

**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 days prior to the scheduled hearing on [*an applica-*
19 *tion*] **a petition** for approval of a transfer of payment rights, the transferee
20 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) Be accompanied by a declaration under penalty of perjury by
30 the payee:**

1 “(A) Stating whether the payee currently and substantially relies
2 on the structured settlement payments that the payee proposes to
3 transfer to the transferee, or governmental assistance payments, for
4 the payee’s necessary living expenses or required medical care and
5 treatment relating to the injuries that the payee sustained in con-
6 nection with the incident that was the subject of the structured
7 settlement.

8 “(B) Stating whether the payee personally sustained physical inju-
9 ries in connection with the incident from which the structured settle-
10 ment arose and that currently prevent the payee from working.

11 “(C) Providing a summary of:

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

15 “(ii) 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 “(iii) Any prior transfers of structured settlement payments by the
19 payee to a person other than the transferee within the year preceding
20 the date of the pending transfer agreement, including any prior at-
21 tempted transfers that were denied or that were dismissed or with-
22 drawn prior to a decision on the merits of the transfer.

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

27 “(g) Include a summary of any prior attempted transfers of struc-
28 tured settlement payments by the payee to the transferee.

29 “(2) If the petition is accompanied by a declaration that the payee
30 currently and substantially relies on structured settlement payments

1 or governmental assistance payments for necessary living expenses or
2 required medical treatment for personally sustained physical injuries
3 that prevent the payee from working as provided in subsection (1)(f)
4 of this section, the transferee shall advise the payee in writing that
5 the payee will be required to secure at least one other transfer pro-
6 posal from another potential transferee and provide to the court the
7 terms of the other transfer proposal at or prior to the hearing. The
8 transferee shall also advise the payee that, if the payee is required to
9 secure a transfer proposal from another transferee under this sub-
10 section and the payee fails to do so, the court may require the payee
11 to do so before ruling on the petition.

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

16 “(A) Provide to the court a copy of the court orders approving, de-
17 nying, or otherwise relating to the transfers or attempted transfers
18 involving the transferee; and

19 “(B) Request from the payee or the annuity issuer or obligor under
20 the structured settlement agreement copies of any court orders relat-
21 ing to any transfer or attempted transfer involving the payee and any
22 other party and, if any orders are provided to the transferee, provide
23 a copy of the orders to the court at or before the hearing on the pe-
24 tition.

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

30 SECTION 5. (1) At the hearing on a petition to transfer payment

1 **rights filed under ORS 33.855, the court may ask the payee to provide**
2 **testimony on or other evidence related to the following matters and**
3 **any other relevant evidence that the court deems appropriate to make**
4 **the findings required by ORS 33.865:**

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

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

9 **“(c) The amounts and sources of the payee’s monthly income and,**
10 **if the payee is married, the amounts and sources of the payee’s**
11 **spouse’s monthly income.**

12 **“(d) If the payee has minor children, whether the payee is currently**
13 **obligated to pay child support under any child support order, whether**
14 **the payee is current or in arrears under any child support order and**
15 **the names, addresses and telephone numbers of any persons or agen-**
16 **cies receiving child support from the payee under the order.**

17 **“(e) The extent, if at all, to which the payee currently and sub-**
18 **stantially relies on the structured settlement payments that the payee**
19 **proposes to transfer to the transferee for the payee’s necessary living**
20 **expenses or required medical care and treatment relating to the inju-**
21 **ries that the payee sustained in connection with the incident that was**
22 **the subject of the structured settlement.**

23 **“(2) If the transferee has included in the petition a statement that**
24 **the payee currently and substantially relies on the structured settle-**
25 **ment payments that the payee proposes to transfer to the transferee,**
26 **or governmental assistance payments, for the payee’s necessary living**
27 **expenses or required medical care and treatment for personally sus-**
28 **tained physical injuries that prevent the payee from working as pro-**
29 **vided in section 4 (1)(f) of this 2013 Act, the court shall require the**
30 **payee to secure at least one other transfer proposal from another po-**

1 **tential transferee unaffiliated with the transferee and provide to the**
2 **court the terms of the other transfer proposal at or prior to the**
3 **hearing.**

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

5 “33.860. Not less than [*three*] **14** days [*prior to the day on which a payee*
6 *is scheduled to sign*] **before a payee signs** a transfer agreement, a transferee
7 shall provide the payee with a **disclosure** statement in not less than 14-point
8 type that sets forth:

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

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

12 “(3) The discounted present value of the payments and the rate used in
13 calculating the discounted present value. The discounted present value shall
14 be calculated by using the most recently published applicable federal rate for
15 determining the present value of an annuity, as issued by the Internal Rev-
16 enue Service.

