

CHAPTER 2016-45

Committee Substitute for Senate Bill No. 458

An act relating to transfers of structured settlement payment rights; amending s. 626.99296, F.S.; revising definitions; revising specified disclosures and notices that are or may be required to be given in order to effect transfers of structured settlement payment rights and payments under such rights; revising the time limit by which a written response to an application for transferring such rights must be filed; specifying requirements for the filing and contents of the application; requiring the court to hold a hearing on the application; requiring a payee to appear in person unless the court determines that good cause exists to excuse the payee; providing that the transferee is solely responsible for compliance with certain requirements; providing that following issuance of a court order approving the transfer, the structured settlement obligor and annuity issuer may rely on the order in redirecting certain payments and are released and discharged from certain liability; providing for construction; conforming provisions to changes made by the act; making technical changes; providing an effective date.

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

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

626.99296 Transfers of structured settlement payment rights.—

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

~~(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 approved by a court; or

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

(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.

(d) “Assignee” means any party that acquires structured settlement payment rights directly or indirectly from a transferee of such rights.

(e) “Dependents” means a payee’s spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including spousal maintenance.

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

1. Interest charges, discounts, or other compensation for the time value of money;
2. All application, origination, processing, underwriting, closing, filing, and notary fees and all similar charges, however denominated; and
3. All charges for commissions or brokerage, regardless of the identity of the party to whom such charges are paid or payable.

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

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

(h) “Independent professional advice” means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser:

1. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;
2. Who is not in any manner affiliated with or compensated by the transferee of the transfer; and
3. Whose compensation for providing the advice is not affected by whether a transfer occurs or does not occur.

(i) “Interested parties” means:

- 1. The payee;
- 2. Any beneficiary irrevocably designated under the annuity contract to receive payments following the payee’s death or, if such designated beneficiary is a minor, the designated beneficiary’s parent or guardian;
- 3. The annuity issuer;
- 4. The structured settlement obligor; or
- 5. Any other party to the structured settlement who has continuing rights or obligations to receive or make payments under the structured settlement.

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

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

(l) “Settled claim” means the original tort claim resolved by a structured settlement.

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

(n) “Structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments.

(o) “Structured settlement obligor” means the party who is obligated to make continuing periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

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

- 1. The payee ~~or any other interested party~~ is domiciled in this state;
- 2. The structured settlement agreement was approved by a court of this state; or
- 3. The settled claim was pending before the courts of this state when the parties entered into the structured settlement agreement.

(q) “Terms of the structured settlement” means the terms of the structured settlement agreement; the annuity contract; a qualified assignment agreement; or an order or approval of a court or other government authority authorizing or approving the structured settlement.

(r) “Transfer” means a sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration.

(s) “Transfer agreement” means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

(t) “Transferee” means a person who is receiving or who will receive structured settlement payment rights resulting from a transfer.

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

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

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

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

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

b. The aggregate amount of the payments;

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

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

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

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

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

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

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

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

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

~~5.~~ ~~The transferee has given written notice of the transferee’s name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of the notice with the court;~~

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

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

(b) If a proposed transfer would contravene the terms of the structured settlement, upon the filing of a written objection by any interested party and after considering the objection and any response to it, the court may grant, deny, or impose conditions upon the proposed transfer which the court deems just and proper given the facts and circumstances and in accordance with established principles of law. Any order approving a transfer must require that the transferee indemnify the annuity issuer and the structured settlement obligor for any liability, including reasonable costs and attorney attorney’s fees, which arises from compliance by the issuer or obligor with the order of the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. A copy of the transfer agreement;

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

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

5. A summary of each of the following:

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

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

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

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

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

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

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

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

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

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

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

(e) If the terms of the structured settlement prohibit transfer of payment rights:

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

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

(f) This section may not be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law.

(6) NONCOMPLIANCE.—

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

- 1. A refund of any excess amounts previously received by the transferee or any assignee;
- 2. A penalty in an amount determined by the court, but not in excess of three times the aggregate amount of the discount and finance charge; and
- 3. Reasonable costs and attorney attorney’s fees.

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

- 1. A penalty in an amount determined by the court, but not in excess of three times the amount of the discount and finance charge; and
- 2. Reasonable costs and attorney attorney’s fees.

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

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

- 1. The last transferred structured settlement payment, in the case of a violation of the requirements for stipulating the discount and finance charge provided for in subsection (3).
- 2. The first transferred structured settlement payment, in the case of a violation of the disclosure requirements of subsection (3).

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

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

Approved by the Governor March 10, 2016.

Filed in Office Secretary of State March 10, 2016.