

Senate Bill 963

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies laws relating to transfers of structured settlement payment rights.

Extends time period in which payee under structured settlement who signs transfer agreement may cancel agreement.

Specifies findings that court or administrative authority must make to approve transfer agreement.

Requires transferee to pay up to specified amount to payee for fees incurred by payee for professional advice related to transfer agreement.

A BILL FOR AN ACT

1
2 Relating to transfers of structured settlement payment rights; creating new provisions; and amending
3 ORS 33.855, 33.860, 33.865 and 33.875.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 33.855 is amended to read:

6 33.855. *[(1)]* A payee may transfer payment rights under ORS 33.850 to 33.875 if:

7 *[(a)]* (1) The payee is domiciled in this state;

8 *[(b)]* (2) The domicile or principal place of business of the obligor or the annuity issuer is lo-
9 cated in this state;

10 *[(c)]* (3) The structured settlement agreement was approved by a court or responsible adminis-
11 trative authority in this state; or

12 *[(d)]* (4) The structured settlement agreement is expressly governed by the laws of this state.

13 *[(2)]* *Prior to transferring payment rights under ORS 33.850 to 33.875, the transferee shall file an*
14 *application for approval of the transfer in:]*

15 *[(a)]* *The county in which the payee resides;]*

16 *[(b)]* *The county in which the obligor or the annuity issuer maintains its principal place of business;*
17 *or]*

18 *[(c)]* *Any court or before any responsible administrative authority that approved the structured*
19 *settlement agreement.]*

20 *[(3)]* *Not less than 20 days prior to the scheduled hearing on an application for approval of a*
21 *transfer of payment rights, the transferee shall send notice of the proposed transfer to:]*

22 *[(a)]* *The payee;]*

23 *[(b)]* *Any beneficiary irrevocably designated under the annuity contract to receive payments follow-*
24 *ing the payee's death;]*

25 *[(c)]* *The annuity issuer;]*

26 *[(d)]* *The obligor; and]*

27 *[(e)]* *Any other party that has continuing rights or obligations under the structured settlement*
28 *agreement that is the subject of the hearing.]*

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 [(4) *The notice sent under subsection (3) of this section shall include:*]

2 [(a) *A copy of the transferee's application.*]

3 [(b) *A copy of the transfer agreement.*]

4 [(c) *A copy of the disclosure statement provided to the payee as required under ORS 33.860.*]

5 [(d) *A listing of each person for whom the payee is legally obligated to provide support, including*
6 *the age of each of those persons.*]

7 [(e) *Notification that any person receiving notice under subsection (3) of this section is entitled to*
8 *support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by*
9 *submitting written comments to the court or responsible administrative authority or by participating in*
10 *the hearing.*]

11 [(f) *Notification of the time and place of the hearing and notification of the manner in which and*
12 *the time by which written responses to the application must be filed, which shall not be less than 15*
13 *days after service of the transferee's notice, in order to be considered by the court or responsible ad-*
14 *ministrative authority.*]

15 **SECTION 2. Sections 3 to 5 of this 2011 Act are added to and made a part of ORS 33.850**
16 **to 33.875.**

17 **SECTION 3. (1) Before transferring payment rights under ORS 33.850 to 33.875, the**
18 **transferee shall file a petition for approval of the transfer in:**

19 **(a) The circuit court for the county in which the payee resides;**

20 **(b) The circuit court for the county in which the obligor or the annuity issuer maintains**
21 **its principal place of business; or**

22 **(c) The court or responsible administrative authority that approved the structured**
23 **settlement agreement.**

24 **(2) A petition under this section must include, to the extent known after the transferee**
25 **has made reasonable inquiry of the payee:**

26 **(a) The payee's name, address and age.**

27 **(b) The payee's marital status, and, if married or separated, the name of the payee's**
28 **spouse.**

29 **(c) The names, ages and place or places of residence of any minor children or other de-**
30 **pendents of the payee.**

