

**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, financial
10 adviser or other 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 transferring payment rights under ORS
20 33.850 to 33.875, the transferee shall file a petition for approval of the
21 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 state:**

28 **“(a) The payee’s county of residence; and**

29 **“(b) That a copy of the transfer agreement and the disclosure
30 statement required under ORS 33.860 have been provided to the payee,**

1 have been included in the notices required under section 6 of this 2013
2 Act and will be filed with the court as provided in section 5 of this 2013
3 Act.

4 **“SECTION 5. (1) After filing a petition for approval of a transfer**
5 **of payment rights under section 4 of this 2013 Act but no less than 10**
6 **days before the hearing on the petition, the transferee shall file with**
7 **the court a document including, to the extent known after the**
8 **transferee has made reasonable inquiry of the payee, the following**
9 **information:**

10 **“(a) The payee’s name, address and date of birth.**

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

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

15 **“(d) The amounts and sources of the payee’s monthly income and,**
16 **if the payee is married, the amounts and sources of the payee’s**
17 **spouse’s monthly income.**

18 **“(e) Whether the payee has minor children, whether the payee is**
19 **currently obligated under any child support order, whether the payee**
20 **is current or in arrears under any child support order and, if the payee**
21 **is obligated under a child support order, the names, addresses and**
22 **telephone numbers of any person or agency that is receiving child**
23 **support from the payee under the order.**

24 **“(2) The court shall maintain the information contained in a filing**
25 **under this section as confidential and the information may be used**
26 **only for purposes of determining whether to approve or deny the pe-**
27 **tion filed under section 4 of this 2013 Act.**

28 **“SECTION 6. (1) Not less than 20 days before the scheduled hearing**
29 **on a petition for approval of a transfer of payment rights, the**
30 **transferee shall send a notice of the filing of the petition to:**

- 1 “(a) The payee;
- 2 “(b) Any beneficiary irrevocably designated under the annuity con-
- 3 tract to receive payments following the payee’s death;
- 4 “(c) The annuity issuer;
- 5 “(d) The obligor; and
- 6 “(e) Any other party that has continuing rights or obligations re-
- 7 lating to the structured settlement payment rights that are the subject
- 8 of the hearing.

9 “(2) The notice sent under subsection (1) of this section must in-

10 clude:

- 11 “(a) A copy of the transferee’s petition.
- 12 “(b) A copy of the signed transfer agreement.
- 13 “(c) A copy of the disclosure statement provided to the payee as
- 14 required under ORS 33.860.
- 15 “(d) Notification that any person receiving notice under this section
- 16 is entitled to support, oppose or otherwise respond to the transferee’s
- 17 petition, either in person, if the person is an individual, or by counsel.
- 18 “(e) Notification of the time and place of the hearing and notifica-
- 19 tion of the manner in which and the time by which written responses
- 20 to the petition must be filed, which may not be less than 15 days after
- 21 service of the transferee’s notice, in order to be considered by the
- 22 court or responsible administrative authority.

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

24 “33.860. Not less than [*three*] **10** days **before** [*prior to the day on which a*

25 *payee is scheduled to sign*] a transfer agreement **is signed by the payee**, a

26 transferee shall provide the payee with a **disclosure** statement in not less

27 than 14-point type that sets forth:

- 28 “(1) The amounts and due dates of the structured settlement payments to
- 29 be transferred.
- 30 “(2) The aggregate amount of the payments to be transferred.

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

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

10 “(5) An itemized listing of all applicable transfer expenses and the
11 transferee’s best estimate of the amount of any attorney fees and disburse-
12 ments **to be assessed to the payee**. For the purposes of this subsection,
13 ‘transfer expenses’:

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

17 “(b) Does not include attorney fees and related disbursements payable **or**
18 **incurred** in connection with the transferee’s [*application*] **petition** for ap-
19 proval of the transfer or preexisting obligations of the payee payable for the
20 payee’s account from the proceeds of a transfer.

