

As Reported by the Senate Judiciary Committee

132nd General Assembly

Regular Session

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S. B. No. 152

Senator Dolan

Cosponsor: Senator Huffman

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;~~

(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 <u>includes</u> 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 <u>provide support,</u>	33
<u>including alimony.</u>	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, <u>as issued by the</u>	39
United States internal revenue service.	40
(E) <u>"Gross advance amount" means the sum payable to the</u>	41
<u>payee or for the payee's account as consideration for a transfer</u>	42
<u>of structured settlement payment rights before any reductions</u>	43
<u>for transfer expenses or other deductions to be made from such</u>	44
<u>consideration.</u>	45

~~(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:~~

~~(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.~~

~~(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.~~

~~(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.~~

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

~~(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.~~

~~(G)~~ ~~(H)~~ "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated

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

~~(L)~~ (M) "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)~~ (N) "Structured settlement agreement" means an 103

agreement, judgment, stipulation, or release that embodies the 104
terms of a structured settlement, including the rights of a 105
payee to receive periodic payments. 106

~~(N)~~(O) "Structured settlement obligor" means the party 107
that has the obligation to make continuing periodic payments to 108
the payee under a structured settlement agreement or a qualified 109
assignment agreement. 110

~~(O)~~(P) "Structured settlement payment rights" means the 111
rights under a structured settlement agreement to receive 112
periodic payments from a structured settlement obligor or an 113
annuity issuer if either of the following applies: 114

(1) The payee, ~~the structured settlement obligor, or the~~ 115
~~annuity issuer with respect to the structured settlement~~ 116
~~agreement~~ is a resident of this state. 117

(2) The structured settlement agreement was approved by a 118
court in this state. 119

~~(P)~~(Q) "Terms of a structured settlement" includes the 120
terms of a structured settlement agreement, ~~an insurance the~~ 121
annuity contract, a qualified assignment agreement, and any 122
order or approval by a court, ~~a responsible administrative~~ 123
~~authority~~, or other government authority authorizing or 124
approving the structured settlement. 125

~~(Q)~~(R) "Transfer" means a sale, assignment, pledge, 126
hypothecation, or any other form of alienation or encumbrance of 127
structured settlement payment rights made by a payee for 128
consideration. "Transfer" does not include the creation or 129
perfection of a security interest in structured settlement 130
payment rights under a blanket security agreement entered into 131
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)~~(S) "Transfer agreement" means an agreement that 137
provides for the transfer of structured settlement payment 138
rights from a payee to a transferee. 139

~~(S)~~(T) "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

(U) "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

<u>following:</u>	163
<u>(A) The transfer is in the best interest of the payee,</u>	164
<u>taking into account the welfare and support of the payee's</u>	165
<u>dependents.</u>	166
<u>(B) The payee has been advised in writing by the</u>	167
<u>transferee to seek independent professional advice regarding the</u>	168
<u>transfer and has either received that advice or knowingly waived</u>	169
<u>in writing the opportunity to seek and receive that advice.</u>	170
<u>(C) The transfer does not contravene any applicable</u>	171
<u>statute or order of any court or other government authority.</u>	172
Sec. 2323.582. Not less than ten days prior to the date on	173
which a payee becomes obligated under <u>signs</u> a transfer	174
agreement, the transferee shall provide to the payee a <u>separate</u>	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, <u>which shall be identified as</u>	183
<u>the "calculation of current value of the transferred structured</u>	184
<u>settlement payments under federal standards for valuing</u>	185
<u>annuities,"</u> and the amount of the applicable federal rate used	186
in determining the discounted present value;	187
(D) The gross <u>advance</u> 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	190

section;	191
(E) An itemized listing of all brokers' commissions,	192
service charges, application fees, processing fees, closing	193
costs, filing fees, administrative fees, legal fees, notary	194
fees, and other commissions, fees, costs, expenses, and charges	195
payable by the payee or deductible from the gross amount	196
otherwise payable to the payee as described in division (D) of	197
this section <u>applicable transfer expenses, other than attorneys'</u>	198
<u>fees and related disbursements payable in connection with the</u>	199
<u>transferee's application for approval of the transfer, and the</u>	200
<u>transferee's best estimate of the amount of any such fees and</u>	201
<u>disbursements;</u>	202
(F) The net <u>advance amount</u> payable to the payee after	203
deduction from the gross amount payable to the payee as	204
described in division (D) of this section of all commissions,	205
fees, costs, expenses, and charges described in division (E) of	206
this section;	207
(G) The quotient, expressed as a percentage, obtained by	208
dividing the net amount payable to the payee as described in	209
division (F) of this section by the discounted present value of	210
the payments described in division (C) of this section <u>effective</u>	211
<u>annual interest rate, which shall be disclosed as follows: "On</u>	212
<u>the basis of the net amount that you will receive from us and</u>	213
<u>the amounts and timing of the structured settlement payments</u>	214
<u>that you are transferring to us, you will, in effect, be paying</u>	215
<u>interest to us at a rate of per cent per year";</u>	216
(H) The <u>aggregate amount</u> of any penalty and the aggregate	217
amount of any <u>or</u> liquidated damages, including penalties,	218
payable by the payee in the event of any breach of the transfer	219
agreement by the payee;	220

