

HB

64

LEGAL SERVICES

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MEMORANDUM

January 28, 2003

SUBJECT: Sectional Summary of HB 64

TO: Representative Richard Foster

FROM: Gerald P. Luckhaupt *JERRY*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill creates AS 09.68.200 which provides that structured settlements may not be transferred without court approval of the transfer. The court may not approve a transfer unless

- the structured settlement arose from an action filed in Alaska or which could have been filed in Alaska or the payee of the structured settlement is domiciled in Alaska;
- the transfer complies with state and federal law;
- the transferee has provided a disclosure statement to the payee as required by proposed AS 09.68.200(a)(3);
- the transfer is in the best interests of the payee and the payee's dependents;
- the payee has received independent professional advice regarding the transfer;
- notice has been provided to the payer (the annuity issuer and obligor);
- choice of law forum that complies with proposed AS 09.68.200(a)(7) is included in the transfer agreement;
- transferee must indemnify the annuity issuer and obligor for all liability and costs.

Creates AS 09.68.210 which provides the procedure for approval of a transfer of a structured settlement.

Creates AS 09.68.220 which provides that the provisions of AS 09.68.200 - 09.68.230 may not be waived nor may a penalty be charged the payee if the proposed transfer does not meet the requirements of AS 09.68.200 - 09.68.230.

Creates AS 09.68.230 which provides definitions.

GPL:med
03-067.med

Conceptual Amendment #1 - Adopted

P.1, Line 14

After "09.68.230" Insert:

", the orders of any court,"

Conceptual Amendment #2 - Adopted

Page 2, Line 1

Delete: "transferee has provided to the"

Page 2, Line 2

After "payee" insert:

"has received by certified mail, return receipt requested, or other equally certifiable means,"

Amendment #3 - Adopted

Page 3, Line 23

Delete "20". Replace with "30."

CS FOR HOUSE BILL NO. 64(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 2/24/03

Referred: Judiciary

Sponsor(s): REPRESENTATIVE FOSTER

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 the orders of any court, 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 **has received by certified mail, return receipt requested, or other equally certifiable means,**

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 or where the payee is domiciled has jurisdiction over
 21 an application for approval under AS 09.68.200 of a transfer of structured settlement
 22 payment rights.

23 (b) Not less than ³⁰~~20~~ days before the scheduled hearing on an application for
 24 authorization of a transfer of structured settlement payment rights under
 25 AS 09.68.200, the transferee shall file with the court and serve on any other
 26 government authority that previously approved the structured settlement and all
 27 interested parties a notice of the proposed transfer and the application for its
 28 authorization. The notice must include

- 29 (1) a copy of the transferee's application to the court;
 30 (2) a copy of the transfer agreement;
 31 (3) a copy of the disclosure statement required under AS 09.68.200;

1 (4) notification that an interested party is entitled to support, oppose, or
 2 otherwise respond to the transferee's application, either in person or by counsel, by
 3 submitting written comments to the court or by participating in the hearing; and

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

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

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

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

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

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

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

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

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

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

31 (B) who is not in any manner affiliated with or compensated by

1 the transferee of the transfer; and

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

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

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

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

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

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

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

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

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

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

31 (B) the structured settlement agreement was approved by a

1 court in the state; or

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

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

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

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

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

HB 64 for ✓

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 new number

"Applicable law" means any of the following, as applicable in interpreting the terms of a structured settlement:

- (a) the laws of the United States;**
- (b) the laws of this State, including principles of equity applied in the courts of this State; and**
- (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.**

"Applicable federal rate" means the most recently published applicable rate for determining the present value of an annuity, as issued by the United State Internal Revenue Service pursuant to section 7520 of the United States Internal Revenue Code, as amended from time to time.

"Assignee" means any party that acquires structured settlement payment rights directly or indirectly from a transferee of such rights.

"Dependents" means a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including spousal maintenance.

"Discount/finance charge" means the sum of:

- (a) all charges payable directly or indirectly from assigned structured settlement payments and imposed directly or indirectly by the transferee as an incident to a transfer of structured settlement payment rights, including:**
 - (i) interest charges, discounts and other compensation for the time value of money, and**
 - (ii) all application, origination, processing, underwriting, closing, filing and notary fees and all similar charges, however denominated; and**
- (b) all charges for commissions or brokerage, irrespective of the identity of the party to whom such charges are paid or payable.**

The term "discount/finance charge" does not include any fee or other obligation incurred by a payee in obtaining independent professional advice concerning a transfer of structured settlement payment rights.

"Discounted present value" means, with respect to a proposed transfer of structured settlement payment rights, the fair present value of future payments, as determined by discounting the payments to the present using the most recently published applicable federal rate as the discount rate.

"Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser:

- (vi) the net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in clause (5);
 - (vii) the quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments, which shall be disclosed in the following statement: "The net amount that you will receive from us in exchange for your future structured settlement payments represent ___% of the estimated current value of the payments";
 - (viii) the effective annual interest rate, which rate shall be disclosed in the following statement: "Based on the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are turning over to us, you will, in effect, be paying interest to us at a rate of ___% per year"; and
 - (ix) the amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of a breach of the transfer agreement by the payee;
- (3) the payee has established that the transfer is in the best interests of the payee and the payee's dependents;
 - (4) the payee has received, or waived his or her right to receive, independent professional advice regarding the legal, tax, and financial implications of the transfer;
 - (5) the transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of the notice with the court or responsible administrative authority;
 - (6) the transfer agreement provides that if the payee is domiciled in this state, any disputes between the parties will be governed, interpreted, construed, and enforced in accordance with the laws of this State and that the domicile state of the payee is the proper place of venue to bring any cause of action arising out of a breach of the agreement; and
 - (7) the Court or responsible administrative agency has made a determination that the net amount payable to the payee is fair, just and reasonable under the circumstances then existing.

