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1
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; conforming provisions to
22 changes made by the act; making technical changes;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 626.99296, Florida Statutes, is amended
28 to read:

29 626.99296 Transfers of structured settlement payment

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30 rights.—

31 (1) PURPOSE.—The purpose of this section is to protect
32 recipients of structured settlements who are involved in the
33 process of transferring structured settlement payment 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 (c)~~(b)~~ "Applicable law" means any of the following, as
39 applicable in interpreting the terms of a structured settlement:

40 1. The laws of the United States;

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

43 3. The laws of any other jurisdiction:

44 a. That is the domicile of the payee ~~or any other~~
45 ~~interested party~~;

46 b. Under whose laws a structured settlement agreement was
47 approved by a court; or

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

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

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

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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

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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 annuity
97 contract to receive payments following the payee's death or, if
98 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.

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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 of
137 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

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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, service

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175 charges, application fees, processing fees, closing costs,
176 filing fees, referral fees, administrative fees, legal fees, and
177 notary fees and other commissions, fees, costs, expenses, and
178 charges payable by the payee or deductible from the gross amount
179 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.~~ 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;

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

231 (c) Any provision in a transfer agreement which gives a
232 transferee power to confess judgment against a payee is

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233 unenforceable to the extent that the amount of the judgment
234 would exceed the amount paid by the transferee to the payee,
235 less any payments received from the structured settlement
236 obligor or payee.

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

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

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

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

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

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

259 ~~6. That any transfer of the periodic payments by the~~
260 ~~claimant may subject the claimant to serious adverse tax~~
261 ~~consequences.~~

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262 (4) VENUE JURISDICTION; PROCEDURE FOR APPROVAL OF
263 TRANSFERS; CONTENTS OF APPLICATION.—

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

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

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

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

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

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

285 (b) An application must be made by the transferee and filed
286 in the circuit court of the county where the payee is domiciled.
287 However, if the payee is not domiciled in this state, the
288 application may be filed in the court in this state which
289 approved the structured settlement agreement or in the court
290 where the settled claim was pending when the parties entered

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291 into the structured settlement.

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

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

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

300 2. A copy of the transfer agreement;

301 3. A copy of the disclosure statement required under
302 subsection (3);

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

305 5. A summary of each of the following:

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

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

316 c. Any proposed transfers by the payee to the transferee or
317 an affiliate, or through the transferee or an affiliate to an
318 assignee, for which an application was denied within the 2 years
319 preceding the date of the transfer agreement.

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

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

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

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

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

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

345 1. May rely on the court order in redirecting future
346 structured settlement payments to the transferee or an assignee
347 in accordance with the order; and

348 2. Are released and discharged from any liability for the

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349 transferred payments to any party except the transferee or an
350 assignee, notwithstanding the failure of any party to the
351 transfer to comply with this section or with the orders of the
352 court approving the transfer.

353 (e) If the terms of the structured settlement prohibit
354 transfer of payment rights:

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

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

362 (f) This section may not be construed to authorize any
363 transfer of structured settlement payment rights in
364 contravention of applicable law.

365 (6) NONCOMPLIANCE.—

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

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

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

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

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378 (b) If the transferee violates the disclosure requirements
379 in subsection (3), the transferee and any assignee are liable to
380 the payee for:

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

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

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

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

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

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

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

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