§ 3212. Exemption of proceeds and avails of certain insurance and annuity contracts. (a) In this section:

(1) The term "proceeds and avails", in reference to policies of life insurance, includes death benefits, accelerated payments of the death benefit or accelerated payment of a special surrender value, cash surrender and loan values, premiums waived, and dividends, whether used in reduction of premiums or in whatever manner used or applied, except where the debtor has, after issuance of the policy, elected to receive the dividends in cash.

(2) An annuity contract includes any obligation to pay certain sums at stated times, during life or lives, or for a specified term or terms, issued for a valuable consideration, regardless of whether such sums are payable to one or more persons, jointly or otherwise, but does not include payments under a life insurance policy at stated times during life or lives, or for a specified term or terms.

(3) The term "creditor" includes every claimant under a legal obligation contracted or incurred after December thirty-first, nineteen hundred thirty-nine.

(4) The term "execution" includes execution by garnishee process and every action, proceeding or process whereby assets of a debtor may be subjected to the claims of creditors.

(b) (1) If a policy of insurance has been or shall be effected by any person on his own life in favor of a third person beneficiary, or made payable otherwise to a third person, such third person shall be entitled to the proceeds and avails of such policy as against the creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts of the person effecting the insurance.

(2) If a policy of insurance has been or shall be effected upon the life of another person in favor of the person effecting the same or made payable otherwise to such person, the latter shall be entitled to the proceeds and avails of such policy as against the creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts of the person insured. If the person effecting such insurance shall be the spouse of the insured, he or she shall be entitled to the proceeds and avails of such policy as against his or her own creditors, trustees in bankruptcy and receivers in state and federal courts.

(3) If a policy of insurance has been or shall be effected by any person on the life of another person in favor of a third person beneficiary, or made payable otherwise to a third person, such third person shall be entitled to the proceeds and avails of such policy as against the creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts of the person insured and of the person effecting the insurance.

(4) (A) The person insured pursuant to paragraph one of this subsection or the person effecting the insurance other than the spouse of the insured pursuant to paragraph two hereof, and the person effecting the insurance pursuant to paragraph three hereof, or the executor or administrator of any such persons, or a person entitled to the proceeds or avails of such policy in trust for such persons shall not be deemed a third person beneficiary, assignee or payee.

(B) A policy shall be deemed payable to a third person beneficiary if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the person insured by paying the death benefits to a third person.

(5) This section shall be applicable whether or not the right is reserved in any such policy to change the designated beneficiary and whether or not the policy is made payable to the person whose life is insured if the beneficiary, assignee or payee shall predecease such person; and no person shall be compelled to exercise any rights, powers, options or privileges under such policy.

(6) If a policy of insurance has been or shall be effected by any person on his own life or upon the life of another person, the policyowner shall be entitled to any accelerated payments of the death benefit or accelerated payment of a special surrender value permitted under such policy as against the creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts of the policyowner.

(c) (1) No money or other benefits payable or allowable under any policy of insurance against disability arising from accidental injury or bodily infirmity or ailment of the person insured, shall be liable to execution for the purpose of satisfying any debt or liability of the insured, whether incurred before or after the commencement of the

disability, except as provided in subsection (e) hereof.

(2) With respect to debts or liabilities incurred for necessaries furnished the insured after the commencement of disability, the exemption shall not include any income payment benefits payable as a result of any disability of the insured, and with respect to all other debts or liabilities incurred after the commencement of disability of the insured, the exemption of income payment benefits payable as a result of any disability of the insured shall not at any time exceed payment at a rate of four hundred dollars per month for the period of such disability.

(3) When a policy provides for lump sum payment because of a dismemberment or other specific loss of insured, such payment shall be exempt from execution of insured's creditors.

(4) This subsection shall not affect the assignability of any benefit otherwise assignable.

(d) (1) The benefits, rights, privileges and options which, under any annuity contract are due or prospectively due the annuitant, who paid the consideration for the annuity contract, shall not be subject to execution.

