

A-Engrossed
House Bill 2536

Ordered by the House April 23
Including House Amendments dated April 23

Sponsored by Representative HOLVEY (Pre-session filed.)

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.

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.

A BILL FOR AN ACT

1
2 Relating to transfers of structured settlement rights; creating new provisions; and amending ORS
3 33.850, 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 33.850 is amended to read:

6 33.850. As used in ORS 33.850 to 33.875:

7 (1) "Annuity issuer" means an insurer that has entered into a contract to fund periodic pay-
8 ments under a structured settlement agreement.

9 (2) "**Independent professional advice**" means **advice regarding a proposed transfer from**
10 **a person who is not employed by the transferee and who is an attorney, certified public ac-**
11 **countant, actuary or other licensed professional adviser.**

12 [(2)] (3) "Obligor" means a party that has a continuing obligation to make periodic payments to
13 a payee under a structured settlement agreement or an agreement that provides for a qualified as-
14 signment as defined in section 130 of the Internal Revenue Code, as of January 1, 2006.

15 [(3)] (4) "Payee" means an individual who is receiving tax-free payments under a structured
16 settlement agreement and proposes to make a transfer of payment rights.

17 [(4)] (5) "Payment rights" means rights to receive periodic payments under a structured settle-
18 ment agreement, whether from the obligor or the annuity issuer.

19 [(5)] (6) "Periodic payments" includes both recurring payments and scheduled future lump sum
20 payments.

21 [(6)] (7) "Responsible administrative authority" means a government authority vested by law
22 with exclusive jurisdiction over the original tort claim or workers' compensation claim that was
23 resolved in a structured settlement agreement.

24 [(7)] (8) "Structured settlement agreement" means an agreement, judgment, stipulation or release
25 embodying the terms of an arrangement for periodic payment of damages from an obligor or an an-
26 nuity issuer for:

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 (a) Personal injuries or sickness established by settlement or judgment in resolution of a tort
2 claim; or

3 (b) Periodic payments in settlement of a workers' compensation claim.

4 [(8)] (9) "Terms of the structured settlement agreement" includes the terms of:

5 (a) A structured settlement agreement;

6 (b) An annuity contract;

7 (c) An agreement that provides for a qualified assignment as defined in section 130 of the
8 Internal Revenue Code, as of January 1, 2006; and

9 (d) Any order or other approval of any court, responsible administrative authority or other
10 government authority that authorized or approved the structured settlement agreement.

11 [(9)] (10) "Transfer" means any sale, assignment, pledge or other alienation or encumbrance of
12 payment rights made by a payee for consideration. "Transfer" does not include the creation or per-
13 fection of an unspecified security interest in all of the payee's payment rights entered into with an
14 insured depository institution, or an agent or successor in interests of the insured depository insti-
15 tution, in the absence of any action to redirect the payments under the structured settlement
16 agreement to the insured depository institution or otherwise to enforce a security interest against
17 the payment rights.

18 [(10)] (11) "Transfer agreement" means an agreement providing for a transfer of payment rights.

19 [(11)] (12) "Transferee" means a party acquiring or proposing to acquire payment rights through
20 a transfer agreement.

21 **SECTION 2.** ORS 33.855 is amended to read:

22 33.855. [(1)] A payee may transfer payment rights under ORS 33.850 to 33.875 if:

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

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

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

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

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

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

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

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

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

38 [(a) *The payee;]*

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

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

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

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

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

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

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

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

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

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

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

14 **SECTION 3. Sections 4 to 6 of this 2013 Act are added to and made a part of ORS 33.850**
15 **to 33.875.**

16 **SECTION 4. (1) Before a payee may transfer payment rights to a transferee under ORS**
17 **33.850 to 33.875, the transferee shall file a petition for approval of the transfer in:**

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

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

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

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

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

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

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

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

33 **(e) Whether the payee is currently obligated under any child support order and, if so, the**
34 **name, address and telephone number of each person or agency that is receiving child support**
35 **from the payee under the order.**

36 **(f) A description of the payment rights to be transferred by the payee.**

37 **(g) The amount to be received by the payee in return for transferring the payment rights.**

38 **(h) A general description of the reasons why the payee seeks to transfer the payment**
39 **rights.**

40 **(3) A petition filed under this section must include:**

41 **(a) A copy of the disclosure statement provided to the payee required by ORS 33.860; and**

42 **(b) A copy of the signed transfer agreement.**

43 **(4) The court may seal all or part of a petition filed under this section as the court deems**
44 **necessary to ensure that the information is not public or subject to disclosure.**

45 **SECTION 5. (1) Not less than 20 days before the scheduled hearing on a petition for ap-**

