

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 00/2

10782 HOUSE JUDICIARY

# Fairbanks Daily News-Miner

## Two face charges after suspected drug lab raided

Wednesday, January 29, 2003 - Staff report

Alaska State Troopers discovered a small-scale methamphetamine lab in a residence in the Gold Rush Estates trailer park Tuesday and arrested two occupants on a charge of possessing finished methamphetamine.

Cinda J. Ingles, 44, and Harold T. Griffin, 79, were both arrested on a charge of fourth-degree misconduct involving a controlled substance.

However, more charges could be filed after the materials found in the trailer are tested at the troopers crime lab, Sgt. Ron Wall said.

Troopers had been investigating the possibility of a meth lab at the trailer for about a year before entering with a search warrant on Tuesday, he said. Wall classified the operation as "relatively small."

Louise Chikigak, a neighbor who lives in the park behind the College Corner shopping center, said she was surprised to learn of the meth lab across the street.

"I never saw any strange people over there or anything," she said.

Troopers said Griffin had been living in the residence since about 1994 and that he and Ingles were boyfriend and girlfriend.

# Fairbanks Daily News-Miner

## Investigators surprise suspected meth chefs

By BETH IPSEN  
Staff Writer

Friday, January 10, 2003 - Drug investigators kicked in the door and interrupted two men in the middle of cooking what is suspected to be methamphetamine at the Ranch Motel Thursday morning.

A relative of someone who had been partying at the room the night before tipped off authorities, saying a meth lab in the room was about to be torn down. Three drug investigators went to the hotel and knocked on room No. 218, said Alaska State Trooper Teague Widmier, an investigator for the statewide drug enforcement unit in Fairbanks.

They didn't get an answer, but "all of the a sudden we heard jars clinking," Widmier said. He kicked in the door and interrupted the two men inside as they were trying to flush chemicals down the toilet and bathtub drain, Widmier said.

A man who was staying in the room next door said he heard the loud knocking on the door followed by shouting from both inside and outside. He then heard foot steps of the two men running back and forth, and glass breaking.

"Finally, the toilet flushed," followed by a strong smell emitting from the plumbing in his own room, said the man, who asked to remain anonymous. The witness then heard troopers yelling at the suspects to get on the floor.

"The hot plates were still hot and the odor was very strong," said Widmier, indicating authorities likely caught the two men in the middle of cooking meth.

"The Mason jars were just empty, laying on the bathroom floor and bath tub and they had water running in the tub," he said. "There wasn't a lot of sampling to be done because prior to our arrival they were dumping it."

Jeffrey Franks, 41, was arrested on a warrant and a charge of probation violation for a prior meth bust. Bruce Barcus, 41, was charged with fourth-degree misconduct involving a controlled substance after investigators found traces of meth inside his pockets, Widmier said.

Investigators also found traces of methamphetamines scattered throughout the room, he said.

Widmier suspects the suspects had been using meth all night long because the pair wouldn't stop twitching, a trait associated with methamphetamine use. Widmier called the suspected lab a medium-sized operation.

"I'd say they were manufacturing for themselves and their friends, just because of the crowd that's been running around," he said.

Investigators also want to question Fortune Kurzendoerfer, 31, who has been placed at the room the night before.

Hotel employee Robert Garcia said he was walking outside the South Cushman Street hotel when three men with guns began banging on the doors.

"I saw some guns and I split," Garcia said. "They weren't dressed like cops."

Hotel owner Donna Gilbert said the room was registered under a North Pole woman's name three days ago and staff hadn't received any complaints from people in the neighboring room. There weren't a large amount of calls going to the hotel room, which can be an indication that something is going on, Gilbert said.

"They didn't request any service so the girls never went in the room," she said. "But that happens here all the time. That isn't a sign that something's going on."

Meanwhile the man staying next door said he thought the number of people going in and out of the room over the past few days seemed suspicious.

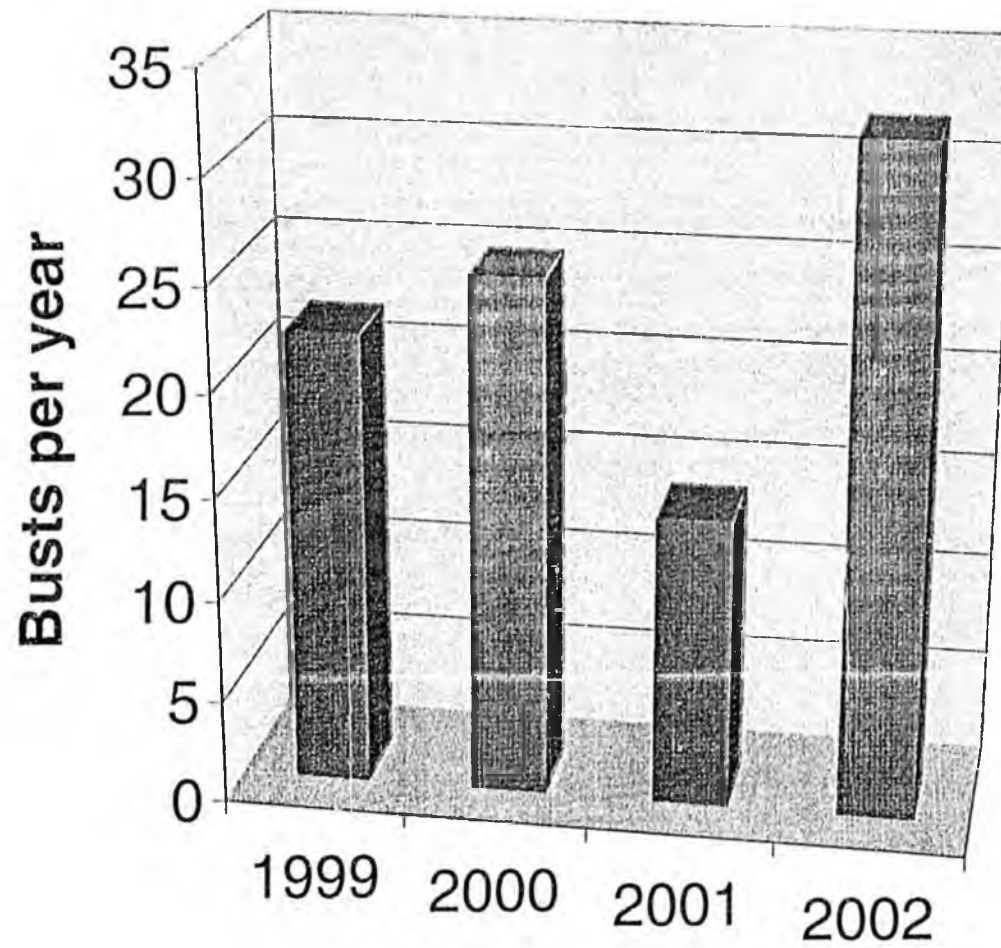
An agent from the Drug Enforcement Administration and investigators from the Fairbanks University of Alaska police departments helped collect samples from inside the hotel room. These samples will be sent to the state crime lab and, pending test results, Barcus and Franks could face more charges.

Widmier said they found toluene, acetone, matches for red phosphorus and iodine, all highly flammable and toxic ingredients used in cooking meth.

Because the toxic chemicals used in making meth can seep into the carpet, draperies and furniture, Gilbert said the apartment won't be livable until it's stripped clean of the lingering chemicals.

Reporter Beth Ipsen can be reached at [bipsen@newsminer.com](mailto:bipsen@newsminer.com) or 459-7545.

# Alaska Methamphetamine Lab Seizures



## Methamphetamine

Methamphetamine is an addictive stimulant drug that strongly activates certain systems in the brain. Methamphetamine is closely related chemically to amphetamine, but the central nervous system effects of methamphetamine are greater. Both drugs have some medical uses, primarily in the treatment of obesity, but their therapeutic use is limited.

Street methamphetamine is referred to by many names, such as "speed," "meth," and "chalk." Methamphetamine hydrochloride, clear chunky crystals resembling ice, which can be inhaled by smoking, is referred to as "ice," "crystal," and "glass."

### Health Hazards

**Neurological hazards.** Methamphetamine releases high levels of the neurotransmitter dopamine, which stimulates brain cells, enhancing mood and body movement. It also appears to have a neurotoxic effect, damaging brain cells that contain dopamine and serotonin, another neurotransmitter. Over time, methamphetamine appears to cause reduced levels of dopamine, which can result in symptoms like those of Parkinson's disease, a severe movement disorder.

**Addiction.** Methamphetamine is taken orally or intranasally (snorting the powder), by intravenous injection, and by smoking. Immediately after smoking or intravenous injection, the methamphetamine user experiences an intense sensation, called a "rush" or "flash," that lasts only a few minutes and is described as extremely pleasurable. Oral or intranasal use produces euphoria - a high, but not a rush. Users may become addicted quickly, and use it with increasing frequency and in increasing doses.

**Short-term effects.** The central nervous system (CNS) actions that result from taking even small amounts of methamphetamine include increased wakefulness, increased physical activity, decreased appetite, increased respiration, hyperthermia, and euphoria. Other CNS effects include irritability, insomnia, confusion, tremors, convulsions, anxiety, paranoia, and aggressiveness. Hyperthermia and convulsions can result in death.

**Long-term effects.** Methamphetamine causes increased heart rate and blood pressure and can cause irreversible damage to blood vessels in the brain, producing strokes. Other effects of methamphetamine include respiratory problems, irregular heartbeat, and extreme anorexia. Its use can result in cardiovascular collapse and death.

*Information provided by the National Institute on Drug Abuse.*

#### Making Methamphetamine at home:

To make meth you need ephedrine. The cottons in todays vicks nase inhalers dont contain efed or pfed (ephedrin or pseudoephedrin) but there are still lots of easy ways to get good ephed or pfed, pure ephedrin can be extracted out of it's plant matter, and a plant that can be bought at most garden stores. or you can get pfed from decongestive pills like sudafed. Most people prefer to work with pfed from pills rather than ephed from the plant. The important thing is that you must have pure pfed/ephed as any contaminants will fuck up the molar ratio leaving you with over reduced shit or under reduced shit. or contaminants will jelly during baseifying and gunk up your product which will then be very hard to clean. so you want to find a pill that is relatively pure pfed hcl, or as close to pure as you can get. also check the label on your pills and see what inactive ingredients they contain. inactive ingredients are things like binders and flavors these you dont want and will remove when cleaning your pills. but certain inactive ingredients are harder to remove than others. you dont want pills with a red coating you dont want pills with a lot of cellulose in them and you dont want pills with much wax. you also dont want pills that contain povidone. as a rule if you have two pills that contain the same amount of pfed hcl then take the smaller sized pill because it obviously has less binders and inactive ingredients, time released pills are usually harder to work with they have more binders and tend to gel up during the a/b stage also only buy pills that have pfed hcl as the only active ingredient. This information was brought to you by thehive You first have to make ephedrine (which is sometimes sold as meth by itself): If you are selling it... I would just make ephedrine and say it's meth.

List of chemicals and materials: Dilute HCl - also called Muriatic acid - can be obtained from hardware stores, in the pool section. NaOH - also called lye - can be obtained from supermarkets in the "drain cleaner" section. "Red Devil Lye" recommended. Ethyl Ether - aka Diethyl Ether - Et-O-Et - can be obtained from engine starting fluid, usually from a large supermarket. Look for one that says "high ethyl ether content", such as Prestone. Desoxyephedrine - can be obtained from "VICKS" nasal inhalers. These are found at any drug store or grocery, etc. They contain 50mg of l-desoxyephedrine per container. Six containers will give 300mg of l-desoxyephedrine. Distilled water - it's really cheap, so you have no reason to use the nasty stuff from the tap. Do things right.

#### List of equipment :

a glass eyedropper  
three small glass bottles with lids (approx. 3 oz., but not important) one should be marked at 1.5oz, use tape on the outside to mark it (you might want to label it as ether) one should be clear (and it can't be the marked one)  
a Pyrex dish (the meatloaf one is suggested)  
a glass quart jar  
sharp scissors  
clean rubber gloves  
coffee filters  
a measuring cup  
measuring spoons

#### Preparing your Lab:

##### Preparing Ethyl Ether:

**WARNING:** Ethyl Ether is very flammable and is heavier than air. Do not use ethyl ether near flame or non-sparkless motors. It is also an anaesthetic and can cause respiratory collapse if you inhale too much.

Take the unmarked small bottle and spray starter fluid in it until it looks half-full. Then fill the rest of the way with water, cap the bottle and shake for 5

minutes. Let it sit for a minute or two, and tap the side to try and separate the clear upper layer. Then, draw off the top (ether) layer with the eyedropper, and throw away the lower (water) and cloudy layer. Place the ether in the marked container. Repeat this until you have about 1.5 oz. of ether. Put the cap on it, and put it in the freezer if you can. Rinse the other bottle and let it stand.

Ethyl ether is very pungent. Even a small evaporated amount is quite noticeable.

#### Extracting l-desoxyephedrine:

1. Break open the inhalers, a pair of real sharp scissors does this well. Place the cottons that were inside in a bottle (the unmarked one) and close the lid. I use 6 cottons.

2. In the Pyrex dish, combine 2/3 oz. water and 1/3 oz. muriatic acid. Shred cottons in this solution, and knead for 5 minutes with your gloves on. Squeeze all juice out of the cottons after you knead, and discard them. This step bonds the HCl to the l-desoxyephedrine, forming the HCl salt (what you want). The salt is soluble in water, and thus dissolves.

3. Filter the remaining liquid into the quart jar. It will be necessary to do this several times to get the awful smelling oils (check the packaging if you are interested in which ones). The chemicals in the inhalers have been bonded to the HCl, and the oils have been filtered off. Discard the filters and clean the Pyrex dish. Remember to wet the filters with distilled water before you pour, otherwise you'll lose some product.

4. Pour enough of the solution into the clear bottle to fill it 1/3 full. Save any leftover juice for the second batch.

5. Pour 1/8 teaspoon of the lye crystals into the bottle and agitate. Do this carefully, as the mixture will become hot, and give off hydrogen gas and/or steam. H<sub>2</sub> gas is explosive and lighter than air, avoid any flames as usual. Repeat this step until the mixture remains cloudy. This step neutralizes the HCl in the salt, leaving the insoluble free base (l-desoxyephedrine) again. Why do we do this? So that we can get rid of any water-soluble impurities. For 3 oz. bottles, this should take only 3 repetitions or so.

6. Fill the bottle from step 5 up the rest of the way with ethyl ether. Cap the bottle, and agitate for about 8 minutes. It is very important to expose every molecule of the free-base to the ether for as long as possible. This will cause the free base to dissolve into the ether (it -is- soluble in ether).

7. Let the mixture settle. There will be a middle layer that is very thick. Tap the side of the bottle to get this layer as thin as possible. This is why this bottle should be clear.

8. Remove the top (ether) layer with the eyedropper, being careful not to get any of the middle layer in it. Place the removed ether layer into a third bottle.

9. Add to the third bottle enough water to fill it half-way and about 5 drops of muriatic acid. Cap it. Shake the bottle for 2 minutes. When it settles, remove the top layer and throw it away. The free base has now been bonded to the HCl again, forming a water soluble salt. This time, we're getting rid of ether-soluble impurities. Make sure to get rid of all the ether before going to step 11!

10. If there is anything left from step 3, repeat the procedure with it.

11. Evaporate the solution in the Pyrex dish on low heat. You can do this on

the stove or nuke it in the microwave (be careful of splashing), but I have found that if you leave it on top of a hot-water heater (like the one that supplies hot water to your house) for about 2-3 days, the remaining crystals will be ephedrine HCl.

If you microwave it, I suggest no more than 5-10s at one time. If it starts "popping", that means you have too little liquid left to microwave. You can put it under a bright (100W) lamp instead. Microwaving can result in uneven heating, anyway.

First Batch: 120mg ephedrine HCl Estimated: 300mg (100% of theoretical, disregarding HCl)

Now, Making Methamphetamine out of ephedrine by reducing it with Hydroiodic Acid and Red Phosphorus.

Items needed:

1. A lot of matchbooks (the kind with the striking pad)
2. Coffee filters (or filter paper)
3. Something that measures ml and grams
4. A flask (a small pot with a lid can be used)
5. iodine (found at any drug store)
6. Hydroiodic Acid (I will tell you how to make this)
7. Red Phosphorus (I will tell you how to make this)
8. Lye (can be obtained from supermarkets in the "drain cleaner" section. "Red Devil Lye" recommended)
- \*9. Optional (toluene and HCl gas)

Making Red Phosphorus:

The striking pad on books of matches is about 50% red phosphorus. The determined experimenter could obtain a pile of red phosphorus by scraping off the striking pads of matchbooks with a sharp knife. A typical composition of the striking pad is about 50% red phosphorus, along with about 30% antimony sulfide, and lesser amounts of glue, iron oxide, MnO<sub>2</sub>, and glass powder. I don't think these contaminants will seriously interfere with the reaction. Naturally, it is a tedious process to get large amounts of red phosphorus by scraping the striking pads off matchbooks, but who cares?

Making Hydroiodic Acid:

This is made by mixing iodine and red phosphorus. When making hydroiodic acid from iodine and red phosphorus, the acid is prepared first, and allowed to come to complete reaction for 20 minutes before adding the ephedrine to it. The way around the roadblock here is to just boil off some more of the water from the ephedrine extract, and make the acid mixture in fresh pure water. Since the production of HI from iodine and red phosphorus gives off a good deal of heat, it is wise to chill the mixture in ice, and slowly add the iodine crystals to the red phosphorus-water mixture.

Now, Making Methamphetamine:

To do the reaction, a 1000 ml round bottom flask is filled with 150 grams of ephedrine. Also added to the flask are 40 grams of red phosphorus and 340 ml of 47% hydroiodic acid. This same acid and red phosphorus mixture can be prepared from adding 150 grams of iodine crystals to 150 grams of red phosphorus in 300 ml of water. This should produce the strong hydroiodic acid solution needed. Exactly how strong the acid needs to be, I can't say. With the ingredients mixed together in the flask, a condenser is attached to the flask, and the mixture is boiled for one day. This length of time is needed for best yields and highest octane numbers on the product. While it is cooking, the mixture is quite red and messy looking from the red phosphorus floating around in it. When one day of boiling under reflux is up, the flask is allowed to cool, then it is diluted with an equal volume of water. Next, the red

phosphorus is filtered out. A series of doubled up coffee filters will work to get out all the red phosphorus, but real filter paper is better. The filtered solution should look a golden color. A red color may indicate that all the red phosphorus is not yet out. If so, it is filtered again. The filtered-out phosphorus can be saved for use in the next batch. If filtering does not remove the red color, there may be iodine floating around the solution. It can be removed by adding a few dashes of sodium bisulfate or sodium thiosulfate. The next step in processing the batch is to neutralize the acid. A strong lye solution is mixed up and added to the batch while shaking until the batch is strongly basic. This brings the meth out as liquid free base floating on top of the water. The strongly basic solution is shaken vigorously to ensure that all the meth has been converted to the free base. You now can sell or use the free base for injection use or with free base meth now obtained, the next step you can do is to form the crystalline hydrochloride salt of meth. To do this, a few hundred mls of toluene is added to the batch, and the meth free base extracted out as usual. If the chemist's cooking has been careful, the color of the toluene extract will be clear to pale yellow. If this is the case, the product is sufficiently pure to make nice white crystals just by bubbling dry HCl gas through the toluene extract. If the toluene extract is darker colored, a distillation is called for to get pure meth free base. The yield of pure methamphetamine hydrochloride should be from 100 to 110 grams.

HB

64

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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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

# 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: "transferor 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 <sup>30</sup>~~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 ✓

WITNESS REGISTER

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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 <sup>3/</sup>
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

<sup>3/</sup> 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.

