

As Passed by the House

132nd General Assembly

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Am. H. B. No. 223

Representative Dever

**Cosponsors: Representatives Anielski, Antonio, Blessing, Boggs, Lepore-Hagan,
Rogers, Sweeney**

A BILL

To amend sections 2323.58, 2323.581, 2323.582,
2323.583, 2323.584, 2323.585, 2323.586, and
2323.587 of the Revised Code relative to
transfers of structured settlement payment
rights.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2323.58, 2323.581, 2323.582,
2323.583, 2323.584, 2323.585, 2323.586, and 2323.587 of the
Revised Code be amended to read as follows:

Sec. 2323.58. As used in this section and sections
2323.581 to 2323.587 of the Revised Code:

(A) "Annuity issuer" means an insurer that has issued ~~an~~
~~insurance~~ a contract that is used to fund periodic payments
under a structured settlement.

(B) ~~"Applicable law~~ "Assignee" means ~~any of the following,~~
~~as applicable in interpreting the terms of a party acquiring or~~
~~proposing to acquire structured settlement agreement.~~

- ~~(1) The laws of the United States,~~ 17
- ~~(2) The laws of this state, including principles of equity~~ 18
~~that are applied in the courts of this state,~~ 19
- ~~(3) The laws of any other jurisdiction if any of the~~ 20
~~following applies:~~ 21
- ~~(a) The laws of that other jurisdiction govern the~~ 22
~~structured settlement.~~ 23
- ~~(b) A court or a responsible administrative authority~~ 24
~~approved the structured settlement agreement under the laws of~~ 25
~~that other jurisdiction.~~ 26
- ~~(c) The transfer of payments under the structured~~ 27
~~settlement is subject to the laws of that other jurisdiction~~ 28
~~payment rights from a transferee of those rights.~~ 29
- (C) "Dependent" ~~means~~ includes a spouse of a payee, a 30
minor child of a payee, ~~or and~~ any other ~~member of the family of~~ 31
~~a payee or other person for whom, by law or by court order or~~ 32
~~decree,~~ the payee is legally obligated to provide support, 33
including alimony. 34
- (D) "Discounted present value" means the ~~fair~~ present 35
value of ~~the~~ future payments ~~under a structured settlement that~~ 36
~~is~~ determined by discounting those payments to the present, 37
using the most recently published applicable federal rate for 38
determining the present value of an annuity, as issued by the 39
United States internal revenue service. 40
- (E) "Gross advance amount" means the sum payable to the 41
payee or for the payee's account as consideration for a transfer 42
of structured settlement payment rights before any reductions 43
for transfer expenses or other deductions to be made from such 44

consideration.

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~~(F) "Independent professional advice" means the advice of an attorney, a certified public accountant, an actuary, or any other licensed professional adviser if all of the following apply:~~

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~~(1) The payee has engaged the services of the licensed professional adviser to render advice concerning the legal and other implications of a transfer of structured settlement payment rights.~~

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~~(2) The licensed professional adviser has signed a statement to the effect that the licensed professional adviser rendered advice to the payee concerning the legal and other implications of a transfer of structured settlement payment rights.~~

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~~(3) The licensed professional adviser is not affiliated in any manner with, referred by, or compensated in any manner by the transferee of the structured settlement payment rights.~~

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~~(4) The compensation of the licensed professional adviser is not affected by whether or not a transfer of structured settlement payment rights occurs.~~

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~~(F) (G) "Interested party" includes the payee means, with respect to a structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement ~~agreement~~ obligor, and any other party to the structured settlement that has continuing rights or obligations to receive or make payments under the structured settlement ~~agreement~~.~~

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~~(G) (H) "Net advance amount" means the gross advance~~

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amount less the aggregate amount of the actual and estimated 74
transfer expenses required to be disclosed under division (E) of 75
section 2323.582 of the Revised Code. 76

(I) "Payee" means an individual who is receiving periodic 77
payments under a structured settlement ~~agreement~~ that are 78
excludable from the individual's gross income under federal 79
income taxation laws applicable to that individual and who 80
proposes to make a transfer of the rights to receive those 81
periodic payments. 82

~~(H)~~ (J) "Periodic payments" includes both continuing 83
monthly or other periodic payments and scheduled future lump-sum 84
payments under a structured settlement. 85

