

	Current Law – O.R.S 33.850 <i>et. seq.</i>	HB 2536 -- Enacted by Oregon House	NASP Proposed Amendments in Oregon Senate	Explanatory notes and comments.
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	Current Law – O.R.S 33.850 <i>et. seq.</i>	HB 2536 -- Enacted by Oregon House	NASP Proposed Amendments in Oregon Senate	Explanatory notes and comments.
1	(No definition of “independent professional advice in current Oregon statute.)	<p><u>SECTION 1</u></p> <p>(2) “Independent professional advice” means advice regarding a proposed transfer from a person who is not employed by the transferee and who is an attorney, certified public accountant, actuary or other licensed professional adviser.</p>	(2) “Independent professional advice” means advice regarding a proposed transfer from a person who is not employed by the transferee and who is an attorney, certified public accountant, <u>financial adviser</u> , actuary or other licensed professional adviser.	
2	<p>33.855 Payment rights transfer.</p> <p>(1) A payee may transfer payment rights under <i>ORS 33.850 to 33.875</i> if:</p> <p>(a) The payee is domiciled in this state;</p> <p>(b) The domicile or principal place of business of the obligor or the annuity issuer is located in this state;</p> <p>(c) The structured settlement agreement was approved by a court or responsible administrative authority in this state; or</p> <p>(d) The structured settlement agreement is expressly governed by the laws of this state.</p> <p>(2) Prior to transferring payment rights under <i>ORS 33.850 to 33.875</i>, the transferee shall file an application for approval of the transfer in:</p> <p>(a) The county in which the payee resides;</p> <p>(b) The county in which the obligor or the annuity issuer maintains its principal place of business; or</p>	<p><u>SECTION 2.</u></p> <p>33.855 A payee may transfer payment rights under <i>ORS 33.850 to 33.875</i> if:</p> <p>(1) The payee is domiciled in this state;</p> <p>(2) The domicile or principal place of business of the obligor or the annuity issuer is located in this state;</p> <p>(3) The structured settlement agreement was approved by a court or responsible administrative authority in this state; or</p> <p>(4) The structured settlement agreement is expressly governed by the laws of this state.</p> <p><u>SECTION 4.</u></p> <p>(1) Before a payee may transfer payment rights to a transferee under <i>ORS 33.850 to 33.875</i>, the transferee shall file a petition for approval of the transfer in:</p> <p>(a) The circuit court for the county in which the payee resides;</p> <p>(b) The circuit court for the county in which the obligor or the annuity issuer</p>	<p>(No changes proposed.)</p> <p>(No changes proposed.)</p>	

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--	------------------------------------	---	---------------------------------

	(c) Any court or before any responsible administrative authority that approved the structured settlement agreement.	maintains its principal place of business; or (c) The court or responsible administrative authority that approved the structured settlement agreement.		
3	(No similar section under current Oregon law.)	<p>SECTION 4. <i>(This is an entirely new section added to current law by HB 2536.)</i></p> <p>(2) <u>A petition under this section must include the following information, to the extent known after the transferee has made reasonable inquiry of the payee:</u></p> <ol style="list-style-type: none"> a. <u>The payee's name, address and age.</u> b. <u>The payee's marital status and, if married or separated, the name of the payee's spouse.</u> c. <u>The names, ages and place or places of residence of any minor children or other dependents of the payee.</u> d. <u>The amounts and sources of the payee's monthly income, the payee's financial resources and, if the payee is married, the amounts and sources of the payee's spouse's monthly income and the financial resources of the payee's spouse.</u> e. <u>Whether the payee is currently obligated under any child support order and, if so, the name, address and telephone number of each person or agency that is receiving child support from the payee under the order.</u> f. <u>A description of the payment rights to be transferred by the payee.</u> g. <u>The amount to be received by the payee in return for transferring the payment rights. A general description of the reasons why the payee seeks to transfer the payment</u> 	<p>(2)A petition under this section must include the following information, to the extent known after the transferee has made reasonable inquiry of the payee:</p> <ol style="list-style-type: none"> a. The payee's name, address and age, and county of residence. Include the The payee's name, address and age, and county of residence. b. The payee's marital status and, if married or separated, the name of the payee's spouse. c. The names, ages and place or places of residence of any minor children or other dependents of the payee. d. The amounts and sources of the payee's monthly income, the payee's financial resources and, if the payee is married, the amounts and sources of the payee's spouse's monthly income and the financial resources of the payee's spouse. e. Whether the payee is currently obligated under any child support order and, if so, the name, address and telephone number of each person or agency that is receiving child support from the payee under the order. b. Describe the financial terms of the proposed transfer, including A description of the payment rights to be transferred by the payee and f. the amount to be received by the payee in return for the transfer. c. Be accompanied by a copy of the transfer agreement and the disclosure statement 	<p>Everyone seems to agree that efforts should be taken to protect from public disclosure the private, confidential personal, family, and financial information of the payee (the consumer). Yet, HB 2536, in its current form, <u>requires</u> the names and ages and addresses of the payee's children, the income and "financial resources" of the payee and the payee's spouse, and the payee's child support obligations, etc., to be included in the petition which is a document filed of public record. The proponents of HB 2536 have acknowledged that only the Judge needs this information, however they continue insist that this information be included in the petition. .</p> <p>The proponent of HB 2536 also suggest that this problem can be remedied by following current Oregon court rules to "segregate and preclude from public disclosure" information in a court pleading. But those rules require the filing of a motion and an affidavit, a hearing, and the filing of a separate document which segregates the information that one desires to maintain</p>

