

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1205

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1205

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7293

Committee Clerk Signature

Ellen Letour

Chairman Keiser: Opened the hearing on HB 1205 relating to the transfer of structured settlements.

Pat Ward introduced Kara Johnson

Kara Johnson~Attorney representing the Association of North Dakota Insurers. See testimony, attachment 1.

Chairman Keiser: Tell us in your own words, what this does.

Kara: For the parties that receive structured settlement and they find in the future that the payment schedule isn't working out. They can take that accident to a factoring company and sell it to them, they will get a lump sum which is a smaller reduced amount. The law is placing restrictions so the court can watch out and make sure that people are not getting the short end of the stick. The factoring companies will be able to avoid a penalty.

Vice Chairman Kasper: Asks Kara to walk through a transaction.

Representative N Johnson: The court does not need to find a financial hardship?

Kara: Correct

Representative Thorpe: This essentially negates the original structure security, right?

Kara: This is in the event they wish to sell.

Pat Ward~State Farm. In minor settlements, they don't want a bundle of money now and wait for later; they will go to the insurance dealer. They will go to a second company, it's like an investment company, buy some annuity. Continues to answer Kara's question for her.

Representative Thorpe: The company purchasing this contracts (inaudible).

Ward: Yes

Representative Thorpe: Do our courts have jurisdiction?

Ward: If we made this change, our North Dakota court.

Representative Boe: In practice, is there a minimum amount in these structured settlements?

Ward: It varies, usually more money is involved.

Representative Boe: My concern, when we have to do our diligence for \$5000 as a \$50,000, doesn't this get to be a lot of work for a \$5000 settlement.

Ward: Yes that true, it wouldn't be the same heaviness.

Representative Amerman: Is this something Joe Average can do?

Ward: A lot is provided for in the bill on page four.

Vice Chairman Kasper: On page six, line 13, do you have a copy of that disclosure statement?

Ward: There is one yet.

Vice Chairman Kasper: Judges are not actuarials, how do we know they can make a fair decision?

Ward: Judges can bring in special talents in to consult.

Vice Chairman Kasper: Page seven, line 17-22, this is a limiting liability bill. Is that what section does?

Ward: Defer to Kara

Kara: I believe with this provision is doing is once the it is sold to the company, it places the burden on the company to take over the responsibility.

Representative Thorpe: If the person holding this instrument, needs some money quickly (inaudible).

Ward: I don't think any faster than several weeks.

Representative N Johnson: On page six, there is no waiver by payee, once this is passed into law, no matter who wants to do it; you have to go through the courts.

Ward: Yes

Representative Schneider: It's to supervise?

Ward: Yes, so North Dakota citizens are not being taken advantage of.

Representative Ruby: On line 13, page six; is this in North Dakota century code?

Ward: It will be part of the bill.

Chairman Keiser: In worker's comp structured settlements, there is in North Dakota an additional step and that WSI must approve it, is that not true?

Ward: I don't know.

Chairman Keiser: It does.

Ward: Some of that true, we are looking down the road of the benefits of those structured settlements.

Chairman Keiser: And currently, without this legislation, the good companies are going outside the state of North Dakota and the bad companies are operating in our state.

Vice Chairman Kasper: Does this have to occur in North Dakota and where's the penalty?

Kara: There are so few states on this matter; it would be hard to find a place to do it.

Vice Chairman Kasper: What about the penalty?

Kara: There is no current penalty.

Vice Chairman Kasper: Is there a reason you did not put a penalty in?

Kara: The model act did not have a penalty but if that's something we should have?

Representative Ruby: The way I heard for both parties is that the person receiving the payment, they would be able to take advantage of tax shelter that they enjoyed under the settlement, right?

Kara: That is not correct. The tax structure, when settlement are being made, once they decide that, there is no longer (doesn't finish sentence).

Representative Ruby: That current under this bill?

Representative Vigesaa: Is there bad companies that prey on North Dakota citizens and if they do, where do they get people's names.

Kara: I do not believe they prey on North Dakota citizens, but we have not researched that.

Ward: That's not why we are bringing this bill.

Chairman Keiser: Can we go over the amendments quick.

Kara: See attachment for the amendments.

Chairman Keiser: These amendments need to be resubmitted as further amended by the committee.

Vice Chairman Kasper: What is your feeling about a penalty clause for violation of statue?

Chairman Keiser: We will come back to that.

Anyone else here in opposition, neutral.

Closes the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1205

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number: 8420

Committee Clerk Signature

Ellen LeTang

Chairman Keiser: Opened the committee work session on HB 1205.

