

SENATE BILL NO. 193

BY SENATOR MORRISH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To enact R.S. 9:2713 through 2713.9 and to repeal R.S. 9:2715, relative to agreements; to
3 provide relative to structured settlements; to enact the Louisiana Structured
4 Settlement Protection Act; to provide certain definitions, terms, procedures,
5 conditions, requirements, and effects; to provide relative to registration and transfer;
6 to provide relative to the transfer of structured settlement payment rights; and to
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:2713 through 2713.9 are hereby enacted to read as follows:

10 §2713. Short Title

11 This Section and Sections 2713.1 through 2713.9 of this Title shall be
12 known and may be cited as the Louisiana Structured Settlement Protection Act.

13 §2713.1. Definitions

14 A. As used in this Act, the following terms shall mean:

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

17 (2) "Assignee" means a person or entity acquiring or proposing to
18 acquire structured settlement payments from a structured settlement purchase
19 company or transferee after, or concurrently with, the transfer by the payee to
20 the structured settlement purchase company or transferee.

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

24 (4) "Discounted present value" means the present value of future

1 payments determined by discounting such payments to the present using the
2 most recently published Applicable Federal Rate for determining the present
3 value of an annuity, as issued by the United States Internal Revenue Service.

4 (5) "Gross advance amount" means the sum payable to the payee or for
5 the payee's account as consideration for a transfer of structured settlement
6 payment rights, before any reductions for transfer expenses or other deductions
7 to be made from such consideration.

8 (6) "Independent professional advice" means advice of an attorney,
9 certified public accountant, actuary, or other licensed professional adviser
10 whose compensation is not affected by whether a transfer occurs and both of the
11 following apply:

12 (a) The person is engaged by a payee to render advice concerning a
13 transfer of structured settlement payment rights.

14 (b) The person is not affiliated with or compensated by the transferee.

15 (7) "Interested party" means, with respect to any structured settlement,
16 the payee, any beneficiary irrevocably designated under the annuity contract
17 to receive payments following the payee's death, the annuity issuer, the
18 structured settlement obligor, and any other party to the structured settlement
19 that has continuing rights or obligations to receive or make payments under the
20 structured settlement.

21 (8) "Net advance amount" means the gross advance amount, less the
22 aggregate amount of the actual and estimated transfer expenses required to be
23 disclosed under R.S. 9:2713.5(A)(5).

24 (9) "Payee" means an individual who is receiving tax-free payments
25 under a structured settlement and proposes to make a transfer of payment
26 rights thereunder.

27 (10) "Periodic payments" includes both recurring payments and
28 scheduled future lump-sum payments.

29 (11) "Qualified assignment agreement" means an agreement providing
30 for a qualified assignment within the meaning of Section 130 of the Internal

1 Revenue Code, United States Code Title 26, as amended.

2 (12) "Renewal date" means the date on which a registered structured
3 settlement purchase company is required to have renewed their registration
4 under this statute, which date shall be one year after the initial registration or
5 any subsequent renewal.

6 (13) "Settled claim" means the tort claim resolved by a structured
7 settlement.

8 (14) "Structured settlement" means an arrangement for periodic
9 payment of damages for personal injuries or sickness established by settlement
10 or judgment in resolution of a tort claim.

11 (15) "Structured settlement agreement" means the agreement, judgment,
12 stipulation, or release embodying the terms of a structured settlement.

13 (16) "Structured settlement obligor" means, with respect to any
14 structured settlement, the party that has the continuing obligation to make
15 periodic payments to the payee under a structured settlement agreement or
16 qualified assignment agreement.

17 (17) "Structured settlement payment rights" means rights to receive
18 periodic payments under a structured settlement, whether from the structured
19 settlement obligor or the annuity issuer, where the payee is domiciled in the
20 state or the structured settlement agreement was approved by a court in the
21 state.

