

SENATE FILE NO. SF0099

Wyoming Structured Settlement Protection Act.

Sponsored by: Senator(s) Ross and Representative(s) Luthi

A BILL

for

1 AN ACT relating to the civil procedure; creating the
 2 Wyoming Structured Settlement Protection Act; specifying
 3 procedures for transfer of structured settlement payment
 4 rights; requiring disclosure as specified; providing
 5 definitions; providing for applicability of the act; and
 6 providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 1-16-601 through 1-16-607 are created
 11 to read:

12

ARTICLE 6

13

WYOMING STRUCTURED SETTLEMENT PROTECTION ACT

14

15

1-16-601. Short title.

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17

1 This act shall be known and may be cited as the Wyoming
2 Structured Settlement Protection Act.

3

4 **1-16-602. Definitions.**

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6 (a) As used in this act:

7

8 (i) "Annuity issuer" means an insurer that has
9 issued a contract to fund periodic payments under a
10 structured settlement;

11

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

15

16 (iii) "Discounted present value" means the
17 present value of future payments determined by discounting
18 the payments to the present value using the most recently
19 published applicable federal rate for determining the
20 present value of an annuity, as issued by the United States
21 Internal Revenue Service;

22

23 (iv) "Gross advance amount" means the sum
24 payable to the payee or for the payee's account as

1 consideration for a transfer of structured settlement
2 payment rights before any reductions for transfer expenses
3 or other deductions to be made from such consideration;

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5 (v) "Independent professional advice" means
6 advice of an attorney, certified public accountant, actuary
7 or other licensed professional adviser;

8

9 (vi) "Interested parties" means, with respect to
10 any structured settlement, the payee, any beneficiary
11 irrevocably designated under the annuity contract to
12 receive payments following the payee's death, the annuity
13 issuer, the structured settlement obligor and any other
14 party that has continuing rights or obligations under the
15 structured settlement;

16

17 (vii) "Net advance amount" means the gross
18 advance amount less the aggregate amount of the actual and
19 estimated transfer expenses required to be disclosed under
20 W.S. 1-16-603(e);

21

22 (viii) "Payee" means an individual who is
23 receiving tax free payments under a structured settlement

1 and proposes to make a transfer of payment rights
2 thereunder;

3

4 (ix) "Periodic payments" includes both recurring
5 payments and scheduled future lump sum payments;

6

7 (x) "Qualified assignment agreement" means an
8 agreement providing for a qualified assignment within the
9 meaning of 26 U.S.C. 130;

10

11 (xi) "Settled claim" means the original tort
12 claim or workers' compensation claim resolved by a
13 structured settlement;

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15 (xii) "Structured settlement" means an
16 arrangement for periodic payment of damages for personal
17 injuries or sickness established by settlement agreement or
18 judgment in resolution of a tort claim or for periodic
19 payments in settlement of a workers' compensation claim;

20

21 (xiii) "Structured settlement agreement" means
22 the agreement, judgment, stipulation or release embodying
23 the terms of the structured settlement;

24

1 (xiv) "Structured settlement obligor" means,
2 with respect to a structured settlement, the party that has
3 a continuing obligation to make periodic payments to the
4 payee under a structured settlement agreement or a
5 qualified assignment agreement;

6

7 (xv) "Structured settlement rights" means rights
8 to receive periodic payments under a structured settlement,
9 whether from the structured settlement obligor or the
10 annuity issuer, where:

11

12 (A) The payee is domiciled in, or the
13 domicile or principal place of business of the structured
14 settlement obligor or the annuity issuer is located in,
15 this state;

16

17 (B) The structured settlement agreement was
18 approved by a court in this state; or

19

20 (C) The structured settlement agreement is
21 expressly governed by the laws of this state.

22

23 (xvi) "Terms of the structured settlement"
24 include, with respect to a structured settlement agreement,

1 the terms of the structured settlement agreement, the
2 annuity contract, a qualified assignment agreement and any
3 order or other approval of any court that authorized or
4 approved the structured settlement;

5

6 (xvii) "Transfer" means any sale, assignment,
7 pledge, hypothecation or other alienation or encumbrance of
8 structured settlement payment rights made by a payee for
9 consideration, provided that the term "transfer" does not
10 include the creation or perfection of a security agreement
11 in structured settlement payment rights under a blanket
12 security agreement entered into with an insured depository
13 institution, in the absence of any action to redirect the
14 structured settlement payments to the insured depository
15 institution, or an agent or successor in interest thereof,
16 or otherwise to enforce the blanket security interest
17 against the structured settlement payment rights;

18

19 (xviii) "Transfer agreement" means the agreement
20 providing for a transfer of structured settlement payment
21 rights;

22

23 (xix) "Transfer expenses" means all expenses of
24 a transfer that are required under the transfer agreement

1 to be paid by the payee or deducted from the gross advance
2 amount, including without limitation, court filing fees,
3 attorneys' fees, escrow fees, lien recordation fees,
4 judgment and lien search fees, finders' fees, commissions
5 and other payments to a broker or other intermediary.
6 "Transfer expenses" do not include preexisting obligations
7 of the payee payable for the payee's account from the
8 proceeds of a transfer;

9

10 (xx) "Transferee" means a party acquiring or
11 proposing to acquire structured settlement payment rights
12 through a transfer;

13

14 (xxi) "This act" means W.S. 1-16-601 through
15 1-16-607.

