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R29, S259

STATUS INFORMATION

General Bill

Sponsors: Senators Rankin, Young, Hutto, Sabb and Malloy

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Last Amended on February 28, 2023

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Governor's Action: May 16, 2023, Signed

Summary: Structured Settlement Payments

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/7/2022	Senate	Prefiled
12/7/2022	Senate	Referred to Committee on Judiciary
1/10/2023	Senate	Introduced and read first time (Senate Journal-page 132)
1/10/2023	Senate	Referred to Committee on Judiciary (Senate Journal-page 132)
1/12/2023	Senate	Referred to Subcommittee: Talley (ch), Hutto, Malloy, Gustafson, Reichenbach
2/9/2023		Scrivener's error corrected
2/22/2023	Senate	Committee report: Favorable with amendment Judiciary (Senate Journal-page 13)
2/24/2023		Scrivener's error corrected
2/28/2023	Senate	Committee Amendment Adopted (Senate Journal-page 32)
2/28/2023	Senate	Read second time (Senate Journal-page 32)
2/28/2023	Senate	Roll call Ayes-41 Nays-0 (Senate Journal-page 32)
3/1/2023	Senate	Read third time and sent to House (Senate Journal-page 12)
3/1/2023		Scrivener's error corrected
3/2/2023	House	Introduced and read first time (House Journal-page 6)
3/2/2023	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 6)
5/3/2023	House	Committee report: Favorable Labor, Commerce and Industry (House Journal-page 3)
5/4/2023	House	Read second time (House Journal-page 30)
5/4/2023	House	Roll call Yeas-89 Nays-0 (House Journal-page 32)
5/4/2023	House	Unanimous consent for third reading on next legislative day (House Journal-page 33)
5/5/2023	House	Read third time and enrolled (House Journal-page 6)
5/11/2023		Ratified R 29 (Senate Journal-page 132)
5/16/2023		Signed By Governor

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NOTE: THIS IS A TEMPORARY VERSION. THIS DOCUMENT WILL REMAIN IN THIS VERSION UNTIL FINAL APPROVAL BY THE LEGISLATIVE COUNCIL.

(R29, S259)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 15-50-20, RELATING TO DEFINITIONS FOR PURPOSES OF THE STRUCTURED SETTLEMENT PROTECTION ACT, SO AS TO PROVIDE ADDITIONAL DEFINITIONS; BY ADDING SECTION 15-50-25 SO AS TO PROVIDE A LIST OF ACTS IN WHICH A STRUCTURED SETTLEMENT PURCHASE COMPANY CANNOT ENGAGE; BY AMENDING SECTION 15-50-30, RELATING TO DISCLOSURE STATEMENTS, SO AS TO ADD TO THE LIST OF ITEMS WHICH MUST BE DISCLOSED TO THE PAYEE BY THE STRUCTURED SETTLEMENT PURCHASE COMPANY; BY AMENDING SECTION 15-50-40, RELATING TO APPROVAL BY FINAL COURT ORDER, SO AS TO ADD FACTORS WHICH THE COURT MUST CONSIDER IN DETERMINING IF THE TRANSFER OF THE STRUCTURED SETTLEMENT PAYMENT RIGHTS IS IN THE BEST INTEREST OF THE PAYEE; BY AMENDING SECTION 15-50-50, RELATING TO RIGHTS AND OBLIGATIONS OF A STRUCTURED SETTLEMENT OBLIGOR, ANNUITY ISSUER, AND TRANSFEREE, SO AS TO PROVIDE WHEN CERTAIN PARTIES WILL BE DISCHARGED FROM LIABILITY; BY AMENDING SECTION 15-50-60, RELATING TO THE NOTICE OF AN APPROVAL HEARING, SO AS TO PROVIDE THAT A HEARING MUST BE HELD IN THE CIRCUIT COURT IN A COUNTY IN WHICH THE PAYEE RESIDES, A HEARING MUST BE HELD IN THE COUNTY IN WHICH THE AGREEMENT WAS APPROVED IF THE PAYEE IS A NONRESIDENT OF THE STATE, AND FURTHER REQUIRE THAT THE PAYEE MUST ATTEND THE HEARING IN PERSON UNLESS GOOD CAUSE EXISTS TO EXCUSE THE IN-PERSON ATTENDANCE; BY AMENDING SECTION 15-50-70, RELATING TO THE SCOPE OF TRANSFER AGREEMENTS, SO AS TO MAKE CONFORMING CHANGES; BY ADDING SECTION 15-50-80 SO AS TO PROVIDE THAT THE COURT MAY APPOINT AN ATTORNEY TO SERVE AS A GUARDIAN AD LITEM TO ADVISE THE COURT IN CERTAIN CASES; BY ADDING SECTION 15-50-90 SO AS TO PROVIDE

