

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

FILED SENATE
Apr 6, 2023
S.B. 655
PRINCIPAL CLERK

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SENATE BILL DRS45273-MVf-14

Short Title: Update Structured Settlement Protection Act. (Public)

Sponsors: Senators Sawyer, Craven, and Johnson (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE THE NORTH CAROLINA STRUCTURED SETTLEMENT
3 PROTECTION ACT TO ALIGN WITH THE MOST RECENT VERSION OF THE
4 MODEL STATE STRUCTURED SETTLEMENT PROTECTION ACT APPROVED BY
5 THE NATIONAL COUNCIL OF INSURANCE LEGISLATORS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 44B of Chapter 1 of the General Statutes reads as rewritten:

8 "Article 44B.

9 "Structured Settlement Protection Act.

10 **"§ 1-543.10. Title.**

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

12 **"§ 1-543.11. Definitions.**

13 For purposes of this ~~Article~~ Article, the following definitions apply:

14 (1) ~~"Annuity issuer" means an~~ Annuity issuer. – An insurer that has issued an
15 annuity or insurance contract used to fund periodic payments under a
16 structured ~~settlement;~~ settlement.

17 (1a) Assignee. – A party acquiring or proposing to acquire structured settlement
18 payment rights from a transferee of the rights.

19 (1b) Dependents. – Includes a payee's spouse and minor children and all other
20 persons for whom the payee is legally obligated to provide support, including
21 alimony.

22 (2) ~~"Discounted present value" means the fair~~ Discounted present value. – The
23 present value of future ~~payments,~~ as payments determined by discounting ~~such~~
24 the payments to the present utilizing the ~~tables adopted in Article 5 of Chapter~~
25 8 of the General Statutes; ~~most recently published~~ Applicable Federal Rate for
26 determining the present value of an annuity, as issued by the United States
27 Internal Revenue Service.

28 (2a) Gross advance amount. – The sum payable to the payee or for the payee's
29 account as consideration for a transfer of structured settlement payment rights
30 before any reductions for transfer expenses or other deductions to be made
31 from the consideration.

32 (3) ~~"Independent professional advice" means advice~~ Independent professional
33 advice. – Advice of an attorney, certified public accountant, actuary, or other
34 licensed ~~or registered~~ professional ~~or financial adviser;~~ advisor.



- 1 a. ~~Who is engaged by a payee to render advice concerning the legal, tax,~~
2 ~~and financial implications of a transfer of structured settlement~~
3 ~~payment rights;~~
4 b. ~~Who is not in any manner affiliated with or compensated by the~~
5 ~~transferee of such transfer; and~~
6 e. ~~Whose compensation for rendering such advice is not affected by~~
7 ~~whether a transfer occurs or does not occur;~~
- 8 (4) ~~"Interested parties" means, with Interested parties. – With respect to any~~
9 ~~structured settlement, the payee, any beneficiary designated under the annuity~~
10 ~~contract to receive payments following the payee's death, the annuity issuer,~~
11 ~~the structured settlement obligor, and any other party to the structured~~
12 ~~settlement that has continuing rights or obligations to receive or make~~
13 ~~payments under the terms of the structured settlement; settlement.~~
14 (4a) ~~Net advance amount. – The gross advance amount less the aggregate amount~~
15 ~~of the actual and estimated transfer expenses required to be disclosed under~~
16 ~~G.S. 1-543.11C(5).~~
17 (5) ~~"Payee" means an Payee. – An individual who is receiving tax-free damage~~
18 ~~payments under a structured settlement and proposes to make a transfer of the~~
19 ~~payment rights thereunder; rights.~~
20 (5a) ~~Periodic payments. – Includes both recurring payments and scheduled future~~
21 ~~lump sum payments.~~
22 (5b) ~~Person. – Includes individual and entity.~~
23 (6) ~~"Qualified assignment agreement" means an Qualified assignment agreement.~~
24 ~~– An agreement providing for a qualified assignment within the meaning of~~
25 ~~section 130 of the Internal Revenue Code, United States Code Title 26, as~~
26 ~~amended from time to time; 26 U.S.C. § 130.~~
27 (6a) ~~Renewal date. – The annual date on which a registered structured settlement~~
28 ~~purchase company is required to have renewed their annual registration~~
29 ~~pursuant to G.S. 1-543.11A.~~
30 (7) ~~"Responsible administrative authority" means, with Responsible~~
31 ~~administrative authority. – With respect to a structured settlement, any~~
32 ~~government authority vested by law with exclusive jurisdiction over the~~
33 ~~settled claim resolved by such the structured settlement; settlement.~~
34 (8) ~~"Settled claim" means the Settled claim. – The original tort claim resolved by~~
35 ~~a structured settlement; settlement.~~
36 (9) ~~"Structured settlement" means an Structured settlement. – An arrangement for~~
37 ~~periodic payment of damages for personal injuries established by settlement~~
38 ~~or judgment in resolution of a tort claim; claim.~~
39 (10) ~~"Structured settlement agreement" means the Structured settlement~~
40 ~~agreement. – The agreement, judgment, stipulation, or release embodying the~~
41 ~~terms of a structured settlement, including the rights of the payee to receive~~
42 ~~periodic payments; settlement.~~
43 (11) ~~"Structured settlement obligor" means, with Structured settlement obligor. –~~
44 ~~With respect to any structured settlement, the party that has the continuing~~
45 ~~periodic payment obligation to the payee under a structured settlement~~
46 ~~agreement or a qualified assignment agreement; agreement.~~
47 (12) ~~"Structured settlement payment rights" means rights Structured settlement~~
48 ~~payment rights. – Rights to receive periodic payments (including lump sum~~
49 ~~payments) under a structured settlement, whether from the structured~~
50 ~~settlement obligor or the annuity issuer, where issuer, when any of the~~
51 ~~following applies:~~

