

1999 DRAFTING REQUEST

Bill

Received: **12/09/1998**

Received By: **nelsorp1**

Wanted: **As time permits**

Identical to LRB:

For: **Roger Breske (608) 266-2509**

By/Representing: **Vaughn Vance**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Courts - civil procedure
Courts - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Structured settlement model protection act

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	nelsorp1 02/01/1999	chanaman 02/11/1999	lpaasch 02/11/1999	_____	lrb_docadmin 02/11/1999		
/P2	nelsorp1 04/07/1999	chanaman 04/07/1999	hhagen 04/08/1999	_____	lrb_docadmin 04/08/1999		
/P3	nelsorp1 04/12/1999	chanaman 04/13/1999	martykr 04/14/1999	_____	lrb_docadmin 04/14/1999		
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Extra Copies: P J H

Pre Topic:

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Structured settlement model protection act

2/19 Phone conference with
Greg Wilman & Pete Christiansen
New language will be sent

Instructions:

See attached

RPV - check to see if the definitions in
bill are of terms used in the bill,
as IP2

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	nelsorp1 02/1/99	chanaman 02/11/99	lpaasch 02/11/99	_____	lrb_docadmin 02/11/99		

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Do not submit return to RPV
Submit
IP3

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1/?	nelsorp1	cmm PL 2/10	2-11 LP Jm 4/13	2-11 LP JS	<u>Submitted</u> yes		

FE Sent For:

<END>

ROGER BRESKE

STATE SENATOR

12th District

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MEMORANDUM

December 8, 1998

TO: K. Scott Hubli, Attorney
Legislative Reference Bureau
FR: Vaughn L. Vance for
State Senator Roger Breske
RE: Structured Settlement Protection Act

Roger is requesting that legislation be drafted that would safeguard beneficiaries of structured settlements by requiring that a court or administrative authority authorize any lump sum purchase thereof. Attached is a copy of the National Structured Settlements Trade Association Model Act which Roger would like to implement.

Thank you for your assistance with this matter. Please feel free to give me a call at 266-2509 should you have any questions or concerns regarding this matter.

November 1, 1998

MODEL STRUCTURED SETTLEMENT PROTECTION ACT SECTION-BY-SECTION ANALYSIS

The following is a section-by-section analysis of the Model Structured Settlement Protection Act (the "Model Act") developed by the National Structured Settlements Trade Association ("NSSTA"), a non-profit association of insurers, insurance brokers, attorneys and others dedicated to promoting the use of structured settlements to resolve tort and workers' compensation claims involving serious physical injuries.

The Model Act protects parties to structured settlements by assuring that the factoring companies (also referred to as "settlement purchasers") that offer to buy structured settlement payments from injury victims can do so only in cases of genuine hardship and in accordance with strict safeguards.

The Model Act should be distinguished from draft legislation of the same name proposed by the National Association of Settlement Purchasers ("NASP"), a trade organization representing factoring companies. NASP's proposed legislation attempts to legitimize factoring company purchases from injury victims, while offering far less protection than the Model Act provides for injury victims and no protection for the other parties to structured settlements.

The analysis below refers to the November 1, 1998 version of the Model Act, which has been modified in minor respects to harmonize it with the federal penalty tax legislation introduced in the 105th Congress as H.R. 4314 and S. 2543. An earlier version of the Model Act has been enacted in Kentucky as Ky. House Bill No. 312 (to be codified at Ky. Rev. Stat. Ann. § 454.1-454.4). Legislation derived from the Model Act has been enacted as Connecticut Public Act No. 98-238.

SECTION 1. **CONDITIONS TO TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.**

This section is the basic, operative provision of the Model Act. It specifies that a transfer of structured settlement payment rights is not effective and parties obligated to make structured settlement payments cannot be required to make such payments to any transferee (*i.e.*, a factoring company) unless the transfer has been approved in advance by a court or a responsible administrative authority based on its express findings that five statutory conditions have been satisfied. Those conditions are as follows:

- (a) **Compliance with Applicable Law.** A transfer must comply with the Model Act itself and must not contravene any other applicable law. If, for example, a proposed transfer involves payments under a

the issuer of the annuity contract that funds the settlement and the structured settlement obligor (*i.e.* the annuity contract owner, which normally is an affiliate of the annuity issuer, a liability insurer or a large-self insured enterprise). Under this subsection of the Model Act, the approval of the annuity issuer and the settlement obligor would not be required if (i) all of the other interested parties approve a transfer, and (ii) a favorable tax determination (protecting the tax treatment of other interested parties) is in effect.

- (f) **Tax Reporting/Withholding Information.** To enable the annuity issuer to comply with federal tax reporting and withholding requirements, the transferee must have provided written notice of its name, address and taxpayer identification number.

SECTION 2. DEFINITIONS.

This section defines many of the terms used in the Model Act. Following are summaries of the definitions of key terms:

“Applicable law” is defined to mean United States federal law, the laws and equity principles of the state enacting the Model Act, and the laws of any other jurisdiction (i) where any of the interested parties is domiciled; (ii) under whose law the structured settlement agreement was approved; or (iii) whose courts heard the claim giving rise to the structured settlement agreement. (The jurisdictions referred to in clauses (ii) and (iii) will normally be the same, but in some cases a court in State A may, in approving a structured settlement, have had occasion to apply the law of State B.)

“Discounted present value” means the present value of future settlement payments, as determined by discounting the payments to their present value using the “Applicable Federal Rate” that is published each month by the Internal Revenue Service for the express purpose of establishing (for estate tax and other purposes) the present value of future annuity payments.

“Favorable tax determination” is defined to mean any of several listed categories of tax authorities that “definitively establishes” that a proposed transfer of structured settlement payment rights will not affect the federal income tax treatment of the structured settlement for parties other than the payee.

“Federal hardship standard” is defined to mean a federal standard for transfers of structured settlement payment rights, based on findings regarding the payee’s needs. To qualify under this definition, any such

standard would have to be set forth in the Internal Revenue Code or in a Treasury Regulation adopted pursuant to the Internal Revenue Code.

“Independent professional advice” is defined to mean advice from a licensed professional advisor (*e.g.*, an attorney, CPA or actuary) (i) who is engaged by a payee to advise the payee concerning the legal, tax and financial implications of a proposed transfer of structured settlement payment rights; (ii) who is not affiliated with or compensated by the transferee; and (iii) whose compensation will not be affected based on whether the transfer occurs or does not occur. The strict standards in this definition are designed to assure, and to encourage courts and responsible administrative authorities to satisfy themselves, that payees receive truly disinterested advice regarding transactions which many payees would be well-advised to avoid.

“Responsible administrative authority” is defined to mean any government authority having exclusive jurisdiction over the claim giving rise to a structured settlement. Examples of such authorities include workers’ compensation boards (in those few states whose workers’ compensation statutes permit assignments of payments under workers’ compensation settlements) and the federal Vaccine Compensation Act claims facility.

“Structured settlement payment rights” means rights to receive payments under a structured settlement, where (i) the payee [or any other interested party], [the settlement obligor or annuity issuer] is domiciled in the state enacting the Model Act; (ii) the underlying structured settlement agreement was approved by a court or responsible administrative authority in that state; or (iii) the underlying claim was heard in the courts of that state. This definition, including in particular the alternative formulations of clause (i), establishes the territorial effect of the Model Act as enacted in any particular State.

“Transfer” is defined to mean any sale, assignment, pledge or encumbrance made by a payee for consideration. The definition extends to pledges and encumbrances as well as outright assignments, because structured settlement factoring transactions, although generally structured as purchases of structured settlement payment rights, can be (and sometimes are) recharacterized as loans secured by pledges of the same payment rights. The safeguards provided under the Model Act should apply to these transactions regardless of how they are labeled.