~~(I)~~ (K) "Qualified assignment agreement" means an 86
agreement that provides for a qualified assignment, as defined 87
in section 130 of the "Internal Revenue Code of 1986," 100 Stat. 88
2085, 26 U.S.C.A. 130(c), as amended, ~~through an assignment of~~ 89
~~the liability under a structured settlement agreement to make~~ 90
~~periodic payments as damages, on account of personal injury or~~ 91
~~sickness.~~ 92

~~(J)~~ "Responsible administrative authority" means any 93
~~government authority of another state vested by the law of that~~ 94
~~state with the original exclusive jurisdiction over the settled~~ 95
~~claim resolved by a structured settlement.~~ 96

~~(K)~~ "Settled claim" means the original tort claim resolved 97
by a structured settlement. 98

(L) "Structured settlement" means an arrangement for 99
periodic payments of damages for ~~injury to a person~~ personal 100
injuries or sickness that is established by a settlement or a 101
court judgment in resolution of a tort claim. 102

(M) "Structured settlement agreement" means an agreement, judgment, stipulation, or release that embodies the terms of a structured settlement, including the rights of a payee to receive periodic payments.

(N) "Structured settlement obligor" means the party that has the obligation to make continuing periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(O) "Structured settlement payment rights" means the rights under a structured settlement agreement to receive periodic payments from a structured settlement obligor or an annuity issuer if either of the following applies:

(1) ~~The payee, the structured settlement obligor, or the annuity issuer with respect to the structured settlement agreement~~ is a resident of this state.

(2) The structured settlement agreement was approved by a court in this state.

(P) "Terms of a structured settlement" includes the terms of a structured settlement agreement, ~~an insurance~~ the annuity contract, a qualified assignment agreement, and any order or approval by a court, ~~a responsible administrative authority~~, or other government authority authorizing or approving the structured settlement.

(Q) "Transfer" means a sale, assignment, pledge, hypothecation, or any other form of alienation or encumbrance of structured settlement payment rights made by a payee for consideration. "Transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into

with an insured depository institution, in the absence of any 132
action to redirect the structured settlement payments to that 133
institution, or an agent or successor in interest thereof, or 134
otherwise to enforce the blanket security interest against the 135
structured settlement payment rights. 136

(R) "Transfer agreement" means an agreement that provides 137
for the transfer of structured settlement payment rights from a 138
payee to a transferee. 139

(S) "Transfer expense" means any expense of a transfer 140
that is required under the transfer agreement to be paid by the 141
payee or deducted from the gross advance amount, including but 142
not limited to, court filing fees, attorneys' fees, escrow fees, 143
lien recordation fees, judgment and lien search fees, finder's 144
fees, commissions, and other payments to a broker or other 145
intermediary. "Transfer expense" does not include pre-existing 146
obligations of the payee payable for the payee's account from 147
the proceeds of a transfer. 148

(T) "Transferee" means a party acquiring or proposing to 149
acquire structured settlement payment rights through a transfer 150
of those rights. 151

Sec. 2323.581. No direct or indirect transfer of 152
structured settlement payment rights shall be effective, and no 153
structured settlement obligor or annuity issuer shall be 154
required to make any payment directly or indirectly to a 155
transferee or assignee of structured settlement payment rights, 156
unless the ~~transferee has provided the payee and other~~ 157
~~interested parties with the disclosures required by section~~ 158
~~2323.582 of the Revised Code and the transfer has been approved~~ 159
in advance in a final order of a court of competent jurisdiction 160
~~in accordance with sections 2323.583 and 2323.584 of the Revised~~ 161

Code based on express findings by the court of all of the 162
following: 163

(A) The transfer is in the best interest of the payee, 164
taking into account the welfare and support of the payee's 165
dependents. 166

(B) The payee has been advised in writing by the 167
transferee to seek independent professional advice regarding the 168
transfer and has either received that advice or knowingly waived 169
in writing the opportunity to seek and receive that advice. 170

(C) The transfer does not contravene any applicable 171
statute or order of any court or other government authority. 172

Sec. 2323.582. Not less than ten days prior to the date on 173
which a payee ~~becomes obligated under~~ signs a transfer 174
agreement, the transferee shall provide to the payee a separate 175
disclosure statement, in boldface type of the minimum size of 176
fourteen points, setting forth all of the following: 177