Representative N Johnson: This bill is about the transfer structured settlements. Goes over the amendments see attachment. There was some incorrect numbering. The main thing we changed is on page five; we deleted that whole section from lines eight thru thirteen. Then the larger location on page five is what we inserted right after the "a section".

Chairman Keiser: Everything is technical with the exception of page five, line two, and then Vice Chairman Kasper requested a penalty for the bad operators is a Class B misdemeanor.

Representative N Johnson: Motioned to amend.

Representative Ruby: Seconded.

Voice vote with all aye's and zero nay's.

Chairman Keiser: What are the wishes of the committee?

Vice Chairman Kasper: Moves a Do Pass as Amended.

Representative N Johnson: Seconded.

Voting roll call was taken on HB 1205 for a Do Pass as Amended with 12 ayes, 0 nays, 1 absent with Representative N Johnson the carrier.

VR
2/4/09
102

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1205

Page 1, line 1, replace "32-03.3" with "32-03.4"

Page 1, line 2, after "settlements" insert "; and to provide a penalty"

Page 1, line 4, replace "32-03.3" with "32-03.4"

Page 1, line 6, replace "32-03.3-01" with "32-03.4-01"

Page 2, line 12, replace "39-03.3-02" with "32-03.4-02"

Page 2, line 19, replace "30" with "26"

Page 3, line 6, after "court" insert "in this state"

Page 4, line 3, replace "32-03.3-02" with "32-03.4-02"

Page 4, line 25, replace "32-03.3-03" with "32-03.4-03"

Page 4, line 26, remove "1."

Page 5, line 1, replace "a." with "1."

Page 5, line 2, after "dependents" insert "and whether the transaction, including the discount rate used to determine the gross advance amount and the fees and expenses used to determine the net advance amount, are fair and reasonable. If the court makes the findings as outlined in this subsection, there is not a requirement for the court to find that an applicant is suffering from a hardship to approve the transfer of structured settlement payments under this subsection"

Page 5, line 3, replace "b." with "2."

Page 5, line 5, after the underscored semicolon insert "and"

Page 5, line 6, replace "c." with "3."

Page 5, line 7, replace "; and" with an underscored period

Page 5, remove lines 8 through 13

Page 5, line 14, replace "32-03.3-04" with "32-03.4-04"

Page 5, line 17, after "payments" insert "as to all parties except the transferee"

Page 5, line 30, replace "32-03.3-05" with "32-03.4-05"

Page 6, line 7, replace "39-03.3-03" with "32-03.4-03"

Page 6, line 13, replace "39-03.3-02" with "32-03.4-02"

Page 6, line 23, replace "32-03.3-06" with "32-03.4-06"

Page 6, line 25, replace "32-03.3-07" with "32-03.4-07"

Page 7, line 1, replace "32-03.3-08" with "32-03.4-08"

Page 7, line 8, replace "32-03.3-09" with "32-03.4-09"

Page 7, line 13, replace "32-03.3-10" with "32-03.4-10"

Page 7, line 17, replace "32-03.3-11" with "32-03.4-11"

Page 7, line 19, replace "39-03.3-02" with "32-03.4-02" and replace "39-03.3-03" with "32-03.4-03"

Page 7, after line 22, insert:

"32-03.4-12. Penalty. Any transferee that willfully violates this chapter is guilty of an infraction. A second or subsequent violation of this chapter is a class B misdemeanor."

Page 7, line 23, replace "32-03.3-12" with "32-03.4-13"

Renumber accordingly

Date: Feb 2 - 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1205

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative N Johnson			Representative Schneider		
Representative Nottestad			Representative Thorpe		
Representative Ruby					
Representative Sukut					
Representative Vigasaa					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

all ayes, no nays

Date: Feb 2 - 2009
Roll Call Vote # 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1205

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Kasper Seconded By N Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	7	
Vice Chairman Kasper	7		Representative Boe		
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson	7		Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe	7	
Representative Ruby	7				
Representative Sukut	7				
Representative Vigasaa	7				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep N Johnson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1205: Industry, Business and Labor Committee (Rep. Kelser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1205 was placed
on the Sixth order on the calendar.

Page 1, line 1, replace "32-03.3" with "32-03.4"

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Page 5, line 3, replace "b." with "2."

Page 5, line 5, after the underscored semicolon insert "and"

Page 5, line 6, replace "c." with "3."

