

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To regulate transfers of structured settlement payment rights; and to regulate automatic renewal provisions in consumer contracts for goods and services.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Structured Settlements and Automatic Renewal Protections Act of 2018”.

TITLE I. STRUCTURED SETTLEMENTS PROTECTION

Sec. 101. Short title.

This title may be cited as the “Structured Settlements Protection Act of 2018”.

Sec. 102. Definitions.

For the purposes of this title, the term:

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

(2) “Assignee” means a party acquiring or proposing to acquire structured settlement payment rights directly or indirectly from a transferee.

(3) “Dependents” means 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, as 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 published 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 the advice of an attorney, certified public accountant, financial planner, actuary, or other appropriately qualified and licensed professional advisor:

(A) Who is engaged by a payee to render advice concerning the implications of a transfer of structured settlement payment rights;

(B) Who is not in any manner affiliated with or compensated by the transferee; and

(C) Whose compensation for rendering such advice is not affected by whether such a transfer occurs.

(7) “Interested parties” means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee’s death, the annuity issuer, the structured settlement obligor, a parent or other guardian or authorized legal representative of any interested party who is not legally competent, and any other party that has continuing rights or obligations under such structured settlement.

(8) “Net advance amount” means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under section 103(5).

(9) “Payee” means an individual who receives tax-free payments under a structured settlement and proposes to make a transfer of structured settlement payment rights thereunder.

(10) “Periodic payments” means both recurring payments and scheduled future lump-sum payments under a structured settlement.

(11) “Qualified assignment agreement” means an agreement providing for a qualified assignment, as that term is defined in section 130(c) of the Internal Revenue Code of 1954, approved January 14, 1983 (96 Stat. 2605; 26 U.S.C. § 130).

(12) “Structured settlement” means an arrangement for periodic payment of damages for personal injury or sickness established by a settlement or judgment in resolution of a tort claim.

(13) “Structured settlement agreement” means an agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(14) “Structured settlement obligor” means the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

(15) “Structured settlement payment rights” means the rights to receive periodic payments, including lump-sum payments, under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

(A) The payee is domiciled in the District; or

(B) The structured settlement agreement was approved by a court in the District.

(16) “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 a court or other government authority that authorized or approved such structured settlement.

(17) “Transfer” means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for

consideration; provided, that the term “transfer” 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.

(18) “Transfer agreement” means the agreement providing for the transfer of structured settlement payment rights from a payee to a transferee.

(19) “Transfer expenses” 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 court filing fees, attorney’s fees, escrow fees, lien recordation fees, judgment and lien search fees, finders’ fees, commissions, and other payments to a broker or other intermediary; provided, that the term “transfer expenses” shall not include preexisting obligations of the payee payable for the payee’s account from the proceeds of a transfer.

(20) “Transferee” means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

Sec. 103. Required disclosures to payee.

Not fewer than 10 days before the date on which the payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth:

(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 the 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 the discounted present value;

(4) The gross advance amount;

(5) An itemized listing of all applicable transfer expenses, other than attorney’s 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 net advance amount;

(7) The effective annual interest rate, which shall 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”;

(8) The amount of any penalties or liquidated damages payable by the payee in the event of a 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, at any time before entry of a final court order approving the transfer;

(10) That the purchase price offered by the transferee to the payee in return for the transfer of structured settlement payment rights is negotiable, that the payee may ask the transferee to pay an amount greater than the offered amount, and that the payee may request competing quotes from other potential transferees; and

(11) 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.

Sec. 104. Procedure for approval of transfers.

(a) An application for approval of a transfer shall be made by the transferee and shall be brought in the Superior Court of the District of Columbia or in another court that approved the structured settlement agreement.

(b) The court shall hold a timely hearing on an application for approval of a transfer. 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.

(c)(1) 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.

(2) The deadline for interested parties to file written comments shall not be fewer than 15 days after service of the transferee's notice to that interested party.

(d) Not fewer than 20 days before the scheduled hearing on any application for approval of a transfer, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer, and the application for the transfer's approval, including:

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

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required by section 103;

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

(B) Any proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, for which the applications for approval were denied; and

(C) To the extent that such transfers or proposed transfers have been disclosed to the transferee by the payee or otherwise are actually known to the transferee:

(i) 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; and

(ii) Any 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;

(6) A statement describing what the transferee has done to identify and obtain information, disclosure of which is required by paragraph (5)(C) of this subsection;

(7) 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; and

(8) Notification of the time and place of the hearing and notification of the manner in which and the time by which written comments must be filed.

(e) For the purposes of this section, the term "affiliate" shall have the same meaning as provided in section 101(2) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601.01(2)).

Sec. 105. Approval of transfers by the court.

(a) 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 transferee has provided the payee and other interested parties with the disclosures required by section 103, and the transfer has been approved in advance in a final order of a court of competent jurisdiction based on express findings that:

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

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

(3) 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

(4) The transfer satisfies all other requirements of this title.

(b) In determining whether a transfer is in the best interest of the payee, considering the welfare and support of the payee's dependents, the court may consider any relevant information, including:

(1) The age and maturity of the payee;

(2) Whether the payee understands the terms and financial implications of the transfer;

(3) Whether the financial and other terms of the transfer are fair and reasonable;

(4) The payee's stated purposes for the transfer and whether the payee has considered other options for accomplishing those purposes;

(5) Changes in the payee's personal, family, or financial circumstances since the date of the structured settlement agreement;

(6) The summary filed with the court under section 104(d)(5); and

(7) The remaining payments that the payee will receive under the structured settlement if the court approves the transfer.

Sec. 106. Effects of transfers.