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

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

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

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

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

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

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

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

12 “(10) **A statement that transferring payment rights may or may not**
13 **be financially appropriate for the payee and the payee should not**
14 **proceed without first weighing and considering other offers and alter-**
15 **nate means of obtaining funds through borrowing or the sale of other**
16 **assets.**

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

19 “(12) **A statement that the court may require the payee to seek in-**
20 **dependent professional advice and that the expenses for the independ-**
21 **ent professional advice may be paid out of the amount paid by the**
22 **transferee to the payee.**

23 “**SECTION 7.** 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 **“(b) If the transferee has included in the petition a statement that
5 the payee currently and substantially relies on the structured settle-
6 ment payments that the payee proposes to transfer to the transferee,
7 or governmental assistance payments, for the payee’s necessary living
8 expenses or required medical care and treatment for personally sus-
9 tained physical injuries that prevent the payee from working as pro-
10 vided in section 4 (1)(f) of this 2013 Act, the transfer is in the best
11 interest of the payee for reasons specified and described in writing by
12 the court.**

13 “[2] (c) The payee has been advised in writing by the transferee to seek
14 **independent professional** advice [*from an attorney, certified public account-
15 ant, actuary or other licensed professional adviser regarding the transfer,*] and
16 the payee has either received [*the advice*] **independent professional advice
17 regarding the transfer** or knowingly waived **independent professional
18 advice** in writing.

19 “[3] (d) The transfer does not contravene any applicable statute or order
20 of any court or other government authority.

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

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

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

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

9 **“(a) The reasonable preference and desire of the payee to complete**
10 **the proposed transfer, taking into account the payee’s age and appar-**
11 **ent maturity level and recognizing that the payment rights constitute**
12 **a financial asset and property right of the payee over which the payee**
13 **does and should have control.**

14 **“(b) The purpose of the transfer and the intended use of the pro-**
15 **ceeds by the payee.**

16 **“(c) The payee’s financial situation.**

17 **“(d) Whether the payee relies exclusively on the structured settle-**
18 **ment payments that the payee proposes to transfer for the payee’s**
19 **necessary living expenses or required medical care and treatment.**

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

21 **“(f) The terms of the transfer agreement, including whether the**
22 **payee is transferring monthly or lump sum payments or all or a por-**
23 **tion of the payee’s future payments, the size of the transaction and**
24 **the financial alternatives available to the payee to achieve the payee’s**
25 **stated objectives.**

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

28 **“(h) Whether the payee has income or support other than the fu-**
29 **ture periodic payments sufficient to meet the payee’s future financial**
30 **obligations for support of the payee’s dependents, including child sup-**

1 port obligations. The payee shall disclose to the transferee, and to the
2 court or responsible administrative authority, the payee's child sup-
3 port obligations.

4 “(i) Whether the terms of the proposed transfer agreement, in-
5 cluding the amount to be paid to the payee and the expenses and costs
6 of the transfer for the payee and the transferee are fair and reason-
7 able.

8 “(j) Whether the payee has completed or attempted previous trans-
9 fers of payment rights.

10 “(k) Whether the payee, or the payee's family or dependents, may
11 suffer personal, family or financial hardship or may be unable to pur-
12 sue personal, family or financial objectives if the transfer is not ap-
13 proved.

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

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

17 “33.875. (1) The provisions of ORS 33.850 to 33.875 may not be waived by
18 any payee.

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

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

30 “(a) Periodically confirming the payee's survival.

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

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

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

11 “(6) Compliance with the requirements [*set forth in ORS 33.860 and ful-*
12 *fillment of the conditions set forth in ORS 33.855 shall be]* **of ORS 33.850 to**
13 **33.875 is** solely the responsibility of the transferee in any transfer of pay-
14 ment rights, and neither the obligor nor the annuity issuer shall bear any
15 responsibility for, or any liability arising from, noncompliance with the re-
16 quirements or failure to fulfill the conditions.

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

21 _____