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State Structured Settlement Protection Statutes

State	Statute	Effective Date[1/]
Arizona	2002 Ariz. Legis. Serv. 239	05/20/02
California	Cal. Ins. Code §§ 10134-10141 (as amended by 2001 Assembly Bill 268)	01/01/00 01/01/02
Connecticut	Conn. Gen. Stat. § 52-225f	10/01/98
Delaware	Del. Code Ann. Tit. 10, §§ 6601-6604	07/26/00
Florida	2001 Fla. Sess. Law Serv. Ch. 207	10/01/01
Georgia	Ga. Code Ann. §§ 51-12-70-77	07/01/99
Idaho	2001 Idaho Sess. Laws 299[2/]	07/01/01
Illinois (predates NSSTA Models)	215 Ill. Comp. Stat. 5/155.34	01/01/98
Indiana	Ind. Code Ann. §§ 34-50-2-1 – 34-50-2-11	06/30/01
Iowa	2001 Iowa Legis Serv. 337	07/01/01
Kentucky	Ky. Rev. Stat. Ann. §§ 454.430, 454.431, 454.435	07/15/98
Louisiana	2001 La. Sess. Law Serv. 597	08/15/01
Maine	Me. Rev. Stat. Ann. tit. 24A §§ 601.25, 2241-46	__/__/99
Maryland	Md. Code Ann. Cts. & Jud. Proc. §§ 5-1101-5-1105	10/01/00
Massachusetts	Mass. Gen. Laws Ann. Ch. 231C, §§ 1-5	01/12/01

1/ Statutes based on the NSSTA Models generally include a transition rule that specifies that the statute applies to transfers of structured settlement payment rights under transfer agreements (i.e., factoring agreements) entered into on or after a specified date, generally the same date on which the statute takes effect. For any statute that includes this transition rule, the effective date listed in this table is the date after which new transfer agreements will be subject to the statute. In other cases the effective date listed is the effective date of the statute itself.

2/ Idaho H.B. 237 enacted structured settlement protection provisions as an amendment to the scope section, § 9-109, of Revised Article 9 of the Idaho Uniform Commercial Code. This unusual placement makes it unclear how and when the structured settlement provisions will apply.

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State	Statute	Effective Date
Michigan	Mich. Comp. Laws. Ann., §§ 691.1191 – 691.1197	01/14/01
Minnesota	Minn. Stat. §§ 549.30 – 549.34	08/01/99
Mississippi	2002 Miss. S.B. No. 2912	08/01/02
Missouri	Mo. Rev. Stat. §§ 407.1060 – 407.1068	08/28/99
Nebraska	2001 Neb. Laws 55	01/01/02
New Jersey	2001 N.J. Sess. Law Serv. 139	08/02/01
New York	2002 Assembly Bill 6936-A, to be codified at N.Y. Gen. Obs. Law §§ 5-1701-1709	9/17/02 [3]
North Carolina	N.C. Gen. Stat. Art. 44B §§ 1-543.10 – 1-543.15 and Art. 33 § 1-394.1	10/01/99
Ohio	Ohio Rev. Code. Ann. §§ 2323.58 – 2323.587	10/27/00
Oklahoma	2001 Okla. Sess. Law Serv. 70	11/01/01
Pennsylvania	40 Pa. Cons. Stat. Ann. §§ 4001-4009	04/11/00
Rhode Island	2001 R.I. Pub. Laws 01-226	08/13/01
South Carolina	2002 S.C. Pub. Laws 252	06/13/02
South Dakota	S.D. Codified Laws §§ 21-3B-1 – 21-3B-12	07/01/01
Tennessee	Tenn. Code Ann. Tit. 47, Ch. 18 §§ 1-7	06/23/00
Texas	2001 Tex. Sess. Law Serv. 96	09/01/01
Utah	2002 Utah S.B. 163, to be codified at Utah Code Ann. §§ 78-59-101-108	05/06/02
Virginia	Va. Code Ann. §§ 59.1-475–477 Va. Code §§ 59.1-475-477.1	07/01/99 07/01/01
Washington	2001 Wash. Legis. Serv. 178	07/22/01
W. Virginia	W. Va. Code §§ 46A-6H-1 – 46A-6H-8	06/11/99

[3] Section 4 of the New York legislation states that it "shall take effect July 1, 2002"; but the legislation was not signed by the Governor until September 17.

