

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Structured Settlement Protection Act is amended by changing Sections 5, 10, 15, 20, 25, 30, and 35 as follows:

(215 ILCS 153/5)

Sec. 5. Definitions. For purposes of this Act:

"Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

"Dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including maintenance.

"Discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

"Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such

consideration.

"Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.

"Interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party to the structured settlement that has continuing rights or obligations to receive or make payments under such structured settlement.

"Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under item (5) of Section 10 of this Act.

"Payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

"Periodic payments" includes both recurring payments and scheduled future lump sum payments.

"Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time.

~~"Responsible administrative authority" means, with respect to a structured settlement, any government authority vested by~~

~~law with exclusive jurisdiction over the settled claim resolved by such structured settlement.~~

"Settled claim" means the original tort claim ~~or workers' compensation claim~~ resolved by a structured settlement.

"Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim ~~or for periodic payments in settlement of a workers' compensation claim.~~

"Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

"Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

"Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, when:

(1) the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this State;

(2) the structured settlement agreement was approved by a court ~~or responsible administrative authority~~ in this

State; or

(3) the structured settlement agreement is expressly governed by the laws of this State.

"Terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or other approval of any court ~~or responsible administrative authority~~ or other government authority that authorized or approved such structured settlement.

"Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term "transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such insured depository institution or an agent or successor in interest thereof or otherwise to enforce such blanket security interest against the structured settlement payment rights.

"Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

"Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the

payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

"Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

(Source: P.A. 93-502, eff. 1-1-04.)

(215 ILCS 153/10)

Sec. 10. Required disclosures to payee. Not less than 10 ~~3~~ days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth all of the following:

(1) the amounts and due dates of the structured settlement payments to be transferred;

(2) the aggregate amount of the payments;

(3) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the Applicable Federal Rate used in

calculating the discounted present value;

(4) the gross advance amount;

(5) an itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

(6) the net advance amount;

(7) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; ~~and~~

(8) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee; and -

(9) the effective annual interest rate, which must be disclosed in the following statement: "Based on the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are turning over to us, you will, in effect, be paying interest to us at a rate of percent per year."

(Source: P.A. 93-502, eff. 1-1-04.)

(215 ILCS 153/15)

Sec. 15. Approval of transfers of structured settlement

payment rights. No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order ~~or order of a responsible administrative authority~~ based on express findings by such court ~~or responsible administrative authority~~ that:

(1) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

(2) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived in writing the opportunity to seek and receive such advice ~~in writing~~; and

(3) the transfer does not contravene any applicable statute or the order of any court or other government authority.

(Source: P.A. 93-502, eff. 1-1-04.)

(215 ILCS 153/20)

Sec. 20. Effects of transfer of structured settlement payment rights. Following a transfer of structured settlement payment rights approved under this Act:

(1) the structured settlement obligor and the annuity

issuer shall, as to all parties except the transferee or an assignee designated by the transferee, be discharged and released from any and all liability for the transferred payments, and the discharge and release shall not be affected by the failure of any party to the transfer to comply with this Act or with the order of the court approving the transfer;

(2) the transferee shall be liable to the structured settlement obligor and the annuity issuer:

(A) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by the parties as a consequence of the transfer; and

(B) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by the structured settlement obligor or annuity issuer ~~parties~~ with the order of the court ~~or responsible administrative authority~~ or from arising as a consequence of the transferee's failure of any party to the transfer to comply with this Act;

(3) neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between 2 or more transferees or assignees; and

(4) any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this Act.

(Source: P.A. 93-502, eff. 1-1-04.)

(215 ILCS 153/25)

Sec. 25. Procedure for approval of transfers.

(a) No annuity issuer or structured settlement obligor may make payments on a structured settlement to anyone other than the payee or beneficiary of the payee without prior approval of the circuit court ~~or responsible administrative authority~~. No payee or beneficiary of a payee of a structured settlement may assign in any manner the structured settlement payment rights without the prior approval of the circuit court ~~or responsible administrative authority~~.

(b) An application under this Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and shall be brought in the circuit court of the county in which the payee is domiciled, except that, if the payee is not domiciled in this State, the application may be filed in the court in this State that approved the structured settlement agreement or in the circuit court of the county in this State in which the structured settlement obligor or annuity issuer has its principal place of business ~~an action was or could have been maintained or before any responsible administrative authority that approved the structured settlement agreement~~.

(c) A hearing shall be held on an application for approval of a transfer of structured settlement payment rights. The

payee shall appear in person at the hearing unless the court determines that good cause exists to excuse the payee from appearing. Not less than 20 days prior to the scheduled hearing on an application, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application, including the information and documentation required under subsection (d) of this Section.

(d) In addition to complying with the other requirements of this Act, the application shall include:

(1) the payee's name, age, and county of domicile and the number and ages of the payee's dependents;

(2) a copy of the transfer agreement and disclosure statement;

(3) a description of the reasons why the payee seeks to complete the proposed transfer;

(4) a summary of:

(i) any prior transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, within the 4 years preceding the date of the transfer agreement and any proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, applications for approval of which were denied within the 2 years preceding the date of the transfer agreement;

(ii) any prior transfers by the payee to any person

or entity other than the transferee or an affiliate or an assignee of a transferee or affiliate within the 3 years preceding the date of the transfer agreement and any prior proposed transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval which were denied within the one year preceding the date of the current transfer agreement, to the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee in writing or otherwise are actually known by the transferee;

(5) notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing; and

(6) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than 5 days prior to the hearing, in order to be considered by the court.

(Source: P.A. 93-502, eff. 1-1-04.)

(215 ILCS 153/30)

Sec. 30. General provisions; construction.

(a) The provisions of this Act may not be waived by any payee.

(b) Any transfer agreement entered into on or after the effective date of this Act by a payee who is domiciled ~~resides~~ in this State shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this State. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (1) periodically confirming the payee's survival, and (2) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(d) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the conditions of this Act.

(e) Nothing contained in this Act shall be construed to

authorize any transfer of structured settlement payment rights in contravention of any law ~~or to imply that any transfer under a transfer agreement entered into prior to the effective date of this Act is valid or invalid.~~ A court shall not be precluded from hearing an application for approval of a transfer of payment rights under a structured settlement where the terms of the structured settlement prohibit sale, assignment, or encumbrance of such payment rights, nor shall the interested parties be precluded from waiving or asserting their rights under those terms. The court hearing an application for approval of a transfer of payment rights under such a settlement shall have authority to rule on the merits of the application and any objections to such application.

(f) Compliance with the requirements set forth in Section 10 of this Act and fulfillment of the conditions set forth in Section 15 of this Act shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with those requirements or failure to fulfill those conditions.

(g) Following issuance of a court order approving a transfer of structured settlement payment rights under this Act, the structured settlement obligor and annuity issuer may rely on the court order in redirecting future structured settlement payments to the transferee or an assignee in

accordance with the order.

(h) The changes made to this Section by this amendatory Act of the 99th General Assembly are declarative of existing law.

(Source: P.A. 93-502, eff. 1-1-04.)

(215 ILCS 153/35)

Sec. 35. Applicability. This Act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the 30th day after the effective date of this Act, including any transfer in which the structured settlement obligor and annuity issuer have affirmatively waived, or have not objected to the transfer based upon, the terms of the settlement prohibiting sale, assignment, or encumbrance of the payee's structured settlement payment rights. The changes made to this Section by this amendatory Act of the 99th General Assembly are declarative of existing law; ~~provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to that date is either effective or ineffective.~~

(Source: P.A. 93-502, eff. 1-1-04.)

Section 99. Effective date. This Act takes effect upon becoming law.