



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Am. H.B. 223*

132nd General Assembly
(As Reported by S. Judiciary)

Reps. Dever, Anielski, Antonio, Blessing, Boggs, Lepore-Hagan, Rogers, Sweeney

BILL SUMMARY

- Modifies the requirements for the transfer of structured settlement payment rights by a payee under a structured settlement which is an arrangement for periodic payment of damages for personal injuries or sickness established in a settlement or court judgment in resolution of a tort claim.
- Modifies and expands the contents of a disclosure statement that a transferee of structured settlement payment rights is required to provide to the payee prior to the date on which the payee signs a transfer agreement, including a payee's right to cancel the agreement within three business days after signing it.
- Revises the procedures in which a transferee of structured settlement payment rights must file an application in court for the approval in advance of a transfer of the payment rights and serve a notice of the proposed transfer and the application for approval on all interested parties.
- Expands the required contents of the above notice to include, among others, a summary regarding certain prior transfers and proposed transfers by the payee to the transferee or affiliate or to any person or entity other than the transferee or affiliate.
- Requires that an approval of the transfer in a final court order must be based on specified findings by the court.

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and legislative history may be incomplete.

- Eliminates the items that under current law must be included in the court's express findings.
- Specifies the effects of a transfer of structured settlement payment rights.
- Revises the immunities from liability granted to a payee, structured settlement obligor, and annuity issuer, and limits the prohibition against a waiver of the bill's provisions to a waiver by any payee.
- Modifies and expands the effects on transfer agreements entered into prior to or on or after the bill's effective date.
- Provides that transfers of structured settlement payment rights cannot extend to payments that are life-contingent, unless certain conditions are met.
- Provides that the bill applies to a transfer of structured settlement payment rights under any transfer agreement entered into on or after the bill's effective date.
- Allows a fiduciary to transfer fiduciary funds to the fiduciary's attorney for deposit in the attorney's interest on lawyer's trust account under certain circumstances.

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CONTENT AND OPERATION

Transfer of structured settlement payment rights

A "**structured settlement**" is an arrangement for periodic payment of damages for *personal injuries or sickness* (changed by the bill from injury to a person in current law), that is established by a settlement or a court judgment in resolution of a tort

claim.¹ "**Structured settlement payment rights**" are the rights under a "structured settlement agreement" to receive periodic payments from a "structured settlement obligor" or an "annuity issuer" if either of the following applies:²

- The "payee" is a resident of Ohio. Current law requires that the payee, the structured settlement obligor, or the annuity issuer be a resident of Ohio.
- The structured settlement agreement was approved by a court in Ohio.

Current law provides procedures for the transfer of structured settlement payment rights from a payee of those payments to a transferee. "**Transfer**" in current law, not changed by the bill, means a sale, assignment, pledge, hypothecation, or any other form of alienation or encumbrance of structured settlement payment rights made by a payee for consideration. However, the bill excludes from "**transfer**" the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to that institution, or an agent or successor in interest thereof, or otherwise to enforce the blanket security interest against the structured settlement payment rights.³

Transfer requirements

The bill modifies current law by providing that no direct or indirect transfer of structured settlement payment rights is effective, and no "structured settlement obligor" or "annuity issuer" can be required to make any payment directly or indirectly to a "transferee" or "assignee" (added by the bill) of structured settlement payment rights, unless the transfer has been approved in advance in a final order of a court of competent jurisdiction *based on express findings by the court of all of the following* (added by the bill) (see "**Definitions**" of terms in quotation marks):⁴

- The transfer is in the best interest of the "payee," taking into account the welfare and support of the payee's "dependents."
- The payee has been advised in writing by the transferee to seek "independent professional advice" regarding the transfer and has either

¹ R.C. 2323.58(L).

² R.C. 2323.58(O).

³ R.C. 2323.58(Q).

⁴ R.C. 2323.581.



received that advice or knowingly waived in writing the opportunity to seek and receive that advice.

- The transfer does not contravene any applicable statute or order of any court or other government authority.

