

No. 168. An act relating to structured settlements and to prohibiting collusion as an antitrust violation.

(H.778)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 9 V.S.A. chapter 63, subchapter 5 is added to read:

Subchapter 5. Transfers of Structured Settlements

§ 2480aa. LEGISLATIVE INTENT; PUBLIC POLICY

Structured settlement agreements, which provide for payments to a person over a period of time, are often used in the settlement of actions such as personal injury or medical claims and serve a number of valid purposes, including protection of persons from economic victimization and assuring a person's ability to provide for his or her future needs and obligations. It is the policy of this state that such agreements, which have often been approved by a court, should not be set aside lightly or without good reason.

§ 2480bb. DEFINITIONS

In this subchapter:

(1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) "Dependents" includes a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

(3) “Discounted present value” means the present value of future payments 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) “Gross advance amount” means the sum payable to the payee or for the payee’s account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

(5) “Independent professional advice” means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser meeting all of the following requirements:

(A) The advisor is engaged by the payee to render advice concerning the legal, tax, or financial implications of a structured settlement or a transfer of structured settlement payment rights;

(B) The adviser’s compensation for rendering independent professional advice is not affected by occurrence or lack of occurrence of a settlement transfer; and

(C) A particular adviser is not referred to the payee by the transferee or its agent, except that the transferee may refer the payee to a lawyer referral service or agency operated by a state or local bar association.

(6) “Interested parties” means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee’s death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations relating to the structured settlement payment rights which are the subject of the proposed transfer.

(7) “Net advance amount” means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under subdivision 2480cc(5) of this title.

(8) “Payee” means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

(9) “Periodic payments” includes both recurring payments and scheduled future lump sum payments.

(10) “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.

(11) “Settled claim” means the original tort claim resolved by a structured settlement.

(12) “Structured settlement” means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim but does not refer to periodic payments in settlement of a workers’ compensation claim.

(13) “Structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(14) “Structured settlement obligor” means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(15) “Structured settlement payment rights” means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

(A) the payee is domiciled in this state; or

(B) the structured settlement agreement was approved by a court in this state.

(16) “Terms of the structured settlement” include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or other approval of any court or other government authority that authorized or approved such structured settlement.

(17) “Transfer” means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration.

(18) “Transfer agreement” means the agreement providing for a transfer of structured settlement payment rights.

(19) “Transfer expenses” means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorney’s fees, escrow fees, lien recordation fees, judgment and lien search fees, finders’ fees, commissions, and other payments to a broker or other intermediary.

(20) “Transferee” means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

§ 2480cc. REQUIRED DISCLOSURES TO PAYEE

Not less than ten days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement in bold type in a size no smaller than 14 points setting forth:

(1) the amounts and due dates of the structured settlement payments to be transferred;

(2) the aggregate amount of such payments;

(3) the discounted present value of the payments to be transferred, which shall be identified as the “calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities,” and the amount of the applicable federal rate used in calculating such discounted present value;

(4) the gross advance amount and the annual discount rate, compounded monthly, used to determine such figure;

(5) an itemized listing of all applicable transfer expenses, other than attorneys’ fees and related disbursements payable by the payee in connection with the transferee’s application for approval of the transfer, and the transferee’s best estimate of the amount of any such fees and disbursements;

(6) the net advance amount;

(7) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee, as well as a description of any other financial penalties the payee might incur with the transferee as a result of such a breach; and

(8) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, at any time before the date on which a court enters a final order approving the transfer agreement.

§ 2480dd. APPROVAL OF TRANSFERS OF STRUCTURED

SETTLEMENT PAYMENT RIGHTS

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by such court that:

(1) the transfer is in the best interest of the payee taking into account the welfare and support of the payee's dependents, considering all relevant factors, including:

(A) the payee's ability to understand the financial terms and consequences of the transfer;

(B) the payee's capacity to meet his or her financial obligations, including the potential need for future medical treatment;

(C) the need, purpose, or reason for the transfer; and

(D) whether the transfer is fair and reasonable, considering the discount rate used to calculate the gross advance amount, the fees and expenses imposed on the payee, and whether the payee obtained more than one quote for the same or a substantially similar transfer.

(2)(A) the payee has been advised in writing by the transferee to seek independent professional advice regarding the financial advisability of the transfer and the other financial options available to the payee, if any, and:

(B)(i) that the payee has in fact received such advice; or

(ii) that such advice is unnecessary for good cause shown.

(3) the transfer does not contravene any applicable statute or the order of any court or other government authority.

(b) Any agreement to transfer future payments arising under a workers' compensation claim is prohibited.

(c) At the hearing on the transfer the court may, in its sole discretion, continue the hearing and require the payee to seek independent professional advice if the court determines that obtaining such advice should be required based on the circumstances of the payee or the terms of the transaction. If the court determines that independent professional advice should be required, the court may order that the costs incurred by a payee for independent professional advice be paid by the transferee, the payee, or another party, provided that the amount to be paid by the transferee shall not exceed one thousand five hundred dollars (\$1,500.00).

§ 2480ee. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT

PAYMENT RIGHTS

Following a transfer of structured settlement payment rights under this subchapter:

(1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(A) if the transfer contravenes the terms of the structured settlement for any taxes incurred by such parties as a consequence of the transfer; and

(B) for any other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by such parties with the order of the court or arising as a consequence of the transferee's failure to comply with this subchapter;

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and

(4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this subchapter.

