

B-Engrossed
House Bill 2536

Ordered by the Senate June 5
Including House Amendments dated April 23 and Senate Amendments
dated June 5

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 of an attorney, certified public ac-**
10 **countant, actuary, financial advisor or other professional advisor:**

11 (a) **Who is engaged by a payee to render advice concerning the legal, tax or financial**
12 **implications of a transfer;**

13 (b) **Who is not affiliated with or compensated by the transferee; and**

14 (c) **Whose compensation for providing the advice is not affected by whether a transfer**
15 **occurs or does not occur.**

16 [(2)] (3) "Obligor" means a party that has a continuing obligation to make periodic payments to
17 a payee under a structured settlement agreement or an agreement that provides for a qualified as-
18 signment as defined in section 130 of the Internal Revenue Code, as of January 1, 2006.

19 [(3)] (4) "Payee" means an individual who is receiving tax-free payments under a structured
20 settlement agreement and proposes to make a transfer of payment rights.

21 [(4)] (5) "Payment rights" means rights to receive periodic payments under a structured settle-
22 ment agreement, whether from the obligor or the annuity issuer.

23 [(5)] (6) "Periodic payments" includes both recurring payments and scheduled future lump sum
24 payments.

25 [(6)] (7) "Responsible administrative authority" means a government authority vested by law
26 with exclusive jurisdiction over the original tort claim or workers' compensation claim that was

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 resolved in a structured settlement agreement.

2 [(7)] (8) "Structured settlement agreement" means an agreement, judgment, stipulation or release
3 embodying the terms of an arrangement for periodic payment of damages from an obligor or an an-
4 nuity issuer for:

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

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

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

9 (a) A structured settlement agreement;

10 (b) An annuity contract;

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

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

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

22 [(10)] (11) "Transfer agreement" means an agreement providing for a transfer of payment rights.

23 [(11)] (12) "Transferee" means a party acquiring or proposing to acquire payment rights through
24 a transfer agreement.

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

26 33.855. (1) A payee may transfer payment rights under ORS 33.850 to 33.875 if:

27 (a) The payee is domiciled in this state;

28 (b) The domicile or principal place of business of the obligor or the annuity issuer is located in
29 this state;

30 (c) The structured settlement agreement was approved by a court or responsible administrative
31 authority in this state; or

32 (d) The structured settlement agreement is expressly governed by the laws of this state.

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

35 (a) The county in which the payee resides; **or**

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

38 [(c)] (b) Any court or before any responsible administrative authority that approved the struc-
39 tured settlement agreement **from which the payment rights that the payee proposes to transfer**
40 **arose, if:**

41 (A) **The terms of the structured settlement were approved in an order or a judgment is-**
42 **sued by a court or other responsible administrative authority;**

43 (B) **The payee was an original party to the structured settlement when it was approved;**
44 **and**

45 (C) **The payee is a minor or remains subject to the condition that required the structured**

1 **settlement to be approved by a court or responsible administrative authority originally.**

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

4 (a) The payee;

5 (b) Any beneficiary irrevocably designated under the annuity contract to receive payments fol-
6 lowing the payee's death;

7 (c) The annuity issuer;

8 (d) The obligor; and

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

11 (4) The notice sent under subsection (3) of this section shall include:

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

13 (b) A copy of the transfer agreement.

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

15 (d) A listing of each person for whom the payee is legally obligated to provide support, including
16 the age of each of those persons.

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

21 (f) Notification of the time and place of the hearing [*and*].

22 (g) Notification of the manner in which and the time by which written responses to the [*appli-*
23 *cation*] **petition** must be filed, which shall not be less than 15 days after service of the transferee's
24 notice, in order to be considered by the court or responsible administrative authority.

25 **SECTION 3. Sections 4 and 5 of this 2013 Act are added to and made a part of ORS 33.850**
26 **to 33.875.**

27 **SECTION 4. (1) A petition for approval of a transfer of payment rights filed under ORS**
28 **33.855 must:**

29 (a) **Include the payee's name, age and county of residence.**

30 (b) **Describe the financial terms of the proposed transfer, including the payment rights**
31 **to be transferred by the payee and the amount to be received by the payee in return for the**
32 **transfer.**

33 (c) **Be accompanied by a copy of the transfer agreement.**

34 (d) **Be accompanied by a copy of the disclosure statement required under ORS 33.860, and**
35 **the signature of the payee acknowledging the payee's receipt of the disclosure statement.**

36 (e) **Generally describe the reasons why the payee seeks to transfer the payment rights.**

37 (f) **Be accompanied by a declaration under penalty of perjury by the payee:**

38 (A) **Stating whether the payee currently and substantially relies on the structured**
39 **settlement payments that the payee proposes to transfer to the transferee, or governmental**
40 **assistance payments, for the payee's necessary living expenses or required medical care and**
41 **treatment relating to the injuries that the payee sustained in connection with the incident**
42 **that was the subject of the structured settlement.**

43 (B) **Stating whether the payee personally sustained physical injuries in connection with**
44 **the incident from which the structured settlement arose and that currently prevent the**
45 **payee from working.**

1 (C) Providing a summary of:

2 (i) Any prior transfers of structured settlement payments by the payee to the transferee
3 within the five years preceding the date of the pending transfer agreement.