31 **(d) The amounts and sources of the payee's monthly income, the payee's financial re-**
32 **sources and, if the payee is married, the amounts and sources of the payee's spouse's**
33 **monthly income and the financial resources of the payee's spouse.**

34 **(e) Whether the payee is currently obligated under any child support order, and, if so,**
35 **the names, addresses and telephone numbers of any person or agency that is receiving child**
36 **support from the payee under the order.**

37 **(3) A petition under this section must include a copy of the signed transfer agreement.**

38 **SECTION 4. (1) Not less than 20 days before the scheduled hearing on a petition for ap-**
39 **proval of a transfer of payment rights, the transferee shall send notice of the filing of the**
40 **petition to:**

41 **(a) The payee;**

42 **(b) Any beneficiary irrevocably designated under the annuity contract to receive pay-**
43 **ments following the payee's death;**

44 **(c) The annuity issuer;**

45 **(d) The obligor; and**

1 (e) Any other party that has continuing rights or obligations under the structured
2 settlement agreement that is the subject of the hearing.

3 (2) The notice sent under subsection (1) of this section must include:

4 (a) A copy of the transferee's petition.

5 (b) A copy of the signed transfer agreement.

6 (c) A copy of the disclosure statement provided to the payee as required under ORS
7 33.860.

8 (d) Notification that any person receiving notice under this section is entitled to support,
9 oppose or otherwise respond to the transferee's petition, either in person or by counsel.

10 (e) Notification of the time and place of the hearing and notification of the manner in
11 which and the time by which written responses to the petition must be filed, which may not
12 be less than 15 days after service of the transferee's notice, in order to be considered by the
13 court or responsible administrative authority.

14 **SECTION 5.** (1) Not less than 30 days before the signing of a transfer of payment rights,
15 the transferee must give a written statement to the payee that indicates that the payee has
16 the right to seek advice from an attorney, certified public accountant, actuary or other li-
17 censed professional adviser, and that the transferee will pay up to \$1,500 of the fees incurred
18 by the payee for the advice. The statement must indicate that the payee may incur the cost
19 of the advice at any time before signing the transfer.

20 (2) If a payee retains an attorney, certified public accountant, actuary or other licensed
21 professional adviser after receiving the statement required under this section, the transferee
22 shall pay up to \$1,500 of the fees incurred by the payee before signing the agreement, without
23 regard to whether the transfer agreement is approved.

24 (3) An attorney, certified public accountant, actuary or other licensed professional ad-
25 viser employed by the transferee may not provide advice to the payee.

26 **SECTION 6.** ORS 33.860 is amended to read:

27 33.860. Not less than *[three]* 10 days **before** *[prior to the day on which a payee is scheduled to*
28 *sign]* a transfer agreement **is signed**, a transferee shall provide the payee with a statement in not
29 less than 14-point type that sets forth:

30 (1) The amounts and due dates of the structured settlement payments to be transferred.

31 (2) The aggregate amount of the payments to be transferred.

32 (3) The discounted present value of the payments and the rate used in calculating the discounted
33 present value. The discounted present value shall be calculated by using the most recently published
34 applicable federal rate for determining the present value of an annuity, as issued by the Internal
35 Revenue Service.

36 (4) The amount payable to a payee as the result of a transfer. The amount set forth in this
37 subsection shall be calculated before any reductions are made for transfer expenses required to be
38 listed under subsection (5) of this section or any related disbursements.

39 (5) An itemized listing of all applicable transfer expenses and the transferee's best estimate of
40 the amount of any attorney fees and disbursements. For the purposes of this subsection, "transfer
41 expenses":

42 (a) Includes all expenses of a transfer that are required under the transfer agreement to be paid
43 by the payee or deducted from the amount payable to a payee as the result of a transfer.

44 (b) Does not include attorney fees and related disbursements payable in connection with the
45 transferee's *[application]* **petition** for approval of the transfer or preexisting obligations of the payee

1 payable for the payee's account from the proceeds of a transfer.

