

By Senator Richter

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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; deleting a requirement that specified
5 written findings include a statement regarding net
6 receipts; eliminating a required disclosure that must
7 be made to the claimant or the claimant's legal
8 representative in a structured settlement; requiring
9 that a written response to an application be filed by
10 the transferee within a specified timeframe before a
11 scheduled hearing; requiring an application to be
12 filed in the circuit court of the county where the
13 payee is domiciled; providing an exception; specifying
14 requirements for a transferee's application to the
15 court; providing that the transferee is solely
16 responsible for compliance with certain requirements;
17 authorizing the structured settlement obligor and
18 annuity issuer to rely on the court order in
19 redirecting future settlement payments to the
20 transferee or assignee; providing that the structured
21 settlement obligor and annuity issuer are released
22 from any liability following a court order; specifying
23 that a structured settlement the terms of which
24 prohibit the sale, assignment, or encumbrance of
25 payment rights does not prohibit certain actions on
26 the part of the parties or the court; conforming
27 provisions to changes made by the act; making
28 technical changes; providing an effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Section 626.99296, Florida Statutes, is amended
33 to read:

34 626.99296 Transfers of structured settlement payment
35 rights.—

36 (1) PURPOSE.—The purpose of this section is to protect
37 recipients of structured settlements who are involved in the
38 process of transferring structured settlement payment rights.

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

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

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

45 1. The laws of the United States;

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

48 3. The laws of any other jurisdiction:

49 a. That is the domicile of the payee ~~or any other~~
50 ~~interested party;~~

51 b. Under whose laws a structured settlement agreement was
52 approved by a court; or

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

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

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59 Revenue Code, as amended.

60 (d) "Assignee" means any party that acquires structured
61 settlement payment rights directly or indirectly from a
62 transferee of such rights.

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

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

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

74 2. All application, origination, processing, underwriting,
75 closing, filing, and notary fees and all similar charges,
76 however denominated; and

77 3. All charges for commissions or brokerage, regardless of
78 the identity of the party to whom such charges are paid or
79 payable.

80

81 The term does not include any fee or other obligation incurred
82 by a payee in obtaining independent professional advice
83 concerning a transfer of structured settlement payment rights.

84 (g) "Discounted present value" means, with respect to a
85 proposed transfer of structured settlement payment rights, the
86 fair present value of future payments, as determined by
87 discounting the payments to the present using the most recently

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88 published applicable federal rate as the discount rate.

89 (h) "Independent professional advice" means advice of an
90 attorney, certified public accountant, actuary, or other
91 licensed professional adviser:

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

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

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

99 (i) "Interested parties" means:

100 1. The payee;

101 2. Any beneficiary irrevocably designated under the annuity
102 contract to receive payments following the payee's death or, if
103 such designated beneficiary is a minor, the designated
104 beneficiary's parent or guardian;

105 3. The annuity issuer;

106 4. The structured settlement obligor; or

107 5. Any other party to the structured settlement who has
108 continuing rights or obligations to receive or make payments
109 under the structured settlement.

110 (j) "Payee" means an individual who is receiving tax-free
111 damage payments under a structured settlement and proposes to
112 make a transfer of payment rights under the structured
113 settlement.

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

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

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

122 (n) "Structured settlement agreement" means the agreement,
123 judgment, stipulation, or release embodying the terms of a
124 structured settlement, including the rights of the payee to
125 receive periodic payments.

126 (o) "Structured settlement obligor" means the party who is
127 obligated to make continuing periodic payments to the payee
128 under a structured settlement agreement or a qualified
129 assignment agreement.

130 (p) "Structured settlement payment rights" means rights to
131 receive periodic payments, including lump-sum payments under a
132 structured settlement, whether from the structured settlement
133 obligor or the annuity issuer, if:

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

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

138 3. The settled claim was pending before the courts of this
139 state when the parties entered into the structured settlement
140 agreement.

