As Introduced

132nd General Assembly Regular Session 2017-2018

S. B. No. 152

Senator Dolan

A BILL

To amend sections 2323.58, 2323.581, 2323.582,	1
2323.583, 2323.584, 2323.585, 2323.586, and	2
2323.587 of the Revised Code relative to	3
transfers of structured settlement payment	4
rights.	5

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

Section 1. That sections 2323.58, 2323.581, 2323.582,	6
2323.583, 2323.584, 2323.585, 2323.586, and 2323.587 of the	7
Revised Code be amended to read as follows:	8
Sec. 2323.58. As used in this section and sections	9
2323.581 to 2323.587 of the Revised Code:	10
(A) "Annuity issuer" means an insurer that has issued an	11
insurance <u>a</u> contract that is used to fund periodic payments	12
under a structured settlement.	13
(B) - "Applicable law "Assignee" means any of the following,	14
as applicable in interpreting the terms of a party acquiring or	15
proposing to acquire structured settlement agreement:	16
(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" <u>means 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 p erson <u>for w</u> hom , 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
$rac{d}{d}$ 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 $_{m L}$ as issued by the	39
United States internal revenue service.	40
(E) <u>"Gross advance amount" means the sum payable to the</u>	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.	45
(F) "Independent professional advice" means the advice of	46

an attorney, a certified public accountant, an actuary, or any	47
other licensed professional adviser if all of the following	48
apply:	49
(1) The payee has engaged the services of the licensed	50
professional adviser to render advice concerning the legal and	51
other implications of a transfer of structured settlement	52
payment rights.	53
(2) The licensed professional adviser has signed a	54
statement to the effect that the licensed professional adviser	55
rendered advice to the payee concerning the legal and other-	56
implications of a transfer of structured settlement payment	57
rights.	58
(3) The licensed professional adviser is not affiliated in-	59
any manner with, referred by, or compensated in any manner by	60
the transferee of the structured settlement payment rights.	61
(4) The compensation of the licensed professional adviser	62
is not affected by whether or not a transfer of structured	63
settlement payment rights occurs.	64
(F) (G) "Interested party" includes the payee means, with	65
respect to a structured settlement, the payee, any beneficiary	66
irrevocably designated under the annuity contract to receive	67
payments following the payee's death, the annuity issuer, the	68
structured settlement $rac{agreement}{}$ obligor, and any other party <u>to</u>	69
the structured settlement that has continuing rights or	70
obligations to receive or make payments under the structured	71
settlement-agreement.	72
(G) (H) "Net advance amount" means the gross advance	73
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
$\frac{(K)}{(L)}$ "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 (Θ) (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: 114 115 (1) The payee, the structured settlement obligor, or the 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.	130
rights from a payee to a transferce.	100
(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.	150
	101
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

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(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 <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, 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 <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 applicable transfer expenses, other than attorneys'	198
fees and related disbursements payable in connection with the	199
transferee's application for approval of the transfer, and the	200
transferee's best estimate of the amount of any such fees and	201
<u>disbursements;</u>	202
(F) The net <u>advance</u> amount 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 effective	211
annual interest rate, which shall be disclosed as follows: "On	212
the basis of the net amount that you will receive from us and	213
the amounts and timing of the structured settlement payments	214
that you are transferring to us, you will, in effect, be paying	215
interest to us at a rate of per cent per year";	216
(H) The <u>aggregate</u> amount of any penalty and the aggregate	217
amount of any or 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	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 236 237 Code, and the payee has confirmed the payee's receipt of the 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 248 249 the transfer.

(B) (1) Except as provided in division (B) (2) of this 250 section, the payee has established that the transfer is fair and 251

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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
<u>2323.58 to 2323.585 of the Revised Code</u> .	279

(3) The transferee has provided to the court in which the 280

application for approval of the transfer was filed all of the	281
signed original copies of the approvals required under divisions	282
(D)(1) and (2) of this section.	283
(4) The transferee has furnished each interested party	284
copies of the approvals required under divisions (D)(1) and (2)	285
of this section.	286
(E) The transferee has given written notice of the	287
transferee's name, address, and taxpayer identification number-	288
to the annuity issuer and the structured settlement obligor and	289
has filed a copy of that notice with the court in which the	290
application for approval of the transfer was filed.	291
(F) The (C) Neither the annuity issuer nor the structured	292
settlement obligor may be required to divide any periodic	293
payment between the payee and any transferee or assignee or	294
between two or more transferees or assignees.	295
(D) Any further transfer of structured settlement payment	296
rights by the payee may be made only if the transfer complies	297
with all of the requirements of sections 2323.58 to 2323.585 of	298
the Revised Code and does not contravene any applicable law.	299
Sec. 2323.584. (A) A person_transferee_shall file an	300
application under sections 2323.58 to 2323.585 of the Revised	301
Code for the approval in advance of a transfer of structured	302
settlement payment rights in the probate division of the court	303
of common pleas of the county in which the payee resides, except	304
that if the structured settlement agreement was approved by a	305
court of common pleas or other Ohio state court, the application	306
shall be filed in the Ohio state court that approved the	307
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 <u>The</u> court	319
shall set a date and time for <u>hold</u> a <u>timely hearing</u> 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;

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(c) A copy of the disclosure statement provided by the 339 transferee pursuant to section 2323.582 of the Revised Code and 340 signed by the payee pursuant to division (A) of section 2323.583 341 342 of the Revised Code; (d) The payee's name, age, and county of residence and the 343 number and ages of each of the payee's dependents; 344 (e) A summary of both of the following: 345 346 (i) Any prior transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an 347 assignee, within the four years preceding the date of the 348 transfer agreement and any proposed transfers by the payee to 349 the transferee or an affiliate, or through the transferee or an 350 affiliate, applications for approval of which were denied within 351 the two years preceding the date of the transfer agreement; 352 (ii) Any prior transfers by the payee to any person or 353 entity other than the transferee or an affiliate, or an assignee 354 of the transferee or an affiliate, within the three years 355 preceding the date of the transfer agreement and any prior 356 proposed transfers by the payee to any person or entity other 357 358 than the transferee or an affiliate, or an assignee of a transferee or affiliate, applications for approval of which were 359 360 denied within the one year preceding the date of the current transfer agreement, to the extent that the transfers or proposed 361 transfers have been disclosed to the transferee by the payee in 362 writing or otherwise are actually known to the transferee. 363 (f) Notification of the date, time, and place of the 364 hearing on the application; 365 (c) (c) Notification that any interested party may 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 385 386 in its order all of the express findings specified in section 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 any395assignee based on a failure of the transfer to comply with any396

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. 417 418 (E) No transfer of structured settlement payment rights 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

(1) Periodically confirming the payee's survival;

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

Section 2. That existing sections 2323.58, 2323.581,4522323.582, 2323.583, 2323.584, 2323.585, 2323.586, and 2323.587453of 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