



General Assembly

January Session, 2003

Raised Bill No. 1059

LCO No. 3648

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING STRUCTURED SETTLEMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2003*) For the purposes of
2 sections 1 to 6, inclusive, of this act:

3 (1) "Annuity issuer" means an insurer that has issued a contract to
4 fund periodic payments under a structured settlement;

5 (2) "Dependents" includes a payee's spouse and minor children and
6 all other persons for whom the payee is legally obligated to provide
7 support, including alimony;

8 (3) "Discounted present value" means the present value of future
9 payments determined by discounting the payments to the present
10 using the most recently published applicable federal rate for
11 determining the present value of an annuity, as issued by the United
12 States Internal Revenue Service;

13 (4) "Gross advance amount" means the sum payable to the payee or
14 for the payee's account as consideration for a transfer of structured
15 settlement payment rights before any reductions for transfer expenses

16 or other deductions to be made from such consideration;

17 (5) "Independent professional advice" means advice of an attorney,
18 certified public accountant, actuary or other licensed professional
19 adviser;

20 (6) "Interested parties" means, with respect to any structured
21 settlement, the payee, any beneficiary irrevocably designated under
22 the annuity contract to receive payments following the payee's death,
23 the annuity issuer, the structured settlement obligor and any other
24 party that has continuing rights or obligations under such structured
25 settlement;

26 (7) "Net advance amount" means the gross advance amount less the
27 aggregate amount of the actual and estimated transfer expenses
28 required to be disclosed under subdivision (5) of section 2 of this act;

29 (8) "Payee" means an individual who is receiving tax-free payments
30 under a structured settlement and proposes to transfer payment rights
31 under the structured settlement;

32 (9) "Periodic payments" includes both recurring payments and
33 scheduled future lump-sum payments;

34 (10) "Qualified assignment agreement" means an agreement
35 providing for a qualified assignment within the meaning of Section 130
36 of the Internal Revenue Code of 1986, or any subsequent
37 corresponding internal revenue code of the United States, as from time
38 to time amended;

39 (11) "Responsible administrative authority" means, with respect to a
40 structured settlement, any government authority vested by law with
41 exclusive jurisdiction over the settled claim resolved by such
42 structured settlement;

43 (12) "Settled claim" means the original tort claim or workers'
44 compensation claim resolved by a structured settlement;

45 (13) "Structured settlement" means an arrangement for periodic
46 payment of damages for personal injuries or sickness established by
47 settlement or judgment in resolution of a tort claim or for periodic
48 payments in settlement of a workers' compensation claim;

49 (14) "Structured settlement agreement" means the agreement,
50 judgment, stipulation or release embodying the terms of a structured
51 settlement;

52 (15) "Structured settlement obligor" means, with respect to any
53 structured settlement, the party that has the continuing obligation to
54 make periodic payments to the payee under a structured settlement
55 agreement or a qualified assignment agreement;

56 (16) "Structured settlement payment rights" means rights to receive
57 periodic payments under a structured settlement, whether from the
58 structured settlement obligor or the annuity issuer, where:

59 (A) The payee is domiciled in, or the domicile or principal place of
60 business of the structured settlement obligor or the annuity issuer is
61 located in, this state;

62 (B) The structured settlement agreement was approved by a court or
63 responsible administrative authority in this state; or

64 (C) The structured settlement agreement is expressly governed by
65 the laws of this state;

66 (17) "Terms of the structured settlement" include, with respect to
67 any structured settlement, the terms of the structured settlement
68 agreement, the annuity contract, any qualified assignment agreement,
69 and any order or other approval of any court or responsible
70 administrative authority or other government authority that
71 authorized or approved such structured settlement;

72 (18) "Transfer" means any sale, assignment, pledge, hypothecation,
73 or other alienation or encumbrance of structured settlement payment

74 rights made by a payee for consideration, but does not include the
75 creation or perfection of a security interest in structured settlement
76 payment rights under a blanket security agreement entered into with
77 an insured depository institution, in the absence of any action to
78 redirect the structured settlement payments to such insured depository
79 institution, or an agent or successor in interest thereof, or otherwise to
80 enforce such blanket security interest against the structured settlement
81 payment rights;

