

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; providing 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; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
 28 Section 1. Subsection (2) of section 626.99296, Florida  
 29 Statutes, is reordered and amended, and paragraphs (a) and (d)  
 30 of subsection (3), subsections (4) and (5), and paragraphs (a)  
 31 and (b) of subsection (6) of that section are amended, to read:

32 626.99296 Transfers of structured settlement payment  
 33 rights.—

34 (2) DEFINITIONS.—As used in this section, the term:

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

38 (b)~~(e)~~ "Applicable federal rate" means the most recently  
 39 published applicable rate for determining the present value of  
 40 an annuity, as issued by the United States Internal Revenue  
 41 Service pursuant to s. 7520 of the United States Internal  
 42 Revenue Code, as amended.

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

- 45 1. The laws of the United States;
- 46 2. The laws of this state, including principles of equity  
 47 applied in the courts of this state; and
- 48 3. The laws of any other jurisdiction:
  - 49 a. That is the domicile of the payee ~~or any other~~  
 50 ~~interested party;~~
  - 51 b. Under whose laws a structured settlement agreement was  
 52 approved by a court; or

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

55 (d) "Assignee" means any party that acquires structured  
56 settlement payment rights directly or indirectly from a  
57 transferee of such rights.

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

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

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

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

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

75  
76 The term does not include any fee or other obligation incurred  
77 by a payee in obtaining independent professional advice  
78 concerning a transfer of structured settlement payment rights.

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

84 (h) "Independent professional advice" means advice of an  
 85 attorney, certified public accountant, actuary, or other  
 86 licensed professional adviser:

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

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

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

94 (i) "Interested parties" means:

95 1. The payee;

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

100 3. The annuity issuer;

101 4. The structured settlement obligor; or

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

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

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

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

114 (m) "Structured settlement" means an arrangement for  
 115 periodic payment of damages for personal injuries established by  
 116 settlement or judgment in resolution of a tort claim.

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

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

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

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

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

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

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

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

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

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

150           (3) CONDITIONS TO TRANSFERS OF STRUCTURED SETTLEMENT  
151 PAYMENT RIGHTS AND STRUCTURED SETTLEMENT AGREEMENTS.—

152           (a) A direct or indirect transfer of structured settlement  
153 payment rights is not effective and a structured settlement  
154 obligor or annuity issuer is not required to make a payment  
155 directly or indirectly to a transferee or assignee of structured  
156 settlement payment rights unless the transfer is authorized in

157 advance in a final order by a court of competent jurisdiction  
158 which is based on the written express findings by the court  
159 that:

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

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

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

168 b. The aggregate amount of the payments;

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

172 d. The gross amount payable to the payee in exchange for  
173 the payments;

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

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

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

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

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

201 3. The payee has established that the transfer is in the  
202 best interests of the payee, taking into account the welfare and  
203 support of the payee's dependents;

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

207 ~~5. The transferee has given written notice of the~~  
208 ~~transferee's name, address, and taxpayer identification number~~

209 ~~to the annuity issuer and the structured settlement obligor and~~  
210 ~~has filed a copy of the notice with the court;~~

211 5.6. The transfer agreement provides that if the payee is  
212 domiciled in this state, any disputes between the parties will  
213 be governed in accordance with the laws of this state and that  
214 the domicile state of the payee is the proper venue to bring any  
215 cause of action arising out of a breach of the agreement; and

216 6.7. The court has determined that the net amount payable  
217 to the payee is fair, just, and reasonable under the  
218 circumstances then existing.

219 (d) In negotiating a structured settlement of claims  
220 brought by or on behalf of a claimant who is domiciled in this  
221 state, the structured settlement obligor must disclose in  
222 writing to the claimant or the claimant's legal representative  
223 all of the following information that is not otherwise specified  
224 in the structured settlement agreement:

225 1. The amounts and due dates of the periodic payments to  
226 be made under the structured settlement agreement. In the case  
227 of payments that will be subject to periodic percentage  
228 increases, the amounts of future payments may be disclosed by  
229 identifying the base payment amount, the amount and timing of  
230 scheduled increases, and the manner in which increases will be  
231 compounded;

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

234 3. The discounted present value of all periodic payments

235 that are not life-contingent, together with the discount rate  
 236 used in determining the discounted present value;

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

239 5. Where applicable, that any transfer of the periodic  
 240 payments is prohibited by the terms of the structured settlement  
 241 and may otherwise be prohibited or restricted under applicable  
 242 law; ~~and~~

243 ~~6. That any transfer of the periodic payments by the~~  
 244 ~~claimant may subject the claimant to serious adverse tax~~  
 245 ~~consequences.~~

246 (4) VENUE JURISDICTION; PROCEDURE FOR APPROVAL OF  
 247 TRANSFERS; CONTENTS OF APPLICATION.—

248 (a) At least 20 days before the scheduled hearing on an  
 249 application for authorizing a transfer of structured settlement  
 250 payment rights under this section, the transferee must file with  
 251 the court and provide to all interested parties a notice of the  
 252 proposed transfer and the application for its authorization. The  
 253 notice must include:

