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Representative Dever

**Cosponsors: Representatives Anielski, Antonio, Blessing, Boggs, Lepore-Hagan,
Rogers, Sweeney**

Senators Coley, Eklund, Bacon

A BILL

To amend sections 2109.41, 2323.58, 2323.581, 1
2323.582, 2323.583, 2323.584, 2323.585, 2
2323.586, and 2323.587 of the Revised Code 3
relative to transfers of structured settlement 4
payment rights and relative to the placement of 5
fiduciary funds in interest on lawyer's trust 6
accounts. 7

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

Section 1. That sections 2109.41, 2323.58, 2323.581, 8
2323.582, 2323.583, 2323.584, 2323.585, 2323.586, and 2323.587 9
of the Revised Code be amended to read as follows: 10

Sec. 2109.41. (A) Immediately after appointment and 11
throughout the administration of a trust, but subject to section 12
2109.372 of the Revised Code and except as provided in division 13
(C) of this section, every fiduciary, pending payment of current 14
obligations of the fiduciary's trust, distribution, or 15
investment pursuant to law, shall deposit all funds received by 16
the fiduciary in the fiduciary's name as such fiduciary in one 17

or more depositaries. Each depositary shall be a bank, savings 18
bank, savings and loan association, or credit union located in 19
this state. A corporate fiduciary, authorized to receive 20
deposits of fiduciaries, may be the depository of funds held by 21
it as fiduciary. All deposits made pursuant to division (A) of 22
this section shall be in such class of account as will be most 23
advantageous to the trust, and each depositary shall pay 24
interest at the highest rate customarily paid to its patrons on 25
deposits in accounts of the same class. 26

(B) The placing of funds in such depositaries under the 27
joint control of the fiduciary and a surety on the bond of the 28
fiduciary shall not increase the liability of the fiduciary. 29

(C) A fiduciary may transfer funds received by the 30
fiduciary in the fiduciary's name as such fiduciary to the 31
fiduciary's attorney for deposit in an interest on lawyer's 32
trust account maintained by the attorney if both of the 33
following conditions are satisfied: 34

(1) The attorney, in consultation with the fiduciary, has 35
determined that the funds are nominal in amount and will be held 36
in the interest on lawyer's trust account for a short period of 37
time. 38

(2) The probate court, upon petition by the fiduciary, has 39
approved the deposit. 40

Sec. 2323.58. As used in this section and sections 41
2323.581 to 2323.587 of the Revised Code: 42

(A) "Annuity issuer" means an insurer that has issued ~~an~~ 43
~~insurance~~ a contract that is used to fund periodic payments 44
under a structured settlement. 45

(B) ~~"Applicable law~~ "Assignee" means ~~any of the following,~~ 46

~~as applicable in interpreting the terms of a party acquiring or 47
proposing to acquire structured settlement agreement: 48~~

~~(1) The laws of the United States; 49~~

~~(2) The laws of this state, including principles of equity 50
that are applied in the courts of this state; 51~~

~~(3) The laws of any other jurisdiction if any of the 52
following applies: 53~~

~~(a) The laws of that other jurisdiction govern the 54
structured settlement. 55~~

~~(b) A court or a responsible administrative authority 56
approved the structured settlement agreement under the laws of 57
that other jurisdiction. 58~~

~~(c) The transfer of payments under the structured 59
settlement is subject to the laws of that other jurisdiction 60
payment rights from a transferee of those rights. 61~~

~~(C) "Dependent" means includes a spouse of a payee, a 62
minor child of a payee, ~~or and~~ any other member of the family of 63
a payee or other person for whom, by law or by court order or 64
~~decree~~, the payee is legally obligated to provide support, 65
including alimony. 66~~

~~(D) "Discounted present value" means the fair-present 67
value of the future payments under a structured settlement that 68
is determined by discounting those payments to the present, 69
using the most recently published applicable federal rate for 70
determining the present value of an annuity, as issued by the 71
United States internal revenue service. 72~~

~~(E) "Gross advance amount" means the sum payable to the 73
payee or for the payee's account as consideration for a transfer 74~~

of structured settlement payment rights before any reductions 75
for transfer expenses or other deductions to be made from such 76
consideration. 77

(F) "Independent professional advice" means the advice of 78
an attorney, a certified public accountant, an actuary, or any 79
other licensed professional adviser ~~if all of the following~~ 80
~~apply:~~ 81

~~(1) The payee has engaged the services of the licensed~~ 82
~~professional adviser to render advice concerning the legal and~~ 83
~~other implications of a transfer of structured settlement~~ 84
~~payment rights.~~ 85

~~(2) The licensed professional adviser has signed a~~ 86
~~statement to the effect that the licensed professional adviser~~ 87
~~rendered advice to the payee concerning the legal and other~~ 88
~~implications of a transfer of structured settlement payment~~ 89
~~rights.~~ 90

~~(3) The licensed professional adviser is not affiliated in~~ 91
~~any manner with, referred by, or compensated in any manner by~~ 92
~~the transferee of the structured settlement payment rights.~~ 93

~~(4) The compensation of the licensed professional adviser~~ 94
~~is not affected by whether or not a transfer of structured~~ 95
~~settlement payment rights occurs.~~ 96

~~(F)~~ (G) "Interested party" ~~includes the payee means,~~ 97
with respect to a structured settlement, the payee, any beneficiary 98
irrevocably designated under the annuity contract to receive 99
payments following the payee's death, the annuity issuer, the 100
structured settlement ~~agreement~~ obligor, and any other party to 101
the structured settlement that has continuing rights or 102
obligations to receive or make payments under the structured 103

