

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

3

SENATE BILL 746  
Judiciary I Committee Substitute Adopted 4/21/99  
House Committee Substitute Favorable 7/1/99

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  
17 utilizing the tables adopted in Article 5 of Chapter 8 of the General  
18 Statutes;

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

1           b. The structured settlement agreement was approved by a court or  
2           responsible administrative authority in this State; or

3           c. The settled claim was pending before the courts of this State  
4           when the parties entered into the structured settlement  
5           agreement;

6           (13) 'Transfer' means any sale, assignment, pledge, hypothecation, or other  
7           form of alienation or encumbrance made by a payee for consideration;

8           (14) 'Terms of the structured settlement' include, with respect to any  
9           structured settlement, the terms of the structured settlement agreement,  
10           the annuity contract, any qualified assignment agreement, and any order  
11           or approval of any court or responsible administrative authority or other  
12           government authority authorizing or approving such structured  
13           settlement; and

14           (15) 'Transfer agreement' means the agreement providing for transfer of  
15           structured settlement payment rights from a payee to a transferee.

16 **"§ 1-543.12. Structured settlement payment rights.**

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

23           (1) The transfer complies with the requirements of this Article law;

24           (2) Not less than 10 days prior to the date on which the payee first incurred  
25           any obligation with respect to the transfer, the transferee has provided to  
26           the payee a disclosure statement in bold type, no smaller than 14 point  
27           setting forth:

28           a. The amounts and due dates of the structured settlement payments  
29           to be transferred;

30           b. The aggregate amount of such payments;

31           c. The discounted present value of such payments;

32           d. The gross amount payable to the payee in exchange for such  
33           payments;

34           e. An itemized listing of all brokers' commissions, service charges,  
35           application fees, processing fees, closing costs, filing fees,  
36           administrative fees, legal fees, notary fees and other  
37           commissions, fees, costs, expenses, and charges payable by the  
38           payee or deductible from the gross amount otherwise payable to  
39           the payee;

40           f. The net amount payable to the payee after deduction of all  
41           commissions, fees, costs, expenses, and charges described in sub-  
42           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, legal fees, notary fees  
33       and other commissions, fees, costs, expenses, and charges payable by  
34       the payee or deductible from the gross amount otherwise payable to the  
35       payee do not exceed two percent (2%) of the net amount payable to the  
36       payee;
- 37       (8)    The transfer of structured settlement payment rights is fair and  
38       reasonable; and
- 39       (9)    Notwithstanding a provision of the structured settlement agreement  
40       prohibiting an assignment by the payee, the court may order a transfer  
41       of periodic payment rights provided that the court finds that the  
42       provisions of this Article are satisfied.

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

5 **"§ 1-543.13. Jurisdiction.**

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

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

16 **"§ 1-543.14. Procedure for approval of transfers.**

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

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

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

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

36 (2) A copy of the transfer agreement;

37 (3) A copy of the disclosure statement required under G.S. 1-543.12(a)(2);

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

42 (5) Notification of the time and place of the hearing and notification of the  
43 manner in which and the time by which written responses to the

1                    application must be filed in order to be considered by the court or  
2                    responsible administrative authority.

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

6 **"§ 1-543.15. No waiver; penalties.**

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

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

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

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

21 **"§ 1-394.1. Special proceedings to determine authority to transfer structured**  
22 **settlement payment rights.**

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

29            Section 3. This act shall apply to any transfer of structured settlement payment  
30 rights under a transfer agreement entered into on or after October 1, 1999, provided that  
31 this act shall not apply to any transfer of structured settlement payment rights under a  
32 structured settlement agreement entered into or effective prior to that date where the  
33 transfer does not contravene the terms of the structured settlement. Nothing contained  
34 herein shall imply that any transfer under a transfer agreement reached prior to October 1,  
35 1999, is effective.