

AN ACT

To enact sections 2323.58, 2323.581, 2323.582, 2323.583, 2323.584, 2323.585, 2323.586, and 2323.587 of the Revised Code to require approval by a court of the transfer of payment rights of a payee under a structured settlement for periodic payments of damages in tort actions upon injury to person and to establish procedures for application for such approval by a transferee of those 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 enacted 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 contract that is used to fund periodic payments under a structured settlement.

(B) "Applicable law" means any of the following, AS APPLICABLE IN INTERPRETING THE TERMS OF A STRUCTURED SETTLEMENT AGREEMENT:

(1) The laws of the United States;

(2) The laws of this state, including principles of equity that are applied in the courts of this state;

(3) The laws of any other jurisdiction IF ANY OF THE FOLLOWING APPLIES:

(a) The laws of that other jurisdiction govern the structured settlement.

(b) A court or a responsible administrative authority approved The structured settlement agreement under the laws of that other jurisdiction.

(c) The transfer of payments under the structured settlement is subject to the laws of that other jurisdiction.

(C) "Dependent" means a spouse of a payee, 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.

(D) "Discounted present value" means the fair present value of the future payments under a structured settlement that is 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 United States internal revenue service.

(E) "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) "Interested party" includes the payee with respect to a structured settlement, the annuity issuer, the structured settlement agreement obligor, and any other party that has continuing rights or obligations under the structured settlement agreement.

(G) "Payee" means an individual who is receiving periodic payments under a structured settlement agreement 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 periodic payments.

(H) "Periodic payments" includes both continuing monthly or other periodic payments and scheduled future lump-sum payments under a structured settlement.

(I) "Qualified assignment agreement" means an agreement that provides for a qualified assignment, as defined in section 130 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 130(c), as amended, through an assignment of the liability under a structured settlement agreement to make periodic payments as damages, on account of personal injury or sickness.

(J) "Responsible administrative authority" means any government authority of another state vested by the law of that state with the original exclusive jurisdiction over the settled claim resolved by a structured settlement.

(K) "Settled claim" means the original tort claim resolved by a structured settlement.

(L) "Structured settlement" means an arrangement for periodic payments of damages for injury to a person that is established by a settlement or a court judgment in resolution of a tort claim.

(M) "Structured settlement agreement" means an agreement, judgment, stipulation, or release that embodies the terms of a structured settlement, including the rights of a payee to receive periodic payments.

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

(O) "Structured settlement payment rights" means 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:

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

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

(P) "Terms of a structured settlement" includes the terms of a structured settlement agreement, an insurance contract, a qualified assignment agreement, and any order or approval by a court, a responsible administrative authority, or other government authority authorizing or approving the structured settlement.

(Q) "Transfer" 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.

(R) "Transfer agreement" means an agreement that provides for the transfer of structured settlement payment rights from a payee to a transferee.

(S) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer of those rights.

Sec. 2323.581. No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to a transferee of structured settlement payment rights, unless the transferee has provided the payee and other interested parties with the disclosures

required by section 2323.582 of the Revised Code and the transfer has been approved in advance in a final order of a court of competent jurisdiction in accordance with sections 2323.583 and 2323.584 of the Revised Code.

Sec. 2323.582. Not less than ten days prior to the date on which a payee becomes obligated under a transfer agreement, the transferee shall provide to the payee a disclosure statement, in boldface type of the minimum size of fourteen points, setting forth all of the following:

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

(B) The aggregate amount of the payments described in division (A) of this section;

(C) The discounted present value of the payments described in division (A) of this section and the amount of the applicable federal rate used in determining the discounted present value;

(D) The gross amount payable to the payee in exchange for or as consideration for the transfer of the structured settlement payments described in division (A) of this section;

(E) 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 as described in division (D) of this section;

(F) The net amount payable to the payee after deduction from the gross amount payable to the payee as described in division (D) of this section of all commissions, fees, costs, expenses, and charges described in division (E) of this section;

(G) The quotient, expressed as a percentage, obtained by dividing the net amount payable to the payee as described in division (F) of this section by the discounted present value of the payments described in division (C) of this section;

(H) The amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of any breach of the transfer agreement by the payee.

Sec. 2323.583. A court of competent jurisdiction may approve 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 all of the following:

(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.

(B)(1) Except as provided in division (B)(2) of this section, the payee has established that the transfer is fair and reasonable and in the best interests of the payee and the payee's dependents.

(2) 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.

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

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

(1) Each dependent whom the payee is legally obligated to support by court order or decree, 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.

(2) 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 under sections 2323.58 to 2323.585 of the Revised Code, has expressly approved the transfer in writing.

(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.

(4) The transferee has furnished each interested party copies of the approvals required under divisions (D)(1) and (2) of this section.

(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.

(F) 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.

Sec. 2323.584. (A) A person 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 Ohio court that approved the structured settlement agreement. If the structured settlement agreement was not approved by an Ohio court, a person 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, the structured settlement obligor, or the annuity issuer resides.

(B) The following procedures shall apply to an application for the approval in advance by a court of a transfer of structured settlement payment rights under division (A) of this section:

(1) Upon the filing of the application, the court shall set a date and time for a hearing on the application and shall notify the transferee of the date, time, and place of the hearing.

(2) Not less than twenty days prior to the date set by the court for the hearing on an application filed pursuant to this section, the transferee shall file with the court and shall serve on the court or any responsible administrative authority that previously approved the structured settlement, on all interested parties, and on the annuity issuer and the structured settlement obligor, in the manner prescribed in the Rules of Civil Procedure for the service of process, a notice of the proposed transfer and the application for its approval in advance. The notice shall include all of the following:

(a) A copy of the application;

(b) A copy of the transfer agreement;

(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;

(d) Notification of the date, time, and place of the hearing on the application;

(e) Notification that any interested party may support, oppose, or otherwise respond to the application, either 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;

(f) Notification of the manner of filing a written response to the application and the time within which the response is required to be filed in order for the court to consider it.

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

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

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

Sec. 2323.585. (A) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on a failure of the transfer to comply with any of the requirements of sections 2323.581 to 2323.584 of the Revised Code.

(B) No provision of this section or section 2323.581, 2323.582, 2323.583, or 2323.584 of the Revised Code may be waived.

(C) No provision of this section or section 2323.581, 2323.582, 2323.583, or 2323.584 of the Revised Code authorizes any transfer of structured settlement payment rights in contravention of applicable law or gives effect to any transfer of structured settlement payment rights that is void under any applicable law.

Sec. 2323.586. The structured settlement obligor and the annuity issuer under a transfer or transfer agreement 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.

Sec. 2323.587. A violation of section 2323.581, 2323.582, 2323.583, 2323.584, 2323.585, or 2323.586 of the Revised Code is an unfair or deceptive act or practice in violation of section 1345.02 of the Revised Code.

SECTION 2. Sections 2323.58, 2323.581, 2323.582, 2323.583, 2323.584, 2323.585, 2323.586, and 2323.587 of the Revised Code, as enacted by this act, shall apply to a transfer of structured settlement payment rights under a transfer agreement entered into on or after the effective date of this act. As used in this section, "structured settlement payment rights," "transfer," and "transfer agreement" have the same meanings as in section 2323.58 of the Revised Code, as enacted by this act.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. S. B. No. 260

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____