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### **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><b>"Discount/finance charge"</b> 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"> <li>• interest charges, discounts, and other compensation for the time value of money</li> <li>• all application, origination, processing, underwriting, closing, filing and notary fees and all similar charges, however denominated</li> <li>• all charges for commissions or brokerage, irrespective of the identity of the party to whom such charges are paid or payable</li> </ul> <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><b>"discounted present value"</b> 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><b>"Discounted present value"</b> 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><b>"gross advance amount"</b> 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><b>"independent professional advice"</b> means advice of an attorney, certified public accountant, actuary or other licensed professional adviser</p>	<p><b>"Independent professional advice"</b> 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 style="text-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"> <li>• 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</li> <li>• the structured settlement agreement was approved by a court of responsible administrative authority in this State, or</li> <li>• the structured settlement agreement is expressly governed by the laws of this State</li> </ul>	<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"> <li>• the payee or any other interested party is domiciled in the state</li> <li>• the structured settlement agreement was approved by a court of responsible administrative authority in the state, or</li> <li>• the settled claim was pending before the courts of this state when the parties entered into the structured settlement agreement</li> </ul>
<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.
<b>TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS</b>	
<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"> <li>• the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents</li> <li>• 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</li> <li>• the transfer does not contravene any applicable statute or the order of any court or other government authority</li> </ul>	<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"> <li>• the payee has established that the transfer is in the best interests of the payee and the payee's dependents</li> <li>• 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</li> <li>• the transfer complies with the requirements of Sections 3 through 6 and will not contravene other applicable law</li> <li>• 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</li> <li>• 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</li> </ul>

	<ul style="list-style-type: none"> <li>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</li> </ul>
<b>ADDITIONAL TRANSFER PROVISIONS</b>	
N/A	<p>(Section 3)</p> <ul style="list-style-type: none"> <li>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</li> <li>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</li> </ul>
<b>REQUIRED DISCLOSURES</b>	
<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"> <li>the amounts and due dates of the structured settlement payments to be transferred</li> <li>the aggregate amount of such payments</li> </ul>	<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"> <li>the amounts and due dates of the structured settlement payments to be transferred</li> <li>the aggregate amount of the payments</li> </ul>

Model State Structured Settlement Protection Act	Comments
<ul style="list-style-type: none"> <li>• 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</li> <li>• the gross advance amount</li> <li>• 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</li> <li>• the net advance amount</li> <li>• 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</li> <li>• 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</li> </ul>	<ul style="list-style-type: none"> <li>• the gross amount payable to the payee in exchange for the payments</li> <li>• 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</li> <li>• the net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described above</li> <li>• 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"</li> <li>• 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"</li> <li>• 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</li> </ul> <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 style="text-align: center;"><i>Model State Structured Settlement Protection Act</i></p>	<p style="text-align: center;"><i>Model State Structured Settlement Protection Act</i></p>
	<ul style="list-style-type: none"> <li>• 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</li> <li>• the amount of the premium payable to the annuity issuer</li> <li>• 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</li> <li>• the nature and amount of any cost that may be deducted from any of the periodic payments</li> <li>• 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</li> <li>• that any transfer of the periodic payments by the claimant may subject the claimant to serious adverse tax consequences</li> </ul>
<p><b>PROCEDURE FOR APPROVAL OF TRANSFERS</b></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"> <li>• a copy of the transferee's application</li> <li>• a copy of the transfer agreement</li> <li>• a copy of the disclosure statement required under Section 3 of this Act</li> <li>• a listing of each of the payee's dependents, together with each dependent's age</li> <li>• 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</li> <li>• 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</li> </ul>	<p>notice of the proposed transfer and the application for its authorization. The notice must include:</p> <ul style="list-style-type: none"> <li>• a copy of the transferee's application to the court or responsible administrative authority</li> <li>• a copy of the transfer agreement</li> <li>• a copy of the disclosure statement required under Section 3</li> <li>• 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</li> <li>• 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.</li> </ul>
<p><b>EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS</b></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"> <li>• 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</li> </ul>	<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>

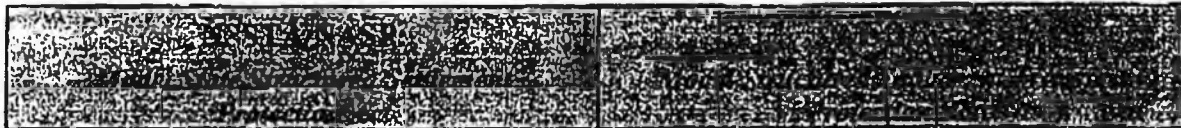
**Model Structured Settlement  
Protection Act**

- 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"> <li>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.</li> </ul>
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	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul> <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

Richard Foster  
P.O. Box 1630  
Nome, AK 99762  
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Fax 907-443-2162



During Session  
State Capitol Rm. 410  
Juneau, AK 99801-1182  
907-465-3789  
Fax 907-465-3242

## 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

Richard Foster  
P.O. Box 1630  
Nome, AK 99762  
907-443-5036  
Fax 907-443-2162



During Session  
State Capitol Rm. 410  
Juneau, AK 99801-1182  
907-465-3789  
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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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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> <sup>1/</sup>
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 <sup>2/</sup>	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

<sup>1/</sup> 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.

<sup>2/</sup> 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 <sup>3/</sup>
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

<sup>3/</sup> 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.—

WITNESS REGISTER

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800 East Diamond Boulevard, Suite 3-440  
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(907) 344-3434  
[jungazar@netscape.net](mailto:jungazar@netscape.net)

RANDY DYER, Executive Vice President  
National Structured Settlement Association  
(Address not provided)  
Washington, D.C.  
(202) 466-2714

AL TAMAGNI Sr.  
(ADDRESS NOT PROVIDED)  
Anchorage AK  
(907) 562-3938

JOHN L. GEORGE, Lobbyist  
American Council of Life Insurance (ACLI) and  
National Association of Independent Insurers (NAII)  
3328 Fritz Cove Road  
Juneau, Alaska 99801  
(907) 789-0712

HB

68

Amndt # 1 to HB 68 by Greenberg

p 1210 after "municipality" add "as defined in

AS 29.71.800"

Conceptual  
Title

Amendment # 2 to HB 68 by Governor

p 1 line 1 ~~following~~ relating to ~~insert~~

~~delete~~ "relating to ~~the office of the victims' rights~~

and insert " adding municipalities to the definition

of justice agency with regard to the jurisdiction

of "

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 29, 2003

FURTHER REFERRALS:

Date of Committee Action: February 5, 2003

The JUDICIARY Committee considered:

HB 68

HOUSE BILL NO. 68

OFFICE OF VICTIMS' RIGHTS: INCLUDE MUNIS

"An Act relating to the office of victims' rights."

