

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 746
Judiciary I Committee Substitute Adopted 4/21/99
House Committee Substitute Favorable 7/1/99
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Short Title: Structured Settlement Protection Act.

(Public)

Sponsors:

Referred to:

April 5, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT
3 PROTECTION ACT.

4 The General Assembly of North Carolina enacts:

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

7 **"ARTICLE 44B.**

8 **"STRUCTURED SETTLEMENT PROTECTION ACT.**

9 **"§ 1-543.10. Title.**

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

11 **"§ 1-543.11. Definitions.**

12 For purposes of this Article:

13 (1) 'Annuity issuer' means an insurer that has issued an annuity or insurance
14 contract used to fund periodic payments under a structured settlement;

15 (2) 'Discounted present value' means the fair present value of future
16 payments, as determined by discounting such payments to the present

- 1 utilizing the tables adopted in Article 5 of Chapter 8 of the General
2 Statutes;
- 3 (3) 'Independent professional advice' means advice of an attorney, certified
4 public accountant, actuary, or other licensed or registered professional
5 or financial adviser:
- 6 a. Who is engaged by a payee to render advice concerning the legal,
7 tax, and financial implications of a transfer of structured
8 settlement payment rights;
- 9 b. Who is not in any manner affiliated with or compensated by the
10 transferee of such transfer; and
- 11 c. Whose compensation for rendering such advice is not affected by
12 whether a transfer occurs or does not occur;
- 13 (4) 'Interested parties' means, with respect to any structured settlement, the
14 payee, any beneficiary designated under the annuity contract to receive
15 payments following the payee's death, the annuity issuer, the structured
16 settlement obligor, and any other party that has continuing rights or
17 obligations under the terms of the structured settlement;
- 18 (5) 'Payee' means an individual who is receiving tax-free damage payments
19 under a structured settlement and proposes to make a transfer of
20 payment rights thereunder;
- 21 (6) 'Qualified assignment agreement' means an agreement providing for a
22 qualified assignment within the meaning of section 130 of the Internal
23 Revenue Code, United States Code Title 26, as amended from time to
24 time;
- 25 (7) 'Responsible administrative authority' means, with respect to a
26 structured settlement, any government authority vested by law with
27 exclusive jurisdiction over the settled claim resolved by such structured
28 settlement;
- 29 (8) 'Settled claim' means the original tort claim resolved by a structured
30 settlement;
- 31 (9) 'Structured settlement' means an arrangement for periodic payment of
32 damages for personal injuries established by settlement or judgment in
33 resolution of a tort claim;
- 34 (10) 'Structured settlement agreement' means the agreement, judgment,
35 stipulation, or release embodying the terms of a structured settlement,
36 including the rights of the payee to receive periodic payments;
- 37 (11) 'Structured settlement obligor' means, with respect to any structured
38 settlement, the party that has the continuing periodic payment obligation
39 to the payee under a structured settlement agreement or a qualified
40 assignment agreement;
- 41 (12) 'Structured settlement payment rights' means rights to receive periodic
42 payments (including lump-sum payments) under a structured settlement,
43 whether from the settlement obligor or the annuity issuer, where:

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

17 **"§ 1-543.12. Structured settlement payment rights.**

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

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

- 1 g. The quotient (expressed as a percentage) obtained by dividing the
2 net payment amount by the discounted present value of the
3 payments;
4 h. The discount rate used by the transferee to determine the net
5 amount payable to the payee for the structured settlement
6 payments to be transferred; and
7 i. The amount of any penalty and the aggregate amount of any
8 liquidated damages (inclusive of penalties) payable by the payee
9 in the event of any breach of the transfer agreement by the payee;

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

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

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

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

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

36 (8) The transfer of structured settlement payment rights is fair and
37 reasonable; and

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

42 If the court or responsible administrative authority authorizes the transfer pursuant to
43 this section, the court or responsible administrative authority shall order the structured

1 settlement obligor to execute an acknowledgment of assignment letter on behalf of the
2 transferee for the amount of the structured settlement payment rights to be transferred.

3 **"§ 1-543.13. Jurisdiction.**

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

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

14 **"§ 1-543.14. Procedure for approval of transfers.**

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

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

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

- 33 (1) A copy of the transferee's application;
34 (2) A copy of the transfer agreement;
35 (3) A copy of the disclosure statement required under G.S. 1-543.12(a)(2);
36 (4) Notification that any interested party is entitled to support, oppose, or
37 otherwise respond to the transferee's application, either in person or by
38 counsel, by submitting written comments to the court or responsible
39 administrative authority or by participating in the hearing; and
40 (5) Notification of the time and place of the hearing and notification of the
41 manner in which and the time by which written responses to the
42 application must be filed in order to be considered by the court or
43 responsible administrative authority.

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

4 **"§ 1-543.15. No waiver; penalties.**

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

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

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

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

19 **"§ 1-394.1. Special proceedings to determine authority to transfer structured**
20 **settlement payment rights.**

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

27 Section 3. This act shall apply to any transfer of structured settlement payment
28 rights under a transfer agreement entered into on or after October 1, 1999, provided that
29 this act shall not apply to any transfer of structured settlement payment rights under a
30 structured settlement agreement entered into or effective prior to that date where the
31 transfer does not contravene the terms of the structured settlement. Nothing contained
32 herein shall imply that any transfer under a transfer agreement reached prior to October 1,
33 1999, is effective.