Following a transfer under this title:

(1) 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 periodic payments, regardless of whether any party to the transfer fails to comply with this title or with the court order approving the transfer;

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

(A) 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

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

(3) Neither the annuity issuer nor the structured settlement obligor shall be required to divide any periodic payment between the payee and any transferee or assignee or between 2 or more transferees or assignees; and

(4) Any further transfer by the payee may be made only after compliance with the requirements of this title.

Sec. 107. General provisions; construction.

(a) The provisions of this title may not be waived by a payee; provided, that this subsection shall not be construed to prohibit a payee from waiving the right to seek and receive independent professional advice, consistent with section 105(a)(3) of this title.

(b) Any transfer agreement entered into on or after the effective date of this act by a payee domiciled in the District shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of the District.

(c) No such transfer agreement shall authorize the transferee or any other party to confess judgment, or consent to entry of judgment, against the payee.

(d) No transfer shall extend to any payments that are life-contingent unless, before 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:

(1) Periodically confirming the payee's survival; and

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

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

(f) No payee who proposes to make a transfer shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on a failure of the transfer to satisfy the requirements of this title.

(g) Nothing in this title shall be construed to authorize any transfer in contravention of any law.

(h) The provisions of this title shall not be applicable to transfers of workers' compensation claims, awards, benefits, settlements or payments.

(i) Compliance with the requirements set forth in sections 103, 104, and 105 shall be solely the responsibility of the transferee in any transfer, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with such requirements.

TITLE II. AUTOMATIC RENEWAL PROTECTIONS

Sec. 201. Short title.

This title may be cited as the "Automatic Renewal Protections Act of 2018".

Sec. 202. Definitions.

For the purposes of this title, the term:

(1) "Clearly and conspicuously" means in larger type than the surrounding text, in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that calls attention to the language and is visually proximate to any request for the consumer's consent.

(2) "Consumer" means any person who seeks or acquires, by purchase or lease, any goods or services.

Sec. 203. Automatic renewal provisions; notice; penalties.

(a) A person who sells a good or service to a consumer pursuant to a contract that will automatically renew at the end of a definite term shall disclose the automatic renewal provision and cancellation procedure clearly and conspicuously in the contract.

(b)(1) A person who sells a good or service to a consumer pursuant to a contract with an initial term of 12 months or more, that will automatically renew for a term of one month or more unless the consumer cancels the contract, shall notify the consumer, in accordance with paragraph (2) of this subsection, of the first automatic renewal and annually thereafter, by:

(A) First-class mail;

(B) Email; or

(C) Another easily accessible form of communication, such as text message or a mobile phone application, if the consumer specifically authorizes the person to provide notice in such form.

(2) The notice required by paragraph (1) of this subsection shall:

(A) Be sent to the consumer no fewer than 30 days and no more than 60 days before the cancellation deadline for the first automatic renewal, and no fewer than 30 days and no more than 60 days before each year after the first automatic renewal;

(B) Disclose clearly and conspicuously:

(i) That unless the consumer cancels the contract, it will automatically renew;

(ii) The cost of the goods or services for the term of the renewal;

(iii) The deadline by which the consumer must cancel the contract to prevent automatic renewal; and

(iv) The methods by which the consumer may obtain details of the automatic renewal provision and cancellation procedures, including by contacting the seller at a specified telephone number, e-mail address, or by another easily accessible form of communication, such as within a mobile phone application; and

(C) If the notice is provided by email, include active weblinks to allow the consumer to cancel the automatic renewal.

(c) A person who sells a free trial of a good or service to a consumer with a term of one month or more, where the contract automatically renews at the end of the free trial period, shall:

(1) Notify the consumer of the automatic renewal between one and 7 days before the expiration of the free trial period; and

(2) Notwithstanding the consumer's consent to the free trial, obtain the consumer's affirmative consent to the automatic renewal before charging the consumer for the automatic renewal.

(d) A violation of this title shall render an automatic renewal provision void and terminate the contract at the end of the term in which the violation occurred, and shall also constitute a violation of the District of Columbia Consumer Protection Procedures Act, effective July 22, 1976 (D.C. Law 1-76; D.C. Official Code § 28-3901 *et seq.*), unless the person demonstrates that:

(1) The person has established and implemented written procedures to comply with this title;

(2) Any failure to comply with this title is the result of a good-faith mistake; and

(3) Where a good-faith mistake has caused a failure to comply with this title, the person provides the consumer with a credit for all amounts billed to or a refund for all amounts paid by the consumer due to the mistaken renewal.

Sec. 204. Exemptions.

This title shall not apply to:

(1) An insurer regulated by the Department of Insurance, Securities, and Banking;

(2) A bank, trust company, savings and loan association, savings bank, or credit union licensed or organized under the laws of the District or any state of the United States, or any foreign bank maintaining a branch or agency licensed or organized under the laws of the District or any state of the United States, or any subsidiary or affiliate thereof;

(3) A person that provides a service regulated by the Public Service Commission, the Federal Communications Commission, or the Federal Energy Regulatory Commission; or

(4) A service contract, as that term is defined in section 2(10) of the Service Contract Regulation Act of 2018, enacted on November 13, 2018 (D.C. Act 22-517; 65 DCR 12963).

TITLE III. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE

Sec. 301. Applicability.

(a)(1) Title I shall not apply to any transfer agreement entered into before the effective date of this act.

(2) Title II shall not apply to a contract entered into or automatically renewed before the effective date of this act, but it shall apply to automatic renewals of such contracts that renew on or after the effective date of this act.

(b)(1) Title II shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(2) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan and provide notice to the Budget Director of the Council of the certification.

(3)(A) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(B) The date of publication of the notice of the certification shall not affect the applicability of Title II.

Sec. 302. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 303. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia