

2019 Regular Session

SENATE BILL NO. 193

BY SENATOR MORRISH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

OBLIGATIONS. Enacts the Louisiana Structured Settlement Act. (gov sig)

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AN ACT

To enact R.S. 9:2713 through 2713.9 and to repeal R.S. 9:2715, relative to agreements; to provide relative to structured settlements; to enact the Louisiana Structured Settlement Act; to provide certain definitions, terms, procedures, conditions, requirements, and effects; to provide relative to registration and transfer; to provide relative to the transfer of structured settlement payment rights; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:2713 through 2713.9 are hereby enacted to read as follows:

§2713. Short Title

This Section and Sections 2713.1 through 2713.9 shall be known and may be cited as the Louisiana Structured Settlement Act.

§2713.1. Definitions

A. As used in this Section, the following terms shall mean:

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

(2) "Assignee" means a person or entity acquiring or proposing to

1 acquire structured settlement payments from a structured settlement purchase
2 company or transferee after, or concurrently with, the transfer by the payee to
3 the structured settlement purchase company or transferee.

4 (3) "Dependents" include a payee's spouse and minor children and all
5 other persons for whom the payee is legally obligated to provide support,
6 including alimony.

7 (4) "Discounted present value" means the present value of future
8 payments determined by discounting such payments to the present using the
9 most recently published Applicable Federal Rate for determining the present
10 value of an annuity, as issued by the United States Internal Revenue Service.

11 (5) "Gross advance amount" means the sum payable to the payee or for
12 the payee's account as consideration for a transfer of structured settlement
13 payment rights, before any reductions for transfer expenses or other deductions
14 to be made from such consideration.

15 (6) "Independent professional advice" means advice of an attorney,
16 certified public accountant, actuary, or other licensed professional adviser.

17 (7) "Interested party" means, with respect to any structured settlement,
18 the payee, any beneficiary irrevocably designated under the annuity contract
19 to receive payments following the payee's death, the annuity issuer, the
20 structured settlement obligor, any party to the structured settlement that has
21 continuing obligations to make payments under the structured settlement, and
22 any person who has continuing rights or obligations relative to the payments
23 that are the subject of a transfer that is the subject of a structured settlement
24 transfer proceeding.

25 (8) "Net advance amount" means the gross advance amount, less the
26 aggregate amount of the actual and estimated transfer expenses required to be
27 disclosed under R.S. 2713.5(E).

28 (9) "Payee" means an individual who is receiving tax free payments
29 under a structured settlement and proposes to make a transfer to a transferee

1 or structured settlement purchase company of structured settlement payments.

2 (10) "Periodic payments" includes both recurring payments and
3 scheduled future lump sum payments.

4 (11) "Qualified assignment agreement" means an agreement providing
5 for a qualified assignment within the meaning of Section 130 of the United
6 States Internal Revenue Code, United States Code Title 26, as amended.

7 (12) "Renewal date" means the date on which a registered structured
8 settlement purchase company must have renewed their registration under this
9 statute, which date shall be two years after the initial registration or any
10 subsequent renewal.

11 (13) "Settled claim" means the tort claim resolved by a structured
12 settlement.

13 (14) "Structured settlement" means an arrangement for periodic
14 payment of damages for personal injuries or sickness established by settlement
15 or judgment in resolution of a tort claim.

16 (15) "Structured settlement agreement" means the agreement, judgment,
17 stipulation, or release embodying the terms of a structured settlement.

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

22 (17) "Structured settlement payments" means periodic payments due
23 under a structured settlement.

24 (18) "Structured settlement payment rights" means rights to receive
25 periodic payments under a structured settlement, whether from the structured
26 settlement obligor or the annuity issuer, where the payee is domiciled in the
27 state or the structured settlement agreement was approved by a court in the
28 state.

29 (19) "Structured settlement purchase company" means a person that

1 acts as a transferee in this state and who is registered with the secretary of state
2 pursuant to R.S. 13:2713.2.

