

## ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda--underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

### ALEC's Corporate Board --in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).

**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

& MEETINGS MO

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### Periodic Payment of Judgments Act

#### Summary

The Periodic Payment of Judgments Act modifies the common law rule requiring that judgments be paid as a lump sum. The modifications provided by the Act allow a claimant to be paid in two or more installments funded by an annuity, by a casualty insurer, or by other satisfactory means.

#### Model Legislation

{Title, enacting clause, etc.}

**Section 1. {Title.}** This Act shall be known and may be cited as the Periodic Payment of Judgments Act.

**Section 2. {Definitions.}** The following words, as used in this Act, shall have the meaning set forth below, unless the context clearly requires otherwise:

- (A) "Economic loss" means pecuniary harm for which damages are recoverable.
- (B) "Noneconomic loss" means nonpecuniary harm for which damages are recoverable, but the term does not include punitive or exemplary damages.
- (C) "Future damages" means damages arising from personal injuries which the trier of fact finds will accrue after the damages findings are made.
- (D) "Past damages" means damages that have accrued when the damages findings are made, including any punitive or exemplary damages allowed by law.
- (E) "Qualified insurer" means an insurer, self-insurer, assignee, plan, or arrangement approved by the court.

#### Section 3. {Election for Act to apply.}

- (A) In order to invoke this Act, a party to an action for personal injuries must make an effective election in accordance with this Section.
- (B) The election must be made in accordance with the rules of the court. Any objection to the election also must be made in accordance with the rules of the court.
- (C) An election is effective if:
  - (1) all parties have consented;
  - (2) no timely objection is filed by any party; or
  - (3) a timely objection is filed; but
    - (a) the electing party is a claimant and shows there good faith claim that future damages will be awarded; or
    - (b) the electing party is a party responding to a claim for future damages and shows that funding in the amount of the claim for past and future damages can be provided under this Act.
  - (D) If any objecting party shows that the legislative intent of this Act would not be served by conducting the trial of the claim affecting him or her under this Act, then the court may determine not to try the claim under this Act even though the conditions of subsection (3)(C)(a) or (b) are satisfied.
  - (E) If an effective election is on file at the commencement of trial, then all actions, including third-party claims, counterclaims, and actions consolidated for trial, must be tried under this Act unless the court finds that the purposes of this Act would not be served by doing so or in the interests of justice a separate trial or proceeding should be held on some or all of the claims that are not the subject of the election.
  - (F) An effective election can be withdrawn only by consent of all parties to the claim to which the election relates.

#### Section 4. {Special damages findings required.}

Did you know that Victor Schwartz--a lawyer who represents companies in product litigation--was the corporate co-chair in 2011?

(A) If liability is found in a trial under this Act, then the trier of fact, in addition to other appropriate findings, shall make separate findings for each claimant specifying the amount of:

- (1) any past damages; and
- (2) any future damages and the periods over which they will accrue, on an annual basis, for each of the following types:
  - (a) medical and other costs of health care;
  - (b) other economic loss; and
  - (c) noneconomic loss.

(B) The calculation of all future medical care and other costs of health care and future noneconomic loss must reflect the costs and losses during the period of time the claimant will sustain those costs and losses. The calculation for other economic loss must be based on the losses during the period of time the claimant would have lived but for the injury upon which the claim is based. The calculation of all future damages must reflect future changes in the earning power or purchasing power of the dollar.

**Section 5. {Determining judgment to be entered.}** In order to determine what judgment is to be entered on a verdict requiring findings of special damages under this Act, the court shall proceed as follows.

(A) The court shall apply to the findings of past and future damages any applicable rules of law, including setoffs, credits, (comparative fault), additur, and remittitur in calculating the respective amounts of past and future damages each claimant is entitled to recover and each party is obligated to pay. The court shall preserve the rights of any subrogee to be paid in a lump sum.

(B) The judgment must specify the payment of attorneys' fees and litigation expenses in a manner separate from the periodic installments payable to the claimant, either in a lump sum or by periodic installments, pursuant to any agreement entered into between the claimant or beneficiary and his or her attorney.

(C) The court shall enter judgment in a lump sum for past damages and for any damages payable in lump sum or otherwise under Subsections (A) and (B).

(D) Upon petition of a party before entry of judgment and a finding of incapacity to pay the periodic payments, the court, at the election of the claimant or at the election of the beneficiaries in an action for wrongful death, shall enter a judgment for the present value of the periodic payments.

**Section 6. {Periodic installment obligations.}**

(A) A judgment for periodic payments must provide that:

- (1) such periodic payments are fixed and determinable as to amount and time of payment;
- (2) such periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of such payments; and
- (3) the recipient of such payments shall be a general creditor of the qualified insurer.

(B) Unless the court directs otherwise or the parties otherwise agree, payments must be scheduled at one-month intervals. Payments for damages accruing during the scheduled intervals are due at the beginning of the intervals. The court may direct that periodic payment shall continue for an initial term of years notwithstanding the death of the judgment creditor during that term.

**Section 7. {Form of funding.}** A judgment for periodic payments entered in accordance with this Act must provide for payments to be funded in one or more of the following forms approved by the court:

- (A) one or more annuity contracts issued by a company licensed to do business as an insurance company under the laws of any state;
- (B) an obligation or obligations of the United States;
- (C) evidence of applicable and collectible liability insurance from one or more qualified insurers;
- (D) an agreement by one or more personal injury liability assignees to assume the obligation of the judgment debtor; or
- (E) Any other satisfactory form of funding.

