

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2536

By COMMITTEE ON JUDICIARY

June 5

- 1 On page 1 of the printed A-engrossed bill, delete lines 9 through 11 and insert:
- 2 “(2) ‘Independent professional advice’ means advice of an attorney, certified public accountant,
3 actuary, financial advisor or other professional advisor:
- 4 “(a) Who is engaged by a payee to render advice concerning the legal, tax or financial impli-
5 cations of a transfer;
- 6 “(b) Who is not affiliated with or compensated by the transferee; and
- 7 “(c) Whose compensation for providing the advice is not affected by whether a transfer occurs
8 or does not occur.”.
- 9 On page 2, delete lines 21 through 45 and delete pages 3 through 8 and insert:
- 10 “**SECTION 2.** ORS 33.855 is amended to read:
- 11 “33.855. (1) A payee may transfer payment rights under ORS 33.850 to 33.875 if:
- 12 “(a) The payee is domiciled in this state;
- 13 “(b) The domicile or principal place of business of the obligor or the annuity issuer is located
14 in this state;
- 15 “(c) The structured settlement agreement was approved by a court or responsible administrative
16 authority in this state; or
- 17 “(d) The structured settlement agreement is expressly governed by the laws of this state.
- 18 “(2) Prior to transferring payment rights under ORS 33.850 to 33.875, the transferee shall file
19 *[an application]* a **petition** for approval of the transfer in:
- 20 “(a) The county in which the payee resides; **or**
- 21 “[*(b) The county in which the obligor or the annuity issuer maintains its principal place of busi-*
22 *ness; or]*
- 23 “[*(c)*] **(b)** Any court or before any responsible administrative authority that approved the struc-
24 tured settlement agreement **from which the payment rights that the payee proposes to transfer**
25 **arose, if:**
- 26 “**(A) The terms of the structured settlement were approved in an order or a judgment**
27 **issued by a court or other responsible administrative authority;**
- 28 “**(B) The payee was an original party to the structured settlement when it was approved;**
29 **and**
- 30 “**(C) The payee is a minor or remains subject to the condition that required the struc-**
31 **tured settlement to be approved by a court or responsible administrative authority**
32 **originally.**
- 33 “(3) Not less than 20 days prior to the scheduled hearing on *[an application]* a **petition** for ap-
34 proval of a transfer of payment rights, the transferee shall send notice of the proposed transfer to:
- 35 “(a) The payee;

1 “(b) Any beneficiary irrevocably designated under the annuity contract to receive payments
2 following the payee’s death;

3 “(c) The annuity issuer;

4 “(d) The obligor; and

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

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

8 “(a) A copy of the transferee’s [application] **petition**.

9 “(b) A copy of the transfer agreement.

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

11 “(d) A listing of each person for whom the payee is legally obligated to provide support, in-
12 cluding the age of each of those persons.

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

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

18 “(g) Notification of the manner in which and the time by which written responses to the [ap-
19 plication] **petition** must be filed, which shall not be less than 15 days after service of the transferee’s
20 notice, in order to be considered by the court or responsible administrative authority.

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

23 “**SECTION 4. (1) A petition for approval of a transfer of payment rights filed under ORS**
24 **33.855 must:**

25 “(a) **Include the payee’s name, age and county of residence.**

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

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

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

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

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

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

39 “(B) **Stating whether the payee personally sustained physical injuries in connection with**
40 **the incident from which the structured settlement arose and that currently prevent the**
41 **payee from working.**

42 “(C) **Providing a summary of:**

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

45 “(ii) **Any prior transfers of structured settlement payments by the payee to a person**

1 other than the transferee within the five years preceding the date of the pending transfer
2 agreement.

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

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

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

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

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

25 “(A) Provide to the court a copy of the court orders approving, denying, or otherwise
26 relating to the transfers or attempted transfers involving the transferee; and

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

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

35 “SECTION 5. (1) At the hearing on a petition to transfer payment rights filed under ORS
36 33.855, the court may ask the payee to provide testimony on or other evidence related to the
37 following matters and any other relevant evidence that the court deems appropriate to make
38 the findings required by ORS 33.865:

39 “(a) The payee’s marital status and, if married or separated, the name of the payee’s
40 spouse.

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

43 “(c) The amounts and sources of the payee’s monthly income and, if the payee is married,
44 the amounts and sources of the payee’s spouse’s monthly income.

45 “(d) If the payee has minor children, whether the payee is currently obligated to pay child

1 **support under any child support order, whether the payee is current or in arrears under any**
2 **child support order and the names, addresses and telephone numbers of any persons or**
3 **agencies receiving child support from the payee under the order.**

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

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

17 “**SECTION 6.** ORS 33.860 is amended to read:

18 “33.860. Not less than [*three*] **14** days [*prior to the day on which a payee is scheduled to sign*]
19 **before a payee signs** a transfer agreement, a transferee shall provide the payee with a **disclosure**
20 statement in not less than 14-point type that sets forth:

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

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

23 “(3) The discounted present value of the payments and the rate used in calculating the dis-
24 counted present value. The discounted present value shall be calculated by using the most recently
25 published applicable federal rate for determining the present value of an annuity, as issued by the
26 Internal Revenue Service.

