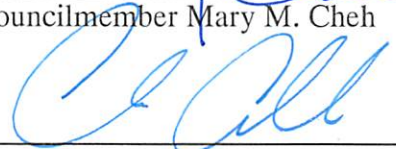


1 
2 Councilmember Brandon Todd


Councilmember Mary M. Cheh

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5 Councilmember David Grosso


Councilmember Charles Allen

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10 Councilmember Anita Bonds

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13 A BILL
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18 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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23 To require that the transfer of structured settlement payment rights be approved by a court or
24 responsible administrative authority; and to require disclosure of a contract clause that
25 causes the contract to automatically renew.
26

27 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
28 act may be cited as the "Consumer Disclosure Act of 2015".

29 TITLE I. STRUCTURED SETTLEMENT PROTECTION

30 Sec. 101. Definitions.

31 For purposes of this title, the term:

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

34 (2) "Applicable law" includes:

35 (A) The federal laws of the United States;

36 (B) The laws of the District; and

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(C) The laws of any other jurisdiction:

(i) That is the domicile of the payee or any other interested party;

(ii) Under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or

(iii) In whose courts a settled claim was pending when the parties entered into a structured settlement agreement.

(3) “Assignee” means any party that acquires structured settlement payment rights directly or indirectly from a transferee of such rights.

(4) “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.

(5) “Discounted present value” means the fair 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 issued by the United States Internal Revenue Service.

(6) “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.

(7) “Independent professional advice” means the advice of an attorney, certified public accountant, actuary, or other licensed professional adviser:

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

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

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

62 (8) "Interested parties" means the payee, each beneficiary designated under the
63 annuity contract to receive payments following the payee's death, the annuity issuer, the
64 structured settlement obligor, and any other party that has continuing rights or obligations under
65 a structured settlement.

66 (9) "Payee" means an individual who receives damage payments that are not
67 subject to income taxation under a structured settlement and proposes to make a transfer of
68 payment rights.

69 (10) "Periodic payment" means both recurring payments and scheduled future
70 lump sum payments under a structured settlement.

71 (11) "Qualified assignment agreement" means an agreement providing for a
72 qualified assignment, as that term is used in section 130 of the Internal Revenue Code, approved
73 January 14, 1983 (96 Stat. 2605; 26 U.S.C. § 130).

74 (12) "Responsible administrative authority" means a government authority vested
75 by law with exclusive jurisdiction over the settled claim resolved by a structured settlement.

76 (13) "Settled claim" means the original tort claim resolved by a structured
77 settlement.

78 (14) "Structured settlement" means an arrangement for periodic payment of
79 damages for personal injury established by a settlement or judgment in resolution of a tort claim.

80 (15) "Structured settlement agreement" means an agreement, judgment,
81 stipulation, or release embodying the terms of a structured settlement, including the rights of the
82 payee to receive periodic payments.

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

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

89 (A) The payee, the structured settlement obligor, the annuity issuer, or any
90 interested party is domiciled in the District;

91 (B) The structured settlement agreement was approved by a court or
92 responsible administrative authority in the District; or

93 (C) The settled claim was pending before the courts of the District when
94 the parties entered into the structured settlement agreement.

95 (18) “Terms of the structured settlement” means the terms of the structured
96 settlement agreement, the annuity contract, a qualified assignment agreement, and an order or
97 approval of a court or responsible administrative authority authorizing or approving the
98 structured settlement.

99 (19) “Transfer” means a sale, assignment, pledge, hypothecation, or other form of
100 alienation or encumbrance of structured settlement payment rights made by a payee for
101 consideration.

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

104 (21) “Transferee” means a party acquiring or proposing to acquire structured
105 settlement payment rights through a transfer of those rights.

106 Sec. 102. Structured settlement payment rights.

107 No direct or indirect transfer of structured settlement payment rights shall be effective
108 and no structured settlement obligor or annuity issuer shall be required to make any payment
109 directly or indirectly to a transferee, unless the transferee has provided the payee and other
110 interested parties with the disclosures required by section 203 and the transfer has been approved
111 in advance in a final order of a court of competent jurisdiction or a responsible administrative
112 authority based on express findings that:

113 (1) The transfer complies with the requirements of this title and does not
114 contravene other applicable law or the order of a court or administrative authority;

115 (2) The transfer is in the best interest of the payee, taking into account the welfare
116 and support of the payee's dependents;

117 (3) The transfer of structured settlement rights is fair and reasonable;

118 (4) The payee has received independent professional advice regarding the legal,
119 tax, and financial implications of the transfer; and

120 (5) The transferee has given written notice of the transferee's name, address, and
121 taxpayer identification number to the annuity issuer and the structured settlement obligor and has
122 filed a copy of the notice with the court or responsible administrative authority.