The transfer agreement must also provide that the parties agree to the jurisdiction of any court of competent jurisdiction located in this State. If the transfer would contravene the terms of the structured settlement, upon the filing of a written objection by any interested party and after considering the objection and any response to it, the court or responsible administrative authority may grant, deny, or impose conditions upon the proposed transfer as the court or responsible administrative authority deems just and proper under the facts and circumstances in accordance with established principles of law. Any order approving a transfer must require that the transferee indemnify the annuity issuer and the structured settlement obligor for any liability including reasonable costs and attorney's fees arising from compliance by the issuer or obligor with the order of the court or responsible administrative authority.

A provision in a transfer agreement giving a transferee power to confess judgment against a payee is unenforceable to the extent the amount of the judgment would exceed the amount paid

by the transferee to the payee, less any payments received from the structured settlement obligor or the payee.

In negotiating a structured settlement of claims brought by or on behalf of a claimant who is domiciled in this state, the structured settlement obligor shall disclose in writing to the claimant or the claimant's legal representative all of the following information that is not otherwise specified in the structured settlement agreement:

- (a) the amounts and due dates of the periodic payments to be made under the structured settlement agreement. In the case of payments that will be subject to periodic percentage increases, the amounts of future payments may be disclosed by identifying the base payment amount, the amount and timing of scheduled increases, and the manner in which increases will be compounded;
- (b) the amount of the premium payable to the annuity issuer;
- (c) the discounted present value of all periodic payments that are not life-contingent, together with the discount rate used in determining the discounted present value;
- (d) the nature and amount of any cost that may be deducted from any of the periodic payments;
- (e) where applicable, that any transfer of the periodic payments is prohibited by the terms of the structured settlement and may otherwise be prohibited or restricted under applicable law; and
- (f) that any transfer of the periodic payments by the claimant may subject the claimant to serious adverse tax consequences.

Section 4. Jurisdiction; Procedure for Approval of Transfers

The district court has nonexclusive jurisdiction over an application for authorization of a transfer of structured settlement payment rights.

Not less than 20 days before the scheduled hearing on an application for authorization of a transfer of structured settlement payment rights under section 3, the transferee shall file with the court or responsible administrative authority, any other government authority that previously approved the structured settlement, and all interested parties a notice of the proposed transfer and the application for its authorization. The notice must include:

- (a) a copy of the transferee's application to the court or responsible administrative authority;
- (b) a copy of the transfer agreement;
- (c) a copy of the disclosure statement required under section 3;
- (d) notification that an interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (e) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, in order to be considered by the court or responsible administrative authority. Written responses to the application must be filed within 15 days after service of the transferee's notice.

- (a) the payee or any other interested party is domiciled in the state;
- (b) the structured settlement agreement was approved by a court or responsible administrative authority in the state; or
- (c) the settled claim was pending before the courts of this state when the parties entered into the structured settlement agreement.

"Terms of the structured settlement" means the terms of the structured settlement agreement, the annuity contract, a qualified assignment agreement, and an order or approval of a court, responsible administrative authority, or other government authority authorizing or approving the structured settlement.

"Transfer" means a sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration.

"Transfer agreement" means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"Transferee" means a person who is receiving or will receive structured settlement payment rights resulting from a transfer.

Section 3. Conditions To Transfers of Structured Settlement Payment Rights and Structured Settlement Agreements

No direct or indirect transfer of structured settlement payment rights is effective and no structured settlement obligor or annuity issuer is required to make a payment directly or indirectly to a transferee of structured settlement payment rights unless:

- (a) the transfer has been authorized in advance in a final order of a court of competent jurisdiction or responsible administrative authority (e.g. administrative law judge), based on the court's or responsible administrative authority's written express findings that:
 - (1) the transfer complies with the requirements of sections 3 through 6 and will not contravene other applicable law;
 - (2) not less than ten days before the date on which the payee first incurred an obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 points, specifying:
 - (i) the amounts and due dates of the structured settlement payments to be transferred;
 - (ii) the aggregate amount of the payments;
 - (iii) the discounted present value of the payments, together with the discount rate used in determining the discounted present value;
 - (iv) the gross amount payable to the payee in exchange for the payments;
 - (v) an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, referral fees, administrative fees, legal fees, notary fees, and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

Section 5. No Waiver; No Penalties

The provisions of sections 2 through 4 may not be waived.

No payee who proposes to make a transfer of structured settlement payment rights shall incur a penalty, forfeit an application fee or other payment, or otherwise incur any liability to the proposed transferee based on the failure of the transfer to satisfy the conditions of section 3.

Section 6. Non-Compliance

If, in connection with a transfer of structured settlement payment rights, a transferee has violated the discount/finance charge stipulation in section 3 of this Act, neither the transferee nor any assignee shall be entitled to collect from the transferred payments, or from the payee, any amount in excess of the net advance amount, and the payee shall have a right to recover from the transferee or any assignee:

- (a) a refund of any excess amounts previously received by the transferee or any assignee;
- (b) a penalty in an amount determined by the court but not in excess of [insert multiplier figure] the aggregate amount of the discount/finance charge; and
- (c) reasonable costs and attorney's fees.

If, in connection with a transfer of structured settlement payments rights, the transferee has violated the disclosure requirements in section 3 of this Act, the transferee and any assignees shall be liable to the payee for:

- (a) a penalty in an amount determined by the court but not in excess of [insert multiplier figure] the amount of the discount/finance charge; and
- (b) reasonable costs and attorney's fees.

A transferee or assignee shall not be liable for any penalty in any action brought under this section if the transferee or assignee establishes by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the transferee's maintenance of procedures reasonably designed to avoid such errors.

No action may be brought under this section if:

- (a) in the case of a violation of the discount/finance charge stipulation of section 3 of this Act, more than one (1) year after the due date of the last transferred structured settlement payment; and
- (b) in the case of the disclosure requirements of section 3 of this Act, more than one (1) year after the due date of the first transferred structured settlement payment.

When the [state official vested with enforcement authority of this Act (e.g. Insurance Commissioner or Attorney General)] has reason to believe that any transferee has violated section 3 of this Act, the [state official vested with enforcement authority of this Act] shall have standing to bring a civil action for injunctive relief and such penalties and other relief as may be appropriate to secure compliance with this Act.

