

House Bill 443

By: Representatives Leverett of the 33rd and Scoggins of the 14th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 12 of Title 51 of the Official Code of Georgia Annotated, relating to
2 damages, so as to provide for new requirements regarding the transfer of structured
3 settlement payment rights; to provide for definitions; to provide for registration of
4 transferees; to provide for requirements; to provide for prohibited acts; to provide for
5 required disclosures; to provide for approval of transfers; to provide for related matters; to
6 provide for a short title; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 12 of Title 51 of the Official Code of Georgia Annotated, relating to damages, is
10 amended by repealing Article 4, relating to damages in tort actions, in its entirety and
11 replacing it with a new Article 4 to read as follows:

12 "ARTICLE 4

13 51-12-71.

14 This article shall be known and may be cited as the 'Georgia Structured Settlement
15 Protection Act.'

16 51-12-72.

17 As used in this article, the term:

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

20 (2) 'Assignee' means a person or entity acquiring or proposing to acquire structured
21 settlement payments from a structured settlement purchase company or transferee after,
22 or concurrently with, the transfer by the payee to the structured settlement purchase
23 company or transferee.

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

26 (4) 'Discounted present value' means the present value of future payments determined
27 by discounting such payments to the present using the most recently published Applicable
28 Federal Rate for determining the present value of an annuity, as issued by the United
29 States Internal Revenue Service.

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

33 (6) 'Independent professional advice' means advice of an attorney, certified public
34 accountant, actuary, or other licensed professional adviser.

35 (7) 'Interested party' means, with respect to any structured settlement, the payee, any
36 beneficiary irrevocably designated under the annuity contract to receive payments

37 following the payee's death, the annuity issuer, the structured settlement obligor, and any
38 party to the structured settlement that has continuing obligations to make payments under
39 the structured settlement.

40 (8) 'Net advance amount' means the gross advance amount, less the aggregate amount
41 of the actual and estimated transfer expenses required to be disclosed under paragraph (5)
42 of subsection (a) of Code Section 51-12-76.

43 (9) 'Payee' means an individual who is receiving tax free payments under a structured
44 settlement and proposes to make a transfer of payment rights thereunder.

45 (10) 'Periodic payments' includes both recurring payments and scheduled future lump
46 sum payments.

47 (11) 'Qualified assignment agreement' means an agreement providing for a qualified
48 assignment within the meaning of Section 130 of the United States Internal Revenue
49 Code, United States Code Title 26, as amended.

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

53 (13) 'Structured settlement' means an arrangement for periodic payment of damages for
54 personal injuries or sickness established by settlement or judgment in resolution of a tort
55 claim.

56 (14) 'Structured settlement agreement' means the agreement, judgment, stipulation, or
57 release embodying the terms of a structured settlement.

58 (15) 'Structured settlement obligor' means, with respect to any structured settlement, the
59 party that has the continuing obligation to make periodic payments to the payee under a
60 structured settlement agreement or qualified assignment agreement.

61 (16) 'Structured settlement payment rights' means rights to receive periodic payments
62 under a structured settlement, whether from the structured settlement obligor or the

63 annuity issuer, where the payee is domiciled in this state or the structured settlement
64 agreement was approved by a court in this state.

65 (17) 'Structured settlement purchase company' means a person that acts as a transferee
66 in this state and who is registered with the Secretary of State pursuant to Code Section
67 51-12-73.

68 (18) 'Structured settlement transfer proceeding' means a court proceeding filed by a
69 structured settlement purchase company seeking court approval of a transfer in
70 accordance with this article.

71 (19) 'Terms of the structured settlement' include, with respect to any structured
72 settlement, the terms of the structured settlement agreement, the annuity contract, any
73 qualified assignment agreement, and any order or other approval of any court in this state.

74 (20) 'Transfer' means any sale, assignment, pledge, hypothecation, or other alienation or
75 encumbrance of structured settlement payment rights made by a payee for consideration.
76 Such term shall not include the creation or perfection of a security interest in structured
77 settlement payment rights under a blanket security agreement entered into with an insured
78 depository institution, in the absence of any action to redirect the structured settlement
79 payments to such insured depository institution, or an agent or successor in interest
80 thereof, or otherwise to enforce such blanket security interest against the structured
81 settlement payment rights.

