

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 1930

S.P. 680

In Senate, March 17, 1999

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**An Act to Protect Beneficiaries of Structured Settlements.**

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Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator LaFOUNTAIN of York.  
Cosponsored by Senators: ABROMSON of Cumberland, MURRAY of Penobscot,  
PENDLETON of Cumberland, Representative: SAXL of Bangor.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 24-A MRSA c. 24-A is enacted to read:**

6 **CHAPTER 24-A**

8 **PROTECTION OF BENEFICIARIES OF STRUCTURED SETTLEMENTS**

10 **§2241. Definitions**

12 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

14 1. **Annuity insurer.** "Annuity insurer" means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement.

16 2. **Applicable law.** "Applicable law" means:

18 A. **Federal law;**

20 B. **The laws of this State, including principles of equity applied in the courts of this State; and**

22 C. **The laws of any other jurisdiction:**

24 (1) **That is the domicile of the payee or any other interested party;**

26 (2) **Under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or**

28 (3) **In whose courts a settled claim was pending when the parties entered into a structured settlement agreement.**

30 3. **Dependents.** "Dependents" means a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony.

32 4. **Discounted present value.** "Discounted present value" means the fair present value of future payments as determined by discounting such payments to the present using the applicable federal rate for determining the present value of an annuity most recently published by the United States Internal Revenue Service.

34 5. **Favorable tax determination.** "Favorable tax determination," with respect to a proposed transfer of structured

2 settlement payment rights, means any of the following authorities  
3 that definitively establishes that the federal income tax  
4 treatment of the structured settlement for the parties, other  
5 than the payee, to the structured settlement agreement and any  
6 qualified assignment agreement will not be affected by that  
7 transfer;

8 A. A provision of the United States Internal Revenue Code  
9 or a United States Treasury regulation adopted pursuant to  
10 the code;

12 B. A revenue ruling or revenue procedure issued by the  
13 United States Internal Revenue Service;

14 C. A private letter ruling by the United States Internal  
15 Revenue Service with respect to that transfer; or

18 D. A decision by the United States Supreme Court or a  
19 decision of a lower federal court in which the United States  
20 Internal Revenue Service has acquiesced.

22 6. Federal hardship standard. "Federal hardship standard"  
23 means a federal standard applicable to transfers of structured  
24 settlement payment rights based on findings of a court or  
25 responsible administrative authority regarding the payee's needs,  
26 as contained in the United States Internal Revenue Code or in a  
27 United States Treasury regulation adopted pursuant to the code.

28 7. Independent professional advice. "Independent  
29 professional advice" means advice of an attorney, certified  
30 public accountant, actuary or other licensed professional advisor:

32 A. Who is engaged by a payee to render advice concerning  
33 the legal, tax and financial implications of a transfer of  
34 structured settlement payment rights;

36 B. Who is not in any manner affiliated with or compensated  
37 by the transferee of that transfer; and

40 C. Whose compensation for rendering advice is not affected  
41 by whether a transfer occurs or does not occur.

42 8. Interested parties. "Interested parties" means the  
43 payee, any beneficiary designated under the annuity contract to  
44 receive payments following the payee's death, the annuity issuer,  
45 the structured settlement obligor and any other party that has  
46 continuing rights or obligations under the structured settlement.

48 9. Payee. "Payee" means an individual who is receiving  
49 tax-free damage payments under a structured settlement and  
50 any other party that has continuing rights or obligations under the structured settlement.

2 proposes to make a transfer of payment rights under that  
3 settlement.

4 10. Qualified assignment agreement. "Qualified assignment  
5 agreement" means an agreement providing for a qualified  
6 assignment within the meaning of Section 130 of the United States  
7 Internal Revenue Code, United States Code, Title 26.

8  
9 11. Responsible administrative authority. "Responsible  
10 administrative authority" means any government authority vested  
11 by law with exclusive jurisdiction over the settled claim  
12 resolved by a structured settlement.

13 12. Settled claim. "Settled claim" means the original tort  
14 claim or workers' compensation claim resolved by a structured  
15 settlement.