June 11, 2001

The Honorable Max Baucus
U.S. Senate
Washington, D.C. 20510

The Honorable Charles Grassley
U.S. Senate
Washington, D.C. 20510

Dear Chairman Baucus and Senator Grassley:

Twenty years ago Congress established prudent public policy and law to provide long-term financial security for injured individuals and their families. It has served its purpose well. However, it is vital that Congress now adopt pending legislation that would clarify its intent concerning the future application of laws to ensure that people with disabilities and their families continue to be protected.

In 1982, Congress enacted legislation to facilitate Astructured settlements@ for injured individuals and their families, that is, settlements paid out over a period of time to meet their basic living and medical needs. Over the past two decades, some recipients of structured settlements have opted, for various reasons, to replace their periodic payments with lump sum payments, and there is now concern about the impact of these transactions on them.

Fortunately, there is broad agreement upon a provision which supports state laws that address these concerns. The benefits of this important legislation are directed at the individuals who are receiving structured settlement payments, and their families. The Senate Finance Committee favorably reviewed this legislative proposal in last year=s Chairman=s Mark, but the 106th Congress adjourned without completing action on this and other beneficial tax legislation. The groups below support the proposal and represent the disability community; the structured settlement companies, who provide these individuals with periodic payments; and the settlement purchase industry, who provide them lump sum payments to replace their periodic payments.

The groups below applaud Senator Baucus (D-MT), the original author of the current law, for taking the lead in advancing legislation in the Senate with the support of other Members of the Finance Committee. Congressmen Clay Shaw (R-FL) and Pete Stark (D-CA) have introduced the Structured Settlement Protection Act (H.R. 1514) in the House which has already been cosponsored on a bipartisan basis by more than 20 members -- a majority -- of the Ways and Means Committee. The legislation ensures that structured settlements serve the purpose Congress intended of providing long-term financial security for structured settlement recipients and their families, while enabling them to get access to future payments if a State court review determines that it is in the best interest of the recipient, taking into account the need to support his or her family.

The disability community, the structured settlement industry, and the settlement purchase industry strongly urge you clarify Congressional intent and enact as soon as possible the proposal, as provided in the Structured Settlement Protection Act, to ensure that individuals who receive structured settlements and their families can continue to receive the settlement payments to which Congress has consistently believed they are entitled.

Sincerely,

American Association of People with Disabilities
National Spinal Cord Injury Association
National Structured Settlements Trade Association
National Association of Settlement Purchasers
United Cerebral Palsy

Easter Seals
National Foundation of the Blind
National Organization on Disability
The Arc of the United States
NISH

RECENT COMMENTS REGARDING STRUCTURED SETTLEMENTS AND STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Senator John Chafee:

Structured settlements were developed because of the pitfalls associated with the traditional lump sum form of recovery in serious personal injury cases, where all too often a lump sum meant to last for decades or even a lifetime swiftly eroded away. Structured settlements have proven to be a very valuable tool. They provide long-term financial security in the form of an assured stream of payments to persons suffering serious, often profoundly disabling, physical injuries. These payments enable the recipients to meet ongoing medical and basic living expenses without having to resort to the social safety net. . . .

I am very concerned that in recent months there has been sharp growth in so-called structured settlement factoring transactions. In these transactions, companies induce injured victims to sell off future structured settlement payments for a steeply-discounted lump sum, thereby unraveling the structured settlement and the crucial long-term financial security that it provides to the injured victim. These factoring company purchases directly contravene the intent and policy of Congress in enacting the special structured settlement tax rules. [144 Cong. Rec. S11340 (October 2, 1998).]

Senator Max Baucus:

Over the almost two decades since we enacted these tax rules [Internal Revenue Code Sections 104(a)(2) and 130], structured settlements have proven to be a very effective means of providing long-term financial protection to persons with serious, long-term physical injuries through an assured stream of payments designed to meet the victim's ongoing expenses for medical care, living and family support. Structured settlements are voluntary agreements reached between the parties that are negotiated by counsel and tailored to meet the specific medical and living needs of the victim and his or her family, often with the aid of economic experts. . . .

