

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; providing construction; conforming provisions
24 to changes made by the act; providing an effective
25 date.
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27 Be It Enacted by the Legislature of the State of Florida:

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

626.99296 Transfers of structured settlement payment rights.—

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

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

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

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

1. The laws of the United States;
2. The laws of this state, including principles of equity applied in the courts of this state; and
3. The laws of any other jurisdiction:
 - a. That is the domicile of the payee ~~or any other interested party;~~
 - b. Under whose laws a structured settlement agreement was

53 approved by a court; or

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

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

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

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

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

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

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

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77 The term does not include any fee or other obligation incurred
78 by a payee in obtaining independent professional advice

79 concerning a transfer of structured settlement payment rights.

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

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

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

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

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

95 (i) "Interested parties" means:

96 1. The payee;

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

101 3. The annuity issuer;

102 4. The structured settlement obligor; or

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

105 under the structured settlement.

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

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

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

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

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

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

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

130 1. The payee ~~or any other interested party~~ is domiciled in

131 this state;

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

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

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

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

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

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

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

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

157 settlement payment rights unless the transfer is authorized in
158 advance in a final order by a court of competent jurisdiction
159 which is based on the written express findings by the court
160 that:

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

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

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

169 b. The aggregate amount of the payments;

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

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

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

181 f. The net amount payable to the payee after deducting all
182 commissions, fees, costs, expenses, and charges described in

183 sub-subparagraph e.;

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

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

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

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

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

208 ~~5. The transferee has given written notice of the~~

209 ~~transferee's name, address, and taxpayer identification number~~
210 ~~to the annuity issuer and the structured settlement obligor and~~
211 ~~has filed a copy of the notice with the court;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

259 4.~~(d)~~ Notification that an interested party may support,
 260 oppose, or otherwise respond to the transferee's application, in

261 person or by counsel, by submitting written comments to the
262 court or by participating in the hearing; and

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

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

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

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

- 283 1. The payee's name, age, and county of domicile and the
284 number and ages of the payee's dependents;
285 2. A copy of the transfer agreement;
286 3. A copy of the disclosure statement required under

287 subsection (3);

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

290 5. A summary of each of the following:

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

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

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

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

312 (5) WAIVER PROHIBITED; NO PENALTIES INCURRED BY PAYEE;

313 RELIANCE ON COURT ORDER; COMPLIANCE; RELEASE FROM LIABILITY;
314 CONSTRUCTION.—

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

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

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

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

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

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

338 (e) If the terms of the structured settlement prohibit

339 transfer of payment rights:

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

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

347 (f) This section does not authorize the transfer of
348 structured settlement payment rights in contravention of
349 applicable law.

350 (6) NONCOMPLIANCE.—

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

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

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

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

363 (b) If the transferee violates the disclosure requirements
364 in subsection (3), the transferee and any assignee are liable to

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365 the payee for:

366 1. A penalty in an amount determined by the court, but not
367 in excess of three times the amount of the discount and finance
368 charge; and

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

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