

COLORADO S.B. 98

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read: ARTICLE 23 Structured Settlement Protection Act

13-23-101. Short title. **THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "STRUCTURED SETTLEMENT PROTECTION ACT".**

13-23-102. Definitions. **AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:**

(1) **"ANNUITY ISSUER" MEANS AN INSURER THAT HAS ISSUED A CONTRACT TO FUND PERIODIC PAYMENTS UNDER A STRUCTURED SETTLEMENT.**

(2) **"DEPENDENT" MEANS A PAYEE'S SPOUSE, MINOR CHILD, OR ANY PERSON FOR WHOM THE PAYEE IS LEGALLY OBLIGATED TO PROVIDE SUPPORT, INCLUDING MAINTENANCE.**

(3) **" 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.**

(4) **"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 ARE MADE FROM SUCH CONSIDERATION.**

(5) **"INDEPENDENT PROFESSIONAL ADVICE" MEANS ADVICE OF AN ATTORNEY, CERTIFIED PUBLIC ACCOUNTANT, ACTUARY, OR OTHER LICENSED PROFESSIONAL ADVISER.**

(6) **"INTERESTED PARTIES" MEANS 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 WHO HAS CONTINUING RIGHTS OR OBLIGATIONS UNDER SUCH STRUCTURED SETTLEMENT. IF A DELEGATE CHILD SUPPORT ENFORCEMENT UNIT IS ENFORCING A PAYEE'S LEGAL OBLIGATION TO SUPPORT HIS OR HER DEPENDENT CHILDREN, PURSUANT TO SECTION 26-13-105, C.R.S., "INTERESTED PARTIES" SHALL ALSO INCLUDE THE DELEGATE CHILD SUPPORT ENFORCEMENT UNIT.**

(7) **"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 13-23-103.**

(8) **"PAYEE" MEANS AN INDIVIDUAL WHO IS RECEIVING TAX-FREE PAYMENTS UNDER A STRUCTURED SETTLEMENT AND WHO PROPOSES TO MAKE A TRANSFER OF PAYMENT RIGHTS THEREUNDER.**

(9) "PERIODIC PAYMENT" MEANS A RECURRING PAYMENT OR A SCHEDULED FUTURE LUMP SUM PAYMENT.

(10) "QUALIFIED ASSIGNMENT AGREEMENT" MEANS AN AGREEMENT PROVIDING FOR A QUALIFIED ASSIGNMENT WITHIN THE MEANING OF SECTION 130 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(11) "RESPONSIBLE ADMINISTRATIVE AUTHORITY" MEANS ANY GOVERNMENT AUTHORITY VESTED BY LAW WITH EXCLUSIVE JURISDICTION OVER THE SETTLED CLAIM RESOLVED BY SUCH STRUCTURED SETTLEMENT.

(12) " SETTLED CLAIM" MEANS THE ORIGINAL TORT CLAIM RESOLVED BY A STRUCTURED SETTLEMENT.

(13) " 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.

(14) " STRUCTURED SETTLEMENT AGREEMENT" MEANS THE AGREEMENT, JUDGMENT, STIPULATION, OR RELEASE EMBODYING THE TERMS OF A STRUCTURED SETTLEMENT.

(15) " STRUCTURED SETTLEMENT OBLIGOR" MEANS THE PARTY WHO HAS THE CONTINUING OBLIGATION TO MAKE PERIODIC PAYMENTS TO THE PAYEE UNDER A STRUCTURED SETTLEMENT AGREEMENT OR A QUALIFIED ASSIGNMENT AGREEMENT.

(16) " STRUCTURED SETTLEMENT PAYMENT RIGHT" MEANS THE RIGHT TO RECEIVE PERIODIC PAYMENTS UNDER A STRUCTURED SETTLEMENT, WHETHER FROM THE STRUCTURED SETTLEMENT OBLIGOR OR THE ANNUITY ISSUER, WHERE:

(a) THE PAYEE IS DOMICILED IN COLORADO, OR THE DOMICILE OR PRINCIPAL PLACE OF BUSINESS OF THE STRUCTURED SETTLEMENT OBLIGOR OR THE ANNUITY ISSUER IS COLORADO; OR

(b) THE STRUCTURED SETTLEMENT AGREEMENT WAS APPROVED BY A COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY IN COLORADO; OR

(c) THE STRUCTURED SETTLEMENT AGREEMENT IS EXPRESSLY GOVERNED BY THE LAWS OF COLORADO.

