

**HOUSE JUDICIARY I COMMITTEE**

**May 20, 1999**

**Agenda**

**Senate Bill 746 – Structured Settlement Protection Act  
Senator Cooper**

HOUSE JUDICIARY I COMMITTEE  
May 20, 1999  
Minutes

The House Judiciary I Committee met on Thursday, May 20, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Blue, Ellis, Gardner, Insko, Miller, Moore and Nesbitt. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated that **Senate Bill 746, AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT**, (Attachment II), which is a companion bill to his own bill, House Bill 853, would be explained by Senator Cooper. The bill would establish certain minimal requirements such as the requirement for a settlement recipient to seek financial counseling and a judge's approval for the transfers of structured settlement rights. Those requirements are outlined in a bill analysis prepared by Ms. Susan Hayes, Committee Counsel, (Attachment III). Senator Cooper offered background for the bill, including his concern regarding possible tax consequences that might result from the sale of a structured settlement to a factoring company. He noted that the bill is supported by the North Carolina Spinal Cord Association.

Senator Cooper offered a proposed committee substitute, (Attachment IV). Representative Blue moved that the committee substitute be adopted for discussion by the committee. The motion carried.

Mr. Sandy Sands, representing the Association of Settlement Purchasers, was recognized and spoke in opposition to the bill. Two handouts stating opposition to the bill were distributed to the members by Mr. Sands, (Attachments V and VI).

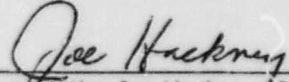
Mr. John E. "Buck" Chapaton, Vinson and Elkins Law Firm, Washington, D.C., was recognized and spoke in opposition to the bill. He stated that there were no tax problems to any party resulting from the sale of a structured settlement.

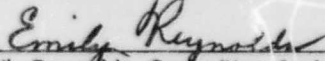
Mr. and Mrs. Eddie Biddix spoke in opposition to the bill and gave a personal account of their positive experience with a buy-out of a structured settlement.

Mr. David Loman, Hunton and Williams Law Firm, was recognized. Mr. Loman stated that tax consequences are present as a result of a factoring transaction of a structured settlement.

Committee discussion followed.

No action was taken on the bill.

  
\_\_\_\_\_  
Representative Joe Hackney/Chairman

  
\_\_\_\_\_  
Emily Reynolds, Committee Assistant



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 746  
Judiciary I Committee Substitute Adopted 4/21/99

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  
6 new 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  
11 Act.12 "§ 1-543.11. Structured settlement payment rights.13 No direct or indirect transfer of structured settlement payment rights shall be  
14 effective, and no structured settlement obligor or annuity issuer shall be required to  
15 make any payment directly or indirectly to any transferee of structured settlement  
16 payment rights unless the transfer has been authorized in advance in a final order of  
17 a court of competent jurisdiction or a responsible administrative authority based on  
18 express findings by such court or responsible administrative authority that:19 (1) The transfer complies with the requirements of this Article and  
20 will not contravene other applicable law;21 (2) Not less than 10 days prior to the date on which the payee first  
22 incurred any obligation with respect to the transfer, the transferee

1 has provided to the payee a disclosure statement in bold type, no  
2 smaller than 14 point setting forth.

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

5 b. The aggregate amount of such payments;

6 c. The discounted present value of such payments;

7 d. The gross amount payable to the payee in exchange for such  
8 payments;

9 e. An itemized listing of all brokers' commissions, service  
10 charges, application fees, processing fees, closing costs, filing  
11 fees, administrative fees, legal fees, notary fees and other  
12 commissions, fees, costs, expenses, and charges payable by  
13 the payee or deductible from the gross amount otherwise  
14 payable to the payee;

15 f. The net amount payable to the payee after deduction of all  
16 commissions, fees, costs, expenses, and charges described in  
17 sub-subdivision e. of this subdivision;

18 g. The quotient (expressed as a percentage) obtained by  
19 dividing the net payment amount by the discounted present  
20 value of the payments; and

21 h. The amount of any penalty and the aggregate amount of any  
22 liquidated damages (inclusive of penalties) payable by the  
23 payee in the event of any breach of the transfer agreement  
24 by the payee;

25 (3) The transferee has established that the transfer is necessary to  
26 enable the payee, the payee's dependents, or both to avoid  
27 imminent financial hardship, and the transfer should not be  
28 expected to subject the payee, the payee's dependents, or both to  
29 undue financial hardship in the future; provided, however, that if,  
30 at the time the payee and the transferee entered into the transfer  
31 agreement, a federal hardship standard was in effect, then, in lieu  
32 of the foregoing finding, the court or responsible administrative  
33 authority must make an express finding that the transfer qualifies  
34 under such federal hardship standard;

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

37 (5) If the transfer would contravene the terms of the structured  
38 settlement:

39 a. The transfer has been expressly approved in writing by:

40 1. Each interested party; provided, however, that if, at  
41 the time the payee and the transferee entered into the  
42 transfer agreement, a favorable tax determination was  
43 in effect, then the approval of the annuity issuer and  
44 the structured settlement obligor shall not be





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

1           (17) 'Transfer' means any sale, assignment, pledge, hypothecation, or  
2           other form of alienation or encumbrance made by a payee for  
3           consideration;

4           (18) 'Terms of the structured settlement' include, with respect to any  
5           structured settlement, the terms of the structured settlement  
6           agreement, the annuity contract, any qualified assignment  
7           agreement, and any order or approval of any court or responsible  
8           administrative authority or other government authority authorizing  
9           or approving such structured settlement; and

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

12 **"§ 1-543.13. Jurisdiction.**

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

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

24 **"§ 1-543.14. Procedure for approval of transfers.**

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

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

37          (c) Not less than 30 days prior to the scheduled hearing on any application for  
38          authorization of a transfer of structured settlement payment rights under this Article,  
39          the transferee shall file with the proper court or responsible administrative authority  
40          and serve on any other government authority which previously approved the  
41          structured settlement, on all interested parties as defined in G.S. 1-543.12(8), and on  
42          the Attorney General, a notice of the proposed transfer and the application for its  
43          authorization, including in such notice:

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

- 1           (2) A copy of the transfer agreement;  
2           (3) A copy of the disclosure statement required under G.S. 1-  
3           543.11(a);  
4           (4) Notification that any interested party is entitled to support, oppose,  
5           or otherwise respond to the transferee's application, either in  
6           person or by counsel, by submitting written comments to the court  
7           or responsible administrative authority or by participating in the  
8           hearing; and  
9           (5) Notification of the time and place of the hearing and notification  
10           of the manner in which and the time by which written responses to  
11           the application must be filed in order to be considered by the court  
12           or responsible administrative authority.

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

16           "§ 1-543.15. No waiver; penalties.

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

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

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

29           "§ 1-543.16. Construction.

30           Nothing contained in this Article shall be construed to authorize any transfer of  
31           structured settlement payment rights in contravention of applicable law or to give  
32           effect to any transfer of structured settlement payment rights that is invalid under  
33           applicable law."

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

36           "§ 1-394.1. Special proceedings to determine authority to transfer structured  
37           settlement payment rights.

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

1           Section 3. This act shall apply to any transfer of structured settlement  
2 payment rights under a transfer agreement entered into on or after October 1, 1999,  
3 but nothing contained in this act shall imply that any transfer under a transfer  
4 agreement reached prior to such date is effective.



## SENATE BILL 746: Structured Settlement Protection Act

### BILL ANALYSIS

**Committee:** House Judiciary I  
**Date:** May 20, 1999  
**Version:** 2nd Edition

**Introduced by:** Sen. Cooper  
**Summary by:** O. Walker Reagan, Staff  
 Attorney; Susan L. Hayes,  
 Committee Counsel

**SUMMARY:** *Senate Bill 746 would enact the Structured Settlement Protection Act to establish certain minimal requirements for the transfers or assignment of structured settlement rights to be considered valid and enforceable.*

**CURRENT LAW:** There is no specific statutory law in North Carolina which governs the transfer or assignment of structured settlement proceeds to other third parties. Structured settlement agreements are either contracts between two parties or agreements of the parties recognized by the court and enforced by order of the court as a consent agreement. Assignment of those rights would typically be as a matter of contract.

**BILL ANALYSIS:** Senate Bill 746 would require that an agreement transferring or assigning the rights to receive structured settlement proceeds in the future must be approved by the court or administrative agency authorized to approve the settlement and must meet minimal disclosure requirements as to the effect and costs of the assignment.

Section 1 of the bill creates a new Article 44B in Chapter 1 to be known as the NC Structured Settlement Protection Act. All references are to G.S. 1-543. \_\_.

Section .11 sets out the requirements that must be satisfied before a transfer of structured settlement rights is effective. This section requires that the transfer be approved in advance by the court or responsible administrative authority based upon a judicial or administrative finding that:

1. The transfer complies with the law.
2. The person assigning their rights in the settlement payments (the "payee") has received the statutory disclosures of the costs and effects of the transfer to the person receiving the rights to future payments (the "transferee").
3. The transferee has established that the transfer is necessary for the to avoid an imminent financial hardship and would not subject the payee or the payee's dependents to future financial hardship.
4. The payee has received independent professional advice on the effects of the transfer.
5. If the transfer is contrary to the terms of the structured settlement, all the parties to the settlement and the court that originally approved the settlement have approved the transfer.

# SENATE BILL 746

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6. The transferee has given all relevant tax payer identification information to the person paying the settlement.
7. The discount rate for determining the present value of the payment rights does not exceed the annual percentage rate permitted under a consumer credit installment sales contract (G.S. 25A-15(b)(4)) calculated as if the net amount payable to the payee, as provided in the act, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred were the payee's payments of principal plus interest on the loan.
8. The transfer of structured settlement payment rights is fair and reasonable.

Section .12 sets out the definitions used in the law including definitions for "dependents", "federal hardship standard", "independent professional advice", and "responsible administrative authority".

Section .13 establishes the court or authority that has jurisdiction to approve these transfers.

Section .14 sets out the procedures for seeking prior approval of a proposed settlement rights transfer. This includes requiring that all relevant documents (specified in the bill) be given at least 30 days prior to a hearing on the proposed transfer approval to the court, all interested parties (defined) and the Attorney General. The Attorney General is authorized to appear and be heard on any application for authorization to transfer structured settlement payments.

Section .15 provides that the provisions of this law may not be waived. It also provides for penalties to any transferee that receives payments under a structured settlement assigned to the transferee in violation of this statute, but this section also protects the payee from any losses arising from an invalid transfer.

Section .16 makes it clear that this act does not affect any other laws that might apply to or affect the transfer of structured settlement rights.

Section 2 of the bill adds a new section to the Special Proceedings statutes to provide that applications for the approval of transfer of structured settlement rights is a special proceeding and is to be heard in Superior Court.

Section 3 makes the bill effective October 1, 1999 and applicable to transfers of rights under transfer agreements entered into on or after that date, but the bill does not imply that any transfer under a transfer agreement reached prior to that date is effective.

S746-SMSA-001

## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 746

Judiciary I Committee Substitute Adopted 4/21/99

PROPOSED HOUSE COMMITTEE SUBTITUTE  
S746-CSRN-001

Attention: Line Numbers May Change After Adoption

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  
 6 by adding a new 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  
 11 Settlement Protection Act.  
 12 "§ 1-543.11. Structured settlement payment rights.  
 13 No direct or indirect transfer of structured settlement payment  
 14 rights shall be effective, and no structured settlement obligor  
 15 or annuity issuer shall be required to make any payment directly  
 16 or indirectly to any transferee of structured settlement payment  
 17 rights unless the transfer has been authorized in advance in a  
 18 final order of a court of competent jurisdiction or a responsible

1 administrative authority based on express findings by such court  
2 or responsible administrative authority that:

- 3       (1) The transfer complies with the requirements of this  
4       Article and will not contravene other applicable  
5       law;  
6       (2) Not less than 10 days prior to the date on which  
7       the payee first incurred any obligation with  
8       respect to the transfer, the transferee has  
9       provided to the payee a disclosure statement in  
10       bold type, no smaller than 14 point setting forth:  
11       a. The amounts and due dates of the structured  
12       settlement payments to be transferred;  
13       b. The aggregate amount of such payments;  
14       c. The discounted present value of such payments;  
15       d. The gross amount payable to the payee in  
16       exchange for such payments;  
17       e. An itemized listing of all brokers'  
18       commissions, service charges, application  
19       fees, processing fees, closing costs, filing  
20       fees, administrative fees, legal fees, notary  
21       fees and other commissions, fees, costs,  
22       expenses, and charges payable by the payee or  
23       deductible from the gross amount otherwise  
24       payable to the payee;  
25       f. The net amount payable to the payee after  
26       deduction of all commissions, fees, costs,  
27       expenses, and charges described in sub-  
28       subdivision e. of this subdivision;  
29       g. The quotient (expressed as a percentage)  
30       obtained by dividing the net payment amount by  
31       the discounted present value of the payments;  
32       and  
33       h. The amount of any penalty and the aggregate  
34       amount of any liquidated damages (inclusive of  
35       penalties) payable by the payee in the event  
36       of any breach of the transfer agreement by the  
37       payee;  
38       (3) The transferee has established that the transfer is  
39       necessary to enable the payee, the payee's  
40       dependents, or both to avoid imminent financial  
41       hardship, and the transfer should not be expected  
42       to subject the payee, the payee's dependents, or  
43       both to undue financial hardship in the future;  
44       provided, however, that if, at the time the payee