123 Sec. 103. Required disclosures to payee.

124 Not less than 3 days before the date on which a payee signs a transfer agreement, the
125 transferee shall provide to the payee a separate disclosure statement, in bold type in a size no
126 smaller than 14 points, setting forth:

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

- 129 (2) The aggregate amount of such payments;
- 130 (3) The discounted present value of the payments to be transferred and the
131 applicable federal rate used in determining the discounted present value;
- 132 (4) The gross advance amount payable to the payee in exchange for the payments;
- 133 (5) An itemized listing of all brokers' commissions, service charges, application
134 fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and
135 other commissions, fees, costs, expenses and charges payable by the payee or deductible from
136 the gross advance amount otherwise payable to the payee;
- 137 (6) The net advance amount payable to the payee after deduction of all
138 commissions, fees, costs, expenses, and charges described in paragraph (5) of this section;
- 139 (7) The quotient, expressed as a percentage, obtained by dividing the net payment
140 amount, described in paragraph (6) of this section, by the discounted present value of the
141 payments, described in paragraph (3) of this section;
- 142 (8) The amount of any penalty and the aggregate amount of any liquidated
143 damages payable by the payee in the event of a breach of the transfer agreement by the payee;
144 and
- 145 (9) A statement that the payee has the right to cancel the transfer agreement,
146 without penalty or further obligation, during the 3 business day after the date the payee signs the
147 transfer agreement.

148 Sec. 104. Jurisdiction; procedure for approval of transfers.

- 149 (a) The Superior Court of the District of Columbia shall have jurisdiction over any
150 application for authorization of a transfer of structured settlement payment rights.

151 (b) Not less than 20 days before the scheduled hearing on any application for approval of
152 a transfer agreement, the transferee shall file with the court or responsible administrative
153 authority and serve on all interested parties a notice of the proposed transfer and the application
154 for its approval, including in such notice:

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

156 (2) A copy of the transfer agreement;

157 (3) A copy of the disclosure statement required under section 203;

158 (4) A listing of each of the payee's dependents, together with each dependent's
159 age;

160 (5) A certification from an independent professional advisor establishing that the
161 advisor has given advice to the payee on the financial advisability of the transfer and the other
162 financial options available to the payee;

163 (6) Notification that any interested party is entitled to support, oppose, or
164 otherwise respond to the transferee's application, either in person or by counsel, by submitting
165 written comments to the court or responsible administrative authority or by participating in the
166 hearing; and

167 (7) Notification of the time and place of the hearing and notification of the
168 manner in which and the time by which written responses to the application must be filed, which
169 shall not be less than 15 days after service of the transferee's notice, in order to be considered by
170 the court or responsible administrative authority.

171 Sec. 105. Effects of transfer of structured settlement payment rights.

172 Following a transfer of structured settlement payment rights under this title:

173 (1) The structured settlement obligor and the annuity issuer shall, as to all parties
174 except the transferee, be discharged and released from any and all liability for the transferred
175 payments;

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

178 (A) If the transfer contravenes the terms of the structured settlement for
179 any taxes incurred by such parties as a consequence of the transfer; and

180 (B) For any other liabilities or costs, including reasonable costs and
181 attorney's fees, arising from compliance by such parties with the order of the court or arising as a
182 consequence of the transferee's failure to comply with this title;

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

186 (4) Any further transfer of structured settlement payment rights by the payee may
187 be made only after compliance with all of the requirements of this title.

188 Sec. 106. General provisions; construction.

189 (a) The provisions of this title may not be waived.

190 (b) Any transfer agreement entered into on or after the effective date of this title by a
191 payee who resides in the District shall provide that disputes under such transfer agreement,
192 including any claim that the payee has breached the agreement, shall be determined in and under
193 the laws of the District. No such transfer agreement shall authorize the transferee or any other
194 party to confess judgment or consent to entry of judgment against the payee.

195 (c) No transfer of structured settlement payment rights shall extend to any payments that
196 are life-contingent unless, before the date on which the payee signs the transfer agreement, the
197 transferee has established and has agreed to maintain procedures reasonably satisfactory to the
198 annuity issuer and the structured settlement obligor for:

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

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

202 (d) No payee who proposes to make a transfer of structured settlement payment rights
203 shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any
204 liability to the proposed transferee based on a failure of the transfer to satisfy the conditions of
205 this title.

