

Article 44B.
Structured Settlement Protection Act.

§ 1-543.10. Title.

This Article may be cited as the North Carolina Structured Settlement Protection Act. (1999-367, s. 1.)

§ 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;

- 1 (12) "Structured settlement payment rights" means rights to receive periodic
2 payments (including lump-sum payments) under a structured settlement,
3 whether from the settlement obligor or the annuity issuer, where:
4 a. The payee is domiciled in this State;
5 b. The structured settlement agreement was approved by a court or
6 responsible administrative authority in this State; or
7 c. The settled claim was pending before the courts of this State when
8 the parties entered into the structured settlement agreement;
- 9 (13) "Terms of the structured settlement" include, with respect to any structured
10 settlement, the terms of the structured settlement agreement, the annuity
11 contract, any qualified assignment agreement, and any order or approval of
12 any court or responsible administrative authority or other government
13 authority authorizing or approving such structured settlement; and
- 14 (14) "Transfer" means any sale, assignment, pledge, hypothecation, or other form
15 of alienation or encumbrance made by a payee for consideration;
- 16 (15) "Transfer agreement" means the agreement providing for transfer of
17 structured settlement payment rights from a payee to a transferee. (1999-367,
18 s. 1.)
19

20 **§ 1-543.12. Structured settlement payment rights.**

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

- 27 (1) The transfer complies with the requirements of this Article [of] law;
28 (2) Not less than 10 days prior to the date on which the payee first incurred any
29 obligation with respect to the transfer, the transferee has provided to the
30 payee a disclosure statement in bold type, no smaller than 14 point setting
31 forth:
32 a. The amounts and due dates of the structured settlement payments to
33 be transferred;
34 b. The aggregate amount of such payments;
35 c. The discounted present value of such payments;
36 d. The gross amount payable to the payee in exchange for such
37 payments;
38 e. An itemized listing of all brokers' commissions, service charges,
39 application fees, processing fees, closing costs, filing fees,
40 administrative fees, legal fees, notary fees and other commissions,
41 fees, costs, expenses, and charges payable by the payee or deductible
42 from the gross amount otherwise payable to the payee;
43 f. The net amount payable to the payee after deduction of all
44 commissions, fees, costs, expenses, and charges described in
45 sub-subdivision e. of this subdivision;
46 g. The quotient (expressed as a percentage) obtained by dividing the net
47 payment amount by the discounted present value of the payments;
48 h. The discount rate used by the transferee to determine the net amount
49 payable to the payee for the structured settlement payments to be
50 transferred; and

1 i. The amount of any penalty and the aggregate amount of any
2 liquidated damages (inclusive of penalties) payable by the payee in
3 the event of any breach of the transfer agreement by the payee;

4 (3) The transfer is in the best interest of the payee;

5 (4) The payee has received independent professional advice regarding the legal,
6 tax, and financial implications of the transfer;

7 (5) The transferee has given written notice of the transferee's name, address, and
8 taxpayer identification number to the annuity issuer and the structured
9 settlement obligor and has filed a copy of such notice with the court or
10 responsible administrative authority;

11 (6) The discount rate used in determining the net amount payable to the payee,
12 as provided in subdivision (2) of this section, does not exceed an annual
13 percentage rate of prime plus five percentage points calculated as if the net
14 amount payable to the payee, as provided in sub-subdivision (2)f. of this
15 section, was the principal of a consumer loan made by the transferee to the
16 payee, and if the structured settlement payments to be transferred to the
17 transferee were the payee's payments of principal plus interest on such loan.
18 For purposes of this subdivision, the prime rate shall be as reported by the
19 Federal Reserve Statistical Release H.15 on the first Monday of the month in
20 which the transfer agreement is signed by both the payee and the transferee,
21 except when the transfer agreement is signed prior to the first Monday of
22 that month then the prime rate shall be as reported by the Federal Reserve
23 Statistical Release H.15 on the first Monday of the preceding month;

24 (7) Any brokers' commissions, service charges, application fees, processing
25 fees, closing costs, filing fees, administrative fees, notary fees and other
26 commissions, fees, costs, expenses, and charges payable by the payee or
27 deductible from the gross amount otherwise payable to the payee do not
28 exceed two percent (2%) of the net amount payable to the payee;

29 (8) The transfer of structured settlement payment rights is fair and reasonable;
30 and

31 (9) Notwithstanding a provision of the structured settlement agreement
32 prohibiting an assignment by the payee, the court may order a transfer of
33 periodic payment rights provided that the court finds that the provisions of
34 this Article are satisfied.

35 If the court or responsible administrative authority authorizes the transfer pursuant to this
36 section, the court or responsible administrative authority shall order the structured settlement
37 obligor to execute an acknowledgment of assignment letter on behalf of the transferee for the
38 amount of the structured settlement payment rights to be transferred; provided, however,
39 structured settlement payment rights arising from a claim pursuant to Chapter 97 shall not be
40 authorized. (1999-367, s. 1; 1999-456, s. 67.)

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42 **§ 1-543.13. Jurisdiction.**

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

47 (b) Where the structured settlement agreement was entered into prior to the
48 commencement of litigation or administrative proceedings, or after the commencement of
49 litigation outside this State, the Superior Court Division of the General Court of Justice shall
50 have nonexclusive original jurisdiction over any application for authorization under this Article
51 of a transfer of structured settlement payment rights. (1999-367, s. 1.)

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2 **§ 1-543.14. Procedure for approval of transfers.**

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

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

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

- 19 (1) A copy of the transferee's application;
20 (2) A copy of the transfer agreement;
21 (3) A copy of the disclosure statement required under G.S. 1-543.12(a)(2);
22 (4) Notification that any interested party is entitled to support, oppose, or
23 otherwise respond to the transferee's application, either in person or by
24 counsel, by submitting written comments to the court or responsible
25 administrative authority or by participating in the hearing; and
26 (5) Notification of the time and place of the hearing and notification of the
27 manner in which and the time by which written responses to the application
28 must be filed in order to be considered by the court or responsible
29 administrative authority.

30 (d) The Attorney General shall have standing to raise, appear, and be heard on any
31 matter relating to an application for authorization of a transfer of structured settlement payment
32 rights under this Article. (1999-367, s. 1.)
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34 **§ 1-543.15. No waiver; penalties.**

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

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

42 (c) No payee who proposes to make a transfer of structured settlement payment rights
43 shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any
44 liability to the proposed transferee based on any failure of such transfer to satisfy the conditions
45 of this Article. (1999-367, s. 1.)