82 (21) 'Transfer agreement' means the agreement providing for a transfer of structured
83 settlement payment rights.

84 (22) 'Transfer expense' means all expenses of a transfer that are required under the
85 transfer agreement to be paid by the payee or deducted from the gross advance amount,
86 including, without limitation, court filing fees, attorney fees, escrow fees, lien recordation
87 fees, judgment and lien search fees, finders' fees, commissions, and other payments to a
88 broker or other intermediary. Such term shall not include preexisting obligations of the
89 payee payable for the payee's account from the proceeds of the transfer.

90 (23) 'Transfer order' means an order approving a transfer in accordance with Code
91 Section 51-12-77.

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

94 51-12-73.

95 (a) A person or entity shall not act as a transferee, attempt to acquire structured settlement
96 payment rights through a transfer from a payee who resides in this state, or file a structured
97 settlement transfer proceeding in this state unless the person or entity has registered with
98 the Secretary of State to do business in this state.

99 (b)(1) An applicant's initial registration application shall be submitted on a form
100 prescribed by the Secretary of State, and shall include a sworn certification by an owner,
101 officer, director, or manager of the applicant, if the applicant is an entity, or by the
102 individual applicant if the applicant is an individual, certifying that the applicant has
103 secured a surety bond, or has been issued a letter of credit, or has posted a cash bond in
104 the amount of \$50,000.00, relative to its business as a structured settlement purchase
105 company in this state. The surety bond or letter of credit is intended to protect payees
106 who do business with a structured settlement purchase company.

107 (2) The bond shall be payable to the State of Georgia.

108 (3) The bond, letter of credit, or cash bond shall be effective for at least the time period
109 during which the application's registration filed with the Secretary of State is effective
110 and the bond, letter of credit, or cash bond shall be renewed each year when the
111 registration of the applicant is renewed.

112 (4) The applicant shall submit to the Secretary of State a copy of the bond, letter of
113 credit, or cash bond with its registration or renewal application.

114 (5) The bond, letter of credit, or cash bond is intended to ensure that the structured
115 settlement purchase company will comply with the provisions of this article relative to

116 the payee and perform its obligations to payee under this article, and to provide a source
117 for recovery for the payee should a payee recover a judgment against a structured
118 settlement purchase company for a violation of this article.

119 (c) Within ten days after a judgment is secured against a structured settlement purchase
120 company by a payee, the structured settlement purchase company shall file a notice with
121 the Secretary of State and the surety providing a copy of the judgment and the name and
122 address of the judgment creditor, and include the status of the matter, including whether
123 the judgment will be appealed, or has been paid or satisfied.

124 (d) The liability of the surety under the bond shall not be affected by any breach of
125 contract, breach of warranty, failure to pay a premium or other act or omission of the
126 bonded structured settlement purchase company, or by any insolvency or bankruptcy of the
127 structured settlement purchase company.

128 (e) Neither the bonded structured settlement purchase company nor the surety shall cancel
129 or modify the bond during the term for which it is issued, except with written notice to the
130 Secretary of State at least 20 days prior to the effective date of such cancellation or
131 modification.

132 (f) In the event of a cancellation of the bond, the registration of the structured settlement
133 purchase company shall automatically expire unless a new surety bond, letter of credit, or
134 cash bond, which complies with this Code section, is filed with the Secretary of State. The
135 cancellation or modification of a bond shall not affect any liability of the bonded surety
136 company incurred before the cancellation or modification of the bond.

137 (g) The applicant shall comply with all of the provisions of this article when acting as a
138 structured settlement purchase company and filing structured settlement transfer
139 proceedings in this state.

140 (h) An assignee shall not be required to register as a structured settlement purchase
141 company in order to acquire structured settlement payment rights from a transferee,
142 structured settlement purchase company, or another assignee, or to take a security interest

143 in structured settlement payment rights from a transferee, structured settlement purchase
144 company, or another assignee, in a transaction where the assignee does not act as a
145 structured settlement purchase company or as a transferee under this article.

146 (i) An employee of a structured settlement purchase company, if acting on behalf of the
147 employer structured settlement purchase company in connection with a transfer, is not
148 required to be registered.

149 (j) A registered structured settlement purchase company shall renew its registration
150 annually, on or before the renewal date, and provide the certifications set forth in this Code
151 section.