**Section 8. {Funding the obligation.}**

(A) If the court enters a judgment for periodic payments, then each party liable for all or a portion of the judgment, unless found to be incapable of doing so under Section 5(D), shall separately or jointly with one or more others provide the funding for the periodic payments in a form prescribed in Section 7, within 60 days after the date the judgment is entered. A liability insurer having a contractual obligation and any other person adjudged to have an obligation to pay all or part of a judgment for periodic payments on behalf of a judgment debtor is obligated to provide such funding to the extent of its contractual or adjudged obligation if the judgment debtor has not done so.

(B) A judgment creditor or successor in interest and any party having rights under Subsection (E) may move that the court find that funding has not been provided with regard to a judgment obligation owing to the moving party. Upon so finding, the court shall order that funding complying with this Act be provided within 30 days. If funding is not provided within that time and Subsection (C) does not apply, then the court shall calculate the lump-sum equivalent of the periodic payment obligation and enter a judgment for that amount in favor of the moving party.

(C) Upon motion by the claimant, or by the beneficiaries in an action for wrongful death, the court, in the absence of a showing of good cause, shall enter a lump-sum judgment for the present value of the future periodic payments if:

(1) a responding party elects to have this Act apply and makes the required showing as to funding under Section 7, but thereafter fails to post security; or

(2) a party fails to provide funding.

(D) If a judgment debtor who is the only person liable for a portion of a judgment for periodic payments fails to provide funding, then the right to lump-sum payment described in Subsection (B) applies only against that judgment debtor and the portion of the judgment so owed.

(E) If more than one party is liable for all or a portion of a judgment requiring funding under this Act and the required funding is provided by one or more but fewer than all of the parties liable, then the funding requirements are satisfied and those providing funding may proceed under Subsection (B) to enforce rights for funding or lump-sum payment to satisfy or protect rights of reimbursement from a party not providing funding.

### **Section 9. {Effect of death.}**

(A) In all cases covered by this Act in which future damages are payable in periodic payments, the damages for payment of any losses measured by medical or other costs of health care or noneconomic loss not yet due at the death of a person entitled to receive those damages terminates upon the death of that person. The liability for other economic losses payable after such death shall continue during the term of years of certain payments described in Section 6(B) and shall be paid to the estate of the decedent. The liability for payment of any other economic losses or portions thereof not yet due at the death of the person entitled to receive them likewise terminates except as provided in Subsection (B) below.

(B) If, in an action for wrongful death, a judgment for periodic payments provides payments to more than one person entitled to receive damages for losses that do not terminate under Subsection (A) and one or more but fewer than all of them die, then the surviving beneficiaries succeed to the shares of the deceased beneficiaries. The surviving beneficiaries are entitled to shares proportionate to their shares in the periodic payments not yet paid, but they are not entitled to receive payments beyond the respective periods specified for them in the judgment.

**Section 10. {Assignment of periodic payments.}** An assignment by a judgment creditor or an agreement by such person to assign any right to receive periodic payments for future damages contained in a judgment entered under this Act is enforceable only as to amounts:

(A) to secure payment of alimony, maintenance, or child support;

(B) for the costs of products, services, or accommodations provided or to be provided by the assignee for medical or other health care; or

(C) for attorneys' fees and other expenses of litigation incurred in securing the judgment.

**Section 11. {Exemption of benefits.}** Except as provided in Section 10, periodic payments for future damages contained in a judgment entered under this Act for loss of earnings are exempt from garnishment, attachment, execution, and any other process or claim to the extent that wages or earnings are exempt under any applicable law.

**Section 12. {Settlement agreements and consent judgments.}** Nothing in this Act is to be construed to limit or effect the settlement of actions triable under this Act. Parties to an action on a claim for personal injury may, but are not required to, file with the clerk of the court in which the action is pending or, if none is pending, with the clerk of a court of competent jurisdiction over the claim, a settlement agreement for future damages payable in periodic payments. The settlement agreement may provide that one or more sections of this Act apply to it.

**Section 13. {Satisfaction of judgments.}** A judgment under this Act is satisfied and the judgment debtor on whose behalf the funding is provided is discharged at such time as all obligations, including all periodic payments, have been paid. In the event that the judgment debtor or the liability insurer of the judgment debtor assigns the obligations to a qualified personal injury liability assignee, such assignment shall satisfy the judgment and discharge the judgment debtor.

**Section 14. {Severability clause.}**

**Section 15. {Repealer clause.}**

**Section 16. {Effective date.}**

Were your laws  
repealed?

**About Us and ALEC EXPOSED.** The Center for Media and Democracy reports on corporate spin and government propaganda. We are located in Madison, Wisconsin, and publish [www.PRWatch.org](http://www.PRWatch.org), [www.SourceWatch.org](http://www.SourceWatch.org), and now [www.ALECexposed.org](http://www.ALECexposed.org). For more information contact: [editor@prwatch.org](mailto:editor@prwatch.org) or 608-260-9713.

### Center for Media and Democracy's quick summary

This bill would allow a defendant who loses a lawsuit against them to pay the plaintiff in installments rather than in a lump sum. The installment payment option is very favorable to defendants, especially in light of Section 9, which provides that most of the defendant's financial liabilities will end with the death of the claimant. In essence, this bill allows a defendant to limit their financial liability by scheduling payment for the amount owed beyond the lifespan of the person receiving the payments; this is particularly effective in cases where a person's lifespan is shortened because of the injury (i.e. exposure to toxic substances) or for suits involving elderly plaintiffs. Section 5 also provides for calculating damages owed in a manner favorable to defendants.