

1 **SECTION 2.** 895.65 of the statutes is created to read:

2 **895.65 Definitions.** In this subsection:

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

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

7 (3) “Business day” has the meaning given in s. 421.301 (6).

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

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

15 (6) “Independent professional advice” means advice of an attorney, certified public
16 accountant, actuary, or other qualified professional adviser.

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

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

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

1 **(10)** “Periodic payments” includes both recurring payments and scheduled future lump
2 sum payments.

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

6 **(12)** “Settled claim” means the original tort claim resolved by a structured settlement.

7 **(13)** “Structured settlement” means an arrangement for periodic payment of damages
8 for personal injuries or sickness established by settlement or judgment in resolution of a tort
9 claim.

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

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

15 **(16)** “Structured settlement payment rights” means rights to receive periodic payments
16 under a structured settlement.

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

21 **(18)** (a) “Transfer” means any sale, assignment, pledge, hypothecation, or other
22 alienation or encumbrance of structured settlement payment rights made by a payee for
23 consideration. Except as provided in par. (b), transfer does not include the creation or

1 perfection of a security interest in structured settlement payment rights under a blanket
2 security agreement entered into with an insured depository institution.

3 (b) "Transfer" includes the creation or perfection, by an insured depository institution,
4 of a security interest in structured settlement payment rights if there is an action to redirect the
5 structured settlement payments to the insured depository institution, or an agent or successor
6 in interest thereof, or otherwise to enforce a blanket security interest against the structured
7 settlement payment rights.

8 (19) "Transfer agreement" means the agreement providing for a transfer of structured
9 settlement payment rights.

10 (20) "Transfer expenses" means all expenses of a transfer that are required under the
11 transfer agreement to be paid by the payee or deducted from the gross advance amount,
12 including court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien
13 search fees, finders' fees, commissions, and other payments to a broker or other intermediary.
14 Transfer expenses do not include preexisting obligations of the payee payable for the payee's
15 account from the proceeds of a transfer.

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

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

19 **895.66 Mandatory disclosures.** Not less than 5 business days before a payee signs a
20 transfer agreement, the transferee shall provide to the payee a separate disclosure statement,
21 in bold type no smaller than 14 points, that contains all of the following:

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

23 (2) The aggregate amount of the payments.

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

COMMENT: Are any modifications required of the disclosure related to
 “discounted present value”, above, or the definition of that term on page
 2, lines 8–11?

3 **(4)** The gross advance amount.

4 **(5)** An itemized listing of all applicable transfer expenses, other than attorneys’ fees and
5 related disbursements payable in connection with the transferee’s application for approval of
6 the transfer, and the transferee’s best estimate of the amount of any such fees and
7 disbursements.

8 **(6)** The net advance amount.

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

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

14 **(9)** The discount rate.

COMMENT: Does the term “discount rate” require a definition or any
 additional description?

15 **(10)** The effective annualized rate of interest on the net advance amount, calculated by
16 treating the transferred structured settlement payments as if they were installment payments
17 on a loan, with each payment applied first to accrued unpaid interest and then to principal, and
18 written in the following format: “YOU WILL BE PAYING THE EQUIVALENT OF AN
19 INTEREST RATE OF ___% PER YEAR.”.

1 **(11)** A statement that the transferee's attorney does not represent the payee in
2 connection with the proposed transfer.

3 **(12)** A statement informing the payee that structured settlement transfers have financial
4 consequences and advising the payee to seek independent professional advice regarding the
5 transfer agreement, and that the failure to obtain such advice may constitute a waiver.

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

7 **895.67 Approval of transfers of structured settlement payment rights.** (1) No
8 direct or indirect transfer of structured settlement payment rights may take effect and no
9 structured settlement obligor or annuity issuer may be required to make any payment directly
10 or indirectly to any transferee of structured settlement payment rights unless, following the
11 hearing required under s. 895.69 (2), the transfer has been approved in advance in a final court
12 order based on express findings by the court that all of the following are true:

13 (a) The transfer is in the best interest of the payee, taking into account the welfare and
14 support of the payee's dependents.

15 (b) The payee has been advised in writing by the transferee to seek independent
16 professional advice regarding the transfer and has either received such advice or knowingly
17 waived such advice in writing.

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

20 **(2)** A court may consider any of the following when making a determination under sub.

21 (1) (a):

22 (a) Whether the payee understands the financial ramifications of the transfer agreement
23 and is entering into the agreement voluntarily.

24 (b) The financial terms of the transfer agreement.

1 (c) Whether the payee is delinquent in the payment of taxes in this state or in any
2 payments required to be made pursuant to a restitution order in a criminal or juvenile
3 delinquency proceeding, or pursuant to a child support order.