206 (e) Nothing contained in this title shall be construed to authorize any transfer of
207 structured settlement payment rights in contravention of any law or to imply that any transfer
208 under a transfer agreement entered into prior to the effective date of this title is valid or invalid.

209 (f) Compliance with the requirements set forth in section 202 and fulfillment of the
210 conditions set forth in section 203 shall be solely the responsibility of the transferee in any
211 transfer of structured settlement payment rights, and neither the structured settlement obligor nor
212 the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance
213 with such requirements or failure to fulfill such conditions.

214 TITLE II. AUTOMATIC RENEWAL PROVISIONS

215 Sec. 201. Definitions.

216 For purposes of this title, the term:

217 (1)(A) “Clear and conspicuous” and “clearly and conspicuously” mean in larger
218 type than the surrounding text, in contrasting type, font, or color to the surrounding text of the
219 same size, or set off from the surrounding text of the same size by symbols or other marks, in a
220 manner that clearly calls attention to the language.

221 (B) In the case of an audio disclosure, “clear and conspicuous” and
222 “clearly and conspicuously” means in a volume and cadence sufficient to be readily audible and
223 understandable.

224 (2) “Person” means an individual, firm, partnership, association, or corporation.

225 Sec. 202. Automatic renewal clause.

226 (a) A person that sells or offers to sell a product or service to a consumer pursuant to a
227 contract, where such contract automatically renews, shall disclose the automatic renewal clause
228 clearly and conspicuously in the contract, including the cancellation procedure.

229 (b)(1) A person that sells or offers to sell a product or service to a consumer pursuant to a
230 consumer contract that has a specified term of 12 months or more and that automatically renews
231 for a specified term of more than 1 month, unless the consumer cancels the contract, shall notify
232 the consumer in writing of the automatic renewal.

233 (2) The written notice required by paragraph (1) of this subsection shall be
234 provided to the consumer no less than 30 days and no more than 60 days before the cancellation
235 deadline pursuant to the automatic renewal clause.

236 (3) The written notice required under this subsection shall disclose clearly and
237 conspicuously:

238 (A) That unless the consumer cancels the contract it will automatically
239 renew;

240 (B) The deadline by which the consumer shall respond to cancel the
241 consumer contract and prevent automatic renewal; and

242 (C) The methods by which the consumer may obtain details of the
243 automatic renewal provision and cancellation procedure, including by contacting the seller at a
244 specified telephone number or address, or by referring to the contract.

245 (c) The written notice required by subsection (b) of this section shall be given in person
246 or by certified mail; provided, that the written notice required by subsection (b) of this section
247 may be provided to the consumer electronically if:

248 (1) The transaction for sale of a product or service was conducted electronically at
249 the election of the consumer; or

250 (2) The consumer elects to receive electronic communications and provides a
251 valid electronic-mail address for the purposes of receiving the notices required by subsection (b)
252 of this section.

253 (d) A violation of this section shall render the automatic renewal provision void.

254 (e) A person may not be liable for a violation of this section if such person demonstrates
255 that, as part of its routine business practice:

256 (1) The person has established and implemented written procedures to comply
257 with this section and enforces compliance with the procedures;

258 (2) Any failure to comply with this section is the result of error; and

259 (3) Where an error has caused a failure to comply with this section, the person
260 provides a full refund or credit for all amounts billed to or paid by the consumer from the date of
261 the renewal until the date of the termination of the account, or the date of the subsequent notice
262 of renewal, whichever comes first.

263 Sec. 203. Exemptions.

264 (a) This title shall not apply to a contract entered into before the effective date of this
265 title.

266 (b) This title shall not apply to:

267 (1) A contract that is extended beyond the original term of the contract as the
268 result of the consumer's initiation of a change in the original contract terms;

269 (2) An insurer regulated by the Department of Insurance, Securities and Banking.

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

274 (4) A person that provides a service pursuant to a franchise issued by a political
275 subdivision of the District or a license, franchise, certificate, or other authorization issued by the
276 District of Columbia Public Service Commission; or

277 (5) A person that provides a service regulated by the District of Columbia Public
278 Service Commission, the Federal Communications Commission, or the Federal Energy
279 Regulatory Commission.

280 TITLE III. FISCAL IMPACT; EFFECTIVE DATE

281 Sec. 301. Fiscal impact statement.

282 The Council adopts the fiscal impact statement in the committee report as the fiscal
283 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
284 approved December 24, 1973 (87 Stat. 813, D.C. Official Code § 1-206.02(c)(3)).

285 Sec. 302. Effective date.

286 This act shall take effect following approval by the Mayor (or in the event of veto by the
287 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
288 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
289 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
290 Columbia Register.