

AN ACT  
RELATING TO CIVIL LAW; ENACTING THE STRUCTURED SETTLEMENT  
PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Structured Settlement Protection Act".

Section 2. DEFINITIONS.--As used in the Structured  
Settlement Protection Act:

A. "annuity issuer" means an insurer that has  
issued a contract to fund periodic payments under a structured  
settlement;

B. "court" means:

(1) the court of original jurisdiction that  
authorized or approved a structured settlement; or

(2) if the court that authorized or approved  
the structured settlement no longer has jurisdiction to  
approve a transfer of payment rights under the structured  
settlement under the Structured Settlement Protection Act, a  
district court or a probate court located in the county in  
which the payee resides;

C. "dependents" includes a payee's spouse, 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 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;

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 the consideration;

F. "independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

G. "interested party" means, with respect to any structured settlement:

- (1) the payee;
- (2) any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death;
- (3) the annuity issuer;
- (4) the structured settlement obligor; and
- (5) any other party that has continuing rights or obligations under the 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 Subsection E of Section 3 of the Structured Settlement Protection Act;

I. "payee" means an individual who is receiving tax-free payments under a structured settlement and proposes to transfer payment rights under the structured settlement;

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 Internal Revenue Code of 1986, as amended;

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;

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, if:

(1) 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;

(2) the structured settlement agreement was authorized or approved by a court located in this state; or

(3) the structured settlement agreement is expressly governed by the laws of this state;

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 approval of the court;

R. "transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration, except that "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 the insured depository institution, or its agent or successor in interest, or to enforce the 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 the 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 court filing fees, attorney fees, escrow fees, lien recording fees, judgment and lien search fees, finders' fees, commissions and other payments to a broker or other intermediary, except that "transfer expenses" does not include preexisting obligations of the payee payable on the payee's account from the proceeds of a transfer; and

U. "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

Section 3. REQUIRED DISCLOSURES TO PAYEE.--At least three days before the date on which the payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type at least fourteen points in size, that states:

- A. the amounts and due dates of the structured settlement payments to be transferred;
- B. the aggregate amount of the 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 the 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 those expenses;
- 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 close of the third business day after the date the agreement is signed by the payee.

Section 4. APPROVAL OF TRANSFERS OF STRUCTURED

SETTLEMENT PAYMENT RIGHTS.--No direct or indirect transfer of

HB 495

Page 6

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 based on express findings by the court that:

A. the transfer is in the best interest 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 the advice or knowingly waived the advice in writing; and

C. the transfer does not contravene any applicable statute or an order of any court or other governmental authority.

Section 5. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.--Following a transfer of structured settlement payment rights pursuant to the Structured Settlement Protection 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:

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

(2) for any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the parties with the order of the court or arising as a consequence of the transferee's failure to comply with the provisions of the Structured Settlement Protection Act;

C. the transferee shall be liable to the payee:

(1) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by the payee as a consequence of the transfer; and

(2) for any other liabilities or costs, including reasonable costs and attorney fees, arising as a consequence of the transferee's failure to comply with the provisions of the Structured Settlement Protection Act;

D. neither the structured settlement obligor nor the annuity issuer 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

E. any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of the Structured Settlement



Protection Act.

Section 6. PROCEDURE FOR APPROVAL OF TRANSFERS.--

A. An application under the Structured Settlement Protection Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and shall be brought in court.

B. At least twenty days before the date of the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of the Structured Settlement Protection Act, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for authorization, including with the notice:

(1) a copy of the transferee's application;  
(2) a copy of the transfer agreement;  
(3) a copy of the disclosure statement required under Section 3 of the Structured Settlement Protection Act;

(4) a listing of each of the payee's dependents, together with each dependent's age;

(5) notice 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 by participating in the hearing; and

(6) notice 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 to be considered by the court.

C. Written responses to the application under Paragraph (6) of Subsection B of this section shall be filed on or before the fifteenth day after the date the transferee's notice is served.

Section 7. GENERAL PROVISIONS--CONSTRUCTION.--

A. The provisions of the Structured Settlement Protection Act shall not be waived by any payee.

B. Any transfer agreement entered into by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. The transfer agreement shall not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

C. 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 agreed to maintain procedures reasonably satisfactory to the structured settlement obligor and the annuity issuer for:

(1) periodically confirming the payee's

survival; and

(2) giving the structured settlement obligor and the annuity issuer prompt written notice in the event of the payee's death.

D. A payee who proposes to make a transfer of structured settlement payment rights 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 any failure of the transfer to satisfy the conditions of the Structured Settlement Protection Act.

E. Nothing contained in the Structured Settlement Protection Act may be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into before July 1, 2005 is valid or invalid.

F. Compliance with the requirements in Section 3 of the Structured Settlement Protection Act and fulfillment of the conditions in Section 4 of that act are solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer bears any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

Section 8. EFFECTIVE DATE.--The effective date of the

HB 495  
Page 11

provisions of this act is July 1, 2005. \_\_\_\_\_

Page 12

HB 495

HB 495  
Page 12