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National Council of Insurance Legislators (NCOIL)

Model State Structured Settlement Protection Act

**Supported by the NCOIL Executive Committee on February 27, 2004, July 22, 2006, July 17, 2011, November 20, 2016, July 18, 2021, November 20, 2021, March 6, 2022, and July 16, 2022.*

**Originally Sponsored by Sen. Carroll Leavell (NM). July 2022 amendments sponsored by Sen. Paul Utke (MN); co-sponsored by Rep. Bart Rowland (KY).*

SECTION 1. TITLE.

This Act shall be known and referred to as the “Structured Settlement Protection Act.”

SECTION 2. DEFINITIONS.

For purposes of this Act--

(a) “annuity issuer” means an insurer that has issued a contract to fund periodic payments under a structured settlement;

(b) “assignee” means a party acquiring or proposing to acquire structured settlement payment rights from a transferee of such rights.

(c) “dependents” include a payee’s spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;

(d) “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;

(e) “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;

(f) “independent professional advice” means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

(g) “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 such structured settlement that has continuing rights or obligations to receive or make payments under such structured settlement;

(h) “net advance amount” means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 3(e) of this Act;

(i) “payee” means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(j) “periodic payments” includes both recurring payments and scheduled future lump sum payments;

(k) “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;

(l) “renewal date” means the date on which a registered structured settlement purchase company is required to have renewed their registration pursuant to Section 3 of this Act, which date shall be one year after the initial registration or any subsequent renewal.

[(m) “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;]

Drafting Note 1: this Model recognizes that in some states a structured settlement may have been approved by an administrative body, i.e., a “responsible administrative authority,” rather than a court. The definition of “responsible administrative authority” and subsequent references to that term are bracketed, because they can appropriately be omitted in a State whose laws do not provide for administrative approval of structured settlements (or in which the only settlements that receive administrative approval are workers’ compensation settlements and such settlements are excluded from the definition of “structured settlement” as discussed in note 2 below).

(n) “settled claim” means the original tort claim [or workers’ compensation claim] resolved by a structured settlement;

Drafting Note 2: References to workers’ compensation are bracketed, because in some States transfers of payment rights under workers’ compensation settlements are incompatible with workers’ compensation laws.

(o) “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];

(p) “structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement;

(q) “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;

(r) “structured settlement payment rights” means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where

—
(i) the payee [resides] [is domiciled] in this State; or

Drafting Note 3: This definition, which determines the applicability of a statute based on this Model, refers to the place where a structured settlement payee has his or her primary, continuing residence, e.g., where he or she pays State taxes, is registered to vote, is licensed to drive, etc. In some States that place may commonly be referred to as the payee’s “domicile,” in other States it may be referred to as the payee’s “residence.”

(ii) the structured settlement agreement was approved by a court [or responsible administrative authority] in this State

(s) “structured settlement purchase company” means a person that acts as a transferee in this state and who is registered with the [appropriate state agency] pursuant to Section 3 of this Act.

(t) “structured settlement transfer proceeding” means a court proceeding filed by a structured settlement purchase company seeking court approval of a transfer filed in accordance with this Section 6 of this Act.

(u) “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;

(v) “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;

(w) “transfer agreement” means the agreement providing for a transfer of structured settlement payment rights.

(x) “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;

(y) “transfer order” means an order approving a transfer in accordance with Section 6 of this Act;

(z) “transferee” means a party acquiring or proposing to acquire structured settlement payment rights through a transfer;

SECTION 3. REGISTRATION REQUIRED

(a) A person or entity shall not act as a transferee, attempt to acquire structured settlement payment rights through a transfer from a payee who resides in this state, or file a structured settlement transfer proceeding in this state unless the person or entity has registered with the [appropriate state agency] to do business in this state as a structured settlement purchase company.