- 1                   and the transferee entered into the transfer  
2                   agreement, a federal hardship standard was in  
3                   effect, then, in lieu of the foregoing finding, the  
4                   court or responsible administrative authority must  
5                   make an express finding that the transfer qualifies  
6                   under such federal hardship standard;
- 7           (4) The payee has received independent professional  
8           advice regarding the legal, tax, and financial  
9           implications of the transfer;
- 10          (5) If the transfer would contravene the terms of the  
11          structured settlement:
- 12           a. The transfer has been expressly approved in  
13           writing by:
- 14               1. Each interested party; provided, however,  
15               that if, at the time the payee and the  
16               transferee entered into the transfer  
17               agreement, a favorable tax determination  
18               was in effect, then the approval of the  
19               annuity issuer and the structured  
20               settlement obligor shall not be required  
21               if all other interested parties approve  
22               the transfer and waive any and all rights  
23               to require that the transferred payments  
24               be made to the payee in accordance with  
25               the terms of the structured settlement;  
26               and
- 27               2. Any court or government authority, other  
28               than the court or responsible  
29               administrative authority from which  
30               authorization of the transfer is sought  
31               under this act, which previously approved  
32               the structured settlement; and
- 33           b. Signed originals of all approvals required  
34           under sub-subdivision a. of this subdivision  
35           have been filed with the court or responsible  
36           administrative authority from which  
37           authorization of the transfer is sought under  
38           this act, and originals or copies have been  
39           furnished to all interested parties;
- 40          (6) The transferee has given written notice of the  
41          transferee's name, address, and taxpayer  
42          identification number to the annuity issuer and the  
43          structured settlement obligor and has filed a copy

- 1 of such notice with the court or responsible  
2 administrative authority;
- 3 (7) The discount rate used in determining discounted  
4 present value of the structured settlement payment  
5 rights does not exceed the annual percentage rate  
6 permitted under G.S. 25A-15(b)(4) calculated as if  
7 the net amount payable to the payee, as provided in  
8 sub-subdivision (2)f. of this section, was the  
9 principal of a consumer loan made by the transferee  
10 to the payee, and if the structured settlement  
11 payments to be transferred to the transferee were  
12 the payee's payments of principal plus interest on  
13 such loan; and
- 14 (8) The transfer of structured settlement payment  
15 rights is fair and reasonable.

16 "§ 1-543.12. Definitions.

17 For purposes of this Article:

- 18 (1) 'Annuity issuer' means an insurer that has issued  
19 an insurance contract used to fund periodic  
20 payments under a structured settlement;
- 21 (2) 'Applicable law' means:
- 22 a. The federal laws of the United States;  
23 b. The laws of this State, including principles  
24 of equity applied in the courts of this State;  
25 and  
26 c. The laws of any other jurisdiction:
- 27 1. Which is the domicile of the payee or any  
28 other interested party;
- 29 2. Under whose laws a structured settlement  
30 agreement was approved by a court or  
31 responsible administrative authority; or  
32 3. In whose courts a settled claim was  
33 pending when the parties entered into a  
34 structured settlement agreement;
- 35 (3) 'Dependents' include a payee's spouse and minor  
36 children and all other family members and other  
37 persons for whom the payee is legally obligated to  
38 provide support, including alimony;
- 39 (4) 'Discounted present value' means the fair present  
40 value of future payments, as determined by  
41 discounting such payments to the present utilizing  
42 the tables adopted in Article 5 of Chapter 8 of the  
43 General Statutes;

- 1           (5) 'Favorable tax determination' means, with respect  
2 to a proposed transfer of structured settlement  
3 payment rights, any of the following authorities  
4 that definitely establish that the federal income  
5 tax treatment of the structured settlement for the  
6 parties to the structured settlement agreement and  
7 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,  
10 United States Code Title 26, as amended from  
11 time to time, or a United States Treasury  
12 regulation adopted pursuant thereto;  
13       b. A revenue ruling or revenue procedure issued  
14 by the Internal Revenue Service;  
15       c. A private letter ruling by the Internal  
16 Revenue Service with respect to such transfer;  
17 or  
18       d. A decision of the United States Supreme Court  
19 or a decision of a lower federal court in  
20 which the Internal Revenue Service has  
21 acquiesced;
- 22       (6) 'Federal hardship standard' means a federal  
23 standard applicable to transfers of structured  
24 settlement payment rights based on findings of a  
25 court or responsible administrative authority  
26 regarding the payees' needs, as contained in the  
27 Internal Revenue Code, United States Code Title 26,  
28 as amended from time to time, or in a United States  
29 Treasury regulation adopted pursuant thereto;
- 30       (7) 'Independent professional advice' means advice of  
31 an attorney, certified public accountant, actuary,  
32 or other licensed or registered professional or  
33 financial adviser:  
34       a. Who is engaged by a payee to render advice  
35 concerning the legal, tax, and financial  
36 implications of a transfer of structured  
37 settlement payment rights;  
38       b. Who is not in any manner affiliated with or  
39 compensated by the transferee of such  
40 transfer; and  
41       c. Whose compensation for rendering such advice  
42 is not affected by whether a transfer occurs  
43 or does not occur;

- 1           (8) 'Interested parties' means, with respect to any  
2           structured settlement, the payee, any beneficiary  
3           designated under the annuity contract to receive  
4           payments following the payee's death, the annuity  
5           issuer, the structured settlement obligor, and any  
6           other party that has continuing rights or  
7           obligations under the terms of the structured  
8           settlement;
- 9           (9) 'Payee' means an individual who is receiving tax-  
10           free damage payments under a structured settlement  
11           and proposes to make a transfer of payment rights  
12           thereunder;
- 13           (10) 'Qualified assignment agreement' means an agreement  
14           providing for a qualified assignment within the  
15           meaning of section 130 of the Internal Revenue  
16           Code, United States Code Title 26, as amended from  
17           time to time;
- 18           (11) 'Responsible administrative authority' means, with  
19           respect to a structured settlement, any government  
20           authority vested by law with exclusive jurisdiction  
21           over the settled claim resolved by such structured  
22           settlement;
- 23           (12) 'Settled claim' means the original tort claim or  
24           workers' compensation claim resolved by a  
25           structured settlement;
- 26           (13) 'Structured settlement' means an arrangement for  
27           periodic payment of damages for personal injuries  
28           established by settlement or judgment in resolution  
29           of a tort claim or for periodic payments in  
30           settlement of a workers' compensation claim;
- 31           (14) 'Structured settlement agreement' means the  
32           agreement, judgment, stipulation, or release  
33           embodying the terms of a structured settlement,  
34           including the rights of the payee to receive  
35           periodic payments;
- 36           (15) 'Structured settlement obligor' means, with respect  
37           to any structured settlement, the party that has  
38           the continuing periodic payment obligation to the  
39           payee under a structured settlement agreement or a  
40           qualified assignment agreement;
- 41           (16) 'Structured settlement payment rights' means rights  
42           to receive periodic payments (including lump-sum  
43           payments) under a structured settlement, whether

- 1 from the settlement obligor or the annuity issuer,  
2 where:
- 3 a. The payee is domiciled in this State;  
4 b. The structured settlement agreement was  
5 approved by a court or responsible  
6 administrative authority in this State; or  
7 c. The settled claim was pending before the  
8 courts of this State when the parties entered  
9 into the structured settlement agreement;
- 10 (17) 'Transfer' means any sale, assignment, pledge,  
11 hypothecation, or other form of alienation or  
12 encumbrance made by a payee for consideration;
- 13 (18) 'Terms of the structured settlement' include, with  
14 respect to any structured settlement, the terms of  
15 the structured settlement agreement, the annuity  
16 contract, any qualified assignment agreement, and  
17 any order or approval of any court or responsible  
18 administrative authority or other government  
19 authority authorizing or approving such structured  
20 settlement; and
- 21 (19) 'Transfer agreement' means the agreement providing  
22 for transfer of structured settlement payment  
23 rights from a payee to a transferee.
- 24 "§ 1-543.13. Jurisdiction.
- 25 (a) Where the structured settlement agreement was entered into  
26 after commencement of litigation or administrative proceedings in  
27 this State, the court or administrative agency where the action  
28 was pending shall have exclusive jurisdiction over any  
29 application for authorization under this Article of a transfer of  
30 structured settlement payment rights.
- 31 (b) Where the structured settlement agreement was entered into  
32 prior to the commencement of litigation or administrative  
33 proceedings, or after the commencement of litigation outside this  
34 State, the Superior Court Division of the General Court of  
35 Justice shall have nonexclusive original jurisdiction over any  
36 application for authorization under this Article of a transfer of  
37 structured settlement payment rights.
- 38 "§ 1-543.14. Procedure for approval of transfers.
- 39 (a) Where the structured settlement agreement was entered into  
40 after the commencement of litigation or administrative  
41 proceedings in this State, the application for authorization of a  
42 transfer of structured settlement rights shall be filed with the  
43 court or administrative agency where the settled claim was  
44 pending as a motion in the cause.

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

10 (c) Not less than 30 days prior to the scheduled hearing on  
11 any application for authorization of a transfer of structured  
12 settlement payment rights under this Article, the transferee  
13 shall file with the proper court or responsible administrative  
14 authority and serve on any other government authority which  
15 previously approved the structured settlement, on all interested  
16 parties as defined in G.S. 1-543.12(8), and on the Attorney  
17 General, a notice of the proposed transfer and the application  
18 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  
22 G.S. 1-543.11(a);
- 23 (4) Notification that any interested party is entitled  
24 to support, oppose, or otherwise respond to the  
25 transferee's application, either in person or by  
26 counsel, by submitting written comments to the  
27 court or responsible administrative authority or by  
28 participating in the hearing; and
- 29 (5) Notification of the time and place of the hearing  
30 and notification of the manner in which and the  
31 time by which written responses to the application  
32 must be filed in order to be considered by the  
33 court or responsible administrative authority.

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

38 "§ 1-543.15. No waiver; penalties.

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

40 (b) Any payee who has transferred structured settlement  
41 payment rights to a transferee without knowledge of the  
42 requirements set out in this Article may bring an action against  
43 the transferee to recover actual monetary loss or for damages up  
44 to five thousand dollars (\$5,000) for the violation by the

1 transferee, or bring actions for both. The payee is entitled to  
2 attorneys' fees and costs incurred to enforce this Article. In  
3 addition, all unpaid structured settlement payment rights  
4 transferred as a result of a violation of this Article by any  
5 transferee shall be reconveyed to the payee.

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

11 "§ 1-543.16. Construction.

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

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

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

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

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

## PROBLEMS WITH SB746 (STRUCTURED SETTLEMENT PROTECTION ACT)

1. Many of the definitions in G.S. §1-543.12 give the act much broader application and effect than is necessary to protect consumers.
  - For instance the definition of "applicable law" requires a reviewing court to review, know, and correctly apply the laws of numerous jurisdictions in considering a request for approval of a transfer. It poses numerous conflict of law problems. (This definition should be deleted.)
  - "Dependents" as currently defined would give ex-spouses the ability to interfere with a person's financial decisions and would require notice be provided to a person's minor children, probably requiring a guardian ad litem. (This section should be deleted.)
  - "Discounted Present Value" uses a rate for determining the present value of an annuity that has no bearing on an assignment or loan transaction and is likely to be less than the rate at which the annuity was initially issued by the insurance company. (This section should be deleted or revised to provide for a rate that has more bearing on financial transactions, such as the prime rate of interest.)
  - "Favorable tax determination" and "federal hardship standard" benefit only the insurance companies that issue these annuities. (These sections should be deleted.) This is a smoke screen anyway.
  - The definition of "independent professional advice" when coupled with the standard necessary to procure court approval (which basically limits these transactions to individuals who are in desperate financial straits) insures that these transactions will never get done. In essence, under this definition, the bill requires the payee (who will not be able to procure court approval of the transaction unless they can prove that they will sustain imminent financial harm) to retain a lawyer, CPA or other professional on their own nickel to advise them in connection with the transaction. The professional's fees cannot be a contingent fee (i.e., contingent on approval of the transaction) or can the transferee pay the fee. If a person can afford to hire a professional, they probably cannot qualify under the imminent financial harm standard. It is the classic Catch-22. (This definition should be deleted.)
  - "Transfer" is defined such that the bill would apply to loan transactions as well as sales. It requires people to file a lawsuit just to borrow money. This is contrary to the current UCC as found in N.C.G.S. 25-9-318. (Delete everything after "assignment" up through "encumbrance.")
2. G.S. §1-543.11(2)-Disclosures. There are only a couple of issues with the disclosure requirements. Specifically, this section imposes disclosure requirements on transferees.
  - Requiring disclosure of the terms of the transaction, similar to a truth-in-lending disclosure is good. Unfortunately, consumers could use the same types of disclosures when they get

into structured settlements. The bill can be easily amended to require structured settlement obligors to provide similar disclosures to claimants when they are setting up a structured settlement. Again, if consumer education and protection is the objective, then requiring "front-end" disclosures is natural.

