WEST VIRGINIA CODE CHAPTER 46A ARTICLE 6H

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§46A-6H-1. Definitions.

For the purposes of this article:

(1) "Closing date" means the date the transfer agreement is executed by the consumer and the transferee, and shall be at least fourteen days after the requisite disclosures have been provided to the consumer and interested parties.

(2) "Consumer" means any person entitled to receive periodic future payments from an annuity issuer, settlement obligor or any other party as the result of an annuity, settlement, lottery winnings, sweepstakes payoff or other future payment arrangement.

(3) "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.

(4) "Favorable tax determination" means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities that are applicable to the parties to such transfer and on the parties to the structured settlement agreement and any qualified assignment agreement and establish 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 consumer, will not be adversely affected by such transfer:

(i) A United States Treasury regulation;

(ii) A published ruling by the United States Internal Revenue Service;

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

(iv) Other applicable legal authority that is binding on the United States Internal Revenue Service.

(5) "Interested party" means an insurance company, an annuity issuer, a structured settlement obligor, a lottery, a beneficiary irrevocably designated in an agreement to receive future payments following the consumer's death or other entity obligated to pay to a consumer any future payments or any other party that has continuing rights or obligations under the structured settlement agreement.

(6) "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.

(7) "Structured settlement" means an arrangement whereby a settlement obligor, an annuity

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issuer or other person agrees to make future payments to a consumer in resolution of a personal injury or other claim.

(8) "Structured settlement payment rights" means the right to receive periodic payments, including lump sum payments, under a structured settlement from a settlement obligor, annuity issuer, or other person.

(9) "Transfer" means any sale, assignment or other conveyance of future payment rights by a consumer to a transferee for consideration.

(10) "Transfer agreement" means an agreement providing for the transfer of future payment rights from a consumer to a transferee.

(11) "Transferee" means any person or entity that becomes entitled to receive a consumer's future payments as a result of a transfer agreement and includes companies in the business of purchasing future payments.

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§46A-6H-2. Disclosure requirements prior to transfer.

(a) In order for any transfer by a consumer to a transferee to be effective, the transferee shall provide the following disclosures in writing, in bold, twelve point type, to the consumer at least fourteen days prior to the earlier of the closing date or the hearing on the transfer when court approval is required by the provisions of this article:

(1) The amount of each future payment to be transferred by the consumer and the date such payments were due to the consumer;

(2) The aggregate amount of the future payments to be transferred by the consumer;

(3) The discounted present value of the future payments to be transferred by the consumer and the discount rate used in the calculation, as determined by discounting the 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;

(4) The discount rate used in subdivision (3) of this section stated in terms of an annual percentage rate;

(5) The lump sum payable to the consumer in exchange for transferring the future payments;

(6) A good faith estimate of all commissions, fees, rebates, service charges, application fees, processing fees, closing costs, filing fees, administrative charges and other commissions, fees, costs, expenses and charges to be paid by the consumer or deducted from the lump sum in connection with the transfer;

(7) The net amount payable to the consumer after the deduction of all commissions, fees, costs, expenses and charges described in subdivision (6) of this section; and

(8) A statement that there may be adverse tax consequences affecting the consumer as a result of the transfer and that the consumer is advised to seek the advice of an attorney or accountant.

(b) The transferee shall also provide written notice to all interested parties at least fourteen days prior to the earlier of the closing date of the transfer or the hearing when court approval is required including:

(1) The closing date of the transfer, or the date, time and place of the hearing;

(2) A copy of the disclosure statement required by subsection (a) of this section; and

(3) The name, address and taxpayer identification number of the transferee.

(c) If the transfer requires court approval pursuant to section three of this article, then the transferee shall also provide the disclosure statement required by subsection (a) of this

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section to the court and the guardian ad litem, if one is named by the court.

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§46A-6H-3. Requirement of court approval for certain structured settlement transfers.

(a) In addition to the requirements of this article, all transfer agreements must be approved by the circuit court of the county wherein the consumer resides or where the structured settlement agreement was executed when the structured settlement payment rights arise from a personal injury or other claim.

(b) The transferee shall commence the action by filing a petition with the court seeking approval of the transfer and providing to the court the disclosure statement required by subsection (a), section two of this article.

(c) The circuit court shall set a time and date for a hearing on the matter within twenty-one days of the date of the filing of the petition. The transferee shall notify the consumer and all interested parties of the date and time of the hearing and provide them with a copy of the petition.

(d) The court may appoint a guardian ad litem for the consumer in all cases, and shall appoint a guardian at litem for the consumer in any case where the structured settlement payment rights belong to an infant, an incompetent person or a ward of the court. The guardian ad litem shall review the requisite disclosures and make an independent inquiry to determine whether the proposed transfer is fair, reasonable and in the best interests of the consumer and any dependents of the consumer as well and determine if transfer has been attempted or accomplished before. The information shall be reported to the court during the hearing on the matter.

