

June 6, 2017

VIA E-MAIL

Senator Kevin Bacon, Chair
Senate Judiciary Committee
Senate Building
1 Capitol Square, Ground Floor
Columbus, OH 43215

Re: Senate Bill No. 152 – Proposed Amendments to Ohio’s Structured Settlement Protection Act

Dear Chairman Bacon and Committee Members:

On behalf of the National Structured Settlements Trade Association (“NSSTA”) I am writing to express our association’s strong support for Senate Bill No. 152, which would update Ohio’s 17-year-old structured settlement protection statute, Ohio Rev. Code §§ 2323.58 through 2323.587 (the “Ohio SSPA”) to conform it to the National Conference of Insurance Legislators Model State Structured Settlement Protection Act (the “NCOIL Model”).

NSSTA is a non-profit association dedicated to promoting the use of structured settlements to resolve physical injury claims. Its members include licensed insurance brokers that specialize in arranging structured settlements; property and casualty insurers who use structured settlements to resolve claims against their insureds; life insurers that issue annuities to fund structured settlements; and lawyers, life care planners and other professionals engaged in negotiating and implementing structured settlements.

NSSTA developed the model legislation that preceded the NCOIL Model. Since September 2000 (shortly after enactment of the Ohio SSPA) NSSTA has worked with the National Association of Settlement Purchasers (“NASP”), the association that represents secondary market purchasers of payment rights under structured settlements, to promote enactment of statutes based on the model legislation. NSSTA and NASP have cooperated on SSPA legislation, even though their respective members often are at odds. In the last several years NSSTA and NASP have jointly supported enactment of the Wisconsin SSPA (which made Wisconsin the 49th State to enact an SSPA) and amendments to the Florida, Illinois and Virginia SSPAs. Based on the legislation enacted in those four States, NSSTA and NASP also jointly developed updating amendments to the NCOIL Model that were approved in November 2016.

Senate Bill 152 is the product of continued cooperation between NSSTA and NASP, in consultation with representatives of the Ohio Judicial Conference, the Ohio Association for Justice and the Ohio Insurance Institute. The Bill would conform the Ohio SSPA in substance to the updated NCOIL Model.

Following is a synopsis of the principal changes that would be made by Senate Bill 152:

- In lieu of requiring a finding that a payee who proposes to transfer structured settlement payment rights has obtained independent professional advice, the amendments would require, as one of the conditions for an effective transfer, a judicial finding that the payee “has been advised in writing . . . to seek independent professional advice . . . and has either received that advice or knowingly waived in writing the opportunity to seek and receive that advice.” Experience in other states has shown that mandating independent professional advice: (i) compels structured settlement payees to incur costs that they often cannot afford; (ii) sometimes leads payees to receive advice that is not independent and professional; and (iii) may suggest to some courts that they need not make the thorough evaluation of a payee’s best interest that is central to protection of payees and their families.
- In place of the existing requirement that the disclosure statement provided to a payee include the “quotient . . . obtained by dividing the net amount payable to the payee . . . by the discounted present value of the payments . . .” (a disclosure that sometimes may cause confusion), the amendments would require that the disclosure statement specify the effective annual interest rate implied in the transaction.
- The amendments would require that courts hold hearings on all SSPA applications and that the payee “appear in person at the hearing unless the court determines that good cause exists to excuse the payee from appearing . . .”
- The amendments would require that any application for court approval of a transfer include summaries of prior transfers and proposed (but not completed) transfers of the same payee’s payment rights.
- The amendments would expressly provide that following a transfer of payment rights the transferee be liable to the annuity owner and annuity issuer for “liabilities or costs, including reasonable costs and attorneys’ fees, arising from compliance . . . with the court order approving the transfer or from the failure of any party to the transfer to comply with” the statute.
- The amendments would confirm that following an approved transfer of payment rights the annuity issuer and owner are “discharged and released from any and all liability for the redirected payments,” except liability to the transferee (or its assignee).

- The amendments would confirm that neither an annuity issuer nor an annuity owner “may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees.”
- The amendments would condition any transfer of life-contingent payment rights on previously established procedures, reasonably satisfactory to the annuity issuer and annuity owner, for periodically confirming the payee’s survival and providing prompt written notice in the event of the payee’s death.
- The amendments would confirm that compliance with the statutory requirements for an effective transfer of payment rights is “solely the responsibility of the transferee” and that neither the annuity owner nor the annuity issuer bears “any responsibility for, or any liability arising from, non-compliance with . . . or failure to fulfill” the statutory requirements.
- The amendments also would eliminate the problematic requirement of the existing Ohio statute that “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 . . . , has expressly approved” the proposed transfer of payment rights under the settlement.

NSSTA endorses all of these changes and commends Senator Matt Dolan for sponsoring legislation that would make them.

NSSTA regrets that it will not be able directly to offer proponent testimony in favor of Senate Bill 152. Please be assured, however, that NSSTA enthusiastically endorses enactment of Senate Bill 152 and wishes to be counted as one of its proponents. Please also make this letter part of the record on the Judiciary Committee’s consideration of the Bill.

If NSSTA can answer questions about Senate Bill 152 or provide background about structured settlements or SSPAs generally, please feel free to direct them to the undersigned or to NSSTA’s counsel, Craig Ulman of Hogan Lovells, who can be reached at (202) 637-5669 or by email at craig.ulman@hoganlovells.com.

Very truly yours



Eric Vaughn
Executive Director
National Structured Settlements Trade Association