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

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

256 3.~~(c)~~ A copy of the disclosure statement required under  
 257 subsection (3);

258 4.~~(d)~~ Notification that an interested party may support,  
 259 oppose, or otherwise respond to the transferee's application, in  
 260 person or by counsel, by submitting written comments to the

261 court or by participating in the hearing; and

262 5.(e) Notification of the time and place of the hearing  
263 and notification of the manner in which and the time by which  
264 any written response to the application must be filed in order  
265 to be considered by the court. A written response to an  
266 application must be filed at least 5 ~~within 15~~ days before the  
267 date after service of the scheduled hearing in order to be  
268 considered by the court transferee's notice.

269 (b) An application must be made by the transferee and  
270 filed in the circuit court of the county in which the payee is  
271 domiciled. However, if the payee is not domiciled in this state,  
272 the application may be filed in the court in this state which  
273 approved the structured settlement agreement or in the court in  
274 which the settled claim was pending when the parties entered  
275 into the structured settlement.

276 (c) The court shall hold a hearing on the application. The  
277 payee shall appear in person at the hearing unless the court  
278 determines that good cause exists to excuse the payee from  
279 appearing.

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

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

284 2. A copy of the transfer agreement;

285 3. A copy of the disclosure statement required under  
286 subsection (3);

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

289 5. A summary of each of the following:

290 a. Any transfers by the payee to the transferee or an  
291 affiliate, or through the transferee or an affiliate to an  
292 assignee, within the 4 years before the date of the transfer  
293 agreement.

294 b. Any transfers within the 3 years before the date of the  
295 transfer agreement made by the payee to any person or entity  
296 other than the transferee or an affiliate, or an assignee of a  
297 transferee or an affiliate, to the extent such transfers were  
298 disclosed to the transferee by the payee in writing or are  
299 otherwise actually known by the transferee.

300 c. Any proposed transfers by the payee to the transferee  
301 or an affiliate, or through the transferee or an affiliate to an  
302 assignee, for which an application was denied within the 2 years  
303 before the date of the transfer agreement.

304 d. Any proposed transfers by the payee to any person or  
305 entity other than the transferee, or an assignee of a transferee  
306 or an affiliate, to the extent such proposed transfers were  
307 disclosed to the transferee by the payee in writing or are  
308 otherwise actually known by the transferee, for which  
309 applications were denied within the year before the date of the  
310 transfer agreement.

311 (5) WAIVER PROHIBITED; NO PENALTIES INCURRED BY PAYEE;  
312 RELIANCE ON COURT ORDER; COMPLIANCE; RELEASE FROM LIABILITY;

313 CONSTRUCTION.—

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

316 (b) If a transfer of structured settlement payment rights  
317 fails to satisfy the conditions of subsection (3), the payee who  
318 proposed the transfer does not incur any penalty, forfeit any  
319 application fee or other payment, or otherwise incur any  
320 liability to the proposed transferee.

321 (c) In a transfer of structured settlement payment rights,  
322 the transferee is solely responsible for compliance with the  
323 requirements of paragraph (3)(a) and subsection (4), and neither  
324 the structured settlement obligor nor the annuity issuer shall  
325 incur any liability arising from noncompliance.

326 (d) After issuance of a court order approving a transfer  
327 of structured settlement payment rights under this section, the  
328 structured settlement obligor and annuity issuer:

329 1. May rely on the court order in redirecting future  
330 structured settlement payments to the transferee or an assignee  
331 in accordance with the order; and

332 2. Are released and discharged from any liability for the  
333 transferred payments to any party except the transferee or an  
334 assignee, notwithstanding the failure of any party to the  
335 transfer to comply with this section or with the orders of the  
336 court approving the transfer.

337 (e) If the terms of the structured settlement prohibit  
338 transfer of payment rights:

339        1. A court is not precluded from hearing an application  
 340 for approval of a transfer of such payment rights or ruling on  
 341 the merits of the application and any objections to the  
 342 application; and

343        2. The parties to such structured settlement are not  
 344 precluded from waiving or asserting their rights under such  
 345 terms.

346        (6) NONCOMPLIANCE.—

347        (a) If a transferee violates the requirements for  
 348 stipulating the discount and finance charge provided for in  
 349 subsection (3), neither the transferee nor any assignee may  
 350 collect from the transferred payments, or from the payee, any  
 351 amount in excess of the net advance amount, and the payee may  
 352 recover from the transferee or any assignee:

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

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

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

359        (b) If the transferee violates the disclosure requirements  
 360 in subsection (3), the transferee and any assignee are liable to  
 361 the payee for:

362        1. A penalty in an amount determined by the court, but not  
 363 in excess of three times the amount of the discount and finance  
 364 charge; and

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365 |           2. Reasonable costs and attorney ~~attorney's~~ fees.  
366 |           Section 2. This act shall take effect upon becoming a law.