



Sen. William R. Haine

Filed: 4/14/2015

09900SB1268sam002

LRB099 07155 MLM 33908 a

1 AMENDMENT TO SENATE BILL 1268

2 AMENDMENT NO. _____. Amend Senate Bill 1268, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Structured Settlement Protection Act is
6 amended by changing Sections 5, 10, 15, 20, 25, 30, and 35 as
7 follows:

8 (215 ILCS 153/5)

9 Sec. 5. Definitions. For purposes of this Act:

10 "Annuity issuer" means an insurer that has issued a
11 contract to fund periodic payments under a structured
12 settlement.

13 "Dependents" include a payee's spouse and minor children
14 and all other persons for whom the payee is legally obligated
15 to provide support, including maintenance.

16 "Discounted present value" means the present value of

1 future payments determined by discounting such payments to the
2 present using the most recently published Applicable Federal
3 Rate for determining the present value of an annuity, as issued
4 by the United States Internal Revenue Service.

5 "Gross advance amount" means the sum payable to the payee
6 or for the payee's account as consideration for a transfer of
7 structured settlement payment rights before any reductions for
8 transfer expenses or other deductions to be made from such
9 consideration.

10 "Independent professional advice" means advice of an
11 attorney, certified public accountant, actuary, or other
12 licensed professional adviser.

13 "Interested parties" means, with respect to any structured
14 settlement, the payee, any beneficiary irrevocably designated
15 under the annuity contract to receive payments following the
16 payee's death, the annuity issuer, the structured settlement
17 obligor, and any other party to the structured settlement that
18 has continuing rights or obligations to receive or make
19 payments under such structured settlement.

20 "Net advance amount" means the gross advance amount less
21 the aggregate amount of the actual and estimated transfer
22 expenses required to be disclosed under item (5) of Section 10
23 of this Act.

24 "Payee" means an individual who is receiving tax free
25 payments under a structured settlement and proposes to make a
26 transfer of payment rights thereunder.

1 "Periodic payments" includes both recurring payments and
2 scheduled future lump sum payments.

3 "Qualified assignment agreement" means an agreement
4 providing for a qualified assignment within the meaning of
5 Section 130 of the United States Internal Revenue Code, United
6 States Code Title 26, as amended from time to time.

7 ~~"Responsible administrative authority" means, with respect
8 to a structured settlement, any government authority vested by
9 law with exclusive jurisdiction over the settled claim resolved
10 by such structured settlement.~~

11 "Settled claim" means the original tort claim ~~or workers'
12 compensation claim~~ resolved by a structured settlement.

13 "Structured settlement" means an arrangement for periodic
14 payment of damages for personal injuries or sickness
15 established by settlement or judgment in resolution of a tort
16 claim ~~or for periodic payments in settlement of a workers'
17 compensation claim.~~

18 "Structured settlement agreement" means the agreement,
19 judgment, stipulation, or release embodying the terms of a
20 structured settlement.

21 "Structured settlement obligor" means, with respect to any
22 structured settlement, the party that has the continuing
23 obligation to make periodic payments to the payee under a
24 structured settlement agreement or a qualified assignment
25 agreement.

26 "Structured settlement payment rights" means rights to

1 receive periodic payments under a structured settlement,
2 whether from the structured settlement obligor or the annuity
3 issuer, when:

4 (1) the payee is domiciled in, or the domicile or
5 principal place of business of the structured settlement
6 obligor or the annuity issuer is located in, this State;

7 (2) the structured settlement agreement was approved
8 by a court ~~or responsible administrative authority~~ in this
9 State; or

10 (3) the structured settlement agreement is expressly
11 governed by the laws of this State.

12 "Terms of the structured settlement" include, with respect
13 to any structured settlement, the terms of the structured
14 settlement agreement, the annuity contract, any qualified
15 assignment agreement, and any order or other approval of any
16 court ~~or responsible administrative authority~~ or other
17 government authority that authorized or approved such
18 structured settlement.

