

HB 379

2016

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 provisions relating to transfers
5 of structured settlement payment rights and structured
6 settlement agreements; revising provisions relating to
7 the venue and procedure for approval of transfers of
8 structured settlement payment rights; providing
9 requirements of a transferee's application to the
10 court; revising applicability of certain provisions
11 relating to waiver; providing liability; providing
12 conditions relating to reliance on a court order;
13 providing an effective date.

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15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Paragraphs (b), (i), and (p) of subsection (2),
18 paragraphs (a) and (d) of subsection (3), and subsections (4)
19 and (5) of section 626.99296, Florida Statutes, are amended to
20 read:

21 626.99296 Transfers of structured settlement payment
22 rights.—

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

24 (b) "Applicable law" means any of the following, as
25 applicable in interpreting the terms of a structured settlement:

26 1. The laws of the United States;

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

29 3. The laws of any other jurisdiction:

30 a. That is the domicile of the payee ~~or any other~~
31 ~~interested party;~~

32 b. Under whose laws a structured settlement agreement was
33 approved by a court; or

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

36 (i) "Interested parties" means:

37 1. The payee;

38 2. Any beneficiary irrevocably designated under the
39 annuity contract to receive payments following the payee's death
40 or, if such designated beneficiary is a minor, the designated
41 beneficiary's parent or guardian;

42 3. The annuity issuer;

43 4. The structured settlement obligor; or

44 5. Any other party to the structured settlement that ~~who~~
45 has continuing rights or obligations to receive or make payments
46 under the structured settlement.

47 (p) "Structured settlement payment rights" means rights to
48 receive periodic payments, including lump-sum payments under a
49 structured settlement, whether from the structured settlement
50 obligor or the annuity issuer, if:

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

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

55 3. The settled claim was pending before the courts of this
56 state when the parties entered into the structured settlement
57 agreement.

58 (3) CONDITIONS TO TRANSFERS OF STRUCTURED SETTLEMENT
59 PAYMENT RIGHTS AND STRUCTURED SETTLEMENT AGREEMENTS.—

60 (a) A direct or indirect transfer of structured settlement
61 payment rights is not effective and a structured settlement
62 obligor or annuity issuer is not required to make a payment
63 directly or indirectly to a transferee or assignee of structured
64 settlement payment rights unless the transfer is authorized in
65 advance in a final order by a court of competent jurisdiction
66 which is based on the written express findings by the court
67 that:

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

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

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

76 b. The aggregate amount of the payments;

77 c. The discounted present value of the payments, together
78 with the discount rate used in determining the discounted

79 present value;

80 d. The gross amount payable to the payee in exchange for
81 the payments;

82 e. An itemized listing of all brokers' commissions,
83 service charges, application fees, processing fees, closing
84 costs, filing fees, referral fees, administrative fees, legal
85 fees, and notary fees and other commissions, fees, costs,
86 expenses, and charges payable by the payee or deductible from
87 the gross amount otherwise payable to the payee;

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

91 ~~g. The quotient, expressed as a percentage, obtained by~~
92 ~~dividing the net payment amount by the discounted present value~~
93 ~~of the payments, which must be disclosed in the following~~
94 ~~statement: "The net amount that you will receive from us in~~
95 ~~exchange for your future structured settlement payments~~
96 ~~represent percent of the estimated current value of the~~
97 ~~payments based upon the discounted value using the applicable~~
98 ~~federal rate";~~

99 g.h. The effective annual interest rate, which must be
100 disclosed in the following statement: "Based on the net amount
101 that you will receive from us and the amounts and timing of the
102 structured settlement payments that you are turning over to us,
103 you will, in effect, be paying interest to us at a rate of
104 percent per year"; and

105 ~~h.i.~~ The amount of any penalty and the aggregate amount of
106 any liquidated damages, including penalties, payable by the
107 payee in the event of a breach of the transfer agreement by the
108 payee;

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

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

115 5. The transferee or assignee has given written notice of
116 his or her ~~the transferee's~~ name, address, and taxpayer
117 identification number to the annuity issuer and the structured
118 settlement obligor and has filed a copy of the notice with the
119 court;

120 6. The transfer agreement provides that if the payee is
121 domiciled in this state, any disputes between the parties will
122 be governed in accordance with the laws of this state and that
123 the domicile state of the payee is the proper venue to bring any
124 cause of action arising out of a breach of the agreement; and

125 7. The court has determined that the net amount payable to
126 the payee is fair, just, and reasonable under the circumstances
127 then existing.