4 (ii) Any prior transfers of structured settlement payments by the payee to a person other
5 than the transferee within the five years preceding the date of the pending transfer agree-
6 ment.

7 (iii) Any prior transfers of structured settlement payments by the payee to a person
8 other than the transferee within the year preceding the date of the pending transfer agree-
9 ment, including any prior attempted transfers that were denied or that were dismissed or
10 withdrawn prior to a decision on the merits of the transfer.

11 (D) If the payee has minor children, stating whether the payee is currently obligated to
12 pay child support under any child support order, and whether the payee is current or in ar-
13 rears under any child support order.

14 (g) Include a summary of any prior attempted transfers of structured settlement pay-
15 ments by the payee to the transferee.

16 (2) If the petition is accompanied by a declaration that the payee currently and substan-
17 tially relies on structured settlement payments or governmental assistance payments for
18 necessary living expenses or required medical treatment for personally sustained physical
19 injuries that prevent the payee from working as provided in subsection (1)(f) of this section,
20 the transferee shall advise the payee in writing that the payee will be required to secure at
21 least one other transfer proposal from another potential transferee and provide to the court
22 the terms of the other transfer proposal at or prior to the hearing. The transferee shall also
23 advise the payee that, if the payee is required to secure a transfer proposal from another
24 transferee under this subsection and the payee fails to do so, the court may require the
25 payee to do so before ruling on the petition.

26 (3)(a) If the summaries required under subsection (1)(f) and (g) of this section describe
27 any prior transfers or attempted transfers of structured settlement payments, the
28 transferee shall, at or before the hearing on the petition:

29 (A) Provide to the court a copy of the court orders approving, denying, or otherwise re-
30 lating to the transfers or attempted transfers involving the transferee; and

31 (B) Request from the payee or the annuity issuer or obligor under the structured
32 settlement agreement copies of any court orders relating to any transfer or attempted
33 transfer involving the payee and any other party and, if any orders are provided to the
34 transferee, provide a copy of the orders to the court at or before the hearing on the petition.

35 (b) The inability of the transferee or payee to provide copies of court orders under this
36 subsection does not preclude the court from approving the proposed transfer, if the court
37 determines that the court orders are not available to the transferee or payee after the
38 transferee and payee have made reasonable efforts to obtain the court orders.

39 **SECTION 5.** (1) At the hearing on a petition to transfer payment rights filed under ORS
40 33.855, the court may ask the payee to provide testimony on or other evidence related to the
41 following matters and any other relevant evidence that the court deems appropriate to make
42 the findings required by ORS 33.865:

43 (a) The payee's marital status and, if married or separated, the name of the payee's
44 spouse.

45 (b) The names, ages and place or places of residence of any minor children or other de-

1 **pendents of the payee.**

2 (c) **The amounts and sources of the payee's monthly income and, if the payee is married,**
3 **the amounts and sources of the payee's spouse's monthly income.**

4 (d) **If the payee has minor children, whether the payee is currently obligated to pay child**
5 **support under any child support order, whether the payee is current or in arrears under any**
6 **child support order and the names, addresses and telephone numbers of any persons or**
7 **agencies receiving child support from the payee under the order.**

8 (e) **The extent, if at all, to which the payee currently and substantially relies on the**
9 **structured settlement payments that the payee proposes to transfer to the transferee for the**
10 **payee's necessary living expenses or required medical care and treatment relating to the**
11 **injuries that the payee sustained in connection with the incident that was the subject of the**
12 **structured settlement.**

13 (2) **If the transferee has included in the petition a statement that the payee currently**
14 **and substantially relies on the structured settlement payments that the payee proposes to**
15 **transfer to the transferee, or governmental assistance payments, for the payee's necessary**
16 **living expenses or required medical care and treatment for personally sustained physical in-**
17 **juries that prevent the payee from working as provided in section 4 (1)(f) of this 2013 Act,**
18 **the court shall require the payee to secure at least one other transfer proposal from another**
19 **potential transferee unaffiliated with the transferee and provide to the court the terms of**
20 **the other transfer proposal at or prior to the hearing.**

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

22 33.860. Not less than [*three*] **14** days [*prior to the day on which a payee is scheduled to sign*] **be-**
23 **fore a payee signs** a transfer agreement, a transferee shall provide the payee with a **disclosure**
24 statement in not less than 14-point type that sets forth:

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

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

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

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

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

37 (a) Includes all **fees, costs and** expenses of a transfer that are required under the transfer
38 agreement to be paid by the payee **to the transferee** or deducted from the amount payable to a
39 payee as the result of a transfer.

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

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

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

3 (8) A statement that the payee has the right to cancel the transfer agreement, without penalty
4 or further obligation, not later than the third business day after the date the **transfer** agreement
5 is signed by the payee **at the hearing**.

