

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-367
SENATE BILL 746

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT
PROTECTION ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 44B.

"Structured Settlement Protection Act.

"§ 1-543.10. Title.

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"§ 1-543.11. Definitions.

For purposes of this Article:

- (1) 'Annuity issuer' means an insurer that has issued an annuity or insurance contract used to fund periodic payments under a structured settlement;
- (2) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;
- (3) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:
 - a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;
 - b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and
 - c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;
- (4) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the terms of the structured settlement;

- (5) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;
- (6) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;
- (7) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;
- (8) 'Settled claim' means the original tort claim resolved by a structured settlement;
- (9) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim;
- (10) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;
- (11) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;
- (12) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:
 - a. The payee is domiciled in this State;
 - b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or
 - c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;
- (13) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;
- (14) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the 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 such structured settlement; and
- (15) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"§ 1-543.12. Structured settlement payment rights.

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

- (1) The transfer complies with the requirements of this Article law;
- (2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:
 - a. The amounts and due dates of the structured settlement payments to be transferred;
 - b. The aggregate amount of such payments;
 - c. The discounted present value of such payments;
 - d. The gross amount payable to the payee in exchange for such payments;
 - e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;
 - f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subdivision e. of this subdivision;
 - g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments;
 - h. The discount rate used by the transferee to determine the net amount payable to the payee for the structured settlement payments to be transferred; and
 - i. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;
- (3) The transfer is in the best interest of the payee;
- (4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;
- (5) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority;

- (6) The discount rate used in determining the net amount payable to the payee, as provided in subdivision (2) of this section, does not exceed an annual percentage rate of prime plus five percentage points calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan. For purposes of this subdivision, the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the month in which the transfer agreement is signed by both the payee and the transferee, except when the transfer agreement is signed prior to the first Monday of that month then the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the preceding month;
- (7) Any brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee do not exceed two percent (2%) of the net amount payable to the payee;
- (8) The transfer of structured settlement payment rights is fair and reasonable; and
- (9) Notwithstanding a provision of the structured settlement agreement prohibiting an assignment by the payee, the court may order a transfer of periodic payment rights provided that the court finds that the provisions of this Article are satisfied.

If the court or responsible administrative authority authorizes the transfer pursuant to this section, the court or responsible administrative authority shall order the structured settlement obligor to execute an acknowledgment of assignment letter on behalf of the transferee for the amount of the structured settlement payment rights to be transferred.

"§ 1-543.13. Jurisdiction.

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"§ 1-543.14. Procedure for approval of transfers.

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties as defined in G.S. 1-543.11(4), and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

- (1) A copy of the transferee's application;
- (2) A copy of the transfer agreement;
- (3) A copy of the disclosure statement required under G.S. 1-543.12(a)(2);
- (4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's 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
- (5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"§ 1-543.15. No waiver; penalties.

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without complying with this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars (\$5,000) for the violation by the transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all unpaid structured settlement payment rights transferred in violation of this Article by any transferee shall be reconveyed to the payee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise

incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, provided that this act shall not apply to any transfer of structured settlement payment rights under a structured settlement agreement entered into or effective prior to that date where the transfer does not contravene the terms of the structured settlement. Nothing contained herein shall imply that any transfer under a transfer agreement reached prior to October 1, 1999, is effective.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:42 p.m. this 4th day of August, 1999