HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 379	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Insurance & Banking Subcommittee; Civil Justice Subcommittee and Santiago	116 **Y's**	0 **N's**
COMPANION BILLS:	CS/SB 458	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/HB 379 passed the House on February 24, 2016, as CS/SB 458. The bill provides consumer protections regarding the transfer of a structured settlement agreement.

A structured settlement agreement is an arrangement for the periodic payment of damages for personal injuries in connection with a personal injury claim or lawsuit. Payees under such arrangements sometimes wish to forgo future payments in favor of an immediate cash payout. Current law requires certain disclosures and court approval before a payee may transfer his or her rights under a structured settlement. The bill:

- Repeals the requirement to disclose the quotient;
- Requires the petition to the court for approval of the transfer to be filed in the county where the payee lives, or to the circuit where the underlying tort occurred if the payee is not a state resident;
- Allows a court to reach the merits of a petition for approval of transfer notwithstanding a non-assignment clause;
- Requires the payee to attend the hearing;
- Declares that transfers pursuant to s. 626.99296, F.S., are not authorized if such transfer is in contravention of applicable law;
- Requires additional information to be included in the petition for authority to transfer; and
- Makes other technical and style changes and other clarifications to the statute.

This bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on March 10, 2016, ch. 2016-45, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

A structured settlement is an agreement for the periodic future payment of damages in a personal injury case.[1] This arrangement often involves the at-fault party in the personal injury claim or lawsuit paying a lump-sum premium to an insurance company to purchase an annuity in the name of and for the benefit of the injured party (the payee). Once the annuity is purchased, the insurance company begins to make periodic payments to the payee for the negotiated period of time. A structured settlement arrangement provides the payee long-term financial stability, and may provide tax benefits for beneficiaries[2] and annuity issuers.[3]

For some payees, however, their personal financial circumstances may change, or they may simply want to "cash out" the future annuity. As such, instead of receiving payments under a structured settlement plan, the payee may wish to transfer his or her rights to future payments to another organization—known as a transferee—in exchange for a lump sum.[4]

In 2001, the Legislature created s. 626.99296, F.S., to regulate the transfer of structured settlements. Fundamentally, the statute requires such transfers to receive prior court approval.[5] This approval must be conditioned upon statutorily-enumerated factors, including an explicit finding by the court that the transfer is "in the best interests of the" individual opting to sell his or her settlement rights in order to receive a lump sum.[6] The entity contracting to receive the structured settlement rights must file an application with the court at least 20 days before the application hearing[7] and must make a series of disclosures to the payee.[8]

<u>Disclosure of the Quotient</u>

One of the required disclosures that must be made to a payee is the "quotient" of the transaction.[9] The "quotient" is described by statute as "a percentage, obtained by dividing the net payment amount by the discounted present value of the payments."[10] The bill repeals the requirement that the quotient be disclosed to the payee as a part of the pre-transfer disclosures.

<u>Venue</u>

The legal term "venue" refers to the place in which a case can be filed and pursued. In general, venue is proper where the cause of action accrued[11] or where the defendant resides. However, the plaintiff picks a venue by the act of filing the case, and if the defendant does not object then it is said that venue

---

[1] *See* s. 626.99296(2)(m), F.S. Structured settlements occur in all forms of personal injury matters, including worker's compensation claims.
[2] 26 U.S.C. § 104 (providing that, for taxation purposes, gross income does not include the amount of damages received on account of personal physical injuries or physical sickness); s. 626.99296(2)(j), F.S. (defining "payee" as an individual receiving tax-free damage payments under a structured settlement).
[3] *See* 26 U.S.C. § 130; *First Providian, LLC v. Evans*, 852 So. 2d 908, 909 (Fla. 4th DCA 2003).
[4] *See, e.g., First Providian, LLC v. Evans*, 852 So. 2d 908, 908 (Fla. 4th DCA 2003).
[5] s. 626.99296(3)(a), F.S.; *Rapid Settlements, Ltd. v. Dickerson*, 941 So. 2d 1275, 1276-77 (Fla. 4th DCA 2006) (affirming lower court decision to deny petition, noting that "[t]ransfers of structured settlement payment rights are regulated by statute and court approval is required before a transfer may go forward.").
[6] s. 626.99296(3)(a)3., F.S.
[7] s. 626.99296(4), F.S.
[8] s. 626.99296(3), F.S.
[9] s. 626.99296(3)(a)2.g., F.S.
[10] *Id*.
[11] The structured settlements referenced in this bill arise from tort claims. The cause of action for a tort claim accrues in the jurisdiction where the injury occurs.

is waived and the case proceeds where it was filed. Thus, where the parties agree, and unless a statute provides otherwise, a case can be filed in any court that has jurisdiction.

The bill limits venue of a case regarding approval of the transfer of a structured settlement to the circuit court where the payee resides. If the payee is not domiciled in the state, then venue is proper in the circuit court that approved the structured settlement or the circuit court where the case was pending when the parties agreed to a structured settlement.

