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HOUSE BILL 495

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO CIVIL LAW; ENACTING THE STRUCTURED SETTLEMENT  
PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Structured Settlement Protection Act".

Section 2. DEFINITIONS.--As used in the Structured  
Settlement Protection Act:

A. "annuity issuer" means an insurer that has  
issued a contract to fund periodic payments under a structured  
settlement;

B. "court" means:

(1) the court of original jurisdiction that  
authorized or approved a structured settlement; or

(2) if the court that authorized or approved

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1 the structured settlement no longer has jurisdiction to approve  
2 a transfer of payment rights under the structured settlement  
3 under the Structured Settlement Protection Act, a district  
4 court or a probate court located in the county in which the  
5 payee resides;

6 C. "dependents" includes a payee's spouse, minor  
7 children and all other persons for whom the payee is legally  
8 obligated to provide support, including alimony;

9 D. "discounted present value" means the present  
10 value of future payments determined by discounting the payments  
11 to the present using the most recently published applicable  
12 federal rate for determining the present value of an annuity,  
13 as issued by the United States internal revenue service;

14 E. "gross advance amount" means the sum payable to  
15 the payee or for the payee's account as consideration for a  
16 transfer of structured settlement payment rights before any  
17 reductions for transfer expenses or other deductions to be made  
18 from the consideration;

19 F. "independent professional advice" means advice  
20 of an attorney, certified public accountant, actuary or other  
21 licensed professional adviser;

22 G. "interested party" means, with respect to any  
23 structured settlement:

- 24 (1) the payee;
- 25 (2) any beneficiary irrevocably designated

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1 under the annuity contract to receive payments following the  
2 payee's death;

3 (3) the annuity issuer;

4 (4) the structured settlement obligor; and

5 (5) any other party that has continuing rights  
6 or obligations under the structured settlement;

7 H. "net advance amount" means the gross advance  
8 amount less the aggregate amount of the actual and estimated  
9 transfer expenses required to be disclosed under Subsection E  
10 of Section 3 of the Structured Settlement Protection Act;

11 I. "payee" means an individual who is receiving  
12 tax-free payments under a structured settlement and proposes to  
13 transfer payment rights under the structured settlement;

14 J. "periodic payments" includes both recurring  
15 payments and scheduled future lump-sum payments;

16 K. "qualified assignment agreement" means an  
17 agreement providing for a qualified assignment within the  
18 meaning of Section 130 of the Internal Revenue Code of 1986, as  
19 amended;

20 L. "settled claim" means the original tort claim or  
21 workers' compensation claim resolved by a structured  
22 settlement;

23 M. "structured settlement" means an arrangement for  
24 periodic payment of damages for personal injuries or sickness  
25 established by settlement or judgment in resolution of a tort

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1 claim or for periodic payments in settlement of a workers'  
2 compensation claim;

3 N. "structured settlement agreement" means the  
4 agreement, judgment, stipulation or release embodying the terms  
5 of a structured settlement;

6 O. "structured settlement obligor" means, with  
7 respect to any structured settlement, the party that has the  
8 continuing obligation to make periodic payments to the payee  
9 under a structured settlement agreement or a qualified  
10 assignment agreement;

11 P. "structured settlement payment rights" means  
12 rights to receive periodic payments under a structured  
13 settlement, whether from the structured settlement obligor or  
14 the annuity issuer, if:

15 (1) the payee is domiciled in or the domicile  
16 or principal place of business of the structured settlement  
17 obligor or the annuity issuer is located in this state;

18 (2) the structured settlement agreement was  
19 authorized or approved by a court located in this state; or

20 (3) the structured settlement agreement is  
21 expressly governed by the laws of this state;

22 Q. "terms of the structured settlement" include,  
23 with respect to any structured settlement, the terms of the  
24 structured settlement agreement, the annuity contract, any  
25 qualified assignment agreement and any order or other approval

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1 of the court;