(I) That the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee; 221
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(J) That the payee has the right to seek and receive independent professional advice regarding the proposed transfer and should consider doing so before agreeing to transfer any structured settlement payment rights. 225
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~~Sec. 2323.583. A court of competent jurisdiction may approve~~ Following a transfer of structured settlement payment rights only in a final order that is based on the express findings of the court, and the express findings shall include pursuant to sections 2323.58 to 2323.585 of the Revised Code, all of the following apply: 229
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~~(A) The transferee has provided to the payee a disclosure statement that complies with section 2323.582 of the Revised Code, and the payee has confirmed the payee's receipt of the disclosure statement, as evidenced by the payee's notarized signature on a copy of the disclosure statement~~ structured settlement obligor and the annuity issuer may rely on the court order approving the transfer in redirecting periodic payments to an assignee or transferee in accordance with the order approving the transfer and shall, as to all parties except the transferee or an assignee designated by the transferee, be discharged and released from any and all liability for the redirected payments. That discharge and release shall not be affected by the failure of any party to the transfer to comply with sections 2323.58 to 2323.585 of the Revised Code or with the court order approving the transfer. 235
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~~(B) (1) Except as provided in division (B) (2) of this~~ 250

~~section, the payee has established that the transfer is fair and 251
reasonable and in the best interests of the payee and the 252
payee's dependents. 253~~

~~(2) If, on the effective date of the transfer agreement, a 254
federal hardship standard exists, the payee has established that 255
the transfer meets that hardship standard. 256~~

~~(C) The payee has received independent professional advice 257
regarding the legal and other implications of the transfer. 258~~

~~(D) If the transferee shall be liable to the structured 259
settlement obligor and the annuity issuer, as follows: 260~~

~~(1) For any taxes incurred by the structured settlement 261
obligor or annuity issuer as a consequence of the transfer, if 262
the transfer contravenes the terms of the structured settlement 263
involved, all of the following have been complied with: 264~~

~~(1) Each dependent whom the payee is legally obligated to 265
support by court order or decree, in a written approval and 266
waiver, approves the transfer and waives the right to require 267
that the structured settlement payments be made to the payee in 268
accordance with the terms of the structured settlement.; 269~~

~~(2) Any court or responsible administrative authority that 270
previously approved the structured settlement, other than the 271
court from which the approval of the transfer is sought under 272
sections 2323.58 to 2323.585 of the Revised Code, has expressly 273
approved the transfer in writing. For any other liabilities or 274
costs, including reasonable costs and attorneys' fees, arising 275
from compliance by the structured settlement obligor or annuity 276
issuer with the court order approving the transfer or from the 277
failure of any party to the transfer to comply with sections 278
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 structured settlement agreement. ~~If the structured settlement~~ 300
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~~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;	339 340 341 342
(d) <u>The payee's name, age, and county of residence and the number and ages of each of the payee's dependents;</u>	343 344
(e) <u>A summary of both of the following:</u>	345
(i) <u>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, applications for approval of which were denied within the two years preceding the date of the transfer agreement;</u>	346 347 348 349 350 351 352
(ii) <u>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.</u>	353 354 355 356 357 358 359 360 361 362 363
(f) <u>Notification of the date, time, and place of the hearing on the application;</u>	364 365
(e) <u>(g) Notification that any interested party may</u>	366

support, oppose, or otherwise respond to the application, either 367
in person or by counsel, by submitting to the court a written 368
response containing the interested party's support of, 369
opposition to, or comments on the application or by 370
participating in the hearing; 371

~~(f)~~ (h) Notification of the manner of filing a written 372
response to the application and the time within which the 373
response is required to be filed, which time shall be not less 374
than fifteen days after the service of the transferee's notice, 375
in order for the court to consider it. 376

~~(3) Within fifteen days after receipt of the notice~~ 377
~~described in division (B) (2) of this section, any interested~~ 378
~~party who wishes to respond to the application shall file a~~ 379
~~written response with the court personally or by certified mail,~~ 380
~~return receipt requested.~~ 381