§ 2480ff. PROCEDURE FOR APPROVAL OF TRANSFERS

(a) An application under this subchapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the superior court, civil division, of the county in which the payee resides or in which the structured settlement obligor or the annuity issuer maintains its principal place of business or in any court that approved the structured settlement agreement.

(b) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section 2480dd of this title, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

(1) a copy of any court order approving the settlement;

(2) a written description of the underlying basis for the settlement;

(3) a copy of the transferee's application;

(4) a copy of the transfer agreement;

(5) a copy of the disclosure statement required under section 2481n of this title;

(6) a listing of each of the payee's dependents, together with each dependent's age;

(7) a statement setting forth whether, to the best of the transferee's knowledge after making a reasonable inquiry to the payee, the structured settlement obligor, and the annuity issuer, there have been any previous transfers or applications for transfer of any structured settlement payment rights of the payee and giving details of all such transfers or applications for transfer;

(8) if available to the transferee after making a good faith request of the payee, the structured settlement obligor and the annuity issuer, the following documents, which shall be filed under seal:

(A) a copy of the annuity contract;

(B) a copy of any qualified assignment agreement;

(C) a copy of the underlying structured settlement agreement;

(9) either a certification from an independent professional advisor establishing that the advisor has given advice to the payee on the financial advisability of the transfer and the other financial options available to the payee or a written request that the court determine that such advice is unnecessary pursuant to subdivision 2480dd(a)(2) of this title; and

(10) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than 15 days after service of the transferee's notice, in order to be considered by the court.

(c) The transferee shall file a copy of the application with the attorney general's office and a copy of the application and the payee's Social Security number with the office of child support, the department of taxes, and the department of financial regulation. The offices and departments receiving copies pursuant to this section shall permit the copies to be filed electronically.

(d) The payee shall attend the hearing unless attendance is excused for good cause.

§ 2480gg. GENERAL PROVISIONS; CONSTRUCTION

(a) The provisions of this subchapter may not be waived by any payee.

(b) Any transfer agreement entered into on or after the effective date of this subchapter by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:

(1) periodically confirming the payee's survival; and

(2) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(d) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this subchapter.

(e) Nothing contained in this subchapter shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this subchapter is valid or invalid.

(f) Compliance with the requirements set forth in section 2480cc of this title and fulfillment of the conditions set forth in section 2480dd of this title shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for or any liability arising from noncompliance with such requirements or failure to fulfill such conditions.

Sec. 2. 9 V.S.A. § 2451 is amended to read:

§ 2451. PURPOSE

The purpose of this chapter is to complement the enforcement of federal statutes and decisions governing unfair methods of competition, ~~and~~ unfair or

deceptive acts or practices, and anti-competitive practices in order to protect the public; and to encourage fair and honest competition.

Sec. 3. 9 V.S.A. § 2451a is amended to read:

§ 2451a. DEFINITIONS

For the purposes of this chapter:

(a) “Consumer” means any person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services not for resale in the ordinary course of his or her trade or business but for his or her use or benefit or the use or benefit of a member of his or her household, or in connection with the operation of his or her household or a farm whether or not the farm is conducted as a trade or business, or a person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services not for resale in the ordinary course of his or her trade or business but for the use or benefit of his or her business or in connection with the operation of his or her business.

(b) “Goods” or “services” shall include any objects, wares, goods, commodities, work, labor, intangibles, courses of instruction or training, securities, bonds, debentures, stocks, real estate, or other property or services of any kind. The term also includes bottled liquified petroleum (LP or propane) gas.

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(h) "Collusion" means an agreement, contract, combination in the form of trusts or otherwise, or conspiracy to engage in price fixing, bid rigging, or market division or allocation of goods or services between or among persons.

Sec. 4. 9 V.S.A. § 2453a is added to read:

§ 2453a. PRACTICES PROHIBITED; CRIMINAL ANTITRUST

VIOLATIONS

(a) Collusion is hereby declared to be a crime.

(b) Subsection (a) of this section shall not be construed to apply to activities of or arrangements between or among persons which are permitted, authorized, approved, or required by federal or state statutes or regulations.

(c) It is the intent of the general assembly that in construing this section and subsection 2451a(h) of this title, the courts of this state shall be guided by the construction of federal antitrust law and the Sherman Act, as amended, as interpreted by the courts of the United States.

(d) Nothing in this section limits the power of the attorney general or a state's attorney to bring civil actions for antitrust violations under section 2453 of this title.

(e) A violation of this section shall be punished by a fine of not more than \$100,000.00 for an individual or \$1,000,000.00 for any other person or by imprisonment not to exceed five years or both.

Sec. 5. 9 V.S.A. § 2453b is added to read:

§ 2453b. RETALIATION PROHIBITED

No person shall retaliate against, coerce, intimidate, threaten, or interfere with any other person who:

(1) has opposed any act or practice of the person which is collusive or in restraint of trade;

(2) has lodged a complaint or has testified, assisted, or participated in any manner with the attorney general or a state's attorney in an investigation of acts or practices which are collusive or in restraint of trade;

(3) is known by the person to be about to lodge a complaint or testify, assist, or participate in any manner in an investigation of acts or practices which are collusive or in restraint of trade; or

(4) is believed by the person to have acted as described in subdivision (1), (2), or (3) of this subsection.

Sec. 6. EFFECTIVE DATES

(a) Sec. 1 of this act shall take effect on July 1, 2012.

(b) Secs. 2, 3, 4, and 5 of this act and this section shall take effect on passage.

Approved: May 18, 2012