16  
17 13. Structured settlement. "Structured settlement" means  
18 an arrangement for periodic payment of damages for personal  
19 injuries established by settlement or judgment in resolution of a  
20 tort claim or for periodic payments in settlement of a workers'  
21 compensation claim.

22  
23 14. Structured settlement agreement. "Structured  
24 settlement agreement" means the agreement, judgment, stipulation  
25 or release embodying the terms of a structured settlement,  
26 including the rights of the payee to receive periodic payments.

27  
28 15. Structured settlement obligor. "Structured settlement  
29 obligor" means the party that has the continuing periodic payment  
30 obligation to the payee under a structured settlement agreement  
31 or a qualified assignment agreement.

32  
33 16. Structured settlement payment rights. "Structured  
34 settlement payment rights" means rights to receive periodic  
35 payments, including lump sum payments, under a structured  
36 settlement, whether from the settlement obligor or the annuity  
37 issuer, when:

38  
39 A. The payee or any other interested party is domiciled in  
40 this State;

41  
42 B. The structured settlement agreement was approved by a  
43 court or responsible administrative authority in this State;  
44 or

45  
46 C. The settled claim was pending before the courts of this  
47 State when the parties entered into the structured  
48 settlement agreement.

49  
50

2           17. Terms of structured settlement. "Terms of a structured  
4           settlement" means the terms of a structured settlement agreement,  
6           an annuity contract, any qualified assignment agreement and any  
          order or approval of any court or responsible administrative  
          authority or other government authority authorizing or approving  
          the structured settlement.

8           18. Transfer. "Transfer" means any sale, assignment,  
10           pledge, hypothecation or other form of alienation or encumbrance  
          made by a payee for consideration.

12           19. Transfer agreement. "Transfer agreement" means the  
14           agreement providing for transfer of structured settlement payment  
          rights from a payee to a transferee.

16           §2242. Transfer of structured settlement payment rights

18           1. Application. This section applies to any transfer of  
20           structured settlement payment rights under a transfer agreement  
          entered into on or after the effective date of this section.  
22           This section may not be construed to imply that any transfer  
          under a transfer agreement reached prior to the effective date of  
          this section is effective.

24           2. Requirements for transfer. A direct or indirect  
26           transfer of structured settlement payment rights is not effective  
          and a structured settlement obligor or annuity issuer is not  
28           required to make any payment directly or indirectly to any  
          transferee of structured settlement payment rights unless the  
30           transfer has been authorized in advance in a final order of a  
          court of competent jurisdiction or a responsible administrative  
32           authority, based on express findings by that court or responsible  
          administrative authority that:

34                   A. The transfer complies with the requirements of this  
36                   chapter and does not contravene other applicable law;

38                   B. Not less than 10 days prior to the date on which the  
40                   payee first incurred any obligation with respect to the  
          transfer, the transferee provided to the payee a disclosure  
42                   statement in bold type, no smaller than 14 points, setting  
          forth:

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

48                           (2) The aggregate amount of those payments;

2                   (3) The discounted present value of those payments  
3                   together with the discount rate used in determining  
4                   that discounted present value;

5                   (4) The gross amount payable to the payee in exchange  
6                   for the payments;

7                   (5) An itemized listing of all brokers' commissions,  
8                   service charges, application fees, processing fees,  
9                   closing costs, filing fees, administrative fees, legal  
10                   fees, notary fees and other commissions, fees, costs,  
11                   expenses and charges payable by the payee or deductible  
12                   from the gross amount otherwise payable to the payee;

13                   (6) The net amount payable to the payee after  
14                   deduction of all commissions, fees, costs, expenses and  
15                   charges described in subparagraph (5);

16                   (7) The quotient, expressed as a percentage, obtained  
17                   by dividing the net payment amount by the discounted  
18                   present value of the payments; and

19                   (8) The amount of any penalty and the aggregate amount  
20                   of any liquidated damages, inclusive of penalties,  
21                   payable by the payee in the event of any breach of the  
22                   transfer agreement by the payee;