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--	------------------------------------	---	---------------------------------

		<p><u>rights.</u></p>	<p><u>required under ORS 33.860.</u></p> <p>d. The amount to be received by the payee in return for transferring the payment rights. <u>Generally describe</u> A general description of the reasons why the payee seeks to transfer the payment rights.</p> <p>f. <u>At the hearing, the court may ask the payee to provide testimony or other evidence of:</u></p> <p>a. <u>The payee's marital status and, if married or separated, the name of the payee's spouse.</u></p> <p>b. <u>The names, ages and place or places of residence of any minor children or other dependents of the payee.</u></p> <p>c. <u>The amounts and sources of the payee's monthly income, and if the payee is married, the amounts and sources of the payee's spouse's monthly income.</u></p> <p>d. <u>If the payee has minor children, whether the payee is currently obligated to pay child support under any child support order, whether the payee is current or in arrears under any child support order, and the names, addresses, and telephone numbers of any person or agency receiving child support from the payee under the order.</u></p> <p>e. <u>Whether the payee relies exclusively on the structured settlement payments which the payee proposes to transfer to the transferee for the payee's necessary living expenses and /or required medical care or treatment.</u></p>	<p>as private. That is expensive, time consuming and cumbersome, for the parties and the courts.</p> <p><u>Proposed Alternative:</u> Do NOT require such information be included in the petition; rather include in the statute that the payee will need to be prepared to provide to the Judge at the hearing testimony or evidence relative to such information. Otherwise, it is doubtful that the payee will be able to keep his/her private and confidential personal, family, and financial information from being disclosed in written, public documents.</p> <p>As indicated above, with these proposed amendments, the court may require the payee to provide testimony regarding this information to the court at the hearing, but this information is not required to be included in the petition.</p> <p>That strikes a balance between insuring that this information is provided to the court, but is not filed as a written public record and does not require the payee to incur the expense and delay to file a motion to have certain information segregated from public disclosure.</p> <p>The proponents of HB 2536 have indicated that the information in subsection € is information that the</p>
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				court should consider. By requiring the payee to provide such information at the hearing, the Judge will be able to consider the information, BUT the payee is not required to include personal, private, and confidential health and financial information in documents that are easily available to the public.
4	<p>O.R.S. 33.855</p> <p>(3) Not less than 20 days prior to the scheduled hearing on an application for approval of a transfer of payment rights, the transferee shall send notice of the proposed transfer to:</p> <p>(a) The payee;</p> <p>(b) Any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death;</p> <p>(c) The annuity issuer;</p> <p>(d) The obligor; and</p> <p>(e) Any other party that has continuing rights or obligations under the structured settlement agreement that is the subject of the hearing.</p> <p>(4) The notice sent under subsection (3) of this section shall include:</p> <p>(a) A copy of the transferee's application.</p> <p>(b) A copy of the transfer agreement.</p> <p>(c) A copy of the disclosure statement provided to the payee as required under <i>ORS 33.860</i>.</p>	<p><u>SECTION 5</u></p> <p>3) Not less than 20 days prior to the scheduled hearing on an application <u>a petition</u> for approval of a transfer of payment rights, the transferee shall send notice of the proposed transfer to:</p> <p>(a) The payee;</p> <p>(b) Any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death;</p> <p>(c) The annuity issuer;</p> <p>(d) The obligor; and</p> <p>(e) Any other party that has continuing rights or obligations under the structured settlement agreement that is the subject of the hearing.</p> <p>(4) The notice sent under subsection (1) of this section must shall include:</p> <p>(a) A copy of the transferee's application.</p> <p>(b) A copy of the transfer agreement.</p> <p>(c) A copy of the disclosure statement provided to the payee as required under <i>ORS 33.860</i>.</p> <p>(d) A listing of each person for whom the</p>	<p><u>SECTION 5.</u></p> <p>(b) Any beneficiary <u>irrevocably</u> designated under the annuity contract to receive payments following the payee's death;</p>	<p>HB 2536 inexplicably deleted "irrevocably" from Section 5(3)(b). This is a substantively and adverse change for consumers and bad for beneficiaries.</p> <p>Generally, payees can always change the beneficiary under their structured settlement/annuity to anyone they choose – their spouse, their children, their parents, their estate, etc., just as they can do with any insurance or annuity product. The named "beneficiary" will be entitled to receive any remaining, unassigned or not transferred, guaranteed payments due and payable under the structured settlement/annuity following the payee's death. For example, the settlement agreement/annuity will provide that "... monthly payments of \$1,000 per month will be made to the payee Jane Jones for 240</p>

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--	------------------------------------	---	---------------------------------

