

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 746

Short Title: Structured Settlement Protection Act.

(Public)

Sponsors: Senators Cooper; Ballance, Foxx, Kinnaird, Martin of Guilford, Miller, Rand, Reeves, and Soles.

Referred to: Judiciary I.

April 5, 1999

A BILL TO BE ENTITLED
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. 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 and will not contravene other applicable law;

- 1 (2) Not less than 10 days prior to the date on which the payee first incurred
2 any obligation with respect to the transfer, the transferee has provided to
3 the payee a disclosure statement in bold type, no smaller than 14 point
4 setting forth:
- 5 a. The amounts and due dates of the structured settlement payments
6 to be transferred;
- 7 b. The aggregate amount of such payments;
- 8 c. The discounted present value of such payments, together with the
9 discount rate used in determining such discounted present value;
- 10 d. The gross amount payable to the payee in exchange for such
11 payments;
- 12 e. An itemized listing of all brokers' commissions, service charges,
13 application fees, processing fees, closing costs, filing fees,
14 administrative fees, legal fees, notary fees and other
15 commissions, fees, costs, expenses and charges payable by the
16 payee or deductible from the gross amount otherwise payable to
17 the payee;
- 18 f. The net amount payable to the payee after deduction of all
19 commissions, fees, costs, expenses and charges described in sub-
20 subdivision e. of this paragraph;
- 21 g. The quotient (expressed as a percentage) obtained by dividing the
22 net payment amount by the discounted present value of the
23 payments; and
- 24 h. The amount of any penalty and the aggregate amount of any
25 liquidated damages (inclusive of penalties) payable by the payee
26 in the event of any breach of the transfer agreement by the payee;
- 27 (3) The transferee has established that the transfer is necessary to enable the
28 payee, the payee's dependents, or both, to avoid imminent financial
29 hardship, and the transfer should not be expected to subject the payee,
30 the payee's dependents, or both, to undue financial hardship in the
31 future; provided, however, that if, at the time the payee and the
32 transferee entered into the transfer agreement, a federal hardship
33 standard was in effect, then, in lieu of the foregoing finding, the court or
34 responsible administrative authority must make an express finding that
35 the transfer qualifies under such federal hardship standard;
- 36 (4) The payee has received independent professional advice regarding the
37 legal, tax, and financial implications of the transfer;
- 38 (5) If the transfer would contravene the terms of the structured settlement:
- 39 a. The transfer has been expressly approved in writing by:
- 40 1. Each interested party; provided, however, that if, at the
41 time the payee and the transferee entered into the transfer
42 agreement, a favorable tax determination was in effect,
43 then the approval of the annuity issuer and the structured

1 settlement obligor shall not be required if all other
2 interested parties approve the transfer and waive any and
3 all rights to require that the transferred payments be made
4 to the payee in accordance with the terms of the structured
5 settlement; and

6 2. Any court or government authority, other than the court or
7 responsible administrative authority from which
8 authorization of the transfer is sought under this act,
9 which previously approved the structured settlement; and

10 b. Signed originals of all approvals required under sub-subdivision
11 a. of this subdivision have been filed with the court or
12 responsible administrative authority from which authorization of
13 the transfer is sought under this act, and originals or copies have
14 been furnished to all interested parties; and

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

19 (7) The discount rate used in determining discounted present value of the
20 structured settlement payment rights does not exceed eighteen percent
21 (18%).

22 **"§ 1-543.12. Definitions.**

23 For purposes of this Article:

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

26 (2) 'Applicable law' means:

27 a. The federal laws of the United States;

28 b. The laws of this State, including principles of equity applied in
29 the courts of this State; and

30 c. The laws of any other jurisdiction:

31 1. Which is the domicile of the payee or any other interested
32 party;

33 2. Under whose laws a structured settlement agreement was
34 approved by a court or responsible administrative
35 authority; or

36 3. In whose courts a settled claim was pending when the
37 parties entered into a structured settlement agreement;

38 (3) 'Dependents' include a payee's spouse and minor children and all other
39 family members and other persons for whom the payee is legally
40 obligated to provide support, including alimony;

41 (4) 'Discounted present value' means the fair present value of future
42 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 (5) 'Favorable tax determination' means, with respect to a proposed transfer
4 of structured settlement payment rights, any of the following authorities
5 that definitely establishes that the federal income tax treatment of the
6 structured settlement for the parties to the structured settlement
7 agreement and any qualified assignment agreement, other than the
8 payee, will not be affected by such transfer:

9 a. A provision of the Internal Revenue Code, United States Code
10 Title 26, as amended from time to time, or a United States
11 Treasury regulation adopted pursuant thereto;

12 b. A revenue ruling or revenue procedure issued by the Internal
13 Revenue Service; or

14 c. A private letter ruling by the Internal Revenue Service with
15 respect to such transfer; or

16 d. A decision of the United States Supreme Court or a decision of a
17 lower federal court in which the Internal Revenue Service has
18 acquiesced;

19 (6) 'Federal hardship standard' means a federal standard applicable to
20 transfers of structured settlement payment rights based on findings of a
21 court or responsible administrative authority regarding the payees'
22 needs, as contained in the Internal Revenue Code, United States Code
23 Title 26, as amended from time to time, or in a United States Treasury
24 regulation adopted pursuant thereto;

