

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Santiago offered the following:

4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

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

8 626.99296 Transfers of structured settlement payment
 9 rights.—

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

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

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

17 (c) ~~(b)~~ "Applicable law" means any of the following, as

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18 applicable in interpreting the terms of a structured settlement:

19 1. The laws of the United States;

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

22 3. The laws of any other jurisdiction:

23 a. That is the domicile of the payee ~~or any other~~
24 ~~interested party;~~

25 b. Under whose laws a structured settlement agreement was
26 approved by a court; or

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

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

34 (d) "Assignee" means any party that acquires structured
35 settlement payment rights directly or indirectly from a
36 transferee of such rights.

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

41 (f) "Discount and finance charge" means the sum of all
42 charges that are payable directly or indirectly from assigned
43 structured settlement payments and imposed directly or

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44 indirectly by the transferee and that are incident to a transfer
45 of structured settlement payment rights, including:

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

48 2. All application, origination, processing, underwriting,
49 closing, filing, and notary fees and all similar charges,
50 however denominated; and

51 3. All charges for commissions or brokerage, regardless of
52 the identity of the party to whom such charges are paid or
53 payable.

54

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

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

63 (h) "Independent professional advice" means advice of an
64 attorney, certified public accountant, actuary, or other
65 licensed professional adviser:

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

69 2. Who is not in any manner affiliated with or compensated

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70 by the transferee of the transfer; and

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

73 (i) "Interested parties" means:

74 1. The payee;

75 2. Any beneficiary irrevocably designated under the
76 annuity contract to receive payments following the payee's death
77 or, if such designated beneficiary is a minor, the designated
78 beneficiary's parent or guardian;

79 3. The annuity issuer;

80 4. The structured settlement obligor; or

81 5. Any other party to the structured settlement who has
82 continuing rights or obligations to receive or make payments
83 under the structured settlement.

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

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

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

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

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96 (n) "Structured settlement agreement" means the agreement,
97 judgment, stipulation, or release embodying the terms of a
98 structured settlement, including the rights of the payee to
99 receive periodic payments.

100 (o) "Structured settlement obligor" means the party who is
101 obligated to make continuing periodic payments to the payee
102 under a structured settlement agreement or a qualified
103 assignment agreement.

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

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

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

112 3. The settled claim was pending before the courts of this
113 state when the parties entered into the structured settlement
114 agreement.

115 (q) "Terms of the structured settlement" means the terms
116 of the structured settlement agreement; the annuity contract; a
117 qualified assignment agreement; or an order or approval of a
118 court or other government authority authorizing or approving the
119 structured settlement.

120 (r) "Transfer" means a sale, assignment, pledge,
121 hypothecation, or other form of alienation or encumbrance made

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122 by a payee for consideration.

123 (s) "Transfer agreement" means the agreement providing for
124 transfer of structured settlement payment rights from a payee to
125 a transferee.

126 (t) "Transferee" means a person who is receiving or who
127 will receive structured settlement payment rights resulting from
128 a transfer.

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

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

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

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

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

147 b. The aggregate amount of the payments;

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

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

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

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

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

170 ~~h.~~ The effective annual interest rate, which must be
171 disclosed in the following statement: "Based on the net amount
172 that you will receive from us and the amounts and timing of the
173 structured settlement payments that you are turning over to us,

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174 you will, in effect, be paying interest to us at a rate of
175 percent per year"; and

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

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

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

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

190 ~~5.6.~~ The transfer agreement provides that if the payee is
191 domiciled in this state, any disputes between the parties will
192 be governed in accordance with the laws of this state and that
193 the domicile state of the payee is the proper venue to bring any
194 cause of action arising out of a breach of the agreement; and

195 ~~6.7.~~ The court has determined that the net amount payable
196 to the payee is fair, just, and reasonable under the
197 circumstances then existing.

198 (b) If a proposed transfer would contravene the terms of
199 the structured settlement, upon the filing of a written

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200 objection by any interested party and after considering the
201 objection and any response to it, the court may grant, deny, or
202 impose conditions upon the proposed transfer which the court
203 deems just and proper given the facts and circumstances and in
204 accordance with established principles of law. Any order
205 approving a transfer must require that the transferee indemnify
206 the annuity issuer and the structured settlement obligor for any
207 liability, including reasonable costs and attorney ~~attorney's~~
208 fees, which arises from compliance by the issuer or obligor with
209 the order of the court.

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

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

222 1. The amounts and due dates of the periodic payments to
223 be made under the structured settlement agreement. In the case
224 of payments that will be subject to periodic percentage
225 increases, the amounts of future payments may be disclosed by

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226 identifying the base payment amount, the amount and timing of
227 scheduled increases, and the manner in which increases will be
228 compounded;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

277 (d) In addition to complying with the other requirements

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278 of this section, the application must include:

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

281 2. A copy of the transfer agreement;

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

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

286 5. A summary of each of the following:

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

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

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

301 d. Any proposed transfers by the payee to any person or
302 entity other than the transferee, or an assignee of a transferee
303 or an affiliate, to the extent such proposed transfers were

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304 disclosed to the transferee by the payee in writing or are
305 otherwise actually known by the transferee, for which
306 applications were denied within the year preceding the date of
307 the transfer agreement.

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

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

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

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

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

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

329 2. Are released and discharged from any liability for the

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330 transferred payments to any party except the transferee or an
331 assignee, notwithstanding the failure of any party to the
332 transfer to comply with this section or with the orders of the
333 court approving the transfer.

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

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

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

343 (6) NONCOMPLIANCE.—

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

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

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

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

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

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

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

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

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

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

375 2. The first transferred structured settlement payment, in
376 the case of a violation of the disclosure requirements of
377 subsection (3).

378 (e) When any interested party has reason to believe that
379 any transferee has violated this section, any interested party
380 may bring a civil action for injunctive relief, penalties, and

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381 any other relief that is appropriate to secure compliance with
382 this section.

383 Section 2. This act shall take effect upon becoming a law.
384

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386 **T I T L E A M E N D M E N T**

387 Remove everything before the enacting clause and insert:
388 An act relating to transfers of structured settlement payment
389 rights; amending s. 626.99296, F.S.; revising definitions;
390 revising specified disclosures and notices that are or may be
391 required to be given in order to effect transfers of structured
392 settlement payment rights and payments under such rights;
393 revising the time limit by which a written response to an
394 application for transferring such rights must be filed;
395 specifying requirements for the filing and contents of the
396 application; requiring the court to hold a hearing on the
397 application; requiring a payee to appear in person unless the
398 court determines that good cause exists to excuse the payee;
399 providing that the transferee is solely responsible for
400 compliance with certain requirements; providing that following
401 issuance of a court order approving the transfer, the structured
402 settlement obligor and annuity issuer may rely on the order in
403 redirecting certain payments and are released and discharged
404 from certain liability; providing for construction if the terms
405 of the structured settlement prohibit transfer for payment

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406 rights; conforming provisions to changes made by the act; making
407 technical changes; providing an effective date.