(2) The annuitant shall not be compelled to exercise any such rights, powers or options contained in the annuity contract, nor shall creditors be allowed to interfere with or terminate the contract, except as provided in subsection (e) hereof and except that the court may order the annuitant to pay to a judgment creditor or apply on the judgment in installments, a portion of such benefits that appears just and proper to the court, with due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(3) The benefits, rights, privileges or options accruing under such contract to a beneficiary or assignee shall not be transferable nor subject to commutation. If the benefits are payable periodically or at stated times, the same exemptions and exceptions contained herein for the annuitant shall apply with respect to such beneficiary or assignee.

(4) The benefits, rights, privileges or options accruing under an annuity contract funding a structured settlement which would otherwise be nontransferable under this subsection may be transferred in

accordance with title seventeen of article five of the general obligations law. As used in this paragraph the term "structured settlement" means an arrangement for periodic payments of damages for personal injuries established by settlement or judgment in resolution of a tort claim; and the term "periodic payments" shall include scheduled future lump sum payments.

(e) (1) Every assignment or change of beneficiary or other transfer is valid, except in cases of transfer with actual intent to hinder, delay or defraud creditors, as defined by article ten of the debtor and creditor law. In such cases creditors shall have all the remedies provided by such article ten.

(2) (A) Subject to the statute of limitations, the amount of premiums or other consideration paid with actual intent to defraud creditors as provided in article ten of the debtor and creditor law, together with interest on such amount, shall enure to the benefit of creditors from the proceeds of the policy or contract; but the insurer issuing such policy or contract shall be discharged of liability thereunder by making payments in accordance with its terms, or in accordance with any assignment, change of beneficiary or other transfer, unless before any such payment such insurer shall have received written notices, by or on behalf of any such creditor, of a claim to recover any benefits on the ground of a transfer or payment made with intent to defraud such creditor.

(B) The notice shall specify the amount claimed or sufficient facts to enable the insurer to ascertain such amount, the insurance or annuity contract, the person insured or annuitant, and the transfers or payments sought to be avoided on the ground of fraud.

(3) (A) Notwithstanding any inconsistent provision of this section or other law, any right of subrogation to benefits to which a local social services district, the department of social services, or the commissioner of health or his designee, shall be entitled shall be valid and enforceable to the extent benefits are available under any individual accident and health insurance, group or blanket accident and health insurance, or noncancellable disability insurance policy, or any subscriber contract made by a corporation subject to the provisions of article forty-three of this chapter, except that no such right of subrogation shall be enforceable if such benefits may be claimed by the

department of social services, an appropriate social services official or the commissioner of health or his designee, by agreement or other established procedure, directly from an insurance carrier.

(B) The right of subrogation does not attach to insurance benefits paid or provided under any health insurance policy prior to the receipt by the carrier issuing such insurance of written notice from the department of social services, a local social services district, or the commissioner of health or his designee, of the exercise of subrogation rights.

(C) No right of subrogation to insurance benefits available under any health insurance policy shall be enforceable unless written notice of the exercise of such subrogation right is received by the carrier within three years from the date services for which benefits are provided under the policy or contract are rendered. An insurer shall not deny a claim made in conformance with paragraph (b) of subdivision two of section three hundred sixty-seven-a of the social services law solely on the basis of the date of submission of the claim, the type or format of the claim form, a failure to obtain prior authorization, or a failure to present proper documentation at the point-of-sale that is the basis of the claim.

(4) No terms of any policy or contract which directly or indirectly prevent or prohibit the assignment of rights under any policy or contract prevent a local social services district, the department of social services, or the commissioner of health or his designee, from claiming benefits to which it shall be subrogated. The right of subrogation attaches to any benefits paid or provided under any policy, plan or contract upon receipt of written notice of the exercise of such subrogation rights.

(f) This section shall likewise apply to group insurance policies or annuity contracts, to the certificates or contracts of fraternal benefit societies, and to the policies or contracts of cooperative life and accident insurance companies.