

A BILL

22-20

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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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.

27                   (4) “Discounted present value” means the present value of future payments, as  
28 determined by discounting such payments to the present using the most recently published  
29 applicable federal rate for determining the present value of an annuity, as published by the  
30 United States Internal Revenue Service.

31                   (5) “Gross advance amount” means the sum payable to the payee or for the  
32 payee’s account as consideration for a transfer of structured settlement payment rights before  
33 any reductions for transfer expenses or other deductions to be made from such consideration.

34                   (6) “Independent professional advice” means the advice of an attorney, certified  
35 public accountant, financial planner, actuary, or other appropriately qualified and licensed  
36 professional advisor:

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

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

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

43                   (7) “Interested parties” means, with respect to any structured settlement, the  
44 payee, any beneficiary irrevocably designated under the annuity contract to receive payments  
45 following the payee’s death, the annuity issuer, the structured settlement obligor, a parent or  
46 other guardian or authorized legal representative of any interested party who is not legally

47 competent, and any other party that has continuing rights or obligations under such structured  
48 settlement.

49 (8) “Net advance amount” means the gross advance amount less the aggregate  
50 amount of the actual and estimated transfer expenses required to be disclosed under section  
51 103(5).

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

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

57 (11) “Qualified assignment agreement” means an agreement providing for a  
58 qualified assignment, as that term is defined in section 130(c) of the Internal Revenue Code of  
59 1954, approved January 14, 1983 (96 Stat. 2605; 26 U.S.C. § 130).

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

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

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

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

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

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

74                   (16) “Terms of the structured settlement” include, with respect to any structured  
75 settlement, the terms of the structured settlement agreement, the annuity contract, any qualified  
76 assignment agreement, and any order or other approval of a court or other government authority  
77 that authorized or approved such structured settlement.

78                   (17) “Transfer” means any sale, assignment, pledge, hypothecation, or other  
79 alienation or encumbrance of structured settlement payment rights made by a payee for  
80 consideration; provided, that the term “transfer” shall not include the creation or perfection of a  
81 security interest in structured settlement payment rights under a blanket security agreement  
82 entered into with an insured depository institution, in the absence of any action to redirect the  
83 structured settlement payments to such insured depository institution, or an agent or successor  
84 in interest thereof, or otherwise to enforce such blanket security interest against the structured  
85 settlement payment rights.

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

88                   (19) "Transfer expenses" means all expenses of a transfer that are required under  
89 the transfer agreement to be paid by the payee or deducted from the gross advance amount,  
90 including court filing fees, attorney's fees, escrow fees, lien recordation fees, judgment and lien  
91 search fees, finders' fees, commissions, and other payments to a broker or other intermediary;  
92 provided, that the term "transfer expenses" shall not include preexisting obligations of the  
93 payee payable for the payee's account from the proceeds of a transfer.

94                   (20) "Transferee" means a party acquiring or proposing to acquire structured  
95 settlement payment rights through a transfer.

96                   Sec. 103. Required disclosures to payee.

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

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

102                   (2) The aggregate amount of such payments;

103                   (3) The discounted present value of the payments to be transferred, which shall  
104 be identified as the "calculation of the current value of the transferred structured settlement  
105 payments under federal standards for valuing annuities", and the amount of the applicable  
106 federal rate used in calculating the discounted present value;

107                   (4) The gross advance amount;

108                   (5) An itemized listing of all applicable transfer expenses, other than attorney's  
109 fees and related disbursements payable in connection with the transferee's application for  
110 approval of the transfer, and the transferee's best estimate of the amount of any such fees and  
111 disbursements;

112                   (6) The net advance amount;

113                   (7) The effective annual interest rate, which shall be disclosed in a statement in  
114 the following form: "On the basis of the net amount that you will receive from us and the  
115 amounts and timing of the structured settlement payments that you are transferring to us, you  
116 will, in effect, be paying interest to us at a rate of \_\_\_\_\_ percent per year";

117                   (8) The amount of any penalties or liquidated damages payable by the payee in  
118 the event of a breach of the transfer agreement by the payee;

119                   (9) That the payee has the right to cancel the transfer agreement, without penalty  
120 or further obligation, at any time before entry of a final court order approving the transfer;

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

125                   (11) That the payee has the right to seek and receive independent professional  
126 advice regarding the proposed transfer and should consider doing so before agreeing to transfer  
127 any structured settlement payment rights.

128                   Sec. 104. Procedure for approval of transfers.

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

132 (b) The court shall hold a timely hearing on an application for approval of a transfer.  
133 The payee shall appear in person at the hearing unless the court determines that good cause  
134 exists to excuse the payee from appearing in person.

135 (c)(1) Any interested party is entitled to support, oppose, or otherwise respond to the  
136 transferee's application, either in person or by counsel, by submitting written comments to the  
137 court or by participating in the hearing.