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

30 “(5) An itemized listing of all applicable transfer expenses and the transferee’s best estimate of
31 the amount of any attorney fees and disbursements. For the purposes of this subsection, ‘transfer
32 expenses’:

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

36 “(b) Does not include [*attorney fees and related disbursements payable in connection with the*
37 *transferee’s application for approval of the transfer or*] preexisting obligations of the payee payable
38 for the payee’s account from the proceeds of a transfer.

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

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

44 “(8) A statement that the payee has the right to cancel the transfer agreement, without penalty
45 or further obligation, not later than the third business day after the date the **transfer** agreement

1 is signed by the payee at the hearing.

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

4 “(10) A statement that transferring payment rights may or may not be financially ap-
5 propriate for the payee and the payee should not proceed without first weighing and consid-
6 ering other offers and alternate means of obtaining funds through borrowing or the sale of
7 other assets.

8 “(11) A statement that the transferee’s attorney does not represent the payee in con-
9 nection with the proposed transfer.

10 “(12) A statement that the court may require the payee to seek independent professional
11 advice and that the expenses for the independent professional advice may be paid out of the
12 amount paid by the transferee to the payee.

13 “SECTION 7. ORS 33.865 is amended to read:

14 “33.865. (1) A transfer of payment rights under ORS 33.850 to 33.875 is not effective and an
15 obligor or annuity issuer is not required to make any payments directly or indirectly to a transferee
16 unless the transferee has filed a petition under section 4 of this 2013 Act and the transfer [*has*
17 *been*] is approved [*in advance in a final court order or order of a*] by the court or responsible ad-
18 ministrative authority based on express findings by the court or authority that:

19 “[*1*] (a) The transfer is in the best interest of the payee, taking into account the welfare and
20 support of all persons for whom the payee is legally obligated to provide support.

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

28 “[*2*] (c) The payee has been advised in writing by the transferee to seek independent pro-
29 fessional advice [*from an attorney, certified public accountant, actuary or other licensed professional*
30 *adviser regarding the transfer,*] and the payee has either received [*the advice*] independent profes-
31 sional advice regarding the transfer or knowingly waived independent professional advice in
32 writing.

33 “[*3*] (d) The transfer does not contravene any applicable statute or order of any court or other
34 government authority.

35 “(e) The payee understands the transfer agreement, the disclosure statement required
36 under ORS 33.860 and the financial terms of the transfer.

37 “(f) The payee understands the payee’s right to cancel the transfer agreement as set
38 forth in the disclosure statement required by ORS 33.860 and knowingly elected not to cancel
39 the transfer agreement.

40 “(g) The payee confirmed to the court at the hearing that the payee wanted the court
41 to approve the proposed transfer and understood that the court would not approve the
42 transfer if the payee did not want the court to do so.

43 “(2) When determining whether the proposed transfer should be approved, including
44 whether the transfer agreement is fair, reasonable and in the payee’s best interest, the court
45 or responsible administrative authority may consider all relevant information, including in-

1 formation contained in the petition and any other document that is filed with the court and
2 provided at the hearing. Relevant information that may be considered under this subsection
3 includes, but is 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 and apparent maturity level and recognizing that the
6 payment rights constitute a financial asset and property right of the payee over which the
7 payee does and should have control.

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

9 “(c) The payee’s financial situation.

10 “(d) Whether the payee relies exclusively on the structured settlement payments that the
11 payee proposes to transfer for the payee’s necessary living expenses or required medical care
12 and treatment.

13 “(e) Whether the payee is employed or employable.

14 “(f) 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, the size
16 of the transaction and the financial alternatives available to the payee to achieve the payee’s
17 stated objectives.

18 “(g) Whether the payee has experienced a change in personal, family or financial cir-
19 cumstances.

20 “(h) Whether the payee has income or support other than the future periodic payments
21 sufficient to meet the payee’s future financial obligations for support of the payee’s depen-
22 dents, including child support obligations. The payee shall disclose to the transferee, and to
23 the court or responsible administrative authority, the payee’s child support obligations.

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

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

28 “(k) Whether the payee, or the payee’s family or dependents, may suffer personal, family
29 or financial hardship or may be unable to pursue personal, family or financial objectives if
30 the transfer is not approved.

31 “(L) Whether the payee received independent professional advice regarding the trans-
32 action.

33 “**SECTION 8.** ORS 33.875 is amended to read:

34 “33.875. (1) The provisions of ORS 33.850 to 33.875 may not be waived by any payee.

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

40 “(3) A transfer of payment rights may not extend to any payments that are life contingent un-
41 less, prior to the date on which the payee signs the transfer agreement, the transferee has estab-
42 lished and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the
43 obligor for:

44 “(a) Periodically confirming the payee’s survival.

45 “(b) Giving the annuity issuer and the obligor prompt written notice in the event of the payee’s

1 death.

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

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

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

14 “**SECTION 9. Sections 4 and 5 of this 2013 Act and the amendments to ORS 33.850, 33.855,**
15 **33.860, 33.865 and 33.875 by sections 1, 2, 6, 7 and 8 of this 2013 Act apply only to transfer**
16 **agreements signed on or after the effective date of this 2013 Act.”.**

17
