

Enrolled
House Bill 2536

Sponsored by Representative HOLVEY (Presession filed.)

CHAPTER

AN ACT

Relating to transfers of structured settlement rights; creating new provisions; and amending ORS 33.850, 33.855, 33.860, 33.865 and 33.875.

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

SECTION 1. ORS 33.850 is amended to read:

33.850. As used in ORS 33.850 to 33.875:

(1) "Annuity issuer" means an insurer that has entered into a contract to fund periodic payments under a structured settlement agreement.

(2) **"Independent professional advice" means advice of an attorney, certified public accountant, actuary, financial advisor or other professional advisor:**

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

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

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

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

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

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

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

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

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

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

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

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

(a) A structured settlement agreement;

- (b) An annuity contract;
- (c) An agreement that provides for a qualified assignment as defined in section 130 of the Internal Revenue Code, as of January 1, 2006; and
- (d) Any order or other approval of any court, responsible administrative authority or other government authority that authorized or approved the structured settlement agreement.

[(9)] **(10)** “Transfer” means any sale, assignment, pledge or other alienation or encumbrance of payment rights made by a payee for consideration. “Transfer” does not include the creation or perfection of an unspecified security interest in all of the payee’s payment rights entered into with an insured depository institution, or an agent or successor in interests of the insured depository institution, in the absence of any action to redirect the payments under the structured settlement agreement to the insured depository institution or otherwise to enforce a security interest against the payment rights.

[(10)] **(11)** “Transfer agreement” means an agreement providing for a transfer of payment rights.

[(11)] **(12)** “Transferee” means a party acquiring or proposing to acquire payment rights through a transfer agreement.

SECTION 2. ORS 33.855 is amended to read:

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

- (a) The payee is domiciled in this state;
- (b) The domicile or principal place of business of the obligor or the annuity issuer is located in this state;
- (c) The structured settlement agreement was approved by a court or responsible administrative authority in this state; or

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

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

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

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

[(c)] (b) **In** any court or before any responsible administrative authority **in this state** that approved the structured settlement agreement.

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

- (a) The payee;
- (b) Any beneficiary irrevocably designated under the annuity contract to receive payments following the payee’s death;
- (c) The annuity issuer;
- (d) The obligor; and
- (e) Any other party that has continuing rights or obligations under the structured settlement agreement that is the subject of the hearing.

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

- (a) A copy of the transferee’s [*application*] **petition**.
- (b) A copy of the transfer agreement.
- (c) A copy of the disclosure statement provided to the payee as required under ORS 33.860.
- (d) A listing of each person for whom the payee is legally obligated to provide support, including the age of each of those persons.

(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*] **petition**, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing.

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

(g) Notification of the manner in which and the time by which written responses to the [application] petition 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.

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

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

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

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

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

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

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

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

(A) Stating whether the payee depends on structured settlement payments or government benefits for the payee's necessary living expenses or required medical care and treatment.

(B) Stating whether the payee personally sustained physical injuries or sickness in connection with the incident from which the structured settlement arose and whether the injuries or sickness currently prevents the payee from working or substantially limits the work that the payee can perform.

(C) Providing a summary of:

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

(ii) Any prior transfers of structured settlement payments by the payee to a person other than the transferee within the five years preceding the date of the pending transfer agreement.

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

(D) If the payee has minor children, stating whether the payee is currently obligated to pay child support under any child support order, and whether the payee is current or in arrears under any child support order.

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

(A) Provide to the court or responsible administrative authority a copy of the court orders approving, denying or otherwise relating to the transfers or attempted transfers involving the transferee; and

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

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

SECTION 5. At the hearing on a petition to transfer payment rights filed under ORS 33.855, the court or responsible administrative authority may ask the payee to provide testimony on or other evidence related to the following matters and any other relevant evidence that the court or authority deems appropriate to make the findings required by ORS 33.865:

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

(2) The names, ages and place or places of residence of any minor children or other dependents of the payee.

(3) 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.

(4) 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 persons or agencies receiving child support from the payee under the order.

(5) Whether the payee depends on the structured settlement payments that the payee proposes to transfer for the payee's necessary living expenses or required medical care and treatment.

SECTION 6. ORS 33.860 is amended to read:

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

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

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

(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.

(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.

(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":

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

(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.

(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.

(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.

(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.]* **before the approval of the transfer by the court or responsible administrative authority.**

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

(10) **A statement that transferring payment rights may or may not be financially appropriate for the payee and 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.

(11) A statement that the transferee's attorney does not represent the payee in connection with the proposed transfer.

(12) A statement that the court or responsible administrative authority may require the payee to seek independent professional advice and that the expenses for the independent professional advice may be paid out of the amount paid by the transferee to the payee.

SECTION 7. ORS 33.865 is amended to read:

33.865. (1) A transfer of payment rights under ORS 33.850 to 33.875 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** *[has been]* **is approved** *[in advance in a final court order or order of a]* **by the court or** responsible administrative authority based on express findings by the court or authority that:

[(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.

[(2)] (b) The payee has been advised in writing by the transferee to seek **independent professional** advice *[from an attorney, certified public accountant, actuary or other licensed professional adviser regarding the transfer,]* and the payee has either received *[the advice]* **independent professional advice regarding the transfer** or knowingly waived **independent professional** advice in writing.

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

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

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

(f) **The payee confirmed to the court or responsible administrative authority at the hearing that the payee wanted the court or authority to approve the proposed transfer and understood that the court or authority would not approve the transfer if the payee did not want the court or authority to do so.**

(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 may consider all relevant information, including information contained in the petition and any other document that is filed with the court or authority and provided at the hearing. Relevant information that may be considered under this subsection includes, but is not limited to:

(a) The reasonable preference and desire of the payee to complete the proposed transfer, taking into account the payee's age and apparent maturity level.

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

(c) The payee's financial situation.

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

(e) Whether the payee is employed or employable.

(f) 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, the size of the transaction and the financial alternatives available to the payee to achieve the payee's stated objectives.

(g) Whether the payee has experienced a change in personal, family or financial circumstances.

(h) 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.

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

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

(k) Whether the payee, or the payee's family or dependents, may suffer personal, family or financial hardship if the transfer is not approved.

(L) Whether the payee received independent professional advice regarding the transaction.

SECTION 8. ORS 33.875 is amended to read:

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

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

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

(a) Periodically confirming the payee's survival.

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

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

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

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

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

Passed by House April 25, 2013

Repassed by House July 1, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 12, 2013

Repassed by Senate July 2, 2013

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Peter Courtney, President of Senate

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Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State