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Senate Bill 152 Sponsor Testimony
House Civil Justice Committee
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Chairman Butler, Vice Chair Hughes, Ranking Member Boggs and distinguished members of the Civil Justice committee, thank you for the opportunity to provide sponsor testimony on Senate Bill 152 regarding transfers of structured settlement payment rights. The secondary market for structured settlement payments developed in the early 1990s to provide the recipient of such payments the opportunity to sell some or all of their future payments for an immediate lump sum. Due to little oversight, various industry participants began to develop legislation to regulate these transfers at the state level.

The legislative model that was developed requires all structured settlement transfers to be court-approved under an applicable state transfer statute. Additionally, a federal statutory framework was enacted to impose an excise tax on all transfers that were not court-approved under an applicable state transfer statute and to clarify that a secondary market transfer did not create any adverse tax consequences to any of the parties involved in the original settlement. By 2004, this model was adopted by the National Conference of Insurance Legislators (NCOIL) as one of its model acts of legislation. The model act has been amended a few times, most recently in late 2016.

Ohio was one of the first states to adopt a structured settlement transfer act. As that legislation was adopted in 2000, and has had no substantive amendments since, it does not align with the NCOIL model act. As time goes by, Ohio becomes more and more out of line with the rest of the country.

This bill would amend Ohio's current Structured Settlement Transfer act to bring it in line with the current NCOIL model while retaining some Ohio-specific provisions that were important to the various parties within the industry. The principal changes in the existing Ohio statute would be:

1. Removal of Dual Court Approval: The current Ohio Statute provides that any court that previously approved the structured settlement must also approve a transfer, in addition to the Ohio court where the transfer is pending. Ohio is the only state in the country (of the 49 states that enacted similar statutes) that includes this provision and it has never been part of the NCOIL Model, in any of its versions.
2. Amends the Independent Professional Advice: This is often a time-consuming and expensive requirement for an adult that is presumed to understand how to manage their assets and financial affairs. In addition to, the payee will be present at the hearing and will be able to answer any questions should the judge be concerned about the payee's understanding of the transaction. The judge would then be able to retain the discretion to require independent professional advice as circumstances warrant.
3. Disclosure of Effective Annual Interest Rate: The effective annual interest rate is designed to provide payees with information and a calculation that they are likely familiar with and one that is readily understandable (i.e. basically interpreting the discount rate as an interest rate, which consumers/payees likely encounter regularly and related to other transactions in which payees are often involved).
4. Requires In-person Hearing: This codifies common practice in Ohio and ensures that judges have an opportunity to assess the payee's understanding of the transfer.
5. Clarifies Standard of Review: The new language exactly tracks with the findings required by federal tax law to ensure that the transfer does not incur the 40% federal excise tax. This is of utmost importance.

This change also ensures that the payee's best interests are not superseded by the best interests of their dependents. The dependents interests are considered in the new standard but cannot outweigh the interests of the payee.

6. Adds Disclosure of Prior Transfers and Attempted Transfers: This addition ensures that the judge has relevant information in advance of the hearing to assist in evaluating whether the transfer is in the payee's best interest.

Senate Bill 152 also contains two provisions that are unique to Ohio and not included within the NCOIL Model.

1. The bill maintains jurisdiction for the approval of transfers with the Probate Division of the Court of Common Pleas.
2. A violation of or failure to comply with the Current Ohio Statute is an unfair or deceptive practice or act in violation of R.C. 1345.02.

The current proposed legislation is a result of the industry returning to Ohio to advocate for amendments to modernize, improve and conform Ohio's act and to recognize efforts of the state's probate judges (the courts responsible for approving transfers) to enact reforms to the structured settlement transfer act in the previous session. Interested parties representing all sides of a structured settlement transfer took part in the discussions that constructed this piece of legislation and I believe enacting these reforms to better align with the NCOIL model would be a positive change for Ohio.

Thank you, Chairman Butler and members of the committee, for allowing me to speak to this legislation. I would be happy to answer any questions at this time.