(A) The amounts and due dates of the structured settlement 178
payments that would be transferred under the transfer agreement; 179

(B) The aggregate amount of the payments described in 180
division (A) of this section; 181

(C) The discounted present value of the payments described 182
in division (A) of this section, which shall be identified as 183
the "calculation of current value of the transferred structured 184
settlement payments under federal standards for valuing 185
annuities," and the amount of the applicable federal rate used 186
in determining the discounted present value; 187

(D) The gross advance amount ~~payable to the payee in~~ 188
~~exchange for or as consideration for the transfer of the~~ 189

~~structured settlement payments described in division (A) of this section;~~ 190
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(E) ~~An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, 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 as described in division (D) of this section~~ 192
applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements; 193
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(F) ~~The net advance amount payable to the payee after deduction from the gross amount payable to the payee as described in division (D) of this section of all commissions, fees, costs, expenses, and charges described in division (E) of this section;~~ 203
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(G) ~~The quotient, expressed as a percentage, obtained by dividing the net amount payable to the payee as described in division (F) of this section by the discounted present value of the payments described in division (C) of this section~~ 208
effective annual interest rate, which shall be disclosed as follows: "On the basis of the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, you will, in effect, be paying interest to us at a rate of per cent per year"; 209
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(H) ~~The aggregate amount of any penalty and the aggregate amount of any or liquidated damages, including penalties, payable by the payee in the event of any breach of the transfer~~ 217
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agreement by the payee; 220

(I) That the payee has the right to cancel the transfer 221
agreement, without penalty or further obligation, not later than 222
the third business day after the date the agreement is signed by 223
the payee; 224

(J) That the payee has the right to seek and receive 225
independent professional advice regarding the proposed transfer 226
and should consider doing so before agreeing to transfer any 227
structured settlement payment rights. 228

Sec. 2323.583. ~~A court of competent jurisdiction may~~ 229
~~approve~~ Following a transfer of structured settlement payment 230
~~rights only in a final order that is based on the express~~ 231
~~findings of the court, and the express findings shall include~~ 232
pursuant to sections 2323.58 to 2323.585 of the Revised Code, 233
all of the following apply: 234

~~(A) The transferee has provided to the payee a disclosure~~ 235
~~statement that complies with section 2323.582 of the Revised~~ 236
~~Code, and the payee has confirmed the payee's receipt of the~~ 237
~~disclosure statement, as evidenced by the payee's notarized~~ 238
~~signature on a copy of the disclosure statement~~ structured 239
settlement obligor and the annuity issuer may rely on the court 240
order approving the transfer in redirecting periodic payments to 241
an assignee or transferee in accordance with the order approving 242
the transfer and shall, as to all parties except the transferee 243
or an assignee designated by the transferee, be discharged and 244
released from any and all liability for the redirected payments. 245
That discharge and release shall not be affected by the failure 246
of any party to the transfer to comply with sections 2323.58 to 247
2323.585 of the Revised Code or with the court order approving 248
the transfer. 249

~~(B) (1) Except as provided in division (B) (2) of this section, the payee has established that the transfer is fair and reasonable and in the best interests of the payee and the payee's dependents.~~ 250
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~~(2) If, on the effective date of the transfer agreement, a federal hardship standard exists, the payee has established that the transfer meets that hardship standard.~~ 254
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~~(C) The payee has received independent professional advice regarding the legal and other implications of the transfer.~~ 257
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~~(D) If The transferee shall be liable to the structured settlement obligor and the annuity issuer, as follows:~~ 259
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~~(1) For any taxes incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer, if the transfer contravenes the terms of the structured settlement involved, all of the following have been complied with:~~ 261
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~~(1) Each dependent whom the payee is legally obligated to support by court order or decree, in a written approval and waiver, approves the transfer and waives the right to require that the structured settlement payments be made to the payee in accordance with the terms of the structured settlement.;~~ 265
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~~(2) Any court or responsible administrative authority that previously approved the structured settlement, other than the court from which the approval of the transfer is sought under sections 2323.58 to 2323.585 of the Revised Code, has expressly approved the transfer in writing For any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by the structured settlement obligor or annuity issuer with the court order approving the transfer or from the failure of any party to the transfer to comply with sections~~ 270
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2323.58 to 2323.585 of the Revised Code. 279

