

**PROPOSED AMENDMENTS TO
HOUSE BILL 2536**

1 On page 1 of the printed bill, line 2, after “ORS” insert “33.850,”.

2 Delete lines 5 through 30 and delete pages 2 through 6 and insert:

3 **“SECTION 1.** ORS 33.850 is amended to read:

4 “33.850. As used in ORS 33.850 to 33.875:

5 “(1) ‘Annuity issuer’ means an insurer that has entered into a contract
6 to fund periodic payments under a structured settlement agreement.

7 **“(2) ‘Independent professional advice’ means advice regarding a**
8 **proposed transfer from a person who is not employed by the transferee**
9 **and who is an attorney, certified public accountant, actuary or other**
10 **licensed professional adviser.**

11 “[2] (3) ‘Obligor’ means a party that has a continuing obligation to make
12 periodic payments to a payee under a structured settlement agreement or an
13 agreement that provides for a qualified assignment as defined in section 130
14 of the Internal Revenue Code, as of January 1, 2006.

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

18 “[4] (5) ‘Payment rights’ means rights to receive periodic payments un-
19 der a structured settlement agreement, whether from the obligor or the an-
20 nuity issuer.

21 “[5] (6) ‘Periodic payments’ includes both recurring payments and
22 scheduled future lump sum payments.

1 “[6] (7) ‘Responsible administrative authority’ means a government au-
2 thority vested by law with exclusive jurisdiction over the original tort claim
3 or workers’ compensation claim that was resolved in a structured settlement
4 agreement.

5 “[7] (8) ‘Structured settlement agreement’ means an agreement, judg-
6 ment, stipulation or release embodying the terms of an arrangement for pe-
7 riodic payment of damages from an obligor or an annuity issuer for:

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

10 “(b) Periodic payments in settlement of a workers’ compensation claim.

11 “[8] (9) ‘Terms of the structured settlement agreement’ includes the
12 terms of:

13 “(a) A structured settlement agreement;

14 “(b) An annuity contract;

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

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

20 “[9] (10) ‘Transfer’ means any sale, assignment, pledge or other alien-
21 ation or encumbrance of payment rights made by a payee for consideration.
22 ‘Transfer’ does not include the creation or perfection of an unspecified se-
23 curity interest in all of the payee’s payment rights entered into with an in-
24 sured depository institution, or an agent or successor in interests of the
25 insured depository institution, in the absence of any action to redirect the
26 payments under the structured settlement agreement to the insured depository
27 institution or otherwise to enforce a security interest against the pay-
28 ment rights.

29 “[10] (11) ‘Transfer agreement’ means an agreement providing for a
30 transfer of payment rights.

1 “~~[(11)]~~ **(12)** ‘Transferee’ means a party acquiring or proposing to acquire
2 payment rights through a transfer agreement.

3 “**SECTION 2.** ORS 33.855 is amended to read:

4 “33.855. ~~[(1)]~~ A payee may transfer payment rights under ORS 33.850 to
5 33.875 if:

6 “~~[(a)]~~ **(1)** The payee is domiciled in this state;

7 “~~[(b)]~~ **(2)** The domicile or principal place of business of the obligor or the
8 annuity issuer is located in this state;

9 “~~[(c)]~~ **(3)** The structured settlement agreement was approved by a court
10 or responsible administrative authority in this state; or

11 “~~[(d)]~~ **(4)** The structured settlement agreement is expressly governed by
12 the laws of this state.

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

15 “~~[(a)]~~ *The county in which the payee resides;]*

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

18 “~~[(c)]~~ *Any court or before any responsible administrative authority that ap-*
19 *proved the structured settlement agreement.]*

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

23 “~~[(a)]~~ *The payee;]*

24 “~~[(b)]~~ *Any beneficiary irrevocably designated under the annuity contract to*
25 *receive payments following the payee’s death;]*

26 “~~[(c)]~~ *The annuity issuer;]*

27 “~~[(d)]~~ *The obligor; and]*

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

30 “~~[(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
4 under ORS 33.860.]

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

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

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

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

19 **“SECTION 4. (1) Before a payee may transfer payment rights to a
20 transferee under ORS 33.850 to 33.875, the transferee shall file a peti-
21 tion for approval of the transfer in:**

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

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

25 **“(c) The court or responsible administrative authority that ap-
26 proved the structured settlement agreement.**

27 **“(2) A petition under this section must include the following infor-
28 mation, to the extent known after the transferee has made reasonable
29 inquiry of the payee:**

30 **“(a) The payee’s name, address and age.**

1 **“(b) The payee’s marital status and, if married or separated, the**
2 **name of the payee’s spouse.**

3 **“(c) The names, ages and place or places of residence of any minor**
4 **children or other dependents of the payee.**

