



Sen. William R. Haine

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LRB099 07155 MLM 32922 a

1 AMENDMENT TO SENATE BILL 1268

2 AMENDMENT NO. _____. Amend Senate Bill 1268 as follows:

3 on page 1, by replacing line 5 with: "amended by changing
4 Sections 5, 15, 20, 25, 30, and 35 as follows: "; and

5 on page 1, immediately below line 5, by inserting the
6 following:

7 "(215 ILCS 153/5)

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

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

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

15 "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.); and

20 on page 1, by replacing lines 13 through 23 with the following:

21 "been approved in advance in a final court order ~~or order of a~~
22 ~~responsible administrative authority~~ based on express findings
23 by such court ~~or responsible administrative authority~~ that:

24 (1) the transfer is in the best interest of the payee,

1 taking into account the welfare and support of the payee's
2 dependents;

3 (2) the payee has been advised in writing by the
4 transferee to seek independent professional advice
5 regarding the transfer and has either received such advice
6 or knowingly waived in writing the opportunity to seek and
7 receive such advice ~~in writing~~; and"; and

8 by replacing line 7 on page 2 through line 11 on page 3 with the
9 following:

10 "payment rights. Following a transfer of structured settlement
11 payment rights approved under this Act:

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

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

22 (A) if the transfer contravenes the terms of the
23 structured settlement, for any taxes incurred by the
24 parties as a consequence of the transfer; and

1 (B) for any other liabilities or costs, including
2 reasonable costs and attorneys' fees, arising from
3 compliance by the structured settlement obligor or
4 annuity issuer ~~parties~~ with the order of the court ~~or~~
5 ~~responsible administrative authority~~ or from arising
6 ~~as a consequence of the transferee's~~ failure of any
7 party to the transfer to comply with this Act;"; and

8 by replacing line 20 on page 3 through line 26 on page 5 with
9 the following:

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

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

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

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

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

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

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

25 (4) a summary of:

26 (i) any prior transfers by the payee to the

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

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

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

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

6 (Source: P.A. 93-502, eff. 1-1-04.)"; and

7 by replacing line 1 on page 6 through line 6 of page 8 with the
8 following:

9 "(215 ILCS 153/30)

10 Sec. 30. General provisions; construction.

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

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

21 (c) No transfer of structured settlement payment rights
22 shall extend to any payments that are life-contingent unless,
23 prior to the date on which the payee signs the transfer
24 agreement, the transferee has established and has agreed to

1 maintain procedures reasonably satisfactory to the annuity
2 issuer and the structured settlement obligor for (1)
3 periodically confirming the payee's survival, and (2) giving
4 the annuity issuer and the structured settlement obligor prompt
5 written notice in the event of the payee's death.

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

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

26 (f) Compliance with the requirements set forth in Section

1 10 of this Act and fulfillment of the conditions set forth in
2 Section 15 of this Act shall be solely the responsibility of
3 the transferee in any transfer of structured settlement payment
4 rights, and neither the structured settlement obligor nor the
5 annuity issuer shall bear any responsibility for, or any
6 liability arising from, non-compliance with those requirements
7 or failure to fulfill those conditions.

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

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

16 (Source: P.A. 93-502, eff. 1-1-04.); and

17 on page 8, by replacing lines 11 through 17 with the following:

18 "the effective date of this Act, including any transfer in
19 which the structured settlement obligor and annuity issuer have
20 affirmatively waived, or have not objected to the transfer
21 based upon, the terms of the settlement prohibiting sale,
22 assignment, or encumbrance of the payee's structured
23 settlement payment rights. The changes made in this".