Definitions

The bill retains, modifies, or enacts definitions of the following terms as used in this analysis:⁵

"Structured settlement obligor" in current law, unchanged by the bill, means the party obliged to make continuing "periodic payments" to the payee under a structured settlement agreement or a "qualified assignment agreement."

"Periodic payments" in current law, unchanged by the bill, includes both continuing monthly or other periodic payments and scheduled future lump-sum payments under a structured settlement.

"Qualified assignment agreement" means an agreement that provides for a qualified assignment, as defined in section 130 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 130(c), as amended (the bill removes "through an assignment of the liability under a structured settlement agreement to make periodic payments as damages, on account of personal injury or sickness").

"Annuity issuer" is redefined in the bill to mean an insurer that has issued a contract, instead of an insurance contract, that is used to fund periodic payments under a structured settlement.

"Transferee" in current law, essentially unchanged by the bill, is a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

"Assignee" is added by the bill and defined as a party acquiring or proposing to acquire structured settlement payment rights from a transferee of those rights.

"Payee" in current law means an individual who is receiving periodic payments under a structured settlement that are excludable from the individual's gross income under federal income taxation laws applicable to that individual and who proposes to make a transfer of the rights to receive those payments.

⁵ R.C. 2323.58.

"**Dependent**" under the bill includes a spouse or a minor child of a payee and any other person for whom the payee is legally obligated to provide support, including alimony. Current law defines "dependent" as meaning a spouse or a minor child of a payee or any other member of the family of a payee or other person whom, by law or by court order or decree, the payee is legally obligated to support.

"**Independent professional advice**" means the advice of an attorney, a certified public accountant, an actuary, or any other licensed professional adviser. The bill eliminates the following conditions all of which must apply under current law:

- 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.
- The licensed professional adviser has signed a statement to the effect that the adviser rendered advice to the payee concerning the legal and other implications of such a transfer.
- 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.
- The compensation of the licensed professional adviser is not affected by whether or not a transfer of structured settlement payment rights occurs.

Required disclosure by transferee

The bill modifies the current requirements for a transferee to provide a disclosure statement to the payee by providing that not less than ten days before the date on which a payee signs, instead of becomes obligated under, a transfer agreement, the transferee must provide to the payee a *separate* (added by the bill) disclosure statement, in boldface type of the minimum size of 14 points, setting forth all of the following ((1) and (2) below are existing law):⁶

(1) The amounts and due dates of the structured settlement payments that would be transferred under the transfer agreement;

(2) The aggregate amount of the payments described in (1) above;

(3) The "discounted present value" (defined below) of those payments, which must be identified as the "calculation of current value of the transferred structured

⁶ R.C. 2323.582.

settlement payments under federal standards for valuing annuities" (added by the bill) and the amount of the applicable federal rate used in determining the discounted present value. "**Discounted present value**" means the present value (the bill removes *fair* from present value) of future payments determined by discounting those payments to the present, using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the Internal Revenue Service.⁷

(4) The "gross advance amount" instead of gross amount payable to the payee in exchange for or as consideration for the transfer of the structured settlement payments in current law. The bill defines:

- "**Gross advance amount**" as the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for "transfer expenses" or other deductions to be made from such consideration.⁸
- "**Transfer expense**" means any expense of a transfer that is required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including but not limited to, court filing fees, attorneys' fees, escrow fees, lien recordation fees, judgment and lien search fees, finder's fees, commissions, and other payments to a broker or other intermediary. "**Transfer expense**" does not include pre-existing obligations of the payee payable for the payee's account from the proceeds of a transfer.⁹

(5) An itemized listing of all applicable "transfer expenses," other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements. Current law provides an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees, and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee (note that the bill defines the new term "transfer expense" above to include some of these items).

(6) The "net advance amount," instead of the net amount payable to the payee after deduction from the gross amount payable to the payee of all commissions, fees,

⁷ R.C. 2323.58(D).

