

MODEL STATE STRUCTURED SETTLEMENT PROTECTION ACT – WITH SUGGESTED REVISIONS

Following is a marked, revised version of the Model State Structured Settlement Protection Act, as developed by the National Structured Settlements Trade Association (“NSSTA”), agreed upon by NSSTA and the National Association of Settlement Purchasers in September 2000 and adopted by the Workers’ Compensation Insurance and Executive Committees of the National Conference of Insurance Legislators (NCOIL) on February 26 and 27, 2004 (the “Agreed Model SSPA”). (The structured settlement protection acts (“SSPAs”) enacted to date in 48 States are derived from, and in most cases are closely patterned after, the Agreed Model SSPA or prior, similar model legislation developed by NSSTA.) As it appears below, the text of the Agreed Model SSPA has been revised to incorporate suggested revisions, including (i) supplemental provisions based on amendments enacted recently in several States; and (ii) deletion of provisions that have become superfluous because of the nearly universal adoption of SSPAs. Suggested additions to the Agreed Model SSPA are underlined and appear in bold italic type; suggested deletions appear as crossed-out text. Footnotes identify the reasons for the suggested revisions and, where applicable, the States that have enacted similar revisions.

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) “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;
- (c) “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;
- (d) “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;

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

(f) “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 that has continuing rights or obligations under such structured settlement;

(g) “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;

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

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

(j) “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;

(k) “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;

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

(m) “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;~~¹

¹ Deletion of the references to workers’ compensation claims in Sections 2 (l) and (m) makes the statute wholly inapplicable to transfers of payment rights under structured workers’ compensation settlements. In most States transfers of such payment rights are prohibited or sharply restricted by applicable workers’ compensation law provisions. States that have chosen to exclude workers’ compensation settlements from the definition of “structured settlement” in their SSPAs include Alabama, California, Colorado, Florida, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maryland, Michigan, Montana, Nebraska, New York North Carolina, Ohio, South Carolina, Tennessee, Vermont, Virginia, West Virginia and Wyoming.

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

(o) “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;

(p) “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 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; or~~

~~—— (ii) — the structured settlement agreement was approved by a court or responsible administrative authority in this State; or~~

~~—— (iii) — the structured settlement agreement is expressly governed by the laws of this State;~~²

provided, however, that “structured settlement payment rights” do not include rights of, or rights to receive benefits from, a special needs trust, as described in 42 U.S.C. § 1396p(d)(4), or rights to receive settlement payments allocated for medical expenses under a Medicare set-aside arrangement established pursuant to 42 U.S.C. 1395y (b)(2);³

(q) “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

² The suggested deletions from this definition would eliminate provisions that were designed to make the Agreed Model SSPA broadly applicable when few States had enacted SSPAs. For example, application of the Agreed Model SSPA in an enacting State could be triggered if an insurance company affected by a transfer (i.e., the structured settlement obligor or the annuity issuer) was domiciled in that State – even if the structured settlement payee was domiciled elsewhere. The multiple triggering provisions of the Agreed Model SSPA have become superfluous as a consequence of the enactment of SSPAs in 48 States. Today there is no need to trigger application of the SSPA of any State other than the State in which a payee is domiciled.

³ This proviso would clarify that the statute does not apply to rights to receive structured settlement payments that (i) fund special needs trusts (sometimes also referred to as supplemental needs trusts) for individuals who are severely disabled; or (ii) provide funding for anticipated future medical expenses that might otherwise be borne by Medicare.

approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement;

(r) “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;

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

(t) “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;

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

SECTION 3. 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 net advance amount;

(g) 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~~

(h) 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

(i) *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"; and*

(j) *A price quote from the original annuity issuer or, if such price quote is not readily available from the original annuity issuer, then a price quote from two other annuity issuers, that reflects the current cost of purchasing a comparable annuity providing for payments in the same amounts and on the same due dates specified in paragraph (a) above.*⁴

SECTION 4. 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 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;

⁴ California, Louisiana, Massachusetts and Nebraska require interest rate disclosure as suggested in new paragraph 3 (h). New York requires disclosure of an annuity quote or quotes, as suggested in new paragraph 3(i).

(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 such advice in writing; and

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

SECTION 5. 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 shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

(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 such parties as a consequence of the transfer; and

(ii) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure 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 6. 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 ~~may~~ **shall** be brought in the {county} in which the payee **is domiciled** resides, ~~in the {county} in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.~~⁵

⁵ The suggested omissions from this provision correspond to the suggested changes in the definition of

[Footnote continued]

(b) Not less than ~~twenty (20)~~ **thirty (30)**⁶ days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of this Act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties 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 3 of this Act;
- (iv) a listing of each of the payee's dependents, together with each dependent's age;

(v) a copy of any court order approving the settlement agreement;⁷

(vi) a verified statement setting forth whether there have been any prior transfers or unapproved applications for authorization of transfers of payment rights under the structured settlement and, if so, providing details of all such transfers and applications, including a copy of each court order authorizing or declining to authorize a transfer;⁸

[Footnote continued]

“structured settlement payment rights” in Section 2(p). See n. 2 above. The suggested change from “may” to “shall” would curtail forum shopping and assure that decisions concerning a payee’s best interest are made by a court in the payee’s home jurisdiction, where the payee can readily appear. Substitution of the phrase “is domiciled” for “resides” would conform Section 6(a) with Section 2(p).

