



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB6181

Introduced 2/11/2010, by Rep. Kevin Joyce

#### SYNOPSIS AS INTRODUCED:

215 ILCS 153/5  
215 ILCS 153/40 new  
215 ILCS 153/45 new  
215 ILCS 153/50 new  
215 ILCS 153/55 new  
215 ILCS 153/60 new  
215 ILCS 153/65 new  
215 ILCS 153/70 new  
215 ILCS 153/75 new  
215 ILCS 153/80 new

Amends the Structured Settlement Protection Act. In the provision concerning definitions, adds definitions of "Director" and "Division". Sets forth provisions concerning transferee licensure requirements, qualifications, renewal, revocation and suspension, and examination; the display of licenses; and injunction and review with regard to licensure complaints. Provides that it shall be unlawful for any person to operate as, advertise as, or solicit transfers as a transferee without first having obtained a license. Provides that every applicant shall submit a bond, in which the applicant shall be the obligor, in the sum of \$125,000 or an additional amount at the time of the application for a license. Makes other changes.

LRB096 19316 RPM 34707 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning insurance.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Structured Settlement Protection Act is  
5 amended by changing Section 5 and adding Sections 40, 45, 50,  
6 55, 60, 65, 70, 75, and 80 as follows:

7 (215 ILCS 153/5)

8 Sec. 5. Definitions. For purposes of this Act:

9 "Annuity issuer" means an insurer that has issued a  
10 contract to fund periodic payments under a structured  
11 settlement.

12 "Dependents" include a payee's spouse and minor children  
13 and all other persons for whom the payee is legally obligated  
14 to provide support, including maintenance.

15 "Director" means the Director of the Division of Financial  
16 Institutions.

17 "Discounted present value" means the present value of  
18 future payments determined by discounting such payments to the  
19 present using the most recently published Applicable Federal  
20 Rate for determining the present value of an annuity, as issued  
21 by the United States Internal Revenue Service.

22 "Division" means the Division of Financial Institutions.

23 "Gross advance amount" means the sum payable to the payee

1 or for the payee's account as consideration for a transfer of  
2 structured settlement payment rights before any reductions for  
3 transfer expenses or other deductions to be made from such  
4 consideration.

5 "Independent professional advice" means advice of an  
6 attorney, certified public accountant, actuary, or other  
7 licensed professional adviser.

8 "Interested parties" means, with respect to any structured  
9 settlement, the payee, any beneficiary irrevocably designated  
10 under the annuity contract to receive payments following the  
11 payee's death, the annuity issuer, the structured settlement  
12 obligor, and any other party that has continuing rights or  
13 obligations under such structured settlement.

14 "Net advance amount" means the gross advance amount less  
15 the aggregate amount of the actual and estimated transfer  
16 expenses required to be disclosed under item (5) of Section 10  
17 of this Act.

18 "Payee" means an individual who is receiving tax free  
19 payments under a structured settlement and proposes to make a  
20 transfer of payment rights thereunder.

21 "Periodic payments" includes both recurring payments and  
22 scheduled future lump sum payments.

23 "Qualified assignment agreement" means an agreement  
24 providing for a qualified assignment within the meaning of  
25 Section 130 of the United States Internal Revenue Code, United  
26 States Code Title 26, as amended from time to time.

1 "Responsible administrative authority" means, with respect  
2 to a structured settlement, any government authority vested by  
3 law with exclusive jurisdiction over the settled claim resolved  
4 by such structured settlement.

5 "Settled claim" means the original tort claim or workers'  
6 compensation claim resolved by a structured settlement.

7 "Structured settlement" means an arrangement for periodic  
8 payment of damages for personal injuries or sickness  
9 established by settlement or judgment in resolution of a tort  
10 claim or for periodic payments in settlement of a workers'  
11 compensation claim.

12 "Structured settlement agreement" means the agreement,  
13 judgment, stipulation, or release embodying the terms of a  
14 structured settlement.

15 "Structured settlement obligor" means, with respect to any  
16 structured settlement, the party that has the continuing  
17 obligation to make periodic payments to the payee under a  
18 structured settlement agreement or a qualified assignment  
19 agreement.

20 "Structured settlement payment rights" means rights to  
21 receive periodic payments under a structured settlement,  
22 whether from the structured settlement obligor or the annuity  
23 issuer, when:

24 (1) the payee is domiciled in, or the domicile or  
25 principal place of business of the structured settlement  
26 obligor or the annuity issuer is located in, this State;

1           (2) the structured settlement agreement was approved  
2           by a court or responsible administrative authority in this  
3           State; or

4           (3) the structured settlement agreement is expressly  
5           governed by the laws of this State.

6           "Terms of the structured settlement" include, with respect  
7           to any structured settlement, the terms of the structured  
8           settlement agreement, the annuity contract, any qualified  
9           assignment agreement, and any order or other approval of any  
10          court or responsible administrative authority or other  
11          government authority that authorized or approved such  
12          structured settlement.

