

1 **895.65 Definitions.** In this subsection:

2 (1) “Annuity issuer” means an insurer that has issued a contract to fund periodic
3 payments under a structured settlement.

4 (2) “Dependents” means a payee’s spouse and minor children and all other persons for
5 whom the payee is legally obligated to provide support, maintenance, or alimony.

6 (3) “Discounted present value” means the present value of future payments determined
7 by discounting the payments to the present using the applicable federal rate for determining
8 the present value of an annuity, as most recently issued by the federal Internal Revenue
9 Service.

10 (4) “Gross advance amount” means the sum payable to the payee or for the payee’s
11 account as consideration for a transfer of structured settlement payment rights before any
12 reductions for transfer expenses or other deductions to be made from such consideration.

13 (5) “Independent professional advice” means advice of an attorney, certified public
14 accountant, actuary, or other licensed professional adviser.

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

19 (7) “Net advance amount” means the gross advance amount less the aggregate amount
20 of the actual and estimated transfer expenses required to be disclosed under s. 895.66 (5).

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

23 (9) “Periodic payments” includes both recurring payments and scheduled future lump
24 sum payments.

1 **(10)** “Qualified assignment agreement” means an agreement providing for a qualified
2 assignment within the meaning of section 130 of the federal Internal Revenue Code, Title 26,
3 USC.

4 **(11)** “Responsible administrative authority” means any government authority vested
5 by law with exclusive jurisdiction over the settled claim resolved by such structured
6 settlement.

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

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

COMMENT: Under Wisconsin’s worker’s compensation statute, worker’s
compensation claims are generally unassignable. [s. 102.27 (1), stats.]
For that reason, the committee may choose to exclude worker’s
compensation benefits from the scope of benefits for which a court may
approve a transfer.

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

14 **(15)** “Structured settlement obligor” means the party that has the continuing obligation
15 to make periodic payments to the payee under a structured settlement agreement or a qualified
16 assignment agreement.

17 **(16)** “Structured settlement payment rights” means rights to receive periodic payments
18 under a structured settlement if any of the following apply:

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

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

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

COMMENT: This definition may need to be modified if the committee
chooses to make corresponding changes regarding venue and choice of
law.

4 **(17)** “Terms of the structured settlement” means the terms or conditions of the
5 structured settlement agreement, the annuity contract, any qualified assignment agreement,
6 and any order or other approval of any court or responsible administrative authority or other
7 government authority that authorized or approved the structured settlement.

8 **(18)** (a) “Transfer” means any sale, assignment, pledge, hypothecation, or other
9 alienation or encumbrance of structured settlement payment rights made by a payee for
10 consideration. Except as provided in par. (b), transfer does not include the creation or
11 perfection of a security interest in structured settlement payment rights under a blanket
12 security agreement entered into with an insured depository institution.

13 (b) “Transfer” includes the creation or perfection, by an insured depository institution,
14 of a security interest in structured settlement payment rights if there is an action to redirect the
15 structured settlement payments to the insured depository institution, or an agent or successor
16 in interest thereof, or otherwise to enforce a blanket security interest against the structured
17 settlement payment rights.

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

20 **(20)** “Transfer expenses” means all expenses of a transfer that are required under the
21 transfer agreement to be paid by the payee or deducted from the gross advance amount,
22 including court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien

1 search fees, finders' fees, commissions, and other payments to a broker or other intermediary.
2 Transfer expenses do not include preexisting obligations of the payee payable for the payee's
3 account from the proceeds of a transfer.

4 (21) "Transferee" means a party acquiring or proposing to acquire structured settlement
5 payment rights through a transfer.

6 SECTION 3. 895.66 of the statutes is created to read:

7 **895.66 Mandatory disclosures.** Not less than 3 days before a payee signs a transfer
8 agreement, the transferee shall provide to the payee a separate disclosure statement, in bold
9 type no smaller than 14 points, that contains all of the following:

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

11 (2) The aggregate amount of the payments.