“Terms of the structured settlement” is defined to include the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement (*i.e.*, a qualified assignment under Internal Revenue Code § 130), and any order of a court or a responsible administrative

authority authorizing or approving the structured settlement. Thus, in cases involving minors or incompetents or in which a court or a responsible administrative authority otherwise approved the underlying structured settlement, the terms of the settlement would include the terms of the applicable court (or administrative authority) order.

SECTION 3. JURISDICTION; PROCEDURE FOR APPROVAL OF TRANSFERS.

This section spells out the mechanics for approval of a transfer of structured settlement payment rights.

Subsection (a) confirms that the courts of a state enacting the Model Act will have non-exclusive jurisdiction over applications for approval of transfers under the Model Act. Jurisdiction is non-exclusive, because there are situations in which courts in one state (which may or may not yet have enacted the Model Act) may be asked to consider applications for approval of transfers of structured settlement payment rights under the laws of another state. For example, a payee domiciled in State A may seek approval of a transfer of payment rights under a structured settlement that was originally approved by a court or a responsible administrative authority in State B. If State B has enacted the Model Act, the effectiveness of the transfer, for purposes of the laws of State B, would depend on whether the transfer satisfies the conditions of Section 1 of the Model Act. That determination might be made by a court in State B, but it might equally well be made by a court in State A.

Subsection (b) specifies the manner in which interested parties must be notified prior to any hearing on an application for authorization for a transfer of structured settlement rights. Optional language in subsection (b) provides for notice to the Attorney General, the Consumer Affairs Commissioner, the Insurance Commissioner or any other State official who should be afforded the opportunity to be heard on applications under the Model Act. Subsection (c) confirms that any such state officials designated to receive notices will have standing to appear and be heard on Model Act applications.

SECTION 4. NO WAIVER; NO PENALTIES.

This section prohibits waivers of the provisions of the Model Act and prohibits factoring companies from charging fees or penalties or otherwise penalizing payees whose proposed transfers do not meet the conditions of the Model Act.

SECTION 5. CONSTRUCTION.

This section clarifies that the Model Act does not authorize any transfer of structured settlement payment rights that would contravene any other applicable law, nor does the Model Act give legal effect to any transfer that is otherwise invalid. If, for example, a payee proposes to transfer structured settlement payment rights under a workers' compensation settlement and the applicable workers' compensation statute prohibits assignment of such payments, Section 5 confirms that the Model Act does not supersede that prohibition. Similarly, if a payee proposes to transfer structured settlement payment rights in violation of contract provisions that effectively prohibit or nullify such transfers, the Model Act does not supersede those contract provisions. The Model Act is intended only to impose safeguards in factoring transactions that are otherwise permissible under applicable law; the Model Act does not expand the range of permissible factoring transactions.

SECTION 6. EFFECTIVE DATE.

This section provides for the Model Act to take effect at a stated interval after its enactment and negates any implication that transfers occurring prior to the effective date are necessarily valid.

structured settlement of a workers' compensation claim and the applicable workers' compensation statute invalidates assignments of workers' compensation benefits, the transfer would "contravene other applicable law" and should not be approved, whether or not other conditions are satisfied.

- (b) **Disclosure of Key Terms.** The transferee must have provided the payee with a detailed disclosure statement spelling out the key financial terms of the proposed transfer, including the discounted present value of the payments to be transferred; the amounts of all commissions, fees and costs payable by the payee or deductible from the amount otherwise payable to the payee; the net amount payable to the payee; and the amount of any penalty payable by the payee if the payee breaches the transfer agreement.
- (c) **Imminent Hardship/Federal Hardship Standard.** The payee must have established that the transfer qualifies under a hardship standard. A proposed transfer meets the hardship standard contained in the Model Act if the transfer "is necessary to enable the payee" and/or the payee's dependents "to avoid imminent financial hardship" and the transfer itself "should not be expected to subject the payee, the payee's dependents, or both to undue financial hardship in the future."

In view of the likelihood that Congress will enact a federal hardship standard that will determine the tax impact of structured settlement factoring transactions, the Model Act provides that if, at the time a payee and a transferee enter into a transfer agreement, a federal hardship standard is in effect, that standard will automatically govern. Under the proposed House and Senate bills (and under the related penalty tax proposal included in the Administration's Fiscal Year 1999 Budget), the federal hardship standard would require a finding "that the extraordinary, unanticipated, and imminent needs of the structured settlement recipient or his or her spouse or dependents render [the proposed] transfer appropriate."

- (d) **Independent Professional Advice.** The payee must have received independent professional advice concerning the legal, tax and financial implications of the proposed transfer.
- (e) **Protection of Other Parties to the Structured Settlement.** If the proposed transfer would violate the terms of the structured settlement, the transfer must have been approved in writing by each interested party and by any court or government authority that previously approved the structured settlement. As explained below, the "interested parties" with respect to any structured settlement include

November 1, 1998

MODEL STRUCTURED SETTLEMENT PROTECTION ACT

SECTION 1. CONDITIONS TO TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS. 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 authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority, based on express findings by such court or responsible administrative authority that --

- (a) the transfer complies with the requirements of this Act and will not contravene other applicable law;
- (b) not less than ten (10) days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 points, setting forth --
 - (i) the amounts and due dates of the structured settlement payments to be transferred;
 - (ii) the aggregate amount of such payments;
 - (iii) the discounted present value of such payments, together with the discount rate used in determining such discounted present value;
 - (iv) the gross amount payable to the payee in exchange for such payments;
 - (v) an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing 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;

(vi) the net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in subparagraph (v) of this paragraph;

(vii) the quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and

(viii) the amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(c) the payee has established that the transfer is necessary to enable the payee, the payee's dependents, or both, to avoid imminent financial hardship, and the transfer should not be expected to subject the payee, the payee's dependents, or both, to undue financial hardship in the future; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a federal hardship standard was in effect, then, in lieu of the foregoing finding, the court or responsible administrative authority must make an express finding that the transfer qualifies under such federal hardship standard;

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

(e) if the transfer would contravene the terms of the structured settlement:

(i) the transfer has been expressly approved in writing by --

(A) each interested party; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a favorable tax determination was in effect, then the approval of the annuity issuer and the structured settlement obligor shall not be required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

(B) any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this Act, which previously approved the structured settlement; and

(ii) signed originals of all approvals required under subparagraph (i) of this paragraph have been filed with the court or responsible administrative authority from which authorization of the transfer is sought under this Act, and originals or copies have been furnished to all interested parties; and

(f) 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 such notice with the court or responsible administrative authority.

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

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

(b) "applicable law" means --

(i) the federal laws of the United States;

(ii) the laws of this State, including principles of equity applied in the courts of this State; and

(iii) the laws of any other jurisdiction --

(A) which is the domicile of the payee or any other interested party;

(B) under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or

(C) in whose courts a settled claim was pending when the parties entered into a structured settlement agreement;

(a) "dependents" include 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 alimony;

(b) "discounted present value" means the fair present value of future payments, as 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;

(c) "favorable tax determination" means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities that definitively establishes that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the payee, will not be affected by such transfer:

(i) a provision of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time, ~~United States Treasury regulations adopted pursuant thereto;~~

(ii) a revenue ruling or revenue procedure issued by the United States Internal Revenue Service; or

(iii) a private letter ruling by the United States Internal Revenue Service with respect to such transfer; or

(iv) a decision of the United States Supreme Court or a decision of a lower federal court in which the United States Internal Revenue Service has acquiesced;

(d) "federal hardship standard" means a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payees' needs, as contained in the ~~United States Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;~~

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

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

(ii) who is not in any manner affiliated with or compensated by the transferee of such transfer; and

(iii) whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(f) "interested parties" means, with respect to any structured settlement, the payee, any beneficiary 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) "payee" means an individual who is receiving tax free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(h) "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;

(i) "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;

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

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

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

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

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

(i) the payee *[for any other interested party] [, the settlement obligor or the annuity issuer]* is domiciled in this State;

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

(iii) the settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(o) "transfer" means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration; and

(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 approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement;

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

SECTION 3. JURISDICTION: PROCEDURE FOR APPROVAL OF TRANSFERS.