Recommends it be replaced with [ ] HCS or  CS for HB 68 (JUD)  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_  Same Title  New Title

attach amendments

[ ] add new referral to \_\_\_\_\_ Committee

[ ] Letter of Intent \_\_\_\_\_ Committee

- List of Abbrev for Depts.:
- ADM
  - CED
  - COR
  - CRT
  - EED
  - DEC
  - DFG
  - GOV
  - HSS
  - LAA
  - LAW
  - LWF
  - MVA
  - DNR
  - DPS
  - REV
  - DOT
  - UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAA				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	GARA	✓			
	HOLM	✓			
	SAMUELS	✓			
	ANDERSON	✓			
	GRUBENBERG	✓			
	COGHILL	✓			
Chair:	McGure	✓			
Chair:					




# REPRESENTATIVE RALPH SAMUELS

HOUSE DISTRICT 29

## Memorandum

**Date:** February 3, 2003

**To:** Representative Lesil McGuire  
Chair, House Judiciary Committee

**From:** Representative Ralph Samuels 

**RE:** Hearing for House Bill 68

---

Thank you for scheduling a hearing for HB 68 pertaining to the Office of Victims' Rights.

Attached you will find:

1. HB 68
2. Sponsor statement
3. Letters of support
  - a. Mayor George P. Wuerch, Anchorage Mayor
  - b. Assemblyman Dick Traini, Chair, Anchorage Assembly
  - c. Stephen Branchflower, Director, Office of Victims' Rights
  - d. Gerad Godfrey
4. Anchorage Daily News article
  - a. Bills Would Clarify Jurisdiction

Email: Representative\_Ralph\_Samuels@legis.state.ak.us

Session: Alaska State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-2095 Fax: (907) 465-3810  
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0240 Fax: (907) 269-0242



# **REPRESENTATIVE RALPH SAMUELS**

---

HOUSE DISTRICT 29

## **HB 68 Sponsor Statement**

### **“An Act relating to the Office of Victims’ Rights”**

This legislation was sponsored to clarify that municipalities be specifically included in the definition of a justice agency. It was the intent of the original bill for the Office of Victims’ Rights to be able to communicate directly with the municipality, the police department and the department of law, and a minor technical change is needed to make this happen. As a result of the minor language change, the Office of Victims’ Rights will have jurisdiction to act on behalf of the victims it represents with all critical agencies.

Email: [Representative\\_Ralph\\_Samuels@legis.state.ak.us](mailto:Representative_Ralph_Samuels@legis.state.ak.us)

Session: Alaska State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-2095 Fax: (907) 465-3810  
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0240 Fax: (907) 269-0242



# Municipality of Anchorage

Office of the Mayor

*George P. Wuerch, Mayor*



January 29, 2003

Senator Lyda Green  
State of Alaska  
State Capitol, Room 516  
Juneau, AK 99801-1182

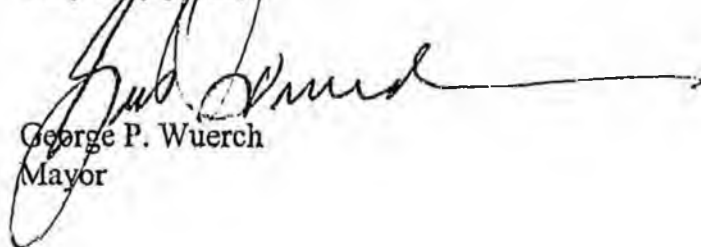
Representative Ralph Samuels  
State of Alaska  
State Capitol, Room 412  
Juneau, AK 99801-1182

Re: House Bill Relating to the Office of Victims' Rights

Dear Senator Green and Representative Samuels:

Please include municipalities as a unit of government, along with the executive and judicial branches of State government, in which there are "justice agencies", under the jurisdiction of the Office of Victims' Rights. (Revisions to Alaska Statute 24.65.110 and the definition of "justice agency" in Alaska Statute 24.65.250.)

Very truly yours,



George P. Wuerch  
Mayor

Municipality  
of  
Anchorage



P.O. Box 196650  
Anchorage, Alaska 99519-6650  
Telephone: (907) 343-4311  
Fax: (907) 343-4313 or 343-4780  
[www.ci.anchorage.ak.us/Assembly](http://www.ci.anchorage.ak.us/Assembly)

ANCHORAGE ASSEMBLY

January 31, 2003

Representative Ralph Samuels  
Room 409  
State Capitol  
Juneau AK 99801-1182

Dear Representative Samuels:

You have offered HB 68 along with seven of your house colleagues relating to the jurisdiction of the State Office of Victims' Rights. The Bill would clarify State law by making specific reference to Municipalities in its definition of justice agencies within OVR's jurisdiction. Enactment would resolve a technical question first raised by Anchorage Municipal Attorney Bill Green in connection with OVR's inquiry into the Godfrey shooting.

First by resolution and later by an amendment to the Anchorage Municipal Code, the Anchorage Assembly has already gone on record as acknowledging the jurisdiction of the State Office of Victims' Rights over the Municipality and requiring Municipal Officials to cooperate with that agency in its investigations. Based on these prior enactments and comments of individual members on January 28, 2002, when we first learned of your introduction of HB 68, I can safely say the Anchorage Assembly supports the goal of this legislation and would urge its enactment. If a more formal resolution of the Assembly would be helpful, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Dick Traini". The signature is written in dark ink and is positioned above the printed name and title.

Dick Traini  
Chair



STATE OF ALASKA  
OFFICE OF VICTIMS' RIGHTS

Ralph Samuels  
Representative  
State Capitol, Room 409  
Juneau, Alaska 99801-1182

January 30, 2003

Lyda Green  
Senator  
State Capitol, Room 516  
Juneau, Alaska 99801-1182

RE: House Bill 68 and Senate Bill 42

Dear Representative Samuels and Senator Green:

In 2001 the Alaska legislature enacted a law that created a new agency within the legislature known as the Alaska Office of Victims' Rights (OVR) of which I am the director. The law, which may be found in Alaska statutes 24.65.010.250, went into effect on July 1, 2002. Our purpose is to help crime victims when they are unexpectedly and suddenly drawn into an often indifferent but always confusing criminal justice system at a time when they are trying to cope with injury and personal loss. It is equally to protect the rights they have under Alaska's constitution and statutes while working with police, prosecutors and criminal justice agencies as the investigation and prosecution of their cases unfolds, which can sometimes take months or years. Our clients, which now number more than 100, have sought a variety of services including information, education, investigation, in court advocacy and support. In providing these needed services we have focused on facilitating a cooperative relationship between criminal justice agencies and victims of crime.