19 "Transfer" means any sale, assignment, pledge,
20 hypothecation, or other alienation or encumbrance of
21 structured settlement payment rights made by a payee for
22 consideration; provided that the term "transfer" does not
23 include the creation or perfection of a security interest in
24 structured settlement payment rights under a blanket security
25 agreement entered into with an insured depository institution
26 in the absence of any action to redirect the structured

1 settlement payments to such insured depository institution or
2 an agent or successor in interest thereof or otherwise to
3 enforce such blanket security interest against the structured
4 settlement payment rights.

5 "Transfer agreement" means the agreement providing for a
6 transfer of structured settlement payment rights.

7 "Transfer expenses" means all expenses of a transfer that
8 are required under the transfer agreement to be paid by the
9 payee or deducted from the gross advance amount, including,
10 without limitation, court filing fees, attorneys fees, escrow
11 fees, lien recordation fees, judgment and lien search fees,
12 finders' fees, commissions, and other payments to a broker or
13 other intermediary; "transfer expenses" do not include
14 preexisting obligations of the payee payable for the payee's
15 account from the proceeds of a transfer.

16 "Transferee" means a party acquiring or proposing to
17 acquire structured settlement payment rights through a
18 transfer.

19 (Source: P.A. 93-502, eff. 1-1-04.)

20 (215 ILCS 153/10)

21 Sec. 10. Required disclosures to payee. Not less than 10 ~~3~~
22 days prior to the date on which a payee signs a transfer
23 agreement, the transferee shall provide to the payee a separate
24 disclosure statement, in bold type no smaller than 14 points,
25 setting forth all of the following:

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

3 (2) the aggregate amount of the payments;

4 (3) the discounted present value of the payments to be
5 transferred, which shall be identified as the "calculation
6 of current value of the transferred structured settlement
7 payments under federal standards for valuing annuities",
8 and the amount of the Applicable Federal Rate used in
9 calculating the discounted present value;

10 (4) the gross advance amount;

11 (5) an itemized listing of all applicable transfer
12 expenses, other than attorneys' fees and related
13 disbursements payable in connection with the transferee's
14 application for approval of the transfer, and the
15 transferee's best estimate of the amount of any such fees
16 and disbursements;

17 (6) the net advance amount;

18 (7) the amount of any penalties or liquidated damages
19 payable by the payee in the event of any breach of the
20 transfer agreement by the payee; ~~and~~

21 (8) a statement that the payee has the right to cancel
22 the transfer agreement, without penalty or further
23 obligation, not later than the third business day after the
24 date the agreement is signed by the payee; and -

25 (9) the effective annual interest rate, which must be
26 disclosed in the following statement: "Based on the net

1 amount that you will receive from us and the amounts and
2 timing of the structured settlement payments that you are
3 turning over to us, you will, in effect, be paying interest
4 to us at a rate of percent per year.".

5 (Source: P.A. 93-502, eff. 1-1-04.)

6 (215 ILCS 153/15)

7 Sec. 15. Approval of transfers of structured settlement
8 payment rights. No direct or indirect transfer of structured
9 settlement payment rights shall be effective and no structured
10 settlement obligor or annuity issuer shall be required to make
11 any payment directly or indirectly to any transferee of
12 structured settlement payment rights unless the transfer has
13 been approved in advance in a final court order ~~or order of a~~
14 ~~responsible administrative authority~~ based on express findings
15 by such court ~~or responsible administrative authority~~ that:

16 (1) the transfer is in the best interest of the payee,
17 taking into account the welfare and support of the payee's
18 dependents;

19 (2) the payee has been advised in writing by the
20 transferee to seek independent professional advice
21 regarding the transfer and has either received such advice
22 or knowingly waived in writing the opportunity to seek and
23 receive such advice ~~in writing~~; and

24 (3) the transfer does not contravene any applicable
25 statute or the order of any court or other government

1 authority.

2 (Source: P.A. 93-502, eff. 1-1-04.)