3 (20) "Structured settlement transfer proceeding" means a court
4 proceeding filed by a structured settlement purchase company seeking court
5 approval of a transfer in accordance with the Louisiana Structure Settlement
6 Act.

7 (21) "Terms of the structured settlement" include, with respect to any
8 structured settlement, the terms of the structured settlement agreement, the
9 annuity contract, any qualified assignment agreement, and any order or other
10 approval of any court in this state.

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

20 (23) "Transfer agreement" means the agreement providing for a transfer
21 of structured settlement payments.

22 (24) "Transferee" means a party acquiring or proposing to acquire
23 structured settlement payments through a transfer.

24 §2713.2. Registration; renewal

25 A. A person or entity shall not act as a transferee, attempt to acquire
26 structured settlement payments through a transfer from a payee who resides in
27 this state, and file a structured settlement transfer proceeding in this state
28 unless the person or entity has registered with the secretary of state to do
29 business in this state.

1 **B. An applicant's initial registration application must be submitted on**
2 **a form prescribed by the secretary of state, and shall include a sworn**
3 **certification by an owner, officer, director, or manager of the applicant, if the**
4 **applicant is an entity, or by the individual applicant if the applicant is an**
5 **individual, certifying that:**

6 **(1) The applicant has secured a surety bond or has been issued a letter**
7 **of credit, in the amount of fifty thousand dollars, relative to its business as a**
8 **structured settlement purchase company in this state. The surety bond or letter**
9 **of credit is intended to protect payees who do business with a structured**
10 **settlement purchase company, and to ensure the structured settlement purchase**
11 **company's compliance with and performance of its obligation under the**
12 **Louisiana Structured Settlement Act and other applicable law.**

13 **(2) The applicant will comply with all of the provisions of the Louisiana**
14 **Structured Settlement Act when acting as a structured settlement purchase**
15 **company and filing structured settlement transfer proceedings in this state.**

16 **C. An assignee is not required to register as a structured settlement**
17 **purchase company in order to acquire structured settlement payments from a**
18 **transferee, structured settlement purchase company, or another assignee, or to**
19 **take a security interest in structured settlement payments from a transferee,**
20 **structured settlement purchase company, or another assignee, in a transaction**
21 **where the assignee does not act as a structured settlement purchase company**
22 **or as a transferee under the Louisiana Structured Settlement Act.**

23 **D. An employee of a structured settlement purchase company, if acting**
24 **on behalf of the employer structured settlement purchase company in**
25 **connection with a transfer, is not required to be registered.**

26 **E. A registered structured settlement purchase company must renew its**
27 **registration annually, on or before the renewal date, and provide the**
28 **certifications set forth in Subsection B of this Section.**

29 **§2713.3. Prohibited Acts**

1 A. A transferee or structured settlement purchase company, and an
2 employee or representative of a transferee or structured settlement purchase
3 company, shall not engage in any of the following actions:

4 (1) Pursue or complete a transfer with a payee without complying with
5 the Louisiana Structured Settlement Act.

6 (2) Refuse or fail to timely fund a transfer, following court approval of
7 the transfer.

8 (3) Receive or divert structured settlement payments from the payee
9 without complying with the Louisiana Structured Settlement Act and securing
10 court approval of the transfer in accordance with the Act.

11 (4) Intentionally file a structured settlement transfer proceeding in an
12 improper court.

13 (5) Pay a referral fee, commission, or finders fees, to a person or entity
14 for facilitating or arranging a structured settlement transfer with a payee, or
15 introducing or referring a payee to the structured settlement purchase
16 company, unless such person or entity is registered as a structured settlement
17 purchase company or is an employee of a registered structured settlement
18 purchase company. A transferee may pay to third parties routine transfer
19 expenses, such as court filing fees, escrow fees, lien recordation fees, judgment
20 and lien search fees, attorney fees, and other similar types of fees relating to a
21 transfer.