~~(3) The transferee has provided to the court in which the application for approval of the transfer was filed all of the signed original copies of the approvals required under divisions (D) (1) and (2) of this section.~~ 280
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~~(4) The transferee has furnished each interested party copies of the approvals required under divisions (D) (1) and (2) of this section.~~ 284
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~~(E) 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 that notice with the court in which the application for approval of the transfer was filed.~~ 287
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~~(F) The~~ (C) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees. 292
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(D) Any further transfer of structured settlement payment rights by the payee may be made only if the transfer complies with all of the requirements of sections 2323.58 to 2323.585 of the Revised Code and does not contravene any applicable law. 296
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Sec. 2323.584. (A) A ~~person~~ transferee shall file an application under sections 2323.58 to 2323.585 of the Revised Code for the approval in advance of a transfer of structured settlement payment rights in the probate division of the court of common pleas of the county in which the payee resides, except that if the structured settlement agreement was approved by a court of common pleas or other Ohio state court, the application shall be filed in the Ohio state court that approved the 300
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~~structured settlement agreement. If the structured settlement-~~ 308
~~agreement was not approved by an Ohio court, a person shall file-~~ 309
~~an application under sections 2323.58 to 2323.585 of the Revised-~~ 310
~~Code for the approval in advance of a transfer of structured-~~ 311
~~settlement payment rights in the probate division of the court-~~ 312
~~of common pleas of the county in which the payee, the structured-~~ 313
~~settlement obligor, or the annuity issuer resides.~~ 314

(B) The following procedures shall apply to an application 315
for the approval in advance by a court of a transfer of 316
structured settlement payment rights under division (A) of this 317
section: 318

(1) ~~Upon the filing of the application, the~~ The court 319
~~shall set a date and time for hold a~~ timely hearing on the 320
~~application and shall notify the transferee of the date, time,~~ 321
~~and place of the hearing.~~ The payee shall appear in person at 322
the hearing unless the court determines that good cause exists 323
to excuse the payee from appearing in person. 324

(2) Not less than twenty days prior to the date set by the 325
court for the hearing on an application filed pursuant to this 326
section, the transferee shall file with the court and shall 327
serve on ~~the court or any responsible administrative authority-~~ 328
~~that previously approved the structured settlement, on all~~ 329
~~interested parties, and on the annuity issuer and the structured-~~ 330
~~settlement obligor~~ including a parent or other guardian or 331
authorized legal representative of any interested party who is 332
not legally competent, in the manner prescribed in the Rules of 333
Civil Procedure for the service of process, a notice of the 334
proposed transfer and the application for its approval in 335
advance. The notice shall include all of the following: 336

(a) A copy of the application; 337

- (b) A copy of the transfer agreement; 338
- (c) A copy of the disclosure statement provided by the transferee pursuant to section 2323.582 of the Revised Code ~~and signed by the payee pursuant to division (A) of section 2323.583 of the Revised Code;~~ 339
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- (d) The payee's name, age, and county of residence and the number and ages of each of the payee's dependents; 343
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- (e) A summary of both of the following: 345
- (i) Any prior transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, within the four years preceding the date of the transfer agreement and any proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, applications for approval of which were denied within the two years preceding the date of the transfer agreement; 346
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- (ii) Any prior transfers by the payee to any person or entity other than the transferee or an affiliate, or an assignee of the transferee or an affiliate, within the three years preceding the date of the transfer agreement and any prior proposed transfers by the payee to any person or entity other than the transferee or an affiliate, or an assignee of a transferee or affiliate, applications for approval of which were denied within the one year preceding the date of the current transfer agreement, to the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee in writing or otherwise are actually known to the transferee. 354
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- (f) Notification of the date, time, and place of the hearing on the application; 365
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~~(e)-(g)~~ Notification that any interested party may 367
support, oppose, or otherwise respond to the application, either 368
in person or by counsel, by submitting to the court a written 369
response containing the interested party's support of, 370
opposition to, or comments on the application or by 371
participating in the hearing; 372

~~(f)-(h)~~ Notification of the manner of filing a written 373
response to the application and the time within which the 374
response is required to be filed, which time shall be not less 375
than fifteen days after the service of the transferee's notice, 376
in order for the court to consider it. 377