4 (d) Any other considerations the court deems appropriate.

5 (3) In addition to the considerations in sub. (2), if the payee is a minor or has been
6 adjudicated incompetent in this state, the court shall consider all of the following when making
7 a determination under sub. (1) (a):

8 (a) The physical and mental health of the payee.

9 (b) The payee's overall financial situation.

10 (4) Notwithstanding subs. (1) to (3), no court may approve the transfer of payments that
11 are part of a Medicare set-aside arrangement established under 42 USC 1395y (b) (2).

COMMENT: Subsection (4) prohibits the approval of transfers of rights to
payments that are part of a Medicare set-aside arrangement. Does this
provision reflect the committee's intent?

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

13 **895.68 Effects of transfer of structured settlement payment rights.** A transfer of
14 structured settlement payment rights under this subchapter includes the following effects:

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

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

20 (a) Any taxes incurred by such parties as a consequence of the transfer, if the transfer
21 contravenes the terms of the structured settlement.

1 (b) Any other liabilities or costs, including reasonable costs and attorneys' fees, arising
2 from compliance by the parties with the order of the court or arising as a consequence of the
3 transferee's failure to comply with this subchapter.

4 (c) A transfer of payments that would require an annuity issuer or the structured
5 settlement obligor to divide any periodic payment between the payee and any transferee or
6 assignee or between multiple transferees or assignees.

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

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

11 **895.69 Procedure. (1)** A petition for approval of a transfer of structured settlement
12 payment rights shall be brought by the transferee in the county in which the payee resides.

13 (2) A hearing must be held on a petition for approval of a transfer agreement. The payee
14 must attend the hearing in person unless the court determines that appearance via audiovisual
15 technology is appropriate or that good cause exists for the payee not to appear.

16 (3) Not less than 20 days prior to the hearing required under sub. (2), the transferee shall
17 file with the court and serve on all interested parties a notice of the proposed transfer and the
18 petition for its authorization, including with the notice all of the following:

19 (a) A copy of the transferee's petition.

20 (b) A copy of the transfer agreement.

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

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

1 (e) Notification that any interested party is entitled to support, oppose, or otherwise
2 respond to the transferee's petition, either in person or by counsel, by submitting written
3 comments to the court or by participating in the hearing.

4 (f) Notification of the time and place of the hearing and notification of the manner in
5 which and the time by which written responses to the petition must be filed in order to be
6 considered by the court. Written responses may not be due less than 15 days after service of
7 the notice.

8 (g) An affidavit from the payee stating whether the payee is delinquent on any taxes in
9 this state or on any payments owed under an order for restitution in a criminal or juvenile
10 delinquency proceeding, or an order for restitution in a criminal or juvenile delinquency
11 proceeding, or an order for child support.

12 (4) Notwithstanding the general service of process requirements under s. 801.11,
13 service by certified mail or overnight mail with proof of delivery or its equivalent constitutes
14 adequate service of process for purposes of the notice requirement under sub. (3).

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

16 **895.70 General provisions.** (1) The provisions of this subchapter may not be waived
17 by any payee.

18 (a) The transfer of payments under a transfer agreement that does not provide that
19 disputes under such agreement, including any claim that the payee has breached the
20 agreement, shall be determined in and under the laws of this state.

21 (b) The transfer of payments under a transfer agreement that authorizes the transferee
22 or any other party to confess judgment or consent to entry of judgment against the payee.

23 (c) The transfer of payments that are life contingent unless, prior to the date on which
24 the payee signs the transfer agreement, the transferee has established and has agreed to

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

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

15 (4) No payee who proposes to make a transfer of structured settlement payment rights
16 shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any
17 liability to the proposed transferee or any assignee based on any failure of such transfer to
18 satisfy the conditions of this subchapter.

19 (5) This subchapter may not be construed to authorize any transfer of structured
20 settlement payment rights in contravention of any law.

21 (6) Compliance with the requirements set forth in s. 895.66 and s. 895.67 shall be solely
22 the responsibility of the transferee in any transfer of structured settlement payment rights, and
23 neither the structured settlement obligor nor the annuity issuer shall bear any responsibility

1 for, or any liability arising from, noncompliance with such requirements or failure to fulfill
2 such conditions.

3 (7) Following any transfer of structured settlement payment rights under this
4 subchapter, any further transfer of structured settlement payment rights by the payee may be
5 made only after compliance with all of the requirements of this subchapter, at the time of such
6 further transfer.

7 **SECTION 8. Initial applicability.**

8 (1) This act first applies to transfer agreements entered into on the effective date of this
9 subsection.

10 (END)