⁸ R.C. 2323.58(E)

⁹ R.C. 2323.58(S).

costs, expenses, and charges described in current law in (5) above. The bill defines "**net advance amount**" as the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under the bill's provision described in (5) above.¹⁰

(7) The effective annual interest rate, which must be disclosed as follows: "On the basis of the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, you will, in effect, be paying interest to us at a rate of per cent per year." Current law provides the quotient, expressed as a percentage, obtained by dividing the net amount payable to the payee as described in current law in (6) above by the discounted present value of the payments described in current law in (3) above.

(8) The aggregate amount of any penalty or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee (same as in current law but restructured);

(9) 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;

(10) 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.

Application for court approval of transfer

Under the bill, a *transferee*, rather than a person, must file an application 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 must be filed in the Ohio state court that approved the agreement.¹¹ The bill eliminates the existing provision that, if the application is filed with the probate division, it may also be filed in the probate division of the court of common pleas of the county in which the structured settlement obligor or the annuity issuer resides.¹²

¹⁰ R.C. 2323.58(H).

¹¹ This provision essentially restructures the current provision, except for the bill's elimination of additional venues if the application is filed with the probate court.

¹² R.C. 2323.584(A).

The following procedures apply to an application for a transfer of structured settlement payment rights:¹³

(1) The court must hold a timely hearing on the application at which the payee must appear in person unless the court determines that good cause excuses the payee from appearing in person. Current law specifies that the court upon the filing of the application must set a date and time for a hearing.

(2) Not less than 20 days prior to the date set by the court for the hearing, the transferee must file with the court and serve a notice of the proposed transfer and the application for its approval in the manner provided in the civil rules for service of process on all "interested parties" (current law), including a parent or other guardian or authorized legal representative of any interested party who is not legally competent (added by the bill). The bill eliminates the specification of service of the notice on the court, any "responsible administrative authority" that previously approved the structured settlement, the annuity issuer, and the structured settlement obligor (note that the latter two entities are included in the definition of "interested party"). The bill removes from current law the use and definition of "**responsible administrative authority**" which means any government authority of another state vested by that state's law with the original exclusive jurisdiction over the "settled claim" resolved by a structured settlement.¹⁴ As a result of eliminating the definition of "responsible administrative authority" which refers to a settled claim, the bill also eliminates the current definition of "**settled claim**" which means the original tort claim resolved by a structured settlement."¹⁵ Under the bill, "**interested party**" means the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party to the structured settlement that has continuing rights or obligations to receive or make payments under the structured settlement. Under current law, "interested party" includes the payee, the annuity issuer, the structured settlement agreement obligor, and any other party that has continuing rights or obligations under the structured settlement agreement.¹⁶

¹³ R.C. 2323.584(B).

¹⁴ Repeal of current R.C. 2323.58(J).

¹⁵ Repeal of current R.C. 2323.58(K).

¹⁶ R.C. 2323.58(G).

Contents of notice

The bill adds the following to the information under current law that must be included in the notice described in (2) above:¹⁷

- The payee's name, age, and county of residence and the number and ages of each of the payee's dependents;
- A summary of both of the following:
 - 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 to an assignee, applications for approval of which were denied within the two years preceding the date of the transfer agreement;
 - Any prior transfers by the payee to any person or entity other than the transferee or an affiliate, or a transferee's or affiliate's assignee, 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 a transferee's or affiliate's assignee, 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.

Current law, retained by the bill for the most part, requires the following to be included in the above notice:¹⁸

- A copy of the application;
- A copy of the transfer agreement;
- A copy of the disclosure statement provided by the transferee;
- Notification of the date, time, and place of the hearing on the application;

¹⁷ R.C. 2323.584(B)(2)(d) and (e).

¹⁸ R.C. 2323.584(B)(2)(a), (b), (c), (f), (g), and (h) and (B)(3).