Page 5, line 7, replace "; and" with an underscored period

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Page 7, line 17, replace "32-03.3-11" with "32-03.4-11"

Page 7, line 19, replace "39-03.3-02" with "32-03.4-02" and replace "39-03.3-03" with "32-03.4-03"

Page 7, after line 22, insert:

"32-03.4-12. Penalty. Any transferee that willfully violates this chapter is guilty of an infraction. A second or subsequent violation of this chapter is a class B misdemeanor."

Page 7, line 23, replace "32-03.3-12" with "32-03.4-13"

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1205

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1205

Senate industry, Business, and Labor Committee

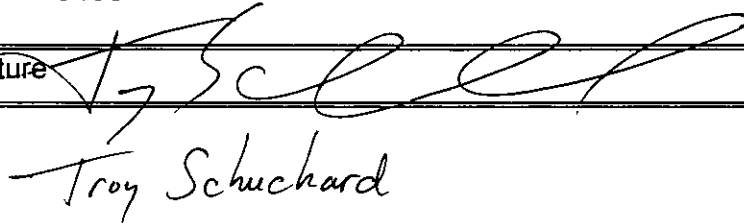
☐ Check here for Conference Committee

Hearing Date: March 9, 2009

Recorder Job Number: 10455

Committee Clerk Signature

Minutes:


Troy Schuchard

Chairman Klein: Opened the hearing on HB 1205, all members present.

Kara Johnson: Representing the Association of North Dakota Insurers (ANDI) and is an attorney with Zuger Kirmis and Smith, introduced HB 1205. (See attachment #1)

Senator Andrist: Could you give us a hypothetical or real example how this may have been used?

Kara Johnson: Typically this is what happens: Say someone is hurt in a car accident and they don't trust themselves with the money, so they put it into a structured settlement form so there is a rigid payment schedule. Say something such as our economy not doing so well puts this person out of work, at which time they would need those assets to be more liquid. In turn, they can sell future payment rights to a company such as JG Whittworth and have a lump sum fee paid to them directly for the rights to their future payments from the accident. Under the current law in North Dakota, there is an issue with that because JG Whittworth will incur a penalty tax if they don't have court approval. What is currently happening, companies are putting in the contracts that Minnesota laws will govern instead of North Dakota law. This bill is an effort to put restrictions in place so that North Dakota would be included in these contracts.

Senator Andrist: These agreements would have to have the agreements of the Court as well.

Kara Johnson: Yes

Chairman Klein: This now goes in front of the court to ensure everyone is being treated fairly before the settlement is deemed appropriate.

Kara Johnson: Yes

Senator Nodland: Can they still pay them less because of future value of money?

Kara Johnson: Yes, that is correct.

Chairman Klein: Who is responsible for the cost in the courts that would inevitably be involved in that?

Kara Johnson: My understanding is that legal fees would be part of the contract.

Senator Wanzek: What if the one who is suppose to pay goes into bankruptcy?

Kara Johnson: Typically, these contracts are done with insurance companies so there is no individual liability.

Senator Horne: So what you are proposing is to bring North Dakota into compliance or agreements that these other 40 states have adopted some variations of the Model Transfer Act.

Kara Johnson: That is correct.

Senator Potter: Which court with have jurisdiction should that be the route they go?

Kara Johnson: District Court

Senator Potter: Would it be the same court and judge that issued the judgment in the first place?

Kara Johnson: Theoretically yes, but necessarily.

Senator Potter: And you stated this is primarily used in personal injury claims.

Kara Johnson: Correct

Senator Potter: If we pass this, then the companies involved in this transfer can avoid paying the IRS tax on the difference between the future value and the amount that they pay, presumably because they are equal, not in \$\$\$ but equal going forward because of the time-value-money.

Chairman Klein: Closed the hearing on HB 1205

Senator Andrist: Motion for a Do Pass on HB 1205

Senator Nodland: Seconded

Chairman Klein: Motion for a Do Pass on HB 1205 is approved 7-0, Senator Andrist to carry.

Date: 3/9
Roll Call Vote #: 1

Senate

Industry, Business and Labor

Legislative Council Amendment Number

☒ **Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Senator Andrist Seconded By Senator Nodland

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Andrist

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1205, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1205 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1205

TESTIMONY IN SUPPORT OF HOUSE BILL 1205
HOUSE INDUSTRY BUSINESS AND LABOR COMMITTEE
JANUARY 20, 2009

Good morning Chairman Keiser and Committee Members. My name is Kara Johnson. I am an attorney here in Bismarck. I represent the Association of North Dakota Insurers (ANDI). I am pleased to be here this morning to bring forward for your consideration House Bill 1205, a bill to impose restrictions on the transfers of structured settlements. I will also be offering a couple of amendments to the bill along with my testimony here today.