2 (6) The amount calculated by subtracting the aggregate amount of the actual and estimated
3 transfer expenses required to be listed under subsection (5) of this section from the amount identi-
4 fied in subsection (4) of this section.

5 (7) The amount of any penalties or liquidated damages payable by the payee in the event of a
6 breach of the transfer agreement by the payee.

7 (8) A statement that the payee has the right to cancel the transfer agreement, without penalty
8 or further obligation, not later than the *[third]* **10th** business day after the date the agreement is
9 signed by the payee.

10 **SECTION 7.** ORS 33.865 is amended to read:

11 33.865. (1) A transfer of payment rights under ORS 33.850 to 33.875 is not effective and an
12 obligor or annuity issuer is not required to make any payments directly or indirectly to a transferee
13 unless the **transferee has filed a petition under section 3 of this 2011 Act and the** transfer *[has*
14 *been]* **is** approved *[in advance in a final court order or order of a]* **by the court or** responsible ad-
15 ministrative authority based on express findings by the court or authority that:

16 *[(1)]* (a) The transfer is in the best interest of the payee, taking into account the welfare and
17 support of all persons for whom the payee is legally obligated to provide support.

18 *[(2)]* (b) The payee has been advised *[in writing]* by the transferee **in the manner provided by**
19 **section 5 of this 2011 Act of the right of the payee** to seek advice from an attorney, certified
20 public accountant, actuary or other licensed professional adviser *[regarding the transfer]* **at the**
21 **expense of the transferee**, and the payee has either received the advice or knowingly waived ad-
22 vice in writing.

23 (c) **The transferee has given the notice required by section 4 of this 2011 Act and the**
24 **statement required by ORS 33.860.**

25 *[(3)]* (d) The transfer does not contravene any applicable statute or order of any court or other
26 government authority.

27 (e) **The payee understands the terms of the transfer agreement, including the terms set**
28 **forth in the statement required by ORS 33.860.**

29 (f) **The payee understood the payee's right to cancel the transfer agreement and know-**
30 **ingly elected not to cancel the transfer agreement.**

31 (2) **When determining whether the proposed transfer should be approved, including**
32 **whether the transfer agreement is fair, reasonable and in the payee's best interest, the court**
33 **or responsible administrative authority shall consider the totality of the circumstances, in-**
34 **cluding but not limited to:**

35 (a) **The reasonable preference and desire of the payee to complete the proposed transfer,**
36 **taking into account the payee's age, mental capacity, knowledge of the law and apparent**
37 **maturity level.**

38 (b) **The stated purpose of the transfer.**

39 (c) **The payee's financial situation.**

40 (d) **The terms of the transfer agreement, including whether the payee is transferring**
41 **monthly or lump sum payments or all or a portion of the payee's future payments.**

42 (e) **Whether, at the time the structured settlement agreement was executed, the future**
43 **periodic payments were intended to pay for the future medical care and treatment of the**
44 **payee for injuries sustained by the payee in the incident that was the subject of the struc-**
45 **tured settlement agreement, and whether the payee still needs the payments to pay for fu-**

1 **ture care and treatment.**

2 **(f) Whether, at the time the structured settlement agreement was executed, the future**
3 **periodic payments were intended to provide for the necessary living expenses of the payee,**
4 **and whether the payee still needs the payments to pay for future necessary living expenses.**

5 **(g) Whether the payee is, at the time of the proposed transfer, likely to require future**
6 **medical care and treatment for the injuries that the payee sustained in connection with the**
7 **incident that was the subject of the structured settlement agreement, and whether the payee**
8 **lacks insurance or other resources sufficient to cover future medical expenses.**

9 **(h) Whether the payee has income or support other than the future periodic payments**
10 **sufficient to meet the payee's future financial obligations for support of the payee's depen-**
11 **dents, including child support obligations. The payee shall disclose to the transferee, and to**
12 **the court or administrative authority, the payee's child support obligations.**

