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REGULAR SESSION, 1999



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Committee Substitute For
SENATE BILL NO. 18

(By Senators *Bowman & Kessler*)



PASSED MARCH 13, 1999

In Effect NINETY DAYS FROM Passage

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OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 18

(SENATORS BOWMAN AND KESSLER, *original sponsors*)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-g, relating to companies that purchase the right to receive a person's future payments from an annuity, court settlement, lottery payoff, sweepstakes payoff or other similar payment arrangement; defining terms; setting forth disclosure requirements; establishing a threshold amount for the applicability of the article; requiring court approval for certain transfers; prohibiting transfers that are otherwise prohibited by law; restricting transfers where the structured settlement contains a provision limiting the right to assign or transfer; providing for a right to rescision; establishing operative date and remedies; prohibiting waiver; limiting liability to consumer;

and requiring companies to register with the secretary of state.

Be it enacted by the Legislature of West Virginia:

That chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six-g, to read as follows:

ARTICLE 6G. TRANSFERS OF RIGHT TO RECEIVE FUTURE PAYMENTS.

§46A-6G-1. Definitions.

1 (a) For the purposes of this article:

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

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

11 (3) "Discounted present value" means the fair present
12 value of future payments, as determined by discounting
13 such payments to the present using the most recently
14 published applicable federal rate for determining the
15 present value of an annuity, as issued by the United States
16 Internal Revenue Service.

17 (4) "Favorable tax determination" means, with respect
18 to a proposed transfer of structured settlement payment
19 rights, any of the following authorities that are applicable
20 to the parties to such transfer and on the parties to the
21 structured settlement agreement and any qualified assign-
22 ment agreement and establish that the federal income tax
23 treatment of the structured settlement for the parties to
24 the structured settlement agreement and any qualified
25 assignment agreement, other than the consumer, will not
26 be adversely affected by such transfer:

27 (i) A United States Treasury regulation;

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

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

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

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

41 (6) "Qualified assignment agreement" means an agree-
42 ment providing for a qualified assignment within the
43 meaning of section 130 of the United States Internal
44 Revenue Code, United States Code Title 26, as amended
45 from time to time.

46 (7) "Structured settlement" means an arrangement
47 whereby a settlement obligor, an annuity issuer or other
48 person agrees to make future payments to a consumer in
49 resolution of a personal injury or other claim.

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

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

57 (10) "Transfer agreement" means an agreement provid-
58 ing for the transfer of future payment rights from a
59 consumer to a transferee.

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

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

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

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

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

12 (3) The discounted present value of the future payments
13 to be transferred by the consumer and the discount rate
14 used in the calculation, as determined by discounting the
15 such payments to the present using the most recently
16 published applicable federal rate for determining the
17 present value of an annuity as issued by the United States
18 Internal Revenue Service;

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

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

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

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

32 (8) A statement that there may be adverse tax conse-
33 quences affecting the consumer as a result of the transfer
34 and that the consumer is advised to seek the advice of an
35 attorney or accountant.

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

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

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

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

46 (c) If the transfer requires court approval pursuant to
47 section three of this article, then the transferee shall also
48 provide the disclosure statement required by subsection (a)
49 of this section to the court and the guardian ad litem, if
50 one is named by the court.

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

1 (a) In addition to the requirements of this article, the
2 transfer agreement shall be approved by the circuit court
3 of the county wherein the consumer resides or where the
4 structured settlement agreement was executed when:

5 (1) The structured settlement payment rights belong to
6 an infant or an incompetent person; or

7 (2) The structured settlement payment rights arise from
8 a personal injury or other claim and:

9 (i) The aggregate of the structured settlement payment
10 rights exceeds forty thousand dollars; or

11 (ii) The structured settlement agreement contains a
12 provision restricting the right of the consumer to assign or
13 transfer the consumer's future payment rights.

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

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

23 (d) The court shall appoint a guardian ad litem in cases
24 where the structured settlement payment rights belong to
25 an infant, an incompetent person or a ward of the court.
26 The guardian ad litem shall review the requisite disclo-
27 sures and make an independent inquiry to determine
28 whether the proposed transfer is fair, reasonable and in
29 the best interests of the consumer. Such information shall
30 be reported to the court during the hearing on the matter.

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

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

38 (1) The consumer has demonstrated that (A) he or she, or
39 his or her family, is facing a financial hardship and that
40 the transfer would not subject the consumer or the con-
41 sumer's family to undue financial hardship in the future or
42 (B) the transfer is in the best interest of the consumer:
43 *Provided*, That the judge shall disclose the possible
44 adverse tax consequence to the consumer;

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

47 (3) The transfer agreement does not contravene the terms
48 of the structured settlement agreement, including any
49 restrictions on the right of the consumer to transfer his or
50 her structured settlement payment rights, unless the
51 annuity issuer and structured settlement obligor have
52 consented to the transfer. However, the approval of the
53 annuity issuer and the structured settlement obligor shall
54 not be required if, at the time the consumer and the

55 transferee entered into the transfer agreement, a favorable
56 tax determination was in effect.

57 (g) The court shall award the guardian ad litem reason-
58 able fees for representing the consumer. Such fees shall be
59 paid by the transferee.

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

**§46A-6G-4. Prohibiting transfer agreements of worker's com-
pensation claims and other transfer agreements
that contravene law.**

1 Any agreement to transfer future payments arising under
2 a worker's compensation claim is prohibited as is any
3 other agreement to transfer future payments that would
4 contravene existing law.

§46A-6G-5. Right of rescision.

1 (a) Any consumer who enters into a transfer agreement
2 shall have an absolute, nonwaiveable right of rescision for
3 five business days following the closing date of the trans-
4 fer. During the five-day rescision period, the consumer
5 may rescind the transfer agreement by phone, mail or
6 facsimile, effective upon receipt, without penalty or
7 further obligation to the transferee, except that any
8 amounts advanced by the transferee to the consumer in
9 contemplation of the transfer shall be immediately re-
10 funded to the transferee.

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

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

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

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

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

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

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

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

§46A-6G-8. Registration with the secretary of state.

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

7 (1) The name and address of the transferee;

8 (2) The name and address of the transferee's agent for
9 service of process within the state, or if the company does
10 not have one within the state, a statement that the secre-

11 tary of state will serve as the agent for service of process;
12 and

13 (3) A full and complete disclosure of any prior or pend-
14 ing litigation involving alleged violations of this article's
15 provisions or consumer complaints filed with the attorney
16 general's office of this state that allege violations of this
17 article's provisions, or a notarized statement that there has
18 been no such litigation or unresolved complaint relating to
19 the operations of the transferee.

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

22 (c) Each transferee registering pursuant to the provisions
23 of this section shall maintain a copy of the registration
24 statement. The transferee shall allow a consumer, inter-
25 ested party or court to inspect the registration statement
26 on request.

27 (d) The secretary of state may charge each transferee
28 that files a registration statement with the secretary of
29 state a reasonable fee not to exceed one hundred dollars to
30 cover the cost of filing.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Robert Schover
.....
Chairman Senate Committee

Joe F. Smith
.....
Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

Harriet Elkus
.....
Clerk of the Senate

Bryony A. Berg
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Franklin
.....
Speaker House of Delegates

The within..... this the *27th*
Day of *April*....., 1999

Jeffrey D. Underwood
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/1/99

Time 10:25 am