- 1 a. The payee is domiciled in this ~~State;~~State.
2 b. The structured settlement agreement was approved by a court or
3 responsible administrative authority in this ~~State;~~or State.
4 c. The settled claim was pending before the courts of this State when the
5 parties entered into the structured settlement ~~agreement;~~agreement.
6 (12a) Structured settlement purchase company. – A person that acts as a transferee
7 in this State and who is registered with the Department of Insurance pursuant
8 to G.S. 1-543.11A.
9 (12b) Structured settlement transfer proceeding. – A court proceeding filed by a
10 structured settlement purchase company seeking court approval of a transfer
11 in accordance with G.S. 1-543.12.
12 (13) ~~"Terms of the structured settlement" include, with~~ Terms of the structured
13 settlement. – With respect to any structured settlement, the terms of the
14 structured settlement agreement, the annuity contract, any qualified
15 assignment agreement, and any order or approval of any court or responsible
16 administrative authority or other government authority authorizing or
17 approving ~~such the structured settlement; and~~ settlement.
18 (14) ~~"Transfer" means any~~ Transfer. – Any sale, assignment, pledge,
19 hypothecation, or other form of alienation or encumbrance of the structured
20 settlement payment rights made by a payee for ~~consideration;~~ consideration.
21 The term does not include the creation or perfection of a security interest in
22 structured settlement payment rights under a blanket security agreement
23 entered into with an insured depository institution in the absence of any action
24 to redirect the structured settlement payments to the insured depository
25 institution, or its agent or successor in interest, or to otherwise enforce the
26 blanket security interest against the structured settlement payment rights.
27 (15) ~~"Transfer agreement" means the~~ Transfer agreement. – The agreement
28 providing for transfer of structured settlement payment rights ~~from a payee to~~
29 a transferee rights.
30 (16) Transfer expenses. – All expenses of a transfer that are required under the
31 transfer agreement to be paid by the payee or deducted from the gross advance
32 amount, including court filing fees, attorneys' fees, escrow fees, lien
33 recordation fees, judgment and lien search fees, finders' fees, commissions,
34 and other payments to a broker or other intermediary. The term does not
35 include preexisting obligations of the payee payable for the payee's account
36 from the proceeds of a transfer.
37 (17) Transfer order. – An order approving a transfer in accordance with
38 G.S. 1-543.12.
39 (18) Transferee. – A party acquiring or proposing to acquire structured settlement
40 payment rights through a transfer.

