

The Senate Committee on Judiciary offered the following substitute to HB 443:

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 a fee by the Secretary of State; to
5 provide for prohibited acts; to provide for required disclosures; to provide for approval of
6 transfers; to provide for related matters; to provide for a short title; to repeal conflicting laws;
7 and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

"ARTICLE 4

51-12-71.

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

51-12-72.

As used in this article, the term:

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

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

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

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

(5) '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 such consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) '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 any court.

(20) 'Transfer' means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration. Such term shall 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 such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

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

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

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

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

51-12-73.

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

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

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

(3) The bond, letter of credit, or cash bond shall be effective concurrently with the applicant's registration with the Secretary of State and shall remain in effect for not less than three years after expiration or termination of that registration. The bond, letter of credit, or cash bond shall be renewed each year when the registration of the applicant is renewed.

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

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

(6) The Secretary of State shall be authorized to set and charge a fee to offset the costs of processing and maintaining the registration required by this Code section.

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

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

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

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

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

(h) An assignee shall not be required to register as a structured settlement purchase company in order to acquire structured settlement payment rights or to take a security interest in structured settlement payment rights that were transferred by the payee to a structured settlement purchase company.

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

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

51-12-74.

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

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

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

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

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

(5) Pay a commission or finder's fee to a person or entity for facilitating or arranging a structured settlement transfer with a payee, unless such person or entity is registered as

a structured settlement purchase company or is an employee of a registered structured settlement purchase company. A structured settlement purchase company may pay to third parties routine transfer expenses, such as court filing fees, escrow fees, lien recordation fees, judgment and lien search fees, attorney fees, and other similar types of fees relating to a transfer. A structured settlement purchase company may pay a reasonable referral fee to an attorney, certified public accountant, actuary, licensed insurance agent, or other licensed professional advisor in connection with a transfer;

(6) Intentionally advertise materially false or misleading information regarding its products or services;

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

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

(9) Intervene in a pending structured settlement transfer proceeding, if the transferee or structured settlement purchase company is not a party to such proceeding or an interested party relative to the proposed transfer which is the subject of the pending structured settlement transfer proceeding. However, this shall not preclude a structured settlement purchase company from intervening in a pending structured settlement transfer proceeding where the payee has signed a transfer agreement with the structured settlement purchase company within 60 days prior to the filing of the pending structured settlement proceeding, and the structured settlement purchase company who filed the pending structured settlement transfer proceeding violated any of the provisions of this article in connection with the proposed transfer that is the subject of the pending structured settlement transfer proceeding;

(10) Knowingly contact a payee who has signed a transfer agreement and is pursuing a proposed transfer with another structured settlement purchase company for the purpose

of inducing the payee into canceling the proposed transfer or transfer agreement with the other structured settlement purchase company, if a structured settlement transfer proceeding has been filed by the other structured settlement purchase company and is pending. However, if no hearing has been held in the pending structured settlement transfer proceeding within 90 days of the filing of same, this paragraph shall not apply; or

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

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

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

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

51-12-75.

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

51-12-76.

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

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

(2) The aggregate amount of such payments;

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

(4) The gross advance amount;

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

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

(7) The net advance amount;

(8) 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;

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

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

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

51-12-77.

No direct or indirect transfer of 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 or assignee of structured settlement payment rights, unless the transfer has been approved in advance in a final court order based on express findings by such court that all of the following apply:

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

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

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

51-12-78.

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

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

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

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

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

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

51-12-79.

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

domiciled in this state, the application may be brought in the court in this state that approved the structured settlement agreement.

(b) At the time any application is made under this article for approval of a transfer of structured settlement payment rights, the transferee's application shall include evidence that the transferee is registered to do business in this state as a structured settlement purchase company.

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

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

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

(2) A copy of the transfer agreement;

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

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

(5) A summary of:

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

(B) Any prior transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of the transferee or an affiliate within the three years

preceding the date of the transfer agreement, and any prior proposed transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval of which were denied within the one year preceding the date of the current transfer agreement, to the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee in writing or otherwise are actually known to the transferee;

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

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

(8) Evidence of the transferee's registration to do business in this state as a structured settlement purchase company.

51-12-80.

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

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

(c) No transfer of structured settlement payment rights shall extend to any payments that are life contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory

to the annuity issuer and the structured settlement obligor for periodically confirming the payee's survival and giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

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

(e) No payee who proposes to make a transfer of structured settlement payment rights shall 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 such transfer to satisfy the conditions of this article.

(f) Nothing contained in this article shall:

(1) Be construed to authorize any transfer of structured settlement payment rights in contravention of any applicable law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this article is valid or invalid; or

(2) Affect the validity of any transfer of structured settlement payment rights, whether under a transfer agreement entered into prior to or subsequent to the effective date of this article, in which the structured settlement obligor and annuity issuer have waived, or have not asserted their rights under, terms of the structured settlement prohibiting or restricting sale, assignment, or encumbrance of the structured settlement payment rights.

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

372 (h) This article shall apply to any transfer of structured settlement payment rights under
373 a transfer agreement entered into on or after July 1, 2021."

374 **SECTION 2.**

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