The goal of this bill is to provide protections to the transferring party and for the recipient party to avoid a penalty tax when structured settlements are transferred under North Dakota law. In order to understand the current problem, some background information is needed because this is a complex issue that involves both tax law and the Uniform Commercial Code.

First, I want to give a quick overview of structured settlements to make sure everyone has a basic understanding of them. Structured settlements are a financial option that primarily used in the resolution of personal injury claims. Typically, they are set up so that in exchange for dismissing a claim the claimant

is entitled to fixed periodic payments. The rigidity of the payment schedule is one of the disadvantages to this option.

One of the main benefits to the injured party in getting a structured settlement is the tax advantage. If a total settlement award is paid as a lump sum, rather than using a structured settlement, the amount is considered part of a person's gross income and is subject to state and federal income tax. When a structured settlement is used, the Internal Revenue Code exempts the payment amount from the current year's gross income.

Under North Dakota's current law, there are no protections in place if a party wishes to transfer structured settlement payment rights. The reason involves the 2001 adoption of the Revised Article 9 of the Uniform Commercial Code (UCC). To resolve the problem, the vast majority of states have adopted some form of a "Transfer Act." North Dakota remains in the small minority of states that has yet to adopt a solution.

In 2001, the legislature passed the Revised Article 9 verbatim as proposed by the Uniform Laws Commission. Article 9 is now codified in chapter 41-09 of the North Dakota Century Code. There are two provisions within Article 9 that affect the transfer of structured settlements. While it is not a codified portion § 41-09-09, Official Comment #15 on the corresponding UCC provision, used to aid in the

interpretation of the section, states that "once a claim arising in tort has been settled and reduced to a contractual obligation to pay the right to payment becomes a payment intangible and ceases to be a claim arising in tort." The reason this Comment makes a difference is because § 41-09-70 of the Century Code invalidates anti-assignment clauses on the sales of payment intangibles.

So why does that matter? Rights to receive payments under structured settlements are considered payment intangibles. Under our current law, no contractual restrictions from a structured settlement agreement can prevent the transfer of payment rights. Imposing restrictions through state law would benefit both parties involved in the transfer.

In order to better understand, it helps to look at the typical situation where a transfer of a structured settlement occurs. These transfers happen most often when the claimant's circumstances change and he wants to sell the rights to receive periodic payments. A company can then purchase the payment rights and in turn pay a smaller lump sum to individual. The restrictions created in a Transfer Act serve to protect the little guy by requiring him to be advised to obtain independent professional advice on conducting a transfer and by protecting him through requiring court approval of the transfer. During the court approval process, the court will take into consideration whether the transfer is in the individual's best interests and if the amount being paid is fair. The companies

purchasing the payment rights also benefit by having restrictions imposed. Companies can avoid paying an IRS penalty tax on the difference between the future value of the payments sold and the amount paid to the individual wishing to sell if court approval of a transfer is granted. As you see, both parties to the transfer benefit by imposing state regulation.

Now that I have given you an overview of the problem and informed you about why this bill is in the interests of both of the parties involved, we come to discussing the solution. While the problem was once uniform amongst the states, the solution has not been. It would seem logical that the fix should go within chapter 41-09 since that is where the problem is created; however, the Transfer Acts are often scattered in various sections of state codes. For example - New York's is under their provisions on Contracts, Minnesota's is under Judicial Procedure, and South Dakota's Act is under its code in the Judicial Remedies section. The wording and length of each state's code varies. In looking at our state code, like South Dakota, the proposed chapter seems to best fit within the Judicial Remedies section.

While a few states already had Transfer Acts in place before the 2001 changes, the majority of states had to react to the Article 9 revisions. Over 40 of these states have already adopted some variation of the model Transfer Act developed by the National Conference of Insurance Legislators (NCOIL). In drafting the

proposed Transfer Act for North Dakota, I relied primarily on NCOIL's model, but also made some slight adjustments which were principally based on changes made by South Dakota in their adoption of the model Act.

So what happens if you vote against this proposed bill? By voting not to impose state regulations, the "good" companies who purchase structured settlement payment rights will circumvent North Dakota law by naming another state that has already adopted a Transfer Act within the choice of law clause found in the structured settlement agreement. The "bad" companies will be left with the opportunity to exploit the people of our state by paying such a deep discount for the transfer that penalty tax will be worth the price in comparison to the profits.