41 **"§ 1-543.11A. Registration required.**

42 (a) A person shall not act as a transferee, attempt to acquire structured settlement payment
43 rights through a transfer from a payee who resides in this State, or file a structured settlement
44 transfer proceeding in this State unless the person has registered with the Department of
45 Insurance as a structured settlement purchase company. A registered structured settlement
46 purchase company shall renew its registration annually, on or before the renewal date required
47 by the Department of Insurance, and provide the certifications set forth in this section. The
48 Department of Insurance may adopt rules as necessary to implement this section and may set and
49 charge to each registrant a fee to offset the costs of processing and maintaining the registration
50 required by this section.

1 **(b)** To protect payees who do business with a structured settlement purchase company, a
2 structured settlement purchase company's initial registration shall be submitted on a form
3 prescribed by the Department of Insurance and shall include a sworn certification by an owner,
4 officer, director, or manager of the registrant, if the registrant is an entity or by the registrant if
5 the registrant is an individual, certifying that the registrant has secured a surety bond, been issued
6 a letter of credit, or posted a cash bond in the amount of fifty thousand dollars (\$50,000) relative
7 to its business as a structured settlement purchase company in this State. The following
8 provisions apply:

9 **(1)** The bond shall be payable to the State of North Carolina.

10 **(2)** The surety bond, letter of credit, or cash bond shall be effective concurrently
11 with the structured settlement purchase company's registration with the
12 Department of Insurance and shall remain in effect for not less than three years
13 after the expiration or termination of the registration. The surety bond, letter
14 of credit, or cash bond shall be renewed annually with the registration.

15 **(3)** The registrant shall submit to the Department of Insurance a copy of the surety
16 bond, letter of credit, or receipt from the posted cash bond with its initial
17 registration and each annual renewal.

18 **(4)** The surety bond, letter of credit, or cash bond may provide a source for
19 recovery for the payee should a payee recover a judgment against a structured
20 settlement purchase company for a violation of this Article.

21 **(c)** Within 10 days after a judgment is secured against a structured settlement purchase
22 company by a payee, the structured settlement purchase company shall file a notice with the
23 Department of Insurance and the surety. The notice shall include a copy of the judgment, the
24 name and address of the judgment creditor, and the status of the matter, including whether the
25 judgment will be appealed or has been satisfied.

26 **(d)** The liability of the surety under the bond is not affected by any (i) breach of contract,
27 (ii) breach of warranty, (iii) failure to pay a premium, (iv) other act or omission of the bonded
28 structured settlement purchase company, or (v) insolvency or bankruptcy of the structured
29 settlement purchase company.

30 **(e)** Neither the bonded structured settlement purchase company nor the surety shall
31 cancel or modify the bond during the term for which it is issued, except with written notice to the
32 Department of Insurance at least 20 days prior to the effective date of a cancellation or
33 modification.

34 **(f)** In the event of a cancellation of the bond, the registration of the structured settlement
35 purchase company shall automatically expire unless a new surety bond, letter of credit, or cash
36 bond that complies with this section is filed with the Department of Insurance. The cancellation
37 or modification of a bond does not affect any liability that the bonded surety company incurred
38 before the cancellation or modification of the bond.

39 **(g)** An assignee is not required to register as a structured settlement purchase company
40 in order to acquire structured settlement payment rights or take a security interest in structured
41 settlement payment rights that were transferred by the payee to a structured settlement purchase
42 company.

43 **(h)** An employee of a structured settlement purchase company acting on behalf of the
44 structured settlement purchase company in connection with a transfer is not required to register.

45 **(i)** A transfer order signed by a court of competent jurisdiction pursuant to this Article
46 constitutes a qualified order under 26 U.S.C. § 5891 unless the transferee to which the transfer
47 order applies is not registered as a structured settlement purchase company pursuant to this
48 section at the time the transfer order is signed, in which case, the transfer order does not constitute
49 a qualified order under 26 U.S.C. § 5891.