THAT A STRUCTURED SETTLEMENT PURCHASE COMPANY WHO WANTS TO DO BUSINESS IN THIS STATE MUST REGISTER WITH THE SECRETARY OF STATE; BY ADDING SECTION 15-50-100 SO AS TO PROVIDE THAT REGISTRATION IS VALID FOR ONE YEAR AND A RENEWED APPLICATION MUST BE FILED EVERY YEAR THEREAFTER; BY ADDING SECTION 15-50-110 SO AS TO PROVIDE THAT A STRUCTURED SETTLEMENT PURCHASE COMPANY MUST POST A BOND WITH THE SECRETARY OF STATE OR PAY A CASH BOND IN THE AMOUNT OF FIFTY THOUSAND DOLLARS; BY ADDING SECTION 15-50-120 SO AS TO PROVIDE THAT A STRUCTURED SETTLEMENT PURCHASE COMPANY MUST FILE A NOTICE OF JUDGMENT WITH THE SECRETARY OF STATE AND PROVIDE A COPY OF THE JUDGMENT SECURED AGAINST THE COMPANY; BY ADDING SECTION 15-50-130 SO AS TO PROVIDE THAT LIABILITY IS NOT AFFECTED BY A BREACH OF CONTRACT, BREACH OF WARRANTY, OR ANY OTHER ACT OR OMISSION OF THE BONDED STRUCTURED SETTLEMENT PURCHASE COMPANY; BY ADDING SECTION 15-50-140 SO AS TO PROVIDE THAT THE SECRETARY OF STATE MUST RECEIVE WRITTEN NOTICE OF THE CANCELLATION OR MODIFICATION OF A SURETY BOND WITHIN TWENTY DAYS PRIOR TO THE CANCELLATION OR MODIFICATION; BY ADDING SECTION 15-50-150 SO AS TO PROVIDE THAT AN ASSIGNEE IS NOT REQUIRED TO REGISTER AS A STRUCTURED SETTLEMENT PURCHASE COMPANY TO ACQUIRE STRUCTURED SETTLEMENT PAYMENT RIGHTS; BY ADDING SECTION 15-50-160 SO AS TO PROVIDE THAT THE SECRETARY OF STATE MAY ASSESS AN ADMINISTRATIVE FINE IF A PERSON WHO IS REQUIRED TO REGISTER DOES NOT DO SO WITHIN FIFTEEN DAYS AFTER RECEIPT OF NOTICE TO REGISTER; AND BY ADDING SECTION 15-50-170 SO AS TO PROVIDE THAT A TRANSFER ORDER DOES NOT CONSTITUTE A QUALIFIED ORDER PURSUANT TO FEDERAL LAW IF THE TRANSFEREE IS NOT REGISTERED AS A STRUCTURED SETTLEMENT PURCHASE COMPANY PURSUANT TO THIS ACT AT THE TIME THE ORDER IS SIGNED.

Be it enacted by the General Assembly of the State of South Carolina:

Definitions

SECTION 1. Section 15-50-20 of the S.C. Code is amended to read:

Section 15-50-20. As used in this chapter:

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

(2) “Assignee” means a person acquiring or proposing to acquire structured settlement payments from a structured settlement purchase company or transferee after, or concurrently with, the transfer of the structured settlement payment rights by the payee to the structured settlement purchase company or transferee.

(3) “Dependents” include a payee's spouse and minor children and all other persons for whom the payee legally is obligated to provide support, including alimony.

(4) “Discounted present value” means the present value of future payments determined by discounting the 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.

(5) “Effective annual interest rate” means the effective rate of interest per year the payee will be paying the transferee based on the net advance amount that a payee will receive from the transferee and the amounts and timing of the structured settlement payments that the payee is transferring to the transferee.