22 (18) "Structured settlement purchase company" means a party that acts
23 as a transferee in this state and that is registered with the secretary of state
24 pursuant to R.S. 9:2713.2.

25 (19) "Structured settlement transfer proceeding" means a court
26 proceeding filed by a structured settlement purchase company seeking court
27 approval of a transfer in accordance with this Act.

28 (20) "Terms of the structured settlement" include, with respect to any
29 structured settlement, the terms of the structured settlement agreement, the
30 annuity contract, any qualified assignment agreement, and any order or other

1 approval of any court in this state.

2 (21) "Transfer" means any sale, assignment, pledge, hypothecation, or
3 other alienation or encumbrance of structured settlement payment rights made
4 by a payee for consideration. The term "transfer" does not include the creation
5 or perfection of a security interest in structured settlement payment rights
6 under a blanket security agreement entered into with an insured depository
7 institution, in the absence of any action to redirect the structured settlement
8 payment rights to such insured depository institution, or an agent or successor
9 in interest thereof, or otherwise to enforce such blanket security interest against
10 the structured settlement payment rights.

11 (22) "Transfer agreement" means the agreement providing for a transfer
12 of structured settlement payment rights.

13 (23) "Transfer expenses" means all expenses of a transfer that are
14 required under the transfer agreement to be paid by the payee or deducted
15 from the gross advance amount, including, without limitation, court filing fees,
16 attorney fees, escrow fees, lien recordation fees, judgment and lien search fees,
17 finder's fees, commissions, and other payments to a broker or other
18 intermediary. "Transfer expenses" shall not include preexisting obligations of
19 the payee payable for the payee's account from the proceeds of a transfer.

20 (24) "Transfer order" means an order approving a transfer in
21 accordance with R. S. 9:2713.6.

22 (25) "Transferee" means a party acquiring or proposing to acquire
23 structured settlement payment rights through a transfer.

24 §2713.2. Registration; renewal

25 A. A person or entity shall not act as a transferee, attempt to acquire
26 structured settlement payment rights through a transfer from a payee who
27 resides in this state, or file a structured settlement transfer proceeding in this
28 state unless the person or entity has registered with the secretary of state to do
29 business in this state.

30 B. An applicant's initial registration application shall be submitted on

1 a form prescribed by the secretary of state, and shall include a sworn
2 certification by an owner, officer, director, or manager of the applicant, if the
3 applicant is an entity, or by the individual applicant if the applicant is an
4 individual, certifying that:

5 (1) The applicant has secured a surety bond, has been issued a letter of
6 credit, or has posted a cash bond in the amount of fifty thousand dollars,
7 relative to its business as a structured settlement purchase company in this
8 state. The surety bond, letter of credit, or cash bond is intended to protect
9 payees who do business with a structured settlement purchase company.

10 (a) The bond shall be payable to the state of Louisiana.

11 (b) The bond, letter of credit, or cash bond shall be effective for at least
12 the time period during which the applicant's registration filed with the
13 secretary of state is effective and the bond, letter of credit, or cash bond shall
14 be renewed each year when the applicant's registration is renewed.

15 (c) The applicant shall submit to the secretary of state a copy of the bond,
16 letter of credit, or cash bond with its registration or renewal application.

17 (d) The bond, letter of credit, or cash bond is intended to ensure that the
18 structured settlement purchase company will comply with the provisions of this
19 Act relative to the payee and perform its obligations to payee under this Act,
20 and to provide a source for recovery for the payee should a payee recover a
21 judgment against a structured settlement purchase company for a violation of
22 this Act.

23 (e) Within ten days after a judgment is secured against a structured
24 settlement purchase company by a payee, the structured settlement purchase
25 company shall file a notice with the secretary of state and the surety providing
26 a copy of the judgment and the name and address of the judgment creditor, and
27 include the status of the matter, including whether the judgment will be
28 appealed or has been paid or satisfied.