<p>(d) A listing of each person for whom the payee is legally obligated to provide support, including the age of each of those persons.</p> <p>(e) Notification that any person receiving notice under subsection (3) of this section is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing.</p> <p>(f) 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 not be less than 15 days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.</p>	<p>payee is legally obligated to provide support, including the age of each of those persons.</p> <p>(e) Notification that any person receiving notice under subsection (3) of this section is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing.</p> <p>(f) 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 not be less than 15 days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.</p>		<p>months, from January 1, 2000 through December 1, 2020, and for as long thereafter as Jane Jones is living. If Jane Jones dies before 240 guaranteed monthly payments are paid, then all remaining guaranteed monthly payments, through December 1, 2020, will be paid to Jane Jones properly designated beneficiary, currently her Mother Tammy Jones. Jane Jones may change the beneficiary at any time, by delivering written notice of such change to the [annuity issuer]." This is the typical structured settlement/annuity. Tammy Jones is a beneficiary, but Jane Jones can change that beneficiary designation at any time.</p> <p>Occasionally, the underlying structured settlement documents will provide that 240 monthly payments of \$1,000 each will be paid to John Smith from January 1, 2000 through December 1, 2020 (the "Guaranteed Period"), and said monthly payments shall continue, beginning on January 1, 2021, for as long as John Smith is living. If John Smith dies before 240 monthly payments have been made (i.e. before the end of the Guaranteed</p>
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				<p>Period), then all remaining guaranteed monthly payments shall be paid to his spouse Maggie Smith.</p> <p>In this scenario, Maggie Smith is an “irrevocable beneficiary.” John Smith cannot change that beneficiary designation.</p> <p>Under current law and under the NASP proposed amendments, ONLY an irrevocable beneficiary would receive notice of the transfer.</p> <p>Under HB 2536, all beneficiaries receive notice of the transfer. Payees might not want beneficiaries to receive notice of the transfer. So, they will simply change the designated beneficiary to their estate, and then there is no requirement to provide notice to anyone. It is not good to force payees to make this change, because if they do die, and the estate is their beneficiary, then their estate may need to go through probate and the payments may very well be distributed to someone other than the person the payee really wants to receive them.</p>
5		<u>SECTION 6.</u>	(This entire section is deleted under the -7	HB 2536 requires a written statement be provided to the payee containing

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--	------------------------------------	---	---------------------------------

<p>(There is no similar section to this in current Oregon law. HB 2536 proposes an entirely new document be sent to the payee by the transferee BEFORE there is even a preliminary agreement or negotiations on a transaction.)</p>	<p>(1) Not less than 30 days before the signing of a transfer of payment rights, the transferee must give a written statement to the payee that indicates that:</p> <ul style="list-style-type: none"> i. The payee has the right to seek advice from an attorney, certified public accountant, actuary or other licensed professional adviser. ii. The court may require the payee to seek advice from an attorney, certified public accountant, actuary, or other licensed professional adviser. iii. The court may require fees incurred by the payee in seeking advice from an attorney, certified public accountant, actuary or other licensed professional adviser to be paid out of the amount paid by the transferee to the payee. iv. The court may deny or defer a ruling on the petition if the court believes that the payee has not obtained independent transfer proposals and that independent transfer proposals should be obtained. v. The court may require the payee to obtain independent transfer proposals from no more than two other potential transferees that are not affiliated with the transferee. <p>(2) An attorney, certified public accountant, actuary or other licensed professional adviser employed by the transferee may not provide advice to the payee.</p>	<p>proposed amendments in the Oregon Senate.</p> <p>We do support incorporating a couple of the concepts in the disclosure statement required by ORS 33.860, relative to independent professional advice and an admonishment to the payee that they should consider other offers and alternate means of raising funds in the disclosure statement.)</p>	<p>certain statements at least 30 days BEFORE the payee signs a contract – i.e. a transfer agreement – with the payee. As a practical matter, this document provides very little useful information to the payee. It is provided <u>before</u> the parties have reached a tentative agreement on the financial terms of the transfer. It will likely routinely be sent the first minute that a payee makes contact with a funding company, before there has been any discussion of a potential transaction. It also serves to needlessly delay the transaction. Payees who enter into these transfers typically desire and need to complete the transaction as quickly as possible.</p> <p><u>Proposed Alternative:</u> Include some of the concepts from this 30 day statement in the 10 day disclosure statement, required by ORS 33. 860.</p> <p><u>This way, the consumer/payee is (i) advised in writing that they should seek independent professional advice regarding the transaction; and (ii) that they should not proceed without considering other offers and alternate means of obtaining funds through borrowing or the sale of other assets.</u> Including these admonishments in the disclosure statement, which also includes detailed information about the actual proposed transaction, makes much more sense that including these</p>
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				<p>statements in an innocuous, form documents that is routinely sent out before any terms are discussed.</p> <p>It also seems to make more sense to require that the payee be advised to get professional advice and consider other offers right BEFORE they sign a transfer agreement, rather than wait until the end and allow the court to require the payee to do so, which will further delay the transaction for the payee and increase the cost to the payee. Delaying the transaction or incurring the cost of professional advice should be left to the payee's choice.</p>