25 (7) 'Independent professional advice' means advice of an attorney, certified
26 public accountant, actuary, or other licensed or registered professional
27 or financial adviser:

28 a. Who is engaged by a payee to render advice concerning the legal,
29 tax, and financial implications of a transfer of structured
30 settlement payment rights;

31 b. Who is not in any manner affiliated with or compensated by the
32 transferee of such transfer; and

33 c. Whose compensation for rendering such advice is not affected by
34 whether a transfer occurs or does not occur;

35 (8) 'Interested parties' means, with respect to any structured settlement, the
36 payee, any beneficiary designated under the annuity contract to receive
37 payments following the payee's death, the annuity issuer, the structured
38 settlement obligor, and any other party that has continuing rights or
39 obligations under such structured settlement;

40 (9) 'Payee' means an individual who is receiving tax-free damage payments
41 under a structured settlement and proposes to make a transfer of
42 payment rights thereunder;

- 1 (10) 'Qualified assignment agreement' means an agreement providing for a
2 qualified assignment within the meaning of section 130 of the Internal
3 Revenue Code, United States Code Title 26, as amended from time to
4 time;
- 5 (11) 'Responsible administrative authority' means, with respect to a
6 structured settlement, any government authority vested by law with
7 exclusive jurisdiction over the settled claim resolved by such structured
8 settlement;
- 9 (12) 'Settled claim' means the original tort claim or workers' compensation
10 claim resolved by a structured settlement;
- 11 (13) 'Structured settlement' means an arrangement for periodic payment of
12 damages for personal injuries established by settlement or judgment in
13 resolution of a tort claim or for periodic payments in settlement of a
14 workers' compensation claim;
- 15 (14) 'Structured settlement agreement' means the agreement, judgment,
16 stipulation, or release embodying the terms of a structured settlement,
17 including the rights of the payee to receive periodic payments;
- 18 (15) 'Structured settlement obligor' means, with respect to any structured
19 settlement, the party that has the continuing periodic payment obligation
20 to the payee under a structured settlement agreement or a qualified
21 assignment agreement;
- 22 (16) 'Structured settlement payment rights' means rights to receive periodic
23 payments (including lump-sum payments) under a structured settlement,
24 whether from the settlement obligor or the annuity issuer, where:
- 25 a. The payee is domiciled in this State;
- 26 b. The structured settlement agreement was approved by a court or
27 responsible administrative authority in this State; or
- 28 c. The settled claim was pending before the courts of this State
29 when the parties entered into the structured settlement
30 agreement;
- 31 (17) 'Transfer' means any sale, assignment, pledge, hypothecation, or other
32 form of alienation or encumbrance made by a payee for consideration;
- 33 (18) 'Terms of the structured settlement' include, with respect to any
34 structured settlement, the terms of the structured settlement agreement,
35 the annuity contract, any qualified assignment agreement, and any order
36 or approval of any court or responsible administrative authority or other
37 government authority authorizing or approving such structured
38 settlement; and
- 39 (19) 'Transfer agreement' means the agreement providing for transfer of
40 structured settlement payment rights from a payee to a transferee.

41 **"§ 1-543.13. Jurisdiction.**

42 (a) Where the structured settlement agreement was entered into after
43 commencement of litigation or administrative proceedings in this State, the court or

1 administrative agency where the action was pending shall have exclusive jurisdiction
2 over any application for authorization under this Article of a transfer of structured
3 settlement payment rights.

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

9 **"§ 1-543.14. Procedure for approval of transfers.**

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

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

21 (c) Not less than 30 days prior to the scheduled hearing on any application for
22 authorization of a transfer of structured settlement payment rights under this Article, the
23 transferee shall file with the proper court or responsible administrative authority and
24 serve on any other government authority which previously approved the structured
25 settlement, on all interested parties, and on the Attorney General, a notice of the proposed
26 transfer and the application for its authorization, including in such notice:

27 (1) A copy of the transferee's application;

28 (2) A copy of the transfer agreement;

29 (3) A copy of the disclosure statement required under G.S. 1-543.11(a);

30 (4) Notification that any interested party is entitled to support, oppose, or
31 otherwise respond to the transferee's application, either in person or by
32 counsel, by submitting written comments to the court or responsible
33 administrative authority or by participating in the hearing; and

34 (5) Notification of the time and place of the hearing and notification of the
35 manner in which and the time by which written responses to the
36 application must be filed in order to be considered by the court or
37 responsible administrative authority.

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

41 **"§ 1-543.15. No waiver; penalties.**

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

1 (b) Any payee who has transferred structured settlement payment rights to a
2 transferee without knowledge of the requirements set out in this Article may bring an
3 action against the transferee to recover actual monetary loss or for damages up to five
4 thousand dollars (\$5,000) for the violation by the transferee, or bring actions for both.
5 The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In
6 addition, the payee shall be entitled to reinstatement of all structured settlement payment
7 rights lost as a result of violation of this Article by any transferee.

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

12 **"§ 1-543.16. Construction.**

13 Nothing contained in this Article shall be construed to authorize any transfer of
14 structured settlement payment rights in contravention of applicable law or to give effect
15 to any transfer of structured settlement payment rights that is invalid under applicable
16 law."

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, but nothing
29 contained in this act shall imply that any transfer under a transfer agreement reached prior
30 to such date is effective.