- Section (g) requires a transferee to disclose a "quotient" to the payee. However, the quotient has little, if any, relationship to the transaction and would cause confusion. Moreover, the denominator of the quotient has no relationship to the consumer credit transactions and the random rate used by the IRS in estate tax valuation situations. (This section should be deleted.)
- Court orders. Requiring court approval of these transactions in every case would have a chilling effect on these transactions, effectively preventing anyone except the insurance companies who hold the veto for court approval, from participating in this business.
- G.S. §1-543.11(3) virtually insures that no transactions will ever get approved. Many, many people who have entered into secondary market transactions in the past have done so in order to buy or improve a home, open or expand a small business, continue their educations, pay down debts, pay off tax liens and child support obligations, or pay for medical treatment. None of these legitimate reasons would qualify under the imminent financial hardship standard. Moreover, to require the payee to establish that the transfer will not subject him or his dependants to undue financial harm in the future requires the payee and the court to be clairvoyant. Again, this is an impossible standard. A "fair and reasonable" or "best interest" standard would be much more appropriate and workable.
- G.S. §1-543.11(4) should be deleted altogether. Presumably, if the payee is going to court, then the payee has the advice of counsel regarding the transaction. Moreover, in light of the definition of independent professional advice, if this requirement remains, no deals will ever get done.
- G.S. §1-543.11(5)—After imposing all of the disclosure and court approval requirements on the parties, this section then gives ultimate veto power to the insurance company. Since insurance companies routinely include boilerplate anti-assignment and anti-encumbrance language in structured settlements (such provisions being disfavored as unlawful restraints on the alienation of property rights and often held to be unenforceable), the ultimate determination of whether a payee may access their own financial assets, by way of a loan or an assignment, is not left up to the consumer or the courts, rather it is left to the discretion of the insurance company. How can such a provision possibly be considered pro-consumer?
- Generally, the fact that consumers must provide personal, private, confidential and sometimes embarrassing financial information to insurance companies and file it in public records in court, seems to be very anti-consumer.

**STRUCTURED SETTLEMENTS & HB 853/SB 746  
CUTTING THROUGH THE DEMAGOGUERY**

**Summary:** Structured settlement purchasers provide a valuable service to individuals that originally choose a structured settlement instead of a lump sum and now wish to alter the timing of some or all of their payments. The vast, vast majority of structured settlement recipients are employed and perfectly capable of deciding what is best for them financially. They had the right to choose a lump sum at the time of settlement and should continue to have the right to choose how they get their money. HB 853/SB 746 eliminates citizens' rights to choose what to do with their money.

**Myth** Structured settlements are used to provide for the long term care of seriously injured people.

**Reality:** Over 85% of structured settlement recipients are gainfully employed or capable of working and do not suffer from a long term disability.

The average size of a structured settlement is only \$75,000. This is hardly enough to provide for the long term care of a critically injured person.

**Myth:** Structured settlements were intended to prevent people from quickly dissipating their awards.

**Reality:** The vast majority of people had the choice of a lump sum or a structured settlement at the time of settlement and they chose a structured settlement.

HB 853/SB 746 takes away freedom of choice. As we are all aware, changing life circumstances alter one's financial needs. The freedom to contract to meet those needs is a fundamental right. Just because a person elected not to take a lump sum at the time of settlement shouldn't mean they are forever restricted from so doing.

**Myth:** Claimants who sell a portion of the settlements squander the money.

**Reality:** 34% Use the money to buy or renovate a home  
31% Pay off existing debts including tax liens and child support obligations<sup>1</sup>  
14% Pay medical expenses  
11% Use the funds to open or expand a business

**Myth:** Settlement Purchasers use high pressure sales tactics and usurious interest rates.

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<sup>1</sup>Settlement Purchasers require that tax liens, child support and alimony are paid. As a result, during the last two years over \$9,000,000 in child support, alimony, tax liens and other debts have been paid.

**Reality:** Settlement Purchasers advertise and respond to in-bound phone calls. The claimant initiates the contact and can terminate the contract by simply saying they are not interested.

Settlement Purchasers insist that individuals seek legal and financial counsel before they sign a contract. Most contracts for sale of settlement payments contain a 3-day right of rescission and all terms and conditions are fully disclosed in writing.

The discount rates charged by Settlement Purchasers are consistent with the rates of major credit card companies throughout the US and competition is driving discount rates down all the time.

**Myth:** IRC § 130 was adopted to encourage people to accept long term pay-outs of personal injury claims and the Treasury has so found.

**Reality:** IRC § 130 was passed at the behest of the insurance industry because it provides them a huge tax benefit. Treasury presented a more balanced view of the structured settlement industry stating

"It could be argued that imposing a tax on the acquisition of the payment stream would only worsen the risk that the injured person would receive an excessively discounted value..." and "It could also be argued that it is not the function of the tax law to prevent injured persons or their legal representatives from transferring rights to payments. Arguably, consumer protection and similar regulation is more properly the role of the States than of the Federal Government."

**Myth:** Insurance companies wish to protect structured settlement claimants from themselves.

**Reality:** This is a total fallacy. Claimants have complete latitude to accept a lump sum or structured settlement at the outset.

Structured settlements are incredibly profitable for the insurance companies and the brokers that set them up (the NSSTA and its members).

Take it from them--one insurer's structured settlement manual says:

"The primary objective in expanding the use of structured settlements is to maximize their value as a tool to reduce both claim loss and expense costs."

"Essentially, when a claimant has a reduced life expectancy and a substandard age rating has been obtained, the more life contingent benefits provided in the structure offer, the higher the savings on the claim."

The insurance industry does not like the fact that Settlement Purchasers are educating the public about the "time value of money" (the real value of the settlement they accepted).

**Myth:** H.R.'s exception for court approved hardships addresses the needs of those who really need access to their money.

**Reality:** There is no court procedure for obtaining such an order in 46 of the 50 states.

To the extent that a petition can be brought before a court, the bill's standard of "extraordinary, unanticipated and imminent" will lead to a disparity of results amongst and between residents of the several states.

**Myth:** Settlement Purchasers oppose regulation.

**Reality:** The Settlement Purchase industry embraces reasonable regulation and recently sought to introduce such legislation in Illinois which was opposed by the NSSTA and the insurance industry. Settlement Purchasers have and will support reasonable regulation at the federal and state levels.

**Myth:** A non-assignment clause in a structured settlement should keep the claimant from borrowing money on the settlement.

**Reality:** This would change existing law and deprive the claimant the right to borrow money. N.C.G.S. 25-9-318(4) provides:

"A term in any contract debtor and an assigner is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest."

### WHAT'S THIS FIGHT REALLY ALL ABOUT?

#### If It Is About Protecting North Carolina Consumers:

Why won't the insurance companies sit down and work out a true consumer protection bill?

Settlement Purchasers have supported and will support a law that provides:

- Full and complete disclosure;
- A five day right of rescission;
- Court orders where the court determines what is "fair or reasonable" or "in the best interest" of the claimant;
- Court orders if a court or IRS revenue ruling determines that a transfer of structured settlement payments causes a genuine tax liability to the annuity issuer, settlement obligor or claimant.

Why do they insist on absolute veto power over the transaction?

Why have they picked a standard of review which is so onerous that virtually no one could achieve it?

- A standard that is higher than that needed to settle the claim of a minor;
- Higher than the standard applied to the adoption or custody of a child.

Why do they point to a federal bill as the stalking horse for the need for HB 853/SB 746 when they had the federal bill introduced?

Why don't they tell you that Settlement Purchasers have paid millions of dollars in back child support, and state and federal tax liens?

Why don't they tell you who gets hurt by HB 853/SB 746?

- Lower income people and minorities who don't have access to other forms of capital get hurt.
- Thousands of employees at hundreds of small business throughout the nation get hurt.
- People who won't be able to afford to buy a home, pay for school or improve their lives get hurt.

Why don't they tell you who really gets structured settlement payments?

- More than 85% of structured settlement recipients are not disabled and are gainfully employed.
- 92% of claimants are "satisfied" or "very satisfied" with the re-financing of their settlement which they accomplished with the help of Settlement Purchasers.
- The average person who re-finances a structured settlement is 33 years old, employed with a household income of nearly \$25,000.
- More than 50% of structured settlements have a present value of \$30,000 or less.  
*(Source: Best's Review - November 1998)*

Why do they contend that structured settlements are intended to prevent people from receiving a lump sum when more than 65% of all structured settlements are for lump sums paid at some arbitrary time in the future?

#### **If It Is About Taxes:**

Why do they hide the fact that opinions have been issued by Morrison & Foerster's national tax office, PriceWaterhouseCoopers, Wolf, Block, Schorr and Solis, the United States Court of Appeals and the IRS itself that there is no "tax issue".

Why do they hide the fact that the United States Court of Appeals for the Third Circuit has ruled on this issue?

"The Haydens would have us conclude that Reliance would retroactively lose this (the § 130) exclusion if Ms. Hayden assigned her right to receive the periodic payments under the settlement agreement... The Haydens, however, do not cite, and our research has failed to reveal, any support for this novel proposition. We are therefore unpersuaded by the Haydens theory..."

Why can't they point to a single letter, rule, case or memorandum from any governmental entity which supports their contentions that there may be a tax problem?

Why don't they tell you that Allstate obtained a ruling from the IRS which allows them to offer lump sums in certain circumstances (IRS PLR 116384-97)?

Why do they fail to point out that the tax code clearly and unconditionally exempts from income payments received as compensation for personal injuries?

IRC § 104 (a)(2) exempts from income "the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;"

### **So What Is It Really All About:**

It's about money!

Structured Settlements save the insurance industry billions of dollars in settlement costs.

- One insurer's structured settlement manual says:

**"The primary objective in expanding the use of structured settlements is to maximize their value as a tool to reduce both claim loss and expense costs."**

**"Essentially, when a claimant has a reduced life expectancy and a substandard age rating has been obtained, the more life contingent benefits provided in the structure offer, the higher the savings on the claim."**

- Ringler Associates, the country's largest structured settlement broker boasts:

**"Initially, the concept was used on large, catastrophic-injury cases. Today, claims as small as \$5,000 are structured."**

Insurers make billions more by investing the lump sum than they would otherwise pay an injured person and paying that person only a fraction of the interest they earn each year.

The Montgomery County Court in Maryland sure knows it:

Excerpt of transcript Stone Street Capital v. Deborah L. Jackson, Civil No. 176131.

THE COURT: Why is it, by the way, that traditionally these [structured settlement annuity contracts] are non-assignable?

COUNSEL FOR STATE FARM: There are a lot of reasons. One is to protect the victim usually of personal injury. The whole reason for setting up these --

THE COURT: Protect them from what?

COUNSEL FOR STATE FARM: The whole reason for setting up these structured payments is so that they do not get a lump sum;

they do not get \$300,000 Plaintiff up front. These people -

THE COURT: No it is not. The reason for setting up these structured payments are so that the insurance companies can settle out cheaper.

COUNSEL FOR STATE FARM: That is one reason.

THE COURT: All right, come on -

COUNSEL FOR STATE FARM: I am not going to deny that.

THE COURT: They are not looking out for a plaintiff in a personal injury case. Please.

COUNSEL FOR STATE FARM: That is one reason that Your Honor has said. It is more cost effective for the insurance company -

THE COURT: That is one reason. That is the reason.

COUNSEL FOR STATE FARM: Okay.

#### **It's About Their Need to Keep a Secret:**

- We demonstrate what the real value of a structured settlement is. This makes the insurers fearful that as injury victims become more educated about present values, they will demand lump sum settlements and hence cost the insurers money.
- They know what the corporate welfare provisions of the tax code known as IRC § 130 was adopted by Congress to facilitate settlements of catastrophically injured people who are in need of long term care (thalidomide babies and the like).
- They know that they have exploited and corrupted the laudable policy objectives underlying § 130 by settling every slip and fall, fender bender and garden variety tort claim with a structured settlement.
- They fear that if Congress gets wind of what they have been up to Congress may just reform § 130 and hence;
- They fear the light we shed on the market and their practices.

#### **It's About Their Own Fear of Regulation:**

Most insurance policies convey the following rights, but not insurance policies used by structured settlement companies. Most insurance products give you:

- the right to assign the proceeds;
- the right to take out a policy loan;
- the right to take cash out at policy maturity;
- the right to name and change a beneficiary;
- the right of the beneficiary to select a settlement option.

Yet with a structured settlement you get none of these rights!

### **It's About Greed:**

Insurance carriers want this business for themselves.

- Allstate Insurance Company obtained a ruling from the IRS so that they could offer lump sums to beneficiaries of structured settlements!
- Who don't they tell you that insurance companies buy the bonds we create which are repaid by the settlement payments?
- The insurance industry knows that the services provided by Settlement Purchasers are valuable and highly sought after. They like the bonds we create and now want to control and monopolize the market for themselves.
- Why don't they mention the fact that HB 853/SB 746 will not affect Allstate or any insurance company commutation of a structured settlement?

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**Before you decide just ask yourself - What's it really all about?**

# **HOUSE JUDICIARY I COMMITTEE**

**June 10, 1999**

## **Agenda**

**Senate Bill 297 - Limited Partnership Law Changes  
Senator Clodfelter**

**Senate Bill 746 - Structured Settlement Protection Act  
Senator Cooper**

**Senate Bill 1009 - Journalists' Testimonial Privilege  
Senator Hoyle**

**Senate Bill 1074 - Year 2000 Consumer Protection Act  
Senator Reeves**

HOUSE JUDICIARY I COMMITTEE  
June 10, 1999  
Minutes

The House Judiciary I Committee met on Thursday, June 10, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Clary, Ellis, Gardner, Gray, Insko, Miller, Moore, Redwine, and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated that **Senate Bill 746, AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT**, (Attachment II), had been added to the agenda to accommodate an out-of-town speaker. He reminded the committee that a proposed committee substitute had been adopted for the purpose of discussion on May 20, 1999, and said that the bill would be called first for the limited purpose of hearing from the speaker.

Mr. Davis Horne was recognized to introduce Mr. Thomas H. Countee, Jr., Executive Director of The National Spinal Cord Injury Association. Mr. Countee addressed the committee in support of the structured settlement protection act. A copy of his comments is attached, (Attachment III).

