

House Bill 443 (AS PASSED HOUSE AND SENATE)

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 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:

13 "ARTICLE 414 51-12-71.15 This article shall be known and may be cited as the 'Georgia Structured Settlement
16 Protection Act.'17 51-12-72.18 As used in this article, the term:19 (1) 'Annuity issuer' means an insurer that has issued a contract to fund periodic payments
20 under a structured settlement.21 (2) 'Assignee' means a person or entity acquiring or proposing to acquire structured
22 settlement payments from a structured settlement purchase company or transferee after,
23 or concurrently with, the transfer by the payee to the structured settlement purchase
24 company or transferee.25 (3) 'Dependents' include a payee's spouse and minor children and all other persons for
26 whom the payee is legally obligated to provide support, including alimony.27 (4) 'Discounted present value' means the present value of future payments determined
28 by discounting such payments to the present using the most recently published Applicable
29 Federal Rate for determining the present value of an annuity, as issued by the United
30 States Internal Revenue Service.31 (5) 'Gross advance amount' means the sum payable to the payee or for the payee's
32 account as consideration for a transfer of structured settlement payment rights, before any
33 reductions for transfer expenses or other deductions to be made from such consideration.34 (6) 'Independent professional advice' means advice of an attorney, certified public
35 accountant, actuary, or other licensed professional adviser.36 (7) 'Interested party' means, with respect to any structured settlement, the payee, any
37 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

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

66 (17) 'Structured settlement purchase company' means a person that acts as a transferee
67 in this state and who is registered with the Secretary of State pursuant to Code Section
68 51-12-73.

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

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

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

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

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

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

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

95 51-12-73.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

154 51-12-74.

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

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

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

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

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

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

167 a structured settlement purchase company or is an employee of a registered structured
168 settlement purchase company. A structured settlement purchase company may pay to
169 third parties routine transfer expenses, such as court filing fees, escrow fees, lien
170 recordation fees, judgment and lien search fees, attorney fees, and other similar types of
171 fees relating to a transfer. A structured settlement purchase company may pay a
172 reasonable referral fee to an attorney, certified public accountant, actuary, licensed
173 insurance agent, or other licensed professional advisor in connection with a transfer;
174 (6) Intentionally advertise materially false or misleading information regarding its
175 products or services;
176 (7) Attempt to coerce, bribe, or intimidate any payee seeking to transfer structured
177 settlement payment rights;
178 (8) Attempt to defraud a payee or any party to a structured settlement transfer or any
179 interested party in a structured settlement transfer proceeding by means of forgery or
180 false identification;
181 (9) Intervene in a pending structured settlement transfer proceeding, if the transferee or
182 structured settlement purchase company is not a party to such proceeding or an interested
183 party relative to the proposed transfer which is the subject of the pending structured
184 settlement transfer proceeding. However, this shall not preclude a structured settlement
185 purchase company from intervening in a pending structured settlement transfer
186 proceeding where the payee has signed a transfer agreement with the structured
187 settlement purchase company within 60 days prior to the filing of the pending structured
188 settlement proceeding, and the structured settlement purchase company who filed the
189 pending structured settlement transfer proceeding violated any of the provisions of this
190 article in connection with the proposed transfer that is the subject of the pending
191 structured settlement transfer proceeding;
192 (10) Knowingly contact a payee who has signed a transfer agreement and is pursuing a
193 proposed transfer with another structured settlement purchase company for the purpose

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

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

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

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

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

218 51-12-75.

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

225 51-12-76.

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

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

230 (2) The aggregate amount of such payments;

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

235 (4) The gross advance amount;

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

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

- 244 (7) The net advance amount;
245 (8) The amount of any penalties or liquidated damages payable by the payee in the event
246 of any breach of the transfer agreement by the payee;
247 (9) That the payee has the right to cancel the transfer agreement, without penalty or
248 further obligation, until the transfer is approved by the court;
249 (10) That the payee has the right to seek and receive independent professional advice
250 regarding the proposed transfer and should consider doing so before agreeing to transfer
251 any structured settlement payment rights; and
252 (11) That the payee has the right to seek out and consider additional offers for
253 transferring the structured settlement payments and should do so.

254 51-12-77.

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

- 260 (1) The transfer is in the best interest of the payee, taking into account the welfare and
261 support of the payee's dependents;
262 (2) The payee has been advised in writing by the transferee to seek independent
263 professional advice regarding the transfer, and has either received such advice or
264 knowingly waived in writing the opportunity to seek and receive such advice; and
265 (3) The transfer does not contravene any applicable statute or the order of any court or
266 other government authority.

267 51-12-78.

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

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

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

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

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

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

289 51-12-79.

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

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

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

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

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

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

308 (2) A copy of the transfer agreement;

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

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

312 (5) A summary of:

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

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

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

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

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

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

335 51-12-80.

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

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

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

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

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

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

357 (f) Nothing contained in this article shall:

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

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

366 (g) The compliance with the requirements set forth in Code Section 51-12-76 and
367 fulfillment of the conditions set forth in Code Section 51-12-77 shall be solely the
368 responsibility of the transferee in any transfer of structured settlement payment rights, and
369 neither the structured settlement obligor nor the annuity issuer shall bear any responsibility
370 for, or any liability arising from, noncompliance with such requirements or failure to fulfill
371 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.