5 **“(d) The amounts and sources of the payee’s monthly income, the**
6 **payee’s financial resources and, if the payee is married, the amounts**
7 **and sources of the payee’s spouse’s monthly income and the financial**
8 **resources of the payee’s spouse.**

9 **“(e) Whether the payee is currently obligated under any child sup-**
10 **port order and, if so, the name, address and telephone number of each**
11 **person or agency that is receiving child support from the payee under**
12 **the order.**

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

15 **“(g) The amount to be received by the payee in return for trans-**
16 **ferring the payment rights.**

17 **“(h) A general description of the reasons why the payee seeks to**
18 **transfer the payment rights.**

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

20 **“(a) A copy of the disclosure statement provided to the payee re-**
21 **quired by ORS 33.860; and**

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

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

26 **“SECTION 5. (1) Not less than 20 days before the scheduled hearing**
27 **on a petition for approval of a transfer of payment rights, the**
28 **transferee shall send notice of the filing of the petition to:**

29 **“(a) The payee;**

30 **“(b) Any beneficiary designated under the annuity contract to re-**

1 **ceive payments following the payee's death;**

2 **“(c) The annuity issuer;**

3 **“(d) The obligor; and**

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

6 **“(2) The notice sent under subsection (1) of this section must in-**
7 **clude:**

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

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

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

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

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

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

23 **“(a) The payee has the right to seek advice from an attorney, cer-**
24 **tified public accountant, actuary or other licensed professional ad-**
25 **viser.**

26 **“(b) The court may require the payee to seek advice from an at-**
27 **torney, certified public accountant, actuary or other licensed profes-**
28 **sional adviser.**

29 **“(c) The court may require fees incurred by the payee in seeking**
30 **advice from an attorney, certified public accountant, actuary or other**

1 licensed professional adviser to be paid out of the amount paid by the
2 transferee to the payee.

3 “(d) The court may deny or defer a ruling on the petition if the
4 court believes that the payee has not obtained independent transfer
5 proposals and that independent transfer proposals should be obtained.

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

9 “(2) An attorney, certified public accountant, actuary or other li-
10 censed professional adviser employed by the transferee may not pro-
11 vide advice to the payee.

12 “SECTION 7. ORS 33.860 is amended to read:

13 “33.860. Not less than [*three*] **10** days **before** [*prior to the day on which a*
14 *payee is scheduled to sign*] a transfer agreement **is signed**, a transferee shall
15 provide the payee with a **disclosure** statement in not less than 14-point type
16 that sets forth:

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

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

20 “(3) The discounted present value of the payments and the rate used in
21 calculating the discounted present value. The discounted present value shall
22 be calculated by using the most recently published applicable federal rate for
23 determining the present value of an annuity, as issued by the Internal Rev-
24 enue Service.

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

29 “(5) An itemized listing of all applicable transfer expenses and the
30 transferee’s best estimate of the amount of any attorney fees and disburse-

1 ments. For the purposes of this subsection, ‘transfer expenses’:

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

5 “(b) Does not include attorney fees and related disbursements payable in
6 connection with the transferee’s [*application*] **petition** for approval of the
7 transfer or preexisting obligations of the payee payable for the payee’s ac-
8 count from the proceeds of a transfer.

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

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

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

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

23 “**SECTION 8.** ORS 33.865 is amended to read:

24 “33.865. (1) A transfer of payment rights under ORS 33.850 to 33.875 is
25 not effective and an obligor or annuity issuer is not required to make any
26 payments directly or indirectly to a transferee unless the **transferee has**
27 **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**
29 **court or** responsible administrative authority based on express findings by
30 the court or authority that:

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

4 “[(2)] (b) The payee has been advised [*in writing*] by the transferee [*to*
5 *seek advice from an attorney, certified public accountant, actuary or other li-*
6 *icensed professional adviser regarding the transfer, and*] **in the manner pro-**
7 **vided by section 6 of this 2013 Act and the transferee has given the**
8 **notice required by section 5 of this 2013 Act and the statement required**
9 **by ORS 33.860.**

10 “(c) The payee has either received [*the advice*] **independent professional**
11 **advice from an attorney, certified public accountant, actuary or other**
12 **licensed professional adviser regarding the transfer** or knowingly waived
13 **independent professional** advice in writing.

