

By the Committee on Banking and Insurance; and Senator Richter

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1 A bill to be entitled
2 An act relating to transfers of structured settlement
3 payment rights; amending s. 626.99296, F.S.; revising
4 definitions; revising specified disclosures and
5 notices that are or may be required to be given in
6 order to effect transfers of structured settlement
7 payment rights and payments under such rights;
8 revising the time limit by which a written response to
9 an application for transferring such rights must be
10 filed; specifying requirements for the filing and
11 contents of the application; requiring the court to
12 hold a hearing on the application; requiring a payee
13 to appear in person unless the court determines that
14 good cause exists to excuse the payee; providing that
15 the transferee is solely responsible for compliance
16 with certain requirements; providing that following
17 issuance of a court order approving the transfer, the
18 structured settlement obligor and annuity issuer may
19 rely on the order in redirecting certain payments and
20 are released and discharged from certain liability;
21 providing for construction if the terms of the
22 structured settlement prohibit transfer for payment
23 rights; conforming provisions to changes made by the
24 act; making technical changes; providing an effective
25 date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 626.99296, Florida Statutes, is amended

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30 to read:

31 626.99296 Transfers of structured settlement payment
32 rights.-

33 (1) PURPOSE.-The purpose of this section is to protect
34 recipients of structured settlements who are involved in the
35 process of transferring structured settlement payment rights.

36 (2) DEFINITIONS.-As used in this section, the term:

37 (a) "Annuity issuer" means an insurer that has issued an
38 annuity contract to be used to fund periodic payments under a
39 structured settlement.

40 (c)~~(b)~~ "Applicable law" means any of the following, as
41 applicable in interpreting the terms of a structured settlement:

42 1. The laws of the United States;

43 2. The laws of this state, including principles of equity
44 applied in the courts of this state; and

45 3. The laws of any other jurisdiction:

46 a. That is the domicile of the payee ~~or any other~~
47 ~~interested party;~~

48 b. Under whose laws a structured settlement agreement was
49 approved by a court; or

50 c. In whose courts a settled claim was pending when the
51 parties entered into a structured settlement agreement.

52 (b)~~(e)~~ "Applicable federal rate" means the most recently
53 published applicable rate for determining the present value of
54 an annuity, as issued by the United States Internal Revenue
55 Service pursuant to s. 7520 of the United States Internal
56 Revenue Code, as amended.

57 (d) "Assignee" means any party that acquires structured
58 settlement payment rights directly or indirectly from a

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59 transferee of such rights.

60 (e) "Dependents" means a payee's spouse and minor children
61 and all other family members and other persons for whom the
62 payee is legally obligated to provide support, including spousal
63 maintenance.

64 (f) "Discount and finance charge" means the sum of all
65 charges that are payable directly or indirectly from assigned
66 structured settlement payments and imposed directly or
67 indirectly by the transferee and that are incident to a transfer
68 of structured settlement payment rights, including:

69 1. Interest charges, discounts, or other compensation for
70 the time value of money;

71 2. All application, origination, processing, underwriting,
72 closing, filing, and notary fees and all similar charges,
73 however denominated; and

74 3. All charges for commissions or brokerage, regardless of
75 the identity of the party to whom such charges are paid or
76 payable.

77
78 The term does not include any fee or other obligation incurred
79 by a payee in obtaining independent professional advice
80 concerning a transfer of structured settlement payment rights.

81 (g) "Discounted present value" means, with respect to a
82 proposed transfer of structured settlement payment rights, the
83 fair present value of future payments, as determined by
84 discounting the payments to the present using the most recently
85 published applicable federal rate as the discount rate.

86 (h) "Independent professional advice" means advice of an
87 attorney, certified public accountant, actuary, or other

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88 licensed professional adviser:

89 1. Who is engaged by a payee to render advice concerning
90 the legal, tax, and financial implications of a transfer of
91 structured settlement payment rights;

92 2. Who is not in any manner affiliated with or compensated
93 by the transferee of the transfer; and

94 3. Whose compensation for providing the advice is not
95 affected by whether a transfer occurs or does not occur.

96 (i) "Interested parties" means:

97 1. The payee;

98 2. Any beneficiary irrevocably designated under the annuity
99 contract to receive payments following the payee's death or, if
100 such designated beneficiary is a minor, the designated
101 beneficiary's parent or guardian;

102 3. The annuity issuer;

103 4. The structured settlement obligor; or

104 5. Any other party to the structured settlement who has
105 continuing rights or obligations to receive or make payments
106 under the structured settlement.

107 (j) "Payee" means an individual who is receiving tax-free
108 damage payments under a structured settlement and proposes to
109 make a transfer of payment rights under the structured
110 settlement.