29 (f) The liability of the surety under the bond shall not be affected by any
30 breach of contract, breach of warranty, failure to pay a premium or other act

1 or omission of the bonded structured settlement purchase company, or by any
2 insolvency or bankruptcy of the structured settlement purchase company.

3 (g) Neither the bonded structured settlement purchase company nor the
4 surety shall cancel or modify the bond during the term for which it is issued,
5 except by filing a written notice with the secretary of state at least twenty days
6 prior to the effective date of such cancellation or modification.

7 (h) In the event of a cancellation of the bond, the registration of the
8 structured settlement purchase company shall automatically expire unless a
9 new surety bond, letter of credit, or cash bond, which complies with this
10 Subsection, is filed with the secretary of state. The cancellation or modification
11 of a bond does not affect any liability of the bonded surety company incurred
12 before cancellation or modification of the bond.

13 (2) The applicant will comply with all of the provisions of this Act when
14 acting as a structured settlement purchase company and filing structured
15 settlement transfer proceedings in this state.

16 C. An assignee is not required to register as a structured settlement
17 purchase company in order to acquire structured settlement payment rights
18 from a transferee, structured settlement purchase company, or another
19 assignee, or to take a security interest in structured settlement payment rights
20 from a transferee, structured settlement purchase company, or another
21 assignee, in a transaction where the assignee does not act as a structured
22 settlement purchase company or as a transferee under this Act.

23 D. An employee of a structured settlement purchase company, if acting
24 on behalf of the employer structured settlement purchase company in
25 connection with a transfer, is not required to be registered.

26 E. A registered structured settlement purchase company shall renew its
27 registration annually, on or before the renewal date, and provide the
28 certifications set forth in Subsection B of this Section.

29 §2713.3. Prohibited Acts

30 A. A transferee or structured settlement purchase company, or an

1 employee or representative of a transferee or structured settlement purchase
2 company, shall not engage in any of the following actions:

3 (1) Pursue or complete a transfer with a payee without complying with
4 this Act.

5 (2) Refuse or fail to fund a transfer, following court approval of the
6 transfer.

7 (3) Acquire structured settlement payment rights from a payee without
8 complying with this Act and securing court approval of the transfer in
9 accordance with this Act.

10 (4) Intentionally file a structured settlement transfer proceeding in any
11 court other than the court specified in R. S. 9:2713.8(A), unless the transferee
12 is required to file in some other court by other applicable law.

13 (5) Pay a commission or finder's fee to a person or entity for facilitating
14 or arranging a structured settlement transfer with a payee, unless such person
15 or entity is registered as a structured settlement purchase company or is an
16 employee of a registered structured settlement purchase company. A structured
17 settlement purchase company may pay to third parties routine transfer
18 expenses, such as court filing fees, escrow fees, lien recordation fees, judgment
19 and lien search fees, attorney fees, and other similar types of fees relating to a
20 transfer. A structured settlement purchase company may pay a reasonable
21 referral fee to an attorney, certified public accountant, actuary, licensed
22 insurance agent, or other licensed professional advisor in connection with a
23 transfer.

24 (6) Intentionally advertise materially false or misleading information
25 regarding its products or services.

26 (7) Attempt to coerce, bribe, or intimidate any payee seeking to transfer
27 structured settlement payment rights.

28 (8) Attempt to defraud a payee or any party to a structured settlement
29 transfer or any interested party in a structured settlement transfer proceeding
30 by means of forgery or false identification.

