

Enrolled
Senate Bill 645

Sponsored by Senator METSGER

CHAPTER

AN ACT

Relating to transfers of structured settlement rights.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 6 of this 2005 Act:

(1) "Annuity issuer" means an insurer that has entered into a contract to fund periodic payments under a structured settlement agreement.

(2) "Obligor" means a party that has a continuing obligation to make periodic payments to a payee under a structured settlement agreement or an agreement that provides for a qualified assignment as defined in section 130 of the Internal Revenue Code, as of January 1, 2006.

(3) "Payee" means an individual who is receiving tax-free payments under a structured settlement agreement and proposes to make a transfer of payment rights.

(4) "Payment rights" means rights to receive periodic payments under a structured settlement agreement, whether from the obligor or the annuity issuer.

(5) "Periodic payments" includes both recurring payments and scheduled future lump sum payments.

(6) "Responsible administrative authority" means a government authority vested by law with exclusive jurisdiction over the original tort claim or workers' compensation claim that was resolved in a structured settlement agreement.

(7) "Structured settlement agreement" means an agreement, judgment, stipulation or release embodying the terms of an arrangement for periodic payment of damages from an obligor or an annuity issuer for:

(a) Personal injuries or sickness established by settlement or judgment in resolution of a tort claim; or

(b) Periodic payments in settlement of a workers' compensation claim.

(8) "Terms of the structured settlement agreement" includes the terms of:

(a) A structured settlement agreement;

(b) An annuity contract;

(c) An agreement that provides for a qualified assignment as defined in section 130 of the Internal Revenue Code, as of January 1, 2006; and

(d) Any order or other approval of any court, responsible administrative authority or other government authority that authorized or approved the structured settlement agreement.

(9) "Transfer" means any sale, assignment, pledge or other alienation or encumbrance of payment rights made by a payee for consideration. "Transfer" does not include the cre-

ation or perfection of an unspecified security interest in all of the payee's payment rights entered into with an insured depository institution, or an agent or successor in interests of the insured depository institution, in the absence of any action to redirect the payments under the structured settlement agreement to the insured depository institution or otherwise to enforce a security interest against the payment rights.

(10) "Transfer agreement" means an agreement providing for a transfer of payment rights.

(11) "Transferee" means a party acquiring or proposing to acquire payment rights through a transfer agreement.

SECTION 2. (1) A payee may transfer payment rights under sections 1 to 6 of this 2005 Act if:

(a) The payee is domiciled in this state;

(b) The domicile or principal place of business of the obligor or the annuity issuer is located in this state;

(c) The structured settlement agreement was approved by a court or responsible administrative authority in this state; or

(d) The structured settlement agreement is expressly governed by the laws of this state.

(2) Prior to transferring payment rights under sections 1 to 6 of this 2005 Act, the transferee shall file an application for approval of the transfer in:

(a) The county in which the payee resides;

(b) The county in which the obligor or the annuity issuer maintains its principal place of business; or

(c) Any court or before any responsible administrative authority that approved the structured settlement agreement.

(3) Not less than 20 days prior to the scheduled hearing on an application for approval of a transfer of payment rights, the transferee shall send notice of the proposed transfer to:

(a) The payee;

(b) Any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death;

(c) The annuity issuer;

(d) The obligor; and

(e) Any other party that has continuing rights or obligations under the structured settlement agreement that is the subject of the hearing.

(4) The notice sent under subsection (3) of this section shall include:

(a) A copy of the transferee's application.

(b) A copy of the transfer agreement.

(c) A copy of the disclosure statement provided to the payee as required under section 3 of this 2005 Act.

(d) A listing of each person for whom the payee is legally obligated to provide support, including the age of each of those persons.

(e) Notification that any person receiving notice under subsection (3) of this section is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing.

(f) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall not be less than 15 days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

SECTION 3. Not less than three days prior to the day on which a payee is scheduled to sign a transfer agreement, a transferee shall provide the payee with a statement in not less than 14-point type that sets forth:

(1) The amounts and due dates of the structured settlement payments to be transferred.

(2) The aggregate amount of the payments to be transferred.

(3) The discounted present value of the payments and the rate used in calculating the discounted present value. The discounted present value shall be calculated by using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the Internal Revenue Service.

(4) The amount payable to a payee as the result of a transfer. The amount set forth in this subsection shall be calculated before any reductions are made for transfer expenses required to be listed under subsection (5) of this section or any related disbursements.

(5) An itemized listing of all applicable transfer expenses and the transferee's best estimate of the amount of any attorney fees and disbursements. For the purposes of this subsection, "transfer expenses":

(a) Includes all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the amount payable to a payee as the result of a transfer.

(b) Does not include attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer or preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

(6) The amount calculated by subtracting the aggregate amount of the actual and estimated transfer expenses required to be listed under subsection (5) of this section from the amount identified in subsection (4) of this section.

(7) The amount of any penalties or liquidated damages payable by the payee in the event of a breach of the transfer agreement by the payee.

(8) A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

SECTION 4. A transfer of payment rights under sections 1 to 6 of this 2005 Act is not effective and an obligor or annuity issuer is not required to make any payments directly or indirectly to a transferee unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by the court or authority that:

(1) The transfer is in the best interest of the payee, taking into account the welfare and support of all persons for whom the payee is legally obligated to provide support.

(2) The payee has been advised in writing by the transferee to seek advice from an attorney, certified public accountant, actuary or other licensed professional adviser regarding the transfer, and the payee has either received the advice or knowingly waived advice in writing.

(3) The transfer does not contravene any applicable statute or order of any court or other government authority.

SECTION 5. Following a transfer of payment rights under sections 1 to 6 of this 2005 Act:

(1) The obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from all liability for the transferred payments.

(2) The transferee shall be liable to the obligor and the annuity issuer:

(a) If the transfer contravenes the terms of the structured settlement agreement, for any taxes incurred by the parties as a consequence of the transfer; and

(b) For any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with sections 1 to 6 of this 2005 Act.

(3) An annuity issuer or an obligor may not be required to divide any periodic payments between the payee and any transferee or assignee or between two or more transferees or assignees.

(4) Any further transfer of payment rights by the payee may be made only after compliance with all of the requirements of sections 1 to 6 of this 2005 Act.

SECTION 6. (1) The provisions of sections 1 to 6 of this 2005 Act may not be waived by any payee.

(2) A transfer agreement entered into on or after the effective date of this 2005 Act by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined under the laws of this state. A transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry to judgment against the payee.

(3) A transfer of payment rights may not extend to any payments that are life contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the obligor for:

(a) Periodically confirming the payee's survival.

(b) Giving the annuity issuer and the obligor prompt written notice in the event of the payee's death.

(4) A payee who proposes to make a transfer of payment rights does not incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or an assignee based on any failure of the transfer to satisfy the conditions of sections 1 to 6 of this 2005 Act.

(5) Nothing in sections 1 to 6 of this 2005 Act shall be construed to authorize a transfer of payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this 2005 Act is valid or invalid.

(6) Compliance with the requirements set forth in section 3 of this 2005 Act and fulfillment of the conditions set forth in section 2 of this 2005 Act shall be solely the responsibility of the transferee in any transfer of payment rights, and neither the obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

SECTION 7. Sections 1 to 6 of this 2005 Act apply to transfer agreements entered into on or after the effective date of this 2005 Act.

Passed by Senate March 30, 2005

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Secretary of Senate

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President of Senate

Passed by House May 20, 2005

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Speaker of House

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State