~~(3) Within fifteen days after receipt of the notice~~ 378
~~described in division (B) (2) of this section, any interested~~ 379
~~party who wishes to respond to the application shall file a~~ 380
~~written response with the court personally or by certified mail,~~ 381
~~return receipt requested.~~ 382

~~(4) At the conclusion of the hearing on an application~~ 383
~~under this section, the court may grant or deny the approval of~~ 384
~~the transfer. The court shall enter its order accordingly. If~~ 385
~~the court grants the approval of the transfer, it shall include~~ 386
~~in its order all of the express findings specified in section~~ 387
~~2323.583 of the Revised Code. If the court denies the approval~~ 388
~~of the transfer, it shall include in its order the reasons for~~ 389
~~the denial.~~ 390

~~(5) An order of the court made under division (B) (4) of~~ 391
~~this section is a final and appealable order.~~ 392

Sec. 2323.585. (A) No payee who proposes to make a 393
transfer of structured settlement payment rights shall incur any 394
penalty, forfeit any application fee or other payment, or 395

otherwise incur any liability to the proposed transferee or any 396
assignee based on a failure of the transfer to comply with any 397
of the requirements of sections 2323.581 to 2323.584 of the 398
Revised Code. 399

(B) No provision of this section or section 2323.581, 400
2323.582, 2323.583, or 2323.584 of the Revised Code may be 401
waived by any payee. 402

(C) No provision of this section or section 2323.581, 403
2323.582, 2323.583, or 2323.584 of the Revised Code authorizes 404
any transfer of structured settlement payment rights in 405
contravention of applicable law or ~~gives effect to~~ implies that 406
~~any transfer of structured settlement payment rights that is~~ 407
~~void under any applicable law~~ under a transfer agreement that 408
was entered into prior to the effective date of this amendment 409
is valid or invalid. 410

(D) Any transfer agreement entered into on or after the 411
effective date of this amendment by a payee who resides in this 412
state shall provide that disputes under the transfer agreement, 413
including any claim that the payee has breached the agreement, 414
are to be determined in and under the laws of this state. No 415
such transfer agreement shall authorize the transferee or any 416
other party to confess judgment or consent to entry of judgment 417
against the payee. 418

(E) No transfer of structured settlement payment rights 419
shall extend to any payments that are life-contingent unless, 420
prior to the date on which the payee signs the transfer 421
agreement, the transferee has established and has agreed to 422
maintain procedures reasonably satisfactory to the annuity 423
issuer and the structured settlement obligor for both of the 424
following: 425

(1) Periodically confirming the payee's survival; 426

(2) Giving the annuity issuer and the structured 427
settlement obligor prompt written notice in the event of the 428
payee's death. 429

(F) If the payee cancels a transfer agreement, or if the 430
transfer agreement otherwise terminates, after an application 431
for approval of a transfer of structured settlement payment 432
rights has been filed and before it has been granted or denied, 433
the transferee shall promptly request dismissal of the 434
application. 435

Sec. 2323.586. The Compliance with section 2323.582 of the 436
Revised Code and the fulfillment of the conditions set forth in 437
section 2323.581 of the Revised Code shall be solely the 438
responsibility of the transferee in any transfer of structured 439
settlement payment rights, and neither the structured settlement 440
obligor and nor the annuity issuer under a transfer or transfer- 441
agreement are immune from shall bear any responsibility for, or 442
any liability based upon any claim by the payee, or any party, 443
other than a transferee, claiming through the payee, as to any 444
structured settlement payment rights or periodic payments that 445
are the subject of the transfer or transfer agreement arising 446
from, noncompliance with the requirements or failure to fulfill 447
the conditions. 448

Sec. 2323.587. A violation of or failure to comply with 449
section 2323.581, 2323.582, 2323.583, 2323.584, 2323.585, or 450
2323.586 of the Revised Code is an unfair or deceptive act or 451
practice in violation of section 1345.02 of the Revised Code. 452

Section 2. That existing sections 2323.58, 2323.581, 453
2323.582, 2323.583, 2323.584, 2323.585, 2323.586, and 2323.587 454

of the Revised Code are hereby repealed. 455

Section 3. Sections 2323.58, 2323.581, 2323.582, 2323.583, 456
2323.584, 2323.585, 2323.586, and 2323.587 of the Revised Code, 457
as amended by this act, shall apply to a transfer of structured 458
settlement payment rights under any transfer agreement entered 459
into on or after the effective date of this act. 460