22 (6) Intentionally and willfully advertise materially false or misleading
23 information regarding its products or services.

24 (7) Attempt to coerce, bribe, or intimidate any payee seeking to transfer
25 structured settlement payments.

26 (8) Attempt to defraud a payee or any party to a structured settlement
27 transfer or any interested party in a structured settlement transfer proceeding
28 by means of forgery or false identification.

29 (9) Intervene in a pending structured settlement transfer proceeding, if

1 the transferee or structured settlement purchase company is not a party to such
2 proceeding or an interested party relative to the proposed transfer which is the
3 subject of the pending structured settlement transfer proceeding. This
4 Paragraph shall not apply where a payee has signed a transfer agreement with
5 the intervening structured settlement purchase company within sixty days prior
6 to the filing of the pending structured settlement transfer proceeding, and the
7 structured settlement purchase company who filed the pending structured
8 settlement transfer proceeding violated any of the provisions of the Louisiana
9 Structured Settlement Act in filing the pending structured settlement transfer
10 proceeding or in connection with the proposed transfer that is the subject of the
11 pending structured settlement transfer proceeding.

12 (10) Knowingly contact a payee who has signed a transfer agreement and
13 is pursuing a proposed transfer with another structured settlement purchase
14 company, where a structured settlement transfer proceeding has been filed by
15 the other structured settlement purchase company and is pending relative to the
16 proposed transfer, with the purpose of inducing the payee into canceling the
17 proposed transfer or transfer agreement with the other structured settlement
18 purchase company. However, if no hearing has been held within ninety days of
19 the filing of the structured settlement transfer proceeding, this Paragraph shall
20 not apply.

21 (11) Refusing to honor a payee's request to cancel a transfer agreement
22 in accordance with the Louisiana Structured Settlement Act, or refusing to
23 promptly dismiss a pending structured settlement transfer proceeding at the
24 request of the payee, unless the structured settlement purchase company
25 establishes that the reason that the payee has requested dismissal of the pending
26 structured settlement transfer proceeding was due to a violation of this Section
27 by another structured settlement purchase company or transferee dealing with
28 the payee.

29 B. A payee may pursue a private action as a result of a violation of this

1 Section, and may recover all damages and pursue all rights and remedies to
2 which the payee may be entitled under the Louisiana Structured Settlement Act,
3 the Louisiana Unfair Trade Practices Act, or other applicable law.

4 C. A structured settlement purchase company may pursue a private
5 action to enforce Subsections 2713.3(A)(4), 2713.3(A)(7), 2713.3(A)(9), and
6 2713.3(A)(10) of this Section as a result of a violation of such Sections, and may
7 recover all damages and pursue all remedies to which the payee may be entitled
8 under the Louisiana Structured Settlement Act.

9 D. In any action filed in violation of this Section, if a court determines
10 that a structured settlement purchase company or transferee is in violation of
11 this Section, the court may revoke the registration of the structured settlement
12 purchase company, suspend the registration of the structured settlement
13 purchased for a period of time to be determined at the discretion of the court,
14 or may enjoin the structured settlement purchase company or transferee from
15 filing new structured settlement transfer proceedings or pursuing transfers in
16 this state.

17 §2713.4. Authority to pursue and complete transfers

18 A. The payee may void any transfer attempted or completed by a
19 transferee who is not, at the time of transfer, registered with the secretary of
20 state to do business in this state.

21 B. All transferees must provide evidence to the court in which an
22 application for court approval of a transfer is filed under the Louisiana
23 Structured Settlement Act. The evidence must show that the transferee is
24 registered to do business in his state as a structured settlement purchase
25 company at the time the structured settlement transfer proceeding is filed or at
26 any time prior to the court signing an order approving said transfer in
27 accordance with the Louisiana Structured Settlement Act.