152 51-12-74.

153 (a) A transferee or structured settlement purchase company, and an employee or
154 representative of a transferee or structured settlement purchase company, shall not engage
155 in any of the following actions:

156 (1) Pursue or complete a transfer with a payee without complying with this article;

157 (2) Refuse or fail to fund a transfer, following court approval of the transfer;

158 (3) Acquire structured settlement payment rights from the payee without complying with
159 this article and securing court approval of the transfer in accordance with this article;

160 (4) Intentionally file a structured settlement transfer proceeding in any court other than
161 the court specified in subsection (a) of Code Section 51-12-79, unless the transferee is
162 required to file in some other court by other applicable law;

163 (5) Pay a commission or finder's fee to a person or entity for facilitating or arranging a
164 structured settlement transfer with a payee, unless such person or entity is registered as
165 a structured settlement purchase company or is an employee of a registered structured
166 settlement purchase company. A structured settlement purchase company may pay to
167 third parties routine transfer expenses, such as court filing fees, escrow fees, lien
168 recordation fees, judgment and lien search fees, attorney fees, and other similar types of

169 fees relating to a transfer. A structured settlement purchase company may pay a
170 reasonable referral fee to an attorney, certified public accountant, actuary, licensed
171 insurance agent, or other licensed professional advisor in connection with a transfer;
172 (6) Intentionally advertise materially false or misleading information regarding its
173 products or services;
174 (7) Attempt to coerce, bribe, or intimidate any payee seeking to transfer structured
175 settlement payment rights;
176 (8) Attempt to defraud a payee or any party to a structured settlement transfer or any
177 interested party in a structured settlement transfer proceeding by means of forgery or
178 false identification;
179 (9) Intervene in a pending structured settlement transfer proceeding, if the transferee or
180 structured settlement purchase company is not a party to such proceeding or an interested
181 party relative to the proposed transfer which is the subject of the pending structured
182 settlement transfer proceeding. However, this shall not preclude a structured settlement
183 purchase company from intervening in a pending structured settlement transfer
184 proceeding where the payee has signed a transfer agreement with the structured
185 settlement purchase company within 60 days prior to the filing of the pending structured
186 settlement proceeding, and the structured settlement purchase company who filed the
187 pending structured settlement transfer proceeding violated any of the provisions of this
188 article in connection with the proposed transfer that is the subject of the pending
189 structured settlement transfer proceeding;
190 (10) Knowingly contact a payee who has signed a transfer agreement and is pursuing a
191 proposed transfer with another structured settlement purchase company for the purpose
192 of inducing the payee into canceling the proposed transfer or transfer agreement with the
193 other structured settlement purchase company, if a structured settlement transfer
194 proceeding has been filed by the other structured settlement purchase company and is
195 pending. However, if no hearing has been held in the pending structured settlement

196 transfer proceeding within 90 days of the filing of same, this paragraph shall not apply;
197 or

198 (11) Fail to dismiss a pending structured settlement transfer proceeding at the request of
199 the payee. A dismissal of a structured settlement proceeding under this Code section
200 shall not exempt a person who violates this Code section from any liability under this
201 article.

202 (b) A payee may pursue a private action as a result of a violation of this Code section, and
203 may recover all damages and pursue all rights and remedies to which the payee may be
204 entitled under this article, the Fair Business Practices Act, or other applicable law.

205 (c) A structured settlement purchase company may pursue a private action to enforce
206 paragraphs (4), (7), (9), (10), or (11) of subsection (a) of this Code section as a result of a
207 violation of such paragraphs, and may recover all damages and pursue all remedies to
208 which the structured settlement purchase company may be entitled under this article or
209 other applicable law.

210 (d) If a court determines that a structured settlement purchase company or transferee is in
211 violation of this Code section, the court may revoke the registration of the structured
212 settlement purchase company, suspend the registration of the structured settlement
213 purchase company for a period of time to be determined at the discretion of the court, or
214 enjoin the structured settlement purchase company or transferee from filing new structured
215 settlement transfer proceedings or pursuing transfers in this state.

216 51-12-75.

217 (a) At the time the transfer order is to be signed by the court, all transferees must provide
218 evidence to the court in which a structured settlement transfer proceeding is filed that the
219 transferee is registered to do business in this state as a structured settlement purchase
220 company.