(17) "TERMS OF THE STRUCTURED SETTLEMENT " MEANS THE TERMS OF THE STRUCTURED SETTLEMENT AGREEMENT, THE ANNUITY CONTRACT, A QUALIFIED ASSIGNMENT AGREEMENT, AND ANY ORDER OR OTHER APPROVAL OF A COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY OR OTHER GOVERNMENT AUTHORITY THAT AUTHORIZED OR APPROVED SUCH STRUCTURED SETTLEMENT.

(18) "TRANSFER" MEANS A SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION, OR OTHER ALIENATION OR ENCUMBRANCE OF A STRUCTURED SETTLEMENT PAYMENT RIGHT MADE BY A PAYEE FOR CONSIDERATION; EXCEPT THAT THE TERM "TRANSFER" DOES NOT INCLUDE THE CREATION OR PERFECTION OF A SECURITY INTEREST IN A STRUCTURED SETTLEMENT PAYMENT RIGHT 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.

(19) "TRANSFER AGREEMENT" MEANS THE AGREEMENT PROVIDING FOR A TRANSFER OF A STRUCTURED SETTLEMENT PAYMENT RIGHT.

(20) "TRANSFeree" MEANS A PARTY ACQUIRING OR PROPOSING TO ACQUIRE A STRUCTURED SETTLEMENT PAYMENT RIGHT THROUGH A TRANSFER.

(21) "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, ATTORNEY 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" DOES NOT INCLUDE PREEXISTING OBLIGATIONS OF THE PAYEE PAYABLE FOR THE PAYEE'S ACCOUNT FROM THE PROCEEDS OF A TRANSFER.

13-23-103. Required disclosures to payee. (1) NOT FEWER THAN THREE 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 FOURTEEN 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 ATTORNEY 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 ATTORNEY FEES AND RELATED DISBURSEMENTS;

(f) THE NET ADVANCE AMOUNT;

(g) THE AMOUNT OF ANY PENALTIES OR LIQUIDATED DAMAGES PAYABLE BY THE PAYEE IN THE EVENT OF A 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.

13-23-104. Approval of transfers of structured settlement payment rights. (1) A DIRECT OR INDIRECT TRANSFER OF A STRUCTURED SETTLEMENT PAYMENT RIGHT SHALL NOT

BE EFFECTIVE AND A STRUCTURED SETTLEMENT OBLIGOR OR ANNUITY ISSUER SHALL NOT BE REQUIRED TO MAKE A PAYMENT DIRECTLY OR INDIRECTLY TO A TRANSFEREE OF A STRUCTURED SETTLEMENT PAYMENT RIGHT 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:

(a) THE TRANSFER IS IN THE BEST INTERESTS OF THE PAYEE, TAKING INTO ACCOUNT THE WELFARE AND SUPPORT OF THE PAYEE'S DEPENDENTS;

(b) 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 AND WILLINGLY WAIVED SUCH ADVICE IN WRITING; AND

(c) THE TRANSFER DOES NOT CONTRAVENE ANY APPLICABLE STATUTE OR THE ORDER OF ANY COURT OR OTHER GOVERNMENT AUTHORITY.

13-23-105. Effect of transfer of structured settlement payment right. (1) FOLLOWING A TRANSFER OF A STRUCTURED SETTLEMENT PAYMENT RIGHT PURSUANT TO THIS ARTICLE:

(a) THE STRUCTURED SETTLEMENT OBLIGOR AND THE ANNUITY ISSUER SHALL, AS TO ALL PARTIES EXCEPT THE TRANSFEREE, BE DISCHARGED AND RELEASED FROM 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 ATTORNEY 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 THE PROVISIONS OF THIS ARTICLE;

(c) NEITHER THE ANNUITY ISSUER NOR THE STRUCTURED SETTLEMENT OBLIGOR MAY BE REQUIRED TO DIVIDE ANY PERIODIC PAYMENT BETWEEN THE PAYEE AND A 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 ARTICLE.