<u>State</u>	<u>Statute</u>	<u>Effective Date</u>
Michigan	Mich. Comp. Laws. Ann., §§ 691.1191 – 691.1197	01/14/01
Minnesota	Minn. Stat. §§ 549.30 – 549.34	08/01/99
Mississippi	2002 Miss. S.B. No. 2912	08/01/02
Missouri	Mo. Rev. Stat. §§ 407.1060 – 407.1068	08/28/99
Nebraska	2001 Neb. Laws 55	01/01/02
New Jersey	2001 N.J. Sess. Law Serv. 139	08/02/01
New York	2002 Assembly Bill 6936-A, to be codified at N.Y. Gen. Obs. Law §§ 5-1701-1709	9/17/02 ^{3/}
North Carolina	N.C. Gen. Stat. Art. 44B §§ 1-543.10 – 1-543.15 and Art. 33 § 1-394.1	10/01/99
Ohio	Ohio Rev. Code Ann. §§ 2323.58 – 2323.587	10/27/00
Oklahoma	2001 Okla. Sess. Law Serv. 70	11/01/01
Pennsylvania	40 Pa. Cons. Stat. Ann. §§ 4001-4009	04/11/00
Rhode Island	2001 R.I. Pub. Laws 01-226	08/13/01
South Carolina	2002 S.C. Pub. Laws 252	06/13/02
South Dakota	S.D. Codified Laws §§ 21-3B-1 – 21-3B-12	07/01/01
Tennessee	Tenn. Code Ann. Tit. 47, Ch. 18 §§ 1-7	06/23/00
Texas	2001 Tex. Sess. Law Serv. 96	09/01/01
Utah	2002 Utah S.B. 163, to be codified at Utah Code Ann. §§ 78-59-101-108	05/06/02
Virginia	Va. Code Ann. §§ 59.1-475-477 Va. Code §§ 59.1-475-477.1	07/01/99 07/01/01
Washington	2001 Wash. Legis. Serv. 178	07/22/01
W. Virginia	W. Va. Code §§ 46A-6H-1 – 46A-6H-8	06/11/99

^{3/} Section 4 of the New York legislation states that it "shall take effect July 1, 2002"; but the legislation was not signed by the Governor until September 17.



PRESIDENT: REP. KATHLEEN KEENAN, VT
VICE PRESIDENT: SEN. STEVEN GELLER, FL
SECRETARY: REP. CRAIG EILAND, TX
TREASURER: REP. FRANK WALD, NO

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS MODEL STRUCTURED SETTLEMENT TRANSFERS PROTECTION ACT

*Adopted by the NCOIL Executive Committee on July 7, 2000.
To be reviewed by the NCOIL Workers' Compensation Insurance Committee on February 20,
2003.*

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Section 1. Purpose

The purpose of this Model Act is to protect structured settlement recipients involved in the process of transferring structured settlement payment rights.

(Drafting note: States should be mindful in adopting this model that court approval of these transactions may be delayed and become cost prohibitive, depending upon the caseload of the court of primary jurisdiction. Therefore, consideration should be given to providing for expedited proceedings, including the insertion of time limits within which courts must act and the granting of jurisdiction to courts with jurisdiction over probate or guardianship matters, as well as courts of general jurisdiction.)

Section 2. Definitions

"Annuity issuer" means an insurer that has issued an annuity contract to be used to fund periodic payments under a structured settlement.

EXECUTIVE COMMITTEE CHAIR: SEN. ALAN SANBORN, MI; EXECUTIVE COMMITTEE: REP. GLENN ANSARDI, LA; SEN. DAVID BATES, RI; DEL. J.D. BEANE, WV; REP. SHIRLEY BOWLER, LA; SEN. NEIL BRESLIN, NY; SEN. THOMAS DUFORD, KY; REP. LON BURNHAM, TX; ASSEM. NANCY CALHOUN, NY; REP. MAUREEN OAKIN, VT; REP. ROBERTY DAMRON, KY; REP. GREGORY DAV-OS, MN; SEN. BOB DEARING, MS; SEN. FRANK DEEM, WV; REP. ANTHONY DELUCA, PA; SEN. ROBERT DUNCAN, TX; REP. STEPHEN EHART, MI; REP. DAVID EVANS, OH; ASSEM. DONNA FERRARA, NY; REP. RICH GOLUCH, GA; SEN. BILLY HEWES, MD; SEN. JAY HOTTINGER, OH; REP. GEORGE KEISER, ND; REP. BRIAN KENNEDY, RI; SEN. DEAN KIRBY, MO; SEN. JERRY KLEIN, ND; REP. RICHARD LAIRD, AL; SEN. DAVID LANDIS, NE; SEN. CAL LARSON, MN; REP. ALLEN LAYSON, AL; SEN. CARROLL LEAVELL, NM; REP. JIMMY LORD, GA; SEN. GLENN MCCONNELL, SC; REP. ANTHONY MELIO, PA; REP. MARY ANN MIDDLEBROUGH, MI; REP. VIRGINIA MILKEY, VT; REP. PHIL MONTGOMERY, WI; SEN. ALAN NUNNELEE, MO; SEN. PAMELA REDFIELD, NE; SEN. BEN ROBINSON, OK; SEN. DALE SCHULTZ, WI; SEN. JAMES SEWARD, NY; REP. DAN WARD, MO; REP. MARK YOUNG, VT; PAST PRESIDENTS AND MEMBERS OF THE EXECUTIVE COMMITTEE: SEN. WILLIAM J. LARKIN, JR., NV; REP. TERRY PARKE, IL; ASSEM. CLARE FARRAGHER, NJ; SEN. HARVEY TALLACKSON, NO; REP. LEO FRASER, NH; EXECUTIVE DIRECTOR: ROBERT MACKIN; DEPUTY EXECUTIVE DIRECTOR: SUSAN NOLAN; NATIONAL OFFICE: 130 LANCASTER STREET, ALBANY, NY 12210-1903; TEL: 518-449-9210; FAX: 518-432-5651; WASHINGTON OFFICE: 601

Section 7. Construction

Nothing contained in sections 2 through 6 may be construed to authorize any transfer of workers' compensation payment rights in contravention of applicable law or to give effect to any transfer of workers' compensation or other payment rights that is invalid under applicable law. This Act is not applicable to transfers occurring before the effective date.