111 (k) "Qualified assignment agreement" means an agreement
112 providing for a qualified assignment, as authorized by 26 U.S.C.
113 s. 130 of the United States Internal Revenue Code, as amended.

114 (l) "Settled claim" means the original tort claim resolved
115 by a structured settlement.

116 (m) "Structured settlement" means an arrangement for

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117 periodic payment of damages for personal injuries established by
118 settlement or judgment in resolution of a tort claim.

119 (n) "Structured settlement agreement" means the agreement,
120 judgment, stipulation, or release embodying the terms of a
121 structured settlement, including the rights of the payee to
122 receive periodic payments.

123 (o) "Structured settlement obligor" means the party who is
124 obligated to make continuing periodic payments to the payee
125 under a structured settlement agreement or a qualified
126 assignment agreement.

127 (p) "Structured settlement payment rights" means rights to
128 receive periodic payments, including lump-sum payments under a
129 structured settlement, whether from the structured settlement
130 obligor or the annuity issuer, if:

131 1. The payee ~~or any other interested party~~ is domiciled in
132 this state;

133 2. The structured settlement agreement was approved by a
134 court of this state; or

135 3. The settled claim was pending before the courts of this
136 state when the parties entered into the structured settlement
137 agreement.

138 (q) "Terms of the structured settlement" means the terms of
139 the structured settlement agreement; the annuity contract; a
140 qualified assignment agreement; or an order or approval of a
141 court or other government authority authorizing or approving the
142 structured settlement.

143 (r) "Transfer" means a sale, assignment, pledge,
144 hypothecation, or other form of alienation or encumbrance made
145 by a payee for consideration.

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146 (s) "Transfer agreement" means the agreement providing for
147 transfer of structured settlement payment rights from a payee to
148 a transferee.

149 (t) "Transferee" means a person who is receiving or who
150 will receive structured settlement payment rights resulting from
151 a transfer.

152 (3) CONDITIONS TO TRANSFERS OF STRUCTURED SETTLEMENT
153 PAYMENT RIGHTS AND STRUCTURED SETTLEMENT AGREEMENTS.—

154 (a) A direct or indirect transfer of structured settlement
155 payment rights is not effective and a structured settlement
156 obligor or annuity issuer is not required to make a payment
157 directly or indirectly to a transferee or assignee of structured
158 settlement payment rights unless the transfer is authorized in
159 advance in a final order by a court of competent jurisdiction
160 which is based on the written express findings by the court
161 that:

162 1. The transfer complies with this section and does not
163 contravene other applicable law;

164 2. At least 10 days before the date on which the payee
165 first incurred an obligation with respect to the transfer, the
166 transferee provided to the payee a disclosure statement in bold
167 type, no smaller than 14 points in size, which specifies:

168 a. The amounts and due dates of the structured settlement
169 payments to be transferred;

170 b. The aggregate amount of the payments;

171 c. The discounted present value of the payments, together
172 with the discount rate used in determining the discounted
173 present value;

174 d. The gross amount payable to the payee in exchange for

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175 the payments;

176 e. An itemized listing of all brokers' commissions, service
177 charges, application fees, processing fees, closing costs,
178 filing fees, referral fees, administrative fees, legal fees, and
179 notary fees and other commissions, fees, costs, expenses, and
180 charges payable by the payee or deductible from the gross amount
181 otherwise payable to the payee;

182 f. The net amount payable to the payee after deducting all
183 commissions, fees, costs, expenses, and charges described in
184 sub-subparagraph e.;

185 ~~g. The quotient, expressed as a percentage, obtained by~~
186 ~~dividing the net payment amount by the discounted present value~~
187 ~~of the payments, which must be disclosed in the following~~
188 ~~statement: "The net amount that you will receive from us in~~
189 ~~exchange for your future structured settlement payments~~
190 ~~represent percent of the estimated current value of the~~
191 ~~payments based upon the discounted value using the applicable~~
192 ~~federal rate";~~

193 ~~h.~~ The effective annual interest rate, which must be
194 disclosed in the following statement: "Based on the net amount
195 that you will receive from us and the amounts and timing of the
196 structured settlement payments that you are turning over to us,
197 you will, in effect, be paying interest to us at a rate of
198 percent per year"; and

199 ~~h.i.~~ The amount of any penalty and the aggregate amount of
200 any liquidated damages, including penalties, payable by the
201 payee in the event of a breach of the transfer agreement by the
202 payee;

203 3. The payee has established that the transfer is in the

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204 best interests of the payee, taking into account the welfare and
205 support of the payee's dependents;

206 4. The payee has received, or waived in writing his or her
207 right to receive, independent professional advice regarding the
208 legal, tax, and financial implications of the transfer;

209 ~~5. The transferee has given written notice of the~~
210 ~~transferee's name, address, and taxpayer identification number~~
211 ~~to the annuity issuer and the structured settlement obligor and~~
212 ~~has filed a copy of the notice with the court;~~

213 ~~5.6.~~ The transfer agreement provides that if the payee is
214 domiciled in this state, any disputes between the parties will
215 be governed in accordance with the laws of this state and that
216 the domicile state of the payee is the proper venue to bring any
217 cause of action arising out of a breach of the agreement; and

218 ~~6.7.~~ The court has determined that the net amount payable
219 to the payee is fair, just, and reasonable under the
220 circumstances then existing.