82 (19) "Transfer agreement" means the agreement providing for a
83 transfer of structured settlement payment rights;

84 (20) "Transfer expenses" means all the expenses of a transfer that are
85 required under the transfer agreement to be paid by the payee or
86 deducted from the gross advance amount, including, but not limited
87 to, court filing fees, attorney's fees, escrow fees, lien recordation fees,
88 judgment and lien search fees, finders' fees, commissions and other
89 payments to a broker or other intermediary, but does not include
90 preexisting obligations of the payee payable for the payee's account
91 from the proceeds of a transfer; and

92 (21) "Transferee" means a party acquiring or proposing to acquire
93 structured settlement payment rights through a transfer.

94 Sec. 2. (NEW) (*Effective October 1, 2003*) Not less than three days
95 prior to the date on which the payee signs a transfer agreement, the
96 transferee shall provide to the payee a separate disclosure statement,
97 in boldface type at least fourteen points in size, setting forth:

98 (1) The amounts and due dates of the structured settlement
99 payments to be transferred;

100 (2) The aggregate amount of such payments;

101 (3) The discounted present value of the payments to be transferred,
102 which shall be identified as the "calculation of current value of the
103 transferred structured settlement payments under federal standards

104 for valuing annuities," and the amount of the Applicable Federal Rate
105 used in calculating such discounted present value;

106 (4) The gross advance amount;

107 (5) An itemized listing of all applicable transfer expenses, other than
108 attorney's fees and related disbursements payable in connection with
109 the transferee's application for approval of the transfer, and the
110 transferee's best estimate of the amount of any such fees and
111 disbursements;

112 (6) The net advance amount;

113 (7) The amount of any penalties or liquidated damages payable by
114 the payee in the event of any breach of the transfer agreement by the
115 payee; and

116 (8) A statement that the payee has the right to cancel the transfer
117 agreement, without penalty or further obligation, not later than the
118 third business day after the date the agreement is signed by the payee.

119 Sec. 3. (NEW) (*Effective October 1, 2003*) No direct or indirect transfer
120 of structured settlement payment rights shall be effective and no
121 structured settlement obligor or annuity issuer shall be required to
122 make any payment directly or indirectly to any transferee of structured
123 settlement payment rights unless the transfer has been approved in
124 advance in a final court order or order of a responsible administrative
125 authority based on express findings by such court or responsible
126 administrative authority that:

127 (1) The transfer is in the best interest of the payee, taking into
128 account the welfare and support of the payee's dependents;

129 (2) The payee has been advised in writing by the transferee to seek
130 independent professional advice regarding the transfer and has either
131 received such advice or knowingly waived such advice in writing; and

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

134 Sec. 4. (NEW) (*Effective October 1, 2003, and applicable to transfer*
135 *agreements executed on or after said date*) Following a transfer of
136 structured settlement payment rights under sections 1 to 6, inclusive,
137 of this act:

138 (1) The structured settlement obligor and the annuity issuer shall, as
139 to all parties except the transferee, be discharged and released from
140 any and all liability for the transferred payments;

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

143 (A) If the transfer contravenes the terms of the structured
144 settlement, for any taxes incurred by such parties as a consequence of
145 the transfer, and

146 (B) For any other liabilities or costs, including reasonable costs and
147 attorney's fees, arising from compliance by such parties with the order
148 of the court or responsible administrative authority or arising as a
149 consequence of the transferee's failure to comply with sections 1 to 6,
150 inclusive, of this act;

151 (3) Neither the structured settlement obligor nor the annuity issuer
152 may be required to divide any periodic payment between the payee
153 and any transferee or assignee or between two or more transferees or
154 assignees; and

155 (4) Any further transfer of structured settlement payment rights by
156 the payee may be made only after compliance with all of the
157 requirements of sections 1 to 6, inclusive, of this act.

158 Sec. 5. (NEW) (*Effective October 1, 2003*) (a) An application under
159 sections 1 to 6, inclusive, of this act for approval of a transfer of
160 structured settlement payment rights shall be made by the transferee

161 and may be brought in the superior court for the judicial district in
162 which the payee resides or in which the structured settlement obligor
163 or annuity issuer maintains its principal place of business or in the
164 superior court or before the responsible administrative authority that
165 approved the structured settlement agreement.