141 (q) "Terms of the structured settlement" means the terms of
142 the structured settlement agreement; the annuity contract; a
143 qualified assignment agreement; or an order or approval of a
144 court or other government authority authorizing or approving the
145 structured settlement.

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

149 (s) "Transfer agreement" means the agreement providing for
150 transfer of structured settlement payment rights from a payee to
151 a transferee.

152 (t) "Transferee" means a person who is receiving or who
153 will receive structured settlement payment rights resulting from
154 a transfer.

155 (3) CONDITIONS TO TRANSFERS OF STRUCTURED SETTLEMENT
156 PAYMENT RIGHTS AND STRUCTURED SETTLEMENT AGREEMENTS.-

157 (a) A direct or indirect transfer of structured settlement
158 payment rights is not effective and a structured settlement
159 obligor or annuity issuer is not required to make a payment
160 directly or indirectly to a transferee or assignee of structured
161 settlement payment rights unless the transfer is authorized in
162 advance in a final order by a court of competent jurisdiction
163 which is based on the written express findings by the court
164 that:

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

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

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

173 b. The aggregate amount of the payments;

174 c. The discounted present value of the payments, together

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175 with the discount rate used in determining the discounted
176 present value;

177 d. The gross amount payable to the payee in exchange for
178 the payments;

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

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

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

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

202 ~~h.i.~~ The amount of any penalty and the aggregate amount of
203 any liquidated damages, including penalties, payable by the

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204 payee in the event of a breach of the transfer agreement by the
205 payee;

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

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

212 5. The transferee or assignee, if any, has given written
213 notice of his or her ~~the transferee's~~ name, address, and
214 taxpayer identification number to the annuity issuer and the
215 structured settlement obligor and has filed a copy of the notice
216 with the court;

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

222 7. The court has determined that the net amount payable to
223 the payee is fair, just, and reasonable under the circumstances
224 then existing.

225 (b) If a proposed transfer would contravene the terms of
226 the structured settlement, upon the filing of a written
227 objection by any interested party and after considering the
228 objection and any response to it, the court may grant, deny, or
229 impose conditions upon the proposed transfer which the court
230 deems just and proper given the facts and circumstances and in
231 accordance with established principles of law. Any order
232 approving a transfer must require that the transferee indemnify

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233 the annuity issuer and the structured settlement obligor for any
234 liability, including reasonable costs and attorney ~~attorney's~~
235 fees, which arises from compliance by the issuer or obligor with
236 the order of the court.

237 (c) Any provision in a transfer agreement which gives a
238 transferee power to confess judgment against a payee is
239 unenforceable to the extent that the amount of the judgment
240 would exceed the amount paid by the transferee to the payee,
241 less any payments received from the structured settlement
242 obligor or payee.

243 (d) In negotiating a structured settlement of claims
244 brought by or on behalf of a claimant who is domiciled in this
245 state, the structured settlement obligor must disclose in
246 writing to the claimant or the claimant's legal representative
247 all of the following information that is not otherwise specified
248 in the structured settlement agreement:

249 1. The amounts and due dates of the periodic payments to be
250 made under the structured settlement agreement. In the case of
251 payments that will be subject to periodic percentage increases,
252 the amounts of future payments may be disclosed by identifying
253 the base payment amount, the amount and timing of scheduled
254 increases, and the manner in which increases will be compounded;

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

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

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

261 5. Where applicable, that any transfer of the periodic

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262 payments is prohibited by the terms of the structured settlement
263 and may otherwise be prohibited or restricted under applicable
264 law; ~~and~~

265 ~~6. That any transfer of the periodic payments by the~~
266 ~~claimant may subject the claimant to serious adverse tax~~
267 ~~consequences.~~

268 (4) VENUE JURISDICTION; PROCEDURE FOR APPROVAL OF
269 TRANSFERS; CONTENTS OF APPLICATION.—

270 (a) At least 20 days before the scheduled hearing on an
271 application for authorizing a transfer of structured settlement
272 payment rights under this section, the transferee must file with
273 the court and provide to all interested parties a notice of the
274 proposed transfer and the application for its authorization. The
275 notice must include:

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

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

278 3.(c) A copy of the disclosure statement required under
279 subsection (3);

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

284 5.(e) Notification of the time and place of the hearing and
285 notification of the manner in which and the time by which any
286 written response to the application must be filed in order to be
287 considered by the court. A written response to an application
288 must be filed no later than 5 ~~within 15~~ days before the date
289 after service of the scheduled hearing in order to be considered
290 by the court transferee's notice.