(e) An interested party has the right to appear and contest the proposed transfer at the time of the hearing. If, after proper notice, the interested party does not make an appearance, then the interested party shall be bound by the court's ruling.

(f) After a hearing or upon its own motion, the court may approve the transfer if the court finds that:

(1) The consumer has clearly demonstrated that: (A) He or she, or his or her family is facing a financial hardship that the transfer would alleviate and that the transfer would not subject the consumer or the consumer's family to undue financial hardship in the future; or (B) the transfer is in the best interest of the consumer: Provided, That the judge shall inquire of the guardian ad litem and the transferee as to possible adverse tax consequence to the consumer and inform the consumer of the result of said inquiry;

(2) The transferee is in compliance with the provisions of section two of this article; and

(3) The transfer agreement does not contravene the terms of the structured settlement agreement, including any restrictions on the right of the consumer to transfer his or her structured settlement payment rights, unless the annuity issuer and structured settlement

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obligor have consented to the transfer. However, the approval of the annuity issuer and the structured settlement obligor shall not be required if, at the time the consumer and the transferee entered into the transfer agreement, a favorable tax determination was in effect.

(g) The court shall award the guardian ad litem reasonable fees for representing the consumer. Attorneys' fees and costs shall be paid by the transferee.

(h) A consumer may request court approval for a transfer that does not mandate court approval under this section. Such voluntary petition by the consumer shall then become subject to the provisions of this section. The transferee shall be responsible for filing the action pursuant to subsection (b) of this section and shall be responsible for attorney's fees or guardian ad litem fees.

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§46A-6H-4. Prohibiting transfer agreements of workers' compensation claims and other transfer agreements that contravene law.

Any agreement to transfer future payments arising under a workers' compensation claim is prohibited as is any other agreement to transfer future payments that would contravene existing law.

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§46A-6H-5. Right of recision.

(a) Any consumer who enters into a transfer agreement shall have an absolute, nonwaiveable right of recision for five business days following the closing date of the transfer. During the five-day recision period, the consumer may rescind the transfer agreement by phone, mail or facsimile, effective upon receipt, without penalty or further obligation to the transferee, except that any amounts advanced by the transferee to the consumer in contemplation of the transfer shall be immediately refunded to the transferee.

(b) When a transfer requires court approval, the consumer may rescind without penalty until the court order is entered appointing a guardian ad litem. When the consumer dismisses the action after the appointment of a guardian ad litem or rescinds the transfer agreement within five business days of court approval of the transfer, the consumer shall be responsible for the filing fee and any guardian ad litem fees.

(c) Notice of the right of recision shall be provided to the consumer in writing by the transferee prior to the time of closing.

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§46A-6H-6. Remedies; effective date; nonwaiver.

(a) This article shall apply to transfer agreements of future payment rights executed after the effective date of this article. Nothing in this article shall be construed to impair, limit, affect or otherwise apply to any transfer agreement executed prior to the effective date of this article.

(b) A violation of a provision of this article by the transferee is an unfair or deceptive act or practice in the conduct of commerce pursuant to the provisions of article six, section one hundred four of this chapter. The remedy provided for in this section is in addition to other remedies provided for by law.

(c) The provisions of this article may not be waived.

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§46A-6H-7. Protection from liability to consumer.

When an interested party makes payments to the transferee pursuant to a court order of approval or a transfer agreement executed in accordance with the provisions of this article, the interested party and the transferee are not liable to the consumer or other interested party for the transfer of the consumer's future payments.

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§46A-6H-8. Registration with the Secretary of State.

(a) A transferee or other person in the business of soliciting or purchasing future payments shall file a registration statement with the Secretary of State before advertising or arranging transfers of consumer's future payment rights in this state. The registration statement shall contain:

(1) The name and address of the transferee;

(2) The name and address of the transferee's agent for service of process within the state, or if the company does not have one within the state, a statement that the Secretary of State will serve as the agent for service of process; and

(3) A full and complete disclosure of any prior or pending litigation involving alleged violations of this article's provisions or consumer complaints filed with the Attorney General's office of this state that allege violations of this article's provisions, or a notarized statement that there has been no such litigation or unresolved complaint relating to the operations of the transferee.

(b) The transferee shall update the statement within thirty days after a change of information occurs.

(c) Each transferee registering pursuant to the provisions of this section shall maintain a copy of the registration statement. The transferee shall allow a consumer, interested party or court to inspect the registration statement on request.

(d) The Secretary of State may charge each transferee that files a registration statement with the Secretary of State a reasonable fee not to exceed $100 to cover the cost of filing.

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