6	<p>33.860 Statement containing terms of transfer.</p> <p>Not less than three days prior to the day on which a payee is scheduled to sign a transfer agreement, a transferee shall provide the payee with a statement in not less than 14-point type that sets forth:</p> <p>(1) The amounts and due dates of the structured settlement payments to be transferred.</p> <p>(2) The aggregate amount of the payments to be transferred.</p> <p>(3) The discounted present value of the payments and the rate used in calculating the discounted present value. The discounted present value shall be calculated by using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the Internal Revenue Service.</p>	<p><u>SECTION 7</u></p> <p>33.860 Statement containing terms of transfer.</p> <p>Not less than <u>10</u> three days <u>before</u> prior to the day on which a payee is scheduled to sign a transfer agreement <u>is signed</u>, a transferee shall provide the payee with a <u>disclosure</u> statement in not less than 14-point type that sets forth:</p> <p>(1) The amounts and due dates of the structured settlement payments to be transferred.</p> <p>(2) The aggregate amount of the payments to be transferred.</p> <p>(3) The discounted present value of the payments and the rate used in calculating the discounted present value. The discounted present value shall be calculated by using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the</p>	<p>(NASP is not opposed to the changes to ORS 33.960 (1) – (8). Section 7 of HB 2536).</p>	

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--	------------------------------------	---	---------------------------------

<p>(4) The amount payable to a payee as the result of a transfer. The amount set forth in this subsection shall be calculated before any reductions are made for transfer expenses required to be listed under subsection (5) of this section or any related disbursements.</p> <p>(5) An itemized listing of all applicable transfer expenses and the transferee's best estimate of the amount of any attorney fees and disbursements. For the purposes of this subsection, "transfer expenses":</p> <p>(a) Includes all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the amount payable to a payee as the result of a transfer.</p> <p>(b) Does not include attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer or preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.</p> <p>(6) The amount calculated by subtracting the aggregate amount of the actual and estimated transfer expenses required to be listed under subsection (5) of this section from the amount identified in subsection (4) of this section.</p> <p>(7) The amount of any penalties or liquidated damages payable by the payee in the event of a breach of the transfer agreement by the payee.</p> <p>(8) A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.</p>	<p>Internal Revenue Service.</p> <p>(4) The <u>gross</u> amount payable to a payee as the result of a transfer. The amount set forth in this subsection shall be calculated before any reductions are made for transfer expenses required to be listed under subsection (5) of this section or any related disbursements.</p> <p>(5) An itemized listing of all applicable transfer expenses and the transferee's best estimate of the amount of any attorney fees and disbursements. For the purposes of this subsection, "transfer expenses":</p> <p>(a) Includes all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the <u>gross</u> amount payable to a payee as the result of a transfer.</p> <p>(b) Does not include attorney fees and related disbursements payable in connection with the transferee's application <u>petition</u> for approval of the transfer or preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.</p> <p><u>(c) Does not include attorney fees, professional fees, and related expenses incurred by the payee in seeking independent professional advice regarding the proposed transfer or charged by an individual providing independent professional advice to the payee.</u></p> <p>(6) The amount calculated by subtracting the aggregate amount of the actual and estimated transfer expenses required to be listed under subsection (5) of this section from the amount identified in subsection (4) of this section.</p> <p>(7) The amount of any penalties or liquidated damages, <u>if any</u>, payable by the payee in the event</p>	<p>(The -7 Senate amendments supported by</p>	<p>By changing the <u>minimum</u> time period in advance of the payee signing the transfer agreement when the disclosure statement must be delivered to the payee (from 3 to 10 days) and the statutory time period during which the payee has to cancel the transaction after signing the transfer agreement (from 3 to 10 days), the payee has more than enough time to consider and evaluate the transaction and to cancel it even <u>after</u> signing a contract. As a practical matter the payee can cancel any time prior to the court actually approving the transaction. (Section 8(1)(f)).</p> <p>As indicated, the admonishment to the payee/consumer that they</p>
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		<p>of a breach of the transfer agreement by the payee.</p> <p>(8) A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the <u>10th</u> third business day after the date the <u>transfer</u> agreement is signed by the payee.</p>	<p><u>NASP provide for adding the following to the disclosure statement.</u></p> <p><u>(9) A statement that the payee is entitled to, and should, seek independent professional advice regarding the proposed transfer.</u></p> <p><u>(10) A statement that the payee should not proceed without first weighing and considering other offers and alternate means of obtaining funds through borrowing or the sale of other assets.</u></p>	<p>should seek independent professional advice and that they should consider other offers or other ways to raise the money should be included in the disclosure statement that actually sets forth the financial terms of the transaction and which is provided before the transfer agreement is signed and the court proceeding is filed. Including such information in the disclosure statement will be more meaningful and informative to the payee.</p>