Section 8. Effective Date

This Act shall be effective on [insert date].

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N/A	<p>"Discount/finance charge" means the sum of all charges payable directly or indirectly from assigned structured settlement payments and imposed directly or indirectly by the transferee as an incident to a transfer of structured settlement payment rights, including:</p> <ul style="list-style-type: none"> • interest charges, discounts, and other compensation for the time value of money • all application, origination, processing, underwriting, closing, filing and notary fees and all similar charges, however denominated • all charges for commissions or brokerage, irrespective of the identity of the party to whom such charges are paid or payable <p>The term "discount/finance charge" does not include any fee or other obligation incurred by a payee in obtaining independent professional advice concerning a transfer of structured settlement payment rights.</p>
<p>"discounted present value" means the present value of future payments 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</p>	<p>"Discounted present value" means with respect to a proposed transfer of structured settlement payment rights, the fair present value of future payments, as determined by discounting the payments to the present using the most recently published applicable federal rate as the discount rate.</p>
<p>"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</p>	N/A
<p>"independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser</p>	<p>"Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional advisor 1) who is engaged by a payee to render advice concerning the legal, tax and financial implications of a transfer of structured settlement payment rights, and 2) who is not in any manner affiliated with or compensated by the transferee of the transfer and whose compensation for providing the advice is not affected by whether a transfer occurs or does not occur</p>

<p align="center">NCSSTAMP Model State Structured Settlement Protection Act</p>	
<p>"structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where</p> <ul style="list-style-type: none"> • the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this State, or • the structured settlement agreement was approved by a court of responsible administrative authority in this State, or • the structured settlement agreement is expressly governed by the laws of this State 	<p>"Structured settlement payment rights" means rights to receive periodic payments, including lump sum payment under a structured settlement, whether from the settlement obligor or the annuity issuer, where</p> <ul style="list-style-type: none"> • the payee or any other interested party is domiciled in the state • the structured settlement agreement was approved by a court of responsible administrative authority in the state, or • the settled claim was pending before the courts of this state when the parties entered into the structured settlement agreement
<p>"terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement</p>	<p>Same.</p>
<p>"transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term "transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights</p>	<p>"Transfer" means a sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration.</p>
<p>"transfer agreement" means the agreement providing for a transfer of structured settlement payment rights</p>	<p>Same.</p>
<p>"transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys' fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary; "transfer expenses" do</p>	<p>N/A</p>

Protection 1	Protection 2
"interest parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement	Same.
"net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 3(e) of this Act	N/A
"payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder	Same.
"periodic payments" includes both recurring payments and scheduled future lump-sum payments	N/A
"qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time	Same.
"responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement	Same.
"settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement	Same.
"structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim	Same.
"structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement	Same.
"structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement	Same.

not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.	
"transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer	"Transferee" means a person who is receiving or will receive structured settlement payment rights resulting from a transfer.
TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS	
<p><i>(Section 4)</i></p> <p>No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that</p> <ul style="list-style-type: none"> • the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents • the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing • the transfer does not contravene any applicable statute or the order of any court or other government authority 	<p><i>(Section 3)</i></p> <p>No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make a payment directly or indirectly to a transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or responsible administrative authority (e.g. administrative law judge) based on the court's or responsible administrative authority's written express findings that:</p> <ul style="list-style-type: none"> • the payee has established that the transfer is in the best interests of the payee and the payee's dependents • the payee has received, or waived his or her right to receive, independent professional advice regarding the legal, tax and financial implications of the transfer • the transfer complies with the requirements of Sections 3 through 6 and will not contravene other applicable law • the transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of the notice with the court or responsible administrative authority • the transfer agreement provides that if the payee is domiciled in this state, any disputes between the parties will be governed, interpreted, construed, and enforced in accordance with the laws of this State and that the domicile state of the payee is the proper place of venue to bring any cause of action arising out of a breach of the agreement

	<ul style="list-style-type: none"> the Court or responsible administrative agency has made a determination that the net amount payable to the payee is fair, just and reasonable under the circumstances then existing
ADDITIONAL TRANSFER PROVISIONS	
N/A	<p>(Section 3)</p> <ul style="list-style-type: none"> The transfer agreement must also provide that the parties agree to the jurisdiction of any court of competent jurisdiction located in this State. If the transfer would contravene the terms of the structured settlement, upon the filing of a written objection by any interested party and after considering the objection and any response to it, the court or responsible administrative authority may grant, deny or impose conditions upon the proposed transfer as the court or responsible administrative authority deems just and proper under the facts and circumstances in accordance with established principles of law A provision in a transfer agreement giving a transferee power to confess judgment against a payee is unenforceable to the extent the amount of the judgment would exceed the amount paid by the transferee to the payee, less any payments received from the structured settlement obligor or the payee
REQUIRED DISCLOSURES	
<p>(Section 3)</p> <p>Not less than three (3) days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth</p> <ul style="list-style-type: none"> the amounts and due dates of the structured settlement payments to be transferred the aggregate amount of such payments 	<p>(Section 3)</p> <p>Not less than ten (10) days before the date on which the payee first incurred an obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 points, specifying:</p> <ul style="list-style-type: none"> the amounts and due dates of the structured settlement payments to be transferred the aggregate amount of the payments