50 **§ 1-543.11B. Prohibited practices; private right of action; penalties.**

1 (a) A transferee, structured settlement purchase company, or an employee or other
2 representative of a transferee or structured settlement purchase company shall not do any of the
3 following:

- 4 (1) Pursue or complete a transfer with a payee without complying with this
5 Article.
- 6 (2) Refuse or fail to fund a transfer after court approval of the transfer.
- 7 (3) Acquire structured settlement payment rights from a payee without complying
8 with this Article and obtaining court approval of the transfer in accordance
9 with this Article.
- 10 (4) Intentionally file a structured settlement transfer proceeding in any court or
11 with any administrative authority other than the court or administrative
12 authority specified in G.S. 1-543.14, unless the transferee is required to file in
13 a different court by other law.
- 14 (5) Except as otherwise provided in this subdivision, pay a commission or finder's
15 fee to any person for facilitating or arranging a structured settlement transfer
16 with a payee. This subdivision does not prevent a structured settlement
17 purchase company from paying any of the following:
- 18 a. A commission or finder's fee to a person who is a structured settlement
19 purchase company or an employee of a structured settlement purchase
20 company.
- 21 b. Routine transfer expenses to third parties, including court filing fees,
22 escrow fees, lien recordation fees, judgment and lien search fees,
23 attorneys' fees, and other similar types of fees relating to a transfer.
- 24 c. A reasonable referral fee to an attorney, certified public accountant,
25 actuary, licensed insurance agent, or other licensed professional
26 advisor in connection with a transfer.
- 27 (6) Intentionally advertise materially false or misleading information regarding
28 its products or services.
- 29 (7) Attempt to coerce, bribe, or intimidate a payee seeking to transfer structured
30 settlement payment rights.
- 31 (8) Attempt to defraud a payee, any party to a structured settlement transfer, or
32 any interested party in a structured settlement transfer proceeding by means
33 of forgery or false identification.
- 34 (9) Except as otherwise provided in this subdivision, intervene in a pending
35 structured settlement transfer proceeding if the transferee or structured
36 settlement purchase company is not a party to the proceeding or an interested
37 party relative to the proposed transfer that is the subject of the proceeding.
38 This subdivision does not prevent a structured settlement purchase company
39 from intervening in a pending structured settlement transfer proceeding if the
40 payee has signed a transfer agreement with the structured settlement purchase
41 company within 60 days before the filing of the proceeding and the structured
42 settlement purchase company that filed the proceeding violated any provision
43 of this Article in connection with the proposed transfer that is the subject of
44 the proceeding.
- 45 (10) Except as otherwise provided in this subdivision, knowingly contact a payee
46 who has signed a transfer agreement and is pursuing a proposed transfer with
47 another structured settlement purchase company for the purpose of inducing
48 the payee into cancelling the proposed transfer or transfer agreement with the
49 other structured settlement purchase company if a structured settlement
50 transfer proceeding has been filed by the other structured settlement purchase
51 company and is pending. This subdivision does not apply if no hearing was

1 held in the pending structured settlement transfer proceeding within 90 days
2 after the filing of the proceeding.

3 (11) Fail to move for dismissal of a pending structured settlement transfer
4 proceeding at the request of the payee. A dismissal of a structured settlement
5 proceeding after a structured settlement purchase company has violated this
6 subdivision does not exempt the structured settlement purchase company from
7 liability under this Article.

8 (b) A payee has standing to bring a private action for violation of this Article and may
9 recover all damages and pursue all rights and remedies to which the payee may be entitled
10 pursuant to this Article or any other law. Any payee who brings an action against the transferee
11 may recover actual monetary loss or damages up to five thousand dollars (\$5,000), or both. The
12 payee is entitled to 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 transferee shall
14 be reconveyed to the payee.

15 (c) A structured settlement purchase company has standing to bring a private action to
16 enforce subdivisions (4), (7), (9), (10), and (11) of subsection (a) of this section and may recover
17 all damages and pursue all remedies to which the structured settlement purchase company may
18 be entitled pursuant to this Article or any other law.

19 (d) If a court determines that a structured settlement purchase company or transferee is
20 in violation of subsection (a) of this section, the court may do one or more of the following:

21 (1) Revoke the registration of the structured settlement purchase company.

22 (2) Suspend the registration of the structured settlement purchase company for a
23 period to be determined at the discretion of the court.

24 (3) Enjoin the structured settlement purchase company or transferee from filing
25 new structured settlement transfer proceedings in this State or otherwise
26 pursuing transfers in this State.

27 **"§ 1-543.11C. Required disclosures to payee.**

28 No less than three days prior to the date on which a payee signs a transfer agreement, the
29 transferee shall provide to the payee a separate disclosure statement setting forth in bolded type,
30 no smaller than 14-point font, all of the following:

31 (1) The amounts and due dates of the structured settlement payments to be
32 transferred.