7	<p>33.865 Required findings by court or responsible administrative authority.</p> <p>A transfer of payment rights under <i>ORS 33.850</i> to <i>33.875</i> is not effective and an obligor or annuity issuer is not required to make any payments directly or indirectly to a transferee unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by the court or authority that:</p> <p>(1) The transfer is in the best interest of the payee, taking into account the welfare and support of all persons for whom the payee is legally obligated to provide support.</p> <p>(2) The payee has been advised in writing by the transferee to seek advice from an attorney, certified public accountant, actuary or other licensed professional adviser regarding the transfer, and the payee has either received the advice or</p>	<p><u>SECTION 8</u></p> <p>(1) A transfer of payment rights under <i>ORS 33.850</i> to <i>33.875</i> is not effective and an obligor or annuity issuer is not required to make any payments directly or indirectly to a transferee unless <u>the transferee has filed a petition under section 4 of this 2013 Act and the transfer is has been approved in advance in a final court order or order of a by the court or</u> responsible administrative authority based on express findings by the court or authority that:</p> <p>-(1) (a) The transfer is in the best interest of the payee, taking into account the welfare and support of all persons for whom the payee is legally obligated to provide support.</p> <p>-(2) (b) The payee has been advised in writing by the transferee to seek advice from an attorney, certified public accountant, actuary or other licensed professional adviser regarding the transfer, and <u>in the manner provided by Section 6 of this</u></p>	<p><u>SECTION 8</u></p> <p>(1) A transfer of payment rights under <i>ORS 33.950</i> to <i>233.875</i> is not effective and an obligor or annuity issuer is not required to make any payments directly or indirectly to a transferee unless the transferee has filed a petition under section 4 of this 2013 Act and the transfer is approved by the court or responsible administrative authority based on express findings by the court or authority that:</p> <p>(a) The transfer is in the best interest of the payee, taking into account the welfare and support of all persons for whom the payee is legally obligated to provide support.</p> <p>(b) The payee has been advised <u>in writing</u> by the transferee in the manner provided by section 6 of this 2013 Act and the transferee has given the notice required by section 5 of the 2013 Act and the statement required by ORS 33.860. <u>that the payee had the right to seek independent</u></p>	<p>The concept of requiring the court to make an express finding that the payee has been advised to seek professional advice and either receive it or waive it in writing is in the current transfer statute.</p>

Current Law – O.R.S 33.850 <i>et. seq.</i>	HB 2536 -- Enacted by Oregon House	NASP Proposed Amendments in Oregon Senate	Explanatory notes and comments.
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<p>knowingly waived advice in writing.</p> <p>(3) The transfer does not contravene any applicable statute or order of any court or other government authority.</p>	<p><u>2013 Act and the transferee has given the notice required by section 5 of this 2013 Act and the statement required by ORS 33.860.</u></p> <p><u>(c) The payee has either received the advice independent professional advice from an attorney, certified public accountant, or other licensed professional adviser regarding the transfer or knowingly waived independent professional advice in writing.</u></p> <p><u>(d) The transfer does not contravene any applicable statute or order of any court or other government authority.</u></p> <p><u>(e) The payee understands the terms of the transfer agreement, including the terms set forth in the statement required by ORS 33.860.</u></p> <p><u>(f) The payee understood the payee's right to cancel the transfer agreement and knowingly elected not to cancel the transfer agreement.</u></p>	<p><u>professional advice regarding the transfer, and the payee has either received the advice or knowingly waived the opportunity to seek and receive independent professional advice in writing.</u></p> <p><u>(c) The payee has either received independent professional advice from an attorney, certified public accountant, actuary or other licensed professional adviser regarding the transfer or knowingly waived independent professional advice in writing. (d) The transfer does not contravene any applicable statute or order of any court or other government authority.</u></p> <p><u>(d) The payee understands the terms of the transfer agreement, the disclosure statement, and the financial terms of the transfer, including the terms set forth in the statement required by ORS 33.860.</u></p> <p><u>(e) The payee understood the payee's that the payee had the right to cancel the transfer agreement as set forth in the disclosure statement required by ORS 33.860 and the payee knowingly elected not to cancel the transfer agreement.</u></p> <p><u>(f) The payee confirmed to the court at the hearing that the payee wanted the court to approve the proposed transfer and understood that the court would not approve the transfer if the payee did not want the court to do so.</u></p>	<p>This change simply deletes references to the 30 day statement requirement (see # 5 above) imposed by HB 2536. That 30 day statement has been deleted, but most of the concepts included therein have been included in the 10 day disclosure statement required by ORS 33.860.</p> <p>The language proposed in the Senate -7 amendments, relative to this subsection (d), is more precise and specific, and requires the court to make an express finding that the payee understands the transfer agreement, the disclosure statement, and the financial terms of the transaction. HB 2536 requires the court to make a finding that the payee understands the terms of the transfer agreement only.</p> <p>This requires the court to make an express finding that the payee understood and elected not to exercise their right to cancel the transfer agreement.</p> <p>This section provides that the payee must confirm to the court at the hearing that they want to move forward with the transaction. If the payee says that they do not want to do so, then the transfer cannot be approved by the court because the Judge cannot make this express finding. In effect, the payee can decide they do not want to go</p>
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Current Law – O.R.S 33.850 <i>et. seq.</i>	HB 2536 -- Enacted by Oregon House	NASP Proposed Amendments in Oregon Senate	Explanatory notes and comments.
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				forward at the hearing.