28 §2713.5. Required disclosures to payee

29 Not less than three days prior to the date on which a payee signs a

1 transfer agreement, the transferee shall provide to the payee a separate
2 disclosure statement, in bold type no smaller than fourteen point font, setting
3 forth the following:

4 (1) The amounts and due dates of the structured settlement payments to
5 be transferred.

6 (2) The aggregate amount of such payments.

7 (3) The discounted present value of the payments to be transferred,
8 which shall be identified as the "calculation of current value of the transferred
9 structured settlement payments under federal standards for valuing annuities",
10 and the amount of the Applicable Federal Rate used in calculating such
11 discounted present value.

12 (4) The gross advance amount.

13 (5) An itemized listing of all applicable transfer expenses, other than
14 attorney fees and related disbursements, payable in connection with the
15 transferee's application for approval of the transfer, and the transferee's best
16 estimate of the amount of any such fees and disbursements.

17 (6) The effective annual interest rate, which must be disclosed in a
18 statement in the following form: "On the basis of the net amount that you will
19 receive from us and the amounts and timing of the structured settlement
20 payments that you are transferring to us, you will, in effect be paying interest
21 to us at a rate of percent per year".

22 (7) The net advance amount.

23 (8) The amount of any penalties or liquidated damages payable by the
24 payee in the event of any breach of the transfer agreement by the payee.

25 (9) That the payee has the right to cancel the transfer agreement, without
26 penalty or further obligation, not later than the third business day after the date
27 the agreement is signed by the payee.

28 (10) That the payee has the right to seek and receive independent
29 professional advice regarding the proposed transfer and should consider doing

1 so before agreeing to transfer any structured settlement payment rights.

2 §2713.6. Approval of transfers of structured settlement payment rights

3 A. No direct or indirect transfer of structured settlement payment rights
4 shall be effective, and no structured settlement obligor or annuity issuer shall
5 be required to make any payment directly or indirectly to any transferee or
6 assignee of structured settlement payment rights, unless the transfer has been
7 approved in advance in a final court order based on express findings by such
8 court that all of the following apply:

9 (1) The transfer is in the best interest of the payee, taking into account
10 the welfare and support of the payee's dependents.

11 (2) The payee has been advised in writing by the transferee to seek
12 independent professional advice regarding the transfer, and has either received
13 such advice or knowingly waived in writing the opportunity to seek and receive
14 such advice.

15 (3) The transfer does not contravene law or the order of any court or
16 other government authority.

17 §2713.7. Effects of transfer of structured settlement payment rights

18 A. Following a transfer of structured settlement payment rights, the
19 structured settlement obligor and the annuity issuer may rely on the court order
20 approving the transfer in redirecting periodic payments to an assignee or
21 transferee in accordance with the order approving the transfer and shall, as to
22 all parties except the transferee or an assignee designated by the transferee, be
23 discharged and released from any and all liability for the redirected payments.
24 Such discharge and release shall not be affected by the failure of any party to
25 the transfer to comply with the Louisiana Structured Settlement Act or with the
26 court order approving the transfer.

27 B. The transferee shall be liable to the structured settlement obligor and
28 the annuity issuer:

29 (1) If the transfer contravenes the terms of the structured settlement, for

1 any taxes incurred by the structured settlement obligor or annuity issuer as a
2 consequence of the transfer; and

3 (2) For any other liabilities or costs, including reasonable costs and
4 attorney fees, arising from compliance by the structured settlement obligor or
5 annuity issuer with the court order approving the transfer, or from the failure
6 of any party to transfer to comply with the Louisiana Structured Settlement
7 Act.

8 C. Neither the annuity issuer nor the structured settlement obligor may
9 be required to divide any periodic payment between the payee and any
10 transferee or assignee or between two or more transferees or assignees.

11 D. Any further transfer of structured settlement payment rights by the
12 payee may be made only after compliance with all of the requirements of this
13 Act.