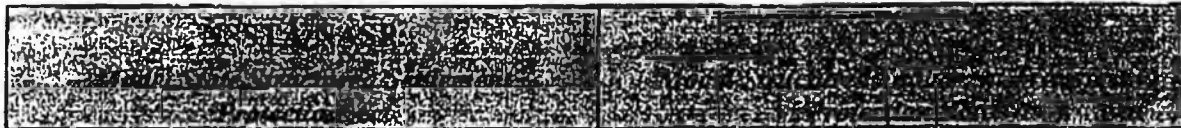
Model State Structured Settlement Protection Act	Comments
<ul style="list-style-type: none"> • the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities," and the amount of the Applicable Federal Rate used in calculating such discounted present value • the gross advance amount • an itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements • the net advance amount • the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee • a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee 	<ul style="list-style-type: none"> • the gross amount payable to the payee in exchange for the payments • an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, referral fees, administrative fees, legal fees, notary fees, and other commissions, fees, costs expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee • the net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described above • the quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments, which shall be disclosed in the following statement: "The net amount that you will receive from us in exchange for your future structured settlement payments represent ___% of the estimated current value of the payments" • the effective annual interest rate, which rate shall be disclosed in the following statement: "Based on the net amount that you receive from us and the amounts and timing of the structured settlement payments that you are turning over to us, you will, in effect, be paying interest to us at a rate of ___% per year" • the amount of any penalty and the aggregate amount of any liquidated damages, including penalties payable by the payee in the event of a breach of the transfer agreement by the payee <p>In negotiating a structured settlement of claims brought by or on behalf of a claimant who is domiciled in this state, the structured settlement obligor shall disclose in writing to the claimant or the claimant's legal representative all of the following information that is not otherwise specified in the structured settlement agreement:</p>

<p>Model State Structured Settlement Protection Act</p>	<p>Model State Structured Settlement Protection Act</p>
	<ul style="list-style-type: none"> • the amounts and due dates of the periodic payments to be made under the structured settlement agreement. In the case of payments that will be subject to periodic percentage increases, the amounts of future payments may be disclosed by identifying the base payment amount, the amount and timing of scheduled increases, and the manner in which increases will be compounded • the amount of the premium payable to the annuity issuer • the discounted present value of all periodic payments that are not life-contingent, together with the discount rate used in determining the discounted present value • the nature and amount of any cost that may be deducted from any of the periodic payments • where applicable, that any transfer of the periodic payments is prohibited by the terms of the structured settlement and may otherwise be prohibited or restricted under applicable law • that any transfer of the periodic payments by the claimant may subject the claimant to serious adverse tax consequences
<p>PROCEDURE FOR APPROVAL OF TRANSFERS</p>	
<p><i>(Section 6)</i></p> <p><i>An application under this Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the [county] in which the payee resides, in the [county] in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.</i></p> <p>Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights</p>	<p><i>(Section 4)</i></p> <p><i>The district court has nonexclusive jurisdiction over an application for authorization of a transfer of structured settlement payment rights.</i></p> <p>Not less than 20 days before the scheduled hearing on an application for authorization of a transfer of structured settlement payment rights under Section 3, the transferee shall file with the court or responsible administrative authority, any other government authority that previously approved the structured settlement, and all interested parties a</p>

<p>under Section 4 of this Act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:</p> <ul style="list-style-type: none"> • a copy of the transferee's application • a copy of the transfer agreement • a copy of the disclosure statement required under Section 3 of this Act • a listing of each of the payee's dependents, together with each dependent's age • notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing • notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed (which shall be not less than <i>[fifteen (15)]</i> days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority 	<p>notice of the proposed transfer and the application for its authorization. The notice must include:</p> <ul style="list-style-type: none"> • a copy of the transferee's application to the court or responsible administrative authority • a copy of the transfer agreement • a copy of the disclosure statement required under Section 3 • notification that an interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing • notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, in order to be considered by the court or responsible administrative authority. Written responses to the application must be filed within 15 days after service of the transferee's notice.
<p>EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS</p>	
<p><i>(Section 5)</i></p> <p>Following a transfer of structured settlement payment rights under this Act:</p> <ul style="list-style-type: none"> • the structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments 	<p><i>(Section 3)</i></p> <p>Any order approving the transfer must require that the transferee indemnify the annuity issuer and the structured settlement obligor for any liability including reasonable costs and attorney's fees arising from compliance by the issuer or obligor with the order of the court or responsible administrative authority.</p>

Model Structured Settlement Protection Act	
<ul style="list-style-type: none"> • the transferee shall be liable to the structured settlement obligor and the annuity issuer 1) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and 2) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this Act • neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two (or more) transferees or assignees • any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this Act 	
NON-COMPLIANCE/PENALTIES	
<p><i>(Section 7.f)</i></p> <p>Compliance with the requirements set forth in Section 3 of this Act and fulfillment of the conditions set forth in Section 4 of this Act shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with such requirements or failure to fulfill such conditions.</p> <p><i>(Section 7.d)</i></p> <p>No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this Act.</p>	<p><i>(Section 6)</i></p> <ul style="list-style-type: none"> • If, in connection with a transfer of structured settlement payment rights, a transferee has violated the discount/finance charge stipulation in Section 3, neither the transferee nor any assignee shall be entitled to collect from the transferred payments, or from the payee, any amount in excess of the net advance amount, and the payee shall have a right to recover from the transferee or any assignee: 1) a refund of any excess amounts previously received by the transferee/assignee, 2) a penalty in an amount determined by the court but not in excess of <i>[insert multiplier figure]</i> the aggregate amount of the discount/finance charge, and 3) reasonable costs and attorney's fees.

	<ul style="list-style-type: none"> • If, in connection with a transfer of structured settlement payment rights, the transferee has violated the disclosure requirements in Section 3 of this Act, the transferee and any assignees shall be liable to the payee for 1) a penalty in an amount determined by the court but not in excess of <i>[insert multiplier figure]</i> the amount of the discount/finance charge, and 2) reasonable costs and attorneys' fees. • A transferee or assignee shall not be liable for a penalty in any action brought under this section if the transferee or assignee establishes by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the transferee's maintenance of procedures reasonably designed to avoid such errors. • No action may be brought under this section if: 1) in the case of a violation of the discount/finance charge stipulation of Section 3, more than one (1) year after the due date of the last transferred structured settlement payment, and 2) in the case of the disclosure requirements of Section 3 of this Act, more than one (1) year after the due date of the first transferred structured settlement payment. • When the <i>[state official vested with enforcement authority of this Act, (e.g. Insurance Commissioner or Attorney General)]</i> has reason to believe that any transferee has violated Section 3 of this Act, the <i>[state official vested with enforcement authority of this Act]</i> shall have standing to bring a civil action for injunctive relief and such penalties and other relief as may be appropriate to secure compliance with this Act. <p><i>(Section 5)</i></p> <p>No payee who proposes to make a transfer of structured settlement payment rights shall incur a penalty, forfeit an application fee or other payment, or otherwise incur any liability to the proposed transferee based on the failure of the transfer to satisfy the conditions of Section 3.</p>
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WAIVERS

(Section 7)

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

(Section 5)

The provisions of Sections 2 through 4 may not be waived.