33 (2) The aggregate amount of the payments.

34 (3) The discounted present value of the payments to be transferred, identified in
35 the disclosure statement as the "calculation of current value of the transferred
36 structured settlement payments under federal standards for valuing annuities,"
37 and the percentage figure used to calculate the discounted present value
38 pursuant to G.S. 1-543.11(2).

39 (4) The gross advance amount.

40 (5) An itemized listing of all applicable transfer expenses and related
41 disbursements payable in connection with the transferee's application for
42 approval of the transfer, other than attorneys' fees, and the transferee's best
43 estimate of the amount of the listed fees and disbursements.

44 (6) The effective annual interest rate disclosed in a statement in the following
45 form: "On the basis of the net amount that you will receive from us and the
46 amounts and timing of the structured settlement payments that you are
47 transferring to us, you will, in effect be paying interest to us at a rate of _____
48 percent per year."

49 (7) The net advance amount.

50 (8) The amount of any penalties or liquidated damages payable by the payee in
51 the event of any breach of the transfer agreement by the payee.

- 1 (9) That the payee has the right to cancel the transfer agreement without penalty
2 or further obligation no later than the third business day after the date the
3 agreement is signed by the payee.
- 4 (10) That the payee has the right to seek and receive independent professional
5 advice regarding the proposed transfer and that the payee should consider
6 doing so before agreeing to transfer any structured settlement payment rights.
- 7 (11) That the payee has the right to seek out and consider additional offers for
8 transferring structured settlement payments and that the payee should do so.

9 **"§ 1-543.12. Structured Approval of transfers of structured settlement payment rights.**

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

- 16 (1) ~~The transfer complies with the requirements of this Article [of] law; does not~~
17 ~~contravene any statute or the order of any court or other government authority.~~
- 18 (2) ~~Not less than 10 days prior to the date on which the payee first incurred any~~
19 ~~obligation with respect to the transfer, the transferee has provided to the payee~~
20 ~~a disclosure statement in bold type, no smaller than 14 point setting forth:~~
- 21 a. ~~The amounts and due dates of the structured settlement payments to~~
22 ~~be transferred;~~
- 23 b. ~~The aggregate amount of such payments;~~
- 24 c. ~~The discounted present value of such payments;~~
- 25 d. ~~The gross amount payable to the payee in exchange for such payments;~~
- 26 e. ~~An itemized listing of all brokers' commissions, service charges,~~
27 ~~application fees, processing fees, closing costs, filing fees,~~
28 ~~administrative fees, legal fees, notary fees and other commissions,~~
29 ~~fees, costs, expenses, and charges payable by the payee or deductible~~
30 ~~from the gross amount otherwise payable to the payee;~~
- 31 f. ~~The net amount payable to the payee after deduction of all~~
32 ~~commissions, fees, costs, expenses, and charges described in~~
33 ~~sub-subdivision e. of this subdivision;~~
- 34 g. ~~The quotient (expressed as a percentage) obtained by dividing the net~~
35 ~~payment amount by the discounted present value of the payments;~~
- 36 h. ~~The discount rate used by the transferee to determine the net amount~~
37 ~~payable to the payee for the structured settlement payments to be~~
38 ~~transferred; and~~
- 39 i. ~~The amount of any penalty and the aggregate amount of any liquidated~~
40 ~~damages (inclusive of penalties) payable by the payee in the event of~~
41 ~~any breach of the transfer agreement by the payee;~~
- 42 (3) ~~The transfer is in the best interest of the payee; payee, taking into account the~~
43 ~~welfare and support of the payee's dependents.~~
- 44 (4) ~~The payee has received been advised in writing by the transferee to seek~~
45 ~~independent professional advice regarding the legal, tax, and financial~~
46 ~~implications of the transfer; transfer and has either received advice or~~
47 ~~knowingly waived in writing the opportunity to seek and receive advice.~~
- 48 (5) ~~The transferee has given written notice of the transferee's name, address, and~~
49 ~~taxpayer identification number to the annuity issuer and the structured~~
50 ~~settlement obligor and has filed a copy of such notice with the court or~~
51 ~~responsible administrative authority;~~