1 **(9) Intervene in a pending structured settlement transfer proceeding, if**
2 **the transferee or structured settlement purchase company is not a party to such**
3 **proceeding or an interested party relative to the proposed transfer which is the**
4 **subject of the pending structured settlement transfer proceeding. However, this**
5 **shall not preclude a structured settlement purchase company from intervening**
6 **in a pending structured settlement transfer proceeding where the payee has**
7 **signed a transfer agreement with the structured settlement purchase company**
8 **within sixty days prior to the filing of the pending structured settlement transfer**
9 **proceeding, and the structured settlement purchase company who filed the**
10 **pending structured settlement transfer proceeding violated any of the**
11 **provisions of this Act in connection with the proposed transfer that is the**
12 **subject of the pending structured settlement transfer proceeding.**

13 **(10) Knowingly contact a payee who has signed a transfer agreement and**
14 **is pursuing a proposed transfer with another structured settlement purchase**
15 **company for the purpose of inducing the payee into canceling the proposed**
16 **transfer or transfer agreement with the other structured settlement purchase**
17 **company, if a structured settlement transfer proceeding has been filed by the**
18 **other structured settlement purchase company and is pending. However, if no**
19 **hearing has been held in the pending structured settlement transfer proceeding**
20 **within ninety days of the filing of same, this Paragraph shall not apply.**

21 **(11) Fail to dismiss a pending structured settlement transfer proceeding**
22 **at the request of the payee. A dismissal of a structured settlement transfer**
23 **proceeding under this Subsection shall not exempt a person who violates this**
24 **Section from any liability under this Section.**

25 **B. A payee may pursue a private action as a result of a violation of this**
26 **Section, and may recover all damages and pursue all rights and remedies to**
27 **which the payee may be entitled under this Act, the Unfair Trade Practices and**
28 **Consumer Protection Law, or other applicable law.**

29 **C. A structured settlement purchase company may pursue a private**
30 **action to enforce Paragraphs (A)(4), (A)(7), (A)(9), (A)(10), and (A)(11) of this**

1 Section as a result of a violation of such Paragraphs, and may recover all
2 damages and pursue all remedies to which the structured settlement purchase
3 company may be entitled under this Act or other applicable law.

4 D. If a court determines that a structured settlement purchase company
5 or transferee is in violation of this Section, the court may revoke the registration
6 of the structured settlement purchase company, suspend the registration of the
7 structured settlement purchase company for a period of time to be determined
8 at the discretion of the court, or may enjoin the structured settlement purchase
9 company or transferee from filing new structured settlement transfer
10 proceedings or pursuing transfers in this state.

11 §2713.4. Authority to pursue and complete transfers

12 A. At the time the transfer order is to be signed by the court, all
13 transferees must provide evidence to the court in which a structured settlement
14 transfer proceeding is filed that the transferee is registered to do business in this
15 state as a structured settlement purchase company.

16 B. A transfer order signed by a Louisiana court of competent jurisdiction
17 in accordance with this Act shall constitute a qualified order under 26 U.S.C.
18 5891. A transfer order signed by a Louisiana court of competent jurisdiction
19 after the effective date of this Act, where the transferee is not a registered
20 structured settlement purchase company at the time the transfer order is signed
21 shall not constitute a qualified order under 26 U.S.C.5891.

22 §2713.5. Required disclosures to payee

23 A. Not less than three days prior to the date on which a payee signs a
24 transfer agreement, the transferee shall provide to the payee a separate
25 disclosure statement, in bold type no smaller than fourteen point font, setting
26 forth the following:

27 (1) The amounts and due dates of the structured settlement payments to
28 be transferred.

29 (2) The aggregate amount of such payments.

30 (3) The discounted present value of the payments to be transferred,

1 which shall be identified as the "calculation of current value of the transferred
2 structured settlement payments under federal standards for valuing annuities",
3 and the amount of the Applicable Federal Rate used in calculating such
4 discounted present value.

5 (4) The gross advance amount.

6 (5) An itemized listing of all applicable transfer expenses, other than
7 attorney fees and related disbursements, payable in connection with the
8 transferee's application for approval of the transfer, and the transferee's best
9 estimate of the amount of any such fees and disbursements.

10 (6) The effective annual interest rate, which must be disclosed in a
11 statement in the following form: "On the basis of the net amount that you will
12 receive from us and the amounts and timing of the structured settlement
13 payments that you are transferring to us, you will, in effect be paying interest
14 to us at a rate of _____ percent per year".