6 (9) **A statement that the payee is entitled to, and should, seek independent professional
7 advice regarding the proposed transfer.**

8 (10) **A statement that transferring payment rights may or may not be financially appro-
9 priate for the payee and the payee should not proceed without first weighing and considering
10 other offers and alternate means of obtaining funds through borrowing or the sale of other
11 assets.**

12 (11) **A statement that the transferee's attorney does not represent the payee in con-
13 nection with the proposed transfer.**

14 (12) **A statement that the court may require the payee to seek independent professional
15 advice and that the expenses for the independent professional advice may be paid out of the
16 amount paid by the transferee to the payee.**

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

18 33.865. (1) A transfer of payment rights under ORS 33.850 to 33.875 is not effective and an
19 obligor or annuity issuer is not required to make any payments directly or indirectly to a transferee
20 unless the **transferee has filed a petition under section 4 of this 2013 Act and the** transfer [*has*
21 *been*] **is approved** [*in advance in a final court order or order of a*] **by the court or** responsible ad-
22 ministrative authority based on express findings by the court or authority that:

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

25 (b) **If the transferee has included in the petition a statement that the payee currently
26 and substantially relies on the structured settlement payments that the payee proposes to
27 transfer to the transferee, or governmental assistance payments, for the payee's necessary
28 living expenses or required medical care and treatment for personally sustained physical in-
29 juries that prevent the payee from working as provided in section 4 (1)(f) of this 2013 Act,
30 the transfer is in the best interest of the payee for reasons specified and described in writing
31 by the court.**

32 [(2)] (c) The payee has been advised in writing by the transferee to seek **independent profes-
33 sional** advice [*from an attorney, certified public accountant, actuary or other licensed professional ad-
34 viser regarding the transfer,*] and the payee has either received [*the advice*] **independent
35 professional advice regarding the transfer** or knowingly waived **independent professional** advice
36 in writing.

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

39 (e) **The payee understands the transfer agreement, the disclosure statement required
40 under ORS 33.860 and the financial terms of the transfer.**

41 (f) **The payee understands the payee's right to cancel the transfer agreement as set forth
42 in the disclosure statement required by ORS 33.860 and knowingly elected not to cancel the
43 transfer agreement.**

44 (g) **The payee confirmed to the court at the hearing that the payee wanted the court to
45 approve the proposed transfer and understood that the court would not approve the transfer**

1 if the payee did not want the court to do so.

2 (2) When determining whether the proposed transfer should be approved, including
3 whether the transfer agreement is fair, reasonable and in the payee's best interest, the court
4 or responsible administrative authority may consider all relevant information, including in-
5 formation contained in the petition and any other document that is filed with the court and
6 provided at the hearing. Relevant information that may be considered under this subsection
7 includes, but is not limited to:

8 (a) The reasonable preference and desire of the payee to complete the proposed transfer,
9 taking into account the payee's age and apparent maturity level and recognizing that the
10 payment rights constitute a financial asset and property right of the payee over which the
11 payee does and should have control.

12 (b) The purpose of the transfer and the intended use of the proceeds by the payee.

13 (c) The payee's financial situation.

14 (d) Whether the payee relies exclusively on the structured settlement payments that the
15 payee proposes to transfer for the payee's necessary living expenses or required medical care
16 and treatment.

17 (e) Whether the payee is employed or employable.

18 (f) The terms of the transfer agreement, including whether the payee is transferring
19 monthly or lump sum payments or all or a portion of the payee's future payments, the size
20 of the transaction and the financial alternatives available to the payee to achieve the payee's
21 stated objectives.

22 (g) Whether the payee has experienced a change in personal, family or financial circum-
23 stances.

24 (h) Whether the payee has income or support other than the future periodic payments
25 sufficient to meet the payee's future financial obligations for support of the payee's depen-
26 dents, including child support obligations. The payee shall disclose to the transferee, and to
27 the court or responsible administrative authority, the payee's child support obligations.

28 (i) Whether the terms of the proposed transfer agreement, including the amount to be
29 paid to the payee and the expenses and costs of the transfer for the payee and the transferee
30 are fair and reasonable.

31 (j) Whether the payee has completed or attempted previous transfers of payment rights.

32 (k) Whether the payee, or the payee's family or dependents, may suffer personal, family
33 or financial hardship or may be unable to pursue personal, family or financial objectives if
34 the transfer is not approved.

35 (L) Whether the payee received independent professional advice regarding the trans-
36 action.

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

38 33.875. (1) The provisions of ORS 33.850 to 33.875 may not be waived by any payee.

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

44 (3) A transfer of payment rights may not extend to any payments that are life contingent unless,
45 prior to the date on which the payee signs the transfer agreement, the transferee has established

1 and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the obligor
2 for:

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

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

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

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

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

18 **SECTION 9. Sections 4 and 5 of this 2013 Act and the amendments to ORS 33.850, 33.855,**
19 **33.860, 33.865 and 33.875 by sections 1, 2, 6, 7 and 8 of this 2013 Act apply only to transfer**
20 **agreements signed on or after the effective date of this 2013 Act.**