221 (b) If a proposed transfer would contravene the terms of
222 the structured settlement, upon the filing of a written
223 objection by any interested party and after considering the
224 objection and any response to it, the court may grant, deny, or
225 impose conditions upon the proposed transfer which the court
226 deems just and proper given the facts and circumstances and in
227 accordance with established principles of law. Any order
228 approving a transfer must require that the transferee indemnify
229 the annuity issuer and the structured settlement obligor for any
230 liability, including reasonable costs and attorney ~~attorney's~~
231 fees, which arises from compliance by the issuer or obligor with
232 the order of the court.

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233 (c) Any provision in a transfer agreement which gives a
234 transferee power to confess judgment against a payee is
235 unenforceable to the extent that the amount of the judgment
236 would exceed the amount paid by the transferee to the payee,
237 less any payments received from the structured settlement
238 obligor or payee.

239 (d) In negotiating a structured settlement of claims
240 brought by or on behalf of a claimant who is domiciled in this
241 state, the structured settlement obligor must disclose in
242 writing to the claimant or the claimant's legal representative
243 all of the following information that is not otherwise specified
244 in the structured settlement agreement:

245 1. The amounts and due dates of the periodic payments to be
246 made under the structured settlement agreement. In the case of
247 payments that will be subject to periodic percentage increases,
248 the amounts of future payments may be disclosed by identifying
249 the base payment amount, the amount and timing of scheduled
250 increases, and the manner in which increases will be compounded;

251 2. The amount of the premium payable to the annuity issuer;

252 3. The discounted present value of all periodic payments
253 that are not life-contingent, together with the discount rate
254 used in determining the discounted present value;

255 4. The nature and amount of any costs that may be deducted
256 from any of the periodic payments; and

257 5. Where applicable, that any transfer of the periodic
258 payments is prohibited by the terms of the structured settlement
259 and may otherwise be prohibited or restricted under applicable
260 law; ~~and~~

261 ~~6. That any transfer of the periodic payments by the~~

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262 ~~claimant may subject the claimant to serious adverse tax~~
263 ~~consequences.~~

264 (4) VENUE JURISDICTION; PROCEDURE FOR APPROVAL OF
265 TRANSFERS; CONTENTS OF APPLICATION.—

266 (a) At least 20 days before the scheduled hearing on an
267 application for authorizing a transfer of structured settlement
268 payment rights under this section, the transferee must file with
269 the court and provide to all interested parties a notice of the
270 proposed transfer and the application for its authorization. The
271 notice must include:

272 1.(a) A copy of the transferee's application to the court;

273 2.(b) A copy of the transfer agreement;

274 3.(c) A copy of the disclosure statement required under
275 subsection (3);

276 4.(d) Notification that an interested party may support,
277 oppose, or otherwise respond to the transferee's application, in
278 person or by counsel, by submitting written comments to the
279 court or by participating in the hearing; and

280 5.(e) Notification of the time and place of the hearing and
281 notification of the manner in which and the time by which any
282 written response to the application must be filed in order to be
283 considered by the court. A written response to an application
284 must be filed no later than 5 ~~within 15~~ days before the date
285 after service of the scheduled hearing in order to be considered
286 by the court transferee's notice.

287 (b) An application must be made by the transferee and filed
288 in the circuit court of the county where the payee is domiciled.
289 However, if the payee is not domiciled in this state, the
290 application may be filed in the court in this state which

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291 approved the structured settlement agreement or in the court
292 where the settled claim was pending when the parties entered
293 into the structured settlement.

294 (c) The court shall hold a hearing on the application. The
295 payee shall appear in person at the hearing unless the court
296 determines that good cause exists to excuse the payee from
297 appearing.

298 (d) In addition to complying with the other requirements of
299 this section, the application must include:

300 1. The payee's name, age, and county of domicile and the
301 number and ages of the payee's dependents;

302 2. A copy of the transfer agreement;

303 3. A copy of the disclosure statement required under
304 subsection (3);

305 4. An explanation of reasons as to why the payee is seeking
306 approval of the proposed transfer; and

307 5. A summary of each of the following:

308 a. Any transfers by the payee to the transferee or an
309 affiliate, or through the transferee or an affiliate to an
310 assignee, within the 4 years preceding the date of the transfer
311 agreement.