2 R. "transfer" means any sale, assignment, pledge,  
3 hypothecation or other alienation or encumbrance of structured  
4 settlement payment rights made by a payee for consideration,  
5 except that "transfer" does not include the creation or  
6 perfection of a security interest in structured settlement  
7 payment rights under a blanket security agreement entered into  
8 with an insured depository institution, in the absence of any  
9 action to redirect the structured settlement payments to the  
10 insured depository institution, or its agent or successor in  
11 interest, or to enforce the blanket security interest against  
12 the structured settlement payment rights;

13 S. "transfer agreement" means the agreement  
14 providing for a transfer of structured settlement payment  
15 rights;

16 T. "transfer expenses" means all the expenses of a  
17 transfer that are required under the transfer agreement to be  
18 paid by the payee or deducted from the gross advance amount,  
19 including court filing fees, attorney fees, escrow fees, lien  
20 recording fees, judgment and lien search fees, finders' fees,  
21 commissions and other payments to a broker or other  
22 intermediary, except that "transfer expenses" does not include  
23 preexisting obligations of the payee payable for the payee's  
24 account from the proceeds of a transfer; and

25 U. "transferee" means a party acquiring or

1 proposing to acquire structured settlement payment rights  
2 through a transfer.

3 Section 3. REQUIRED DISCLOSURES TO PAYEE. --At least three  
4 days before the date on which the payee signs a transfer  
5 agreement, the transferee shall provide to the payee a separate  
6 disclosure statement, in bold type at least fourteen points in  
7 size, that states:

8 A. the amounts and due dates of the structured  
9 settlement payments to be transferred;

10 B. the aggregate amount of the payments;

11 C. the discounted present value of the payments to  
12 be transferred, which shall be identified as the "calculation  
13 of current value of the transferred structured settlement  
14 payments under federal standards for valuing annuities", and  
15 the amount of the applicable federal rate used in calculating  
16 the discounted present value;

17 D. the gross advance amount;

18 E. an itemized listing of all applicable transfer  
19 expenses, other than attorney fees and related disbursements  
20 payable in connection with the transferee's application for  
21 approval of the transfer, and the transferee's best estimate of  
22 the amount of those expenses;

23 F. the net advance amount;

24 G. the amount of any penalties or liquidated  
25 damages payable by the payee in the event of any breach of the

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1 transfer agreement by the payee; and

2 H. a statement that the payee has the right to  
3 cancel the transfer agreement, without penalty or further  
4 obligation, not later than the close of the third business day  
5 after the date the agreement is signed by the payee.

6 Section 4. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT  
7 PAYMENT RIGHTS.--No direct or indirect transfer of structured  
8 settlement payment rights shall be effective and no structured  
9 settlement obligor or annuity issuer shall be required to make  
10 any payment directly or indirectly to any transferee of  
11 structured settlement payment rights unless the transfer has  
12 been approved in advance in a final court order based on  
13 express findings by the court that:

14 A. the transfer is in the best interest of the  
15 payee, taking into account the welfare and support of the  
16 payee's dependents;

17 B. the payee has been advised in writing by the  
18 transferee to seek independent professional advice regarding  
19 the transfer and has either received the advice or knowingly  
20 waived the advice in writing; and

21 C. the transfer does not contravene any applicable  
22 statute or an order of any court or other governmental  
23 authority.

24 Section 5. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT  
25 PAYMENT RIGHTS.--Following a transfer of structured settlement

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1 payment rights pursuant to the Structured Settlement Protection  
2 Act:

3 A. the structured settlement obligor and the  
4 annuity issuer shall, as to all parties except the transferee,  
5 be discharged and released from any and all liability for the  
6 transferred payments;

7 B. the transferee shall be liable to the structured  
8 settlement obligor and the annuity issuer:

9 (1) for any taxes incurred by the parties as a  
10 consequence of the transfer if the transfer contravenes the  
11 terms of the structured settlement; and

12 (2) for any other liabilities or costs,  
13 including reasonable costs and attorney fees, arising from  
14 compliance by the parties with the order of the court or  
15 arising as a consequence of the transferee's failure to comply  
16 with the provisions of the Structured Settlement Protection  
17 Act;

18 C. the transferee shall be liable to the payee:

19 (1) if the transfer contravenes the terms of  
20 the structured settlement, for any taxes incurred by the payee  
21 as a consequence of the transfer; and