221 (b) A transfer order signed by a Georgia court of competent jurisdiction in accordance with
222 this article shall constitute a qualified order under 26 U.S.C. Section 5891. A transfer order
223 signed by a Georgia court of competent jurisdiction after the effective date of this article,
224 where the transferee is not a registered structured settlement purchase company at the time
225 the transfer order is signed shall not constitute a qualified order under 26 U.S.C.
226 Section 5891.

227 51-12-76.

228 Not less than ten days prior to the date on which a payee signs a transfer agreement, the
229 transferee shall provide to the payee a separate disclosure statement, in bold type no
230 smaller than 14 point font, setting forth the following:

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

232 (2) The aggregate amount of such payments;

233 (3) The discounted present value of the payments to be transferred, which shall be
234 identified as the 'calculation of current value of the transferred structured settlement
235 payments under federal standards for valuing annuities,' and the amount of the Applicable
236 Federal Rate used in calculating such discounted present value;

237 (4) The gross advance amount;

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

242 (6) The effective annual interest rate, which must be disclosed in a statement in the
243 following form: 'On the basis of the net amount that you will receive from us and the
244 amounts and timing of the structured settlement payments that you are transferring to us,
245 you will, in effect be paying interest to us at a rate of ____ percent per year.';

246 (7) The net advance amount;

247 (8) The amount of any penalties or liquidated damages payable by the payee in the event
248 of any breach of the transfer agreement by the payee;

249 (9) That the payee has the right to cancel the transfer agreement, without penalty or
250 further obligation, until the transfer is approved by the court;

251 (10) That the payee has the right to seek and receive independent professional advice
252 regarding the proposed transfer and should consider doing so before agreeing to transfer
253 any structured settlement payment rights; and

254 (11) That the payee has the right to seek out and consider additional offers for
255 transferring the structured settlement payments and should do so.

256 51-12-77.

257 No direct or indirect transfer of structured settlement payment rights shall be effective, and
258 no structured settlement obligor or annuity issuer shall be required to make any payment
259 directly or indirectly to any transferee or assignee of structured settlement payment rights,
260 unless the transfer has been approved in advance in a final court order based on express
261 findings by such court that all of the following apply:

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

264 (2) The payee has been advised in writing by the transferee to seek independent
265 professional advice regarding the transfer, and has either received such advice or
266 knowingly waived in writing the opportunity to seek and receive such advice; and

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

269 51-12-78.

270 (a) Following a transfer of structured settlement payment rights, the structured settlement
271 obligor and the annuity issuer may rely on the court order approving the transfer in

272 redirecting periodic payments to an assignee or transferee in accordance with the order
273 approving the transfer and shall, as to all parties except the transferee or an assignee
274 designated by the transferee, be discharged and released from any and all liability for the
275 redirected payments. Such discharge and release shall not be affected by the failure of any
276 party to the transfer to comply with this article or with the court order approving the
277 transfer.

278 (b) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

279 (1) If the transfer contravenes the terms of the structured settlement, for any taxes
280 incurred by the structured settlement obligor or annuity issuer as a consequence of the
281 transfer; and

282 (2) For any other liabilities or costs, including reasonable costs and attorney fees, arising
283 from compliance by the structured settlement obligor or annuity issuer with the court
284 order approving the transfer, or from the failure of any party to the transfer to comply
285 with this article.

286 (c) Neither the annuity issuer nor the structured settlement obligor may be required to
287 divide any periodic payment between the payee and any transferee or assignee or between
288 two or more transferees or assignees.

289 (d) Any further transfer of structured settlement payment rights by the payee may be made
290 only after compliance with all of the requirements of this article.

291 51-12-79.

292 (a) An application under this article for approval of a transfer of structured settlement
293 payment rights shall be made by the transferee. The application shall be brought in
294 superior court in the county in which the payee is domiciled, except that if the payee is not
295 domiciled in this state, the application may be brought in the court in this state that
296 approved the structured settlement agreement.

297 (b) A timely hearing shall be held on an application for approval of a transfer of structured
298 settlement payment rights. The payee shall appear in person at the hearing, unless the court
299 determines that good cause exists to excuse the payee from appearing in person.