(b) (1) An applicant's initial registration application shall be submitted on a form prescribed by the [appropriate state agency], and shall include a sworn certification by an owner, officer, director, or manager of the applicant, if the applicant is an [entity, not a natural person], or by the applicant if the applicant is [an individual, a natural person], certifying that the applicant has secured a surety bond, or has been issued a letter of credit, or has posted a cash bond in the amount of \$50,000.00, relative to its business as a structured settlement purchase company in this state. The surety bond, letter of credit, or cash bond is intended to protect payees who do business with a structured settlement purchase company.

(2) The bond shall be payable to the State of [name of state].

(3) The bond, letter of credit, or cash bond shall be effective concurrently with the applicant's registration with the [appropriate state agency] and shall remain in effect for not less than three years after expiration or termination of that registration. The bond, letter of credit, or cash bond shall be renewed each year when the registration of the applicant is renewed.

(4) The applicant shall submit to the [appropriate state agency] a copy of the bond, letter of credit, or cash bond with its registration or renewal application.

(5) The bond, letter of credit, or cash bond is intended to ensure that the structured settlement purchase company will comply with the provisions of this article relative to the payee and perform its obligations to payee under this article, and to provide a source for recovery for the payee should a payee recover a judgment against a structured settlement purchase company for a violation of this Act.

(6) The [appropriate state agency] shall be authorized to set and charge a fee to offset the costs of processing and maintaining the registration required by this section.

(c) Within ten days after a judgment is secured against a structured settlement purchase company by a payee, the structured settlement purchase company shall file a notice with the [appropriate state agency] and the surety providing a copy of the judgment and the name and address of the judgment creditor, and include the status of the matter, including whether the judgment will be appealed, or has been paid or satisfied.

(d) The liability of the surety under the bond shall not be affected by any breach of contract, breach of warranty, failure to pay a premium or other act or omission of the bonded structured settlement purchase company, or by any insolvency or bankruptcy of the structured settlement purchase company.

(e) Neither the bonded structured settlement purchase company nor the surety shall cancel or modify the bond during the term for which it is issued, except with written notice to the [appropriate state agency] at least 20 days prior to the effective date of such cancellation or modification.

(f) In the event of a cancellation of the bond, the registration of the structured settlement purchase company shall automatically expire unless a new surety bond, letter of credit, or cash bond, which complies with this Code section, is filed with the [appropriate state agency]. The cancellation or modification of a bond shall not affect any liability of the bonded surety company incurred before the cancellation or modification of the bond.

(g) An assignee shall not be required to register as a structured settlement purchase company in order to acquire structured settlement payment rights or to take a security interest in structured settlement payment rights that were transferred by the payee to a structured settlement purchase company.

(h) An employee of a structured settlement purchase company, if acting on behalf of the employer structured settlement purchase company in connection with a transfer, is not required to be registered.

(i) A registered structured settlement purchase company shall renew its registration annually, on or before the renewal date, and provide the certifications set forth in this section.

(j) Except as otherwise provided in Section 4, a transfer order signed by a court of competent jurisdiction pursuant to this Act constitutes a qualified order under 26 U.S.C. § 5891. If a transferee to which the transfer order applies is not registered as a structured settlement purchase

company pursuant to this Act at the time the transfer order is signed, the transfer order does not constitute a qualified order under 26 U.S.C. § 5891.

SECTION 4. PROHIBITED PRACTICES; PRIVATE RIGHT OF ACTION; PENALTIES

(a) A transferee, a structured settlement purchase company and an employee or other representative of a transferee or structured settlement purchase company shall not engage in any of the following actions:

(i) Pursue or complete a transfer with a payee without complying with all applicable provisions of this Act.

(ii) Refuse or fail to fund a transfer after court approval of the transfer.

(iii) Acquire structured settlement payment rights from a payee without complying with all applicable provisions of this Act, including, without limitation, obtaining court approval of the transfer in accordance with this Act.

(iv) Intentionally file a structured settlement transfer proceeding in any court other than the court specified in Section 8 of this Act, unless the transferee is required to file in a different court by applicable law.