13          "Transfer" means any sale, assignment, pledge,  
14          hypothecation, or other alienation or encumbrance of  
15          structured settlement payment rights made by a payee for  
16          consideration; provided that the term "transfer" does not  
17          include the creation or perfection of a security interest in  
18          structured settlement payment rights under a blanket security  
19          agreement entered into with an insured depository institution  
20          in the absence of any action to redirect the structured  
21          settlement payments to such insured depository institution or  
22          an agent or successor in interest thereof or otherwise to  
23          enforce such blanket security interest against the structured  
24          settlement payment rights.

25          "Transfer agreement" means the agreement providing for a  
26          transfer of structured settlement payment rights.

1 "Transfer expenses" means all expenses of a transfer that  
2 are required under the transfer agreement to be paid by the  
3 payee or deducted from the gross advance amount, including,  
4 without limitation, court filing fees, attorneys fees, escrow  
5 fees, lien recordation fees, judgment and lien search fees,  
6 finders' fees, commissions, and other payments to a broker or  
7 other intermediary; "transfer expenses" do not include  
8 preexisting obligations of the payee payable for the payee's  
9 account from the proceeds of a transfer.

10 "Transferee" means a party acquiring or proposing to  
11 acquire structured settlement payment rights through a  
12 transfer.

13 (Source: P.A. 93-502, eff. 1-1-04.)

14 (215 ILCS 153/40 new)

15 Sec. 40. Requirement of license; application.

16 (a) It shall be unlawful for any person to operate,  
17 advertise, or solicit transfers as a transferee in this State  
18 without first having obtained a license under this Act.

19 (b) An application for a license to operate as a transferee  
20 in this State shall be made to the Director and shall be in  
21 writing, under oath, and in the form prescribed by the  
22 Director.

23 Each applicant, at the time of making the application,  
24 shall pay a fee determined by the Director. Every applicant  
25 shall submit to the Director, at the time of the application

1 for a license, a bond to be approved by the Director in which  
2 the applicant shall be the obligor, in the sum of \$125,000 or  
3 an additional amount as required by the Director based on the  
4 amount of disbursements made by the licensee in the previous  
5 year, and in which an insurance company that is duly authorized  
6 by the State to transact the business of fidelity and surety  
7 insurance shall be a surety.

8 The bond shall run to the Director for the use of the  
9 Division or of any persons who may have a cause of action  
10 against the obligor in the bond arising out of any violation of  
11 this Act or any applicable rules by a licensee. The bond shall  
12 be conditioned so that the obligor must faithfully conform to  
13 and abide by the provisions of this Act and of all rules and  
14 directions lawfully made by the Director and pay to the  
15 Director or to any persons any money that may become due or  
16 owing to the State or to such persons from the obligor under  
17 the provisions of this Act.

18  
19 (215 ILCS 153/45 new)

20 Sec. 45. Qualifications for license. Upon the filing of the  
21 application and the approval of the bond and the payment of the  
22 specified fees, the Director shall issue a license if he or she  
23 finds all of the following:

24 (1) The financial responsibility, experience,  
25 character, and general fitness of the applicant; the

1 managers, if the applicant is a limited liability company;  
2 the partners, if the applicant is a partnership; or the  
3 officers and directors, if the applicant is a corporation,  
4 in order to assess whether the entity shall be operated  
5 fairly, honestly, and efficiently within the purposes of  
6 this Act.

7 (2) The applicant, if an individual, the managers, if  
8 the applicant is a limited liability company, the partners,  
9 if the applicant is a partnership, and the officers and  
10 directors, if the applicant is a corporation, have not been  
11 convicted of a felony or misdemeanor involving dishonesty  
12 or breach of trust; or disciplined with respect to a  
13 license; or currently the subject of a license disciplinary  
14 proceeding concerning allegations involving dishonesty or  
15 untrustworthiness.

16 (3) The applicant, or any officers, directors,  
17 partners, or managers have not previously violated any  
18 provision of this Act or any rule lawfully made by the  
19 Director.

20 (4) The applicant has not made any false statement or  
21 representation to the Director in applying for a license  
22 under this Section.

23 The Director shall deliver a license to the applicant to  
24 operate as a transferee in accordance with the provisions of  
25 this Act at the location specified in the application. The  
26 license shall remain in full force and effect until it is



1 surrendered by the licensee or revoked by the Director as  
2 provided in this Act; provided, however, that each license  
3 shall expire by its terms on January 1 next following its  
4 issuance unless it is renewed as provided in this Act. A  
5 license, however, may not be surrendered without the approval  
6 of the Director.

7 More than one license may be issued to the same person for  
8 separate places of business. Separate applications shall be  
9 made for each place of business.