14 §2713.8. Procedure for approval of transfers

15 A. An application under this Act for approval of a transfer of structured
16 settlement payment rights shall be made by the transferee. The application shall
17 be brought in a court of general jurisdiction in the parish in which the payee is
18 domiciled, except that if the payee is not domiciled in this state, the application
19 may be brought in the court in this state that approved the structured
20 settlement agreement.

21 B. A timely hearing shall be held on an application for approval of a
22 transfer of structured settlement payment rights. The payee shall appear in
23 person at the hearing, unless the court determines that good cause exists to
24 excuse the payee from appearing in person.

25 C. Not less than twenty days prior to the scheduled hearing on any
26 application for approval of a transfer of structured settlement payment rights
27 under R.S. 2713.6, the transferee shall file with the court and serve on all
28 interested parties a notice of the proposed transfer and the application for
29 authorization. Such notice and application shall include all of the following:

1 (1) A copy of the transferee's application.

2 (2) A copy of the transfer agreement.

3 (3) A copy of the disclosure statement required under R.S. 9:2713.5.

4 (4) The payee's name, age, parish of domicile, and the number and ages
5 of each of the payee's dependents.

6 (5) A summary of:

7 (a) Any prior transfers by the payee to the transferee or an affiliate, or
8 through the transferee or an affiliate to an assignee, within the four years
9 preceding the date of the transfer agreement and any proposed transfers by the
10 payee to the transferee or an affiliate, or through the transferee or an affiliate,
11 applications for approval of which were denied within the two years preceding
12 the date of the transfer agreement.

13 (b) Any prior transfers by the payee to any person or entity other than
14 the transferee or an affiliate or an assignee of the transferee or an affiliate
15 within the three years preceding the date of the transfer agreement, and any
16 prior proposed transfers by the payee to any person or entity other than the
17 transferee or an affiliate or an assignee of a transferee or affiliate, applications
18 for approval of which were denied within the one year preceding the date of the
19 current transfer agreement, to the extent that the transfers or proposed
20 transfers have been disclosed to the transferee by the payee in writing or
21 otherwise are actually known to the transferee.

22 (6) Notification that any interested party is entitled to support, oppose
23 or otherwise respond to the transferee's application, either in person or by
24 counsel, by submitting written comments to the court or by participating in the
25 hearing.

26 (7) Notification of the time and place of the hearing and notification of
27 the manner in which and the date by which written responses to the application
28 must be filed, which date shall be not less than five days prior to the hearing, in
29 order to be considered by the court.

1 **§2713.9. General provisions; construction**

2 **A. The provisions of this Act may not be waived by any payee.**

3 **B. Any transfer agreement entered into on or after the effective date of**
4 **this Act by a payee who is domiciled in this state shall provide that disputes**
5 **under such transfer agreement, including any claims that the payee has**
6 **breached the agreement, shall be determined in and under the laws of the state**
7 **of Louisiana. No such transfer agreement shall authorize the transferee or any**
8 **other party to confess judgment or consent to entry of judgment against the**
9 **payee.**

10 **C. No transfer of structured settlement payment rights shall extend to**
11 **any payments that are life contingent unless, prior to the date on which the**
12 **payee signs the transfer agreement, the transferee has established and has**
13 **agreed to maintain procedures reasonable satisfactory to the annuity issuer and**
14 **the structured settlement obligor for periodically confirming the payee's**
15 **survival and giving the annuity issuer and the structured settlement obligor**
16 **prompt written notice in the event of the payee's death.**

17 **D. If the payee cancels a transfer agreement, or if the transfer agreement**
18 **otherwise terminates, after an application for approval of a transfer of**
19 **structured settlement payment rights has been filed and before it has been**
20 **granted or denied, the transferee shall promptly request dismissal of the**
21 **application.**

22 **E. No payee who proposes to make a transfer of structured settlement**
23 **payment rights shall incur any penalty, forfeit any application fee or other**
24 **payment, or otherwise incur any liability to the proposed transferee or any**
25 **assignee based on any failure of such transfer to satisfy the conditions of this**
26 **Act.**

27 **F. Nothing contained in this Act shall be construed to authorize any**
28 **transfer of structured settlement payment rights in contravention of any**
29 **applicable law or to imply that any transfer under a transfer agreement entered**

1 into prior to the effective date of this Act is valid or invalid.