8	<p>(There is no similar section to this in current Oregon law. HB 2536 proposes an entirely new section that directs that the court shall consider certain facts in reviewing a transaction.)</p>	<p><u>SECTION 8(2)</u></p> <p>(2) When determining whether the proposed transfer should be approved, including whether the transfer agreement is fair, reasonable and in the payee’s best interest, the court or responsible administrative authority shall consider the totality of the circumstances, including but not limited to:</p> <p>(a) The reasonable preference and desire of the payee to complete the proposed transfer taking into account the payee’s age, mental capacity, knowledge of the law, and apparent maturity level.</p> <p>(b) The stated purpose of the transfer and the intended use of the proceeds.</p> <p>(c) The payee’s financial situation, including but not limited to:</p> <ol style="list-style-type: none"> i. The amounts and sources of the payee’s monthly income. ii. The payee’s financial resources. iii. If the payee is married, the amounts and sources of the payee’s spouse’s monthly income and the financial resources of the payee’s spouse. <p>(d) Whether the payee is employed.</p> <p>(e) The terms of the transfer agreement, including whether the payee is</p>	<p>(2) When determining whether the proposed transfer should be approved, including whether the transfer agreement is fair, reasonable and in the payee’s best interest, the court or responsible administrative authority shall <u>may consider all relevant information, including information contained in the petition and any other documents filed with the court and that is provided at the hearing. Relevant information that may be considered under this subsection includes the totality of the circumstances, including but is not limited to:</u></p> <p>(a) The reasonable preference and desire of the payee to complete the proposed transfer taking into account the payee’s age, mental capacity, knowledge of the law, and apparent maturity level <u>and recognizing that the payment rights constitute a financial asset and property right of the payee over which the payee does and should have control.</u></p> <p>(b) The stated purpose of the transfer and the intended use of the proceeds <u>by the payee.</u></p> <p>(c) The payee’s financial situation, including but not limited to, <u>the following information be provided by the payee at the hearing under section 4 of this 2013 Act:</u></p> <ol style="list-style-type: none"> i. The amounts and sources of the payee’s monthly income. ii. The payee’s financial resources. iii. If the payee is married, the amounts and sources of the payee’s spouse’s monthly income and the financial resources of the payee’s spouse. <p>iv. <u>The names, ages, and place or places of</u></p>	<p>The added language simply confirms a fact that is important to payees and which is <u>truthful</u> - that structured settlement payment rights are a financial asset of the payee. Judges should consider that fact in evaluating these transactions and payees very much want Judges to understand and acknowledge that these payment rights constitute a financial asset/property right of the payee.</p> <p>This section provides for the court to receive and consider evidence regarding the payee’s income, spouse’s income, child support obligation, and information regarding the payee’s children and dependents. The difference between HB 2536 and the Senate -7 amendments is that the -7 Senate amendments allows the payee</p>

Current Law – O.R.S 33.850 <i>et. seq.</i>	HB 2536 -- Enacted by Oregon House	NASP Proposed Amendments in Oregon Senate	Explanatory notes and comments.
--	------------------------------------	---	---------------------------------

	<p>transferring monthly or lump sum payments or all or a portion of the payee's future payments.</p> <p>(f) Whether, at the time the structured settlement agreement was executed, the future periodic payments were intended to pay for the future medical care and treatment of the payee for injuries sustained by the payee in the incident that was the subject of the structured settlement agreement, and whether the payee still needs the payments to pay for future medical care and treatment.</p> <p>(g) Whether, at the time the structured settlement agreement was executed, the future periodic payments were intended to provide for the necessary living expenses of the payee, and whether the payee still needs the payments to pay for future necessary living expenses.</p> <p>(h) Whether the payee is, at the time of the proposed transfer, likely to require future medical care and treatment for injuries sustained by the payee in the incident that was the subject of the structured settlement agreement, and whether the payee lacks insurance or other resources sufficient to cover the costs of future medical care and treatment.</p> <p>(i) Whether the payee has income or support other than the future periodic payments sufficient to meet the payee's future financial obligations for support of the payee's dependents, including child support obligations. The payee shall disclose to the transferee, and to the court or responsible administrative authority, the payee's child support obligations.</p>	<p><u>residence of any minor children or other dependents of the payee.</u></p> <p>v. <u>Whether the payee relies exclusively on the structured settlement payments which the payee proposes to transfer to the transferee for the payee's necessary living expenses and/or required medical care and treatment.</u></p> <p>(d) Whether the payee is employed <u>and/or employable.</u></p> <p>(e) The terms of the transfer agreement, including whether the payee is transferring monthly or lump sum payments or all or a portion of the payee's future payments <u>and the size of the transaction and the financial alternatives available to the payee, if any, to achieve the payee's stated objectives.</u></p> <p>(f) <u>Whether the payee has experienced a change in personal, family or financial circumstances.</u></p> <p>f. Whether, at the time the structured settlement agreement was executed, the future periodic payments were intended to pay for the future medical care and treatment of the payee for injuries sustained by the payee in the incident that was the subject of the structured settlement agreement, and whether the payee still needs the payments to pay for future</p>	<p>and the court to maintain some degree of privacy and confidentiality, since this information is not required to be included in the petition. Even the proponent of HB 2536 acknowledges that only the Judge needs this information.</p> <p>Even if the payee is currently unemployed, it might be temporary, which might be the reason they are seeking to complete the transaction. The court should also be able to consider whether the payee is employable.</p> <p>Expanding on the concept included in HB 2536.</p> <p>Even the proponents of HB 2536 have acknowledged that courts should consider whether the payee has had a change in circumstances, yet their bill omits that. The Senate -7 amendments includes any change in circumstances as facts for the Judge to consider.</p> <p>Subsection f., g., and h. of HB 2536 should be deleted in their entirety. These subsections simply do not work from a practical perspective. They direct the Judge to determine the intentions of the parties to the original settlement and speculate as to the future medical needs and income needs of the payee. This requires the court to</p>
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Current Law – O.R.S 33.850 <i>et. seq.</i>	HB 2536 -- Enacted by Oregon House	NASP Proposed Amendments in Oregon Senate	Explanatory notes and comments.
