Jennifer A. Parker *Legislative Service Commission*

S.B. 260

123rd General Assembly
(As Introduced)

Sens. Nein, Prentiss, Blessing, Hottinger, Cupp, Brady, DiDonato, Herington, White, Fingerhut

BILL SUMMARY

- Provides that a transfer of the payment rights of a payee under a structured settlement agreement, whereby an arrangement for periodic payments of damages for injury to a person was established in resolution of a tort claim, is *not* effective *unless*:

  --The transferee provides the payee and other interested parties with specified disclosures, and

  --The transfer is approved in advance by a court in a final order based on certain express findings.

- Establishes procedures regarding an application for such court approval.

CONTENT AND OPERATION

Effective transfer of payment rights

(secs. 2323.58(A), (F) to (I), (L), (N), (O), (Q), and (S) and 2323.581)

The bill specifies what must occur for a direct or indirect transfer of structured settlement payment rights to be effective. (For purposes of the bill, a "**structured settlement**" is 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. "**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 (1) the payee, the structured settlement obligor, or the annuity issuer is an Ohio resident, or (2) the structured settlement agreement was approved by a court in Ohio. A "**payee**" is 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. "**Periodic payments**" include both continuing monthly or other periodic payments and scheduled future lump sum payments under a structured settlement. A "**transfer**" is a sale, assignment, pledge, hypothecation, or any other form of alienation or encumbrance of structured settlement payment rights made by a payee for consideration.)

Under the bill, in order for such a transfer to be effective, *both* of the following must occur:

(1) The party acquiring or proposing to acquire the structured settlement payment rights (the "**transferee**") must provide the payee and other interested parties with the disclosures required by the bill. ("**Interested party**" includes the payee, any beneficiary who is designated in the insurance contract to receive payments following the death of 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.)

(2) The transfer is approved in advance in a final order of a court of competent jurisdiction in accordance with the bill.

Additionally, a structured settlement obligor or annuity issuer is *not* required to make any payment directly or indirectly to a transferee of structured settlement payment rights *unless* the transfer is effective pursuant to the bill. (A "**structured settlement obligor**" is the party that has the obligation to make continuing periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement. A "**qualified assignment agreement**" is an agreement that provides for a qualified assignment, as defined in the Internal Revenue Code, through an assignment of the liability under a structured settlement agreement to make periodic payments as damages, on account of personal injury or sickness. An "**annuity issuer**" is an insurer that has issued an insurance contract that is used to fund periodic payments under a structured settlement.)

Required disclosure

(secs. 2323.58(D) and 2323.582)

The bill requires the transferee, not less than ten days prior to the date on which a payee becomes obligated under a transfer agreement, to provide a disclosure statement to the payee. The disclosure statement must be in boldface type of the minimum size of 14 points, and must set forth all of the following:

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

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

(3) The discounted present value of the payments described in (1), above, and the amount of the applicable federal rate used in determining the discounted present value. ("**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 Internal Revenue Service.)

(4) The gross amount payable to the payee in exchange for or as consideration for the transfer of the structured settlement payments;

(5) 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;

(6) The net amount payable to the payee after deducting all commissions, fees, costs, expenses, and charges described in (5), above, from the gross amount payable to the payee;

(7) The quotient, expressed as a percentage, obtained by dividing the net amount payable to the payee by the discounted present value of the payments;

(8) 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.

Court approval

(secs. 2323.58(B), (C), (E), (J), (K), and (T), 2323.583, and 2323.584)

Under the bill, a person may file an application for the approval in advance of a transfer of structured settlement payment rights in either the court of common pleas of the county in which the payee, the structured settlement obligor, or the annuity issuer resides, or in the Ohio court that approved the structured settlement agreement.

Upon the filing of the application, the court must set a date and time for a hearing and notify the transferee of the date, time, and place of the hearing. The transferee, not less than 20 days prior to the hearing date, must file with the court and serve on the court or any "**responsible administrative authority**" (defined as

the government authority of another state vested with the original exclusive jurisdiction over the tort claim resolved by 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 service of process, a notice of the proposed transfer and the application for its approval in advance. The notice must include:

--A copy of the application and the transfer agreement;

--A copy of the disclosure statement provided by the transferee in accordance with the bill and signed by the payee;

--Notification of the date, time, and place of the hearing on the application;

--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;

--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.

Within 15 days after receipt of the notice, any interested party who wishes to respond to the application must file a written response with the court personally or by certified mail, return receipt requested.

At the conclusion of the hearing on an application, the court may grant or deny the approval of the transfer. If the court denies the approval, it must include in its order the reasons for the denial. If the court grants the approval, it must include in its order the following *express findings*:

(1) The transferee has provided to the payee a disclosure statement that complies with the bill (see above), 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 statement.

(2) The extraordinary and unanticipated needs of the payee or the payee's dependents render the transfer appropriate. ("**Extraordinary and unanticipated need**" means a financial need that if unsatisfied would have significant adverse impact on the health and welfare of the payee or the payee's dependents. "**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.)

(3) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer. ("**Independent professional advice**" means the advice of an attorney, a certified public accountant, an actuary, or any other licensed professional adviser if (a) the payee has engaged the services of the adviser to render advice concerning the legal, tax, and other financial implications of the transfer, (b) the adviser has signed a statement to the effect that the adviser rendered advice to the payee concerning those implications, (c) the adviser is not affiliated in any manner with, or compensated in any manner by, the transferee, *and* (d) the adviser's compensation is not affected by whether or not the transfer occurs.)

(4) If the transfer contravenes the terms of the structured settlement involved, all of the following have been complied with: (a) each dependent and each beneficiary, 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 settlement, (b) any court or government authority that previously approved the 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 was filed all of the signed original copies of the approvals required under (a) and (b), above, and (d) the transferee has furnished each interested party copies of the approvals required under (a) and (b), above.

(5) 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.

(6) The transfer complies with all of the requirements of the bill and does not contravene any applicable law. ("**Applicable law**" is defined as (a) the laws of the United States, (b) Ohio law, including principles of equity that are applied in the courts of this state, or (c) the laws of any other jurisdiction in which the payee or any other interested party resides or under which a court or a responsible administrative authority approved the settlement.)

An order of the court made in accordance with the bill is a final and appealable order.

Miscellaneous provisions

Liability of the payee

(sec. 2323.585(A))

Under the bill, a payee who proposes to make a transfer of structured settlement payment rights is not subject to any penalty, and cannot otherwise be held liable to the proposed transferee, on the basis that the transfer fails to comply with the bill.

Waiver of provisions

(sec. 2323.585(B))

The bill prohibits the waiver of any of its provisions.

Violations

(sec. 2323.586)

A violation of the bill is deemed an "unfair or deceptive act or practice" under the Consumer Sales Practices Act (Chapter 1345. of the Revised Code). This has the effect of subjecting the violator to civil penalties and remedies that are presently available to the Attorney General and the courts under sections 1345.05 to 1345.07 of the Revised Code. The Consumer Sales Practices Act also creates a private cause of action (sec. 1345.09).

Application and effect of the bill

(sec. 2323.585(C); Section 2)

The bill applies to a transfer of structured settlement payment rights under a transfer agreement entered into on or after the bill's effective date. It states that it does not authorize any transfer of structured settlement payment rights in contravention of applicable law or give effect to any transfer of such rights that is void under any applicable law.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-07-00	p. 1441

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