

HB

64

Alaska House of Representatives

Richard Foster
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During Session
State Capitol Rm. 410
Juneau, AK 99801-1182
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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.

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Majority Whip

To: Representative Norman Rokeberg
Chair House Rules
From: Rep. Richard Foster
Date: March 11, 2003
Re: CSHB 64

There are no major changes in the current bill. From the original text the to CSHB64 (STA) there was a clarification of jurisdiction on page 3 line 20 (at the request of the AK state courts). From CSHB64 (STA) to CSHB64 (JUD) there was a time extension affecting page 3 line 24, an addition applying to the orders of any court on page 1 line 14, and a clarification with regards to delivery/receipt on page 2 lines 1 and 2.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 64(STA)
(H) Publish Date: 2/24/03

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
Division: Banking, Securities & Corporations
Approved by: Edgar Blatchford, Commissioner
Agency: Department of Community & Economic Development

Phone 907-465-2521
Date/Time 2/10/03 2:35 PM
Date 2/10/2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 64(JUD)
(H) Publish Date: 3/10/2003

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Structured Settlements BRU Alaska Court System
Component Trial Courts
Sponsor Representative Foster
Requester House Judiciary Component No. 768

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 Alaska Court System does not anticipate any fiscal impact by the passage of HB 64.

Prepared by: Doug Wooliver, Administrative Attorney Phone _____
Division Alaska Court System Date/Time 3/10/03 10:53 AM
Approved by: Stephanie Cole, Administrative Director Date 3/10/2003
Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 64(JUD)
(H) Publish Date: 3/10/03

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: Purchase of Structured Settlements BRU: Workers' Compensation
Sponsor: Representative Foster Component: Workers' Compensation
Requester: House JUD Component Number: 344

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: None

Check 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)

This bill will require workers compensation claimants who are receiving benefits through periodic payments either through a standard claim or a structured settlement, make an application to the court for approval of transfer of these payments. The Division of Workers' Compensation does not anticipate a fiscal impact as a result of this bill.

Prepared by: Paul Grossi, Director Phone: 465-2790
Division: Workers' Compensation Date/Time: 2/27/03 10:11 AM
Approved by: Greg O'Claray, Commissioner Date: 02/27/03
Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

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LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

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

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 1
To <i>Judy</i>	From <i>Paul LaBolle</i>	
Co. <i>/</i>	Co.	
Dept.	Phone # <i>907-465-3789</i>	
Fax # <i>907-586-1987</i>	Fax # <i>907-465-3242</i>	

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 501 of chapter 33 of such Code (relating to transportation by air).”~~

~~(b) EFFECTIVE DATE.—An 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 ncte.

(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.~~

26 USC 6103.

(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:

“(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.—