(v) Except as otherwise provided in this paragraph, pay a commission or finder's fee to any person for facilitating or arranging a structured settlement transfer with a payee. The provisions of this paragraph do not prevent a structured settlement purchase company from paying:

(A) A commission or finder's fee to a person who is a structured settlement purchase company or is an employee of a structured settlement purchase company;

(B) To third parties any routine transfer expenses, including, without limitation, court filing fees, escrow fees, lien recordation fees, judgment and lien search fees, attorney's fees and other similar types of fees relating to a transfer; and

(C) A reasonable referral fee to an attorney, certified public accountant, actuary, licensed insurance agent or other licensed professional adviser in connection with a transfer.

(vi) Intentionally advertise materially false or misleading information regarding its products or services.

(vii) Attempt to coerce, bribe or intimidate a payee seeking to transfer structured settlement payment rights

(viii) Attempt to defraud a payee or any party to a structured settlement transfer or any interested party in a structured settlement transfer proceeding by means of forgery or false identification.

(ix) Except as otherwise provided in this paragraph, intervene in a pending structured settlement transfer proceeding if the transferee or structured settlement purchase company is not a party to the proceeding or an interested party relative to the proposed transfer which is the subject of the pending structured settlement transfer proceeding. The provisions of this paragraph do not prevent a structured settlement purchase company from intervening in a pending structured settlement transfer proceeding if the payee has signed a transfer agreement with the structured settlement purchase company within 60 days before the filing of the pending structured settlement transfer proceeding and the structured settlement purchase company which filed the pending structured settlement transfer proceeding violated any provision of this Act in connection with the proposed transfer that is the subject of the pending structured settlement transfer proceeding.

(x) Except as otherwise provided in this paragraph, knowingly contact a payee who has signed a transfer agreement and is pursuing a proposed transfer with another structured settlement purchase company for the purpose of inducing the payee into cancelling the proposed transfer or transfer agreement with the other structured settlement purchase company if a structured settlement transfer proceeding has been filed by the other structured settlement purchase company and is pending. The provisions of this paragraph do not apply if no hearing has been held in the pending structured settlement transfer proceeding within 90 days after the filing of the pending structured settlement transfer proceeding.

(xi) Fail to dismiss a pending structured settlement transfer proceeding at the request of the payee. A dismissal of a structured settlement proceeding after a structured settlement purchase company has violated the provisions of this paragraph does not exempt the structured settlement purchase company from any liability under this Act.

(b) A payee may pursue a private action as a result of a violation of subsection (a) and may recover all damages and pursue all rights and remedies to which the payee may be entitled pursuant to this Act or any other applicable law.

(c) A structured settlement purchase company may pursue a private action to enforce paragraphs (iv), (vii), (ix), (x) and (xi) of subsection (a) and may recover all damages and pursue all remedies to which the structured settlement purchase company may be entitled pursuant to this Act or any other applicable law.

(d) If a court determines that a structured settlement purchase company or transferee is in violation of subsection (a), the court may:

(i) Revoke the registration of the structured settlement purchase company;

(ii) Suspend the registration of the structured settlement purchase company for a period to be determined at the discretion of the court; and

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

SECTION 5. REQUIRED DISCLOSURES TO PAYEE.

Not less than three (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 —

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

(b) the aggregate amount of such payments;

(c) 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 such discounted present value;

(d) the gross advance amount;

(e) 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;

(f) the effective annual interest rate, which must be disclosed in a statement in the following form: "On the basis of the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, you will, in effect be paying interest to us at a rate of _____ percent per year";

(g) the net advance amount;

(h) 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;

(i) 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

(j) that the payee has the right to seek and receive independent professional advice regarding the proposed transfer and should consider doing so before agreeing to transfer any structured settlement payment rights.

(k) That the payee has the right to seek out and consider additional offers for transferring structured settlement payments and should do so.

SECTION 6. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.

