

HOUSE BILL NO. 64

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE FOSTER

Introduced: 1/27/03

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to court approval of the purchase of structured settlements."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 09.68 is amended by adding new sections to read:

4 **Sec. 09.68.200. Conditions to transfers of structured settlement payment**
5 **rights and structured settlement agreements.** (a) A transfer of structured
6 settlement payment rights is not effective and a structured settlement obligor or
7 annuity issuer is not required to make a payment directly or indirectly to a transferee
8 of structured settlement payment rights unless the transfer has been approved by a
9 superior court based on the court's written express findings that

10 (1) the structured settlement arose from an action filed in Alaska or
11 that could have been filed in Alaska, or the payee of the structured settlement is
12 domiciled in Alaska;

13 (2) the transfer complies with the requirements of AS 09.68.200 -
14 09.68.230 and other applicable state and federal law;

15 (3) not less than 10 days before the date on which the payee first

1 incurred an obligation with respect to the transfer, the transferee has provided to the
2 payee a disclosure statement in bold type, no smaller than 14 points, specifying

3 (A) the amounts and due dates of the structured settlement
4 payments to be transferred;

5 (B) the aggregate amount of the payments;

6 (C) the discounted present value of the payments, together with
7 the discount rate used in determining the discounted present value;

8 (D) the gross amount payable to the payee in exchange for the
9 payments;

10 (E) an itemized listing of all broker's commissions, service
11 charges, application fees, processing fees, closing costs, filing fees, referral
12 fees, administrative fees, legal fees, notary fees, and other commissions, fees,
13 costs, expenses, and charges payable by the payee or deductible from the gross
14 amount otherwise payable to the payee;

15 (F) the net amount payable to the payee after deduction of all
16 commissions, fees, costs, expenses, and charges described in (E) of this
17 paragraph;

18 (G) the quotient, expressed as a percentage, obtained by
19 dividing the net payment amount by the discounted present value of the
20 payments; and

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

24 (4) the payee has established that the transfer is in the best interests of
25 the payee and the payee's dependents;

26 (5) the payee has received independent professional advice regarding
27 the legal, tax, and financial implications of the transfer;

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

31 (7) the transfer agreement provides that any disputes between the

1 parties will be governed, interpreted, construed, and enforced in accordance with the
 2 laws of this state and that the domicile state of the payee is the proper venue to bring
 3 any cause of action arising out of a breach of the agreement; the transfer agreement
 4 must also provide that the parties agree to the jurisdiction of any court of competent
 5 jurisdiction located in this state.

6 (b) If the transfer would contravene the terms of the structured settlement,
 7 upon the filing of a written objection by any interested party and after considering the
 8 objection and any response to it, the court may grant, deny, or impose conditions upon
 9 the proposed transfer as the court considers just and proper under the facts and
 10 circumstances in accordance with established principles of law. Any order approving
 11 a transfer must require that the transferee indemnify the annuity issuer and the
 12 structured settlement obligor for any liability including reasonable costs and attorney
 13 fees arising from compliance by the issuer or obligor with the order of the court.

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

18 **Sec. 09.68.210. Jurisdiction; procedure for approval of transfers.** (a) The
 19 superior court where the action giving rise to the structured settlement was maintained
 20 or could have been maintained has jurisdiction over an application for approval under
 21 AS 09.68.200 of a transfer of structured settlement payment rights.

22 (b) Not less than 20 days before the scheduled hearing on an application for
 23 authorization of a transfer of structured settlement payment rights under
 24 AS 09.68.200, the transferee shall file with the court and serve on any other
 25 government authority that previously approved the structured settlement and all
 26 interested parties a notice of the proposed transfer and the application for its
 27 authorization. The notice must include

- 28 (1) a copy of the transferee's application to the court;
- 29 (2) a copy of the transfer agreement;
- 30 (3) a copy of the disclosure statement required under AS 09.68.200;
- 31 (4) notification that an interested party is entitled to support, oppose, or

1 otherwise respond to the transferee's application, either in person or by counsel, by
 2 submitting written comments to the court or by participating in the hearing; and

3 (5) notification of the time and place of the hearing and notification of
 4 the manner in which and the time by which written responses to the application must
 5 be filed in order to be considered by the court.