3 (215 ILCS 153/20)

4 Sec. 20. Effects of transfer of structured settlement
5 payment rights. Following a transfer of structured settlement
6 payment rights approved under this Act:

7 (1) the structured settlement obligor and the annuity
8 issuer shall, as to all parties except the transferee or an
9 assignee designated by the transferee, be discharged and
10 released from any and all liability for the transferred
11 payments, and the discharge and release shall not be
12 affected by the failure of any party to the transfer to
13 comply with this Act or with the order of the court
14 approving the transfer;

15 (2) the transferee shall be liable to the structured
16 settlement obligor and the annuity issuer:

17 (A) if the transfer contravenes the terms of the
18 structured settlement, for any taxes incurred by the
19 parties as a consequence of the transfer; and

20 (B) for any other liabilities or costs, including
21 reasonable costs and attorneys' fees, arising from
22 compliance by the structured settlement obligor or
23 annuity issuer parties with the order of the court ~~or~~
24 ~~responsible administrative authority~~ or from arising
25 ~~as a consequence of the transferee's~~ failure of any

1 party to the transfer to comply with this Act;

2 (3) neither the annuity issuer nor the structured
3 settlement obligor may be required to divide any periodic
4 payment between the payee and any transferee or assignee or
5 between 2 or more transferees or assignees; and

6 (4) any further transfer of structured settlement
7 payment rights by the payee may be made only after
8 compliance with all of the requirements of this Act.

9 (Source: P.A. 93-502, eff. 1-1-04.)

10 (215 ILCS 153/25)

11 Sec. 25. Procedure for approval of transfers.

12 (a) No annuity issuer or structured settlement obligor may
13 make payments on a structured settlement to anyone other than
14 the payee or beneficiary of the payee without prior approval of
15 the circuit court ~~or responsible administrative authority~~. No
16 payee or beneficiary of a payee of a structured settlement may
17 assign in any manner the structured settlement payment rights
18 without the prior approval of the circuit court ~~or responsible~~
19 ~~administrative authority~~.

20 (b) An application under this Act for approval of a
21 transfer of structured settlement payment rights shall be made
22 by the transferee and shall be brought in the circuit court of
23 the county in which the payee is domiciled, except that, if the
24 payee is not domiciled in this State, the application may be
25 filed in the court in this State that approved the structured

1 settlement agreement or in the circuit court of the county in
2 this State in which the structured settlement obligor or
3 annuity issuer has its principal place of business ~~an action~~
4 ~~was or could have been maintained or before any responsible~~
5 ~~administrative authority that approved the structured~~
6 ~~settlement agreement.~~

7 (c) A hearing shall be held on an application for approval
8 of a transfer of structured settlement payment rights. The
9 payee shall appear in person at the hearing unless the court
10 determines that good cause exists to excuse the payee from
11 appearing. Not less than 20 days prior to the scheduled hearing
12 on an application, the transferee shall file with the court and
13 serve on all interested parties a notice of the proposed
14 transfer and the application, including the information and
15 documentation required under subsection (d) of this Section.

16 (d) In addition to complying with the other requirements of
17 this Act, the application shall include:

18 (1) the payee's name, age, and county of domicile and
19 the number and ages of the payee's dependents;

20 (2) a copy of the transfer agreement and disclosure
21 statement;

22 (3) a description of the reasons why the payee seeks to
23 complete the proposed transfer;

24 (4) a summary of:

25 (i) any prior transfers by the payee to the
26 transferee or an affiliate, or through the transferee

1 or an affiliate to an assignee, within the 4 years
2 preceding the date of the transfer agreement and any
3 proposed transfers by the payee to the transferee or an
4 affiliate, or through the transferee or an affiliate to
5 an assignee, applications for approval of which were
6 denied within the 2 years preceding the date of the
7 transfer agreement;

8 (ii) any prior transfers by the payee to any person
9 or entity other than the transferee or an affiliate or
10 an assignee of a transferee or affiliate within the 3
11 years preceding the date of the transfer agreement and
12 any prior proposed transfers by the payee to any person
13 or entity other than the transferee or an affiliate or
14 an assignee of a transferee or affiliate, applications
15 for approval which were denied within the one year
16 preceding the date of the current transfer agreement,
17 to the extent that the transfers or proposed transfers
18 have been disclosed to the transferee by the payee in
19 writing or otherwise are actually known by the
20 transferee;

21 (5) notification that any interested party is entitled
22 to support, oppose, or otherwise respond to the
23 transferee's application, either in person or by counsel,
24 by submitting written comments to the court or by
25 participating in the hearing; and

26 (6) notification of the time and place of the hearing

1 and notification of the manner in which and the time by
2 which written responses to the application must be filed,
3 which shall be not less than 5 days prior to the hearing,
4 in order to be considered by the court.