12 (3) The discounted present value of the payments to be transferred and the amount of
13 the applicable federal rate used in calculating the discounted present value.

14 (4) The gross advance amount.

15 (5) An itemized listing of all applicable transfer expenses, other than attorneys' fees and
16 related disbursements payable in connection with the transferee's application for approval of
17 the transfer, and the transferee's best estimate of the amount of any such fees and
18 disbursements.

19 (6) The net advance amount.

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

22 (8) A statement that the payee has the right to cancel the transfer agreement, without
23 penalty or further obligation, not later than the 3rd business day after the date the agreement
24 is signed by the payee.

COMMENT: The committee could require a transferee to make additional disclosures to a payee. Examples of additional disclosures in other states' laws include:

- A statement that the payee is entitled to, and should seek, independent professional advice regarding the proposed transfer.
- A statement that transferring payment rights may or may not be financially appropriate for the payee and that the payee should not proceed without first weighing and considering other offers and alternate means of obtaining funds through borrowing or the sale of other assets.
- A statement that the transferee's attorney does not represent the payee in connection with the proposed transfer.
- The effective annual interest rate for the transaction, written in the following format: "YOU WILL BE PAYING THE EQUIVALENT OF AN INTEREST RATE OF ___% PER YEAR."
- A price quote from the original annuity issuer or one or more other annuity issuers that reflects the current cost of a comparable annuity.

1 **SECTION 4.** 895.67 of the statutes is created to read:

2 **895.67 Approval of transfers of structured settlement payment rights.** No direct
3 or indirect transfer of structured settlement payment rights may take effect and no structured
4 settlement obligor or annuity issuer may be required to make any payment directly or
5 indirectly to any transferee of structured settlement payment rights unless, after a hearing, the
6 transfer has been approved in advance in a final court order or order of a responsible
7 administrative authority based on express findings by the court or responsible administrative
8 authority that all of the following are true:

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

11 (2) The payee has been advised in writing by the transferee to seek independent
12 professional advice regarding the transfer and has either received such advice or knowingly
13 waived such advice in writing.

- 1 **(3)** The transfer does not contravene any applicable statute or the order of any court or
2 other government authority.

COMMENT: The 3 enumerated findings above are required under federal law. The committee could require or allow courts to make certain additional findings before approving a transfer of structured settlement payments. Examples of additional findings required in other states include:

- The transfer is “fair and reasonable”, as informed by a list of specified considerations.
- The payee understands the terms of the transfer agreement, including the terms set forth in the disclosure statement.
- The payee understands and does not wish to exercise the payee’s right to cancel the transfer agreement.
- The payee confirmed to the court or responsible administrative authority at the hearing that the payee wanted the court or authority to approve the proposed transfer and understood that the court or authority would not approve the transfer if the payee did not want the court or authority to do so.

In lieu of, or in addition to, findings found in other state laws, the committee could include findings to disallow transfers involving particular concerns of state policy. For example, the committee could require a court to find that a structured settlement proposed to be transferred does not include rights to receive benefits from a Medicaid special needs trust, or it could require a finding that a payee’s child support payments are not in arrears.

The committee could also consider whether any unique findings or factors should apply in cases involving payees who are minors or incompetent.

As it considers whether to include additional findings, the committee may wish to determine whether any additional findings should be mandatory (i.e., required to be found before a court may approve a transfer), or whether additional findings may alternatively be included as factors that a court may take into account when determining whether a proposed transfer is in a payee’s best interest (or fair and reasonable).

- 3 **SECTION 5.** 895.68 of the statutes is created to read:

1 **895.68 Effects of transfer of structured settlement payment rights.** A transfer of
2 structured settlement payment rights under this subchapter includes the following effects:

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

6 (2) The transferee shall be liable to the structured settlement obligor and the annuity
7 issuer for all of the following:

8 (a) For any taxes incurred by such parties as a consequence of the transfer, if the transfer
9 contravenes the terms of the structured settlement.

