

By Senator Gibson

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1 A bill to be entitled
2 An act relating to the transfer of structured
3 settlement payment rights; amending s. 626.99296,
4 F.S.; specifying a limitation on the amount of the
5 discount rate used to determine the net amount payable
6 to the payee; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

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10 Section 1. Paragraph (a) of subsection (3) of section
11 626.99296, Florida Statutes, is amended to read:

12 626.99296 Transfers of structured settlement payment
13 rights.—

14 (3) CONDITIONS TO TRANSFERS OF STRUCTURED SETTLEMENT
15 PAYMENT RIGHTS AND STRUCTURED SETTLEMENT AGREEMENTS.—

16 (a) A direct or indirect transfer of structured settlement
17 payment rights is not effective and a structured settlement
18 obligor or annuity issuer is not required to make a payment
19 directly or indirectly to a transferee of structured settlement
20 payment rights unless the transfer is authorized in advance in a
21 final court order ~~by a court of competent jurisdiction which is~~
22 based on the following written express findings of ~~by~~ the court
23 that:

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

26 2. At least 10 days before the date ~~on which~~ the payee
27 first incurred an obligation with respect to the transfer, the
28 transferee provided to the payee a disclosure statement in bold
29 type, at least ~~no smaller than~~ 14 points in size, which

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30 specifies:

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

33 b. The aggregate amount of the payments;

34 c. The discounted present value of the payments, together
35 with the discount rate used in determining the discounted
36 present value;

37 d. The gross amount payable to the payee in exchange for
38 the payments;

39 e. An itemized listing of all brokers' commissions, service
40 charges, application fees, processing fees, closing costs,
41 filing fees, referral fees, administrative fees, legal fees, and
42 notary fees and other commissions, fees, costs, expenses, and
43 charges payable by the payee or deductible from the gross amount
44 otherwise payable to the payee;

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

48 g. The quotient, expressed as a percentage, obtained by
49 dividing the net payment amount by the discounted present value
50 of the payments, which must be disclosed in the following
51 statement: "The net amount that you will receive from us in
52 exchange for your future structured settlement payments
53 represent percent of the estimated current value of the
54 payments based upon the discounted value using the applicable
55 federal rate";

56 h. The effective annual interest rate, which must be
57 disclosed in the following statement: "Based on the net amount
58 that you will receive from us and the amounts and timing of the

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59 structured settlement payments that you are turning over to us,
60 you will, in effect, be paying interest to us at a rate of
61 percent per year"; and

62 i. The amount of any penalty and the aggregate amount of
63 any liquidated damages, including penalties, payable by the
64 payee in the event of a breach of the transfer agreement by the
65 payee;

66 3. The discount rate used in determining the net amount
67 payable to the payee, as provided in subparagraph 2., does not
68 exceed an annual percentage rate of the prime rate plus 5
69 percentage points calculated as if the net amount payable to the
70 payee, as provided in sub-subparagraph 2.f., were the principal
71 of a consumer loan made by the transferee to the payee, and as
72 if the structured settlement payments to be transferred to the
73 transferee were the payee's payments of principal plus interest
74 on such loan. For the purpose of this subparagraph, the prime
75 rate shall be as reported by the Federal Reserve Statistical
76 Release H.15 on the first Monday of the month in which the
77 transfer agreement is signed by both the payee and the
78 transferee; however, if the transfer agreement is signed before
79 the first Monday of that month, the prime rate shall be as
80 reported by the Federal Reserve Statistical Release H.15 on the
81 first Monday of the preceding month;

82 ~~4.3.~~ The payee has established that the transfer is in the
83 best interests of the payee, taking into account the welfare and
84 support of the payee's dependents;

85 ~~5.4.~~ The payee has received, or waived his or her right to
86 receive, independent professional advice regarding the legal,
87 tax, and financial implications of the transfer;

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88 ~~6.5.~~ The transferee has given written notice of the
89 transferee's name, address, and taxpayer identification number
90 to the annuity issuer and the structured settlement obligor and
91 has filed a copy of the notice with the court;

92 ~~7.6.~~ The transfer agreement provides that if the payee is
93 domiciled in this state, ~~any~~ disputes between the parties are
94 ~~will be~~ governed in accordance with the laws of this state and
95 that the domicile state of the payee is the proper venue to
96 bring a ~~any~~ cause of action arising out of a breach of the
97 agreement; and

98 ~~8.7.~~ The court has determined that the net amount payable
99 to the payee is fair, just, and reasonable under the
100 circumstances then existing.

101 Section 2. This act shall take effect July 1, 2014.