

1 AN ACT concerning regulation.

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

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

7 (215 ILCS 153/5)

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

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

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

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

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

1 consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 State; or

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

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

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

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

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

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

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

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

12 (215 ILCS 153/10)

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

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

20 (2) the aggregate amount of the payments;

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

- 1 calculating the discounted present value;
- 2 (4) the gross advance amount;
- 3 (5) an itemized listing of all applicable transfer  
4 expenses, other than attorneys' fees and related  
5 disbursements payable in connection with the transferee's  
6 application for approval of the transfer, and the  
7 transferee's best estimate of the amount of any such fees  
8 and disbursements;
- 9 (6) the net advance amount;
- 10 (7) the amount of any penalties or liquidated damages  
11 payable by the payee in the event of any breach of the  
12 transfer agreement by the payee; ~~and~~
- 13 (8) a statement that the payee has the right to cancel  
14 the transfer agreement, without penalty or further  
15 obligation, not later than the third business day after the  
16 date the agreement is signed by the payee; and -
- 17 (9) the effective annual interest rate, which must be  
18 disclosed in the following statement: "Based on the net  
19 amount that you will receive from us and the amounts and  
20 timing of the structured settlement payments that you are  
21 turning over to us, you will, in effect, be paying interest  
22 to us at a rate of .... percent per year.".

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

24 (215 ILCS 153/15)

25 Sec. 15. Approval of transfers of structured settlement

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

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

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

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

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

21 (215 ILCS 153/20)

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

25 (1) the structured settlement obligor and the annuity

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

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

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

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

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

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

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

2 (215 ILCS 153/25)

3 Sec. 25. Procedure for approval of transfers.

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

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

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

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

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

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

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

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

16 (4) a summary of:

17 (i) any prior transfers by the payee to the  
18 transferee or an affiliate, or through the transferee  
19 or an affiliate to an assignee, within the 4 years  
20 preceding the date of the transfer agreement and any  
21 proposed transfers by the payee to the transferee or an  
22 affiliate, or through the transferee or an affiliate to  
23 an assignee, applications for approval of which were  
24 denied within the 2 years preceding the date of the  
25 transfer agreement;

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

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

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

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

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

24 (215 ILCS 153/30)

25 Sec. 30. General provisions; construction.

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

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

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

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

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

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

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

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

1 accordance with the order.

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

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

5 (215 ILCS 153/35)

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

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

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