(6) “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 a reduction for transfer expenses or

other deduction is made from the consideration.

(7) “Independent professional advice” means advice of an attorney, certified public accountant, actuary, or other licensed professional advisor.

(8) “Interested parties” means, with respect to a structured settlement, the payee, a 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 the structured settlement.

(9) “Net advance amount” means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses that must be disclosed pursuant to Section 15-50-30(5).

(10) “Payee” means an individual who is receiving tax-free payments under a structured settlement and who proposes to make a transfer of payment rights under the settlement.

(11) “Periodic payments” includes recurring payments and scheduled future lump-sum payments.

(12) “Prospective payee” means an individual who is receiving tax-free payments under a structured settlement pursuant to United States Code, Title 26, Section 130, and who has been personally and individually solicited by and has not yet proposed to transfer all or a portion of the structured settlement payment rights to a structured settlement purchase company.

(13) “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.

(14) “Secretary” means the Secretary of State.

(15) “Settled claim” means the original tort claim resolved by a

structured settlement.

(16) “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. Notwithstanding another provision of law, a structured settlement is not a consumer loan or otherwise subject to Title 37.

(17) “Structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(18) “Structured settlement obligor” means, with respect to a 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.

(19) “Structured settlement payment rights” means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, if the:

(a) 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

(b) structured settlement agreement was approved by a court in this State; or

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

(20) “Structured settlement purchase company” means a person who acts as a transferee in the State and who is registered with the Secretary pursuant to Section 15-50-80 through Section 15-50-150.

(21) “Structured settlement transfer proceeding” means a court proceeding initiated by the filing of an application by a structured settlement purchase company seeking court approval of a transfer in

accordance with this chapter.

(22) “Terms of the structured settlement” include the terms of the structured settlement agreement, the annuity contract, a qualified assignment agreement, and an order or other approval of a court that approved a structured settlement agreement.

(23) “Transfer” means the sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; except 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 an action to redirect the structured settlement payments to the insured depository institution, or an agent or successor in interest of it, or otherwise to enforce the blanket security interest against the structured settlement payment rights.

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

(25) “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, finder's 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.

(26) “Transfer order” means an order approving a transfer in accordance with this chapter.

(27) “Transferee” means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

Structured settlement purchase company prohibitions

SECTION 2. Chapter 50, Title 15 of the S.C. Code is amended by adding:

Section 15-50-25. (A) A transferee or structured settlement purchase company and an employee or other representative of a transferee or structured settlement purchase company must not engage in the following actions:

(1) pursue or complete a transfer with a payee without complying with all applicable provisions in this chapter;

(2) refuse or fail to fund a transfer after court approval of the transfer;

(3) acquire structured settlement payment rights from a payee without complying with all applicable provisions in this chapter, including obtaining court approval of the transfer;

(4) intentionally file a structured settlement transfer proceeding in any court other than the court specified in Section 15-50-60;

(5) except as otherwise provided in this chapter, 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 subsection 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;

(6) intentionally advertise materially false or misleading information regarding its products or services;

(7) attempt to coerce, bribe, or intimidate a payee seeking to transfer structured settlement payment rights, including providing any gift, loan, extension of credit, advance, or other forms of consideration paid to or given to the payee as an inducement to enter a transfer agreement;

(8) attempt to defraud a payee or any party to a structured settlement transfer or any interested party in a structured settlement transfer proceeding by any means including, but not limited to, forgery or false identification;

(9) except as otherwise provided in this chapter, 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 chapter 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 sixty 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 chapter in connection with the proposed transfer that is the subject of the pending structured settlement transfer proceeding;

(10) except as otherwise provided in this chapter, 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 canceling 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 subsection do not apply if a hearing has not been held in the pending structured settlement transfer proceeding within ninety days after the filing of the pending structured settlement transfer proceeding;

(11) 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 clause does not exempt the structured settlement purchase company from any liability under this section;

(12) solicit a prospective payee through the conveyance of a document which resembles a check or other form of payment;

(13) provide a transfer agreement or related document that purports to give the transferee the first choice or option to purchase any remaining structured settlement payment rights belonging to the payee which are not subject to the structured settlement transfer proceeding; or