While we have statewide jurisdiction, and assist many crime victims throughout Alaska, most of our clients reside within the Municipality of

1007 WEST 3RD AVENUE, SUITE 205 • ANCHORAGE, ALASKA 99501-1936  
TELEPHONE: 1-907-272-2620 • FACSIMILE: 1-907-272-2640

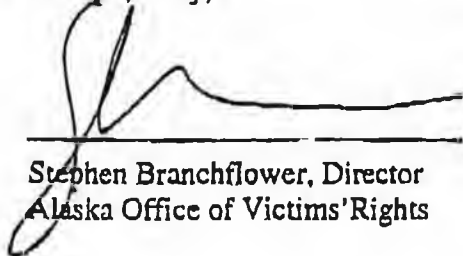
Anchorage, the state's most populated city. The Anchorage Police Department (APD), the largest law enforcement organization in the state, is responsible for investigating the majority of criminal cases in this community and is the justice agency we deal with for more than two-thirds of our cases.

I support passage of the amendment proposed in HB 68 and its companion in the Senate, SB 42, because it would clarify the definition of the term "justice agency" in AS 24.65.110(a)(1) by making it clear that APD, falls under the OVR's oversight. The legislature necessarily meant to include this police department and large population of victims under the umbrella of OVR's protection when it created this office. Since the amended statute will have statewide application, it will make it clear that police departments in smaller jurisdictions are also covered.

Officials of the Municipality of Anchorage are on record supporting the purpose of HB 68 and SB 42. For example, members of the Anchorage Assembly unanimously voted for passage of AO 2003-2 on January 28, 2003. That new ordinance states in pertinent part "The jurisdiction of the Office of Victims' rights over the Municipality of Anchorage, its departments, agencies, officials, and employees is officially acknowledged." Also, Anchorage's Mayor George Wuerch supported enactment of AO 2003-2, and spoke in favor of that ordinance when it came up for assembly action on the 28<sup>th</sup>. He has requested that you sponsor HB 68 on his behalf.

For these reasons, I join with the Mayor, Anchorage Assembly members, and others in the community who will be supporting this legislation, to urge passage of this needed amendment.

Respectfully,



Stephen Branchflower, Director  
Alaska Office of Victims' Rights

Cc: Representatives Bill Stoltze, Lesil McGuire, Tom Anderson, Kevin Meyer,  
Max Gruenberg, Mike Hawker, co-sponsors of HB 68

State of Alaska Representative, Ralph Samuels  
State Capitol Room 409  
Juneau, Alaska 99801-1182

February 2, 2003

Dear Representative Samuels:

We are writing this letter in support of House Bill 68 and Senate Bill 42 in an effort to encourage, or compel, if necessary, all municipalities within the state of Alaska to comply with The Office of Victims' Rights when it is operating in the capacity, which it was intended to. By bringing clarity to the term "justice agency" it would appear as though there would remain little room for the authority and jurisdiction of The Office of Victims' Rights to be misconstrued by any municipality or agency of justice governed by a municipality.

The unfortunate tragedy that recently struck our family created a need for us to turn to the OVR. As a resource the OVR has been invaluable. However, the investigation we requested by The Office of Victims' Rights was hindered through a delayed process of disclosure, which ultimately prolonged the investigation as well as the frustration of our family. An intermittent reluctance by the Anchorage Municipal Attorney's office to acknowledge the jurisdiction of The Office of Victims' Rights hampered, what should and could have been, a more expeditious process. We would desire that no one would suffer such a plight as ours, but should it happen again, we believe that no investigation should be inhibited by a question of jurisdiction or authority of The Office of Victims' Rights. That potential no longer exists within the Municipality of Anchorage because the assembly and mayor have graciously recognized the jurisdiction of the OVR through municipal ordinance. Unfortunately, that only accounts for Anchorage and the "justice agencies" within it. It is therefore prudent and timely for this legislature to ensure the intent of the previous legislature in clarifying the jurisdiction in the wording of the bill, which created The Office of Victims' Rights. We hereby embrace the sponsorship of the previously stated bills and encourage the passage of the amended wording.

Sincerest thanks,



Gerard Godfrey: The Godfrey Family

# Anchorage Daily News

January 30, 2003



Alaska  
Legislature

#### ON THE WEB:

For more information on the Alaska Legislature, including easy ways to contact lawmakers, go to [www.adn.com/legislature](http://www.adn.com/legislature)

## Bills would clarify jurisdiction

■ **AUTHORITY:** Reach of state victims' rights advocate would extend into municipality.

#### The Associated Press

JUNEAU — Several lawmakers want to make clear that a state victims' rights advocate can get involved in municipal as well as state cases.

House Bill 68, which was introduced Wednesday, stems from the state Office of Victims' Rights investigation into the slow response by Anchorage emergency workers to the August shootings of Glenn and Patti Godfrey.

Glenn Godfrey, a retired public safety commissioner, was killed by his former girlfriend, Karen Brand, who also killed herself and shot Godfrey's wife, Patti.

Because of problems in the Anchorage police dispatch system, it took emergency workers 48 minutes to reach Patti God-

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*When the office issued its critical report on the Godfrey case in November, Anchorage municipal attorney Bill Greene questioned whether the victims' rights office had jurisdiction in the case.*

---

frey, who lay bleeding in her Eagle River home.

The Office of Victims' Rights investigated the case and issued a report finding Patti Godfrey's right to emergency help had been violated and urged changes in the Anchorage dispatch system.

The bill's sponsor, Rep. Ralph Samuels,

R-Anchorage, said Anchorage Mayor George Wuerch requested the legislation.

Current law does not make it clear whether the Office of Victims' Rights has authority to investigate municipalities' responses to crime, Samuels said.

When the office issued its critical report on the Godfrey case in November, Anchorage municipal attorney Bill Greene questioned whether the victims' rights office had jurisdiction in the case.

Jennifer Payne, a spokeswoman for Wuerch, said the mayor supports the legislation because he wants to make clear the city does not want to thwart the work of the victims' rights office.

"The mayor wanted to make sure that was cleared up, so there was no misunderstanding," Payne said.

Seven representatives have signed on as co-sponsors to the bill. A similar bill was introduced Wednesday in the Senate by Sen. Lyda Green, R-Wasilla. It is Senate Bill 42.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 68  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Legislature  
 Title "An Act relating to the office of victims'..." BRU Legislative Council  
 Component Council and Subcommittees  
 Sponsor Representative Samuels, Stoltze, ...  
 Requester House Judiciary Component No. 783

**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	0.0	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

POSITIONS	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Full-time	0	0	0	0	0	0
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

HB 68 amends the definition of "justice agency" under AS 24.65.250(1) to include municipalities. This bill has zero fiscal impact to the Office of Victims' Rights as the office currently works with municipalities on a statewide basis. This amendment would clarify the current practice of the Office of Victims' Rights.

Prepared by: Karla Schofield, Deputy Director  
 Division: Administrative Services  
 Approved by: Pamela A. Varni, Executive Director  
 Agency: Legislative Affairs Agency

Phone 465-3850  
 Date/Time 2/4/03 5:08 PM  
 Date 2/4/2003

HB

77

13 AAC 02.480. Unattended motor vehicle

Statute text

No person driving or in charge of a motor vehicle may permit it to stand unattended by an adult person without first stopping the engine, placing the transmission in gear or in park position, locking the ignition, removing the key from the ignition and, if there is not a reasonable possibility of freezing, setting the brake. When standing upon a grade, a driver shall turn the front wheels toward the curb or near the edge of the highway in such a manner that if the unattended vehicle should roll from its standing position, the movement will be in the direction toward the curb or near the edge of the highway and away from the roadway.