- Notification that any interested party may support, oppose, or otherwise respond to the application, in person or by counsel, by submitting to the court a written response containing the interested party's support of, opposition to, or comments on the application or by participating in the hearing.
- Notification of the manner of filing a written response to the application and the time within which the response is required to be filed, which time cannot be less than 15 days after service of the transferee's notice (added by the bill), in order for the court to consider it. The bill eliminates the current provision that any interested party who wishes to respond to the application must file, within 15 days after receipt of the notice, a written response with the court personally or by certified mail, return receipt requested.

Effects of transfer of structured settlement payment rights

Current law provides that a court of competent jurisdiction may approve a transfer of structured settlement payment rights only in a final order that is based on the court's express findings, and the express findings must include specified items. The bill eliminates these items as described below and the reference to them as the court's express findings (see "**Transfer requirements**" above regarding the court's express findings). The bill instead provides that following a transfer of structured settlement payment rights pursuant to current law as modified by the bill, all of the following apply:¹⁹

(1) The 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 and must, as to all parties except the transferee or an assignee designated by the transferee, be discharged and released from all liability for the redirected payments. That discharge and release is not affected by the failure of any party to the transfer to comply with the bill or the court order approving the transfer. The bill removes the provision that the transferee has provided to the payee a disclosure statement that complies with current law as described above in "**Required disclosure by transferee**," and the payee has confirmed its receipt as evidenced by the payee's notarized signature on a copy of the statement.

(2) The transferee is liable to the structured settlement obligor and the annuity issuer, as follows:

¹⁹ R.C. 2323.583.



- For any taxes incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer, if the transfer contravenes the "terms of the structured settlement." The current definition of "**terms of a structured settlement**" is modified by the bill to include the terms of a structured settlement agreement, the annuity contract, instead of an insurance contract, a qualified assignment agreement, and any order or approval by a court (the bill removes a responsible administrative authority) or other government authority authorizing or approving the structured settlement.²⁰
- For any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by the structured settlement obligor or annuity issuer with the court order approving the transfer or from the failure of any party to the transfer to comply with the bill.

(3) 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.

(4) Any further transfer of structured settlement payment rights by the payee may be made only if the transfer complies with all of the bill's requirements. Current law provides that the transfer complies with all of the requirements of current law and does not contravene any "applicable law." The bill removes the current definition of "**applicable law**," which means any of the following, as applicable in interpreting the terms of a structured settlement agreement: (a) the laws of the United States, (b) the laws of Ohio, including principles of equity, or (c) the laws of any other jurisdiction if any of the following applies: (i) those laws govern the structured settlement, (ii) a court or responsible administrative authority approved the agreement under those laws, or (iii) the transfer of payments is subject to those laws.²¹

The bill eliminates the following items that must be included in the court's express findings under current law (see the first paragraph above in this part):²²

(1) The payee has established that the transfer is fair and reasonable and in the best interests of the payee and the payee's dependents, but if, on the effective date of the transfer agreement, a federal hardship standard exists, the payee has established that the transfer meets that hardship standard.

²⁰ R.C. 2323.58(P).

²¹ Repeal of current R.C. 2323.58(B).

²² Repeal of current R.C. 2323.583(B), (C), (D), and (E).

(2) The payee has received independent professional advice regarding the legal and other implications of the transfer.

(3) If the transfer contravenes the terms of the structured settlement, all of the following have been complied with:

(a) Each dependent whom the payee is legally obligated to support by court order, in a written approval and waiver, approves the transfer and waives the right to require that the structured settlement payments be made to the payee in accordance with the terms of the structured settlement.

(b) 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.

(c) 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 described in (a) and (b) above.

(d) The transferee has furnished each interested party copies of the approvals described in (a) and (b) above.

(4) 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.