10  
11 (215 ILCS 153/50 new)

12 Sec. 50. Renewal of license. Each licensee under the  
13 provisions of this Act may make application to the Director for  
14 renewal of its license. The application for renewal shall be on  
15 the form prescribed by the Director and shall be accompanied by  
16 a fee determined by the Director with a bond or other surety as  
17 required, in a minimum amount of \$125,000 or an amount as  
18 required by the Director based on the amount of disbursements  
19 made by the licensee in the previous year. The application must  
20 be received by the Division no later than December 1 of the  
21 year preceding the year for which the application applies.

22 (215 ILCS 153/55 new)

23 Sec. 55. License, display, and location of license. Each  
24 license issued shall be kept conspicuously posted in the place

1 of business of the licensee. The business location may be  
2 changed by any licensee upon 10 days prior approval by the  
3 Director. A licensee must operate under the name as stated in  
4 its original application.

5 (215 ILCS 153/60 new)

6 Sec. 60. Temporary location. The Director may approve a  
7 temporary additional business location for the purpose of  
8 allowing a licensee to conduct business outside the licensed  
9 location.

10 (215 ILCS 153/65 new)

11 Sec. 65. Revocation or suspension of license.

12 (a) The Director may revoke or suspend any license if he or  
13 she finds that:

14 (1) the licensee has failed to pay the annual license  
15 fee or maintain in effect the bond required under the  
16 provisions of this Act;

17 (2) the licensee has violated any provisions of this  
18 Act or any rule lawfully made by the Director under the  
19 authority of this Act;

20 (3) any fact or condition exists that, if it had  
21 existed at the time of the original application for a  
22 license, would have warranted the Director in refusing its  
23 issuance; or

24 (4) any applicant has made any false statement or

1 representation to the Director in applying for a license  
2 under this Act.

3 (b) In every case in which a license is suspended or  
4 revoked or an application for a license or renewal of a license  
5 is denied, the Director shall serve notice of his or her  
6 action, including a statement of the reasons for his or her  
7 action, either personally or by certified mail, return receipt  
8 requested. Service by mail shall be deemed completed if the  
9 notice is deposited in the U.S. Mail.

10 (c) In the case of a denial of an application or renewal of  
11 a license, the applicant or licensee may request, in writing, a  
12 hearing within 30 days after the date of service. In the case  
13 of a denial of a renewal of a license, the license shall be  
14 deemed to continue in force until 30 days after the service of  
15 the notice of denial, or if a hearing is requested during that  
16 period, until a final administrative order is entered.

17 (d) An order of revocation or suspension of a license shall  
18 take effect upon service of the order unless the licensee  
19 requests, in writing, a hearing within 10 days after the date  
20 of service. In the event a hearing is requested, the order  
21 shall be stayed until a final administrative order is entered.

22 (e) If the licensee requests a hearing, the Director shall  
23 schedule the hearing within 30 days after the request for a  
24 hearing unless otherwise agreed to by the parties.

25 (f) The hearing shall be held at the time and place  
26 designated by the Director. The Director and any administrative

1 law judge designated by the Director shall have the power to  
2 administer oaths and affirmations, subpoena witnesses and  
3 compel their attendance, take evidence, and require the  
4 production of books, papers, correspondence, and other records  
5 or information that the Director considers relevant or material  
6 to the injury.

7 (g) The costs for the administrative hearing shall be set  
8 by rule.

9 (h) The Director shall have the authority to adopt rules  
10 for the administration of this Section.

11 (215 ILCS 153/70 new)

12 Sec. 70. Examination of licensee.

13 (a) The Director may, when and as often as the Director  
14 deems it reasonably necessary to protect the interests of the  
15 public, examine the business affairs of any licensee.

16 (b) Licensees shall for 5 years retain copies of all  
17 records and documents in any form related to the requirements  
18 of this Act.

19 (c) The Director shall have the power to subpoena the  
20 production of any books and records pertinent to any  
21 investigation.

22 (d) The Director shall have the authority to adopt rules  
23 for the administration of this Section.

24 (215 ILCS 153/75 new)

1       Sec. 75. Injunction. To engage in a transfer, as defined  
2       in this Act, as a transferee without a valid license to do so  
3       is hereby declared to be inimical to the public welfare and to  
4       constitute a public nuisance. The Director may, in the name of  
5       the people of the State of Illinois, through the Attorney  
6       General of the State of Illinois, file a complaint for an  
7       injunction in the circuit court to enjoin such person from  
8       engaging in such business. An injunction proceeding shall be in  
9       addition to, and not in lieu of, penalties and remedies  
10       otherwise provided in this Act.

11           (215 ILCS 153/80 new)

12       Sec. 80. Review. All final administrative decisions of the  
13       Director under this Act shall be subject to judicial review  
14       pursuant to the provisions of the Administrative Review Law,  
15       including all amendments, modifications, and adopted rules.