166 (b) Not less than twenty days prior to the scheduled hearing on any
167 application for approval of a transfer of structured settlement payment
168 rights under section 3 of this act, the transferee shall file with the court
169 or responsible administrative authority and serve on all interested
170 parties a notice of the proposed transfer and the application for its
171 approval, including with the notice:

172 (1) A copy of the transferee's application;

173 (2) A copy of the transfer agreement;

174 (3) A copy of the disclosure statement required under section 2 of
175 this act;

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

178 (5) Notification that any interested party is entitled to support,
179 oppose or otherwise respond to the transferee's application, either in
180 person or by counsel, by submitting written comments to the court or
181 responsible administrative authority or by participating in the hearing;
182 and

183 (6) Notification of the time and place of the hearing and notification
184 of the manner in which and the time by which written responses to the
185 application must be filed, which shall be not less fifteen days after
186 service of the transferee's notice, in order to be considered by the court
187 or responsible administrative authority.

188 Sec. 6. (NEW) (*Effective October 1, 2003*) (a) The provisions of sections
189 1 to 6, inclusive, of this act may not be waived by any payee.

190 (b) Any transfer agreement entered into on or after the effective date
191 of this section by a payee who resides in this state shall provide that
192 disputes under such transfer agreement, including any claim that the
193 payee has breached the agreement, shall be determined in and under
194 the laws of this state. No such transfer agreement shall authorize the
195 transferee or any other party to confess judgment or consent to entry of
196 judgment against the payee.

197 (c) No transfer of structured settlement payment rights shall extend
198 to any payments that are life-contingent unless, prior to the date on
199 which the payee signs the transfer agreement, the transferee has
200 established and agreed to maintain procedures reasonably satisfactory
201 to the structured settlement obligor and the annuity issuer for:

202 (1) Periodically confirming the payee's survival; and

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

205 (d) No payee who proposes to make a transfer of structured
206 settlement payment rights shall incur any penalty, forfeit any
207 application fee or other payment or otherwise incur any liability to the
208 proposed transferee or any assignee based on any failure of such
209 transfer to satisfy the conditions of sections 1 to 6, inclusive, of this act.

210 (e) Nothing contained in sections 1 to 6, inclusive, of this act shall be
211 construed to authorize any transfer of structured settlement payment
212 rights in contravention of any law or to imply that any transfer under a
213 transfer agreement entered into prior to the effective date of this
214 section is valid or invalid.

215 (f) Compliance with the requirements set forth in section 2 of this act
216 and fulfillment of the conditions set forth in section 3 of this act shall
217 be solely the responsibility of the transferee in any transfer of
218 structured settlement payment rights, and neither the structured
219 settlement obligor nor the annuity issuer shall bear any responsibility

220 for, or any liability arising from, noncompliance with such
221 requirements or failure to fulfill such conditions.

222 (g) The provisions of sections 1 to 6, inclusive, of this act shall be
223 applicable to transfer agreements executed on and after the effective
224 date of this section.

225 Sec. 7. Section 52-225f of the general statutes is repealed and the
226 following is substituted in lieu thereof (*Effective October 1, 2003*):

227 (a) For purposes of this section:

228 (1) "Annuity issuer" means an insurer that has issued any insurance
229 contract used to fund periodic payments under a structured
230 settlement;

231 (2) "Expenses" means all broker's commissions, service charges,
232 application or processing fees, closing costs, filing or administrative
233 charges, legal fees, notary fees and other commissions, fees, costs and
234 charges payable by the payee in connection with the proposed transfer
235 or deductible from the gross consideration that would be paid to the
236 payee in connection with the transfer;

237 (3) "Interested parties" means, with respect to any structured
238 settlement, the payee, any beneficiary designated to receive payments
239 following the payee's death or, if the designated beneficiary is a minor,
240 the designated beneficiary's parent or guardian, the annuity issuer and
241 the structured settlement obligor;

242 (4) "Payee" means an individual who is receiving payments under a
243 structured settlement and proposes to make a transfer of payment
244 rights thereunder;

245 (5) "Structured settlement" means an arrangement for periodic
246 payment of damages established by settlement or judgment in
247 resolution of a tort claim or for periodic payments in settlement of a
248 workers' compensation claim;