~~(4) At the conclusion of the hearing on an application~~ 382
~~under this section, the court may grant or deny the approval of~~ 383
~~the transfer. The court shall enter its order accordingly. If~~ 384
~~the court grants the approval of the transfer, it shall include~~ 385
~~in its order all of the express findings specified in section~~ 386
~~2323.583 of the Revised Code. If the court denies the approval~~ 387
~~of the transfer, it shall include in its order the reasons for~~ 388
~~the denial.~~ 389

~~(5) An order of the court made under division (B) (4) of~~ 390
~~this section is a final and appealable order.~~ 391

Sec. 2323.585. (A) No payee who proposes to make a 392
transfer of structured settlement payment rights shall incur any 393
penalty, forfeit any application fee or other payment, or 394
otherwise incur any liability to the proposed transferee or any 395

assignee based on a failure of the transfer to comply with any 396
of the requirements of sections 2323.581 to 2323.584 of the 397
Revised Code. 398

(B) No provision of this section or section 2323.581, 399
2323.582, 2323.583, or 2323.584 of the Revised Code may be 400
waived by any payee. 401

(C) No provision of this section or section 2323.581, 402
2323.582, 2323.583, or 2323.584 of the Revised Code authorizes 403
any transfer of structured settlement payment rights in 404
contravention of applicable law or ~~gives effect to~~ implies that 405
any transfer of structured settlement payment rights that is 406
void under any applicable law under a transfer agreement that 407
was entered into prior to the effective date of this amendment 408
is valid or invalid. 409

(D) Any transfer agreement entered into on or after the 410
effective date of this amendment by a payee who resides in this 411
state shall provide that disputes under the transfer agreement, 412
including any claim that the payee has breached the agreement, 413
are to be determined in and under the laws of this state. No 414
such transfer agreement shall authorize the transferee or any 415
other party to confess judgment or consent to entry of judgment 416
against the payee. 417

(E) No transfer of structured settlement payment rights 418
shall extend to any payments that are life-contingent unless, 419
prior to the date on which the payee signs the transfer 420
agreement, the transferee has established and has agreed to 421
maintain procedures reasonably satisfactory to the annuity 422
issuer and the structured settlement obligor for both of the 423
following: 424

<u>(1) Periodically confirming the payee's survival;</u>	425
<u>(2) Giving the annuity issuer and the structured</u>	426
<u>settlement obligor prompt written notice in the event of the</u>	427
<u>payee's death.</u>	428
<u>(F) If the payee cancels a transfer agreement, or if the</u>	429
<u>transfer agreement otherwise terminates, after an application</u>	430
<u>for approval of a transfer of structured settlement payment</u>	431
<u>rights has been filed and before it has been granted or denied,</u>	432
<u>the transferee shall promptly request dismissal of the</u>	433
<u>application.</u>	434
Sec. 2323.586. <u>The Compliance with section 2323.582 of the</u>	435
<u>Revised Code and the fulfillment of the conditions set forth in</u>	436
<u>section 2323.581 of the Revised Code shall be solely the</u>	437
<u>responsibility of the transferee in any transfer of structured</u>	438
<u>settlement payment rights, and neither the structured settlement</u>	439
<u>obligor and nor the annuity issuer under a transfer or transfer-</u>	440
<u>agreement are immune from shall bear any responsibility for, or</u>	441
<u>any liability based upon any claim by the payee, or any party,</u>	442
<u>other than a transferee, claiming through the payee, as to any</u>	443
<u>structured settlement payment rights or periodic payments that</u>	444
<u>are the subject of the transfer or transfer agreement arising</u>	445
<u>from, noncompliance with the requirements or failure to fulfill</u>	446
<u>the conditions.</u>	447
Sec. 2323.587. <u>A violation of or failure to comply with</u>	448
<u>section 2323.581, 2323.582, 2323.583, 2323.584, 2323.585, or</u>	449
<u>2323.586 of the Revised Code is an unfair or deceptive act or</u>	450
<u>practice in violation of section 1345.02 of the Revised Code.</u>	451
Section 2. <u>That existing sections 2323.58, 2323.581,</u>	452
<u>2323.582, 2323.583, 2323.584, 2323.585, 2323.586, and 2323.587</u>	453

of the Revised Code are hereby repealed. 454

Section 3. Sections 2323.58, 2323.581, 2323.582, 2323.583, 455
2323.584, 2323.585, 2323.586, and 2323.587 of the Revised Code, 456
as amended by this act, shall apply to a transfer of structured 457
settlement payment rights under any transfer agreement entered 458
into on or after the effective date of this act. 459