1 **proval of a transfer of payment rights, the transferee shall send notice of the filing of the**
2 **petition to:**

3 **(a) The payee;**

4 **(b) Any beneficiary designated under the annuity contract to receive payments following**
5 **the payee's death;**

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

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

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

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

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

12 **(b) A copy of the signed transfer agreement.**

13 **(c) A copy of the disclosure statement provided to the payee as required under ORS**
14 **33.860.**

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

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

21 **SECTION 6. (1) Not less than 30 days before the signing of a transfer of payment rights,**
22 **the transferee must give a written statement to the payee that indicates that:**

23 **(a) The payee has the right to seek advice from an attorney, certified public accountant,**
24 **actuary or other licensed professional adviser.**

25 **(b) The court may require the payee to seek advice from an attorney, certified public**
26 **accountant, actuary or other licensed professional adviser.**

27 **(c) The court may require fees incurred by the payee in seeking advice from an attorney,**
28 **certified public accountant, actuary or other licensed professional adviser to be paid out of**
29 **the amount paid by the transferee to the payee.**

30 **(d) The court may deny or defer a ruling on the petition if the court believes that the**
31 **payee has not obtained independent transfer proposals and that independent transfer pro-**
32 **posals should be obtained.**

33 **(e) The court may require the payee to obtain independent transfer proposals from no**
34 **more than two other potential transferees that are not affiliated with the transferee.**

35 **(2) An attorney, certified public accountant, actuary or other licensed professional ad-**
36 **viser employed by the transferee may not provide advice to the payee.**

37 **SECTION 7. ORS 33.860 is amended to read:**

38 **33.860. Not less than [three] 10 days before [prior to the day on which a payee is scheduled to**
39 **sign] a transfer agreement is signed, a transferee shall provide the payee with a disclosure state-**
40 **ment in not less than 14-point type that sets forth:**

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

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

43 **(3) The discounted present value of the payments and the rate used in calculating the discounted**
44 **present value. The discounted present value shall be calculated by using the most recently published**
45 **applicable federal rate for determining the present value of an annuity, as issued by the Internal**

1 Revenue Service.

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

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

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

10 (b) Does not include attorney fees and related disbursements payable in connection with the
11 transferee's *[application]* **petition** for approval of the transfer or preexisting obligations of the payee
12 payable for the payee's account from the proceeds of a transfer.

13 (c) **Does not include attorney fees, professional fees and related expenses incurred by the**
14 **payee in seeking independent professional advice regarding the proposed transfer or charged**
15 **by an individual providing independent professional advice to the payee.**

16 (6) The amount calculated by subtracting the aggregate amount of the actual and estimated
17 transfer expenses required to be listed under subsection (5) of this section from the **gross** amount
18 identified in subsection (4) of this section.

19 (7) The amount of *[any]* penalties or liquidated damages, **if any**, payable by the payee in the
20 event of a breach of the transfer agreement by the payee.

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

24 **SECTION 8.** ORS 33.865 is amended to read:

25 33.865. (1) A transfer of payment rights under ORS 33.850 to 33.875 is not effective and an
26 obligor or annuity issuer is not required to make any payments directly or indirectly to a transferee
27 unless the **transferee has filed a petition under section 4 of this 2013 Act and the** transfer *[has*
28 *been]* **is** approved *[in advance in a final court order or order of a]* **by the court or** responsible ad-
29 ministrative authority based on express findings by the court or authority that:

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

32 *[(2)]* (b) The payee has been advised *[in writing]* by the transferee *[to seek advice from an attor-*
33 *ney, certified public accountant, actuary or other licensed professional adviser regarding the transfer,*
34 *and]* **in the manner provided by section 6 of this 2013 Act and the transferee has given the**
35 **notice required by section 5 of this 2013 Act and the statement required by ORS 33.860.**

36 (c) The payee has either received *[the advice]* **independent professional advice from an at-**
37 **torney, certified public accountant, actuary or other licensed professional adviser regarding**
38 **the transfer** or knowingly waived **independent professional** advice in writing.

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

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

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

45 (2) **When determining whether the proposed transfer should be approved, including**

1 whether the transfer agreement is fair, reasonable and in the payee's best interest, the court
2 or responsible administrative authority shall consider the totality of the circumstances, in-
3 cluding but not limited to:

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

7 (b) The stated purpose of the transfer and the intended use of the proceeds.

8 (c) The payee's financial situation, including but not limited to:

9 (A) The amounts and sources of the payee's monthly income.

10 (B) The payee's financial resources.