North Dakota has an interest in having its law govern transactions that occur in this state and in providing protections to its people. By passing House Bill 1205, you are ensuring that these interests are protected. Placing state law restrictions on the transferring of structured settlements provides benefits to both parties involved in transaction. I urge you to place a "do pass" on the bill with the amendments provided. Thank you.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1205

Page 1, line 1, replace 32-03.3 with 32-03.4

Page 3, line 6, after "court" add in this state

Page 5, line 2, after "dependents;" add and whether the transaction, including the discount rate used to determine the gross advance amount and the fees and expenses used to determine the net advance amount, are fair and reasonable. Provided the court makes the findings as outlined in this subdivision, there is no requirement for the court to find that an applicant is suffering from a hardship to approve the transfer of structured settlement payments under this subdivision;

Page 5, lines 8 to 13, delete subsection (1)(d) and (2).

Page 5, line 16, after "payments" add as to all parties except the transferee

Renumber accordingly

Testimony in Support of House Bill 1205

Senate Industry Business and Labor Committee
March 9, 2009.

Good morning Chairman Klein and Committee Members. My name is Kara Johnson. I am an attorney at Zuger Kirmis & Smith here in Bismarck where I work with Pat Ward. I represent the Association of North Dakota Insurers (ANDI). I am pleased to be here this morning to bring forward for your consideration House Bill 1205, a bill to impose restrictions on the transfers of structured settlements.

The goal of this bill is to provide protections to the transferring party and for the recipient party to avoid a penalty tax when structured settlements are transferred under North Dakota law. In order to understand the current problem, some background information is needed on this complex issue.

Structured settlements are a financial option primarily used in the resolution of personal injury claims. Typically, they are set up so that in exchange for dismissing a claim the claimant is entitled to fixed periodic future payments rather than accepting a lump sum. The rigidity of the future payment schedule is one of the disadvantages to this option.

Under North Dakota's current law, there are no protections in place if a party wishes to transfer structured settlement payment rights. The reason involves the 2001 adoption of the Revised Article 9 of the Uniform Commercial Code (UCC). To resolve the problem, the vast majority of states have adopted some form of a "Transfer Act." North Dakota remains in the small minority of states that has yet to adopt a solution.

In 2001, the legislature passed the Revised Article 9 verbatim as proposed by the Uniform Laws Commission. Article 9 is now codified in chapter 41-09 of the North Dakota Century Code. There are two provisions within Article 9 that affect the transfer of structured settlements. While it is not a codified portion of § 41-09-09, Official Comment #15 on the corresponding UCC provision, used to aid in the interpretation of the section, states that "once a claim arising in tort has been settled and reduced to a contractual obligation to pay the right to payment becomes a payment intangible and ceases to be a claim arising in tort." The reason this Comment makes a difference is because § 41-09-70 of the Century Code invalidates anti-assignment clauses on the sales of payment intangibles.

So why does that matter? Rights to receive payments under structured settlements are considered payment intangibles. Under our current law, no contractual restrictions from a structured settlement agreement can prevent the

transfer of payment rights. Imposing restrictions through state law would benefit both parties involved in the transfer.

In order to better understand, it helps to look at the typical situation where a transfer of a structured settlement occurs. These transfers happen most often when the claimant's circumstances change and he wants to sell the rights to receive periodic payments. A company can then purchase the payment rights and in turn pay a smaller lump sum to individual. The restrictions created in a Transfer Act serve to protect the little guy by requiring him to be advised to obtain independent professional advice on conducting a transfer and by protecting him through requiring court approval of the transfer. During the court approval process, the court will take into consideration whether the transfer is in the individual's best interests and if the amount being paid is fair. The companies purchasing the payment rights also benefit by having restrictions imposed. Companies can avoid paying an IRS penalty tax on the difference between the future value of the payments sold and the amount paid to the individual wishing to sell if court approval of a transfer is granted. As you see, both parties to the transfer benefit by imposing state regulation.

While the problem was once uniform amongst the states, the solution has not been. Transfer Acts are often scattered in various sections of state codes and vary in both their length and wording. A few states already had Transfer Acts in

place before the 2001 changes, but the majority had to react to the Article 9 revisions. Over 40 of these states have already adopted some variation of the model Transfer Act developed by the National Conference of Insurance Legislators (NCOIL). In drafting the proposed Transfer Act for North Dakota, I relied primarily on NCOIL's model, but also made some slight adjustments which were principally based on changes made by South Dakota in their adoption of the model Act.

North Dakota has an interest in having its law govern transactions that occur in this state and in providing protections to its people. By passing House Bill 1205, you are ensuring that these interests are protected. Placing state law restrictions on the transferring of structured settlements provides benefits to both parties involved in the transaction. I urge you to place a "do pass" on the bill. Thank you.