(a) The *[identify appropriate state courts of original jurisdiction]* shall have non-exclusive jurisdiction over any application for authorization under Section 1 of this Act of a transfer of structured settlement payment rights.

(b) Not less than **[twenty (20)]** days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under Section 1 of this Act, the transferee shall file with the court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties, and on *[insert appropriate reference to the Office of the Attorney General, the Consumer Affairs Commissioner, the Insurance Commissioner or other State official who may appropriately be vested with discretionary authority to be heard in proceedings under this Act]* a notice of the proposed transfer and the application for its authorization, including in 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 1(b) of this Act;
- (iv) 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
- (v) 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.

(c) The *[refer to the same state official(s) identified in §§ 3(b) above]* shall have standing to raise, appear and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Act.

SECTION 4. NO WAIVER: NO PENALTIES.

- (a) The provisions of this Act may not be waived.
- (b) 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 based on any failure of such transfer to satisfy the conditions of Section 1 of this Act.

SECTION 5. CONSTRUCTION. Nothing contained in this Act shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law.

SECTION 6. EFFECTIVE DATE. This Act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after [the [thirty-first (31st)] 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 effective. . . -



① ?

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** ^{gen cat.} **relating to: structured settlement agreements.**

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 **SECTION 1.** Chapter [✓]787 of the statutes is created to read:

3 **CHAPTER 787 STRUCTURED SETTLEMENTS**

4 **787.01 Definitions.** In this chapter:

5 [✓](1) "Annuity issuer" means an insurer that has issued an insurance contract
6 used to fund periodic payments under a structured [✓]settlement.

7 [✓](2) "Applicable law" means the law of the United States, the law of this state
8 and the law of all of the following jurisdictions:

9 [✓](a) Where the payee or any other interested party is domiciled.

10 (b) Where a structured settlement agreement was approved.

1 (c) Where a settled claim was pending in a court when the parties entered into
2 a structured settlement agreement.

3 (3) "Dependent" means the spouse and minor children of a payee and all other
4 persons for whom the payee is legally obligated to provide support, maintenance or
5 alimony.

6 (4) "Discounted present value" means the fair present value of future payments
7 as determined by discounting the payments to the present time by using the most
8 recently published applicable federal rate for determining the present value of an
9 annuity, as issued by the United States internal revenue service.

****NOTE: This definition seems to leave something out. Do you multiply the applicable federal rate by the total value of the annuity, or by some other number? Why the "applicable" federal rate; is there more than one rate for annuities issued by the IRS?

10 (5) "Favorable tax determination" means a decision by an appropriate tax
11 authority that the federal income tax treatment of a structured settlement and of any
12 qualified assignment agreement to the interested parties of that settlement and
13 agreement, other than to the payee, will not be affected by a transfer of the structured
14 settlement payment rights.

→ ****NOTE: The definition as suggested included language regarding tax authorities, which I removed and put in the bill as another definition. See ~~subsection~~ (19).

15 (6) "Federal hardship standard" means the federal standard applicable to the
16 transfers of structured settlement payment rights based on the findings of a court
17 of competent jurisdiction or of a responsible administrative authority regarding the
18 payee's needs, as adopted under the internal revenue code.

→ add hyper
****NOTE: I don't understand this provision. Is a court (or responsible administrative authority) to determine the federal standard or the payee's needs or will the court use the ~~the~~ IRS-developed standard to determine if the payee meets that standard? Or, is the IRS adopting some kind of standard based on a payee's needs, which the court must merely apply to the facts of the case?

1 (7) "Governmental unit" means the United States; the state; any county, city,
2 village or town; or any political subdivision, department, division, board or agency
3 of the United States, the state or any county, city, village or town.

4 (8) "Independent professional advice" means advice provided by an attorney,
5 certified public accountant, actuary or other licensed professional adviser if the
6 person providing the advice meets all of the following criteria:

7 (a) Is requested by the payee to render advice concerning the legal, tax and
8 financial implications of a transfer of structured settlement payment rights.

****NOTE: This limit requires the person to provide all three types of advice, but generally only an attorney is permitted to render legal advice. Should "or" be used instead of "and"?

9 (b) Is not affiliated with or compensated by the transferee of the structured
10 settlement payment rights.

11 (c) Receives compensation for rendering advice concerning the legal, tax and
12 financial implications of a transfer of structured settlement payment rights that is
13 not affected by the transfer occurring or not occurring.

****NOTE: This definition could be interpreted to include doctors, social workers and other persons who are licensed and often give financial and related advice as part of their profession. Don't you want to narrow this in some way?

14 (9) "Interested party" means the payee, any beneficiary designated under the
15 annuity contract to receive payments following the payee's death, the annuity issuer,
16 the structured settlement obligor and any other person who has continuing rights
17 or obligations under the structured settlement.

→ ****NOTE: Are the payee's dependents included in the last part of this definition? If not, should they be listed, especially the spouse in a community property state?

18 (10) "Internal revenue code" has the meaning given in s. 71.01 (6).

19 (11) "Payee" means the individual who is receiving tax free money payments
20 for injuries under a structured settlement.

insert hyphen

****NOTE: I left out the last part of the sentence because it seemed unnecessary to the draft. I also changed “damage payments” to “money payments for injuries”. OK?

1 (12) “Qualified assignment agreement” means an agreement providing for a
 2 qualified assignment within the meaning of section 130 of the internal revenue code.

3 (13) “Responsible administrative authority” means any governmental unit
 4 vested by law with exclusive jurisdiction over the settled claim resolved by a
 5 structured settlement.

→ ****NOTE: This applies to any governmental unit; federal, state, county or local. See
 my definition of governmental unit in sub. (7). OK? *that's lost a checkmark*

6 (14) “Settled claim” means the original tort claim, worker’s compensation
 7 claim or other claim for money damages that was resolved by a structured
 8 settlement.

****NOTE: The model act only mentioned tort or worker’s compensation claims, but
 could there be other claims that involved large money damages, such as a civil rights or
 contract claim? I added “other claim for money damages”. OK?

9 (15) “Structured settlement” means an arrangement for the periodic payment ✓
 10 of money for personal injuries that was established by the settlement or a court
 11 judgment ✓ that resolved a tort claim, worker’s compensation claim or other claim for
 12 money damages.

→ ****NOTE: See note for subsection (14). I changed the “payment of damages” to the
 “payment of money” to clarify what was actually going on. OK?

13 (16) “Structured settlement agreement” means the agreement, judgment, ✓
 14 stipulation or release that includes the terms of a structured settlement, including
 15 the rights of the payee to receive periodic payments.

****NOTE: I don’t think we need the phrase after the last comma, since the definition
 of “structured settlement” includes the periodic payment of money.

16 (17) “Structured settlement obligor” means the person who has the obligation
 17 to make continuing periodic payments to the payee under a structured settlement
 18 agreement or under a qualified assignment agreement.

1 (18) “Structured settlement payment right” means the right to receive periodic
2 payments and any related lump sum payments under a structured settlement, either
3 from the structured settlement obligor or the annuity issuer, if one of the following
4 applies:

5 (a) The payee or other interested party is domiciled of this state.

6 (b) The structured settlement agreement was approved by a court or
7 responsible administrative authority in this state.

8 (c) The settled claim was pending before a court in this state when the parties
9 entered into the structured settlement agreement.

 ****NOTE: Something seems to be missing in this definition. Why does the existence
of the right to receive periodic payments under a structured settlement agreement
depend on where the payee or party resides, unless the right to enforce that right in this
state is what this definition is trying to establish. If so, the language proposed is
incomplete, especially in view of the definition of “transfer agreement” below, which does
not seem to require state jurisdiction.