11 (C) If the payee is married, the amounts and sources of the payee's spouse's monthly
12 income and the financial resources of the payee's spouse.

13 (d) Whether the payee is employed.

14 (e) The terms of the transfer agreement, including whether the payee is transferring
15 monthly or lump sum payments or all or a portion of the payee's future payments.

16 (f) Whether, at the time the structured settlement agreement was executed, the future
17 periodic payments were intended to pay for the future medical care and treatment of the
18 payee for injuries sustained by the payee in the incident that was the subject of the struc-
19 tured settlement agreement, and whether the payee still needs the payments to pay for fu-
20 ture medical care and treatment.

21 (g) Whether, at the time the structured settlement agreement was executed, the future
22 periodic payments were intended to provide for the necessary living expenses of the payee,
23 and whether the payee still needs the payments to pay for future necessary living expenses.

24 (h) Whether the payee is, at the time of the proposed transfer, likely to require future
25 medical care and treatment for injuries sustained by the payee in the incident that was the
26 subject of the structured settlement agreement, and whether the payee lacks insurance or
27 other resources sufficient to cover the costs of future medical care and treatment.

28 (i) Whether the payee has income or support other than the future periodic payments
29 sufficient to meet the payee's future financial obligations for support of the payee's depen-
30 dents, including child support obligations. The payee shall disclose to the transferee, and to
31 the court or responsible administrative authority, the payee's child support obligations.

32 (j) Whether the financial terms of the transfer agreement, the discount rate applied to
33 determine the amount to be paid to the payee, the expenses and costs of the transfer for the
34 payee and the transferee, the size of the transaction and the financial alternatives available
35 to the payee to achieve the payee's stated objectives are fair and reasonable.

36 (k) Whether the payee has completed previous transactions involving the payee's struc-
37 tured settlement payments and the timing and size of any previous transactions and whether
38 the payee was satisfied with any previous transaction.

39 (L) Whether the transferee attempted previous transactions involving the payee's struc-
40 tured settlement payments that were denied, or that were dismissed or withdrawn before a
41 decision on the merits, within the five-year period immediately preceding the signing of the
42 structured settlement agreement.

43 (m) Whether, to the best of the transferee's knowledge after making inquiry of the
44 payee, the payee has attempted to enter into transactions involving the payee's structured
45 settlement payments that were denied, or that were dismissed or withdrawn before a deci-

1 sion on the merits, within the five-year period immediately preceding the signing of the
2 structured settlement agreement.

3 (n) Whether the payee, or the payee's family or dependents, will suffer financial hardship
4 if the transfer is not approved.

5 (o) Whether the payee received independent professional advice regarding the trans-
6 action. The court may deny or defer a ruling on the petition if the court believes that the
7 payee does not fully understand the transaction and that independent professional advice
8 regarding the transaction should be obtained by the payee. Before approving a transfer under
9 this section, the court may require the payee to seek independent professional advice.

10 (p) Whether the payee obtained independent transfer proposals from other potential
11 transferees that are not affiliated with the transferee. The court may deny or defer a ruling
12 on the petition if the court believes that the payee has not obtained independent transfer
13 proposals and that independent transfer proposals should be obtained. Before approving a
14 transfer under this section, the court may require the payee to obtain independent transfer
15 proposals from no more than two other potential transferees that are not affiliated with the
16 transferee.

17 (q) Any other factors or facts that the payee, the transferee or any other interested
18 party calls to the attention of the court or responsible administrative authority, or that the
19 court or authority determines should be considered in reviewing the proposed transfer.

20 (3) The court may require fees incurred by the payee in seeking independent professional
21 advice from an attorney, certified public accountant, actuary or other licensed professional
22 adviser to be paid out of the amount paid by the transferee to the payee.

23 **SECTION 9.** ORS 33.875 is amended to read:

24 33.875. (1) The provisions of ORS 33.850 to 33.875 may not be waived by any payee.

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

30 (3) A transfer of payment rights may not extend to any payments that are life contingent unless,
31 prior to the date on which the payee signs the transfer agreement, the transferee has established
32 and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the obligor
33 for:

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

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

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

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

44 (6) Compliance with the requirements [*set forth in ORS 33.860 and fulfillment of the conditions*
45 *set forth in ORS 33.855 shall be*] **of ORS 33.850 to 33.875 is** solely the responsibility of the

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

4 **SECTION 10. Sections 4 to 6 of this 2013 Act and the amendments to ORS 33.850, 33.855,**
5 **33.860, 33.865 and 33.875 by sections 1, 2, 7, 8 and 9 of this 2013 Act apply only to transfer**
6 **agreements signed on or after the effective date of this 2013 Act.**

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