

HB 4613

FILED

2008 MAR 31 PM 4:56

OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4613

(By Delegates Webster, Walters, Kessler, Caputo,
Fleischauer, Ellem, Brown, Manchin, Shook and Hamilton)

Passed March 6, 2008

In Effect from Passage

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H. B. 4613

(BY DELEGATES WEBSTER, WALTERS, KESSLER, CAPUTO,
FLEISCHAUER, ELLEM, BROWN, MANCHIN, SHOOK AND
HAMILTON)

[Passed March 6, 2008; in effect from passage.]

AN ACT to amend and reenact §46A-6H-3 of the Code of West Virginia, 1931, as amended, relating to requiring court approval for certain structured settlement transfers; requiring appointment of guardian ad litem; payment of guardian ad litem, attorneys' fees and costs; required findings; and standard of proof.

Be it enacted by the Legislature of West Virginia:

That §46A-6H-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

- 1 (a) In addition to the requirements of this article, all
- 2 transfer agreements must be approved by the circuit court of
- 3 the county wherein the consumer resides or where the

4 structured settlement agreement was executed when the
5 structured settlement payment rights arise from a personal
6 injury or other claim.

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

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

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

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

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

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

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

45 (3) The transfer agreement does not contravene the terms
46 of the structured settlement agreement, including any
47 restrictions on the right of the consumer to transfer his or her
48 structured settlement payment rights, unless the annuity
49 issuer and structured settlement obligor have consented to the
50 transfer. However, the approval of the annuity issuer and the
51 structured settlement obligor shall not be required if, at the
52 time the consumer and the transferee entered into the transfer
53 agreement, a favorable tax determination was in effect.

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

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

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



Chairman Senate Committee



Chairman House Committee

Originating in the House.


In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates

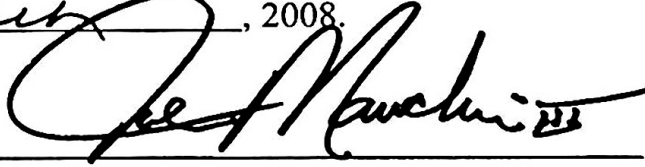


President of the Senate



Speaker of the House of Delegates

The within is approved this the 31st
day of March, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 19 2008

Time 10:15 Am