15 (7) The net advance amount.

16 (8) The amount of any penalties or liquidated damages payable by the
17 payee in the event of any breach of the transfer agreement by the payee.

18 B. Not less than three days prior to the date on which a payee signs a
19 transfer agreement, the transferee shall provide to the payee a separate note of
20 payee's rights, in bold type, no smaller than fourteen point font, setting forth the
21 following:

22 (1) The payee has the right to cancel the transfer agreement, without
23 penalty or further obligation, until the transfer is approved by the court.

24 (2) The payee is required to seek and receive independent professional
25 advice regarding a transfer of structured settlement payment rights.

26 (3) The payee has the right to seek out and consider additional offers for
27 transferring the structured settlement payments and should do so.

28 §2713.6. Approval of transfers of structured settlement payment rights

29 A. No direct or indirect transfer of structured settlement payment rights
30 shall be effective, and no structured settlement obligor or annuity issuer shall

1 be required to make any payment directly or indirectly to any transferee or
2 assignee of structured settlement payment rights, unless the transfer has been
3 approved in advance in a final court order based on express findings by such
4 court that all of the following apply:

5 (1) The transfer is in the best interest of the payee, taking into account
6 the welfare and support of the payee's dependents.

7 (2) The payee has received independent professional advice regarding the
8 transfer.

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

11 §2713.7. Effects of transfer of structured settlement payment rights

12 A. Following a transfer of structured settlement payment rights, the
13 structured settlement obligor and the annuity issuer may rely on the court order
14 approving the transfer in redirecting periodic payments to an assignee or
15 transferee in accordance with the order approving the transfer and shall, as to
16 all parties except the transferee or an assignee designated by the transferee, be
17 discharged and released from any and all liability for the redirected payments.
18 Such discharge and release shall not be affected by the failure of any party to
19 the transfer to comply with this Act or with the court order approving the
20 transfer.

21 B. The transferee shall be liable to the structured settlement obligor and
22 the annuity issuer:

23 (1) If the transfer contravenes the terms of the structured settlement, for
24 any taxes incurred by the structured settlement obligor or annuity issuer as a
25 consequence of the transfer.

26 (2) For any other liabilities or costs, including reasonable costs and
27 attorney fees, arising from compliance by the structured settlement obligor or
28 annuity issuer with the court order approving the transfer, or from the failure
29 of any party to the transfer to comply with this Act.

30 C. Neither the annuity issuer nor the structured settlement obligor may

1 be required to divide any periodic payment between the payee and any
2 transferee or assignee or between two or more transferees or assignees.

3 D. Any further transfer of structured settlement payment rights by the
4 payee may be made only after compliance with all of the requirements of this
5 Act.

6 §2713.8. Procedure for approval of transfers

7 A. An application under this Act for approval of a transfer of structured
8 settlement payment rights shall be made by the transferee. The application shall
9 be brought in a court of general jurisdiction in the parish in which the payee is
10 domiciled, except that if the payee is not domiciled in this state, the application
11 may be brought in the court in this state that approved the structured
12 settlement agreement.

13 B. All court costs associated with filing the application for approval of
14 a transfer of structured settlement payment rights shall be paid by the
15 transferee.

16 C. A timely hearing shall be held on an application for approval of a
17 transfer of structured settlement payment rights. The payee shall appear in
18 person at the hearing, unless the court determines that good cause exists to
19 excuse the payee from appearing in person.

20 D. Not less than twenty days prior to the scheduled hearing on any
21 application for approval of a transfer of structured settlement payment rights
22 under R.S. 9:2713.6, the transferee shall file with the court and serve on all
23 interested parties a notice of the proposed transfer and the application for
24 authorization. Such notice and application shall include all of the following:

25 (1) A copy of the transferee's application.

26 (2) A copy of the transfer agreement.

27 (3) A copy of the disclosure statement required under R.S. 9:2713.5.

28 (4) The payee's name, age, parish of domicile, and the number and ages
29 of each of the payee's dependents.

30 (5) A copy of the notice of payee's rights required under R.S. 9:2713.5.

1 **(6) A summary of:**

2 **(a) Any prior transfers by the payee to the transferee or an affiliate, or**
3 **through the transferee or an affiliate to an assignee, within the four years**
4 **preceding the date of the transfer agreement and any proposed transfers by the**
5 **payee to the transferee or an affiliate, or through the transferee or an affiliate,**
6 **applications for approval of which were denied within the two years preceding**
7 **the date of the transfer agreement.**

8 **(b) Any prior transfers by the payee to any person or entity other than**
9 **the transferee or an affiliate or an assignee of the transferee or an affiliate**
10 **within the three years preceding the date of the transfer agreement, and any**
11 **prior proposed transfers by the payee to any person or entity other than the**
12 **transferee or an affiliate or an assignee of a transferee or affiliate, applications**
13 **for approval of which were denied within the one year preceding the date of the**
14 **current transfer agreement, to the extent that the transfers or proposed**
15 **transfers have been disclosed to the transferee by the payee in writing or**
16 **otherwise are actually known to the transferee.**

17 **(7) Notification that any interested party is entitled to support, oppose,**
18 **or otherwise respond to the transferee's application, either in person or by**
19 **counsel, by submitting written comments to the court or by participating in the**
20 **hearing.**

21 **(8) Notification of the time and place of the hearing and notification of**
22 **the manner in which and the date by which written responses to the application**
23 **must be filed, which date shall be not less than five days prior to the hearing, in**
24 **order to be considered by the court.**

25 **§2713.9. General provisions; construction**

26 **A. The provisions of this Act may not be waived by any payee.**

27 **B. Any transfer agreement entered into on or after the effective date of**
28 **this Act by a payee who is domiciled in this state shall provide that disputes**
29 **under such transfer agreement, including any claims that the payee has**
30 **breached the agreement, shall be determined in and under the laws of the state**

1 of Louisiana. No such transfer agreement shall authorize the transferee or any
2 other party to confess judgment or consent to entry of judgment against the
3 payee.

4 C. No transfer of structured settlement payment rights shall extend to
5 any payments that are life-contingent unless, prior to the date on which the
6 payee signs the transfer agreement, the transferee has established and has
7 agreed to maintain procedures reasonably satisfactory to the annuity issuer and
8 the structured settlement obligor for periodically confirming the payee's
9 survival and giving the annuity issuer and the structured settlement obligor
10 prompt written notice in the event of the payee's death.

11 D. If the payee cancels a transfer agreement, or if the transfer agreement
12 otherwise terminates, after an application for approval of a transfer of
13 structured settlement payment rights has been filed and before it has been
14 granted or denied, the transferee shall promptly request dismissal of the
15 application.

16 E. No payee who proposes to make a transfer of structured settlement
17 payment rights shall incur any penalty, forfeit any application fee or other
18 payment, or otherwise incur any liability to the proposed transferee or any
19 assignee based on any failure of such transfer to satisfy the conditions of this
20 Act.

21 F. Nothing contained in this Act shall be construed to authorize any
22 transfer of structured settlement payment rights in contravention of any
23 applicable law or to imply that any transfer under a transfer agreement entered
24 into prior to July 1, 2020, is valid or invalid.

25 G. The compliance with the requirements set forth in R.S. 9:2713.5 and
26 fulfillment of the conditions set forth in R.S. 9:2713.6 shall be solely the
27 responsibility of the transferee in any transfer of structured settlement payment
28 rights, and neither the structured settlement obligor nor the annuity issuer shall
29 bear any responsibility for, or any liability arising from, noncompliance with
30 such requirements or failure to fulfill such conditions.

1 Section 2. R.S. 9:2715 is hereby repealed.

2 Section 3. This Act shall become effective July 1, 2020.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____