(14) communicate with a payee, a prospective payee, or a person associated with the payee:

(a) after the payee, a prospective payee, or a person associated with the payee has informed the structured settlement purchase company to cease further communication;

(b) at any unusual time, or at a time that the structured settlement purchase company knows is inconvenient to the consumer. In the absence of the structured settlement purchase company's knowledge of circumstances to the contrary, a time before 8:00 a.m. and after 9:00 p.m. local time at the consumer's location is inconvenient. This subsection will not apply to any payee, prospective payee, or person associated with

the payee who has opted in and agreed to allow the structured settlement purchase company to contact the person when necessary; or

(c) repeatedly or continuously with intent to annoy, abuse, or harass a payee, prospective payee, or a person associated with the payee.

(B) A transferee or structured settlement purchase company and an employee or other representative of a transferee or structured settlement purchase company shall not instruct a payee to hire, or directly refer a payee or a prospective payee to seek independent professional advice from, a specific person, except that a structured settlement purchase company may refer a payee to a state or local referral service, bar association, legal aid, or any other entity unrelated to the structured settlement purchase company. A person rendering independent professional advice to a payee or prospective payee is not to be affected by whether a transfer occurs or does not occur and must not in any manner be affiliated with or compensated by the transferee or a structured settlement purchase company unless ordered by the court.

(C) A payee may file a motion in the court in which the structured settlement transfer proceeding is pending alleging a violation of subsection (A) and may pursue all rights and remedies to which the payee may be entitled under this chapter or any other applicable law.

(D) A structured settlement purchase company may file a motion in the court in which the structured settlement transfer proceeding is pending to enforce items in subsection (A) and may pursue all remedies to which the structured settlement purchase company may be entitled pursuant to this chapter or any other applicable law.

(E) If a court finds that a structured settlement purchase company or transferee is in violation of this section, the court may:

(1) revoke the registration of the structured settlement purchase company;

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

(3) 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.

Transfer agreements, disclosures to payees

SECTION 3. Section 15-50-30 of the S.C. Code is amended to read:

Section 15-50-30. Not less than ten days before 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 fourteen points, including:

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

(2) aggregate amount of the payments;

(3) discounted present value of the payments being transferred, which must 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) gross advance amount;

(5) itemized listing of all applicable transfer expenses, other than attorney's 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 the fees and disbursements;

(6) 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.”;

(7) net advance amount;

(8) amount of penalties or liquidated damages payable by the payee if the payee breaches the transfer agreement;

(9) 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;

(10) 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 the transfer of any structured settlement payment rights. The notice must also contain: “It is prohibited for us to refer you to a specific independent professional adviser. We may refer you to a state or local referral service, bar association, legal aid, or any other entity unrelated to us which assists people with locating independent professional advice, if requested”; and

(11) that the payee has the right to seek out and consider additional offers for transferring the structured settlement payment rights and should do so.

Transfer agreements, approval by final court order

SECTION 4. Section 15-50-40 of the S.C. Code is amended to read:

Section 15-50-40. (A) A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not required to make a payment directly or indirectly to a transferee of structured settlement payment rights unless

the transfer has been approved in advance in a final court order based on express findings by the court that the:

(1) transfer is in the best interest of the payee;

(2) payee has been advised in writing by the transferee to seek independent professional advice regarding the legal, tax, and financial implications of the transfer and has knowingly and in writing waived receipt of that advice; and

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

(B) In determining whether a proposed transfer is in the best interest of the payee pursuant to subsection (A)(1), the courts must take into consideration the welfare and support of the payee and the payee's dependents, if any. The court must also consider:

(1) the reasonable preference of the payee, in light of the payee's age, mental capacity, maturity level, understanding of the terms of the agreement, and stated purpose for the transfer;

(2) if the periodic payments were intended to cover future income or losses or future medical expenses, whether the payee has means of support aside from the structured settlement to meet these obligations;

(3) whether the payee can meet the financial needs of, and obligations to, the payee's dependents if the transfer is allowed to proceed, including child support and spousal maintenance;

(4) whether the payee completed previous transactions involving the payee's structured settlement payment rights, and the timing, amount, stated purpose, and actual use of the proceeds;

(5) the impact of the proposed transfer on current or future eligibility of the payee or the payee's dependents for public benefits; and

(6) any other factors or facts the court determines to be relevant.