Senator Hoyle was recognized to continue the discussion of **Senate Bill 1009, AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE**, (Attachment IV). The bill was discussed during the May 18, 1999 meeting of the committee. Senator Hoyle offered a proposed committee substitute, (Attachment V).

Representative Miller moved that the committee substitute be adopted for the purpose of discussion. The motion carried.

Ms. Susan Hayes, Committee Counsel, was recognized to explain the committee substitute. Ms. Hayes stated that in the committee substitute the word "person" has been reinserted into the definition of "journalist." She noted that this had been recommended during the initial discussion on May 18. She said that the effective date had also been amended so that the privilege will only apply to information, documents or items obtained or prepared while acting as a journalist on or after October 1, 1999.

Senator Hoyle and Representative Miller each spoke in support of the bill and urged the committee to give the bill a favorable report.

Representative Miller moved for a favorable report for the House committee substitute, and an unfavorable report as to the Senate committee substituted bill.

Mr. Rex Gore, North Carolina Conference of District Attorneys, expressed some concerns regarding "nonconfidential" information. He suggested the removal of the words "nonconfidential" from page 2, line 5 and the words "or investigation" from page 1, lines 18 and 19.

Representative Ellis offered an amendment to remove the words "or investigation" from lines 18 and 19 of page one, (Attachment VI). The motion carried.

Representative Redwine offered an amendment to remove the words "noncontroversial" from line 8 of page 2, (Attachment VII).

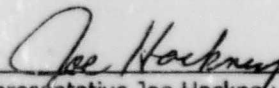
Senator Hoyle and Representative Miller spoke in opposition to the amendment.

Considerable committee discussion followed and Mr. John Bussian, North Carolina Press Association, responded to questions.

The question before the committee was the adoption of the Redwine amendment. Upon voice vote, Representative Redwine called for division. By a count of hands, four members voted for the amendment, seven voted in opposition. The amendment failed.

Representative Blue moved that the amendment be incorporated into a new House committee substitute, that the committee substitute be given a favorable report and the Senate committee substitute bill be given an unfavorable report. The motion carried, (Attachment VIII). A copy of the committee substitute is attached, (Attachment VIII).

The meeting was adjourned.

  
\_\_\_\_\_  
Representative Joe Hackney, Chairman

  
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Emily Reynolds, Committee Assistant

## VISITOR REGISTRATION SHEET

THE HOUSE JUDICIARY I COMMITTEE JUNE 10, 1999

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. Rex Gore	Conference of DAs
2. Teri Saylor	NCPA
3. Charlene Hawkins	SOS
4. Mike Pope	SOS
5. Floyd M. Lewis	General Statutes Commission
6. William Hawkins	NC Press Assn
7. JOHN BUSSIAN	" "
8. Bob Prou	Jordan Press Wall
9. Cam Creech	TDPHL
10. Wade Rawlins	The News & Observer
11. Estes Thompson	AP
22. Melissa Lovell	DOJ
23. Andy Comest	NCLM.
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29.	
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31.	

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

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SENATE BILL 746  
Judiciary I Committee Substitute Adopted 4/21/99  
PROPOSED HOUSE COMMITTEE SUBSTITUTE  
S746-CSRN-001  
Attention: Line Numbers May Change After Adoption

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  
6 by adding a new 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  
11 Settlement Protection Act.  
12 "§ 1-543.11. Structured settlement payment rights.  
13 No direct or indirect transfer of structured settlement payment  
14 rights shall be effective, and no structured settlement obligor  
15 or annuity issuer shall be required to make any payment directly  
16 or indirectly to any transferee of structured settlement payment  
17 rights unless the transfer has been authorized in advance in a  
18 final order of a court of competent jurisdiction or a responsible

1 administrative authority based on express findings by such court  
2 or responsible administrative authority that:

- 3       (1) The transfer complies with the requirements of this  
4       Article and will not contravene other applicable  
5       law;  
6       (2) Not less than 10 days prior to the date on which  
7       the payee first incurred any obligation with  
8       respect to the transfer, the transferee has  
9       provided to the payee a disclosure statement in  
10       bold type, no smaller than 14 point setting forth:  
11       a. The amounts and due dates of the structured  
12       settlement payments to be transferred;  
13       b. The aggregate amount of such payments;  
14       c. The discounted present value of such payments;  
15       d. The gross amount payable to the payee in  
16       exchange for such payments;  
17       e. An itemized listing of all brokers'  
18       commissions, service charges, application  
19       fees, processing fees, closing costs, filing  
20       fees, administrative fees, legal fees, notary  
21       fees and other commissions, fees, costs,  
22       expenses, and charges payable by the payee or  
23       deductible from the gross amount otherwise  
24       payable to the payee;  
25       f. The net amount payable to the payee after  
26       deduction of all commissions, fees, costs,  
27       expenses, and charges described in sub-  
28       subdivision e. of this subdivision;  
29       g. The quotient (expressed as a percentage)  
30       obtained by dividing the net payment amount by  
31       the discounted present value of the payments;  
32       and  
33       h. The amount of any penalty and the aggregate  
34       amount of any liquidated damages (inclusive of  
35       penalties) payable by the payee in the event  
36       of any breach of the transfer agreement by the  
37       payee;  
38       (3) The transferee has established that the transfer is  
39       necessary to enable the payee, the payee's  
40       dependents, or both to avoid imminent financial  
41       hardship, and the transfer should not be expected  
42       to subject the payee, the payee's dependents, or  
43       both to undue financial hardship in the future;  
44       provided, however, that if, at the time the payee

- 1                   and the transferee entered into the transfer  
2                   agreement, a federal hardship standard was in  
3                   effect, then, in lieu of the foregoing finding, the  
4                   court or responsible administrative authority must  
5                   make an express finding that the transfer qualifies  
6                   under such federal hardship standard;
- 7           (4) The payee has received independent professional  
8           advice regarding the legal, tax, and financial  
9           implications of the transfer;
- 10          (5) If the transfer would contravene the terms of the  
11          structured settlement:
- 12           a. The transfer has been expressly approved in  
13           writing by:
- 14               1. Each interested party; provided, however,  
15               that if, at the time the payee and the  
16               transferee entered into the transfer  
17               agreement, a favorable tax determination  
18               was in effect, then the approval of the  
19               annuity issuer and the structured  
20               settlement obligor shall not be required  
21               if all other interested parties approve  
22               the transfer and waive any and all rights  
23               to require that the transferred payments  
24               be made to the payee in accordance with  
25               the terms of the structured settlement;  
26               and
- 27               2. Any court or government authority, other  
28               than the court or responsible  
29               administrative authority from which  
30               authorization of the transfer is sought  
31               under this act, which previously approved  
32               the structured settlement; and
- 33           b. Signed originals of all approvals required  
34           under sub-subdivision a. of this subdivision  
35           have been filed with the court or responsible  
36           administrative authority from which  
37           authorization of the transfer is sought under  
38           this act, and originals or copies have been  
39           furnished to all interested parties;
- 40          (6) The transferee has given written notice of the  
41          transferee's name, address, and taxpayer  
42          identification number to the annuity issuer and the  
43          structured settlement obligor and has filed a copy

- 1           of such notice with the court or responsible  
2           administrative authority;  
3           (7) The discount rate used in determining discounted  
4           present value of the structured settlement payment  
5           rights does not exceed the annual percentage rate  
6           permitted under G.S. 25A-15(b)(4) calculated as if  
7           the net amount payable to the payee, as provided in  
8           sub-subdivision (2)f. of this section, was the  
9           principal of a consumer loan made by the transferee  
10           to the payee, and if the structured settlement  
11           payments to be transferred to the transferee were  
12           the payee's payments of principal plus interest on  
13           such loan; and  
14           (8) The transfer of structured settlement payment  
15           rights is fair and reasonable.

16 "§ 1-543.12. Definitions.

17 For purposes of this Article:

- 18           (1) 'Annuity issuer' means an insurer that has issued  
19           an insurance contract used to fund periodic  
20           payments under a structured settlement;  
21           (2) 'Applicable law' means:  
22           a. The federal laws of the United States;  
23           b. The laws of this State, including principles  
24           of equity applied in the courts of this State;  
25           and  
26           c. The laws of any other jurisdiction:  
27           1. Which is the domicile of the payee or any  
28           other interested party;  
29           2. Under whose laws a structured settlement  
30           agreement was approved by a court or  
31           responsible administrative authority; or  
32           3. In whose courts a settled claim was  
33           pending when the parties entered into a  
34           structured settlement agreement;  
35           (3) 'Dependents' include a payee's spouse and minor  
36           children and all other family members and other  
37           persons for whom the payee is legally obligated to  
38           provide support, including alimony;  
39           (4) 'Discounted present value' means the fair present  
40           value of future payments, as determined by  
41           discounting such payments to the present utilizing  
42           the tables adopted in Article 5 of Chapter 8 of the  
43           General Statutes;

- 1           (5) 'Favorable tax determination' means, with respect  
2           to a proposed transfer of structured settlement  
3           payment rights, any of the following authorities  
4           that definitely establish that the federal income  
5           tax treatment of the structured settlement for the  
6           parties to the structured settlement agreement and  
7           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,  
10           United States Code Title 26, as amended from  
11           time to time, or a United States Treasury  
12           regulation adopted pursuant thereto;  
13           b. A revenue ruling or revenue procedure issued  
14           by the Internal Revenue Service;  
15           c. A private letter ruling by the Internal  
16           Revenue Service with respect to such transfer;  
17           or  
18           d. A decision of the United States Supreme Court  
19           or a decision of a lower federal court in  
20           which the Internal Revenue Service has  
21           acquiesced;  
22           (6) 'Federal hardship standard' means a federal  
23           standard applicable to transfers of structured  
24           settlement payment rights based on findings of a  
25           court or responsible administrative authority  
26           regarding the payees' needs, as contained in the  
27           Internal Revenue Code, United States Code Title 26,  
28           as amended from time to time, or in a United States  
29           Treasury regulation adopted pursuant thereto;  
30           (7) 'Independent professional advice' means advice of  
31           an attorney, certified public accountant, actuary,  
32           or other licensed or registered professional or  
33           financial adviser:  
34           a. Who is engaged by a payee to render advice  
35           concerning the legal, tax, and financial  
36           implications of a transfer of structured  
37           settlement payment rights;  
38           b. Who is not in any manner affiliated with or  
39           compensated by the transferee of such  
40           transfer; and  
41           c. Whose compensation for rendering such advice  
42           is not affected by whether a transfer occurs  
43           or does not occur;

- 1           (8) 'Interested parties' means, with respect to any  
2           structured settlement, the payee, any beneficiary  
3           designated under the annuity contract to receive  
4           payments following the payee's death, the annuity  
5           issuer, the structured settlement obligor, and any  
6           other party that has continuing rights or  
7           obligations under the terms of the structured  
8           settlement;
- 9           (9) 'Payee' means an individual who is receiving tax-  
10           free damage payments under a structured settlement  
11           and proposes to make a transfer of payment rights  
12           thereunder;
- 13           (10) 'Qualified assignment agreement' means an agreement  
14           providing for a qualified assignment within the  
15           meaning of section 130 of the Internal Revenue  
16           Code, United States Code Title 26, as amended from  
17           time to time;
- 18           (11) 'Responsible administrative authority' means, with  
19           respect to a structured settlement, any government  
20           authority vested by law with exclusive jurisdiction  
21           over the settled claim resolved by such structured  
22           settlement;
- 23           (12) 'Settled claim' means the original tort claim or  
24           workers' compensation claim resolved by a  
25           structured settlement;
- 26           (13) 'Structured settlement' means an arrangement for  
27           periodic payment of damages for personal injuries  
28           established by settlement or judgment in resolution  
29           of a tort claim or for periodic payments in  
30           settlement of a workers' compensation claim;
- 31           (14) 'Structured settlement agreement' means the  
32           agreement, judgment, stipulation, or release  
33           embodying the terms of a structured settlement,  
34           including the rights of the payee to receive  
35           periodic payments;
- 36           (15) 'Structured settlement obligor' means, with respect  
37           to any structured settlement, the party that has  
38           the continuing periodic payment obligation to the  
39           payee under a structured settlement agreement or a  
40           qualified assignment agreement;
- 41           (16) 'Structured settlement payment rights' means rights  
42           to receive periodic payments (including lump-sum  
43           payments) under a structured settlement, whether

- 1 from the settlement obligor or the annuity issuer,  
2 where:
- 3 a. The payee is domiciled in this State;  
4 b. The structured settlement agreement was  
5 approved by a court or responsible  
6 administrative authority in this State; or  
7 c. The settled claim was pending before the  
8 courts of this State when the parties entered  
9 into the structured settlement agreement;
- 10 (17) 'Transfer' means any sale, assignment, pledge,  
11 hypothecation, or other form of alienation or  
12 encumbrance made by a payee for consideration;
- 13 (18) 'Terms of the structured settlement' include, with  
14 respect to any structured settlement, the terms of  
15 the structured settlement agreement, the annuity  
16 contract, any qualified assignment agreement, and  
17 any order or approval of any court or responsible  
18 administrative authority or other government  
19 authority authorizing or approving such structured  
20 settlement; and
- 21 (19) 'Transfer agreement' means the agreement providing  
22 for transfer of structured settlement payment  
23 rights from a payee to a transferee.
- 24 "§ 1-543.13. Jurisdiction.
- 25 (a) Where the structured settlement agreement was entered into  
26 after commencement of litigation or administrative proceedings in  
27 this State, the court or administrative agency where the action  
28 was pending shall have exclusive jurisdiction over any  
29 application for authorization under this Article of a transfer of  
30 structured settlement payment rights.
- 31 (b) Where the structured settlement agreement was entered into  
32 prior to the commencement of litigation or administrative  
33 proceedings, or after the commencement of litigation outside this  
34 State, the Superior Court Division of the General Court of  
35 Justice shall have nonexclusive original jurisdiction over any  
36 application for authorization under this Article of a transfer of  
37 structured settlement payment rights.
- 38 "§ 1-543.14. Procedure for approval of transfers.
- 39 (a) Where the structured settlement agreement was entered into  
40 after the commencement of litigation or administrative  
41 proceedings in this State, the application for authorization of a  
42 transfer of structured settlement rights shall be filed with the  
43 court or administrative agency where the settled claim was  
44 pending as a motion in the cause.