History

History: In effect before 7/28/59; am 12/15/61, Register 3; am 8/10/66, Register 22; am 12/31/69, Register 31; am 6/28/79, Register 70

Annotations

*Leaving a vehicle running  
unattended is not prohibited  
by statute, but by regulation  
This is the regulation.*

# Alaska State Legislature



*Chair*

Military and Veterans Affairs Committee

*Vice-Chair*

Labor and Commerce Committee

*Member*

Resources Committee  
State Affairs Committee  
Joint Armed Services Committee

*Finance Subcommittees*

House Environmental Conservation  
House Military & Veterans' Affairs  
House Court System

*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
District 31 Anchorage

**Session:**

Alaska State Capitol  
Juneau, AK 99801-1182

Phone: (907) 465-4931

Fax: (907) 465-4316

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**Interim:**

716 W. 4th Ave., #330  
Anchorage, AK 99501-2133

Phone: (907) 269-0205

Fax: (907) 269-0207

Representative\_Bob\_Lynn@legis.state.ak.us

March 3, 2003

To: Representative Lesil McGuire, Chairman  
Judiciary Committee

Fr: Representative Bob Lynn

Re: Scheduling of HB 77  
"An Act allowing certain motor vehicles to be operated while unattended."

---

Please schedule HB 77 to be heard before the Judiciary Committee as soon as your calendar allows it. Thank you.

A handwritten signature in black ink, appearing to read "Bob Lynn", with a long horizontal line extending to the right.

## **SPONSOR STATEMENT FOR HB 77**

**“An Act allowing certain motor vehicles to be operated while unattended”**

This bill is in response to an January 29, 2003 Anchorage Daily News article headline, “Starting car from afar is just the (\$40) ticket.” The article describes how a lady received a traffic ticket for starting her “unattended” car with a remote starter. The violation described in the newspaper article is based on 1978 Anchorage Municipal Code.

However, current state law *also* prohibits allowing “certain motor vehicles to be running while unattended.” This state prohibition is obsolete. It is “Model T crank-your-engine” law in a remote starter age.

Legislative research dated February 18, 2003 indicates that, in 2002, approximately 1,000,000 remote car starters were sold nationwide, and that sales have increased some 10% to 15% annually. Additionally GM has announced plans to offer remote starters as factory options on certain 2004 automobile models (which will probably spur optional remote starters to be offered by other automobile manufacturers). According to six dealers in Anchorage, 11,000 remote starters were sold in 2002; according to three dealers in Fairbanks, 4,400 were sold there in 2002. This probably represents only 40% to 50% of statewide remote starter sales. It is claimed that Alaska has one of the highest per capita remote starters install rates in the nation.

The number of remote starters currently in use in Alaska is unknown. However, my conservative estimate would probably be at least 10 to 15% of our Alaska vehicles.

Due to extremely cold climates in several areas of Alaska, it has long been common practice for drivers to leave automobiles running unattended, while business is conducted indoors nearby. Failure to leave an automobile running would not only be uncomfortable when returning to a cold car, it's also likely the car could not be started. Allowance in the law needs to be made for Alaska weather conditions.

HB 77 will repair the current obsolete law, and permit an automobile to have its engine running, so long as the vehicle is locked, and is not occupied by a child under 14 or a disabled person. I urge your support of this bill!

# Alaska State Legislature



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## Sectional Analysis for HB 77

**Section 1.** Decriminalizes the use of remote starters in unoccupied locked motor vehicles.

## REMOTE CONTROL

# Starting car from afar is just the (\$40) ticket

Contemporary cold-weather technology collides with ordinance from 1978

By TATABOLINE BRANT  
Anchorage Daily News

One cold day in January, Natalie Aiken parked her Chrysler Concord on Fifth Avenue and went inside a gift shop to look around. Before she left, she remote started her car. Back at the vehicle, Aiken found a \$40 ticket under her windshield wiper.

"I thought it was for an expired meter or something, but it wasn't," she said.

It was for having the car running without a driver.

"I was shocked," said Aiken, who had just installed the remote starter in Decem-

ber. "I was like, 'Are these things illegal?' ... I was horrified that I had broken this law."

Aiken told her husband, Bruce, about the ticket. How could it be illegal to remote start your car in Alaska in the winter? He had never heard of such a law. "Even the place we had it installed didn't know about it," he said.

The ticket pointed the Aikens to Title 9, a thick part of the Municipal Code that deals with vehicles and traffic. Under Chapter 36, Section 010, the couple found "Duties of driver on leaving vehicle unattended," which said:

"No person driving or in charge of a motor vehicle may permit it to stand on a public street unattended without first stopping the engine, locking the ignition, effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway. If a vehicle is left running in a public or private parking lot, the hand brake shall be left on and any automatic transmission shall be placed in the 'park' mode."

The law dates back to March 1978, long

See Page A-6, REMOTE

ADN 1/29/03 Front page

## REMOTE: \$40 ticket

Continued from A-1

before remote starters became popular. Few people today seem to know it exists. Deputy municipal attorney Bruce Roberts looked up the ordinance when asked about it Monday. "I'll be darned," he said. "Who knew?"

The Aikens were told the law was designed to prevent vehicle thefts and pollution, Natalie Aiken said.

But if the Assembly members of the pipeline construction days were concerned about emissions, then why does it appear to be OK to leave a vehicle idling in a private or public parking lot? As for thefts, most remote starters have anti-theft features built in. If you try to drive the vehicle away without putting the key in the ignition, for example, the engine dies.

Assemblyman Allan Tesche, unfamiliar with Section 010, looked it over Tuesday. Indeed, it seemed to prohibit people from remote starting vehicles on public streets in Anchorage, he said.

One could argue, however, that with all its anti-theft features, a vehicle started with a remote starter is properly attended, Tesche said. "If I was a sleazy defense attorney, that would be my argument," he said.

"It is not at all unusual to find a provision of law that has been passed by by technology," Tesche said. "The bottom line is, the ordinance could be out of date."

Few people get cited under the law today. Of the thousands of parking tickets issued by Anchorage police in 2002, 11 were for vehicles left unattended and running, said police spokeswoman Anita Shell.

Bruce Aiken said an officer told him he sees cars and trucks in violation "quite a bit," but usually waits for the owner to return and gives the person a warning. Natalie Aiken said that on the day she was ticketed, her vehicle ran for 20 minutes.

