resolved by a structured settlement.

9 (k) "Structured settlement" means an arrangement for  
10 periodic payment of damages for personal injuries established by  
11 settlement or judgment in resolution of a tort claim or for  
12 periodic payments in settlement of a worker's compensation  
13 claim.

14 (l) "Structured settlement agreement" means the agreement,  
15 judgment, stipulation, or release establishing the right of the  
16 payee to receive periodic payments and other terms of a struc-  
17 tured settlement.

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

22 (n) "Structured settlement payment right" means a right to  
23 receive periodic payments including, but not limited to, lump sum  
24 payments under a structured settlement from the settlement obli-  
25 gor or the annuity issuer, where 1 or more of the following  
26 apply:

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

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

5       (iii) The settled claim was a worker's compensation claim  
6 brought under the worker's disability compensation act of 1969,  
7 1969 PA 317, MCL 418.101 to 418.941.

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

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

13       Sec. 3. (1) A transfer of a structured settlement payment  
14 right is not effective and a structured settlement obligor or  
15 annuity issuer is not required to make payment directly or indi-  
16 rectly to a transferee of a structured settlement payment right  
17 transfer unless all of the following conditions are satisfied:

18       (a) A court of competent jurisdiction approves the transfer  
19 in advance in a final order. To approve the transfer, the court  
20 must expressly find all of the following:

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

23       (ii) Not less than 10 days before the date on which the  
24 payee entered into the transfer agreement, the transferee has  
25 provided to the payee and each dependent of the payee a disclo-  
26 sure statement in boldfaced type not smaller than 14-point that  
27 contains all of the following:



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

3       (B) The aggregate amount of the structured settlement pay-  
4 ments to be transferred.

5       (C) The discounted present value of the structured settle-  
6 ment payments to be transferred and the discount rate or rates  
7 used in determining the discounted present value.

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

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

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

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

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

26       (iii) The payee has established that the transfer is  
27 necessary to enable the payee or the payee's dependents, or both,



1 to avoid imminent financial hardship and the transfer is not  
2 expected to subject the payee or the payee's dependents, or both,  
3 to undue financial hardship in the future.

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

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

11 (b) Each protected party other than the annuity issuer and  
12 the structured settlement obligor has given all of the following  
13 in writing:

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

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

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

20 (iv) The protected party's release of all claims against  
21 other protected parties with respect to the transferred struc-  
22 tured settlement payments.

23 (c) If a favorable tax determination was not in effect at  
24 the time that the payee and the transferee entered into the  
25 transfer agreement, the annuity issuer and the structured settle-  
26 ment obligor have given all of the following in writing:

1       (i) The annuity issuer's and the structured settlement  
2 obligor's irrevocable consent to the transfer.

3       (ii) The annuity issuer's and the structured settlement  
4 obligor's waiver of all rights under each contractual transfer  
5 restriction applicable to it.

6       (2) The transferee of the structured settlement payment is  
7 responsible for all of the following:

8       (a) Obtaining all consents and waivers required under sub-  
9 section (1)(b) and (c).

10       (b) Filing signed originals of all consents and waivers  
11 required under subsection (1)(b) and (c) with the court from  
12 which approval of the transfer is sought under subsection  
13 (1)(a).

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

17       (d) Providing copies of all consents and waivers required  
18 under subsection (1)(b) and (c) to any protected party that  
19 requests copies.

20       Sec. 4. The circuit court shall have subject matter juris-  
21 diction for an application for court approval under section  
22 3(1)(a) of a transfer of a structured settlement payment right.  
23 Not less than 20 days before the scheduled hearing on an applica-  
24 tion for court approval of a transfer of a structured settlement  
25 payment right under section 3(1)(a), the transferee must file  
26 with the circuit court and serve on all protected parties all of  
27 the following:

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

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

5 (c) A copy of the transfer agreement.

6 (d) A copy of the disclosure statement required under sec-  
7 tion 3(1)(a).

8 (e) Notification that any interested party is entitled to  
9 support, oppose, or otherwise respond to the transferee's appli-  
10 cation, either in person or by counsel, by submitting written  
11 comments to the court or by participating in the hearing, or  
12 both.

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

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

18 Sec. 5. A protected party may not waive the requirements of  
19 this act.

20 Sec. 6. This act shall not be construed to authorize any  
21 transfer of a structured settlement payment right in contraven-  
22 tion of applicable law or to give effect to any transfer of a  
23 structured settlement payment right that is void under applicable  
24 law.

25 Sec. 7. This act applies to each transfer of a structured  
26 settlement payment right under a transfer agreement reached on or  
27 after the thirty-first day after the effective date of this act.

1 This act does not affect the enforceability of a transfer  
2 agreement reached before the date this act applies, the effec-  
3 tiveness of a transfer under a transfer agreement reached before  
4 the date this act applies, or the enforceability of an obligation  
5 to make payment to a transferee under a transfer agreement  
6 reached before the date this act applies.