128 (d) In negotiating a structured settlement of claims
129 brought by or on behalf of a claimant who is domiciled in this
130 state, the structured settlement obligor must disclose in

131 writing to the claimant or the claimant's legal representative
 132 all of the following information that is not otherwise specified
 133 in the structured settlement agreement:

134 1. The amounts and due dates of the periodic payments to
 135 be made under the structured settlement agreement. In the case
 136 of payments that will be subject to periodic percentage
 137 increases, the amounts of future payments may be disclosed by
 138 identifying the base payment amount, the amount and timing of
 139 scheduled increases, and the manner in which increases will be
 140 compounded;

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

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

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

148 5. Where applicable, that any transfer of the periodic
 149 payments is prohibited by the terms of the structured settlement
 150 and may otherwise be prohibited or restricted under applicable
 151 law. ~~;~~ ~~and~~

152 ~~6. That any transfer of the periodic payments by the~~
 153 ~~claimant may subject the claimant to serious adverse tax~~
 154 ~~consequences.~~

155 (4) VENUE JURISDICTION; PROCEDURE FOR APPROVAL OF
 156 TRANSFERS; CONTENTS OF APPLICATION.—

157 (a) At least 20 days before the scheduled hearing on an
 158 application for authorizing a transfer of structured settlement
 159 payment rights under this section, the transferee must file with
 160 the court and provide all interested parties with a notice of
 161 the proposed transfer and the application for its authorization.
 162 The notice must include:

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

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

165 3.(c) A copy of the disclosure statement required under
 166 subsection (3);

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

171 5.(e) Notification of the time and place of the hearing
 172 and notification of the manner in which and the time by which
 173 any written response to the application must be filed in order
 174 to be considered by the court. A written response to an
 175 application must be filed at least 5 ~~within 15~~ days before the
 176 date of the scheduled hearing in order to be considered by the
 177 court after service of the transferee's notice.

178 (b) The application must be made by the transferee and
 179 filed in the circuit court of the county in which the payee is
 180 domiciled. However, if the payee is not domiciled in this state,
 181 the application may be filed in the court in this state that
 182 approved the structured settlement agreement or in the court in

183 which the settled claim was pending when the parties entered
184 into the structured settlement.

185 (c) A hearing shall be held on the application, and the
186 payee must appear in person at the hearing unless the court
187 determines that good cause exists to excuse the payee from
188 appearing.

189 (d) In addition to the requirements of this section, the
190 application must include:

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

193 2. A copy of the transfer agreement and disclosure
194 statement;

195 3. The reasons why the payee seeks to complete the
196 proposed transfer; and

197 4. A summary of:

198 a. Any transfers by the payee to the transferee or an
199 affiliate, or through the transferee or an affiliate to an
200 assignee, made within the 4 years before the date of the
201 transfer agreement, and any proposed transfers by the payee to
202 the transferee or an affiliate, or through the transferee or an
203 affiliate to an assignee, applications for the approval of which
204 were denied within the 2 years before the date of the transfer
205 agreement.

206 b. Any transfers by the payee to any person or entity
207 other than the transferee or an affiliate or an assignee of a
208 transferee or affiliate made within the 3 years before the date

209 of the transfer agreement, and any prior proposed transfers by
210 the payee to any person or entity other than the transferee or
211 an affiliate or an assignee of a transferee or affiliate,
212 applications for the approval of which were denied within the 1
213 year before the date of the current transfer agreement, if such
214 transfers or proposed transfers were disclosed to the transferee
215 by the payee in writing or are actually known by the transferee.

216 (5) WAIVER PROHIBITED; NO PENALTIES INCURRED BY PAYEE;
217 RELIANCE ON COURT ORDER; CONSTRUCTION AND APPLICABILITY.—

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

220 (b) If a transfer of structured settlement payment rights
221 fails to satisfy the conditions of subsection (3), the payee who
222 proposed the transfer does not incur any penalty, forfeit any
223 application fee or other payment, or otherwise incur any
224 liability to the proposed transferee.

225 (c) In a transfer of structured settlement payment rights,
226 compliance with the requirements of paragraph (3)(a) and
227 subsection (4) is solely the responsibility of the transferee,
228 and the structured settlement obligor and annuity issuer bear no
229 responsibility for, or any liability arising from,
230 noncompliance. This section does not authorize any transfer of
231 structured settlement payment rights in contravention of general
232 law.

233 (d) After issuance of a court order approving a transfer
234 of structured settlement payment rights under this section, the

235 structured settlement obligor and annuity issuer:

236 1. May rely on the court order in redirecting future
237 structured settlement payments to the transferee or an assignee
238 in accordance with the order; and

239 2. Shall, as to all parties except the transferee or an
240 assignee, be discharged and released from any and all liability
241 for the transferred payments. The discharge and release are not
242 affected by the failure of any party to the transfer to comply
243 with this section or with the orders of the court approving the
244 transfer.

245 (e) A court may hear any application for approval of a
246 transfer of structured settlement payment rights even if the
247 terms of the structured settlement prohibit the sale or the
248 assignment or encumbrance of such payment rights. The parties to
249 the structured settlement may waive or assert their rights under
250 the terms. The court hearing an application for approval of a
251 transfer of structured settlement payment rights under such
252 structured settlement may rule on the merits of the application
253 and any objections to the merits.

254 Section 2. This act shall take effect July 1, 2016.