10 (19) “Tax authority” means each of the following:

11 (a) A provision of the internal revenue code or a regulation adopted under that
12 code.

13 (b) A revenue ruling or revenue procedure issued by the internal revenue
14 service.

15 (c) A private letter ruling issued by the internal revenue service.

16 (d) A decision of the United States supreme court or a decision of a lower federal
17 court in which the internal revenue service has acquiesced.

18 (20) “Terms of a structured settlement” includes the terms of the structured
19 settlement agreement, the annuity contract, any qualified assignment agreement
20 and any order or approval of a court, a responsible administration authority or other
21 governmental unit authorizing or approving the structured settlement.

1 (21) "Transfer" means the sale, assignment, pledge or other form of alienation
2 or encumbrance of a right for consideration.

3 (22) "Transfer agreement" means the agreement providing for the transfer of
4 of structured settlement payment rights from a payee to a transferee.

5 **787.02 Conditions necessary to transfer structured settlement**
6 **payment rights.** (1) A structured settlement obligor or annuity issuer shall not be
7 required to make any payment to any transferee under a transfer agreement unless
8 the transfer agreement has been authorized in advance by a final order of a court or
9 a responsible administrative authority.

10 (2) A court or responsible administrative authority may authorize a transfer
11 agreement only if the court or authority makes express finding that all of the
12 conditions in sub. (3) to (9) are met.

13 (3) The transfer agreement complies with the requirements under this chapter.

14 (4) Not less than ten days before the date on which the payee first incurs any
15 obligation with respect to the transfer, the transferee provides the payee with a
16 disclosure statement written in bold print, in a type size that is no smaller than 14 points.

17 (5) The disclosure statement under sub. (4) includes all of the following:

18 (a) The amounts and due dates of the structured settlement payments to be
19 transferred.

20 (b) The aggregate amount of the structured settlement payments to be
21 transferred.

22 (c) The discounted present value of the structured settlement payments to be
23 transferred.

24 (d) The discount rate used in determining the discounted present value of the
25 structured settlement payments to be transferred.

1 (e) The gross amount payable to the payee in exchange for the structured
2 settlement payments to be transferred.

3 (f) An itemized listing of charges, commissions, costs, expenses and fees,
4 including administrative fees, application fees, broker commissions, closing costs,
5 filing fees, legal fees, notary fees and processing fees, payable by the payee or
6 deductible from the gross amount otherwise payable to the payee in exchange for the
7 structured settlement payments being transferred.

8 (g) The net amount payable to the payee after the deduction of all of the
9 amounts described under par. (f).[✓]

10 (h) The number, expressed as a percentage, obtained by dividing the net
11 payment amount under par. (g)[✓] by the discounted present value of the structured
12 settlement payments to be transferred under par. (c).[✓]

13 (i) The amount of any penalty and the aggregate amount of any other liquidated
14 damages that the payee would be required to pay in the event of the payee's breach
15 of the transfer agreement.

16 (6) The payee has established to a court or the responsible administrative
17 authority that one of the following applies:

18 (a) If a federal hardship standard is not in effect on the effective date of the
19 transfer agreement, the transfer agreement is necessary to enable the payee, the
20 payee's dependents, or both, to avoid imminent financial hardship and is not
21 expected to subject the payee, the payee's dependents, or both, to undue financial
22 hardship in the future.

23 (b) If a federal hardship standard is in effect on the effective date of the transfer
24 agreement, the transfer agreement qualifies under the federal hardship standard.

1 (7) The payee has received independent professional advice regarding the
2 legal, tax and financial implications of the transfer agreement.

3 (8) If the transfer agreement would contravene the terms of a structured
4 settlement, all of the following conditions are met:

5 (a) The transfer agreement has been expressly approved in writing by each
6 interested party. If, at the time that the payee and the transferee entered into the
7 transfer agreement, a favorable tax determination was in effect, then the approval
8 of the annuity issuer and the structured settlement obligor is not required under this
9 paragraph if all of the other interested parties approve the transfer agreement and
10 waive any rights to require that the transferred payments be made to the payee in
11 accordance with the terms of a structured agreement.

12 (b) The transfer agreement has been expressly approved in writing by the court
13 or governmental unit that previously approved the structured settlement, other than
14 the court or responsible administrative authority from which authorization of the
15 transfer agreement is sought under this section.

16 (c) Signed originals of all approvals required under paragraphs (a) and (b) have
17 been filed with the court or responsible administrative authority from which
18 authorization of the transfer agreement is sought under this section and copies of
19 those approvals have been provided to all the interested parties.

20 (9) The transferee has given written notice of the transferee's name, address
21 and taxpayer identification number to the annuity issuer and the structured
22 settlement obligor and has filed a copy of that notice with the court or responsible
23 administrative authority that has been asked to authorize the transfer agreement.

1 **787.03 Procedure for authorizing the transfer of structured settlement**
 2 **payment rights.** (1) The circuit court shall have non-exclusive jurisdiction over
 3 any application for authorization of a transfer agreement under s. 787.02 (2).

→ ****NOTE: Do you want to add that the responsible administrative authority also
 → has non-exclusive jurisdiction, to clarify what agencies have jurisdiction to authorize the
 transfer agreement? See s. 787.02 (2), which includes them both. Why is authorizing used
 instead of approving?

4 (2) Not less than 20 days before a scheduled hearing before a court or
 5 responsible administrative authority on any application for authorization of a
 6 transfer agreement, the transferee shall file a notice of the proposed transfer and an
 7 application for authorization of the transfer agreement with the court or responsible
 8 administrative authority.

9 (3) Not less than 20 days before a scheduled hearing before a court or
 10 responsible administrative authority on any application for authorization of a
 11 transfer agreement, the transferee shall serve notice of the proposed transfer and an
 12 application for authorization of the transfer agreement on any other governmental
 13 unit that previously approved the structured settlement and on all interested
 14 parties.

 ****NOTE: The model act suggests that the notice also be served on other appropriate
 state agencies, such as the insurance commissioner and attorney general, but does not
 require that service. The model act gives those agencies served standing to appear and
 be heard at the authorization hearing. I do not know which, if any, state agency should
 be listed here and given party status. Any suggestions?

15 (4) The notice under sub. (3) shall include all of the following:
 16 (a) A copy of the transferee's application.
 17 (b) A copy of the proposed transfer agreement.
 18 (c) A copy of the disclosure statement required under s. 787.02 (4).
 19 (d) A statement that any interested party may support, oppose or otherwise
 20 respond to the transferee's application, either personally or by counsel, by

1 submitting written comments to the court or responsible administrative authority
2 or by participating at the hearing.

3 (e) A statement of the time and place of the hearing and of the manner in which
4 and time by which written responses to the transferee's application shall be filed in
5 order to be considered by the court or responsible administrative authority.

6 (5) Interested parties may file written responses to the transferee's application
7 with the court or responsible administrative authority within 15 days after receipt
8 of the notice under sub. (3).

9 **787.04 Waiver.** The rights and responsibilities created under this chapter may
10 not be waived.

11 **787.05 Exemption from penalties and fees.** A payee who proposes to make
12 a transfer of structured settlement payment rights shall not be required to pay the
13 proposed transferee any penalty, forfeit any application fee or other payment made
14 to the proposed transferee or incur any liability to the proposed transferee as the
15 result of the failure of the proposed transfer agreement to meet the conditions under
16 s. 787.02.

17 **787.06 Construction of chapter.** This chapter shall not construed to
18 authorize any transfer of structured settlement payment rights in contravention of
19 any applicable law or to give effect to any transfer of structured settlement payment
20 rights that is invalid under any applicable law.

21 **SECTION 2. Initial applicability.**

22 (1) This act first applies to the transfer of structured settlement rights under
23 a transfer agreement entered into on the effective date of this subsection.

24 **SECTION 3. Effective date.**

1 (1) This act takes effect on the first day of the 6th month beginning after
2 publication.