13-23-106. Procedure for approval of transfer. (1) AN APPLICATION UNDER THIS ARTICLE FOR APPROVAL OF A TRANSFER OF A STRUCTURED SETTLEMENT PAYMENT RIGHT SHALL BE MADE BY THE TRANSFEREE AND MAY BE BROUGHT:

(a) IN THE DISTRICT COURT FOR THE COUNTY IN WHICH THE PAYEE RESIDES;

(b) IN THE DISTRICT COURT FOR THE COUNTY IN WHICH THE STRUCTURED SETTLEMENT OBLIGOR OR THE ANNUITY ISSUER MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS; OR

(c) IN ANY COURT OR BEFORE ANY RESPONSIBLE ADMINISTRATIVE AUTHORITY THAT APPROVED THE STRUCTURED SETTLEMENT AGREEMENT.

(2) NOT FEWER THAN TWENTY DAYS PRIOR TO THE SCHEDULED HEARING ON AN APPLICATION FOR APPROVAL OF A TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS UNDER SECTION 13-23-104, 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. THE TRANSFEREE SHALL FILE AND SERVE:

(a) A COPY OF THE TRANSFEREE'S APPLICATION;

(b) A COPY OF THE TRANSFER AGREEMENT;

(c) A COPY OF THE DISCLOSURE STATEMENT REQUIRED PURSUANT TO SECTION 13-23-103;

(d) A LISTING OF EACH OF THE PAYEE'S DEPENDENTS, TOGETHER WITH EACH DEPENDENT'S AGE;

(e) A 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

(f) A 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 FEWER THAN FIFTEEN DAYS AFTER SERVICE OF THE TRANSFEREE'S NOTICE, IN ORDER TO BE CONSIDERED BY THE COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY.

13-23-107. General provisions - construction. (1) THE PROVISIONS OF THIS ARTICLE MAY NOT BE WAIVED BY ANY PAYEE.

(2) ANY TRANSFER AGREEMENT ENTERED INTO ON OR AFTER JULY 1, 2004, BY A PAYEE WHO RESIDES IN COLORADO 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 COLORADO. NO SUCH TRANSFER AGREEMENT SHALL AUTHORIZE THE TRANSFEREE OR ANY OTHER PARTY TO CONFESS JUDGMENT OR CONSENT TO ENTRY OF JUDGMENT AGAINST THE PAYEE.

(3) A TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS SHALL NOT 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 PERIODICALLY CONFIRMING THE PAYEE'S SURVIVAL AND GIVING THE

ANNUITY ISSUER AND THE STRUCTURED SETTLEMENT OBLIGOR PROMPT WRITTEN NOTICE IN THE EVENT OF THE PAYEE'S DEATH.

(4) A PAYEE WHO PROPOSES TO MAKE A TRANSFER OF A STRUCTURED SETTLEMENT PAYMENT RIGHT SHALL NOT INCUR ANY PENALTY, FORFEIT ANY APPLICATION FEE OR OTHER PAYMENT, OR OTHERWISE INCUR ANY LIABILITY TO THE PROPOSED TRANSFEREE OR ANY ASSIGNEE BASED ON A FAILURE OF SUCH TRANSFER TO SATISFY THE CONDITIONS OF THIS ARTICLE.

(5) NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO AUTHORIZE A TRANSFER OF A STRUCTURED SETTLEMENT PAYMENT RIGHT IN CONTRAVENTION OF ANY LAW OR TO IMPLY THAT A TRANSFER UNDER A TRANSFER AGREEMENT ENTERED INTO PRIOR TO JULY 1, 2004, IS VALID OR INVALID.

(6) COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN SECTION 13-23-103 AND FULFILLMENT OF THE CONDITIONS SET FORTH IN SECTION 13-23-104 SHALL BE SOLELY THE RESPONSIBILITY OF THE TRANSFEREE IN A TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS, AND NEITHER THE STRUCTURED SETTLEMENT OBLIGOR NOR THE ANNUITY ISSUER SHALL BEAR RESPONSIBILITY FOR, OR ANY LIABILITY ARISING FROM, NON-COMPLIANCE WITH SUCH REQUIREMENTS OR FAILURE TO FULFILL SUCH CONDITIONS.

13-23-108. Exceptions - judgment for periodic payment against a health care professional or institution - assignment of workers' compensation benefits. **NOTHING IN THIS ARTICLE SHALL APPLY TO A JUDGMENT ENTERED PURSUANT TO THE PROVISIONS OF PART 2 OF ARTICLE 64 OF THIS TITLE OR TO COMPENSATION OR BENEFITS DUE UNDER ARTICLES 40 TO 47 OF TITLE 8, C.R.S.**

SECTION 2. Effective date - applicability. This act shall take effect July 1, 2004, and shall apply to agreements to transfer a structured settlement payment right executed on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.