21 “(c) **Does not include attorney fees, professional fees and related**
22 **expenses incurred by the payee in receiving independent professional**
23 **advice or charged by a person providing independent professional ad-**
24 **vice to the payee as required by the court.**

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

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

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

5 “(9) **A statement that the payee should seek independent profes-**
6 **sional advice regarding the proposed transfer.**

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

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

11 “33.865. (1) A transfer of payment rights under ORS 33.850 to 33.875 is
12 not effective and an obligor or annuity issuer is not required to make any
13 payments directly or indirectly to a transferee unless the **transferee has**
14 **filed a petition under section 4 of this 2013 Act and the** transfer [*has*
15 *been*] **is** approved [*in advance in a final court order or order of a*] **by the**
16 **court or** responsible administrative authority based on express findings by
17 the court or authority that:

18 “[*1*] (a) The transfer is in the best interest of the payee, taking into
19 account the welfare and support of all persons for whom the payee is legally
20 obligated to provide support.

21 “[*2*] (b) The payee [*has been*] **was** advised in writing by the transferee
22 [*to seek advice from an attorney, certified public accountant, actuary or other*
23 *licensed professional adviser regarding the transfer, and the payee has either*
24 *received the advice or knowingly waived advice in writing*] **that the payee**
25 **had the right to seek independent professional advice regarding the**
26 **transfer and the payee has either received independent professional**
27 **advice or knowingly waived in writing the opportunity to seek inde-**
28 **pendent professional advice.**

29 “[*3*] (c) The transfer does not contravene any applicable statute or order
30 of any court or other government authority.

1 “(d) The payee understands the disclosure statement, the financial
2 terms of the transfer and the terms of the transfer agreement.

3 “(e) The payee understands that the payee had the right to cancel
4 the transfer agreement as set forth in the disclosure statement re-
5 quired by ORS 33.860 and the payee knowingly elected not to cancel the
6 transfer agreement.

7 “(2) When determining whether the proposed transfer should be
8 approved, including whether the transfer agreement is fair, reasonable
9 and in the payee’s best interest, the court or responsible administra-
10 tive authority shall consider all relevant information, including infor-
11 mation contained in the petition and other documents filed with the
12 court and the document filed under section 5 of this 2013 Act, and in-
13 formation provided at the hearing. Relevant information to be con-
14 sidered under this section includes but is not limited to:

15 “(a) The reasonable preference and desire of the payee to complete
16 the proposed transfer, taking into account the payee’s age and appar-
17 ent maturity level and recognizing that the payment rights constitute
18 a financial asset and personal property right of the payee over which
19 the payee does and should have control.

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

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

23 “(d) The terms of the transfer agreement, including whether the
24 payee is transferring monthly or lump sum payments or all or a por-
25 tion of the payee’s future payments.

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

27 “(f) Whether the payee has experienced a change in personal, family
28 or financial circumstances.

29 “(g) Whether the payee or the payee’s dependents may suffer per-
30 sonal, family or financial hardship or may be unable to pursue per-

1 **sonal, family or financial objectives if the transfer is not approved.**

2 **“(h) Whether the terms of the proposed transfer, including the**
3 **amount to be paid to the payee and the expenses and costs of the**
4 **transfer for the payee are fair and reasonable.**

5 **“(i) Whether the payee has completed previous transfers of payment**
6 **rights with the transferee within the four years prior to the date of**
7 **the current transfer agreement and whether the payee was satisfied**
8 **with the previous transfers.**

9 **“(j) Whether the payee reports that the payee has completed previ-**
10 **ous transfers of payment rights with other transferees within the four**
11 **years prior to the date of the current transfer agreement and whether**
12 **the payee was satisfied with the previous transfers.**

13 **“(k) Whether the payee has attempted previous transfers of pay-**
14 **ment rights with the transferee or with other transferees that were**
15 **denied, or that were dismissed or withdrawn before a court ruled on**
16 **the transfer, within the year prior to the date of the current transfer**
17 **agreement.**

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

19 **“33.875. (1) The provisions of ORS 33.850 to 33.875 may not be waived by**
20 **any payee.**

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

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

1 for:

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

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

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

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

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

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

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