22 (2) for any other liabilities or costs,  
23 including reasonable costs and attorney fees, arising as a  
24 consequence of the transferee's failure to comply with the  
25 provisions of the Structured Settlement Protection Act;

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1           D. neither the structured settlement obligor nor  
2 the annuity issuer may be required to divide any periodic  
3 payment between the payee and any transferee or assignee or  
4 between two or more transferees or assignees; and

5           E. any further transfer of structured settlement  
6 payment rights by the payee may be made only after compliance  
7 with all of the requirements of the Structured Settlement  
8 Protection Act.

9           Section 6. PROCEDURE FOR APPROVAL OF TRANSFERS. --

10           A. An application under the Structured Settlement  
11 Protection Act for approval of a transfer of structured  
12 settlement payment rights shall be made by the transferee and  
13 shall be brought in an appropriate court.

14           B. At least twenty days before the date of the  
15 scheduled hearing on any application for approval of a transfer  
16 of structured settlement payment rights under Section 4 of the  
17 Structured Settlement Protection Act, the transferee shall file  
18 with the court and serve on all interested parties a notice of  
19 the proposed transfer and the application for authorization,  
20 including with the notice:

- 21                   (1) a copy of the transferee's application;
  - 22                   (2) a copy of the transfer agreement;
  - 23                   (3) a copy of the disclosure statement
- 24 required under Section 3 of the Structured Settlement  
25 Protection Act;

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1 (4) a listing of each of the payee's  
2 dependents, together with each dependent's age;

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

8 (6) notice of the time and place of the  
9 hearing and notification of the manner in which and the time by  
10 which written responses to the application must be filed to be  
11 considered by the court.

12 C. Written responses to the application under  
13 Paragraph (6) of Subsection B of this section shall be filed on  
14 or before the fifteenth day after the date the transferee's  
15 notice is served.

16 Section 7. GENERAL PROVISIONS--CONSTRUCTION.--

17 A. The provisions of the Structured Settlement  
18 Protection Act shall not be waived by any payee.

19 B. Any transfer agreement entered into by a payee  
20 who resides in this state shall provide that disputes under the  
21 transfer agreement, including any claim that the payee has  
22 breached the agreement, shall be determined in and under the  
23 laws of this state. The transfer agreement shall not authorize  
24 the transferee or any other party to confess judgment or  
25 consent to entry of judgment against the payee.

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1 C. Transfer of structured settlement payment rights  
2 shall not extend to any payments that are life-contingent  
3 unless, prior to the date on which the payee signs the transfer  
4 agreement, the transferee has established and agreed to  
5 maintain procedures reasonably satisfactory to the structured  
6 settlement obligor and the annuity issuer for:

7 (1) periodically confirming the payee's  
8 survival; and

9 (2) giving the structured settlement obligor  
10 and the annuity issuer prompt written notice in the event of  
11 the payee's death.

12 D. A payee who proposes to make a transfer of  
13 structured settlement payment rights shall not incur any  
14 penalty, forfeit any application fee or other payment, or  
15 otherwise incur any liability to the proposed transferee or any  
16 assignee based on any failure of the transfer to satisfy the  
17 conditions of the Structured Settlement Protection Act.

18 E. Nothing contained in the Structured Settlement  
19 Protection Act may be construed to authorize any transfer of  
20 structured settlement payment rights in contravention of any  
21 law or to imply that any transfer under a transfer agreement  
22 entered into before July 1, 2005 is valid or invalid.

23 F. Compliance with the requirements in Section 3 of  
24 the Structured Settlement Protection Act and fulfillment of the  
25 conditions in Section 4 of that act are solely the

1 responsibility of the transferee in any transfer of structured  
2 settlement payment rights, and neither the structured  
3 settlement obligor nor the annuity issuer bears any  
4 responsibility for, or any liability arising from,  
5 noncompliance with the requirements or failure to fulfill the  
6 conditions.

7 Section 8. EFFECTIVE DATE. --The effective date of the  
8 provisions of this act is July 1, 2005.

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