16

17 **1-16-603. Required disclosures to payee.**

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19 (a) Not less than three (3) days prior to the date on
20 which a payee signs a transfer agreement, the transferee
21 shall provide to the payee a separate disclosure statement,
22 in bold type no smaller than fourteen (14) points, setting
23 forth:

24

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

3

4 (ii) The aggregate amount of the payments;

5

6 (iii) The discounted present value of the
7 payments to be transferred and the amount of the applicable
8 federal rate used in calculating the discounted present
9 value;

10

11 (iv) The gross advance amount;

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

19

20 (vi) The net advance amount;

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22 (vii) The amount of any penalties or liquidated
23 damages payable by the payee in the event of any breach of
24 the transfer agreement by the payee;

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2 (viii) A statement that the payee has the right
3 to cancel the transfer agreement without penalty or further
4 obligation not later than the third business day after the
5 date the agreement is signed by the payee.

6

7 **1-16-604. Approval of transfers of structured**
8 **settlement payment rights.**

9

10 (a) No direct or indirect transfer of structured
11 settlement payment rights shall be effective and no
12 structured settlement obligor or annuity issuer shall be
13 required to make any payment directly or indirectly to any
14 transferee of structured settlement payment rights unless
15 the transfer has been approved in advance in a final court
16 order based on express findings by the court that:

17

18 (i) The transfer is in the best interest of the
19 payee, taking into account the welfare and support of the
20 payee's dependents;

21

22 (ii) The payee has been advised in writing by
23 the transferee to seek independent professional advice

1 regarding the transfer and has either received such advice
2 or knowingly waived such advice in writing; and

3

4 (iii) The transfer does not contravene any
5 applicable statute or the order of any court or other
6 government authority.

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8 **1-16-605. Effects of transfer of structured**
9 **settlement payment rights.**

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11 (a) Following a transfer of structured settlement
12 payment rights under this act:

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

18

19 (ii) The transferee shall be liable to the
20 structured settlement obligor and the annuity issuer:

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

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(B) For any other liabilities or costs, including reasonable costs and attorneys' fees arising from compliance by such parties with the order of the court or arising as a consequence of the transferee's failure to comply with this act.

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

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

1-16-606. Procedure for approval of transfers.

(a) An application under this act for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the Wyoming district court that approved the structured settlement payment rights, or the Wyoming district court in the county

1 where the payee resides without regard to where the
2 structured settlement payment rights may have accrued.

3

4 (b) Not less than twenty (20) days prior to the
5 scheduled hearing on an application for approval of a
6 transfer of structured settlement payment rights under W.S.
7 1-16-604, the transferee shall file with the court and
8 serve all interested parties a notice of the proposed
9 transfer and application for its authorization, including
10 with the notice:

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12 (i) A copy of the transferee's application for
13 transfer;

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15 (ii) A copy of the transfer agreement;

16

17 (iii) A copy of the disclosure statement
18 required under W.S. 1-16-603;

19

20 (iv) A listing of each of the payee's
21 dependents, together with each dependent's age and date of
22 birth;

23

1 (v) Notification that any interested party may
2 support, oppose or otherwise respond to the transferee's
3 application, either in person or by counsel, by submitting
4 written comments to the court or by participating in the
5 hearing; and

6
7 (vi) Notification of the time and place of the
8 hearing and notification of the manner in which and the
9 time by which written responses to the application shall be
10 filed, which time shall be not less than fifteen (15) days
11 after service of the transferee's notice, in order to be
12 considered by the court.

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14 **1-16-607. General provisions; construction.**

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16 (a) The provisions of this act may not be waived by
17 any payee.

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19 (b) Any transfer agreement entered into on or after
20 July 1, 2006 by a payee who resides in this state shall
21 provide that disputes under the transfer agreement,
22 including any claim that the payee has breached the
23 agreement, shall be determined in and under the laws of
24 this state. No transfer agreement shall authorize the

1 transferee or any other party to confess judgment or
2 consent to entry of judgment against the payee.

3

4 (c) No transfer of structured settlement payment
5 rights shall extend to any payments that are life-
6 contingent unless, prior to the date on which the payee
7 signs the transfer agreement, the transferee has
8 established and has agreed to maintain procedures
9 reasonably satisfactory to the annuity issuer and the
10 structured settlement obligor for:

11

12 (i) Periodically confirming the payee's
13 survival; and

14

15 (ii) Giving the annuity issuer and the
16 structured settlement obligor prompt written notice in the
17 event of the payee's death.

18

19 (d) No payee who proposes to make a transfer of
20 structured settlement payment rights shall incur any
21 penalty, forfeit any application fee or other payment, or
22 otherwise incur any liability to the proposed transferee or
23 any assignee based on any failure of the transfer to
24 satisfy the requirements of this act.

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2 (e) Nothing contained in this act shall be construed
3 to authorize any transfer of structured settlement payment
4 rights in contravention of any law or to imply that any
5 transfer under a transfer agreement entered into prior to
6 July 1, 2006 is valid or invalid.

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8 (f) Compliance with the requirements of W.S. 1-16-603
9 and fulfillment of the conditions set forth in W.S.
10 1-16-604 shall be solely the responsibility of the
11 transferee in any transfer of structured settlement payment
12 rights, and neither the structured settlement obligor nor
13 the annuity issuer shall bear any responsibility for, or
14 any liability arising from, noncompliance with the
15 requirements of W.S. 1-16-603 or failure to fulfill the
16 conditions set forth in W.S. 1-16-604.

17

18 **Section 2.** This act is effective July 1, 2006.

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(END)