

1 H.778

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Commerce and trade; consumer fraud; transfers of structured
5 settlements

6 Statement of purpose: This bill proposes to establish a procedure and
7 substantive standards for the application and court approval of transfers of
8 structured settlement payment rights. The bill defines applicable terms and
9 clarifies the rights and responsibilities of the parties involved during and after
10 such a transfer.

11 An act relating to structured settlements

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

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

14 Subchapter 5. Transfers of Structured Settlements

15 § 2480aa. LEGISLATIVE INTENT; PUBLIC POLICY

16 Structured settlement agreements, which provide for payments to a person
17 over a period of time, are often used in the settlement of actions such as
18 personal injury or medical claims and serve a number of valid purposes,
19 including protection of persons from economic victimization and assuring a
20 person's ability to provide for his or her future needs and obligations. It is the

1 policy of this state that such agreements, which have often been approved by a
2 court, should not be set aside lightly or without good reason.

3 § 2480bb. DEFINITIONS

4 In this subchapter:

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

7 (2) “Dependents” means a payee’s spouse and minor children and all
8 other persons for whom the payee is legally obligated to provide support,
9 including alimony.

10 (3) “Discounted present value” means the present value of future
11 payments determined by discounting such payments to the present using the
12 most recently published Applicable Federal Rate for determining the present
13 value of an annuity, as issued by the United States Internal Revenue Service.

14 (4) “Gross advance amount” means the sum payable to the payee or for
15 the payee’s account as consideration for a transfer of structured settlement
16 payment rights before any reductions for transfer expenses or other deductions
17 to be made from such consideration.

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

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

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

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

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

16 (7) "Net advance amount" means the gross advance amount less the
17 aggregate amount of the actual and estimated transfer expenses required to be
18 disclosed under subdivision 2480cc(6) of this title.

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

1 (9) “Periodic payments” means both recurring payments and scheduled
2 future lump sum payments.

3 (10) “Qualified assignment agreement” means an agreement providing
4 for a qualified assignment within the meaning of Section 130 of the United
5 States Internal Revenue Code, United States Code, Title 26, as amended from
6 time to time.

7 (11) “Settled claim” means the original tort claim resolved wholly or in
8 part by a structured settlement.

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

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

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

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

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

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

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

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

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

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

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

1 § 2480cc. REQUIRED DISCLOSURES TO PAYEE

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

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

7 (2) the aggregate amount of such payments;

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

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

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

19 (6) the net advance amount;

20 (7) the amount of any penalties or liquidated damages payable by the
21 payee in the event of any breach of the transfer agreement by the payee, as

1 well as a description of any other financial penalties the payee might incur with
2 the transferee as a result of such a breach; and

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

6 § 2480dd. APPROVAL OF TRANSFERS OF STRUCTURED

7 SETTLEMENT PAYMENT RIGHTS

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

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

16 (A) the payee's maturity, responsibility, and ability to understand the
17 financial terms and consequences of the transfer;

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

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

1 (D) the reason or reasons why the settlement was structured
2 initially; and

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

7 (2)(A) The payee has been advised in writing by the transferee to seek
8 independent professional advice regarding the financial advisability of the
9 transfer and the other financial options available to the payee; and

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

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

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

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

16 (c) A transferee shall be responsible for the payment of the reasonable costs
17 incurred by a payee for independent professional advice. If a transfer of
18 structured settlement payment rights is approved pursuant to this section, the
19 costs for independent professional advice shall be deducted from the gross
20 advance amount.

1 (d) At the hearing on the transfer, if the payee has waived in writing the
2 opportunity to seek and receive independent professional advice regarding the
3 transfer, the court may, in its sole discretion, continue the hearing and require
4 the payee to seek independent professional advice.

5 § 2480ee. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT

6 PAYMENT RIGHTS

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

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

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

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

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

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

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

7 § 2480ff. PROCEDURE FOR APPROVAL OF TRANSFERS

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

14 (b) Not less than 20 days prior to the scheduled hearing on any application
15 for approval of a transfer of structured settlement payment rights under section
16 2481dd of this title, the transferee shall file with the court and serve on all
17 interested parties a notice of the proposed transfer and the application for its
18 authorization, including with such notice:

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

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

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

1 (4) a copy of the transfer agreement;

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

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

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

12 (8) if available to the transferee after making a good faith request of the
13 payee, the structured settlement obligor, and the annuity issuer: a copy of the
14 annuity contract; a copy of any qualified assignment agreement; and a copy of
15 the underlying structured settlement agreement. These documents shall be
16 filed under seal;

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

1 (10) notification that any interested party is entitled to support, oppose,
2 or otherwise respond to the transferee's application, either in person or by
3 counsel, by submitting written comments to the court or by participating in the
4 hearing; and

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

9 (c) The transferee shall file a copy of the application with the attorney
10 general's office and a copy of the application and the payee's Social Security
11 number with the office of child support, the department of taxes, and the
12 department of banking, insurance, securities, and health care administration.

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

15 § 2480gg. GENERAL PROVISIONS; CONSTRUCTION

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

17 (b) Any transfer agreement entered into on or after the effective date of this
18 subchapter by a payee who resides in this state shall provide that disputes
19 under such transfer agreement, including any claim that the payee has breached
20 the agreement, shall be determined in and under the laws of this state. No such

1 transfer agreement shall authorize the transferee or any other party to confess
2 judgment or consent to entry of judgment against the payee.

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

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

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

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

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

20 (f) Compliance with the requirements set forth in section 2480cc of this
21 subchapter and fulfillment of the conditions set forth in section 2480dd of this

1 subchapter shall be solely the responsibility of the transferee in any transfer of
2 structured settlement payment rights, and neither the structured settlement
3 obligor nor the annuity issuer shall bear any responsibility for or any liability
4 arising from noncompliance with such requirements or failure to fulfill such
5 conditions.

6 Sec. 2. APPLICATION

7 This act shall apply to any transfer of structured settlement payment rights
8 under a transfer agreement entered into on or after August 1, 2012; provided,
9 however, that nothing contained herein shall imply that any transfer under an
10 agreement reached prior to such date is either effective or ineffective.

11 Sec. 3. EFFECTIVE DATE

12 This act shall take effect on July 1, 2012.