

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2536**

1 On page 1 of the printed A-engrossed bill, delete lines 9 through 11 and
2 insert:

3 “(2) ‘Independent professional advice’ means advice of an attorney, certi-
4 fied public accountant, actuary, financial advisor or other professional advi-
5 sor:

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

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

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

11 On page 2, delete lines 21 through 45 and delete pages 3 through 8 and
12 insert:

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

14 “33.855. (1) A payee may transfer payment rights under ORS 33.850 to
15 33.875 if:

16 “(a) The payee is domiciled in this state;

17 “(b) The domicile or principal place of business of the obligor or the an-
18 nuity issuer is located in this state;

19 “(c) The structured settlement agreement was approved by a court or re-
20 sponsible administrative authority in this state; or

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

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

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

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

7 “[*(c)*] **(b)** Any court or before any responsible administrative authority
8 that approved the structured settlement agreement **from which the pay-**
9 **ment rights that the payee proposes to transfer arose, if:**

10 “**(A) The terms of the structured settlement were approved in an**
11 **order or a judgment issued by a court or other responsible adminis-**
12 **trative authority;**

13 “**(B) The payee was an original party to the structured settlement**
14 **when it was approved; and**

15 “**(C) The payee is a minor or remains subject to the condition that**
16 **required the structured settlement to be approved by a court or re-**
17 **sponsible administrative authority originally.**

18 “(3) Not less than [20] **14** days prior to the scheduled hearing on [*an ap-*
19 *plication*] **a petition** for approval of a transfer of payment rights, the
20 transferee shall send notice of the proposed transfer to:

21 “(a) The payee;

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

24 “(c) The annuity issuer;

25 “(d) The obligor; and

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

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

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

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

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

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

5 “(e) Notification that any person receiving notice under subsection (3) of
6 this section is entitled to support, oppose or otherwise respond to the
7 transferee’s [application] **petition**, either in person or by counsel, by sub-
8 mitting written comments to the court or responsible administrative author-
9 ity or by participating in the hearing.

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

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

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

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

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

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

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

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

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

29 **“(f) Include statements, based on the transferee’s inquiry of the
30 payee, as to:**

1 **“(A) Whether the payee reports that the payee currently and sub-**
2 **stantially relies on the structured settlement payments to be trans-**
3 **ferred or governmental assistance payments for necessary living**
4 **expenses or required medical treatment relating to injuries sustained**
5 **by the payee in the incident that is the subject of the structured**
6 **settlement.**

7 **“(B) Whether the payee reports that the payee personally sustained**
8 **physical injuries in connection with the incident from which the**
9 **structured settlement arose and that currently prevent the payee from**
10 **working.**

11 **“(g) Include a summary of any prior transfers of structured settle-**
12 **ment payments by the payee to the transferee within the five years**
13 **preceding the date of the pending transfer agreement.**

14 **“(h) Include a summary, based on the transferee’s inquiry of the**
15 **payee, of any prior transfers of structured settlement payments by the**
16 **payee to a person other than the transferee within the five years pre-**
17 **ceding the date of the pending transfer agreement.**

18 **“(i) Include a summary of any prior attempted transfers of struc-**
19 **tured settlement payments by the payee to the transferee and a sum-**
20 **mary, based on the transferee’s inquiry of the payee, of any prior**
21 **attempted transfers of structured settlement payments by the payee**
22 **to a person other than the transferee within the year preceding the**
23 **date of the pending transfer agreement, including any prior attempted**
24 **transfers that were denied or that were dismissed or withdrawn prior**
25 **to a decision on the merits of the transfer.**

26 **“(2) If the transferee has included in the petition a statement that**
27 **the payee substantially relies on structured settlement payments or**
28 **governmental assistance payments for necessary living expenses or**
29 **personally sustained physical injuries that prevent the payee from**
30 **working as provided in subsection (1)(f) of this section, the transferee**

1 shall advise the payee in writing that the payee will be required to
2 secure at least one other transfer proposal from another potential
3 transferee and provide to the court the terms of the other transfer
4 proposal at or prior to the hearing. The transferee shall also advise the
5 payee that if the payee is required to secure a transfer proposal from
6 another transferee under this subsection and the payee fails to do so,
7 the court may require the payee to do so before ruling on the petition.

8 “(3) If the summaries required under subsection (1)(g), (h) and (i)
9 of this section describe any prior transfers or attempted transfers of
10 structured settlement payments, the transferee shall provide to the
11 court a copy of the court orders approving, denying or relating to the
12 transfers at or before the hearing on the petition.

13 **“SECTION 5. (1) At the hearing on a petition to transfer payment**
14 **rights filed under ORS 33.855, the court may ask the payee to provide**
15 **testimony on or other evidence of the following matters and any other**
16 **relevant evidence that the court determines may be necessary to make**
17 **the findings required by ORS 33.865:**

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

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

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

25 “(d) If the payee has minor children, whether the payee is currently
26 obligated to pay child support under any child support order, whether
27 the payee is current or in arrears under any child support order and
28 the names, addresses and telephone numbers of any person or agency
29 receiving child support from the payee under the order.

30 “(e) The extent, if at all, to which the payee currently relies on the

1 **structured settlement payments that the payee proposes to transfer**
2 **to the transferee for the payee’s necessary living expenses or required**
3 **medical care and treatment relating to the injuries that the payee**
4 **sustained in connection with the incident that was the subject of the**
5 **structured settlement.**

6 **“(2) If the transferee has included in the petition a statement that**
7 **the payee substantially relies on structured settlement payments or**
8 **governmental assistance payments for necessary living expenses or**
9 **personally sustained physical injuries that prevent the payee from**
10 **working as provided in subsection (1)(f) of this section, the court shall**
11 **require the payee to secure at least one other transfer proposal from**
12 **another potential transferee and provide to the court the terms of the**
13 **other transfer proposal at or prior to the hearing.**

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

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

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

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

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

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

1 “(5) An itemized listing of all applicable transfer expenses and the
2 transferee’s best estimate of the amount of any attorney fees and disburse-
3 ments. For the purposes of this subsection, ‘transfer expenses’:

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

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

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

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

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

20 “(9) **A statement that the payee is entitled to, and should, seek in-**
21 **dependent professional advice regarding the proposed transfer.**

22 “(10) **A statement that the payee should not proceed without first**
23 **weighing and considering other offers and alternate means of obtain-**
24 **ing funds through borrowing or the sale of other assets.**

25 “(11) **A statement that the transferee’s attorney does not represent**
26 **the payee in connection with the proposed transfer.**

27 “(12) **A statement that transferring payment rights may not be fi-**
28 **nancially wise.**

29 “(13) **A statement that the court may require the payee to seek in-**
30 **dependent professional advice and that the expenses for the independ-**

1 **ent professional advice may be paid out of the amount paid by the**
2 **transferee to the payee.**

3 **“SECTION 7.** ORS 33.865 is amended to read:

4 “33.865. A transfer of payment rights under ORS 33.850 to 33.875 is not
5 effective and an obligor or annuity issuer is not required to make any pay-
6 ments directly or indirectly to a transferee unless the **transferee has filed**
7 **a petition under section 4 of this 2013 Act and the** transfer [*has been*] is
8 approved [*in advance in a final court order or order of a*] **by the court or**
9 responsible administrative authority based on express findings by the court
10 or authority that:

11 “(1) The transfer is in the best interest of the payee, taking into account
12 the welfare and support of all persons for whom the payee is legally obli-
13 gated to provide support.

14 “(2) The payee has been advised in writing by the transferee to seek **in-**
15 **dependent professional** advice [*from an attorney, certified public accountant,*
16 *actuary or other licensed professional adviser regarding the transfer,*] and the
17 payee has either received [*the advice*] **independent professional advice re-**
18 **garding the transfer** or knowingly waived **independent professional** ad-
19 vice in writing.

20 “(3) The transfer does not contravene any applicable statute or order of
21 any court or other government authority.

22 “(4) **The payee understands the transfer agreement, the disclosure**
23 **statement required under ORS 33.860 and the financial terms of the**
24 **transfer.**

25 “(5) **The payee understood the payee’s right to cancel the transfer**
26 **agreement as set forth in the disclosure statement required by ORS**
27 **33.860 and knowingly elected not to cancel the transfer agreement.**

28 “(6) **The payee confirmed to the court at the hearing that the payee**
29 **wanted the court to approve the proposed transfer and understood that**
30 **the court would not approve the transfer if the payee did not want the**

1 **court to do so.**

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

3 “33.875. (1) The provisions of ORS 33.850 to 33.875 may not be waived by
4 any payee.

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

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

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

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

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

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

27 “(6) Compliance with the requirements [*set forth in ORS 33.860 and ful-*
28 *fillment of the conditions set forth in ORS 33.855 shall be]* **of ORS 33.850 to**
29 **33.875 is** solely the responsibility of the transferee in any transfer of pay-
30 ment rights, and neither the obligor nor the annuity issuer shall bear any

1 responsibility for, or any liability arising from, noncompliance with the re-
2 quirements or failure to fulfill the conditions.

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

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