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

10 (c) Not less than 30 days prior to the scheduled hearing on  
11 any application for authorization of a transfer of structured  
12 settlement payment rights under this Article, the transferee  
13 shall file with the proper court or responsible administrative  
14 authority and serve on any other government authority which  
15 previously approved the structured settlement, on all interested  
16 parties as defined in G.S. 1-543.12(8), and on the Attorney  
17 General, a notice of the proposed transfer and the application  
18 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  
22 G.S. 1-543.11(a);
- 23 (4) Notification that any interested party is entitled  
24 to support, oppose, or otherwise respond to the  
25 transferee's application, either in person or by  
26 counsel, by submitting written comments to the  
27 court or responsible administrative authority or by  
28 participating in the hearing; and
- 29 (5) Notification of the time and place of the hearing  
30 and notification of the manner in which and the  
31 time by which written responses to the application  
32 must be filed in order to be considered by the  
33 court or responsible administrative authority.

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

38 "§ 1-543.15. No waiver; penalties.

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

40 (b) Any payee who has transferred structured settlement  
41 payment rights to a transferee without knowledge of the  
42 requirements set out in this Article may bring an action against  
43 the transferee to recover actual monetary loss or for damages up  
44 to five thousand dollars (\$5,000) for the violation by the

1 transferee, or bring actions for both. The payee is entitled to  
2 attorneys' fees and costs incurred to enforce this Article. In  
3 addition, all unpaid structured settlement payment rights  
4 transferred as a result of a violation of this Article by any  
5 transferee shall be reconveyed to the payee.

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

11 "§ 1-543.16. Construction.


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

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

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

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

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



## National Spinal Cord Injury Association

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### STATEMENT

TESTIMONY BY THOMAS H. COUNTEE, JR., ESQ., EXECUTIVE DIRECTOR,  
THE NATIONAL SPINAL CORD INJURY ASSOCIATION, BEFORE HOUSE  
JUDICIARY COMMITTEE I, NORTH CAROLINA STATE LEGISLATURE,  
THURSDAY, JUNE 10, 1999

Good morning, Chairman Hackney and other Representatives.

My name is Thomas H. Countee, Jr., Executive Director of The National Spinal Cord Injury Association (NSCIA), a national non-profit organization, headquartered in Silver Spring, Maryland. NSCIA's North Carolina Chapter is in Winterville. The Association's President is Jack Dahlberg, who is a quadriplegic.

On a personal note, I have close family connections to North Carolina: my maternal forbears lived in Henderson, North Carolina. My parents met and were married in Winston-Salem and I spent a portion of each early childhood summer in that city. Later in my life, my daughter and I summered in Kill Devil Hills on the Outer Banks and I still enjoy deep sea fishing out of Hatteras. I also own property in Charlotte. Forty-one years ago in 1958, I sustained a diving accident on the Chesapeake Bay, rendering me a quadriplegic. I am an attorney and I served 15 months as Legislative Counsel in the Ford White House. It is a pleasure and honor to come to North Carolina, again to testify on S.746.

Today, I represent over 5,000 members of the National Spinal Cord Injury Association and thousands of other spinal cord injured persons, many of whom benefit from structured settlements, including several hundred in North Carolina. The National Spinal Cord Injury Association has no business or tax effect stake in the outcome of this proposed legislation, S 746.

However, the Association is deeply interested in the health, safety and welfare of persons with catastrophic, traumatic and/or debilitating injuries, many of whom are Association members and receive structured settlements.

NSCIA is deeply troubled at the emergence of factoring companies that convince injury victims, including persons with disabilities, to sell structured settlement payments for a deeply discounted cash lump sum. Such transactions completely undermine the long-term financial security of a structured settlement and threaten the very livelihood of an otherwise extremely vulnerable population - those of us with disabilities. And the steep financial discounts that disabled Americans often are persuaded to accept would be unacceptable to any fair-minded person.

Factoring companies increasingly prey upon the weakest, most gullible and most vulnerable in our society. I assume many of you have seen the television ads soliciting calls from those who have recently suffered severe injuries. We believe that at present, the emerging "gray market" of factoring companies is largely unregulated, unresponsive to the needs and best interests of recipients of structured settlements and unconscionable in their slick, high pressure marketing practices and unethical legal maneuvers and stratagems such as the use of a confessed judgment against the victim in a distant court to garnish the victim's payments.

One last point, Mr. Chairman, I have come here to let you see the type of catastrophic injury affected by this bill and to put a human face on this legislation, not as the beneficiary of a structured settlement, but as a leader of, and advocate for, severely disabled persons who have. In 1982, the intent of Congress, the social purpose if you will, was to encourage those who receive monetary settlements growing out of catastrophic injuries, to accept periodic payments to safeguard the uncertain futures they face. Factoring companies' intent, on the other hand, is simply to cheat severely injured persons out of their money. S.746 does nothing to help those who have already been taken advantage of; we need this legislation to guide those who may be taken advantage of in the future. You can, and should, stop this outrage. Sound public policy and simple decency would indicate that as legislators, you have no choice but to do the right thing.

For all these reasons, The National Spinal Cord Injury Association respectfully recommends and strongly urges your support of S.746, The North Carolina Structured Settlement Act, which would provide needed protection from the predatory practices of these factoring companies.

Thank you for the time and attention you are devoting to this critical issue and the opportunity to appear before you. I will be happy to answer any questions you may have about the Association or our interest in this matter.

**HOUSE JUDICIARY I COMMITTEE**

**June 17, 1999**

**Agenda**

**Senate Bill 746 – Structured Settlement Protection Act  
Senator Cooper**

HOUSE JUDICIARY I COMMITTEE  
June 17, 1999  
Minutes

The House Judiciary I Committee met on Thursday, June 17, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Boyd-McIntyre, Ellis, Gardner, Gray, Moore, Nesbitt and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated that **Senate Bill 746, AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT**, would be further discussed during the meeting. A proposed committee substitute, (Attachment II), was adopted for the purpose of discussion by the committee during the June 10, 1999 meeting. He stated that Senator Cooper, the sponsor of the Senate version of the bill was unable to attend the meeting, but that the discussion would continue. (Representative Hackney introduced the House version of the bill). A copy of a bill analysis prepared by O. Walker Reagan, Staff Attorney, and Susan L. Hayes, Committee Counsel is attached, (Attachment III). Chairman Hackney reminded the members that several people had addressed the committee during the June 10 meeting and that certain issues had been identified that need to be discussed. One issue involved what the standard should be for the review by the judge.

Representative Nesbitt stated that he planned to offer amendments to the bill.

Representative Ellis was recognized and spoke in opposition to regulating the people who received the structured settlements, but noted a possible need for regulation of the industry to some degree, along with possible regulation of the payment of the structured settlement.

Representative Gray asked if any consideration had been given to sending the bill to a subcommittee for further study. Representative Hackney replied that the interested parties had been asked to negotiate, but that they had been unable to reach an agreement. He noted time restraints, but added that anyone could make a motion to send the bill to a subcommittee.

Committee discussion followed.

Representative Ellis moved to place the bill in a study. The motion failed.

Representative Boyd-McIntyre asked if the sponsor had considered a sunset on the bill. Representative Hackney replied that he had not, but that was a possible solution.

Representative Alexander was asked to preside over the meeting during the offering of amendments.

Representative Nesbitt offered an amendment, (Attachment IV), and moved its adoption. He stated that the amendment would change the standard to "best interest of the payee." He said that this is a standard that is understood by the courts and the lawyers.

Representative Hackney spoke in support of the amendment.

Mr. Dave Horne, Smith-Anderson Law Firm, was recognized and agreed that the "best interest" standard is something that they agree should be done, but added that the words "and payees dependents" should be added. He further noted that the elimination, entirely, of the

federal hardship standard could potentially create a conflict between state law and federal law. He said that if the federal government acts, as he thinks they will, the federal standard should be maintained.

Mr. Sandy Sands, National Association of Structured Settlements, spoke against the suggestions made by Mr. Horne.

Representative Ellis spoke against accommodating what Congress "might" do.

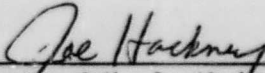
Representative Hackney stated that he felt the amendment should be adopted in the way proposed by Representative Nesbitt, and if at some further point an additional amendment is necessary for the reasons suggested by Mr. Horne, another amendment could be offered.

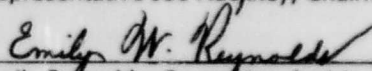
Representative Thompson asked for a definition of "best interest." Representative Hackney replied that it was a wide-open standard that means "helps them, but does not hurt them," and is up to the judge to determine.

The amendment was before the committee. Following vote of the committee, the amendment was adopted.

A copy of a letter distributed to the committee by the Office of the Attorney General is attached, (Attachment V).

No further action was taken on the bill, and the meeting was adjourned.

  
\_\_\_\_\_  
Representative Joe Hackney, Chairman

  
\_\_\_\_\_  
Emily Reynolds, Committee Assistant



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 746

Judiciary I Committee Substitute Adopted 4/21/99

PROPOSED HOUSE COMMITTEE SUBSTITUTE

S746-CSRN-001

Attention: Line Numbers May Change After Adoption

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  
 6 by adding a new 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  
 11 Settlement Protection Act.  
 12 "§ 1-543.11. Structured settlement payment rights.  
 13 No direct or indirect transfer of structured settlement payment  
 14 rights shall be effective, and no structured settlement obligor  
 15 or annuity issuer shall be required to make any payment directly  
 16 or indirectly to any transferee of structured settlement payment  
 17 rights unless the transfer has been authorized in advance in a  
 18 final order of a court of competent jurisdiction or a responsible

1 administrative authority based on express findings by such court  
2 or responsible administrative authority that:

- 3       (1) The transfer complies with the requirements of this  
4 Article and will not contravene other applicable  
5 law:
- 6       (2) Not less than 10 days prior to the date on which  
7 the payee first incurred any obligation with  
8 respect to the transfer, the transferee has  
9 provided to the payee a disclosure statement in  
10 bold type, no smaller than 14 point setting forth:
- 11       a. The amounts and due dates of the structured  
12 settlement payments to be transferred;
- 13       b. The aggregate amount of such payments;
- 14       c. The discounted present value of such payments;
- 15       d. The gross amount payable to the payee in  
16 exchange for such payments;
- 17       e. An itemized listing of all brokers'  
18 commissions, service charges, application  
19 fees, processing fees, closing costs, filing  
20 fees, administrative fees, legal fees, notary  
21 fees and other commissions, fees, costs,  
22 expenses, and charges payable by the payee or  
23 deductible from the gross amount otherwise  
24 payable to the payee;
- 25       f. The net amount payable to the payee after  
26 deduction of all commissions, fees, costs,  
27 expenses, and charges described in sub-  
28 subdivision e. of this subdivision;
- 29       g. The quotient (expressed as a percentage)  
30 obtained by dividing the net payment amount by  
31 the discounted present value of the payments;  
32 and
- 33       h. The amount of any penalty and the aggregate  
34 amount of any liquidated damages (inclusive of  
35 penalties) payable by the payee in the event  
36 of any breach of the transfer agreement by the  
37 payee;
- 38       (3) The transferee has established that the transfer is  
39 necessary to enable the payee, the payee's  
40 dependents, or both to avoid imminent financial  
41 hardship, and the transfer should not be expected  
42 to subject the payee, the payee's dependents, or  
43 both to undue financial hardship in the future;  
44 provided, however, that if, at the time the payee

- 1                   and the transferee entered into the transfer  
2                   agreement, a federal hardship standard was in  
3                   effect, then, in lieu of the foregoing finding, the  
4                   court or responsible administrative authority must  
5                   make an express finding that the transfer qualifies  
6                   under such federal hardship standard;
- 7                   (4) The payee has received independent professional  
8                   advice regarding the legal, tax, and financial  
9                   implications of the transfer;
- 10                  (5) If the transfer would contravene the terms of the  
11                  structured settlement:
- 12                  a. The transfer has been expressly approved in  
13                  writing by:
- 14                    1. Each interested party; provided, however,  
15                    that if, at the time the payee and the  
16                    transferee entered into the transfer  
17                    agreement, a favorable tax determination  
18                    was in effect, then the approval of the  
19                    annuity issuer and the structured  
20                    settlement obligor shall not be required  
21                    if all other interested parties approve  
22                    the transfer and waive any and all rights  
23                    to require that the transferred payments  
24                    be made to the payee in accordance with  
25                    the terms of the structured settlement;  
26                    and
- 27                    2. Any court or government authority, other  
28                    than the court or responsible  
29                    administrative authority from which  
30                    authorization of the transfer is sought  
31                    under this act, which previously approved  
32                    the structured settlement; and
- 33                  b. Signed originals of all approvals required  
34                  under sub-subdivision a. of this subdivision  
35                  have been filed with the court or responsible  
36                  administrative authority from which  
37                  authorization of the transfer is sought under  
38                  this act, and originals or copies have been  
39                  furnished to all interested parties;
- 40                  (6) The transferee has given written notice of the  
41                  transferee's name, address, and taxpayer  
42                  identification number to the annuity issuer and the  
43                  structured settlement obligor and has filed a copy

- 1 of such notice with the court or responsible  
2 administrative authority;
- 3 (7) The discount rate used in determining discounted  
4 present value of the structured settlement payment  
5 rights does not exceed the annual percentage rate  
6 permitted under G.S. 25A-15(b)(4) calculated as if  
7 the net amount payable to the payee, as provided in  
8 sub-subdivision (2)f. of this section, was the  
9 principal of a consumer loan made by the transferee  
10 to the payee, and if the structured settlement  
11 payments to be transferred to the transferee were  
12 the payee's payments of principal plus interest on  
13 such loan; and
- 14 (8) The transfer of structured settlement payment  
15 rights is fair and reasonable.