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

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

18 “(f) **The payee understood the payee’s right to cancel the transfer**
19 **agreement and knowingly elected not to cancel the transfer agree-**
20 **ment.**

21 “(2) **When determining whether the proposed transfer should be**
22 **approved, including whether the transfer agreement is fair, reasonable**
23 **and in the payee’s best interest, the court or responsible administra-**
24 **tive authority shall consider the totality of the circumstances, in-**
25 **cluding but not limited to:**

26 “(a) **The reasonable preference and desire of the payee to complete**
27 **the proposed transfer, taking into account the payee’s age, mental**
28 **capacity, knowledge of the law and apparent maturity level.**

29 “(b) **The stated purpose of the transfer and the intended use of the**
30 **proceeds.**

1 **“(c) The payee’s financial situation, including but not limited to:**

2 **“(A) The amounts and sources of the payee’s monthly income.**

3 **“(B) The payee’s financial resources.**

4 **“(C) If the payee is married, the amounts and sources of the payee’s**
5 **spouse’s monthly income and the financial resources of the payee’s**
6 **spouse.**

7 **“(d) Whether the payee is employed.**

8 **“(e) The terms of the transfer agreement, including whether the**
9 **payee is transferring monthly or lump sum payments or all or a por-**
10 **tion of the payee’s future payments.**

11 **“(f) Whether, at the time the structured settlement agreement was**
12 **executed, the future periodic payments were intended to pay for the**
13 **future medical care and treatment of the payee for injuries sustained**
14 **by the payee in the incident that was the subject of the structured**
15 **settlement agreement, and whether the payee still needs the payments**
16 **to pay for future medical care and treatment.**

17 **“(g) Whether, at the time the structured settlement agreement was**
18 **executed, the future periodic payments were intended to provide for**
19 **the necessary living expenses of the payee, and whether the payee still**
20 **needs the payments to pay for future necessary living expenses.**

21 **“(h) Whether the payee is, at the time of the proposed transfer,**
22 **likely to require future medical care and treatment for injuries sus-**
23 **tained by the payee in the incident that was the subject of the struc-**
24 **tured settlement agreement, and whether the payee lacks insurance**
25 **or other resources sufficient to cover the costs of future medical care**
26 **and treatment.**

27 **“(i) Whether the payee has income or support other than the future**
28 **periodic payments sufficient to meet the payee’s future financial obli-**
29 **gations for support of the payee’s dependents, including child support**
30 **obligations. The payee shall disclose to the transferee, and to the court**

1 or responsible administrative authority, the payee's child support ob-
2 ligations.

3 “(j) Whether the financial terms of the transfer agreement, the
4 discount rate applied to determine the amount to be paid to the payee,
5 the expenses and costs of the transfer for the payee and the transferee,
6 the size of the transaction and the financial alternatives available to
7 the payee to achieve the payee's stated objectives are fair and rea-
8 sonable.

9 “(k) Whether the payee has completed previous transactions in-
10 volving the payee's structured settlement payments and the timing
11 and size of any previous transactions and whether the payee was sat-
12 isfied with any previous transaction.

13 “(L) Whether the transferee attempted previous transactions in-
14 volving the payee's structured settlement payments that were denied,
15 or that were dismissed or withdrawn before a decision on the merits,
16 within the five-year period immediately preceding the signing of the
17 structured settlement agreement.

18 “(m) Whether, to the best of the transferee's knowledge after
19 making inquiry of the payee, the payee has attempted to enter into
20 transactions involving the payee's structured settlement payments
21 that were denied, or that were dismissed or withdrawn before a deci-
22 sion on the merits, within the five-year period immediately preceding
23 the signing of the structured settlement agreement.

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

26 “(o) Whether the payee received independent professional advice
27 regarding the transaction. The court may deny or defer a ruling on the
28 petition if the court believes that the payee does not fully understand
29 the transaction and that independent professional advice regarding the
30 transaction should be obtained by the payee. Before approving a

1 transfer under this section, the court may require the payee to seek
2 independent professional advice.

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

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

16 “(3) The court may require fees incurred by the payee in seeking
17 independent professional advice from an attorney, certified public ac-
18 countant, actuary or other licensed professional adviser to be paid out
19 of the amount paid by the transferee to the payee.

20 “**SECTION 9.** ORS 33.875 is amended to read:

21 “33.875. (1) The provisions of ORS 33.850 to 33.875 may not be waived by
22 any payee.

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

29 “(3) A transfer of payment rights may not extend to any payments that
30 are life contingent unless, prior to the date on which the payee signs the

1 transfer agreement, the transferee has established and has agreed to main-
2 tain procedures reasonably satisfactory to the annuity issuer and the obligor
3 for:

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

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

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

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

15 “(6) Compliance with the requirements [*set forth in ORS 33.860 and ful-*
16 *fillment of the conditions set forth in ORS 33.855 shall be]* **of ORS 33.850 to**
17 **33.875 is** solely the responsibility of the transferee in any transfer of pay-
18 ment rights, and neither the obligor nor the annuity issuer shall bear any
19 responsibility for, or any liability arising from, noncompliance with the re-
20 quirements or failure to fulfill the conditions.

21 **“SECTION 10. Sections 4 to 6 of this 2013 Act and the amendments**
22 **to ORS 33.850, 33.855, 33.860, 33.865 and 33.875 by sections 1, 2, 7, 8 and**
23 **9 of this 2013 Act apply only to transfer agreements signed on or after**
24 **the effective date of this 2013 Act.”.**

25