13 **(i) Whether the financial terms of the transfer agreement, the discount rate applied to**
14 **determine the amount to be paid to the payee, the expenses and costs of the transfer for the**
15 **payee and the transferee, the size of the transaction and the available financial alternatives**
16 **to the payee to achieve the payee's stated objectives are fair and reasonable.**

17 **(j) Whether the payee has completed previous transactions involving the payee's struc-**
18 **tured settlement payments and the timing and size of any previous transactions and whether**
19 **the payee was satisfied with any previous transaction.**

20 **(k) Whether the transferee attempted previous transactions involving the payee's struc-**
21 **tured settlement payments that were denied, or that were dismissed or withdrawn before a**
22 **decision on the merits, within the five-year period immediately preceding the signing of the**
23 **structured settlement agreement.**

24 **(L) Whether, to the best of the transferee's knowledge after making inquiry of the payee,**
25 **the payee has attempted to enter into transactions involving the payee's structured settle-**
26 **ment payments that were denied, or that were dismissed or withdrawn before a decision on**
27 **the merits, within the five-year period immediately preceding the signing of the structured**
28 **settlement agreement.**

29 **(m) Whether the payee, or the payee's family or dependents, will suffer financial hardship**
30 **if the transfer is not approved.**

31 **(n) Whether the payee received independent legal or financial advice regarding the**
32 **transaction. The court may deny or defer a ruling on the petition if the court believes that**
33 **the payee does not fully understand the transaction and that independent legal or financial**
34 **advice regarding the transaction should be obtained by the payee.**

35 **(o) Any other factors or facts that the payee, the transferee or any other interested**
36 **party calls to the attention of the court or responsible administrative authority, or that the**
37 **court or authority determines should be considered in reviewing the proposed transfer.**

38 **SECTION 8.** ORS 33.875 is amended to read:

39 33.875. (1) The provisions of ORS 33.850 to 33.875 may not be waived by any payee.

40 (2) A transfer agreement entered into on or after January 1, 2006, by a payee who resides in this
41 state shall provide that disputes under the transfer agreement, including any claim that the payee
42 has breached the agreement, shall be determined under the laws of this state. A transfer agreement
43 may not authorize the transferee or any other party to confess judgment or consent to entry to
44 judgment against the payee.

45 (3) A transfer of payment rights may not extend to any payments that are life contingent unless,

1 prior to the date on which the payee signs the transfer agreement, the transferee has established
2 and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the obligor
3 for:

4 (a) Periodically confirming the payee's survival.

5 (b) Giving the annuity issuer and the obligor prompt written notice in the event of the payee's
6 death.

7 (4) A payee who proposes to make a transfer of payment rights does not incur any penalty,
8 forfeit any application fee or other payment, or otherwise incur any liability to the proposed
9 transferee or a assignee based on any failure of the transfer to satisfy the conditions of ORS 33.850
10 to 33.875.

11 (5) Nothing in ORS 33.850 to 33.875 shall be construed to authorize a transfer of payment rights
12 in contravention of any law or to imply that any transfer under a transfer agreement entered into
13 prior to January 1, 2006, is valid or invalid.

14 (6) Compliance with the requirements [*set forth in ORS 33.860 and fulfillment of the conditions*
15 *set forth in ORS 33.855 shall be*] **of ORS 33.850 to 33.875 is** solely the responsibility of the
16 transferee in any transfer of payment rights, and neither the obligor nor the annuity issuer shall
17 bear any responsibility for, or any liability arising from, noncompliance with the requirements or
18 failure to fulfill the conditions.

19 **SECTION 9. Sections 3 to 5 of this 2011 Act and the amendments to ORS 33.855, 33.860,**
20 **33.865 and 33.875 by sections 1, 6, 7 and 8 of this 2011 Act apply only to transfer agreements**
21 **signed on or after the effective date of this 2011 Act.**

22