249 (6) "Structured settlement obligor" means, with respect to any
250 structured settlement, the party that has the continuing periodic
251 payment obligation to the payee under a structured settlement
252 agreement or under an agreement providing for a qualified
253 assignment within the meaning of Section 130 of the Internal Revenue
254 Code of 1986, or any subsequent corresponding internal revenue code
255 of the United States, as from time to time amended;

256 (7) "Structured settlement payment rights" means rights to receive
257 periodic payments, including lump sum payments, under a structured
258 settlement, whether from the settlement obligor or the annuity issuer;

259 (8) "Transfer" means any sale, assignment, pledge, hypothecation or
260 other form of alienation or encumbrance made for consideration;

261 (9) "Transfer agreement" means the agreement providing for
262 transfer of structured settlement payment rights from a payee to a
263 transferee; and

264 (10) "Transferee" means any person receiving structured settlement
265 payment rights resulting from a transfer.

266 (b) No transfer of structured settlement payment rights, either
267 directly or indirectly, shall be effective by any payee domiciled in this
268 state or by any payee entitled to receive payments under a structured
269 settlement funded by an insurance contract issued by an insurer
270 domiciled in this state or owned by an insurer or corporation
271 domiciled in this state and no structured settlement obligor or annuity
272 issuer shall be required to make any payment directly or indirectly to
273 any transferee of any such transfer unless (1) not less than ten days
274 prior to the date on which the payee entered into the transfer
275 agreement, the transferee provided to the payee a written disclosure
276 statement setting forth (A) the amounts and due dates of the
277 structured settlement payments to be transferred; (B) the aggregate
278 amount of the payments; (C) the gross amount of all expenses; (D) the
279 amount payable to the payee, net of all expenses, in exchange for the

280 payments; (E) the discounted present value of all structured settlement
281 payments to be transferred and the discount rate used in determining
282 such discounted present value; and (F) a statement that the payee may
283 be subject to adverse federal and state income tax consequences as a
284 result of the proposed transfer; and (2) such transfer has been
285 approved by a court pursuant to subsection (c) of this section.

286 (c) (1) Prior to any transfer, the payee entitled to receive payments
287 under such structured settlement shall commence a declaratory
288 judgment action under section 52-29 for a determination as to whether
289 the transfer of such structured settlement payment rights is in the best
290 interests of the payee and is fair and reasonable to all interested parties
291 under all of the circumstances then existing. The annuity issuer and
292 the structured settlement obligor shall be made parties to such action.
293 If the court determines, after hearing, that such transfer should be
294 allowed, it shall approve such transfer upon such terms and conditions
295 as it deems appropriate.

296 (2) The court in which the original action was or could have been
297 filed or the court which has jurisdiction where the applicant resides
298 shall have jurisdiction over any such action.

299 (3) The payee shall cause notice of the action to be served on all
300 interested parties by a proper officer or other person lawfully
301 empowered to make service. The notice of the action shall include (A)
302 a copy of the payee's application to the court for approval of the
303 transfer, (B) a copy of the disclosure statement required under
304 subsection (b) of this section and (C) notice of the hearing.

305 (4) The payee may seek an order setting the deadline for the filing of
306 written objections. The payee shall give notice to all interested parties
307 of the deadline for filing objections whether such deadline has been
308 established by court order or by operation of the general statutes or
309 court rule. Notice shall be mailed to all interested parties at least ten
310 days before such deadline.

311 (5) The court shall hold a hearing on the application. The payee shall
312 give notice of the hearing to all interested parties.

313 (d) Nothing contained in this section shall imply that any transfer
314 under a transfer agreement dated prior to October 1, 1998, is binding
315 upon any interested party or that any annuity issuer or structured
316 settlement obligor is under any obligation to make transferred
317 payments to the transferee of any such prior transfer.

318 (e) The provisions of this section may not be waived.

319 (f) The provisions of this section shall be applicable to transfer
320 agreements executed on and after October 1, 1998, and prior to October
321 1, 2003.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003, and applicable to transfer agreements executed on or after said date</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>

Statement of Purpose:

To replace Connecticut's law on the transfer of structured settlement payment rights with the Model State Structured Settlement Protection Act.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]