

# Senate Bill 645

Sponsored by Senator METSGER

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes procedures for transferring structured settlement payment rights.

### A BILL FOR 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 agree-**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **ment.**

2 (9) "Transfer" means any sale, assignment, pledge or other alienation or encumbrance  
3 of payment rights made by a payee for consideration. "Transfer" does not include the cre-  
4 ation or perfection of a security interest in payment rights entered into with an insured de-  
5 pository institution, or an agent or successor in interests of the insured depository  
6 institution, in the absence of any action to redirect the payments under the structured  
7 settlement agreement to the insured depository institution or otherwise to enforce a security  
8 interest against the payment rights.

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

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

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

15 (a) The payee is domiciled in this state;

16 (b) The domicile or principal place of business of the obligor of the annuity issuer is lo-  
17 cated in this state;

18 (c) The structured settlement agreement was approved by a court or responsible admin-  
19 istrative authority in this state; or

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

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

23 (a) The county in which the payee resides;

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

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

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

31 (a) The payee;

32 (b) Any beneficiary irrevocably designated under the annuity contract to receive pay-  
33 ments following the payee's death;

34 (c) The annuity issuer;

35 (d) The obligor; and

36 (e) Any other party that has continuing rights or obligations under a structured settle-  
37 ment agreement.

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

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

40 (b) A copy of the transfer agreement.

41 (c) A copy of the disclosure statement required under section 3 of this 2005 Act.

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

44 (e) Notification that any person receiving notice under subsection (3) of this section is  
45 entitled to support, oppose or otherwise respond to the transferee's application, either in

1 person or by counsel, by submitting written comments to the court or responsible adminis-  
2 trative authority or by participating in the hearing.

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

7 **SECTION 3.** A transferee shall provide the payee with a statement in not less than  
8 14-point type that sets forth:

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

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

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

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

18 (5) An itemized listing of all applicable transfer expenses and the transferee's best esti-  
19 mate of the amount of any fees and disbursements. For the purposes of this subsection,  
20 "transfer expenses":

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

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

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

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

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

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

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

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

1 (3) The transfer does not contravene any applicable statute or order of any court or re-  
 2 sponsible administrative authority.

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

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

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

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

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

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

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

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

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

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

30 (a) Periodically confirming the payee's survival.

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

33 (4) A payee who proposes to make a transfer of payment rights does not incur any pen-  
 34 alty, forfeit any application fee or other payment, or otherwise incur any liability to the  
 35 proposed transferee or a assignee based on any failure of the transfer to satisfy the condi-  
 36 tions of sections 1 to 6 of this 2005 Act.

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

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

45 **SECTION 7.** Sections 1 to 6 of this 2005 Act apply to transfer agreements entered into

1 **on or after the effective date of this 2005 Act.**

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