I now find that this careful planning and long-term financial security for the victim and his or her family can be unraveled in an instant by a factoring company offering quick cash at a steep discount. What happens next month or next year when the lump sum from the factoring company is gone, and the stream of payments for future financial support is no longer coming in? These structured settlement factoring transactions place the injured victim in the very predicament that the structured settlement was intended to avoid. [144 Cong. Rec. S11499-500 (October 5, 1998).]

Representative E. Clay Shaw, Jr.:

As long-time supporters of structured settlements and the congressional policy underlying such settlements, we have grave concerns that these factoring transactions directly undermine the policy of the structured settlement tax rules. The Treasury Department shares these concerns. [144 Cong. Rec. E1420 ([daily ed.] (July 24, 1998).]

United States Department of the Treasury:

Congress enacted favorable tax rules intended to encourage the use of structured settlements -- and conditioned such tax treatment on the injured person's inability to accelerate, defer, increase or decrease the periodic payments -- because recipients of structured settlements are less likely than recipients of lump sum awards to consume their awards too quickly and require public assistance . . .

These "factoring" transactions directly undermine the Congressional objective to create an incentive for injured persons to receive periodic payment as settlements of personal injury claims. [*General Explanations of the Administration's Revenue Proposals,* Fiscal Year 1999 Budget of the United States Government, February, 1998.]

Illinois Representative David Leitch:

I'm just very concerned about the people who are being victimized by these people who are taking a very, very deep discount in these settlement amounts, and who are then left penniless without resources in the future. [Illinois House Debate Transcript, April 10, 1997.]

Thomas H. Countee, Jr., Executive Director of the National Spinal Cord Injury Association:

Over the past 16 years, structured settlements have proven to be an ideal method for insuring that persons with disabilities, particularly minors, are not tempted to squander resources designed to last years or even a lifetime.

This is why the National Spinal Cord Injury Association is so deeply concerned about the emergence of companies that purchase payments intended for disabled persons at drastic discount. This strikes at the heart of the security Congress intended when it created structured settlements. The practice of buying the payments of injured parties in exchange for only 50 or 60 cents per present-value dollar strikes me as abusive and inappropriate. [September 8, 1998 Letter to Sen. William Roth.]

Editorial: "Settlements Should Last":

[E]ven if the lump sum paid to the claimant [by a factoring company] is not quickly squandered on some form of immediate gratification, it is certain to disappear more quickly than the original benefit. That can put claimants between a rock and a hard place: They likely still have sizable expenses but no source of adequate income to cover them. . . .

Where does that leave them -- especially if circumstances of their claim have left them unable to earn a living? In all likelihood, at the doorstep of the taxpayer who finances Medicare, Medicaid and public assistance programs. [*Business Insurance,* August 10, 1998.]

Chicago Trial Lawyer Robert A. Clifford:

I represent many people who are hurt or disabled through no fault of their own.

They are victimized once in an accident. The greater tragedy for them can come later when they are victimized again, this time by slick discounters.

Other than the initial injury, I can't think of anything worse. ["Stream of payments shields some injury victims from unwise decisions, maximizes compensation," *Chicago Daily Law Bulletin,* April 25, 1998.]

Former Chicago Bar Association President, Philip H. Corboy

Spawned to purchase payment streams from lottery and power ball winners, the aggressive hucksters known as factoring companies have now moved into the structured settlement business. Their targets, injured persons and surviving spouses and children, are not the beneficiaries of windfalls. The dismantlement of structured settlements is their aim. This destructive course of action has bonded bitter adversaries on tort reform, tort trial lawyers and the insurance industry, in a fight to regulate this cottage industry.

Tort trial lawyers are unequivocally antagonistic to this enterprise. This secondary market preys upon the most vulnerable of our clients. If these structured settlement beneficiaries did not require protection and were not susceptible and potentially gullible, they would have no need for structured settlements. It is precisely because the temptation to squander all or some of a large sum of money is often irresistible that structured settlements were obtained. [ABA Journal, May, 2000]