(C) No direct or indirect transfer of a payee's structured settlement

payment rights by a payee's conservator, if a conservator has been appointed, 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 this section, the court also finds that the proceeds of the proposed transfer would be applied solely for the benefit of the payee.

(D) 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 this section, the court also finds that:

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

(2) 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.

(E) The final court order must expressly state that the best interest factors enumerated in subsection (B) have been considered, and if the court approves the transfer of payment rights, the order must state that the court finds that it is in the best interest of the payee to approve the transfer.

Rights and obligations of obligors, discharge of liability

SECTION 5. Section 15-50-50 of the S.C. Code is amended to read:

Section 15-50-50. Following a transfer of structured settlement

payment rights pursuant to this chapter:

(1) the structured settlement obligor and the annuity issuer may rely on the court 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 liability for the redirected payments. 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 order approving the transfer;

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

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

(b) for other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by the parties with the requirements of this chapter, with the order of the court, or for costs arising as a consequence of the transferee's failure to comply with this chapter;

(3) neither the annuity issuer nor the structured settlement obligor is required to divide a periodic payment between the payee and any transferee or assignee or between two 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 the requirements of this chapter.

Notice of an approval hearing

SECTION 6. Section 15-50-60 of the S.C. Code is amended to read:

Section 15-50-60. (A) An application pursuant to this chapter for approval of a transfer of structured settlement payment rights may be made by the transferee and must be brought in the circuit court in the county in which the payee resides. If the payee is not a resident of this State the application must be brought in the circuit court in the county in which the structured settlement agreement was approved.

(B) For applications made on or after January 1, 2024, for the approval of a transfer of structured settlement payment rights pursuant to this chapter, 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 must be held on an application for approval of a transfer of structured settlement payment rights. The payee must appear in person at the hearing unless the court determines that good cause exists to excuse the payee from appearing in person.

(D) Not less than twenty days before the scheduled hearing on an application for approval of a transfer of structured settlement payment rights pursuant to Section 15-50-40, the transferee must file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization. The notice must include:

- (1) a copy of the transferee's application;
- (2) a copy of the transfer agreement;
- (3) a copy of the disclosure statement required pursuant to Section 15-50-30;
- (4) the payee's name, age, and county of domicile;
- (5) a listing of each of the payee's dependents, and each dependent's age;
- (6)(a) any prior transfers by the payee to the transferee or an

affiliate, or through the transferee or an affiliate to an assignee which were approved; (b) any proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate; (c) and any applications for approval made by the transferee or an affiliate, or through the transferee or an affiliate to an assignee, which were denied;

(7) a sworn affidavit from the transferee listing any prior transfers by the payee that includes the details of the reasonable measures taken to search for and identify prior transfers to any person or entity other than the transferee or an affiliate or an assignee of the transferee and any prior proposed transfer applications by the payee to any person or entity other than the transferee or an affiliate or an assignee of a transferee or affiliate which were denied;

(8) an affidavit from the payee disclosing all prior transfers by the payee to any person or entity;

(9) notification that an interested party may support, oppose, or otherwise respond to the transferee's application, in person or by counsel, by submitting written comments to the court, or by participating in the hearing; and

(10) notification of the time and place of the hearing and notification of the manner and the time for filing written responses to the application, which must be not less than fifteen days after service of the transferee's notice, for consideration by the court.

(E) 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 must promptly request the dismissal of the application.

Scope of transfer agreements, conforming changes

SECTION 7. Section 15-50-70 of the S.C. Code is amended to read:

Section 15-50-70. (A) The provisions of this chapter may not be waived by a payee.

(B) A transfer agreement entered into by a payee who resides in this State must provide that disputes under the transfer agreement, including a claim that the payee has breached the agreement, must be determined pursuant to the laws of this State. A transfer agreement shall not authorize the transferee or another party to confess judgment or consent to entry of judgment against the payee.

(C) Transfer of structured settlement payment rights do not extend to payments that are life-contingent unless, before 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 if the payee dies.

(D) A payee who proposes to make a transfer of structured settlement payment rights does not incur any penalty, forfeit any application fee or other payment, or otherwise incur a liability to the proposed transferee or an assignee based on a failure of the transfer to satisfy the conditions of this chapter.

(E) This chapter does not authorize a transfer of structured settlement payment rights in contravention of law.

(F) Compliance with the requirements of Section 15-50-30 and fulfillment of the conditions in Section 15-50-40 are the sole responsibility of the transferee in a transfer of structured settlement

payment rights, and neither the structured settlement obligor nor the annuity issuer bears responsibility for, or liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

Attorney guardian ad litem to advise the court

SECTION 8. Chapter 50, Title 15 of the S.C. Code is amended by adding:

Section 15-50-80. (A) The court may appoint an attorney to serve as a guardian ad litem to make an independent assessment, and to advise the court whether the proposed transfer is in the best interest of the payee, taking into consideration the factors enumerated in Section 15-50-40(B). The guardian ad litem may consult with a certified public accountant, actuary, or other licensed professional for independent professional advice, if necessary. All costs and reasonable fees for the guardian shall be borne by the transferee in an amount determined by the court.

(B) The court must appoint an attorney to serve as a guardian ad litem in any case involving:

(1) a proposed transfer of a minor's structured settlement payment rights by a conservator or by a parent or guardian if a conservator has not been appointed. The guardian ad litem must advise the court on whether the proposed transfer is of direct benefit to the minor; or

(2) a proposed transfer of structured settlement payment rights involving a payee who appears to the court to suffer from a mental or cognitive impairment.

(C) The transferee must file a motion for the appointment of an attorney to serve as a guardian ad litem prior to a hearing on the proposed transfer if the transferee is aware that:

(1) the underlying structured settlement arose from a case in which a finding was made in a court record of a mental or cognitive impairment on the part of the payee;

(2) a conservator or guardian has been appointed for the payee; or

(3) a finding has been made in a court record, other than that of the underlying structured settlement case, of a mental or cognitive impairment on the part of the payee.

(D) In conjunction with the motion filed pursuant to subsection (C), the transferee shall provide to the court, either in-camera or as directed by the court in a way to protect the privacy of the payee, any such findings known to the transferee that describe the nature, extent, or consequences of the payee's mental or cognitive impairment.

(E) An attorney appointed to serve as a guardian ad litem by the court must report to the court the guardian ad litem's assessment and advice at a time determined by the court.

(F) Nothing in this section affects the rights and protections of persons subject to guardianship or conservatorship under the laws of this State.

Structured settlement purchase companies to register with the Secretary of State

SECTION 9. Chapter 50, Title 15 of the S.C. Code is amended by adding:

Section 15-50-90. A person 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 unless the person is registered with the Secretary to do business in this State as a structured settlement purchase company.

Registration valid for one year

SECTION 10. Chapter 50, Title 15 of the S.C. Code is amended by adding:

Section 15-50-100. A person may apply with the Secretary for registration to do business in this State as a structured settlement purchase company. An application for an initial or renewed registration must be submitted on a form prescribed by the Secretary. An initial or renewed registration is valid for one year from the date it is issued and shall expire one year after the date it was issued. The registration may be renewed annually by the registrant on or before the expiration date. If a structured settlement purchase company fails to file with the Secretary a renewal application on or before the expiration date, then it will be required to file another initial application with the Secretary and pay the application fee for an initial application pursuant to this chapter.

Registration applications, bond

SECTION 11. Chapter 50, Title 15 of the S.C. Code is amended by adding:

Section 15-50-110. (A) Each initial or renewal application must contain a sworn certification by an owner, officer, director, or manager of the applicant, if the applicant is not a natural person, or by the applicant, if the applicant is a natural person, certifying that:

(1) the applicant has secured a surety bond payable to the State or has posted a cash bond in the amount of fifty thousand dollars. The bond

must be in a form satisfactory to the Secretary and must run to the State for the benefit of any payee claimant to secure the faithful performance of the obligation of the structured settlement purchase company under the law; and

(2) the applicant must comply with this chapter when acting as a structured settlement purchase company and filing structured settlement transfer proceedings.

(B) The surety bond or cash bond is payable to the State of South Carolina.

(C) The surety bond or cash bond is effective concurrently with the applicant's registration with the Secretary and remains in effect for not less than three years after expiration or termination of that registration. The bond must be renewed each year when the registration of the applicant is renewed.

(D) The applicant must submit to the Secretary a copy of the surety bond or cash bond with its initial or renewal application.

(E) The surety bond or cash bond is intended to ensure that the structured settlement purchase company will comply with the provisions of this chapter relative to the payee and perform its obligations to the payee under this chapter, 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 chapter.

(F) An applicant must remit to the Secretary a fee of one thousand two hundred and fifty dollars for an initial registration and two hundred dollars for a renewed registration. This fee must be retained by the Secretary to offset the costs of processing and maintaining the registration of structured settlement purchase companies required by the chapter.

Notice of judgments required to be filed

SECTION 12. Chapter 50, Title 15 of the S.C. Code is amended by adding:

Section 15-50-120. Within ten days after a judgment is secured against a structured settlement purchase company by a payee, the structured settlement purchase company must file a notice with the Secretary 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.

Exclusions for breaches or omissions

SECTION 13. Chapter 50, Title 15 of the S.C. Code is amended by adding:

Section 15-50-130. The liability of the surety under the bond is not 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.

Notice of modification or cancellation of bond

SECTION 14. Chapter 50, Title 15 of the S.C. Code is amended by adding:

Section 15-50-140. (A) 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 Secretary at least twenty days prior to the effective date of such cancellation or modification.

(B) In the event of a cancellation of the bond, the registration of the structured settlement purchase company automatically expires unless a new surety bond, or cash bond, which complies with this chapter, is filed with the Secretary. The cancellation or modification of a bond does not affect any liability of the bonded surety company incurred before the cancellation or modification of the bond.

Assignees not required to register

SECTION 15. Chapter 50, Title 15 of the S.C. Code is amended by adding:

Section 15-50-150. (A) An assignee is not required to register as a structured settlement purchase company 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.

(B) An employee of a structured settlement purchase company, if acting on behalf of the structured settlement purchase company in connection with a transfer, is not required to register with the Secretary as provided under this chapter.

Fines for failure to register before the deadline

SECTION 16. Chapter 50, Title 15 of the S.C. Code is amended by

adding:

Section 15-50-160. (A) If a person fails to file with the Secretary an application for registration as a structured settlement purchase company as required by this chapter, the Secretary must notify the person of this delinquency by mailing a notice by certified mail, with return receipt requested, to the person's last known address. If the required registration application is not filed within fifteen days after the receipt of the notice, the Secretary may assess an administrative fine of ten thousand dollars against the person.

(B) If the person does not claim a notice sent by certified mail, or the notice is returned to the Secretary by the United States Postal Service as undeliverable, then the Secretary shall serve the notice upon the person as provided by law.

(C) A registration application required to be filed with the Secretary pursuant to this chapter which contains false or misleading statements, or which is incomplete, may be rejected by the Secretary and returned to the submitting party without being filed.

(D) A person who is assessed an administrative fine or who is denied registration has thirty days from receipt of certified notice or formal service of the notice from the Secretary to pay the fine or request an evidentiary hearing before the administrative law court. If a person fails to remit fines or request a hearing after the required notice is given and after thirty days from the date of receipt of certified notice or service of the notice has elapsed, then the Secretary may bring an action before the administrative law court to enjoin the person from engaging in further activities related to the purchase or transfer of structured settlements in this State. The decision of the Administrative Law Court may be appealed as provided in Section 1-23-610.

(E) Any administrative fine revenue received pursuant to this chapter in a fiscal year may be retained by the Secretary to offset the expenses of enforcing this chapter.

Transfer orders, applicability to federal law

SECTION 17. Chapter 50, Title 15 of the S.C. Code is amended by adding:

Section 15-50-170. Except as otherwise provided, a transfer order signed by a court of competent jurisdiction pursuant to this act constitutes a qualified order under 26 U.S.C. Section 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. Section 5891.

Savings clause

SECTION 18. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement

of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Severability clause

SECTION 19. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 20. SECTION 9 through SECTION 16 take effect on January 1, 2024. All other SECTIONS take effect on July 1, 2023, and apply to applications filed on or after the effective date.

Ratified the 11th day of May, 2023.

President of the Senate

Speaker of the House of Representatives

Approved the _____ day of _____ 2023.

Governor

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