GENERAL PROVISIONS

(Section 7.e)

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

(Section 7.b)

Any transfer agreement entered into on or after the effective date of this Act by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this State. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(Section 7.c)

No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for 1) periodically confirming the payee's survival, and 2) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(Section 7)

Nothing contained in Sections 2 through 6 may be construed to authorize any transfer of workers' compensation payment rights in contravention of applicable law or to give effect to any transfer of workers' compensation or other payment rights that is invalid under applicable law. This Act shall not apply to transfers on or before the effective date of this Act.

EFFECTIVE DATE

(Section 7)

This Act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the *[thirtieth (30th)]* day after the date of enactment of this Act; provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is either effective or ineffective.

(Section 8)

This Act shall be effective on *[insert date]*.

Proposed
**MODEL STATE STRUCTURED SETTLEMENT
PROTECTION ACT**

SECTION 1. TITLE. This Act shall be known and referred to as the "Structured Settlement Protection Act."

SECTION 2. DEFINITIONS. For purposes of this Act--

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

(b) "dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;

(c) "discounted present value" means the present value of future payments 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;

(d) "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;

(e) "independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

(f) "interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

(g) "net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 3(e) of this Act;

(h) "payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(i) "periodic payments" includes both recurring payments and scheduled future lump sum payments;

(j) "qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time;

(k) "responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

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

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

(n) "structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement;

(o) "structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

(p) "structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where –

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

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

(iii) the structured settlement agreement is expressly governed by the laws of this State;

(q) "terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the

annuity contract, any qualified assignment agreement and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement;

(r) "transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term "transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights;

(s) "transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

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

(u) "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer;

SECTION 3. REQUIRED DISCLOSURES TO PAYEE. Not less than three (3) days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth —

(a) the amounts and due dates of the structured settlement payments to be transferred;

(b) the aggregate amount of such payments;

(c) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the Applicable Federal Rate used in calculating such discounted present value;

(d) the gross advance amount;

(e) an itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

(f) the net advance amount;

(g) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and

(h) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

SECTION 4. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that —

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

(ii) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and

(iii) the transfer does not contravene any applicable statute or the order of any court or other government authority;

SECTION 5. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS. Following a transfer of structured settlement payment rights under this Act:

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

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

(i) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and

(ii) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this Act;

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

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

SECTION 6. PROCEDURE FOR APPROVAL OF TRANSFERS.

(a) An application under this Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the [county] in which the payee resides, in the [county] in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

(b) Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of this Act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

- (i) a copy of the transferee's application;
- (ii) a copy of the transfer agreement;
- (iii) a copy of the disclosure statement required under Section 3 of this Act;
- (iv) a listing of each of the payee's dependents, together with each dependent's age;
- (v) notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (vi) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed (which shall be not less than [fifteen (15)] days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority.

SECTION 7. GENERAL PROVISIONS; CONSTRUCTION.

- (a) The provisions of this Act may not be waived by any payee.
- (b) Any transfer agreement entered into on or after the effective date of this Act by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this State. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.
- (c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

Alaska House of Representatives

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During Session
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Majority Whip

Memorandum

To: Representative Lesil McGuire
Chair State Judiciary
From: Rep. Richard Foster
Date: February 25, 2003
Re: HB 64

I respectfully request the House Judiciary committee schedule CS for HB 64, "An Act relating to court approval of the purchase of structured settlements," as soon a practical.

The contact person in my office is Paul LaBolle, 465-3789.

Alaska House of Representatives

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Majority Whip

House Bill 64

“An Act relating to court approval of the purchase of structured settlements.”

Sponsor's Statement

House Bill 64 was introduced to address a concern brought forward by some of the states trial lawyers.

Apparently firms have been contacting the recipients of structured settlements and offering to buy those settlements for a small portion of their value. When a person living in a village is contacted, they may not fully understand the implications of the purchase and realize what they are giving up in terms of long-term benefit versus a quick cash payoff.

This act would allow the reassignment of a structured settlement only after it had been approved by the courts and outlines the considerations that must be made before such a transfer is approved.

The specific provisions of the bill are outlined in the analyses provided by Legislative Legal Services.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 64
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Purchase of Structured Settlements BRU Banking, Securities & Corporations (115)
Component Banking, Securities & Corporations
Sponsor Representative Foster
Requester House State Affairs Component No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The proposed legislation would regulate the purchase of structured settlements. This legislation does not impact the operations of this division.

