

LEGISLATIVE BILL 55

Approved by the Governor April 4, 2001

Introduced by Landis, 46

AN ACT relating to financial arrangements; to amend section 9-109, Uniform Commercial Code; to adopt the Structured Settlements Transfers Protection Act; to harmonize provisions; to provide an operative date; to repeal the original section; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 7 of this act shall be known and may be cited as the Structured Settlements Transfers Protection Act.

Sec. 2. The purpose of the Structured Settlements Transfers Protection Act is to protect structured settlement recipients involved in the process of transferring structured settlement payment rights. The act does not apply to structured settlements of claims for workers' compensation benefits.

Sec. 3. For purposes of the Structured Settlements Transfers Protection Act:

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

(2) Applicable federal rate means the most recently published applicable rate used to determine the present value of an annuity, as issued by the Internal Revenue Service pursuant to section 7520 of the Internal Revenue Code as defined in section 49-801.01;

(3) Dependent means a payee's spouse and minor children and any other family member and other person for whom the payee is legally obligated to provide support, including spousal maintenance;

(4) Discount or finance charge means the sum of all charges payable directly or indirectly from assigned structured settlement payments and imposed directly or indirectly by the transferee as an incident to a transfer of structured settlement payment rights. Discount or finance charge includes interest charges, discounts, and other compensation for the time value of money, all application, origination, processing, underwriting, closing, filing, and notary fees and all similar charges, and all charges for commissions or brokerage services. Discount or finance charge does not include any fee or other obligation incurred by a payee to obtain independent professional advice concerning a transfer of structured settlement payment rights or any charges, commissions, costs, brokerage fees, or other fees which the payee has agreed to pay to a nonaffiliated third party in connection with the transfer;

(5) Discounted present value means, with respect to a proposed transfer of structured settlement payment rights, the fair present value of future payments, as determined by discounting the payments to the present using the most recently published applicable federal rate used to determine the present value of an annuity as the discount rate;

(6) Interested parties means, with respect to any structured settlement:

(a) The payee;

(b) Any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death or, if such designated beneficiary is a minor, the designated beneficiary's parent or guardian;

(c) The annuity issuer;

(d) The structured settlement obligor; and

(e) Any other party that has continuing rights or obligations under the structured settlement;

(7) Payee means a Nebraska resident who is receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights under the structured settlement. Payee does not include a Nebraska resident who is receiving payments under a structured settlement of a workers' compensation claim;

(8) Qualified assignment agreement means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code as defined in section 49-801.01;

(9) Structured settlement means an arrangement for periodic payment of damages for personal injuries or sickness established by a settlement, agreement, or judgment in resolution of a tort claim;

(10) Structured settlement obligor means the party that has the

obligation to make continuing periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

(11) Structured settlement payment rights means rights to receive periodic payments, including lump-sum payments under a structured settlement, whether from the settlement obligor or the annuity issuer if the payee is a resident in the state;

(12) Transfer means a sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;

(13) Transfer agreement means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee; and

(14) Transferee means a person who is receiving or will receive structured settlement payment rights resulting from a transfer.

Sec. 4. (1) No direct or indirect transfer of structured settlement payment rights is effective, and no structured settlement obligor or annuity issuer is required to make a payment directly or indirectly to a transferee of structured settlement payment rights, unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction based on the court's written express findings that:

(a) The transfer complies with the requirements of the Structured Settlements Transfers Protection Act;

(b) The transferee has provided to the payee a disclosure statement in no smaller than fourteen-point type specifying:

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

(ii) The aggregate amount of the payments;

(iii) The discounted present value of the payments, together with the discount rate used in determining the discounted present value;

(iv) The gross amount payable to the payee in exchange for the payments;

(v) An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, referral fees, administrative fees, legal fees, notary fees, and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

(vi) The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in subdivision (1)(b)(v) of this section;

(vii) The quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments. Such quotient shall be disclosed in the following statement "The net amount that you will receive from us in exchange for your future structured settlement payments represents% of the estimated current value of the payments.";

(viii) The effective annual interest rate. Such rate shall be disclosed in the following statement "Based on the amount that you will receive from us and the amounts and timing of the structured settlement payments that you are turning over to us, you will, in effect, be paying interest to us at a rate of% per year."; and

(ix) The amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of a breach of the transfer agreement by the payee;

(c) The transfer is in the best interests of the payee, taking into account the welfare and support of the payee's dependents, and the net amount payable to the payee is not unfair, unjust, or unreasonable under existing circumstances;

(d) The payee has received, or waived his or her right to receive, independent professional advice regarding the legal, tax, and financial implications of the transfer;

(e) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of the notice with the court;

(f) The transfer agreement provides that any disputes between the parties will be governed by the laws of Nebraska and that Nebraska is the proper place of venue to bring any cause of action arising out of a breach of the agreement; and

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

(2) The court may not authorize a transfer if the court makes an express written finding that the transfer contravenes the public policy of this state.

