



Ohio General Assembly
House of Representatives
Columbus

Sponsor Testimony of Representative Jonathan Dever
Regarding House Bill 223
Before the House Civil Justice Committee
Wednesday, May 31, 2017

Chairman Butler, Vice Chair Hughes, Ranking Member Boggs, and members of the House Civil Justice Committee, thank you for allowing me to provide sponsor testimony on House Bill 223, which revises the Ohio Structured Settlement Protection Act.

House Bill 223 is companion legislation to Senate Bill 152. It incorporates portions of the Model Structured Settlement Protection Act, as enacted in 2016 by the National Conference of Insurance Legislators, by incorporating portions of the recently enacted NCOIL Model Structured Settlement Protection Act.

Current Ohio law, enacted in 2000, includes outdated and unnecessary provisions. Changes found in HB 223 to the Ohio Structured Settlement Protection Act include: these provisions, as proposed in House Bill 223 are as follow:

1. Removal of Dual Court Approval

Current Ohio law states, “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 transfer in writing.” (Lines 270-274).

This section is redundant and often times impossible to comply with, as it requires two separate courts or administrative authorities to approve the transfer. In many cases, payees are restricted by settlements that were approved in a court case that had closed years prior, or find additional challenges with settlements that had been approved in a different state. Ohio is the only state that includes this provision and many states don’t even have a set procedure to secure approval of a transfer in the original court that approved the settlement.

Ultimately, this provision restricts the payee and could put their final order transferring the payment at risk. It makes the process twice as expensive as it needs to be which increases the financial burden on the payee.

2. Eliminate Mandatory Independent Professional Advice

Current law requires payees proposing to transfer structured settlement payment rights to obtain independent professional advice. This is a time consuming and costly provision and is unnecessary to most adults who manage their own financial affairs. Instead, House Bill 223 would eliminate the independent professional advice provision and instead amend that the court that rules on the application for approval of a transfer of a structured settlement payment rights give the payee advise in writing to seek independent advice that the payee is able to waive in writing if he or she deems it unnecessary.

Should the judge feel concerned about the payee's understanding of the transaction, he or she is able to question the payee during the trial to ensure they grasp the full concept.

The judge may also hold the discretion to require independent professional advice on a case-by-case basis, should the circumstance warrant.

3. Adds Disclosure of Effective Annual Interest Rate

Currently, the disclosure statement provided to a payee is confusing and is not a frequently used calculation.

House Bill 223 would eliminate that requirement and instead instate a more familiar and easy to follow calculation by having the disclosure statement specify the *effective annual interest rate* implied in the transaction.

4. Requires In-person Hearing

In order to ensure that judges have an opportunity to assess the payee's understanding of the transfer, this provision would require courts to hold hearings on transfer applications. These hearings would ensure that the payee appear in person unless the court determines a cause in which the payee may be excused.

5. Clarifies Standard of Review

This provision exists in HB 223 solely to clarify the pre-existing language in order to conform to the "best interest" standard review of federal law. The new language requires that the transfer be in "the best interest of the payee, taking into account the welfare and support of the payee's dependents" which would replace the existing language to eliminate the requirement that "the transfer is fair and reasonable and in the best interests of the payee and the payee's dependents."

This change in language ensures that the best interest of the payee is not superseded by that of their dependents. The dependents interests are taken into consideration but cannot outweigh the interests of the payee.

6. Adds Disclosure of Prior Transfers and Attempted Transfers

This provision would be added to ensure that a judge has access to relevant information by requiring every applicant include a summary of prior transfers and proposed transfers of the same payee's payment rights, even if not completed.

7. Clarifies Impacts of and Liabilities for a Transfer

This provision clarifies the following rights and responsibilities of all parties involved in the original settlement and the transfer:

- Following a transfer of payment rights, the transferee is 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 transfer or from the failure of any party to the transfer to comply with" the statute.
- 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).
- 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"
- 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.

House Bill 223 will also maintain two provisions that are unique to Ohio and not a part of the NCOIL Model.

1. The bill maintains jurisdiction for the approval of transfers with the Probate Division of the Court of Common Pleas. The NCOIL Model and all other states place jurisdiction in the general division of the state trial court. Ohio's probate courts have a long history with these transactions which is why maintaining that jurisdiction in the Probate Division was found to be favorable.
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. This provision maintains consumer protection and is not found in the NCOIL Model.

Thank you Chairman Butler and members of the committee for allowing me to provide sponsor testimony on HB 223. I would be happy to answer any questions you may have at this time.