312 b. Any transfers within the 3 years preceding the date of
313 the transfer agreement made by the payee to any person or entity
314 other than the transferee or an affiliate, or an assignee of a
315 transferee or an affiliate, to the extent such transfers were
316 disclosed to the transferee by the payee in writing or are
317 otherwise actually known by the transferee.

318 c. Any proposed transfers by the payee to the transferee or
319 an affiliate, or through the transferee or an affiliate to an

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320 assignee, for which an application was denied within the 2 years
321 preceding the date of the transfer agreement.

322 d. Any proposed transfers by the payee to any person or
323 entity other than the transferee, or an assignee of a transferee
324 or an affiliate, to the extent such proposed transfers were
325 disclosed to the transferee by the payee in writing or are
326 otherwise actually known by the transferee, for which
327 applications were denied within the year preceding the date of
328 the transfer agreement.

329 (5) WAIVER PROHIBITED; NO PENALTIES INCURRED BY PAYEE;
330 RELIANCE ON COURT ORDER; COMPLIANCE; RELEASE FROM LIABILITY;
331 CONSTRUCTION.—

332 (a) The provisions of this section may not be waived by the
333 payee.

334 (b) If a transfer of structured settlement payment rights
335 fails to satisfy the conditions of subsection (3), the payee who
336 proposed the transfer does not incur any penalty, forfeit any
337 application fee or other payment, or otherwise incur any
338 liability to the proposed transferee.

339 (c) In any transfer of structured settlement payment
340 rights, the transferee is solely responsible for compliance with
341 the requirements of paragraph (3) (a) and subsection (4), and
342 neither the structured settlement obligor nor the annuity issuer
343 shall incur any liability arising from noncompliance.

344 (d) Following issuance of a court order approving a
345 transfer of structured settlement payment rights under this
346 section, the structured settlement obligor and annuity issuer:

347 1. May rely on the court order in redirecting future
348 structured settlement payments to the transferee or an assignee

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349 in accordance with the order; and

350 2. Are released and discharged from any liability for the
351 transferred payments to any party except the transferee or an
352 assignee, notwithstanding the failure of any party to the
353 transfer to comply with this section or with the orders of the
354 court approving the transfer.

355 (e) If the terms of the structured settlement prohibit
356 transfer of payment rights:

357 1. A court is not precluded from hearing an application for
358 approval of a transfer of such payment rights or ruling on the
359 merits of the application and any objections to the application;
360 and

361 2. The parties to such structured settlement are not
362 precluded from waiving or asserting their rights under such
363 terms.

364 (6) NONCOMPLIANCE.—

365 (a) If a transferee violates the requirements for
366 stipulating the discount and finance charge provided for in
367 subsection (3), neither the transferee nor any assignee may
368 collect from the transferred payments, or from the payee, any
369 amount in excess of the net advance amount, and the payee may
370 recover from the transferee or any assignee:

371 1. A refund of any excess amounts previously received by
372 the transferee or any assignee;

373 2. A penalty in an amount determined by the court, but not
374 in excess of three times the aggregate amount of the discount
375 and finance charge; and

376 3. Reasonable costs and attorney ~~attorney's~~ fees.

377 (b) If the transferee violates the disclosure requirements

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378 in subsection (3), the transferee and any assignee are liable to
379 the payee for:

380 1. A penalty in an amount determined by the court, but not
381 in excess of three times the amount of the discount and finance
382 charge; and

383 2. Reasonable costs and attorney ~~attorney's~~ fees.

384 (c) A transferee or assignee is not liable for any penalty
385 in any action brought under this section if the transferee or
386 assignee establishes by a preponderance of evidence that the
387 violation was not intentional and resulted from a bona fide
388 error, notwithstanding the transferee's maintenance of
389 procedures reasonably designed to avoid such errors.

390 (d) Notwithstanding any other law, an action may not be
391 brought under this section more than 1 year after the due date
392 of:

393 1. The last transferred structured settlement payment, in
394 the case of a violation of the requirements for stipulating the
395 discount and finance charge provided for in subsection (3).

396 2. The first transferred structured settlement payment, in
397 the case of a violation of the disclosure requirements of
398 subsection (3).

399 (e) When any interested party has reason to believe that
400 any transferee has violated this section, any interested party
401 may bring a civil action for injunctive relief, penalties, and
402 any other relief that is appropriate to secure compliance with
403 this section.

404 Section 2. This act shall take effect upon becoming a law.