The state law regarding idling, unattended vehicles appears to be more restrictive than the city's. It says no person driving or in charge of a vehicle can leave it running unattended anywhere.

So is it illegal to leave your car warming up even in your own driveway?

"Technically, yes," said Alaska State Troopers spokesman Greg Wilkinson. "But this is not something we are actively enforcing."

Troopers aim to enforce the spirit of the law, Wilkinson said. If someone leaves young children in a running car at the grocery store, for example, it's a safety issue and there's a very good chance they'll get a ticket, he said. Same goes for someone who leaves a car unlocked and running in a place where it can easily get stolen.

"We are not actively pursuing enforcement of cars with remote starters," Wilkinson said. "The remote car starters have safety factors built into them. They're pretty bulletproof."

Reporter Tataboline Brant can be reached at 257-4321.

Anch Daily News

CS 1/29/03 Front page

# LEGISLATIVE RESEARCH REPORT

FEBRUARY 18, 2003



REPORT NUMBER 03.114

## REMOTE VEHICLE STARTERS: PREVALENCE AND USE

PREPARED FOR REPRESENTATIVE BOB LYNN

BY CHERIE NIENHUIS, LEGISLATIVE ANALYST

You asked for information about the prevalence and use of remote vehicle starters in Alaska. Your inquiry stems from an incident whereby an Anchorage resident received a ticket for violating the municipality's ordinance against leaving a vehicle unattended. The resident had used a remote vehicle starter to start the car and warm the engine before returning to her vehicle.

Ten to fifteen years ago, remote car starter sales represented a small portion of automotive aftermarket sales. DesignTech International, Inc., a firm that manufactures electronic automobile accessories, began offering remote car starters to consumers in 1987, but did not see significant sales increases until the past couple of years. According to the company's press release, dated July 10, 2000, DesignTech estimated that remote car starter sales would increase about 50% for the year. President Skip West believes the market is still largely untapped—the average consumer, Mr. West explains, “still thinks of James Bond or spaceships when remote car starters are mentioned.” According to the press release, manufacturers predict that remote starters will someday become standard features on the majority of vehicles.<sup>1</sup>

Mr. West is a member of the Consumer Electronics Association (CEA), an organization that promotes growth and development of the consumer electronics industry. Although remote car starter sales are no longer tracked by the CEA, Mr. West estimates that approximately one million were sold industry-wide in 2002, and that sales have typically increased 10 to 15 percent a year for the half dozen or more manufacturers.<sup>2</sup> A large portion of the sales are to consumers living in cold climates, Mr. West added. A couple of years ago, several members of the CEA formed a remote car starter group, whose aim was to adopt industry-wide strategies to increase the market for starters, and to deal with issues facing manufacturers, distributors, retailers, and consumers who purchase them. They have also worked to curtail legislation in areas that prohibit vehicles

<sup>1</sup> “Remote Car Starter Sales Expected to Rise Again in 2000,” DesignTech International, Inc., July 10, 2000; we include a copy of this press release as Attachment A.

<sup>2</sup> Skip West can be reached at (703) 866-2000, ext. 102.

from running unattended on public streets. Although Mr. West could not provide specifics on the group's activities, he indicated his willingness, as well as the CEA's, to assist in providing testimony and information to state legislatures.<sup>3</sup>

During the last decade, technology and interest in remote car starters has increased to the extent that they are often integrated with car alarm/anti-theft devices and are now available from a wide selection of retailers at very moderate prices. For example, we found one such device, a "car-alarm, remote starter combo, with keyless entry," advertised for sale through an Internet retailer for \$74.99.<sup>4</sup> Most automobile sales and repair businesses install remote starters, as do a number of electronics specialty shops. According to Mr. West, although installation is not simple, it does not require a trained technician, and his company offers assistance to consumers who wish to install the devices themselves.

Given the numerous retailers and installers of remote car starters in Alaska and elsewhere, we cannot accurately estimate how many vehicles in Alaska are equipped with them. It is fair to say that substantially more vehicles have them now than when the State promulgated its current regulation regarding unattended vehicles.<sup>5</sup> Additionally, the General Motors Corporation recently announced plans to offer remote vehicle starters as factory options on certain 2004 models, a development some believe may spur other automakers to follow.<sup>6</sup>

Some municipalities across the country pass ordinances regarding the length of time a vehicle can sit at idle. In addition to addressing safety concerns, another purpose of these ordinances is to reduce vehicle emissions—a significant contributor to air pollution. In Waterloo, Ontario, residents recently formed a task force to investigate the prevalence of vehicle idling and to assess drivers' attitudes about placing limits on the amount of time they are allowed to let their vehicle idle. Natural Resources Canada recommends that vehicles be idled for no longer than 10 seconds—idling longer than 10 seconds causes vehicles to burn gas almost twice as fast as driving, and produces almost double the amount of toxic emissions per second than a vehicle moving at average speed. Rather than to create a bylaw to curtail vehicle idling, the task force decided to run a public education campaign, which they hope will increase awareness of the problem and convince residents to examine and perhaps alter their idling habits.<sup>7</sup>

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I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

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<sup>3</sup> Doug Johnson is the legislative liaison for the CEA. (703) 907-7686.

<sup>4</sup> The auto device was offered through [commandocaralarms.com](http://commandocaralarms.com).

<sup>5</sup> 13 AAC 02.480 prohibits leaving a running vehicle unattended.

<sup>6</sup> Jim Mateja, "GM to Make Remote Starter Factory Option," *Chicagotribune.com*, November 11, 2002. We include a copy of this article as Attachment B.

<sup>7</sup> Lori Strothard, "Stop Idling Cars and Save Both Gas and the Environment," *TheReccrd.com*, December 26, 2002. We include a copy of this article as Attachment C.

## **Attachment A**

**"Remote Car Starter Sales Expected to Rise Again in 2000,"  
DesignTech International, Incorporated, July 10, 2000**

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July 10, 2000  
For Immediate Release

## **Remote Car Starter Sales Expected to Rise Again In 2000**

**F**rom their once small percentage of sales in the automotive aftermarket, remote car starter sales are now increasing faster than sales of many other products in the aftermarket industry. Remote car starters have shed their old image as a seasonal, luxury, or hard-to-find product to become a popularly demanded item in all types of outlets from automotive parts shops to discount warehouse clubs. Manufacturers and retailers have taken notice of the high potential sales of remote car starters and will be marketing them more seriously this year.



Remote car starters are no longer just a last minute gift holiday gift.

Nearly all remote car starter manufacturers are expecting double-digit sales increases for remote starters this year. DesignTech International expects remote car starter sales to jump about 50% this year.

Marketing strategies for remote car starters are rapidly changing to support the expanding market. For many retailers, remote starters are one of the hottest selling automotive products in the fourth quarter. However, one of the most significant changes in marketing strategies is that remote car starters are no longer considered a seasonal