The bill also eliminates the provision under current law dealing with the court approval of a transfer of structured settlement payment rights that at the conclusion of the hearing on an application for approval of such a transfer, the court may grant or deny the approval of the transfer; that the court must enter its order accordingly; that if the court grants the approval of the transfer, it must include in its order all of the express findings specified in current law; that if the court denies the approval of the transfer, it must include in its order the reasons for the denial; and that such order of the court is a final and appealable order.²³

Immunities and waiver

The bill modifies current law by providing that no payee who proposes to make a transfer of structured settlement payment rights incurs any penalty, forfeits any application fee or other payment, or otherwise incurs any liability to the proposed

²³ Repeal of R.C. 2323.584(B)(4) and (5).

transferee or *any assignee* (added by the bill) based on a failure of the transfer to comply with the bill's requirements.²⁴

The bill provides that compliance with the provisions described above in "**Required disclosure by transferee**" and the fulfillment of the conditions described above in "**Transfer of structured settlement payment rights**" is solely the responsibility of the transferee in any transfer of structured settlement payment rights. Neither the structured settlement obligor nor the annuity issuer bears any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions. Current law provides that the structured settlement obligor and the annuity issuer are immune from liability based upon any claim by the payee, or any party, other than a transferee, claiming through the payee, as to any structured settlement payment rights or periodic payments that are the subject of the transfer or transfer agreement.²⁵

The bill limits existing law's prohibition against any waiver of the transfer of structured settlement payment rights law to a waiver by any payee.²⁶

Effect on transfer agreements entered into prior to or on or after effective date

The bill retains current law providing that no provision of the law as modified by the bill authorizes any transfer of structured settlement payment rights in contravention of applicable law.²⁷ The bill provides that no provision in the structured settlement portion of the bill implies that any transfer under a transfer agreement that was entered into prior to the bill's effective date is valid or invalid. Current law provides that no provision in the structured settlement law gives effect to any transfer of structured settlement payment rights that is void under applicable law.²⁸

Under the bill, any transfer agreement entered into on or after the bill's effective date by a payee who resides in Ohio must provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, are to be determined under Ohio law. No such transfer agreement may authorize the transferee

²⁴ R.C. 2323.585(A).

²⁵ R.C. 2323.586.

²⁶ R.C. 2323.585(B).

²⁷ Note that current law's definition of "applicable law" is eliminated by the bill.

²⁸ R.C. 2323.585(C).

or any other party to confess judgment or consent to entry of judgment against the payee.²⁹

Restrictions on transfers

The bill provides that no transfer of structured settlement payment rights can extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for both of the following:³⁰

- Periodically confirming the payee's survival;
- Giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

Cancellation or termination of transfer agreement

Under the bill, if the payee cancels a transfer agreement, or if the transfer agreement otherwise terminates, after an application for approval of a transfer of structured settlement payment rights has been filed and before it has been granted or denied, the transferee must promptly request dismissal of the application.³¹

Failure to comply with structured settlement provisions of the bill

The bill modifies current law by providing that a violation of or failure to comply (added by the bill) with any of its provisions pertaining to structured settlements is an unfair or deceptive act or practice under the Consumer Sales Practices Act.³²

Effectivity of structured settlement provisions

The bill applies its provisions to a transfer of structured settlement payment rights under any transfer agreement entered into on or after the act's effective date.³³

²⁹ R.C. 2323.585(D).

³⁰ R.C. 2323.585(E).

³¹ R.C. 2323.585(F).

³² R.C. 2323.587.

³³ Section 3.

Fiduciary funds in IOLTA accounts

The bill permits a fiduciary to transfer funds received by the fiduciary in the fiduciary's name as such fiduciary to the fiduciary's attorney for deposit in an interest on lawyer's trust account (IOLTA) maintained by the attorney. A fiduciary is only permitted to transfer such funds for deposit in an IOLTA if the probate court, upon petition by the fiduciary, has approved the deposit and the attorney, in consultation with the fiduciary, has determined that the funds are nominal in amount and will be held in the IOLTA for a short period of time.³⁴

HISTORY

ACTION	DATE
Introduced	05-16-17
Reported, H. Civil Justice	06-20-17
Passed House (94-0)	06-21-17
Reported, S. Judiciary	---

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³⁴ R.C. 2109.41(C).