(a) 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 or assignee 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

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

(ii) 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; and

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

(b) No direct or indirect transfer of a minor's structured settlement payment rights by a parent, conservator, or guardian shall be effective and no structured settlement obligor or annuity issuer shall be required to make a payment directly or indirectly to a transferee or assignee of structured settlement payment rights unless, in addition to the findings required under subdivision (a), the court also finds that:

(i) the proceeds of the proposed transfer would be applied solely for support, care, education, health, and welfare of the minor payee; and

(ii) any excess proceeds would be preserved for the future support, care, education, health, and welfare of the minor payee and transferred to the minor payee upon emancipation.

SECTION 7. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.

Following a transfer of structured settlement payment rights under this Act:

(a) The structured settlement obligor and the annuity issuer may rely on the court [or responsible administrative authority] order approving the transfer in redirecting periodic payments to an assignee or transferee in accordance with the order approving the transfer and 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 redirected

payments; and such discharge and release shall not be affected by the failure of any party to the transfer to comply with this chapter or with the court [or responsible administrative authority] order approving the transfer.

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

(i) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer; and

(ii) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by the structured settlement obligor or annuity issuer with the court [or responsible administrative authority] order approving the transfer or from the failure of any party to the transfer to comply with this Act;

(c) 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 two (or more) transferees or assignees; and

(d) 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.

SECTION 8. PROCEDURE FOR APPROVAL OF TRANSFERS.

(a) 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 [court of general jurisdiction or other designated court] in the [county][other political subdivision] in which the payee [resides][is domiciled], except that if the payee [does not reside][or is not domiciled] in this state, or if the structured settlement agreement requires it, the application may be brought in the court [or before the responsible administrative authority] in this state that approved the structured settlement agreement.

(b) At the time an application is made under this Act for the approval of a transfer of structured settlement payment rights, the application of the transferee must include evidence that the transferee is registered to do business in this State as a structured settlement purchase company

(c) A timely 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 [or responsible administrative authority] determines that good cause exists to excuse the payee from appearing in person.

(d) Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 6 of this Act, the transferee shall file with the court [or responsible administrative authority] and serve on all interested

parties (including a parent or other guardian or authorized legal representative of any interested party who is not legally competent) a notice of the proposed transfer and the application for its authorization, including with such notice:

- (i) a copy of the transferee's application;
- (ii) a copy of the transfer agreement;
- (iii) a copy of the disclosure statement required under Section 5 of this Act;
- (iv) the payee's name, age, and county of [residence][domicile] and the number and ages of each of the payee's dependents;
- (v) A summary of:
 - (A) any prior transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, within the four 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, applications for approval of which were denied within the two years preceding the date of the transfer agreement; and
 - (B) any prior transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of the transferee or an affiliate within the three 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 of 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 to the transferee.
- (vi) 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 responsible administrative authority] or by participating in the hearing; and
- (vii) notification of the time and place of the hearing and notification of the manner in which and the date by which written responses to the application must be filed, which date shall be not less than five (5) days prior to the hearing, in order to be considered by the court [or responsible administrative authority].

SECTION 9. 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 resides in this state shall provide that disputes under such 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 (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

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

(e) 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 such transfer to satisfy the conditions of this Act.

(f) Nothing contained in this Act shall affect the validity of any transfer of structured settlement payment rights, whether under a transfer agreement entered into before or after effective date of this Act, in which the structured settlement obligor and annuity issuer waived, or have not asserted their rights under, terms of the structured settlement prohibiting or restricting the sale, assignment or encumbrance of the structured settlement payment rights.

(g) Nothing contained in this Act shall be construed to authorize any transfer of structured settlement payment rights in contravention of any applicable 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.

(h) Compliance with the requirements set forth in Section 3 of this Act and fulfillment of the conditions set forth in Section 4 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 such requirements or failure to fulfill such conditions.

EFFECTIVE DATE. This Act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the [thirtieth (30th)] day after the date of enactment of this Act.