10 (b) For any other liabilities or costs, including reasonable costs and attorneys' fees,
11 arising from compliance by the parties with the order of the court or responsible administrative
12 authority or arising as a consequence of the transferee's failure to comply with this subchapter.

13 (3) Neither the annuity issuer nor the structured settlement obligor may be required to
14 divide any periodic payment between the payee and any transferee or assignee or between
15 multiple transferees or assignees.

16 (4) Any further transfer of structured settlement payment rights by the payee may be
17 made only after compliance with all of the requirements of this subchapter.

18 **SECTION 6.** 895.69 of the statutes is created to read:

19 **895.69 Procedure.** (1) An application for approval of a transfer of structured
20 settlement payment rights shall be made by the transferee and may be brought in the county
21 in which the payee resides, in the county in which the structured settlement obligor or the
22 annuity issuer maintains its principal place of business, or in any court or before any
23 responsible administrative authority that approved the structured settlement agreement.

COMMENT: Some states require applications for approval of structured settlement transfers to be filed in the county where the payee is domiciled, and do not allow such applications to be filed in other counties. Which approach does the committee prefer?

1 (2) Not less than 20 days prior to the scheduled hearing on any application for approval
2 of a transfer of structured settlement payment rights under s. 895.67, the transferee shall file
3 with the court or responsible administrative authority and serve on all interested parties a
4 notice of the proposed transfer and the application for its authorization, including with the
5 notice all of the following:

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

7 (b) A copy of the transfer agreement.

8 (c) A copy of the disclosure statement required under s. 895.66.

9 (d) A listing of each of the payee's dependents, together with each dependent's age.

10 (e) Notification that any interested party is entitled to support, oppose, or otherwise
11 respond to the transferee's application, either in person or by counsel, by submitting written
12 comments to the court or responsible administrative authority or by participating in the
13 hearing.

14 (f) Notification of the time and place of the hearing and notification of the manner in
15 which and the time by which written responses to the application must be filed in order to be
16 considered by the court or responsible administrative authority. Written responses may not
17 be due less than 15 days after service of the notice.

COMMENT: Several questions relate to procedures for judicial review of structured settlement transfers:

- Should the payee be required to appear personally in the court proceeding?
- Is "application" the correct term for the filing that must be made? If not, what is the appropriate term?

- How should the case be classified?
- Are the timelines (20 days and 15 days for the filing of the application and notification regarding the time and place for the hearing, respectively) adequate? Some states have adopted timelines of 30 days and 20 days, respectively, for those actions.
- Should additional materials be required to be filed together with the application? Examples of additional filings required in other states include a copy of any court order approving the settlement agreement; a verified statement setting forth any prior transfers attempted; and an affidavit from the payee detailing certain information relating to financial obligations and circumstances.
- Should additional parties be required to receive notification regarding a proposed transfer of structured settlement payments?
- Should any additional procedures apply in cases in which the payee is a minor or incompetent?

1 **SECTION 7.** 895.70 of the statutes is created to read:

2 **895.70 General provisions.** (1) The provisions of this subchapter may not be waived
3 by any payee.

4 (2) Any transfer agreement entered into by a payee who resides in this state shall
5 provide that disputes under such transfer agreement, including any claim that the payee has
6 breached the agreement, may be determined in and under the laws of this state. No transfer
7 agreement may authorize the transferee or any other party to confess judgment or consent to
8 entry of judgment against the payee.

9 (3) No transfer of structured settlement payment rights shall extend to any payments
10 that are life contingent unless, prior to the date on which the payee signs the transfer
11 agreement, the transferee has established and has agreed to maintain procedures reasonably
12 satisfactory to the annuity issuer and the structured settlement obligor for periodically
13 confirming the payee's survival, and giving the annuity issuer and the structured settlement
14 obligor prompt written notice in the event of the payee's death.