****NOTE: The model act appears to have one provision for the initial applicability and the effective date. I delayed the effective date for 6 months. Is that too long? I did not include the proposed language about the initial applicability-effective date sections implying anything about transfers agreed to before the effective date. Those provisions never imply anything about previous behaviors unless they are specifically mentioned, such as the counting of previous offenses when determining future penalties.

3

(END)

Nelson, Robert

From: ehost@epnet.com
Sent: Wednesday, March 10, 1999 3:05 PM
To: Nelson, Robert
Subject: Documents Requested from EBSCOhost

HOUSE CONSIDERS STRUCTURED SETTLEMENT BILL

The House Ways and Means Committee is considering federal legislation to eliminate the market for purchasing the structured settlement payment streams of injured persons.

H.R. 4314 was introduced in Congress in July. It is sponsored by 16 committee members. Rep. E. Clay Shaw Jr., R-Fla., is the originating sponsor.

Rep. Shaw, who was vacationing and could not be reached for comment, has accused factoring companies which pay lump sums to parties in return for rights to future payments under their structured settlements--of "directly undermin[ing] the policy of the structured settlement tax rules."

"The Structured Settlement Protection Act of 1998 would ... eliminate the market for this service and protect the victim from exploitation," Rep. Shaw said in a statement.

In July, a Kentucky bill sponsored by State Rep. Harry Moberly, D-Richmond, became law. It requires claimants to get a court order before a structured settlement can be sold to a secondary market.

Rep. Moberly did not return a phone call to National Underwriter before press time. But published reports in Kentucky said lawmakers were struck by the case of a woman who sold \$60,000 worth of payments for \$9,000.

Bobby Elliott, an attorney in Lexington, Ky., testified earlier this year before the state legislature in support of the Moberly bill. "My testimony focused on the fact that these [factoring companies] did not actually divulge the present value of the structure," meaning the companies did not tell recipients how much the property was worth versus how much they would get, he said.

H.R. 4314 "will stop a lot of these deals from going through," said Scott Spear, Rep. Shaw's chief of staff.

According to Mr. Spear, the federal bill would impose on factoring companies a 50 percent excise tax on the difference between the total amount of the structured settlement payments purchased by the factoring company and the heavily discounted lump sum paid to the injured victim, unless there is a court order finding unanticipated and extraordinary hardship.

Michael Goodman, executive vice president of J.G. Wentworth, a Philadelphia-based factoring company, said the bill is less about taxes and more about enforcing structured settlement payments.

"The 50 percent excise tax is a joke," Mr. Goodman said. "What they want to do is force people to spread out [their payments] over a period of time. In all fairness, insurance companies should offer lump-sum payments in the beginning."

Factoring companies have come under fire recently for allegedly high-pressure sales tactics and questionable legal maneuvers that have caused many with personal injury settlements to sell future settlements for smaller lumpsum payments, according to Randy Dyer, executive vice president of the National Structured Settlements Trade Association in Washington.

"Factoring companies created their own market through massive advertising," Mr. Dyer said.

Mr. Dyer charged that J.G. Wentworth obtains lists of structured settlement recipients, sells by phone from about 200 offices six days a week, and advertises on daytime television "where injured people who don't work would be watching."

"These companies bore in on people who have mental illness or drug problems," Mr. Dyer said. "And they have them sign contracts that are Byzantine in their complexity."

Mr. Dyer said factoring companies receive 30 percent to 50 percent or more of the money when purchasing structured settlement payments.

Mr. Goodman of J.G. Wentworth denied that his company performs outbound telemarketing and said, "we have people answering phones." He also denied the company markets to unwary consumers.

"Nobody targets injured people, mentally ill people, drug addicts or people sitting at home," Mr. Goodman said. "It's an outright lie."

In addition to Kentucky, a similar state law passed earlier this year in Illinois.

~~~~~

By TONY ATTRINO

TONY ATTRINO IS A STAFF WRITER FOR NU'S PROPERTY & CASUALTY/RISK & BENEFITS MANAGEMENT EDITION.

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Item Number: 1078621

## Nelson, Robert

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**From:** ehost@epnet.com  
**Sent:** Wednesday, March 10, 1999 2:59 PM  
**To:** Nelson, Robert; mtyykila@acad.uwsuper.edu  
**Subject:** Documents Requested from EBSCOhost

### STATE, FEDERAL BILLS AIM TO RESTRICT SETTLEMENT BUYING

WASHINGTON -- A two-tiered national campaign is under way to better protect injury victims from selling their structured settlement rights to companies that buy them for sharply discounted lump sums.

Structured settlements are voluntary agreements that provide long-term financial protection for injury victims. They are intended to protect the victims and their families against the loss or dissipation of lump-sum recoveries.

The targeted transactions involve specialty finance companies that make significantly discounted cash payments -- typically lump sums -- to settlement recipients in exchange for all or some of the periodic payments, which are often paid through an annuity sold by a life/health insurer.

At the state level, the American Insurance Assn. is leading a campaign urging legislators in at least 18 states to increase the regulation of settlement purchases by so-called "factoring" companies. Such regulation would require advance court approval of such proposed deals, as well as increased disclosure of the financial details.

According to the proposal, crafted with the help of the Washington-based National Structured Settlement Trade Assn., a state court could approve a settlement purchase in cases of imminent financial hardship as long as the transaction did not violate other applicable laws, such as most states' bans on assigning workers comp settlements.

In addition, the proposal requires that the recipient receive independent professional advice about the transaction.

The topic also is being addressed at the federal level by Rep. E. Clay Shaw Jr., R-Fla. Rep. Shaw and 10 co-sponsors -- both Republicans and Democrats -- recently reintroduced a bill, H.R. 263, that would impose upon the factoring company a 50% excise tax on any such transaction, except in court-approved hardship cases (BI, Aug. 3, 1998).

"This tax would, in effect, eliminate the market for this service and protect the victim from exploitation," he said.

Although a similar federal bill failed last session, legislative and insurer representatives say they are optimistic about passage of settlement resale legislation -- at both the federal and state levels --during the current legislative sessions.

Activities at both legislative levels aim to protect structured settlement recipients such as Orion Olson, 20, who was a homeless man living in Minnesota when he sold his rights to \$67,500 in remaining settlement payments to a Pennsylvania company for about \$13,000 two years ago, said Chris Messerly, his pro-bono attorney.

The settlement was for vision and neurological damage Olson suffered

In a vicious dog attack when he was 3 years old. Payments began when he received a first payment of \$7,500 at age 18.

Although payments were to continue for 10 years, in 1997 he sold his rights to the remaining payments. The then-homeless man responded to a television ad offering quick cash from Philadelphia-based J.G. Wentworth & Co. Inc., said Mr. Messerly, an attorney in the Minneapolis office of Robins, Kaplan, Miller & Ciresi L.L.P.

Mr. Messerly said he is considering legal action to try and overturn Mr. Orion's sale of his future payment rights.

Mr. Orion's story encouraged Minnesota Attorney General Mike Hatch to propose protective legislation in Minnesota.

According to Michael Goodman, J.G. Wentworth's executive vp and chief operating officer, though, settlement resales provide claimants with needed flexibility and discounted lump-sum cash. But, according to Mr. Goodman, Wentworth, the nation's largest purchaser of settlements, actively supports requiring court approval of structured settlements --both when they are set up and resold. Wentworth is supporting such legislation, which is being proposed by a purchasers' group, he said.

The AIA, which is spearheading the multistate legislative effort, is targeting California, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, Virginia, Washington and Wisconsin.

According to AIA Vp Janet Bachman, structured settlements are "a valuable product. . .but we need to enact some reasonable legislative protections so that aggressive settlement purchasing companies do not take advantage of people during times of great vulnerability."

The Washington-based American Council of Life Insurance also is "working toward enactment of the same type of legislation in most of the same states," said Laurie Lewis, senior counsel for the ACLI.

Some state-based claimants' attorney groups also are likely to jump on the bandwagon, as they did in states such as Connecticut, Illinois and Kentucky, all of which recently enacted similar protective legislation, said Randy Dyer, executive vp of the National Structured Settlement Trade Assn.

On the federal level, both the AIA and ACLI are generally supportive of the concept of increased regulation of such transactions, although the ACLI has no position on whether 50% is an appropriate level for the excise tax.

Also motivating insurers is a desire to prevent structured settlement resales from becoming just another marketplace practice, which could jeopardize the current tax-free status of the settlements, Mr. Dyer said. Current law lets the injured person receive the benefits tax-free, but the recipient cannot change the terms, such as the amount and frequency, of settlement payments.

Risk managers and brokers need to be aware of these developments as they engage in claim settlement discussions, said Lance Ewing, leader of the External Affairs Team of the New York-based Risk & Insurance Management Society Inc. However, the impact of state-specific proposals must be evaluated on a state-by-state basis, said Mr. Ewing, who also is director of insurance and loss prevention for GES Exposition Service in Las Vegas.