(3) The transfer agreement shall also provide that the parties agree to the jurisdiction of any Nebraska court of competent jurisdiction. If the

transfer would contravene the terms of the structured settlement or the standards set forth in subsection (1) or (2) of this section, the court may grant, deny, or impose conditions upon the proposed transfer as the court deems just and proper under the facts and circumstances, upon the filing of a written objection by any interested party and after considering the objection and any response to it. Any order approving a transfer must require that the transferee indemnify the annuity issuer and the structured settlement obligor for any liability including reasonable costs and attorney's fees arising from compliance by the issuer or obligor with the order of the court.

(4) A provision in a transfer agreement giving a transferee power to confess judgment against a payee is unenforceable to the extent the amount of the judgment would exceed the amount paid by the transferee to the payee, less any payments received from the structured settlement obligor or the payee.

(5) With respect to a transfer of structured settlement payment rights a transferee may not contract for or receive a discount or finance charge that would result in an effective annual rate in excess of the maximum interest rate per year applicable in Nebraska to a consumer loan as set forth in section 45-101.03.

Sec. 5. (1) The Nebraska court that approved the structured settlement agreement has jurisdiction over an application for authorization of a transfer of structured settlement payment rights. If a Nebraska court did not approve the structured settlement agreement, a person shall file an application under section 4 of this act in the district court for the county in which the payee resides.

(2) Not less than twenty days before the scheduled hearing on an application for authorization of a transfer of structured settlement payment rights under section 4 of this act, the transferee shall file with the court and all interested parties a notice of the proposed transfer and the application for its authorization. The notice shall include:

(a) A copy of the transferee's application to the court;

(b) A copy of the transfer agreement;

(c) A copy of the disclosure statement required under section 4 of this act; and

(d) Notice that an 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 notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court. Written responses to the application shall be filed within fifteen days after service of the transferee's notice.

Sec. 6. The provisions of sections 3 to 5 of this act may not be waived. No payee who proposes to make a transfer of structured settlement payment rights shall incur a penalty, forfeit an application fee or other payment, or otherwise incur any liability to the proposed transferee based on the failure of the transfer to satisfy the conditions of section 4 of this act.

Sec. 7. The Structured Settlements Transfers Protection Act applies to any transfer of structured settlement payment rights under a transfer agreement entered into on or after January 1, 2002.

Sec. 8. Section 9-109, Uniform Commercial Code, is amended to read: 9-109. Scope.

(a) Except as otherwise provided in subsections (c) and (d), this article applies to:

(1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) a consignment;

(5) a security interest arising under section 2-401, 2-505, 2-711(3), or 2A-508(5), as provided in section 9-110; and

(6) a security interest arising under section 4-210 or 5-118.

(b) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) This article does not apply to the extent that:

(1) a statute, regulation, or treaty of the United States preempts this article;

(2) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(3) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(4) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 5-114.

(d) This article does not apply to:

(1) a landlord's lien, other than an agricultural lien;

(2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 9-333 applies with respect to priority of the lien;

(3) an assignment of a claim for wages, salary, or other compensation of an employee;

(4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) an assignment of a right to payment under a contract to an assignee that is also obliged to perform under the contract;

(7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;

(9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) a right of recoupment or set-off, but:

(A) section 9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) section 9-404 applies with respect to defenses or claims of an account debtor;

(11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) liens on real property in sections 9-203 and 9-308;

(B) fixtures in section 9-334;

(C) fixture filings in sections 9-501, 9-502, 9-512, 9-516, and 9-519; and

(D) security agreements covering personal and real property in section 9-604;

(12) an assignment of a claim arising in tort, other than a commercial tort claim, but sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds; ~~or~~

(13) an assignment of a deposit account in a consumer transaction, but sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds; or

(14)(A) an assignment or transfer of a claim or right to receive compensation for personal injuries or sickness under any workers' compensation, industrial accident, or similar law or (B) a transfer of structured settlement payment rights entered into on or after January 1, 2002, and subject to the Structured Settlements Transfers Protection Act unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction pursuant to the act.

Sec. 9. This act becomes operative on July 1, 2001.

Sec. 10. Original section 9-109, Uniform Commercial Code, is repealed.

Sec. 11. Since an emergency exists, this act takes effect when passed and approved according to law.