300 (c) Not less than 20 days prior to the scheduled hearing on any application for approval
301 of a transfer of structured settlement payment rights under Code Section 51-12-77, the
302 transferee shall file with the court and serve on all interested parties a notice of the
303 proposed transfer and the application for authorization. Such notice and application shall
304 include all of the following:

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

306 (2) A copy of the transfer agreement;

307 (3) A copy of the disclosure statement required under Code Section 51-12-76;

308 (4) The payee's name, age, county of domicile, and the number and ages of each of the
309 payee's dependents;

310 (5) A summary of:

311 (A) Any prior transfers by the payee to the transferee or an affiliate, or through the
312 transferee or an affiliate to an assignee, within the four years preceding the date of the
313 transfer agreement and any proposed transfers by the payee to the transferee or an
314 affiliate, or through the transferee or an affiliate, applications for approval of which
315 were denied within the two years preceding the date of the transfer agreement; and

316 (B) Any prior transfers by the payee to any person or entity other than the transferee
317 or an affiliate or an assignee of the transferee or an affiliate within the three years
318 preceding the date of the transfer agreement, and any prior proposed transfers by the
319 payee to any person or entity other than the transferee or an affiliate or an assignee of
320 a transferee or affiliate, applications for approval of which were denied within the one
321 year preceding the date of the current transfer agreement, to the extent that the transfers
322 or proposed transfers have been disclosed to the transferee by the payee in writing or
323 otherwise are actually known to the transferee;

324 (6) Notification that any interested party is entitled to support, oppose, or otherwise
325 respond to the transferee's application, either in person or by counsel, by submitting
326 written comments to the court or by participating in the hearing; and

327 (7) Notification of the time and place of the hearing and notification of the manner in
328 which and the date by which written responses to the application must be filed, which
329 date shall be not less than five days prior to the hearing, in order to be considered by the
330 court.

331 51-12-80.

332 (a) The provisions of this article shall not be waived by any payee.

333 (b) Any transfer agreement entered into on or after the effective date of this article by a
334 payee who is domiciled in this state shall provide that disputes under such transfer
335 agreement, including any claims that the payee has breached the agreement, shall be
336 determined in and under the laws of the State of Georgia. No such transfer agreement shall
337 authorize the transferee or any other party to confess judgment or consent to entry of
338 judgment against the payee.

339 (c) No transfer of structured settlement payment rights shall extend to any payments that
340 are life contingent unless, prior to the date on which the payee signs the transfer agreement,
341 the transferee has established and has agreed to maintain procedures reasonably satisfactory
342 to the annuity issuer and the structured settlement obligor for periodically confirming the
343 payee's survival and giving the annuity issuer and the structured settlement obligor prompt
344 written notice in the event of the payee's death.

345 (d) If the payee cancels a transfer agreement, or if the transfer agreement otherwise
346 terminates, after an application for approval of a transfer of structured settlement payment
347 rights has been filed and before it has been granted or denied, the transferee shall promptly
348 request dismissal of the application.

349 (e) No payee who proposes to make a transfer of structured settlement payment rights shall
350 incur any penalty, forfeit any application fee or other payment, or otherwise incur any
351 liability to the proposed transferee or any assignee based on any failure of such transfer to
352 satisfy the conditions of this article.

353 (f) Nothing contained in this article shall be construed to authorize any transfer of
354 structured settlement payment rights in contravention of any applicable law or to imply that
355 any transfer under a transfer agreement entered into prior to the effective date of this article
356 is valid or invalid.

357 (g) The compliance with the requirements set forth in Code Section 51-12-76 and
358 fulfillment of the conditions set forth in Code Section 51-12-77 shall be solely the
359 responsibility of the transferee in any transfer of structured settlement payment rights, and
360 neither the structured settlement obligor nor the annuity issuer shall bear any responsibility
361 for, or any liability arising from, noncompliance with such requirements or failure to fulfill
362 such conditions.

363 (h) This article shall apply to any transfer of structured settlement payment rights under
364 a transfer agreement entered into on or after July 1, 2021, including any transfer in which
365 the structured settlement obligor and annuity issuers waived, or have not objected to the
366 transfer based upon, the terms of the settlement prohibiting sale, assignment, or
367 encumbrance of the payee's structured settlement payment rights."

368 **SECTION 2.**

369 All laws and parts of laws in conflict with this Act are repealed.