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

25 ~~If the court or responsible administrative authority authorizes the transfer pursuant to this~~
26 ~~section, the court or responsible administrative authority shall order the structured settlement~~
27 ~~obligor to execute an acknowledgment of assignment letter on behalf of the transferee for the~~
28 ~~amount of the structured settlement payment rights to be transferred; provided, however,~~
29 ~~structured settlement payment rights arising from a claim pursuant to Chapter 97 shall not be~~
30 ~~authorized.~~

31 (b) No direct or indirect transfer of a minor's structured settlement payment rights by a
32 parent, conservator, or guardian shall be effective and no structured settlement obligor or annuity
33 issuer shall be required to make a payment directly or indirectly to a transferee or assignee of the
34 minor's structured settlement payment rights unless, in addition to the findings required under
35 subsection (a) of this section, the court also finds all of the following:

- 36 (1) The proceeds of the proposed transfer would be applied solely for the support,
37 care, education, health, and welfare of the minor payee.
- 38 (2) Any excess proceeds would be preserved for the future support, care,
39 education, health, and welfare of the minor payee and transferred to the minor
40 payee upon emancipation.

41 (c) Structured settlement payment rights arising from a claim pursuant to Chapter 97 of
42 the General Statutes shall not be authorized.

43 **"§ 1-543.12A. Effects of transfer of structured settlement payment rights.**

44 Following a transfer of structured settlement payment rights under this Article, the following
45 apply:

- 46 (1) The structured settlement obligor and the annuity issuer may rely on the order
47 of the court or responsible administrative authority approving the transfer in
48 redirecting periodic payments to an assignee or transferee and are, as to all
49 parties except the transferee or an assignee designated by the transferee,
50 discharged and released from any and all liability for the redirected payments.
51 The discharge and release are not affected by the failure of any party to the

1 transfer to comply with this Article or with the order of the court or responsible
2 administrative authority approving the transfer.

3 (2) The transferee is liable to the structured settlement obligor and the annuity
4 issuer as follows:

5 a. If the transfer contravenes the terms of the structured settlement, for
6 any taxes incurred by the structured settlement obligor or annuity
7 issuer as a consequence of the transfer.

8 b. For any other liabilities or costs, including reasonable costs and
9 attorneys' fees, arising from compliance by the structured settlement
10 obligor or annuity issuer with the order of the court or responsible
11 administrative authority approving the transfer or from the failure of
12 any party to the transfer to comply with this Article.

13 (3) Neither the annuity issuer nor the structured settlement obligor shall be
14 required to divide any periodic payment between the payee and one or more
15 transferees or assignees.

16 (4) Any further transfer of structured settlement payment rights by the payee shall
17 be made only after compliance with all of the requirements of this Article.

18 **"§ 1-543.13. Jurisdiction.**

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

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

29 **"§ 1-543.14. Procedure for approval of transfers.**

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

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

40 (b1) At the time of filing, the application shall include evidence that the transferee is
41 registered with the Department of Insurance as a structured settlement purchase company.

42 (b2) A timely hearing shall be held on an application for approval of a transfer of structured
43 settlement payment rights. The payee shall appear in person at the hearing unless the court or
44 responsible administrative authority determines that good cause exists to excuse the payee from
45 appearing in person.

46 (c) Not less than ~~30~~20 days prior to the scheduled hearing on any application for
47 authorization of a transfer of structured settlement payment rights under this Article, the
48 transferee shall file with the proper court or responsible administrative authority and serve on
49 any other government authority ~~which that~~previously approved the structured settlement, on all
50 interested parties as defined in G.S. 1-543.11(4), including a parent or other guardian or
51 authorized legal representative of any interested party who is not legally competent, and on the

1 Attorney General, a notice of the proposed transfer and the application for its authorization,
2 ~~including in such notice:~~ and shall include in the notice all of the following:

- 3 (1) A copy of the transferee's ~~application;~~ application.
- 4 (2) A copy of the transfer ~~agreement;~~ agreement.
- 5 (3) A copy of the disclosure statement required under ~~G.S.~~
6 ~~1-543.12(a)(2);~~ G.S. 1-543.11C.
- 7 (3a) The payee's name, age, county of domicile, and the number and ages of each
8 of the payee's dependents.
- 9 (3b) A summary of each of the following:
 - 10 a. Any prior transfers by the payee to the transferee or an affiliate, or
11 through the transferee or affiliate to an assignee, within four years
12 immediately preceding the date of the transfer agreement.
 - 13 b. Any proposed transfers by the payee to the transferee or an affiliate,
14 or through the transferee or affiliate, for which applications for
15 approval were denied within two years immediately preceding the date
16 of the transfer agreement.
 - 17 c. Any prior transfers by the payee to any person or entity other than the
18 transferee or an affiliate, or assignee of the transferee or affiliate,
19 within three years immediately preceding the date of the transfer
20 agreement, to the extent disclosed to the transferee by the payee in
21 writing or otherwise actually known by the transferee.
 - 22 d. Any prior proposed transfers by the payee to any person or entity other
23 than the transferee or an affiliate, or assignee of a transferee or
24 affiliate, for which applications for approval were denied within one
25 year immediately preceding the date of the current transfer agreement,
26 to the extent disclosed to the transferee by the payee in writing or
27 otherwise actually known by the transferee.
- 28 (4) Notification that any interested party is entitled to support, oppose, or
29 otherwise respond to the transferee's application, either in person or by
30 counsel, by submitting written comments to the court or responsible
31 administrative authority or by participating in the ~~hearing;~~ hearing.
- 32 (5) Notification of the time and place of the hearing and notification of the manner
33 in which and the ~~time date by which~~ which, no less than five days prior to the
34 hearing, written responses to the application must be filed in order to be
35 considered by the court or responsible administrative authority.

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

39 **"§ 1-543.15. No waiver; penalties; waiver; miscellaneous provisions.**

- 40 (a) The provisions of this Article may not be waived.
- 41 (b) ~~Any payee who has transferred structured settlement payment rights to a transferee~~
42 ~~without complying with this Article may bring an action against the transferee to recover actual~~
43 ~~monetary loss or for damages up to five thousand dollars (\$5,000) for the violation by the~~
44 ~~transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to~~
45 ~~enforce this Article. In addition, all unpaid structured settlement payment rights transferred in~~
46 ~~violation of this Article by any transferee shall be reconveyed to the payee. Any transfer~~
47 ~~agreement entered into by a payee who resides in this State shall provide that disputes under the~~
48 ~~transfer agreement, including any claim that the payee has breached the agreement, shall be~~
49 ~~determined in and under the laws of this State. No transfer agreement shall authorize the~~
50 ~~transferee or any other party to confess judgment or consent to entry of judgment against the~~
51 ~~payee.~~

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

5 (d) No transfer of structured settlement payment rights shall extend to any payments that
6 are life contingent unless, prior to the date on which the payee signs the transfer agreement, the
7 transferee has established and has agreed to maintain procedures reasonably satisfactory to the
8 annuity issuer and the structured settlement obligor for (i) periodically confirming the payee's
9 survival and (ii) giving the annuity issuer and the structured settlement obligor prompt written
10 notice in the event of the payee's death.

11 (e) If the payee cancels a transfer agreement or if the transfer agreement otherwise
12 terminates after an application for approval of a transfer of structured settlement payment rights
13 has been filed and before it has been granted or denied, the transferee shall promptly request
14 dismissal of the application.

15 (f) Nothing in this Article affects the validity of any transfer of structured settlement
16 payment rights in which the structured settlement obligor and annuity issuer waive or do not
17 assert their rights under terms of the structured settlement prohibiting or restricting the sale,
18 assignment, or encumbrance of the structured settlement payment rights.

19 (g) Nothing in this Article authorizes any transfer of structured settlement payment rights
20 in contravention of any law.

21 (h) Compliance with the requirements set forth in G.S. 1-543.11A and with the
22 prohibitions set forth in G.S. 1-543.11B are solely the responsibility of the transferee in any
23 transfer of structured settlement payment rights, and neither the structured settlement obligor nor
24 the annuity issuer bear any responsibility for or any liability arising from noncompliance."

25 **SECTION 2.** This act is effective when it becomes law and applies to transfer
26 agreements entered into on or after October 1, 2024. Nothing in this act is intended to imply that
27 any transfer under a transfer agreement entered into prior to October 1, 2024, is valid or invalid.