⁶ The suggested change from 20 to 30 days’ notice and the corresponding change from 15 to 20 days in Section 5(b)(viii) below would recognize that 20 days’ notice often is not sufficient to enable interested parties to locate and review settlement documents and court orders that may affect whether payment rights are transferable.

⁷ This suggested addition, which is based on a provision of amended Cal. Ins. Code § 10139(a), recognizes that court orders approving structured settlements, e.g., in cases involving injured minors, sometimes include anti-assignment provisions or other limitations that should be brought to the attention of a court that will be asked under Section 4(a)(iii) to make a finding that a proposed transfer “does not contravene any applicable . . . order of any court or other government authority.”

⁸ The California, Minnesota, New York and Oregon SSPAs have been amended to require that transfer applications or notices include information about prior transfers and applications.

(vii) an affidavit or declaration of the payee:

(A) Stating whether the payee or his or her dependents rely on structured settlement payments or government benefits to meet necessary living expenses or costs of medical care;

(B) Identifying the sources of income, other than structured settlement payments, from which the payee pays living expenses and costs of medical care for himself or herself and for any dependents;

(C) Stating whether the payee personally sustained physical injury or sickness in connection with the incident from which the structured settlement arose and whether the injury or sickness currently prevents the payee from working or substantially limits the work that the payee can perform; and

(D) Stating whether the payee is obligated to pay child support or spousal support under any child support order or qualified domestic relations order, and, if so, whether payments are current under any such order;⁹

(viii) 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;

(ix) 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 [~~fifteen (15)~~**twenty (20)**] days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority.

(c) At the hearing on an application:

(i) the payee shall appear personally, unless personal appearance is excused for good cause, upon motion of the transferee

⁹ The suggested additions in paragraph (b)(vii) are based on 2013 amendments to the Oregon SSPA codified at Or. Rev. Stat. § 33.857(1)(f).

made and served on interested parties not less than seven (7) days prior to the scheduled hearing; and¹⁰

(ii) the court or responsible administrative authority may take testimony or receive other evidence concerning any of the matters required to be disclosed under paragraphs (b)(vi) and (vii) above, together with and any other matters that the court or authority deems relevant to the findings required under Section 4 of this Act.¹¹

(d) If the payee is obligated to pay child support or spousal support payments under any child support order or qualified domestic relations order, as shown by the statement required under paragraph (b)(vii)(D) above, the transferee shall, not less than thirty (30) days prior to the scheduled hearing serve copies of the notice of the proposed transfer and the application for its authorization on any party to whom such support payments are required to be made.

(e) If the payee has child support obligations that are not current, as shown by the statement required under paragraph (b)(vii)(D) above, the transferee shall, not less than thirty (30) days prior to the scheduled hearing serve copies of the notice of the proposed transfer and the application for its authorization on any State or local authority empowered to enforce child support obligations.

(f) Any party required to be notified under Section 6(d) or (e) shall be 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.¹²

¹⁰ The suggested addition in paragraph (c)(i), which is based on a 2010 amendment to the New York SSPA, see N.Y. Gen. Oblig. Law § 5-1705(e), would recognize that findings concerning the best interest of a payee, taking into account the welfare and support of his or her dependents, should be made only after the court has heard directly from the payee.

¹¹ The suggested addition in paragraph (c)(ii) is based on a 2013 amendment to the Oregon SSPA codified at Or. Rev. Stat. § 33.862(1)(f).

¹² The suggested additions in Sections 6 (d)-(f) recognize that in situations in which a payee has child support obligations or support obligations to a former spouse, the recipient of such support payments may not be an interested party with respect to the structured settlement but may be prejudiced by a proposed transfer. (In the case of child support the “party to whom . . . support payments are required to be made” would be the adult to whom such payments are directed – typically the custodial parent – not the child.)

SECTION 7. 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) 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.

(e) Nothing contained in this Act shall be construed (i) to authorize any transfer of structured settlement payment rights in contravention of any law, **including any law restricting or prohibiting assignment of claims, awards, benefits, settlements or payments under any workers' compensation law or other law affording compensation for occupation-related injuries or illnesses,** or (ii) to imply that any transfer under a transfer agreement entered into prior to the effective date of this Act is valid or invalid.¹³

(f) 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.

¹³ In order to eliminate any doubt about the possible applicability of the SSPA to payment rights under workers' compensation settlements (see n. 1 above), several States (Alabama, California, Minnesota and Virginia) have enacted provisions similar to the suggested additions to Section 7 (e).

(g) If a structured settlement agreement or a related court order filed in connection with an application under this Act contains confidentiality provisions prohibiting disclosure of settlement terms, the settlement agreement or court order shall be filed under seal or in redacted form or provided to the Court for in camera review.¹⁴

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; provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is either effective or ineffective.

¹⁴ Suggested Section 7(g) recognizes that the parties to structured settlements, especially settlements of medical malpractice claims, sometimes agree to keep settlement terms confidential, and that their agreements should not (and need not) be thwarted by public SSPA filings.