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	<p>(j) Whether the financial terms of the transfer agreement, the discount rate applied to determine the amount to be paid to the payee, the expenses and costs of the transfer for the payee and the transferee, the size of the transaction and the financial alternatives available to the payee to achieve the payee’s stated objectives are fair and reasonable.</p> <p>(k) Whether the payee has completed previous transactions involving the payee’s structured settlement payments and the timing and size of any previous transactions and whether the payee was satisfied with any previous transaction.</p> <p>(l) Whether the transferee attempted previous transactions involving the payee’s structured settlement payments that were denied, or that were dismissed or withdrawn before a decision on the merits within the five year period immediately preceding the signing of the structured settlement agreement.</p> <p>(m) Whether, to the best of the transferee’s knowledge after making inquiry of the payee, the payee has attempted to enter into transactions involving the payee’s structured settlement payment that were denied, or that were dismissed or withdrawn before a decision on the merits, within the five-year period immediately preceding the signing of the structured settlement agreement.</p> <p>(n) Whether the payee or the payee’s family or dependents, will suffer financial hardship if the transfer is not approved.</p> <p>(o) Whether the payee received independent professional advice regarding the</p>	<p>medical care and treatment.</p> <p>g. Whether, at the time the structured settlement agreement was executed, the future periodic payments were intended to provide for the necessary living expenses of the payee, and whether the payee still needs the payments to pay for future necessary living expenses.</p> <p>h. Whether the payee is, at the time of the proposed transfer, likely to require future medical care and treatment for injuries sustained by the payee in the incident that was the subject of the structured settlement agreement, and whether the payee lacks insurance or other resources sufficient to cover the costs of future medical care and treatment.</p> <p>(g) Whether the payee has income or support other than the future periodic payments sufficient to meet the payee’s future financial obligations for support of the payee’s dependents, including child support obligations. The payee shall disclose to the transferee, and to the court or responsible administrative authority, the payee’s child support obligations.</p> <p>(h) Whether the financial terms of the proposed transfer agreement, the discount rate applied to determine, including the amount to be paid to the payee, and the expenses and costs of the transfer for the payee and the transferee, the size of the transaction and the financial alternatives available to the payee to achieve the payee’s stated objectives are fair and reasonable.</p> <p>(i) Whether the payee has completed previous</p>	<p>engage in speculation OR it requires evidence of these things to be presented. It would be extremely difficult to offer evidence as to what the parties may or may not have intended when they settled the case 20 years ago. It would be difficult, if not impossible, to offer evidence about what the payee might or might not need in terms of medical care/treatment in the future. What is more relevant is whether the payee is relying exclusively on the structured settlement payments which are the subject of the transfer for current necessary living expenses and/or medical care. This information is provided by the payee at the hearing. (See Section 4(3) (e) of the -7 Senate amendments.)</p> <p>Subsections (i), (j), and (k) require the disclosure to the court of prior transfers</p>
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Current Law – O.R.S 33.850 <i>et. seq.</i>	HB 2536 -- Enacted by Oregon House	NASP Proposed Amendments in Oregon Senate	Explanatory notes and comments.
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	<p>transaction. The court may deny or defer a ruling on the petition if the court believes that the payee does not fully understand the transaction and that independent professional advice regarding the transaction should be obtained by the payee. Before approving a transfer under this section, the court may require the payee to seek independent professional advice.</p> <p>(p) Whether the payee obtained independent transfer proposals from other potential transferees that are not affiliated with the transferee. The court may deny or defer a ruling on the petition if the court believes that the payee has not obtained independent transfer proposals and that independent transfer proposals should be obtained. Before approving a transfer under this section, the court may require the payee to obtain independent transfer proposals from no more than two other potential transferees that are not affiliated with the transferee.</p> <p>(q) Any other factors or facts that the payee, the transferee or any other interested party calls to the attention of the court or the responsible administrative authority, or that the court or authority determines should be considered in reviewing the proposed transfer.</p> <p>(3) The court may require fees incurred by the payee in seeking independent professional advice from an attorney, certified public accountant, actuary or other licensed professional adviser to be paid out of the amount paid by the transferee to the payee.</p>	<p><u>transfers of payment rights with the transferee within the four years prior to the date of the current transfer agreement, a general description of such transactions involving the payee's structured settlement payments and the timing and size of any previous transfers, and whether the payee was satisfied with such previous transfers, any previous transaction.</u></p> <p>(j) Whether the transferee <u>has</u> attempted previous <u>transfers</u> involving the payee's <u>structured settlement payments rights</u> that were denied, or that were dismissed or withdrawn before a decision on the merits within the <u>one</u> five year period immediately preceding the signing of the structured settlement <u>prior to the date of the current transfer agreement.</u></p> <p>(k) Whether, to the best of the transferee's knowledge after making inquiry of the payee, the payee has <u>completed previous transfers of payment rights with any other person or entity within the four years prior to the date of the current transfer agreement, or attempted previous transfers to enter into transactions involving the payee's structured settlement payment rights with any other person or entity</u> that were denied, or that were dismissed or withdrawn before a decision on the merits, within the <u>one</u> five year period immediately preceding the signing of the structured settlement <u>period prior to the date of the current transfer agreement.</u></p>	<p>and attempted transfers. We agree information like that would be important for the Judge to have, but there should be some time limits on that information and the transferee may not have information about prior transactions in which they were not involved. The proposed amendments would require the disclosure of (i) all prior transfers within the past 4 years involving the transferee; (ii) attempted transfers involving the transferee within the past 1 year which were denied or dismissed; and (iii) attempted transfers by the payee, to the extent known by the transferee after making inquiry of the payee, with other parties which were denied in the past 1 year and completed transfers with other parties within the past 4 years. The point is that if a payee completed a transfer 6 or 7 years ago, that information should not be considered because it could be prejudicial to the payee in the current transaction. Also, if a payee (and this does happen) attempts a transfer with a company that overreaches or which is inexperienced or uses a lawyer that is less than stellar, and the deal is denied 2 years ago, that information should not be considered by the Judge in a new, smaller, focused deal against the payee. One Judge might think that if Judge Smith in Portland denied a transaction 2 years ago for this payee, then I should be predisposed to deny the deal. When,</p>
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Current Law – O.R.S 33.850 <i>et. seq.</i>	HB 2536 -- Enacted by Oregon House	NASP Proposed Amendments in Oregon Senate	Explanatory notes and comments.