16 "§ 1-543.12. Definitions.

17 For purposes of this Article:

- 18 (1) 'Annuity issuer' means an insurer that has issued  
19 an insurance contract used to fund periodic  
20 payments under a structured settlement;
- 21 (2) 'Applicable law' means:
- 22 a. The federal laws of the United States;  
23 b. The laws of this State, including principles  
24 of equity applied in the courts of this State;  
25 and  
26 c. The laws of any other jurisdiction:
- 27 1. Which is the domicile of the payee or any  
28 other interested party;  
29 2. Under whose laws a structured settlement  
30 agreement was approved by a court or  
31 responsible administrative authority; or  
32 3. In whose courts a settled claim was  
33 pending when the parties entered into a  
34 structured settlement agreement;
- 35 (3) 'Dependents' include a payee's spouse and minor  
36 children and all other family members and other  
37 persons for whom the payee is legally obligated to  
38 provide support, including alimony;
- 39 (4) 'Discounted present value' means the fair present  
40 value of future payments, as determined by  
41 discounting such payments to the present utilizing  
42 the tables adopted in Article 5 of Chapter 8 of the  
43 General Statutes;

- 1           (5) 'Favorable tax determination' means, with respect  
2 to a proposed transfer of structured settlement  
3 payment rights, any of the following authorities  
4 that definitely establish that the federal income  
5 tax treatment of the structured settlement for the  
6 parties to the structured settlement agreement and  
7 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,  
10 United States Code Title 26, as amended from  
11 time to time, or a United States Treasury  
12 regulation adopted pursuant thereto;  
13           b. A revenue ruling or revenue procedure issued  
14 by the Internal Revenue Service;  
15           c. A private letter ruling by the Internal  
16 Revenue Service with respect to such transfer;  
17 or  
18           d. A decision of the United States Supreme Court  
19 or a decision of a lower federal court in  
20 which the Internal Revenue Service has  
21 acquiesced;  
22           (6) 'Federal hardship standard' means a federal  
23 standard applicable to transfers of structured  
24 settlement payment rights based on findings of a  
25 court or responsible administrative authority  
26 regarding the payees' needs, as contained in the  
27 Internal Revenue Code, United States Code Title 26,  
28 as amended from time to time, or in a United States  
29 Treasury regulation adopted pursuant thereto;  
30           (7) 'Independent professional advice' means advice of  
31 an attorney, certified public accountant, actuary,  
32 or other licensed or registered professional or  
33 financial adviser:  
34           a. Who is engaged by a payee to render advice  
35 concerning the legal, tax, and financial  
36 implications of a transfer of structured  
37 settlement payment rights;  
38           b. Who is not in any manner affiliated with or  
39 compensated by the transferee of such  
40 transfer; and  
41           c. Whose compensation for rendering such advice  
42 is not affected by whether a transfer occurs  
43 or does not occur;

- 1           (8) 'Interested parties' means, with respect to any  
2           structured settlement, the payee, any beneficiary  
3           designated under the annuity contract to receive  
4           payments following the payee's death, the annuity  
5           issuer, the structured settlement obligor, and any  
6           other party that has continuing rights or  
7           obligations under the terms of the structured  
8           settlement;
- 9           (9) 'Payee' means an individual who is receiving tax-  
10           free damage payments under a structured settlement  
11           and proposes to make a transfer of payment rights  
12           thereunder;
- 13           (10) 'Qualified assignment agreement' means an agreement  
14           providing for a qualified assignment within the  
15           meaning of section 130 of the Internal Revenue  
16           Code, United States Code Title 26, as amended from  
17           time to time;
- 18           (11) 'Responsible administrative authority' means, with  
19           respect to a structured settlement, any government  
20           authority vested by law with exclusive jurisdiction  
21           over the settled claim resolved by such structured  
22           settlement;
- 23           (12) 'Settled claim' means the original tort claim or  
24           workers' compensation claim resolved by a  
25           structured settlement;
- 26           (13) 'Structured settlement' means an arrangement for  
27           periodic payment of damages for personal injuries  
28           established by settlement or judgment in resolution  
29           of a tort claim or for periodic payments in  
30           settlement of a workers' compensation claim;
- 31           (14) 'Structured settlement agreement' means the  
32           agreement, judgment, stipulation, or release  
33           embodying the terms of a structured settlement,  
34           including the rights of the payee to receive  
35           periodic payments;
- 36           (15) 'Structured settlement obligor' means, with respect  
37           to any structured settlement, the party that has  
38           the continuing periodic payment obligation to the  
39           payee under a structured settlement agreement or a  
40           qualified assignment agreement;
- 41           (16) 'Structured settlement payment rights' means rights  
42           to receive periodic payments (including lump-sum  
43           payments) under a structured settlement, whether

- 1 from the settlement obligor or the annuity issuer,  
2 where:
- 3 a. The payee is domiciled in this State;  
4 b. The structured settlement agreement was  
5 approved by a court or responsible  
6 administrative authority in this State; or  
7 c. The settled claim was pending before the  
8 courts of this State when the parties entered  
9 into the structured settlement agreement;
- 10 (17) 'Transfer' means any sale, assignment, pledge,  
11 hypothecation, or other form of alienation or  
12 encumbrance made by a payee for consideration;
- 13 (18) 'Terms of the structured settlement' include, with  
14 respect to any structured settlement, the terms of  
15 the structured settlement agreement, the annuity  
16 contract, any qualified assignment agreement, and  
17 any order or approval of any court or responsible  
18 administrative authority or other government  
19 authority authorizing or approving such structured  
20 settlement; and
- 21 (19) 'Transfer agreement' means the agreement providing  
22 for transfer of structured settlement payment  
23 rights from a payee to a transferee.
- 24 "§ 1-543.13. Jurisdiction.
- 25 (a) Where the structured settlement agreement was entered into  
26 after commencement of litigation or administrative proceedings in  
27 this State, the court or administrative agency where the action  
28 was pending shall have exclusive jurisdiction over any  
29 application for authorization under this Article of a transfer of  
30 structured settlement payment rights.
- 31 (b) Where the structured settlement agreement was entered into  
32 prior to the commencement of litigation or administrative  
33 proceedings, or after the commencement of litigation outside this  
34 State, the Superior Court Division of the General Court of  
35 Justice shall have nonexclusive original jurisdiction over any  
36 application for authorization under this Article of a transfer of  
37 structured settlement payment rights.
- 38 "§ 1-543.14. Procedure for approval of transfers.
- 39 (a) Where the structured settlement agreement was entered into  
40 after the commencement of litigation or administrative  
41 proceedings in this State, the application for authorization of a  
42 transfer of structured settlement rights shall be filed with the  
43 court or administrative agency where the settled claim was  
44 pending as a motion in the cause.

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

10 (c) Not less than 30 days prior to the scheduled hearing on  
11 any application for authorization of a transfer of structured  
12 settlement payment rights under this Article, the transferee  
13 shall file with the proper court or responsible administrative  
14 authority and serve on any other government authority which  
15 previously approved the structured settlement, on all interested  
16 parties as defined in G.S. 1-543.12(8), and on the Attorney  
17 General, a notice of the proposed transfer and the application  
18 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  
22 G.S. 1-543.11(a);
- 23 (4) Notification that any interested party is entitled  
24 to support, oppose, or otherwise respond to the  
25 transferee's application, either in person or by  
26 counsel, by submitting written comments to the  
27 court or responsible administrative authority or by  
28 participating in the hearing; and
- 29 (5) Notification of the time and place of the hearing  
30 and notification of the manner in which and the  
31 time by which written responses to the application  
32 must be filed in order to be considered by the  
33 court or responsible administrative authority.

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

38 "§ 1-543.15. No waiver; penalties.

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

40 (b) Any payee who has transferred structured settlement  
41 payment rights to a transferee without knowledge of the  
42 requirements set out in this Article may bring an action against  
43 the transferee to recover actual monetary loss or for damages up  
44 to five thousand dollars (\$5,000) for the violation by the

1 transferee, or bring actions for both. The payee is entitled to  
2 attorneys' fees and costs incurred to enforce this Article. In  
3 addition, all unpaid structured settlement payment rights  
4 transferred as a result of a violation of this Article by any  
5 transferee shall be reconveyed to the payee.

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

11 "§ 1-543.16. Construction.


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

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

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

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

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



# SENATE BILL 746: Structured Settlement Protection Act

**BILL ANALYSIS**

**Committee:** House Judiciary I  
**Date:** May 20, 1999  
**Version:** 2nd Edition

**Introduced by:** Sen. Cooper  
**Summary by:** O. Walker Reagan, Staff  
 Attorney; Susan L. Hayes,  
 Committee Counsel

**SUMMARY:** *Senate Bill 746 would enact the Structured Settlement Protection Act to establish certain minimal requirements for the transfers or assignment of structured settlement rights to be considered valid and enforceable.*

**CURRENT LAW:** There is no specific statutory law in North Carolina which governs the transfer or assignment of structured settlement proceeds to other third parties. Structured settlement agreements are either contracts between two parties or agreements of the parties recognized by the court and enforced by order of the court as a consent agreement. Assignment of those rights would typically be as a matter of contract.

**BILL ANALYSIS:** Senate Bill 746 would require that an agreement transferring or assigning the rights to receive structured settlement proceeds in the future must be approved by the court or administrative agency authorized to approve the settlement and must meet minimal disclosure requirements as to the effect and costs of the assignment.

Section 1 of the bill creates a new Article 44B in Chapter 1 to be known as the NC Structured Settlement Protection Act. All references are to G.S. 1-543.\_\_\_\_.

Section .11 sets out the requirements that must be satisfied before a transfer of structured settlement rights is effective. This section requires that the transfer be approved in advance by the court or responsible administrative authority based upon a judicial or administrative finding that:

1. The transfer complies with the law.
2. The person assigning their rights in the settlement payments (the "payee") has received the statutory disclosures of the costs and effects of the transfer to the person receiving the rights to future payments (the "transferee").
3. The transferee has established that the transfer is necessary for the to avoid an imminent financial hardship and would not subject the payee or the payee's dependents to future financial hardship.
4. The payee has received independent professional advice on the effects of the transfer.
5. If the transfer is contrary to the terms of the structured settlement, all the parties to the settlement and the court that originally approved the settlement have approved the transfer.



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 746

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)  
Page 1 of \_\_\_\_

S746-ASA-061

Date \_\_\_\_\_, 1999

Comm. Sub. [YES]  
Amends Title []  
S746-CSR-001

Representative \_\_\_\_\_

1 moves to amend the bill on page 2, line 38-44, through page 3, lines  
2 1-6  
3 by rewriting the lines to read:  
4 "(3) The transfer is in the best interest of the payee."  
5  
6

SIGNED Martin Nesbitt  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

**State of North Carolina**

Department of Justice

P. O. Box 629

RALEIGH

27602-0629

MICHAEL F. EASLEY  
ATTORNEY GENERAL

CONSUMER PROTECTION

919-716-6000

Fax: 919-716-6050

June 17, 1999

Representative Joe Hackney  
Chairman, House Judiciary I Committee  
Room 2207, Legislative Office Building  
Raleigh NC 27601-1096

Re: Structured Settlement Protection Act (SB 746)

Dear Representative Hackney:

This letter is to voice the Attorney General's strong support for the Structured Settlement Protection Act. This bill is a much needed consumer protection measure to address abuses which occur when factoring companies purchase the rights to future payments from settlements entered into by North Carolina residents. These abuses include steep discount rates, repeated contact with the consumers to induce the sale of further payments after an initial transaction, abusive indemnity provisions in favor of the factoring companies and the entry of confessions of judgments in foreign jurisdictions for the full amount purchased if payments to the factoring company are interrupted for any reason.

The provisions of the Structured Settlement Protection Act, which compel disclosures, provide for Court approval, and limit the discount rate, will prevent the abuses noted above. These provisions allow consumers flexibility to deal with circumstances not anticipated at the time of the settlement and assure that such North Carolina consumers are treated fairly.

Proposals by the factoring companies to permit loans secured by structured settlement payments or purchases of five or ten thousand dollar lump sums without the consumer protections in the bill would circumvent the whole purpose of the legislation so as to make it virtually meaningless. I urge you to pass the Structured Settlement Protection Act with meaningful consumer protections which include disclosure, Court approval of all purchases and loans, and a strict discount rate cap.

We would be happy to discuss this matter with you should you have any questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Alan S. Hirsch".