~~~~~

By Meg Fletcher

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Item Number: 1513105

Nelson, Robert

From: chost@epnet.com
Sent: Wednesday, March 10, 1999 2:51 PM
To: Nelson, Robert
Subject: structured settlement

Section: INSURANCE LAW REVIEW

P/C INSURERS MOUNTING STRONG EFFORT FOR LEGISLATION TO PROTECT BENEFICIARIES OF SETTLEMENTS FROM PREDATORS

WASHINGTON, D.C. -- Property-casualty insurers are mounting a strong effort to enact state laws to ensure that injured victims are protected from companies seeking to buy injury compensation settlements at sharp discounts.

The American Insurance Association said January 11 that it is spearheading a multistate legislative effort to require advance court approval for all settlement purchases to ensure victims are fully aware of their choices and the consequences if approached by a settlement purchaser.

AIA said structured settlements are widely used voluntary agreements that provide long-term financial protection for injury victims and their families and protect against the loss or dissipation of lump sum recoveries. Settlement purchasing firms, also known as "factoring companies," "buy" the remaining payments due under the settlement in exchange for a small lump-sum payment. These actions undermine the benefits of structured settlements.

Love & Approval

Under the AIA supported legislation, a court can approve a settlement purchase if the transfer will not violate other applicable laws (such as state laws prohibiting the assignment of a workers' compensation settlement); the transfer is necessary to avoid imminent financial hardship; the key economic terms of the proposed transfer have been disclosed to the settlement recipient; and the settlement recipient has received independent professional advice concerning the transfer. Several states already require some court approval of structured settlements. So far, target states for AIA advocacy efforts include California, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, Virginia, Washington and Wisconsin.

Insurers who offer a structured settlement do so in full consultation with the victim's lawyer and the offer can be rejected in favor of a lump sum award, typically, AIA said adding, however, that the structured settlement provides more benefits because it is paid over time as annuity, which is usually purchased from a life insurance company.

"It makes no difference to a property casualty insurer whether it settles a claim with a structured settlement or a lump sum payment," said Janet Bachman, AIA vice president, claims administration. Often an injured person needs a lump sum payment but in many instances spreading the payments over time is more beneficial since the eventual pay out can be much greater the income is completely secure."

AIA, the National Structured Settlement Trade Association

(www.nssta.com) and the life insurance industry, Bachman reported, are advocating legislation that will ensure that persons who may want to "sell" their structured settlement for a lump sum are fully aware of the long-term implications and appropriate court approval is obtained. The personal injury bar also supports efforts to maintain the integrity of structured settlements.

Another concern to property-casualty insurers is the manner in which settlement purchasing companies "buy" structured settlements, Bachman said. Typically, the person receiving payments requests a change of address to the life insurance company that provided the annuity. The new address is actually used by a settlement purchasing company that then endorses and cashes the checks. Since neither the life insurer nor the property-casualty insurance company knows a settlement has been purchased, it can violate the contractual terms of the settlement or annuity or state laws.

"While it is conceivable that an insurer could wind up paying twice for the same settlement, our greater concerns are for the long term financial security of seriously injured accident victims and the long term credibility of structured settlements," Bachman said.

In addition to state legislation, a federal bill was considered last year by Congress that would have surcharged settlement purchasing companies with a 50 percent tax on the difference between the value of a structured settlement and what the purchasing company paid for it. AIA is advocating that the measure be reintroduced when Congress convenes in January.

"Structured settlements are a valuable product that offer excellent benefits for many, many situations where injured people need a steady, reliable stream of payments," said Bachman. "We hope that these settlements will continue to offer such benefits far into the future but we need to enact some reasonable legislative protections so that aggressive settlement purchasing companies do not take advantage of people during times of great vulnerability"

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Item Number: 1495498

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IMPORTANT NOTICE TELECOPY/FACSIMILE COVER LETTER

DATE: March 2, 1999
FROM: Craig H. Ulman

TIME: 11:45 a.m.
TOTAL NO. OF PAGES: 14
(INCLUDING COVER)

TO:	COMPANY:	X	FAX #:	PHONE #:
Peter C. Christianson	Quarles & Brady		608/251-5139	608/283-2492
Paul Blume	AIA		847/470-1414	847/470-1070

MESSAGE:

C.H.U.

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TO: BOB NELSON
Legis. Ref. Bureau
100 N. Hamilton

HOGAN & HARTSON L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, DC 20004-1109
202/637-5600

VIA TELECOPIER

MEMO

March 2, 1999

TO: Peter C. Christianson

FROM: Craig H. Ulman

- For your information
- As you requested
- For your review and comment
- For your files
- Other

Per our recent discussion with Bob Nelson and Paul Blume I am forwarding a mark-up of the draft Wisconsin legislation, including a few accompanying riders. I believe that all of the substantive changes are consistent with our discussion, but please feel free to call if you have any questions, and please encourage Bob Nelson to call me if he has any questions.

I apologize for the delay in forwarding this mark-up. An unexpected outburst of requests from Model Act proponents in other states, where the legislation is already under active consideration, preempted the time last week that I had intended to devote to the Wisconsin draft.

C.H.U.

cc: Paul Blume (w/attachments)

\\DC - 00799/22 - 0692220.01

**Riders to Accompany
NSSTA Suggested Revisions
for LRV-1195/P1**

Rider 2A

✓ pursuant to Internal Revenue Code section 7520.

* * *

Rider 4A

✓ (11) "Periodic payments" include scheduled future lump sum payments.

* * *

Rider 6A

✓ (23) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer of such rights.

* * *

Rider 6B

✓ If the payee, the structured settlement obligor or the annuity issuer under a structured settlement is domiciled in this state, or if the structured settlement agreement was approved by a court or a responsible administrative authority in this state, then no direct or indirect transfer of structured settlement payment rights under such settlement shall be effective and neither the structured settlement obligor nor the annuity issuer shall be required to make any payments directly or indirectly to any transferee of such rights unless the transfer has been approved in advance by a final order of a court of competent jurisdiction or a responsible administrative authority.

* * *

Rider 6C

✓ and does not contravene other applicable law

* * *

Rider 7A

✓ The extraordinary, unanticipated and imminent needs of the payee or his or her dependents render the transfer appropriate.

* * *



State of Wisconsin
1899 - 2000 LEGISLATURE

LRB-1195/P1
RPN:cmh:lp

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2/25/99

NSSTA Suggested
Revisions

1 **AN ACT** to create chapter 787 of the statutes, relating to: structured settlement
2 agreements.