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			<p>(l) Whether the payee or the payee’s family or dependents, will <u>may</u> suffer <u>personal, family, or financial hardship or may be unable to pursue personal, family, or financial objectives</u> if the transfer is not approved.</p> <p>(m) Whether the payee received independent professional advice regarding the transaction. The court may deny or defer a ruling on the petition if the court believes that the payee does not fully understand the transaction and that independent professional advice regarding the transaction should be obtained by the payee. Before approving a transfer under this section, the court may require the payee to seek independent professional advice.</p> <p>(n) Whether the payee obtained independent transfer proposals from other potential</p>	<p>in reality, it may have had absolutely nothing to do with the payee.</p> <p>A payee’s hardship may be more than just financial. Furthermore, the payee may not be suffering from a financial hardship at all; they may be pursuing the transaction to achieve personal, family, or financial objectives. The Judge should consider all of these things. Payees will certainly want the Judge to consider this type of information.</p> <p>This is unnecessary and impractical. If the court believes that a payee does not “fully understand the transaction” the court may deny the transfer.</p> <p>Also, it should be the choice of the consumer/payee whether to seek independent professional advice and incur that additional expense. If the payee has been admonished, in writing, that they should seek IPA and they make the informed choice, in writing, not to seek IPA, then the court should not, at the last minute at the hearing, overrule that decision. It will further delay the transaction and impose an additional and (in the view of the payee, who has chosen not to seek IPA) unnecessary expense on the payee.</p> <p>The payee is advised in writing at the commencement of the transaction,</p>
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Current Law – O.R.S 33.850 <i>et. seq.</i>	HB 2536 -- Enacted by Oregon House	NASP Proposed Amendments in Oregon Senate	Explanatory notes and comments.
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			<p>transferees that are not affiliated with the transferee. The court may deny or defer a ruling on the petition if the court believes that the payee has not obtained independent transfer proposals and that independent transfer proposals should be obtained. Before approving a transfer under this section, the court may require the payee to obtain independent transfer proposals from no more than two other potential transferees that are not affiliated with the transferee.</p> <p>(3) Any other factors or facts that the payee, the transferee or any other interested party calls to the attention of the court or the responsible administrative authority, or that the court or authority determines should be considered in reviewing the proposed transfer.</p> <p>(4) The court may require fees incurred by the payee in seeking independent professional advice from an attorney, certified public accountant, actuary or other licensed professional adviser to be paid out of the amount paid by the transferee to the payee.</p>	<p>BEFORE they sign any contract and before a court proceeding is filed and attorneys hired, that they should consider other offers and alternate methods of raising funds. If the payee does that, fine. If they choose not to do so and are comfortable with the transaction and the transferee with whom they have chosen to do business, then the court should not be allowed, again, to overrule the choice of the consumer/payee. Again, if the court determines that the transaction is not in the payee's best interest, then the Judge can deny the transfer. But requiring the payee to go and get other offers at the hearing would cause needless delay. Moreover, it is unfair to the transferee, who has provided the necessary and required disclosures, advised the payee to consider other offers, advised the payee to seek IPA, retained counsel, filed the transfer matter, and incurred lots of sunk costs/expenses prior to the hearing, to then open the transaction up at the 11th hour to other offers.</p> <p>As a practical matter, companies would understandably be reluctant to provide an offer to a payee, who is under contract and already been to court. Finally, if the payee desires to accept one of those 11th hour offers, they would have to start the entire process over, i.e. receive the 30 day statement, a new disclosure statement would need</p>
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	Current Law – O.R.S 33.850 <i>et. seq.</i>	HB 2536 -- Enacted by Oregon House	NASP Proposed Amendments in Oregon Senate	Explanatory notes and comments.
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				to be provided by the new transferee, a new court case would have to be filed, etc. That is unworkable and unnecessary.