Alan S. Hirsch  
Special Deputy Attorney General

cc: House Judiciary I Committee Members



# **HOUSE JUDICIARY I COMMITTEE**

**July 1, 1999**

## **Agenda**

**Senate Bill 746 – Structured Settlement Protection Act  
Senator Cooper**

**Senate Bill 995 - Police Peer Counselor Privilege  
Senator Odom**

HOUSE JUDICIARY I COMMITTEE

July 1, 1999

Minutes

The House Judiciary I Committee met on Thursday, July 1, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Boyd-McIntyre, Ellis, Gardner, Gray, Insko, Nesbitt, Redwine and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated **Senate Bill 746, AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT** would be the first bill for discussion. He reminded the committee that a proposed committee substitute had been adopted for the purpose of discussion on May 20, 1999, and that a Nesbitt amendment was adopted on June 17, 1999. He noted that much discussion had taken place regarding the bill and that presently there were two competing versions of the bill. He said that it was his hope to reconcile the versions and get the bill out, if that is the will of the committee to do so.

Ms. Susan L. Hayes, Committee Counsel, was recognized to identify the two versions, and note the differences in them. Ms. Hayes stated that the version identified by the drafting code "004" was the Nesbitt version, (Attachment II) and the "005" was the Hackney version, (Attachment III). She then identified the following differences in the versions: The Nesbitt version had a legislative intent statute stating that the process should be fast and fair, and is not intended to tie the process up and make it impossible to do. A second difference is found in the Hackney version in the definition of "applicable law." This version would incorporate more of the conflicts of loss procedures if the structured settlement or contract had been signed in another state, and another states' law may or may not apply to some aspects of whether or not a settlement is transferred. The Nesbitt version contains a statute that would basically void any provision of structured settlement contract that attempts to prohibit its transfer. The Hackney version does not have this provision. The Hackney version contains language that says, "will not contravene other applicable law" and pertains to whether or not other applicable law is applied. The Nesbitt version does not contain this language. Both versions contain language to limit the amount of fees that a transferee may charge to the payee to 2%. The Hackney version includes filing and legal fees; the Nesbitt version does not. The Hackney version contains new language regarding transfer of periodic payment saying: "Notwithstanding a provision of the structured settlement agreement prohibiting an assignment by the payee, the court may order a transfer of periodic payment rights provided that the court finds that the provisions of this Article are satisfied." The two versions differ in wording on page 7, line 23 (004) and page 7, line 30-31 (005). The 004 version states: "Any payee who has transferred structured settlement payment rights to a transferee without **'complying'** with this Article may bring an action against the transferee.... And the 005 version uses the word **'knowledge'**."

Chairman Hackney stated that he preferred the Nesbitt language of **complying**. Ms. Hayes noted that she would make that technical correction.

The committee heard from Mr. Dave Horne, Smith-Anderson Law Firm, and Mr. Sandy Sands, Association of Settlement Purchasers regarding the differences in the two versions.

Representative Nesbitt stated that he was not satisfied with either version, but that he was attempting to make the process simple.

Committee discussion followed.

The committee heard from Mr. Michael Schaul. A broker of structured settlements.

To summarize the changes under suggestion, Chairman Hackney stated that legislative intent would be removed from the Nesbitt version as well as the applicable law section of the Hackney version. The words "or insurance" would be added to the definition of annuity issuer, to read: "Annuity issuer means an insurer that has issued an annuity **or insurance** contract used to fund periodic payments under a structured settlement." The restriction on transfer invalid language in the Nesbitt would be removed. The words "and will not contravene other applicable law" would be removed from page 4, line 10 of the Hackney version.

The question before the committee was adoption of the suggested changes that reconciled the differences in the versions of the bill. The committee voted to accept the suggested changes. Representative Gray voted in opposition.

The remaining change under discussion was the language regarding legal fees and filing fees.

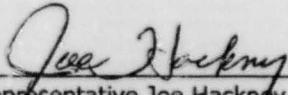
Committee discussion followed.

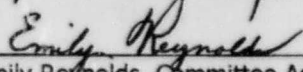
Representative Ellis moved to leave the filing fees and legal fees in the bill. By a vote of 7-2, the motion carried.

Representative Ellis moved to limit the provisions to minors and incompetents. The motion failed. The motion failed.

Representative Gray moved to give a favorable report for a House committee substitute incorporating the provisions as agreed by the committee during this meeting, and an unfavorable report as to the Senate committee substitute bill. The motion carried, (Attachment IV). A copy of the committee substitute is attached, (Attachment V).

The meeting was adjourned.

  
\_\_\_\_\_  
Representative Joe Hackney, Chairman

  
\_\_\_\_\_  
Emily Reynolds, Committee Assistant



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 746

Judiciary I Committee Substitute Adopted 4/21/99

PROPOSED HOUSE COMMITTEE SUBSTITUTE

S746-PCSSA-004 *Nesbitt*

Attention: Line Numbers May Change After Adoption

Short Title: Structured Settlement Protection Act. (Public)

Sponsors:

Referred to:

April 5, 1999

- 1 A BILL TO BE ENTITLED  
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8 "Structured Settlement Protection Act.  
9 "§ 1-543.10. Title.  
10 This Article may be cited as the North Carolina Structured  
11 Settlement Protection Act.  
12 "§ 1-543.11. Legislative intent.  
13 It is the intent of this legislation to provide a clear, fair,  
14 and expeditious processing of all requested transfers  
15 notwithstanding the existence of any contractual or other  
16 limitations or prohibitions on assignment, alienation or  
17 encumbrances of the structured settlement payment rights.  
18 "§ 1-543.12. Definitions.  
19 For purposes of this Article:

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

- 1           (8) 'Settled claim' means the original tort claim  
2           resolved by a structured settlement;
- 3           (9) 'Structured settlement' means an arrangement for  
4           periodic payment of damages for personal injuries  
5           established by settlement or judgment in resolution  
6           of a tort claim;
- 7           (10) 'Structured settlement agreement' means the  
8           agreement, judgment, stipulation, or release  
9           embodying the terms of a structured settlement,  
10           including the rights of the payee to receive  
11           periodic payments;
- 12           (11) 'Structured settlement obligor' means, with respect  
13           to any structured settlement, the party that has  
14           the continuing periodic payment obligation to the  
15           payee under a structured settlement agreement or a  
16           qualified assignment agreement;
- 17           (12) 'Structured settlement payment rights' means rights  
18           to receive periodic payments (including lump-sum  
19           payments) under a structured settlement, whether  
20           from the settlement obligor or the annuity issuer,  
21           where:
- 22           a. The payee is domiciled in this State;  
23           b. The structured settlement agreement was  
24           approved by a court or responsible  
25           administrative authority in this State; or  
26           c. The settled claim was pending before the  
27           courts of this State when the parties entered  
28           into the structured settlement agreement;
- 29           (13) 'Transfer' means any sale, assignment, pledge,  
30           hypothecation, or other form of alienation or  
31           encumbrance made by a payee for consideration;
- 32           (14) 'Terms of the structured settlement' include, with  
33           respect to any structured settlement, the terms of  
34           the structured settlement agreement, the annuity  
35           contract, any qualified assignment agreement, and  
36           any order or approval of any court or responsible  
37           administrative authority or other government  
38           authority authorizing or approving such structured  
39           settlement; and
- 40           (15) 'Transfer agreement' means the agreement providing  
41           for transfer of structured settlement payment  
42           rights from a payee to a transferee.
- 43    "§ 1-543.13. Restriction on transfer invalid.

1 Any provision in a structured settlement agreement that  
2 prohibits the payee of structured settlement payment rights from  
3 transferring the right to receive payment to another party is  
4 against public policy and is void and unenforceable.

5 "§ 1-543.14. Structured settlement payment rights.

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

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

- 1                   for the structured settlement payments to be  
2                   transferred; and  
3            i.   The amount of any penalty and the aggregate  
4                   amount of any liquidated damages (inclusive of  
5                   penalties) payable by the payee in the event  
6                   of any breach of the transfer agreement by the  
7                   payee.
- 8           (3) The transfer is in the best interest of the payee.  
9           (4) The payee has received independent professional  
10                   advice regarding the legal, tax, and financial  
11                   implications of the transfer;  
12           (5) The transferee has given written notice of the  
13                   transferee's name, address, and taxpayer  
14                   identification number to the annuity issuer and the  
15                   structured settlement obligor and has filed a copy  
16                   of such notice with the court or responsible  
17                   administrative authority;  
18           (6) The discount rate used in determining discounted  
19                   present value of the structured settlement payment  
20                   rights does not exceed an annual percentage rate of  
21                   prime plus five percentage points calculated as if  
22                   the net amount payable to the payee, as provided in  
23                   sub-subdivision (2)f. of this section, was the  
24                   principal of a consumer loan made by the transferee  
25                   to the payee, and if the structured settlement  
26                   payments to be transferred to the transferee were  
27                   the payee's payments of principal plus interest on  
28                   such loan. For purposes of this subsection, the  
29                   prime rate shall be as reported by the Federal  
30                   Reserve Statistical Release H.15 on the first  
31                   Monday of the month in which the transfer agreement  
32                   is signed by both the payee and the transferee,  
33                   except when the transfer agreement is signed prior  
34                   to the first Monday of that month then the prime  
35                   rate shall be as reported by the Federal Reserve  
36                   Statistical Release H.15 on the first Monday of the  
37                   preceeding month;  
38           (7) Any brokers' commissions, service charges,  
39                   application fees, processing fees, closing costs,  
40                   administrative fees, notary fees and other  
41                   commissions, fees, costs, expenses, and charges  
42                   payable by the payee or deductible from the gross  
43                   amount otherwise payable to the payee, do not

1 exceed two percent (2%) of the net amount payable  
2 to the payee; and

3 (8) The transfer of structured settlement payment  
4 rights is fair and reasonable.

5 If the court or responsible administrative authority authorizes  
6 the transfer pursuant to this section, the court or responsible  
7 administrative authority shall order the structured settlement  
8 obligor to execute an acknowledgment of assignment letter on  
9 behalf of the transferee for the amount of the structured  
10 settlement payment rights to be transferred.

11 "§ 1-543.15. Jurisdiction.

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

18 (b) Where the structured settlement agreement was entered into  
19 prior to the commencement of litigation or administrative  
20 proceedings, or after the commencement of litigation outside this  
21 State, the Superior Court Division of the General Court of  
22 Justice shall have nonexclusive original jurisdiction over any  
23 application for authorization under this Article of a transfer of  
24 structured settlement payment rights.

25 "§ 1-543.16. Procedure for approval of transfers.

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

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

41 (c) Not less than 30 days prior to the scheduled hearing on  
42 any application for authorization of a transfer of structured  
43 settlement payment rights under this Article, the transferee  
44 shall file with the proper court or responsible administrative

1 authority and serve on any other government authority which  
2 previously approved the structured settlement, on all interested  
3 parties as defined in G.S. 1-543.12(4), and on the Attorney  
4 General, a notice of the proposed transfer and the application  
5 for its authorization, including in such notice:

- 6 (1) A copy of the transferee's application;
- 7 (2) A copy of the transfer agreement;
- 8 (3) A copy of the disclosure statement required under  
9 G.S. 1-543.14(a)(2);
- 10 (4) Notification that any interested party is entitled  
11 to support, oppose, or otherwise respond to the  
12 transferee's application, either in person or by  
13 counsel, by submitting written comments to the  
14 court or responsible administrative authority or by  
15 participating in the hearing; and
- 16 (5) Notification of the time and place of the hearing  
17 and notification of the manner in which and the  
18 time by which written responses to the application  
19 must be filed in order to be considered by the  
20 court or responsible administrative authority.

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

25 "§ 1-543.17. No waiver; penalties.

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

27 (b) Any payee who has transferred structured settlement  
28 payment rights to a transferee without complying with this  
29 Article may bring an action against the transferee to recover  
30 actual monetary loss or for damages up to five thousand dollars  
31 (\$5,000) for the violation by the transferee, or bring actions  
32 for both. The payee is entitled to attorneys' fees and costs  
33 incurred to enforce this Article. In addition, all unpaid  
34 structured settlement payment rights transferred in violation of  
35 this Article by any transferee shall be reconveyed to the payee.

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

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

43 "§ 1-394.1. Special proceedings to determine authority to  
44 transfer structured settlement payment rights.

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

9           Section 3. This act shall apply to any transfer of  
10 structured settlement payment rights under a transfer agreement  
11 entered into on or after October 1, 1999, provided that this act  
12 shall not apply to any transfer of structured settlement payment  
13 rights under a structured settlement agreement entered into or  
14 effective prior to that date where the transfer does not  
15 contravene the terms of the structured settlement. Nothing  
16 contained herein shall imply that any transfer under a transfer  
17 agreement reached prior to October 1, 1999, is effective.

## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 746

Judiciary I Committee Substitute Adopted 4/21/99

PROPOSED HOUSE COMMITTEE SUBSTITUTE

S746-PCSSA-005 (Hickory)

Attention: Line Numbers May Change After Adoption

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  
 6 by adding a new 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  
 11 Settlement Protection Act.  
 12 "§ 1-543.11. Definitions.  
 13 For purposes of this Article:  
 14 (1) 'Annuity issuer' means an insurer that has issued  
 15 an insurance contract used to fund periodic  
 16 payments under a structured settlement;  
 17 (2) 'Applicable law' means:  
 18 a. The federal laws of the United States; and

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

- 1           (9) 'Settled claim' means the original tort claim  
2           resolved by a structured settlement;
- 3           (10) 'Structured settlement' means an arrangement for  
4           periodic payment of damages for personal injuries  
5           established by settlement or judgment in resolution  
6           of a tort claim;
- 7           (11) 'Structured settlement agreement' means the  
8           agreement, judgment, stipulation, or release  
9           embodying the terms of a structured settlement,  
10           including the rights of the payee to receive  
11           periodic payments;
- 12           (12) 'Structured settlement obligor' means, with respect  
13           to any structured settlement, the party that has  
14           the continuing periodic payment obligation to the  
15           payee under a structured settlement agreement or a  
16           qualified assignment agreement;
- 17           (13) 'Structured settlement payment rights' means rights  
18           to receive periodic payments (including lump-sum  
19           payments) under a structured settlement, whether  
20           from the settlement obligor or the annuity issuer,  
21           where:
- 22           a. The payee is domiciled in this State;  
23           b. The structured settlement agreement was  
24           approved by a court or responsible  
25           administrative authority in this State; or  
26           c. The settled claim was pending before the  
27           courts of this State when the parties entered  
28           into the structured settlement agreement;
- 29           (14) 'Transfer' means any sale, assignment, pledge,  
30           hypothecation, or other form of alienation or  
31           encumbrance made by a payee for consideration;
- 32           (15) 'Terms of the structured settlement' include, with  
33           respect to any structured settlement, the terms of  
34           the structured settlement agreement, the annuity  
35           contract, any qualified assignment agreement, and  
36           any order or approval of any court or responsible  
37           administrative authority or other government  
38           authority authorizing or approving such structured  
39           settlement; and
- 40           (16) 'Transfer agreement' means the agreement providing  
41           for transfer of structured settlement payment  
42           rights from a payee to a transferee.
- 43           "§ 1-543.12. Structured settlement payment rights.

1 No direct or indirect transfer of structured settlement payment  
2 rights shall be effective, and no structured settlement obligor  
3 or annuity issuer shall be required to make any payment directly  
4 or indirectly to any transferee of structured settlement payment  
5 rights unless the transfer has been authorized in advance in a  
6 final order of a court of competent jurisdiction or a responsible  
7 administrative authority based on express findings by such court  
8 or responsible administrative authority that:

- 9           (1) The transfer complies with the requirements of this  
10           Article and will not contravene other applicable  
11           law;  
12           (2) Not less than 10 days prior to the date on which  
13           the payee first incurred any obligation with  
14           respect to the transfer, the transferee has  
15           provided to the payee a disclosure statement in  
16           bold type, no smaller than 14 point setting forth:  
17           a. The amounts and due dates of the structured  
18           settlement payments to be transferred;  
19           b. The aggregate amount of such payments;  
20           c. The discounted present value of such payments;  
21           d. The gross amount payable to the payee in  
22           exchange for such payments;  
23           e. An itemized listing of all brokers'  
24           commissions, service charges, application  
25           fees, processing fees, closing costs, filing  
26           fees, administrative fees, legal fees, notary  
27           fees and other commissions, fees, costs,  
28           expenses, and charges payable by the payee or  
29           deductible from the gross amount otherwise  
30           payable to the payee;  
31           f. The net amount payable to the payee after  
32           deduction of all commissions, fees, costs,  
33           expenses, and charges described in sub-  
34           subdivision e. of this subdivision;  
35           g. The quotient (expressed as a percentage)  
36           obtained by dividing the net payment amount by  
37           the discounted present value of the payments;  
38           h. The discount rate used by the transferee to  
39           determine the net amount payable to the payee  
40           for the structured settlement payments to be  
41           transferred; and  
42           i. The amount of any penalty and the aggregate  
43           amount of any liquidated damages (inclusive of  
44           penalties) payable by the payee in the event

- 1                   of any breach of the transfer agreement by the  
2                   payee.
- 3       (3) The transfer is in the best interest of the payee.  
4       (4) The payee has received independent professional  
5       advice regarding the legal, tax, and financial  
6       implications of the transfer;
- 7       (5) The transferee has given written notice of the  
8       transferee's name, address, and taxpayer  
9       identification number to the annuity issuer and the  
10       structured settlement obligor and has filed a copy  
11       of such notice with the court or responsible  
12       administrative authority;
- 13       (6) The discount rate used in determining the net  
14       amount payable to the payee, as provided in  
15       subsection (2) of this section, does not exceed an  
16       annual percentage rate of prime plus five  
17       percentage points calculated as if the net amount  
18       payable to the payee, as provided in sub-  
19       subdivision (2)f. of this section, was the  
20       principal of a consumer loan made by the transferee  
21       to the payee, and if the structured settlement  
22       payments to be transferred to the transferee were  
23       the payee's payments of principal plus interest on  
24       such loan. For purposes of this subsection, the  
25       prime rate shall be as reported by the Federal  
26       Reserve Statistical Release H.15 on the first  
27       Monday of the month in which the transfer agreement  
28       is signed by both the payee and the transferee,  
29       except when the transfer agreement is signed prior  
30       to the first Monday of that month then the prime  
31       rate shall be as reported by the Federal Reserve  
32       Statistical Release H.15 on the first Monday of the  
33       preceeding month;
- 34       (7) Any brokers' commissions, service charges,  
35       application fees, processing fees, closing costs,  
36       filing fees, administrative fees, legal fees,  
37       notary fees and other commissions, fees, costs,  
38       expenses, and charges payable by the payee or  
39       deductible from the gross amount otherwise payable  
40       to the payee, do not exceed two percent (2%) of the  
41       net amount payable to the payee; and
- 42       (8) The transfer of structured settlement payment  
43       rights is fair and reasonable.

1           (9) Notwithstanding a provision of the structured  
2           settlement agreement prohibiting an assignment by  
3           the payee, the court may order a transfer of  
4           periodic payment rights provided that the court  
5           finds that the provisions of this Article are  
6           satisfied.

7           If the court or responsible administrative authority authorizes  
8           the transfer pursuant to this section, the court or responsible  
9           administrative authority shall order the structured settlement  
10           obligor to execute an acknowledgment of assignment letter on  
11           behalf of the transferee for the amount of the structured  
12           settlement payment rights to be transferred.

13           "§ 1-543.13. Jurisdiction.

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

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

27           "§ 1-543.14. Procedure for approval of transfers.

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

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

43           (c) Not less than 30 days prior to the scheduled hearing on  
44           any application for authorization of a transfer of structured

1 settlement payment rights under this Article, the transferee  
2 shall file with the proper court or responsible administrative  
3 authority and serve on any other government authority which  
4 previously approved the structured settlement, on all interested  
5 parties as defined in G.S. 1-543.11(5), and on the Attorney  
6 General, a notice of the proposed transfer and the application  
7 for its authorization, including in such notice:

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

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

27 "§ 1-543.15. No waiver; penalties.

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

29       (b) Any payee who has transferred structured settlement  
30 payment rights to a transferee without knowledge of the  
31 requirements set out in this Article may bring an action against  
32 the transferee to recover actual monetary loss or for damages up  
33 to five thousand dollars (\$5,000) for the violation by the  
34 transferee, or bring actions for both. The payee is entitled to  
35 attorneys' fees and costs incurred to enforce this Article. In  
36 addition, all unpaid structured settlement payment rights  
37 transferred as a result of a violation of this Article by any  
38 transferee shall be reconveyed to the payee.

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

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

3 "§ 1-394.1. Special proceedings to determine authority to  
4 transfer structured settlement payment rights.

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

13 Section 3. This act shall apply to any transfer of  
14 structured settlement payment rights under a transfer agreement  
15 entered into on or after October 1, 1999, provided that this act  
16 shall not apply to any transfer of structured settlement payment  
17 rights under a structured settlement agreement entered into or  
18 effective prior to that date where the transfer does not  
19 contravene the terms of the structured settlement. Nothing  
20 contained herein shall imply that any transfer under a transfer  
21 agreement reached prior to October 1, 1999, is effective.

**1999 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hackney** for the Committee on **JUDICIARY I**.

Committee Substitute for  
S.B. 746 A BILL TO BE ENTITLED AN ACT TO CREATE THE NORTH CAROLINA  
STRUCTURED SETTLEMENT PROTECTION ACT.

- With a favorable report.
- With a favorable report and recommendation that the bill be re-referred to the Committee on  
Appropriations  Finance  .
- With a favorable report, as amended.
- With a favorable report, as amended, and recommendation that the bill be re-referred to the  
Committee on Appropriations  Finance  .
- With a favorable report as to committee substitute bill (#      ),  which changes the title,  
unfavorable as to (original bill) (Committee Substitute Bill #      ), (and recommendation  
that the committee substitute bill #      ) be re-referred to the Committee on      .)
- With a favorable report as to House committee substitute bill (~~#~~),  which changes  
~~the title~~, unfavorable as to Senate committee substitute bill      .
- With an unfavorable report.
- With recommendation that the House concur.
- With recommendation that the House do not concur.
- With recommendation that the House do not concur; request conferees.
- With recommendation that the House concur; committee believes bill to be material.
- With an unfavorable report, with a Minority Report attached.
- Without prejudice.
- With an indefinite postponement report.
- With an indefinite postponement report, with a Minority Report attached.
- With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 746  
 Judiciary I Committee Substitute Adopted 4/21/99  
 Proposed House Committee Substitute S746-PCS3851-SA

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  
 6 new 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  
 11 Act.

12 "§ 1-543.11. Definitions.

13 For purposes of this Article:

- 14 (1) 'Annuity issuer' means an insurer that has issued an annuity or  
 15 insurance contract used to fund periodic payments under a  
 16 structured settlement;  
 17 (2) 'Discounted present value' means the fair present value of future  
 18 payments, as determined by discounting such payments to the  
 19 present utilizing the tables adopted in Article 5 of Chapter 8 of the  
 20 General Statutes;

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

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

18 **§ 1-543.12. Structured settlement payment rights.**

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

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

- 1           g.    The quotient (expressed as a percentage) obtained by  
2           dividing the net payment amount by the discounted present  
3           value of the payments;
- 4           h.    The discount rate used by the transferee to determine the  
5           net amount payable to the payee for the structured  
6           settlement 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  
9           payee in the event of any breach of the transfer agreement  
10           by the payee;
- 11       (3)   The transfer is in the best interest of the payee;
- 12       (4)   The payee has received independent professional advice regarding  
13       the legal, tax, and financial implications of the transfer;
- 14       (5)   The transferee has given written notice of the transferee's name,  
15       address, and taxpayer identification number to the annuity issuer  
16       and the structured settlement obligor and has filed a copy of such  
17       notice with the court or responsible administrative authority;
- 18       (6)   The discount rate used in determining the net amount payable to  
19       the payee, as provided in subdivision (2) of this section, does not  
20       exceed an annual percentage rate of prime plus five percentage  
21       points calculated as if the net amount payable to the payee, as  
22       provided in sub-subdivision (2)f. of this section, was the principal  
23       of a consumer loan made by the transferee to the payee, and if the  
24       structured settlement payments to be transferred to the transferee  
25       were the payee's payments of principal plus interest on such loan.  
26       For purposes of this subdivision, the prime rate shall be as  
27       reported by the Federal Reserve Statistical Release H.15 on the  
28       first Monday of the month in which the transfer agreement is  
29       signed by both the payee and the transferee, except when the  
30       transfer agreement is signed prior to the first Monday of that  
31       month then the prime rate shall be as reported by the Federal  
32       Reserve Statistical Release H.15 on the first Monday of the  
33       preceding month;
- 34       (7)   Any brokers' commissions, service charges, application fees,  
35       processing fees, closing costs, filing fees, administrative fees, legal  
36       fees, notary fees and other commissions, fees, costs, expenses, and  
37       charges payable by the payee or deductible from the gross amount  
38       otherwise payable to the payee do not exceed two percent (2%) of  
39       the net amount payable to the payee;
- 40       (8)   The transfer of structured settlement payment rights is fair and  
41       reasonable; and
- 42       (9)   Notwithstanding a provision of the structured settlement agreement  
43       prohibiting an assignment by the payee, the court may order a

1           transfer of periodic payment rights provided that the court finds  
2           that the provisions of this Article are satisfied.

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

8       "§ 1-543.13. Jurisdiction.

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

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

20       "§ 1-543.14. Procedure for approval of transfers.

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

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

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

- 40           (1) A copy of the transferee's application;  
41           (2) A copy of the transfer agreement;  
42           (3) A copy of the disclosure statement required under G.S. 1-  
43           543.12(a)(2);

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

6           (5) Notification of the time and place of the hearing and notification  
7 of the manner in which and the time by which written responses to  
8 the application must be filed in order to be considered by the court  
9 or responsible administrative authority.

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

13 "§ 1-543.15. No waiver; penalties.

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

15       (b) Any payee who has transferred structured settlement payment rights to a  
16 transferee without complying with this Article may bring an action against the  
17 transferee to recover actual monetary loss or for damages up to five thousand dollars  
18 (\$5,000) for the violation by the transferee, or bring actions for both. The payee is  
19 entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all  
20 unpaid structured settlement payment rights transferred in violation of this Article by  
21 any transferee shall be reconveyed to the payee.

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

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

28 "§ 1-394.1. Special proceedings to determine authority to transfer structured  
29 settlement payment rights.

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

36           Section 3. This act shall apply to any transfer of structured settlement  
37 payment rights under a transfer agreement entered into on or after October 1, 1999,  
38 provided that this act shall not apply to any transfer of structured settlement payment  
39 rights under a structured settlement agreement entered into or effective prior to that  
40 date where the transfer does not contravene the terms of the structured settlement.  
41 Nothing contained herein shall imply that any transfer under a transfer agreement  
42 reached prior to October 1, 1999, is effective.