Analysis by the Legislative Reference Bureau
This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** Chapter 787 of the statutes is created to read:
4 **CHAPTER 787 STRUCTURED SETTLEMENTS**
5 **787.01 Definitions.** In this chapter:
6 (1) "Annuity issuer" means an insurer that has issued an insurance contract
7 used to fund periodic payments under a structured settlement.
8 (2) "Applicable law" means the law of the United States, the law of this state
9 and the law of ~~any other~~ ^(any) ~~jurisdiction~~ *other than this state*
10 (a) Where the payee or any other interested party is domiciled.

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Under whose law

1 (b) ~~When~~ a structured settlement agreement was approved ^{by a court or a} (

2 ~~responsible administrative authority.~~
3 ~~(c) When a structured settlement agreement was approved by a court or a~~
4 ~~responsible administrative authority.~~

5 (3) "Dependent" means the spouse and minor children of a payee and all other
6 persons for whom the payee is legally obligated to provide support, maintenance or
7 alimony.

8 (4) "Discounted present value" means the fair present value of future payments
9 as determined by discounting the payments to the present time ~~by~~ using the most
10 recently published applicable federal rate for determining the present value of an
11 annuity, as issued by the United States internal revenue service.

---NOTE: This definition seems to leave something out. Do you multiply the applicable federal rate by the total value of the annuity, or by some other number? Why the "applicable" federal rate; is there more than one rate for annuities issued by the IRS?

Rider 2A

12 (5) "Favorable tax determination" means a ~~determination~~ ^{definitively establishing} tax
13 authority ~~that~~ the federal income tax treatment of a structured settlement and of any
14 qualified assignment agreement ^(to) the interested parties ^(to) that settlement and
15 agreement, other than ~~to~~ the payee, will not be affected by a transfer of the structured
16 settlement payment rights.

Remember remaining definitions

---NOTE: The definition as suggested included language regarding tax authority, which I removed and put in the bill as another definition. See sub. (19).

~~16 (6) "Federal hardship standard" means the federal standard applicable to the
17 transfers of structured settlement payment rights based on the findings of a court
18 of competent jurisdiction or of a responsible administrative authority regarding the
19 payee's needs, as adopted under the Internal Revenue Code.~~

---NOTE: I don't understand this provision. Is a court (or responsible administrative authority) to determine the federal standard or the payee's needs or will the court use the IRS-developed standard to determine if the payee meets that standard? Or, is the IRS adopting some kind of standard based on a payee's needs, which the court must merely apply to the facts of the case?

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SECTION 1

1 (7) "Governmental unit" means the United States; the state; any county, city,
2 village or town; or any political subdivision, department, division, board or agency
3 of the United States, the state or any county, city, village or town.

4 (8) "Independent professional advice" means advice provided by ^{an appropriate}
5 ~~certified public accountants, attorneys, and~~ licensed professional adviser if the
6 person providing the advice meets all of the following criteria:

7 (a) Is requested by the payee to render advice concerning the legal, tax and
8 financial implications of a transfer of structured settlement payment rights.

---NOTE: This limit requires the person to provide all three types of advice, but
generally only an attorney is permitted to render legal advice. Should "or" be used instead
of "and"?

9 (b) Is not affiliated with or compensated by the transferor of the structured
10 settlement payment rights.

11 (c) Receives compensation for rendering advice concerning the legal, tax and
12 financial implications of a transfer of structured settlement payment rights that is
13 not affected by the transfer occurring or not occurring.

---NOTE: This definition could be interpreted to include doctors, social workers and
other persons who are licensed and often give financial and related advice as part of their
profession. Don't you want to narrow this in some way?

14 (9) "Interested party" means the payee, any beneficiary designated under the
15 annuity contract to receive payments following the payee's death, the annuity issuer,
16 the structured settlement obligor and any other person who has continuing rights
17 or obligations under the structured settlement.

---NOTE: Are the payee's dependents included in the last part of this definition.
If not, should they be listed, especially the spouse in a community property state?

18 (10) "Internal Revenue Code" has the meaning given in § 71.01 (6).

19 (11) "Payee" means the individual who is receiving tax-free ~~payments~~ payments
20 for injuries under a structured settlement.

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SECTION 1

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---NOTE: I left out the last part of the sentence because it seemed unnecessary to the draft. I also changed "damage payments" to "money payments for injuries". OK?

1 (13) "Qualified assignment agreement" means an agreement providing for a
2 qualified assignment within the meaning of section 130 of the Internal Revenue
3 Code.

4 (13) "Responsible administrative authority" means any governmental unit
5 vested by law with exclusive jurisdiction over the settled claim resolved by a
6 structured settlement.

---NOTE: This applies to any governmental unit federal, state, county or local. See my definition of governmental unit in sub. (7). OK?

7 (14) "Settled claim" means the original tort claim, ^(a) worker's compensation
8 claim ~~or any other claim that was resolved by a structured~~
9 settlement.

---NOTE: The model act only mentioned tort or worker's compensation claims, but could there be other claims that involved large money damages, such as a civil rights or contract claim? I added "other claim for money damages". OK?

10 (15) "Structured settlement" means an arrangement for ~~the~~ periodic payment ^(a)
11 of ~~money~~ ^(damages) for personal injuries that was established by ~~the~~ settlement or a court
12 judgment that resolved a tort claim, ~~worker's compensation claim, or a~~
13 ~~structured settlement agreement.~~

---NOTE: See note for sub. (14). I changed the "payment of damages" to the "payment of money" to clarify what was actually going on. OK?

14 (16) "Structured settlement agreement" means the agreement, judgment,
15 stipulation or release that includes the terms of a structured settlement, ^(a) including
16 ~~the terms of a structured settlement agreement.~~

---NOTE: I don't think we need the phrase after the last comma, since the definition of "structured settlement" includes the periodic payment of money.

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1 (17) "Structured settlement obligor" means the person who has the obligation
2 to make ~~continuing~~ periodic payments to the payee under a structured settlement
3 agreement or under a qualified assignment agreement.

4 (18) "Structured settlement payment right" means ^(a) the right to receive periodic
5 payments ~~under a structured settlement agreement~~ under a structured settlement, either
6 from the structured settlement obligor or ^{the annuity issuer} ~~from the following~~
7 ~~sources:~~ ^{from}

8 ~~(a) The payee or other interested party is domiciled in this state.~~

9 ~~(b) The structured settlement agreement was approved by a court or~~
10 ~~responsible administrative authority in this state.~~

11 ~~(c) The settled claim was pending before a court in this state when the parties~~
12 ~~entered into the structured settlement agreement.~~

---NOTE: Something seems to be missing in this definition. Why does the existence
of the right to receive periodic payments under a structured settlement agreement
depend on where the payee or party resides, unless the right to enforce that right in this
state is what this definition is trying to establish. If so, the language proposed is
incomplete, especially in view of the definition of "transfer agreement" below, which does
not seem to require state jurisdiction.

13 (19) "Tax authority" means each of the following:

14 (a) A provision of the Internal Revenue Code or a regulation adopted under that
15 code.

16 (b) A revenue ruling or revenue procedure issued by the internal revenue
17 service.

18 (c) A private letter ruling issued by the internal revenue service.

19 (d) A decision of the United States supreme court or a decision of a lower federal
20 court in which the internal revenue service has acquiesced.

21 (20) "Terms of a structured settlement" includes the terms of the structured
22 settlement agreement, the annuity contract, any qualified assignment agreement

1 and any order or approval of a court, a responsible administrative authority or other
2 governmental unit authorizing or approving the structured settlement.

3 (21) "Transfer" means the sale, assignment, pledge or other form of alienation
4 or encumbrance of a right for consideration.

5 (22) "Transfer agreement" means the agreement providing for the transfer of
6 structured settlement payment rights from a payee to a transferee.