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291 (b) An application must be made by the transferee and filed
292 in the circuit court of the county where the payee is domiciled.
293 However, if the payee is not domiciled in this state, the
294 application may be filed in the court in this state which
295 approved the structured settlement agreement or in the court
296 where the settled claim was pending when the parties entered
297 into the structured settlement.

298 (c) The court shall hold a hearing on the application. The
299 payee shall appear in person at the hearing unless the court
300 determines that good cause exists to excuse the payee from
301 appearing.

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

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

306 2. A copy of the transfer agreement;

307 3. A copy of the disclosure statement required under
308 subsection (3);

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

311 5. A summary of each of the following:

312 a. Any transfers by the payee to the transferee or an
313 affiliate, or through the transferee or an affiliate to an
314 assignee, within the 4 years preceding the date of the transfer
315 agreement.

316 b. Any transfers within the 3 years preceding the date of
317 the transfer agreement made by the payee to any person or entity
318 other than the transferee or an affiliate, or an assignee of a
319 transferee or an affiliate, to the extent such transfers were

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320 disclosed to the transferee by the payee in writing or are
321 otherwise actually known by the transferee.

322 c. Any proposed transfers by the payee to the transferee or
323 an affiliate, or through the transferee or an affiliate to an
324 assignee, for which an application was denied within the 2 years
325 preceding the date of the transfer agreement.

326 d. Any proposed transfers by the payee to any person or
327 entity other than the transferee, or an assignee of a transferee
328 or an affiliate, to the extent such proposed transfers were
329 disclosed to the transferee by the payee in writing or are
330 otherwise actually known by the transferee, for which
331 applications were denied within the year preceding the date of
332 the current transfer agreement.

333 (5) WAIVER PROHIBITED; NO PENALTIES INCURRED BY PAYEE;
334 RELIANCE ON COURT ORDER; COMPLIANCE; RELEASE FROM LIABILITY;
335 CONSTRUCTION.—

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

338 (b) If a transfer of structured settlement payment rights
339 fails to satisfy the conditions of subsection (3), the payee who
340 proposed the transfer does not incur any penalty, forfeit any
341 application fee or other payment, or otherwise incur any
342 liability to the proposed transferee.

343 (c) In any transfer of structured settlement payment
344 rights, the transferee is solely responsible for compliance with
345 the requirements of paragraph (3)(a) and subsection (4), and
346 neither the structured settlement obligor nor the annuity issuer
347 is liable for noncompliance.

348 (d) Following issuance of a court order approving a

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349 transfer of structured settlement payment rights under this
350 section, the structured settlement obligor and annuity issuer:

351 1. May rely on the court order in redirecting future
352 structured settlement payments to the transferee or an assignee
353 in accordance with the order; and

354 2. Are released from any liability for the transferred
355 payments to all of the parties to the settlement except the
356 transferee or an assignee, notwithstanding the failure of any
357 party to the transfer to comply with this section or with the
358 orders of the court approving the transfer.

359 (e) A structured settlement the terms of which prohibit the
360 sale, assignment, or encumbrance of payment rights may not be
361 construed to prohibit:

362 1. The parties to the settlement from waiving or asserting
363 their rights under such terms; or

364 2. A court from hearing an application for approval of a
365 transfer of such rights or ruling on the merits of the
366 application and any objections.

367 (6) NONCOMPLIANCE.—

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

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

376 2. A penalty in an amount determined by the court, but not
377 in excess of three times the aggregate amount of the discount

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378 and finance charge; and

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

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

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

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

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

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

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

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

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

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