Prepared by: Terry Lutz, Acting Director Phone 907-465-2521
Division Banking, Securities & Corporations Date/Time 2/10/03 2:35 PM
Approved by: Edgar Blatchford, Commissioner Date 2/10/2003
Agency Department of Community & Economic Development

State Structured Settlement Protection Statutes

<u>State</u>	<u>Statute</u>	<u>Effective Date</u> ^{1/}
Arizona	2002 Ariz. Legis. Serv. 239	05/20/02
California	Cal. Ins. Code §§ 10134-10141 (as amended by 2001 Assembly Bill 268)	01/01/00 01/01/02
Connecticut	Conn. Gen. Stat. § 52-225f	10/01/98
Delaware	Del. Code Ann. Tit. 10, §§ 6601-6604	07/26/00
Florida	2001 Fla. Sess. Law Serv. Ch. 207	10/01/01
Georgia	Ga. Code Ann. §§ 51-12-70-77	07/01/99
Idaho	2001 Idaho Sess. Laws 299 ^{2/}	07/01/01
Illinois (predates NSSTA Models)	215 Ill. Comp. Stat. 5/155.34	01/01/98
Indiana	Ind. Code Ann. §§ 34-50-2-1 – 34-50-2-11	06/30/01
Iowa	2001 Iowa Legis Serv. 337	07/01/01
Kentucky	Ky. Rev. Stat. Ann. §§ 454.430, 454.431, 454.435	07/15/98
Louisiana	2001 La. Sess. Law Serv. 597	08/15/01
Maine	Me. Rev. Stat. Ann. tit. 24A §§ 601.25, 2241-46	__/__/99
Maryland	Md. Code Ann. Cts. & Jud. Proc. §§ 5-1101-5-1105	10/01/00
Massachusetts	Mass. Gen. Laws Ann. Ch. 231C, §§ 1-5	01/12/01

^{1/} Statutes based on the NSSTA Models generally include a transition rule that specifies that the statute applies to transfers of structured settlement payment rights under transfer agreements (i.e., factoring agreements) entered into on or after a specified date, generally the same date on which the statute takes effect. For any statute that includes this transition rule, the effective date listed in this table is the date after which new transfer agreements will be subject to the statute. In other cases the effective date listed is the effective date of the statute itself.

^{2/} Idaho H.B. 237 enacted structured settlement protection provisions as an amendment to the scope section, § 9-109, of Revised Article 9 of the Idaho Uniform Commercial Code. This unusual placement makes it unclear how and when the structured settlement provisions will apply.

<u>State</u>	<u>Statute</u>	<u>Effective Date</u>
Michigan	Mich. Comp. Laws. Ann., §§ 691.1191 – 691.1197	01/14/01
Minnesota	Minn. Stat. §§ 549.30 – 549.34	08/01/99
Mississippi	2002 Miss. S.B. No. 2912	08/01/02
Missouri	Mo. Rev. Stat. §§ 407.1060 – 407.1068	08/28/99
Nebraska	2001 Neb. Laws 55	01/01/02
New Jersey	2001 N.J. Sess. Law Serv. 139	08/02/01
New York	2002 Assembly Bill 6936-A, to be codified at N.Y. Gen. Obs. Law §§ 5-1701-1709	9/17/02 ^{3/}
North Carolina	N.C. Gen. Stat. Art. 44B §§ 1-543.10 – 1-543.15 and Art. 33 § 1-394.1	10/01/99
Ohio	Ohio Rev. Code. Ann. §§ 2323.58 – 2323.587	10/27/00
Oklahoma	2001 Okla. Sess. Law Serv. 70	11/01/01
Pennsylvania	40 Pa. Cons. Stat. Ann. §§ 4001-4009	04/11/00
Rhode Island	2001 R.I. Pub. Laws 01-226	08/13/01
South Carolina	2002 S.C. Pub. Laws 252	06/13/02
South Dakota	S.D. Codified Laws §§ 21-3B-1 – 21-3B-12	07/01/01
Tennessee	Tenn. Code Ann. Tit. 47, Ch. 18 §§ 1-7	06/23/00
Texas	2001 Tex. Sess. Law Serv. 96	09/01/01
Utah	2002 Utah S.B. 163, to be codified at Utah Code Ann. §§ 78-59-101-108	05/06/02
Virginia	Va. Code Ann. §§ 59.1-475-477 Va. Code §§ 59.1-475-477.1	07/01/99 07/01/01
Washington	2001 Wash. Legis. Serv. 178	07/22/01
W. Virginia	W. Va. Code §§ 46A-6H-1 – 46A-6H-8	06/11/99

^{3/} Section 4 of the New York legislation states that it “shall take effect July 1, 2002”; but the legislation was not signed by the Governor until September 17.

49 USC 40101
note.

“(3) AIRLINE-RELATED DEPOSIT.—For purposes of this subsection, the term ‘airline-related deposit’ means any deposit of taxes imposed by subchapter C of chapter 33 of such Code (relating to transportation by air).”

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in section 301 of the Air Transportation Safety and System Stabilization Act (Public Law 107-42).

SEC. 115. TREATMENT OF CERTAIN STRUCTURED SETTLEMENT PAYMENTS.

(a) IN GENERAL.—Subtitle E is amended by adding at the end the following new chapter:

“CHAPTER 55—STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

“Sec. 5891. Structured settlement factoring transactions.

“SEC. 5891. STRUCTURED SETTLEMENT FACTORING TRANSACTIONS.

“(a) IMPOSITION OF TAX.—There is hereby imposed on any person who acquires directly or indirectly structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount as determined under subsection (c)(4) with respect to such factoring transaction.

“(b) EXCEPTION FOR CERTAIN APPROVED TRANSACTIONS.—

“(1) IN GENERAL.—The tax under subsection (a) shall not apply in the case of a structured settlement factoring transaction in which the transfer of structured settlement payment rights is approved in advance in a qualified order.

“(2) QUALIFIED ORDER.—For purposes of this section, the term ‘qualified order’ means a final order, judgment, or decree which—

“(A) finds that the transfer described in paragraph (1)—

“(i) does not contravene any Federal or State statute or the order of any court or responsible administrative authority, and

“(ii) is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents, and

“(B) is issued—

“(i) under the authority of an applicable State statute by an applicable State court, or

“(ii) by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

“(3) APPLICABLE STATE STATUTE.—For purposes of this section, the term ‘applicable State statute’ means a statute providing for the entry of an order, judgment, or decree described in paragraph (2)(A) which is enacted by—

“(A) the State in which the payee of the structured settlement is domiciled, or

“(B) if there is no statute described in subparagraph (A), the State in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding

asset for the structured settlement is domiciled or has its principal place of business.

"(4) APPLICABLE STATE COURT.—For purposes of this section—

"(A) IN GENERAL.—The term 'applicable State court' means, with respect to any applicable State statute, a court of the State which enacted such statute.