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

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

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

144 (2) A copy of the transfer agreement;

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

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

148 (5) A summary of:

149 (A) Any prior transfers by the payee to the transferee or an affiliate, or  
150 through the transferee or an affiliate to an assignee;

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

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

156 (i) Any prior transfers by the payee to any person or entity other  
157 than the transferee or an affiliate or an assignee of the transferee or an affiliate; and

158 (ii) Any proposed transfers by the payee to any person or entity  
159 other than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for  
160 approval of which were denied;

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

163 (7) 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 by participating in the hearing; and

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



168 (e) For the purposes of this section, the term “affiliate” shall have the same meaning as  
169 provided in section 101(2) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law  
170 13-203; D.C. Official Code § 31-5601.01(2)).

171 Sec. 105. Approval of transfers by the court.

172 (a) No direct or indirect transfer of structured settlement payment rights shall be  
173 effective and no structured settlement obligor or annuity issuer shall be required to make any  
174 payment directly or indirectly to any transferee or assignee of structured settlement payment  
175 rights unless the transferee has provided the payee and other interested parties with the  
176 disclosures required by section 103, and the transfer has been approved in advance in a final  
177 order of a court of competent jurisdiction based on express findings that:

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

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

182 (3) The payee has been advised in writing by the transferee to seek independent  
183 professional advice regarding the transfer and has either received such advice or knowingly  
184 waived in writing the opportunity to seek and receive such advice;

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

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

- 189 (1) The age and maturity of the payee;
- 190 (2) Whether the payee understands the terms and financial implications of the  
191 transfer;
- 192 (3) Whether the financial and other terms of the transfer are fair and reasonable;
- 193 (4) The payee's stated purposes for the transfer and whether the payee has  
194 considered other options for accomplishing those purposes;
- 195 (5) Changes in the payee's personal, family, or financial circumstances since the  
196 date of the structured settlement agreement;
- 197 (6) The summary filed with the court under section 104(d)(5); and
- 198 (7) The remaining payments that the payee will receive under the structured  
199 settlement if the court approves the transfer.

200 Sec. 106. Effects of transfers.

201 Following a transfer under this title:

- 202 (1) The structured settlement obligor and the annuity issuer may rely on the court  
203 order approving the transfer in redirecting periodic payments to an assignee or transferee in  
204 accordance with the order approving the transfer and shall, as to all parties except the transferee  
205 or an assignee designated by the transferee, be discharged and released from any and all  
206 liability for the redirected periodic payments, regardless of whether any party to the transfer  
207 fails to comply with this title or with the court order approving the transfer;
- 208 (2) The transferee shall be liable to the structured settlement obligor and the  
209 annuity issuer:

210 (A) If the transfer contravenes the terms of the structured settlement for  
211 any taxes incurred by the structured settlement obligor or annuity issuer as a consequence of the  
212 transfer; and

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

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

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

222 Sec. 107. General provisions; construction.

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

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

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

232 (d) No transfer shall extend to any payments that are life-contingent unless, before the  
233 date on which the payee signs the transfer agreement, the transferee has established and has  
234 agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured  
235 settlement obligor for:

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

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

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

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

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

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

249 (i) Compliance with the requirements set forth in sections 103, 104, and 105 shall be  
250 solely the responsibility of the transferee in any transfer, and neither the structured settlement

251 obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from,  
252 noncompliance with such requirements.

253 TITLE II. AUTOMATIC RENEWAL PROTECTIONS

254 Sec. 201. Short title.

255 This title may be cited as the “Automatic Renewal Protections Act of 2018”.

256 Sec. 202. Definitions.

257 For the purposes of this title, the term:

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

262 (2) “Consumer” means any person who seeks or acquires, by purchase or lease,  
263 any goods or services.

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

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

268 (b)(1) A person who sells a good or service to a consumer pursuant to a contract with an  
269 initial term of 12 months or more, that will automatically renew for a term of one month or  
270 more unless the consumer cancels the contract, shall notify the consumer, in accordance with

271 paragraph (2) of this subsection, of the first automatic renewal and annually thereafter, by first-  
272 class mail and, if the person possesses the consumer's email address, by email.

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

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

277 (B) Disclose clearly and conspicuously:

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

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

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

283 (iv) The methods by which the consumer may obtain details of  
284 the automatic renewal provision and cancellation procedures, including by contacting the seller  
285 at a specified telephone number or e-mail address; and

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

288 (3) Notwithstanding the consumer's consent to the initial term, the person shall  
289 obtain the consumer's affirmative written consent to the first automatic renewal, and annually  
290 thereafter, before charging the consumer.

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

293 (1) Notify the consumer of the automatic renewal no fewer than 24 and no more  
294 than 72 hours before the expiration of the free trial period; and

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

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

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

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

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

309 Sec. 204. Exemptions.

310 This title shall not apply to:

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

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

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

320 (4) A service contract, as that term is defined in section 2(10) of the Service  
321 Contract Regulation Act of 2018, passed on 2nd reading on October 16, 2018 (Enrolled version  
322 of B22-584).

323 TITLE III. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE

324 Sec. 301. Applicability.

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

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

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



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

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

337                           (B) The date of publication of the notice of the certification shall  
338 not affect the applicability of this act.

339           Sec. 302. Fiscal impact statement.

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

343           Sec. 303. Effective date.

344           This act shall take effect following approval by the Mayor (or in the event of veto by the  
345 Mayor, action by the Council to override the veto), a 30-day period of congressional review as  
346 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
347 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
348 Columbia Register.