2 G. The compliance with the requirements set forth in R.S. 9:2713.5 and
 3 fulfillment of the conditions set forth in R.S. 9:2713.6 shall be solely the
 4 responsibility of the transferee in any transfer of structured settlement payment
 5 rights, and neither the structured settlement obligor nor the annuity issuer shall
 6 bear any responsibility for, or any liability arising from, noncompliance with
 7 such requirements or failure to fulfill such conditions.

8 Section 2. R.S. 9:2715 is hereby repealed.

9 Section 3. This Act shall become effective upon signature by the governor or, if not
 10 signed by the governor, upon expiration of the time for bills to become law without signature
 11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 12 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 13 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Xavier I. Alexander.

DIGEST

SB 193 Original

2019 Regular Session

Morrish

Proposed law enacts the Louisiana Structured Settlement Act.

Proposed law provides for definitions. Provides relative to the registration and renewal of a structured settlement company. Requires transferees to be registered as a structured settlement purchase company with the secretary of state, through a form prescribed by the secretary of state. Provides that a structured settlement purchase company shall renew its registration annually.

Proposed law provides relative to prohibited acts by a transferee or structured settlement purchase company and an transferee, employee or representative of a structured settlement purchase company. Further provides that a payee may pursue a private action as a result of a violation of proposed law and a structured settlement purchase company may pursue a private action to enforce certain portions of proposed law. Such violation may result in the revocation of the registration of the structured settlement purchase company, as well as damages allowed by law.

Proposed law provides that a transferee must provide evidence to the court that he is registered to do business in the state as a structured settlement purchase company. Further provides that the transferee submit certain disclosures to the payee.

Proposed law provides that no transfer of structured settlement payment rights shall be effective unless approved in a final court order. Provides that the court must find that the transfer is the best interest of payee, the payee has been advised in writing to seek independent professional advise regarding the transfer, and transfer does not contravene any

statute, court order, or government authority.

Proposed law provides for effects of a transfer of structured settlement payment rights. Provides that transferee shall be liable to the structured settlement obligor and annuity issuer if transferee contravenes the terms of the structured settlement and for any other liability or costs arising out of compliance issues.

Proposed law provides that annuity issuer and structured settlement obligor may not be required to divide any periodic payment with payee and transferee.

Proposed law provides that an application for transfer under proposed law shall be brought in a court of general jurisdiction in the parish where the payee is domiciled. If payee is not domiciled in this state the application shall be brought in the court that approved the structured settlement agreement.

Proposed law provides that a timely hearing shall be held for approval of a transfer of structured settlement payment rights. The payee shall be present at hearings unless good cause is shown.

Proposed law provides that notice of the proposed transfer and application for authorization shall be served on all interested parties not less than 20 days prior to the scheduled hearing on any application of approval. Notice shall consist of:

- (1) A copy of the application.
- (2) A copy of the transfer agreement.
- (3) A copy of the disclosure statement required under the proposed law.
- (4) Payee's name, age, parish of domicile, and number and ages of each dependent.
- (5) A summary of any prior transfers by payee to transferee and any prior transfers by payee to any person or entity other than transferee.

Proposed law that the provisions of the proposed law may not be waived by any payee. Further provides that all disputes on transfer agreement signed in this state shall be litigated in this state.

Proposed law provides that no transfer of structured settlement payment rights shall extend to any payments that are life contingent, unless certain criteria is met by the transferee.

Proposed law repeals R.S. 9:2715, the present law providing relative to the transfer of structured settlement rights.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 9:2713-2713.9; repeals R.S. 9:2715)