"(B) SPECIAL RULE.—In the case of an applicable State statute described in paragraph (3)(B), such term also includes a court of the State in which the payee of the structured settlement is domiciled.

"(5) QUALIFIED ORDER DISPOSITIVE.—A qualified order shall be treated as dispositive for purposes of the exception under this subsection.

"(c) DEFINITIONS.—For purposes of this section—

"(1) STRUCTURED SETTLEMENT.—The term 'structured settlement' means an arrangement—

"(A) which is established by—

"(i) suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2), or

"(ii) agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1), and

"(B) under which the periodic payments are—

"(i) of the character described in subparagraphs (A) and (B) of section 130(c)(2), and

"(ii) payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

"(2) STRUCTURED SETTLEMENT PAYMENT RIGHTS.—The term 'structured settlement payment rights' means rights to receive payments under a structured settlement.

"(3) STRUCTURED SETTLEMENT FACTORING TRANSACTION.—

"(A) IN GENERAL.—The term 'structured settlement factoring transaction' means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration.

"(B) EXCEPTION.—Such term shall not include—

"(i) the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights, or

"(ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

"(4) FACTORING DISCOUNT.—The term 'factoring discount' means an amount equal to the excess of—

“(A) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over

“(B) the total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

“(5) RESPONSIBLE ADMINISTRATIVE AUTHORITY.—The term ‘responsible administrative authority’ means the administrative authority which had jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

“(6) STATE.—The term ‘State’ includes the Commonwealth of Puerto Rico and any possession of the United States.

“(d) COORDINATION WITH OTHER PROVISIONS.—

“(1) IN GENERAL.—If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

“(2) NO WITHHOLDING OF TAX.—The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.”

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end the following new item:

“Chapter 55. Structured settlement factoring transactions.”

(c) EFFECTIVE DATES.—

Applicability.

(1) IN GENERAL.—The amendments made by this section (other than the provisions of section 5891(d) of the Internal Revenue Code of 1986, as added by this section) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into on or after the 30th day following the date of the enactment of this Act.

Applicability.

(2) CLARIFICATION OF EXISTING LAW.—Section 5891(d) of such Code (as so added) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into before, on, or after such 30th day.

(3) TRANSITION RULE.—In the case of a structured settlement factoring transaction entered into during the period beginning on the 30th day following the date of the enactment of this Act and ending on July 1, 2002, no tax shall be imposed under section 5891(a) of such Code if—

(A) the structured settlement payee is domiciled in a State (or possession of the United States) which has not enacted a statute providing that the structured settlement factoring transaction is ineffective unless the transaction has been approved by an order, judgment, or decree of a court (or where applicable, a responsible administrative authority) which finds that such transaction—

(i) does not contravene any Federal or State statute or the order of any court (or responsible administrative authority); and

(ii) is in the best interest of the structured settlement payee or is appropriate in light of a hardship faced by the payee; and

(B) the person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction the amounts and due dates of the payments to be transferred, the aggregate amount to be transferred, the consideration to be received by the structured settlement payee for the transferred payments, the discounted present value of the transferred payments (including the present value as determined in the manner described in section 7520 of such Code), and the expenses required under the terms of the structured settlement factoring transaction to be paid by the structured settlement payee or deducted from the proceeds of such transaction.

SEC. 116. PERSONAL EXEMPTION DEDUCTION FOR CERTAIN DISABILITY TRUSTS.

(a) **IN GENERAL.**—Subsection (b) of section 642 (relating to deduction for personal exemption) is amended to read as follows: 26 USC 642.

“(b) **DEDUCTION FOR PERSONAL EXEMPTION.**—

“(1) **ESTATES.**—An estate shall be allowed a deduction of \$600.

“(2) **TRUSTS.**—

“(A) **IN GENERAL.**—Except as otherwise provided in this paragraph, a trust shall be allowed a deduction of \$100.

“(B) **TRUSTS DISTRIBUTING INCOME CURRENTLY.**—A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of \$300.

“(C) **DISABILITY TRUSTS.**—

“(i) **IN GENERAL.**—A qualified disability trust shall be allowed a deduction equal to the exemption amount under section 151(d), determined—

“(I) by treating such trust as an individual described in section 151(d)(3)(C)(iii), and

“(II) by applying section 67(e) (without the reference to section 642(b)) for purposes of determining the adjusted gross income of the trust.

“(ii) **QUALIFIED DISABILITY TRUST.**—For purposes of clause (i), the term ‘qualified disability trust’ means any trust if—

“(I) such trust is a disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act (42 U.S.C. 1396p), and

“(II) all of the beneficiaries of the trust as of the close of the taxable year are determined by the Commissioner of Social Security to have been disabled (within the meaning of section 1614(a)(3) of the Social Security Act, 42 U.S.C. 1382c(a)(3)) for some portion of such year.

A trust shall not fail to meet the requirements of subclause (II) merely because the corpus of the trust may revert to a person who is not so disabled after the trust ceases to have any beneficiary who is so disabled.

“(3) DEDUCTIONS IN LIEU OF PERSONAL EXEMPTION.—The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).”

Applicability.
26 USC 642 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending on or after September 11, 2001.

TITLE II—DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS

SEC. 201. DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS.

(a) DISCLOSURE WITHOUT A REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Paragraph (3) of section 6103(i) (relating to disclosure of return information to apprise appropriate officials of criminal activities or emergency circumstances) is amended by adding at the end the following new subparagraph:

26 USC 6103.

“(C) TERRORIST ACTIVITIES, ETC.—

“(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The head of the agency may disclose such return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

“(ii) DISCLOSURE TO THE DEPARTMENT OF JUSTICE.—Returns and taxpayer return information may also be disclosed to the Attorney General under clause (i) to the extent necessary for, and solely for use in preparing, an application under paragraph (7)(D).

“(iii) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer’s identity shall not be treated as taxpayer return information.

“(iv) TERMINATION.—No disclosure may be made under this subparagraph after December 31, 2003.”

(b) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Subsection (i) of section 6103 (relating to disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration) is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

“(7) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—

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