Non-Assignment Clauses

A structured settlement is a contract that is initially between the original payor and the original payee. The parties to a contract are generally free to include any term they want in the contract. At common law, a party to most contracts is free to assign his or her rights and obligations under the contract to another unless there is a statute or contract clause that limits or prohibits assignment. Many structured settlement contracts prohibit the payee from assigning (selling) the right to future payments.[12]

Like all contract terms, a non-assignment clause is not absolute. It is also a fundamental concept of contract law that the parties to a contract may agree to modify or change the terms of the contract. Thus, the parties to a structured settlement agreement may agree to waive a non-assignment clause.

The bill adds that, where the structured settlement prohibits transfer of the payment rights, a court nonetheless may conduct a hearing regarding transfer, the parties to the structured settlement may waive or assert their right under the clause, and the court may rule on the merits of the application for transfer. Further, the bill provides that s. 626.99296, F.S., may not be construed to authorize transfers in contravention of law.

Procedural Changes

Current law provides procedural requirements related to a court approval of the transfer of a structured settlement.[13] The bill:

- changes the time for filing of a written response to a petition for approval of transfer from "within 15 days after service of the transferee's notice" to at least 5 days prior to the hearing;[14]
- adds that the transferee is the person responsible for filing the petition;
- requires the court to hold a hearing on the application for approval of the transfer of a structured settlement;
- requires the payee to appear in person at the hearing, absent good cause; and
- requires the petition to include certain information regarding the payee and the transaction.

The required information regarding the payee and the transaction is:

- the payee's name, age, domicile, and ages of the payee's dependents;

[12] One reason for such clauses was a provision in federal tax law, now repealed, that penalized the payor should the payee take a lump sum payout. Another significant reason for a non-assignment clause is that one goal of a structured settlement arrangement is the protection of a payee who may be naïve, financially unsophisticated, or who relies on the periodic payments as his or her sole means of support. Still another reason for non-assignment clauses is bargaining power in settlement negotiations.
[13] s. 626.99296(4), F.S.
[14] *E.g.*, *First Providian, LLC v. Evans*, 852 So. 2d 908, 908 (Fla. 4th DCA 2003) (where the court dealt with a late filed response by a defendant insurance company). The change from "within 15 days after service of the transferee's notice" to "no later than 5 days before the date of the scheduled hearing" could extend the period an interested party has to file a response. If the transferee gave more than the minimum 20-day notice, the interested party would have more than the current 15 day window. The window would increase by the difference between the length of the notice given and the 20 day minimum (e.g., 30 day notice - 5 days before hearing = 25 day period to respond). In sum, the change could increase the interested party's period to respond to the notice but could never make it shorter than current law.

- a copy of the transfer agreement and disclosure statement;
- the reasons why the payee seeks to transfer the right to future payment under the structured settlement; and
- a summary statement of:
    - completed financial transactions between the payee and the transferee (or related entities) during the past 4 years;
    - denied transfers in the past 2 years;
    - all other transfers in the past 3 years; and
    - proposed transfers.

<u>Other Changes Made by the Bill</u>

The transfer of a structured settlement is, at its core, simply a form of a contract. The parties to a contract can specify the law that will apply in interpreting the contract, which will prevail in the absence of a controlling statute. Current law defines "applicable law" to include only those laws of:

- the United States.
- Florida.
- any other jurisdiction that is the domicile of the payee or any other interested party.
- a court that approved a structured settlement.
- a court in which the underlying tort claim was pending at settlement.

The bill repeals the reference to laws of any other jurisdiction that is the domicile of "any other interested party." The bill also repeals the requirement that the court find that the transferee has given notice to the payor of the transferee's name, address and taxpayer identification number.

Included within the statute on transfer of structured settlements are disclosure requirements that apply to the creation of a structured settlement agreement.[15] The bill repeals the requirement to disclose that transfer of the structured settlement rights may have "serious adverse tax consequences."[16]

Current law provides that the provisions of s. 626.99296, F.S., cannot be waived by any person; the bill provides that this protection and limitation only applies to a payee.

The bill specifies that compliance with the contract, notice and court approval requirements is solely the responsibility of the transferee. The other parties to the transaction do not incur liability for noncompliance.

The bill specifies that a structured settlement obligor and an annuity issuer may rely on the court order approving transfer, and are only legally liable for paying according to the court order.

The bill requires that a waiver of the right to receive independent professional advice must be in writing.

The bill also makes technical, grammatical and stylistic changes to the statute.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

---

[15] s. 626.99296(3)(d), F.S.

[16] While a transfer of a structured settlement right may have significant federal income tax consequences, there are many instances where the transfer would have little impact. In general, personal injury proceeds for medical bills, property loss and pain and suffering damages are not considered income and thus the payee pays no income tax upon receipt. Personal injury proceeds that reimburse the claimant for lost wages, however, are taxable. Since a structured settlement is an agreement, the parties can usually designate the type of payout and thus avoid characterization as taxable income. However, where the facts require designation as income, the payments are taxable in the year received. Where a structured settlement for future lost wages is transferred in exchange for a lump sum, the payee may face a significant tax bill compounded by factors such as moving into a higher tax bracket.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on persons owning a structured settlement and on the companies that purchase to the rights to those future payments.

D. FISCAL COMMENTS:

None.