23                   C. The payee has established that the transfer is necessary  
24                   to enable the payee, the payee's dependents or both to avoid  
25                   imminent financial hardship, and the transfer is not  
26                   expected to subject the payee, the payee's dependents or  
27                   both to undue financial hardship in the future, except that  
28                   if a federal hardship standard was in effect at the time the  
29                   payee and the transferee entered into the transfer  
30                   agreement, in lieu of the foregoing finding the court or  
31                   responsible administrative authority must make an express  
32                   finding that the transfer qualifies under that federal  
33                   hardship standard;

34                   D. The payee has received independent professional advice  
35                   regarding the legal, tax and financial implications of the  
36                   transfer;

37                   E. If the transfer would contravene the terms of the  
38                   structured settlement;

39                   (1) The transfer has been expressly approved in  
40                   writing by;

2                   (a) Each interested party, except that if a  
4                   favorable tax determination was in effect at the  
6                   time the payee and the transferee entered into the  
8                   transfer agreement, the approvals of the annuity  
10                   issuer and the structured settlement obligor are  
                    not required if all other interested parties  
                    approve the transfer and waive all rights to  
                    require that the transferred payments be made to  
                    the payee in accordance with the terms of the  
                    structured settlement; and

12                   (b) Any court or government authority, other than  
14                   the court or responsible administrative authority  
16                   from which authorization of the transfer is sought  
                    under this chapter, that previously approved the  
                    structured settlement; and

18                   (2) Signed originals of all approvals required under  
20                   subparagraph (1) have been filed with the court or  
22                   responsible administrative authority from which  
24                   authorization of the transfer is sought under this  
                    chapter and originals or copies have been furnished to  
                    all interested parties; and

26                   F. The transferee has given written notice of the  
28                   transferee's name, address and taxpayer identification  
30                   number to the annuity issuer and the structured settlement  
                    obligor and has filed a copy of that notice with the court  
                    or responsible administrative authority.

32                   **§2243. Jurisdiction; filing**

34                   1. Jurisdiction. The Superior Court has nonexclusive  
36                   jurisdiction over any application for authorization under this  
                    chapter of a transfer of structured settlement payment rights.

38                   2. Filing. Not less than 30 days prior to the scheduled  
40                   hearing on any application for authorization of a transfer of  
42                   structured settlement payment rights under this chapter, the  
44                   transferee shall file with the court or responsible  
                    administrative authority and serve on any other government  
                    authority that previously approved the structured settlement and  
                    all interested parties a notice of the proposed transfer and the  
                    application of its authorization, including in that notice:

46                   A. A copy of the transferee's application;

48                   B. A copy of the transfer agreement;



2 C. A copy of the disclosure statement required under  
section 2242, subsection 2, paragraph B;

4 D. Notification that any interested party is entitled to  
6 support, oppose or otherwise respond to the transferee's  
8 application, either in person or by counsel, by submitting  
written comments to the court or responsible administrative  
authority or by participating in the hearing; and

10 E. Notification of the time and place of the hearing and  
12 notification of the manner in which and the time by which  
14 written responses to the application must be filed, which  
may be not less than 30 days after service of the  
transferee's notice, in order to be considered by the court  
or responsible administrative authority.

16 **§2244. Prohibitions**

18 1. Prohibition against waiver. The provisions of this  
20 chapter may not be waived.

22 2. Prohibition against penalty. A payee who proposes to  
24 make a transfer of structured settlement payment rights may not  
incur a penalty, forfeit an application fee or other payment or  
26 otherwise incur any liability to the proposed transferee based on  
the failure of that transfer to satisfy the conditions of section  
2242.

28 **§2245. Construction**

30 Nothing contained in this chapter may be construed to  
32 authorize a transfer of structured settlement payment rights in  
contravention of applicable law or to give effect to a transfer  
34 of structured settlement payment rights that is invalid under  
applicable law.

36  
38 **SUMMARY**

40 The settlement of many different types of claims often  
42 involves the use of a structured settlement. A structured  
settlement is an agreement whereby one party receives a series of  
44 payments over a specified term instead of one payment.  
Structured settlements must always be agreed to by a plaintiff  
and a particular defendant in a lawsuit. The purpose of this  
46 bill is to protect individuals who have entered into a structured  
settlement agreement from various companies and individuals who  
48 buy the structure, usually at a dramatically reduced cost. The  
bill establishes procedures and protections pursuant to which  
50 such transactions may occur.