5 (Source: P.A. 93-502, eff. 1-1-04.)

6 (215 ILCS 153/30)

7 Sec. 30. General provisions; construction.

8 (a) The provisions of this Act may not be waived by any
9 payee.

10 (b) Any transfer agreement entered into on or after the
11 effective date of this Act by a payee who is domiciled ~~resides~~
12 in this State shall provide that disputes under the transfer
13 agreement, including any claim that the payee has breached the
14 agreement, shall be determined in and under the laws of this
15 State. No such transfer agreement shall authorize the
16 transferee or any other party to confess judgment or consent to
17 entry of judgment against the payee.

18 (c) No transfer of structured settlement payment rights
19 shall extend to any payments that are life-contingent unless,
20 prior to the date on which the payee signs the transfer
21 agreement, the transferee has established and has agreed to
22 maintain procedures reasonably satisfactory to the annuity
23 issuer and the structured settlement obligor for (1)
24 periodically confirming the payee's survival, and (2) giving
25 the annuity issuer and the structured settlement obligor prompt

1 written notice in the event of the payee's death.

2 (d) No payee who proposes to make a transfer of structured
3 settlement payment rights shall incur any penalty, forfeit any
4 application fee or other payment, or otherwise incur any
5 liability to the proposed transferee or any assignee based on
6 any failure of the transfer to satisfy the conditions of this
7 Act.

8 (e) Nothing contained in this Act shall be construed to
9 authorize any transfer of structured settlement payment rights
10 in contravention of any law ~~or to imply that any transfer under~~
11 ~~a transfer agreement entered into prior to the effective date~~
12 ~~of this Act is valid or invalid.~~ A court shall not be precluded
13 from hearing an application for approval of a transfer of
14 payment rights under a structured settlement where the terms of
15 the structured settlement prohibit sale, assignment, or
16 encumbrance of such payment rights, nor shall the interested
17 parties be precluded from waiving or asserting their rights
18 under those terms. The court hearing an application for
19 approval of a transfer of payment rights under such a
20 settlement shall have authority to rule on the merits of the
21 application and any objections to such application.

22 (f) Compliance with the requirements set forth in Section
23 10 of this Act and fulfillment of the conditions set forth in
24 Section 15 of this Act shall be solely the responsibility of
25 the transferee in any transfer of structured settlement payment
26 rights, and neither the structured settlement obligor nor the

1 annuity issuer shall bear any responsibility for, or any
2 liability arising from, non-compliance with those requirements
3 or failure to fulfill those conditions.

4 (g) Following issuance of a court order approving a
5 transfer of structured settlement payment rights under this
6 Act, the structured settlement obligor and annuity issuer may
7 rely on the court order in redirecting future structured
8 settlement payments to the transferee or an assignee in
9 accordance with the order.

10 (h) The changes made to this Section by this amendatory Act
11 of the 99th General Assembly are declarative of existing law.

12 (Source: P.A. 93-502, eff. 1-1-04.)

13 (215 ILCS 153/35)

14 Sec. 35. Applicability. This Act shall apply to any
15 transfer of structured settlement payment rights under a
16 transfer agreement entered into on or after the 30th day after
17 the effective date of this Act, including any transfer in which
18 the structured settlement obligor and annuity issuer have
19 affirmatively waived, or have not objected to the transfer
20 based upon, the terms of the settlement prohibiting sale,
21 assignment, or encumbrance of the payee's structured
22 settlement payment rights. The changes made to this Section by
23 this amendatory Act of the 99th General Assembly are
24 declarative of existing law ; ~~provided, however, that nothing~~
25 ~~contained herein shall imply that any transfer under a transfer~~

1 ~~agreement reached prior to that date is either effective or~~
2 ~~ineffective.~~

3 (Source: P.A. 93-502, eff. 1-1-04.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.".