6 (c) Written responses to the application must be filed within 15 days after
 7 service of the transferee's notice.

8 **Sec. 09.68.220. No waiver and no penalty.** (a) The provisions of
 9 AS 09.68.200 - 09.68.230 may not be waived.

10 (b) A payee who proposes to make a transfer of structured settlement payment
 11 rights may not incur a penalty, forfeit an application fee or other payment, or
 12 otherwise incur any liability to the proposed transferee based on the failure of the
 13 transfer to satisfy the conditions of AS 09.68.200 - 09.68.230.

14 **Sec. 09.68.230. Definitions.** In AS 09.68.200 - 09.68.230,

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

17 (2) "dependents" means a payee's spouse and minor children and all
 18 other family members and other persons for whom the payee is legally obligated to
 19 provide support, including spousal maintenance;

20 (3) "discounted present value" means, with respect to a proposed
 21 transfer of structured settlement payment rights, the fair present value of future
 22 payments, as determined by discounting the payments to the present using the most
 23 recently published applicable federal rate for determining the present value of an
 24 annuity, as issued by the United States Internal Revenue Service;

25 (4) "independent professional advice" means advice of an attorney,
 26 certified public accountant, actuary, or other professional adviser

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

30 (B) who is not in any manner affiliated with or compensated by
 31 the transferee of the transfer; and

1 (C) whose compensation for providing the advice is not
2 affected by whether a transfer occurs or does not occur;

3 (5) "interested parties" means the payee, a beneficiary designated
4 under the annuity contract to receive payments following the payee's death or, if the
5 designated beneficiary is a minor, the designated beneficiary's parent or guardian, the
6 annuity issuer, the structured settlement obligor, and any other party that has
7 continuing rights or obligations under the structured settlement;

8 (6) "payee" means an individual who is receiving tax-free damage
9 payments under a structured settlement and proposes to make a transfer of payment
10 rights under the structured settlement;

11 (7) "qualified assignment agreement" means an agreement providing
12 for a qualified assignment as provided by 26 U.S.C. 130 (United States Internal
13 Revenue Code), as amended through December 31, 1998;

14 (8) "settled claim" means the original tort claim or workers'
15 compensation claim resolved by a structured settlement;

16 (9) "structured settlement" means an arrangement for periodic payment
17 of damages for personal injuries established by settlement or judgment in resolution of
18 a tort claim or for periodic payments in settlement of a workers' compensation claim;

19 (10) "structured settlement agreement" means the agreement,
20 judgment, stipulation, or release embodying the terms of a structured settlement,
21 including the rights of the payee to receive periodic payments;

22 (11) "structured settlement obligor" means the party that has the
23 continuing periodic payment obligation to the payee under a structured settlement
24 agreement or a qualified assignment agreement;

25 (12) "structured settlement payment rights" means rights to receive
26 periodic payments, including lump-sum payments, under a structured settlement,
27 whether from the settlement obligor or the annuity issuer, where

28 (A) the payee or any other interested party is domiciled in the
29 state;

30 (B) the structured settlement agreement was approved by a
31 court in the state; or

1 (C) the settled claim was pending before the courts of this state
2 when the parties entered into the structured settlement agreement;

3 (13) "terms of the structured settlement" means the terms of the
4 structured settlement agreement, the annuity contract, a qualified assignment
5 agreement, and an order or approval of a court, responsible administrative authority, or
6 other government authority authorizing or approving the structured settlement;

7 (14) "transfer" means a sale, assignment, pledge, hypothecation, or
8 other form of alienation or encumbrance made by a payee for consideration;

9 (15) "transfer agreement" means the agreement providing for transfer
10 of structured settlement payment rights from a payee to a transferee;

11 (16) "transferee" means a person who is receiving or will receive
12 structured settlement payment rights resulting from a transfer.