Rider
6A

7 **787.08 Conditions necessary to transfer structured settlement**
8 ~~payment rights. (1) A structured settlement obligor or annuity issuer shall not be~~
9 ~~required to make any payment to any transferee under a transfer agreement unless~~
10 ~~the transfer agreement has been authorized in advance by a final order of a court or~~
11 ~~a responsible administrative authority.~~

Rider
6B

12 (2) A court or responsible administrative authority may ^{approve} ~~authorize~~ a transfer
13 ~~agreement~~ ^{of structured settlement payment rights} only if the court or authority makes express finding ⁽⁵⁾ that all of the
14 conditions in subs. (3) to (5) are met.

15 (3) The transfer agreement complies with the requirements ^(of) ~~of~~ this chapter.

Rider
6C

16 (4) Not less than ten days before the date on which the payee first incurs any
17 obligation with respect to the transfer, the transferee provides the payee with a
18 disclosure statement written in bold print, in a type size that is no smaller than 14
19 point ⁽⁵⁾.

20 (5) The disclosure statement under sub. (4) includes all of the following:

21 (a) The amounts and due dates of the structured settlement payments to be
22 transferred.

23 (b) The aggregate amount of the structured settlement payments to be
24 transferred.

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1 (c) The discounted present value of the structured settlement payments to be
2 transferred.

3 (d) The discount rate used in determining the discounted present value of the
4 structured settlement payments to be transferred.

5 (e) The gross amount payable to the payee in exchange for the structured
6 settlement payments to be transferred.

7 (f) An itemized listing of ^{all} charges, commissions, costs, expenses and fees ^R
8 ~~including the amount of any interest, taxes, penalties, and other amounts payable by the payee or~~
9 ~~deductible from the gross amount otherwise payable to the payee in exchange for the~~
10 deductible from the gross amount otherwise payable to the payee in exchange for the
11 structured settlement payments being transferred.

12 (g) The net amount payable to the payee after the deduction of all of the
13 amounts described under par. (f).

14 (h) The number, expressed as a percentage, obtained by dividing the net
15 payment amount under par. (g) by the discounted present value of the structured
16 settlement payments to be transferred under par. (c). ^(Maximum)

17 (i) The amount of any penalty and the ~~aggregating~~ ^{maximum} amount of any other liquidated
18 damages that the payee [✓] would be required to pay in the event of the payee's breach
19 of the transfer agreement.

File
7A

20 ~~(e) (The payee has established to a court or the responsible administrative~~
21 ~~authority that one of the following applies:~~

22 ~~(a) If a federal hardship standard is not in effect on the effective date of the~~
23 ~~transfer agreement, the transfer agreement is necessary to enable the payee, the~~
24 ~~payee's dependents, or both, to avoid imminent financial hardship and is not~~

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SECTION 1

1 ~~expected to subject the payee, the payee's dependents, or both, to undue financial~~
2 ~~hardship in the future.~~

3 (b) If a federal hardship standard is in effect on the effective date of the transfer
4 ~~agreement, the transfer agreement qualifies under the federal hardship standard.~~

5 (7) The payee has received independent professional advice regarding the
6 legal, tax and financial implications of the transfer.

7 (8) If the transfer ~~agreement~~ would contravene the terms of ^{the} structured
8 settlement, all of the following conditions are met:

9 (a) The transfer ~~agreement~~ ^(except that if) has been expressly approved in writing by each
10 interested party ^{at} at the time that the payee and the transferee entered into the
11 transfer agreement, a favorable tax determination was in effect, then the approval
12 of the annuity issuer and the structured settlement obligor is not required under this
13 paragraph if all of the other interested parties approve the transfer agreement and
14 waive any rights to require that the transferred payments be made to the payee in
15 accordance with the terms of ^{the} structured ^{settlement} ~~agreement~~.

16 (b) The transfer ~~agreement~~ ^(any) has been expressly approved in writing by ~~the~~ court
17 or governmental unit that previously approved the structured settlement, other than
18 the court or responsible administrative authority from which authorization of the
19 transfer agreement is sought under this section.

20 (c) Signed originals of all approvals required under para. (a) and (b) have been
21 filed with the court or responsible administrative authority from which
22 ^{approval} ~~authorization~~ of the transfer agreement is sought under this section and copies of
23 those approvals have been provided to all the interested parties.

24 (9) The transferee has given written notice of the transferor's name, address
25 and taxpayer identification number to the annuity issuer and the structured

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1 settlement obligor and has filed a copy of that notice with the court or responsible
2 administrative authority that has been asked to ^{approve} ~~authorize~~ the transfer agreement.
3 787.02 Procedure for authorizing the transfer of structured settlement
4 payment rights. (1) The circuit court shall have nonexclusive jurisdiction over any
5 application for authorization of a transfer agreement under s. 787.02 (2).

---Note: Do you want to add that the responsible administrative authority also
has nonexclusive jurisdiction, to clarify what agencies have jurisdiction to authorize the
transfer agreement? See s. 787.02 (2), which includes them both. Why is authorizing
used instead of approving?

6 (2) Not less than 20 days before a scheduled hearing before a court or
7 responsible administrative authority on any application for ^{approval} ~~authorization~~ of a
8 ^(of structured settlement payment rights) transfer agreement, the transferee shall file a notice of the proposed transfer and an
9 application for ^{approval} ~~authorization~~ of the transfer agreement with the court or responsible
10 administrative authority.

11 (3) Not less than 20 days before a scheduled hearing before a court or
12 responsible administrative authority on any application for authorization of a
13 ^(of structured settlement payment rights) transfer agreement, the transferee shall serve notice of the proposed transfer and an
14 application for ^{approval} ~~authorization~~ of the transfer agreement on any other governmental
15 unit that previously approved the structured settlement and on all interested
16 parties.

---Note: The model act suggests that the notice also be served on other appropriate
state agencies, such as the insurance commissioner and attorney general, but does not
require that service. The model act gives those agencies served standing to appear and
be heard at the authorization hearing. I do not know which, if any, state agency should
be listed here and given party status. Any suggestions?

17 (4) The notice under sub. (3) shall include all of the following:
18 (a) A copy of the transferee's application.
19 (b) A copy of the proposed transfer agreement.
20 (c) A copy of the disclosure statement required under s. 787.02 (4).

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1 (d) A statement that any interested party may support, oppose or otherwise
2 respond to the transferee's application, either personally or by counsel, by
3 submitting written comments to the court or responsible administrative authority
4 or by participating at the hearing.

5 (e) A statement of the time and place of the hearing and of the manner in which
6 and time by which written responses to the transferee's application shall be filed in
7 order to be considered by the court or responsible administrative authority.

8 (5) Interested parties may file written responses to the transferee's application
9 with the court or responsible administrative authority within 15 days after receipt
10 of the notice under sub. (3).

11 787.04 Waiver. The rights and responsibilities created under this chapter may
12 not be waived.

13 787.05 Exemption from penalties and fees. A payee who proposes to make
14 a transfer of structured settlement payment rights shall not be required to pay any
15 ~~penalty~~ any penalty, forfeit any application fee or other payment made
16 to the proposed transferee or incur any liability to the proposed transferee as the
17 result of the failure of the proposed transfer agreement to meet the conditions under
18 s. 787.02.

19 787.06 Construction of chapter. This chapter shall not ^(bc) be construed to
20 authorize any transfer of structured settlement payment rights in contravention of
21 any applicable law or to give effect to any transfer of structured settlement payment
22 rights that is invalid under any applicable law.

23 SECTION 2. Initial applicability.

24 (1) This act first applies to the transfer of structured settlement ^(payment) rights under
25 a transfer agreement entered into on the effective date of this subsection.

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SECTION 3

1 **Section 3. Effective date.**

2 (1) This act takes effect on the first day of the 6th month beginning after
3 publication.

---NOTE: The model act appears to have one provision for the initial applicability and the effective date. I delayed the effective date for 6 months. Is that too long? I did not include the proposed language about the initial applicability-effective date sections implying anything about transitions agreed to before the effective date. These provisions never imply anything about previous behavior unless they are specifically mentioned, such as the counting of previous offenses when determining future penalties.

4 (END)

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