~~settlement agreement.~~ 104

~~(G)~~ (H) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under division (E) of section 2323.582 of the Revised Code. 105
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(I) "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. 109
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~~(H)~~ (J) "Periodic payments" includes both continuing monthly or other periodic payments and scheduled future lump-sum payments under a structured settlement. 115
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~~(I)~~ (K) "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.~~ 118
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~~(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. 125
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~~(K)~~ "Settled claim" means the original tort claim resolved by a structured settlement. 129
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(L) "Structured settlement" means an arrangement for periodic payments of damages for injury to a person personal 131
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injuries or sickness that is established by a settlement or a 133
court judgment in resolution of a tort claim. 134

(M) "Structured settlement agreement" means an agreement, 135
judgment, stipulation, or release that embodies the terms of a 136
structured settlement, including the rights of a payee to 137
receive periodic payments. 138

(N) "Structured settlement obligor" means the party that 139
has the obligation to make continuing periodic payments to the 140
payee under a structured settlement agreement or a qualified 141
assignment agreement. 142

(O) "Structured settlement payment rights" means the 143
rights under a structured settlement agreement to receive 144
periodic payments from a structured settlement obligor or an 145
annuity issuer if either of the following applies: 146

(1) ~~The payee, the structured settlement obligor, or the~~ 147
~~annuity issuer with respect to the structured settlement~~ 148
~~agreement~~ is a resident of this state. 149

(2) The structured settlement agreement was approved by a 150
court in this state. 151

(P) "Terms of a structured settlement" includes the terms 152
of a structured settlement agreement, ~~an insurance~~ the annuity 153
contract, a qualified assignment agreement, and any order or 154
approval by a court, ~~a responsible administrative authority,~~ or 155
other government authority authorizing or approving the 156
structured settlement. 157

(Q) "Transfer" means a sale, assignment, pledge, 158
hypothecation, or any other form of alienation or encumbrance of 159
structured settlement payment rights made by a payee for 160
consideration. "Transfer" does not include the creation or 161

perfection of a security interest in structured settlement 162
payment rights under a blanket security agreement entered into 163
with an insured depository institution, in the absence of any 164
action to redirect the structured settlement payments to that 165
institution, or an agent or successor in interest thereof, or 166
otherwise to enforce the blanket security interest against the 167
structured settlement payment rights. 168

(R) "Transfer agreement" means an agreement that provides 169
for the transfer of structured settlement payment rights from a 170
payee to a transferee. 171

(S) "Transfer expense" means any expense of a transfer 172
that is required under the transfer agreement to be paid by the 173
payee or deducted from the gross advance amount, including but 174
not limited to, court filing fees, attorneys' fees, escrow fees, 175
lien recordation fees, judgment and lien search fees, finder's 176
fees, commissions, and other payments to a broker or other 177
intermediary. "Transfer expense" does not include pre-existing 178
obligations of the payee payable for the payee's account from 179
the proceeds of a transfer. 180

(T) "Transferee" means a party acquiring or proposing to 181
acquire structured settlement payment rights through a transfer 182
of those rights. 183

Sec. 2323.581. No direct or indirect transfer of 184
structured settlement payment rights shall be effective, and no 185
structured settlement obligor or annuity issuer shall be 186
required to make any payment directly or indirectly to a 187
transferee or assignee of structured settlement payment rights, 188
unless the ~~transferee has provided the payee and other~~ 189
~~interested parties with the disclosures required by section~~ 190
~~2323.582 of the Revised Code and the transfer has been approved~~ 191

in advance in a final order of a court of competent jurisdiction 192
~~in accordance with sections 2323.583 and 2323.584 of the Revised~~ 193
~~Code~~ based on express findings by the court of all of the 194
following: 195

(A) The transfer is in the best interest of the payee, 196
taking into account the welfare and support of the payee's 197
dependents. 198

(B) The payee has been advised in writing by the 199
transferee to seek independent professional advice regarding the 200
transfer and has either received that advice or knowingly waived 201
in writing the opportunity to seek and receive that advice. 202

(C) The transfer does not contravene any applicable 203
statute or order of any court or other government authority. 204

Sec. 2323.582. Not less than ten days prior to the date on 205
which a payee ~~becomes obligated under~~ signs a transfer 206
agreement, the transferee shall provide to the payee a separate 207
disclosure statement, in boldface type of the minimum size of 208
fourteen points, setting forth all of the following: 209

(A) The amounts and due dates of the structured settlement 210
payments that would be transferred under the transfer agreement; 211

(B) The aggregate amount of the payments described in 212
division (A) of this section; 213

(C) The discounted present value of the payments described 214
in division (A) of this section, which shall be identified as 215
the "calculation of current value of the transferred structured 216
settlement payments under federal standards for valuing 217
annuities," and the amount of the applicable federal rate used 218
in determining the discounted present value; 219

(D) The gross advance amount ~~payable to the payee in~~ 220
~~exchange for or as consideration for the transfer of the~~ 221
~~structured settlement payments described in division (A) of this~~ 222
~~section;~~ 223

(E) An itemized listing of all ~~brokers' commissions,~~ 224
~~service charges, application fees, processing fees, closing~~ 225
~~costs, filing fees, administrative fees, legal fees, notary~~ 226
~~fees, and other commissions, fees, costs, expenses, and charges~~ 227
~~payable by the payee or deductible from the gross amount~~ 228
~~otherwise payable to the payee as described in division (D) of~~ 229
~~this section~~ applicable transfer expenses, other than attorneys' 230
fees and related disbursements payable in connection with the 231
transferee's application for approval of the transfer, and the 232
transferee's best estimate of the amount of any such fees and 233
disbursements; 234

(F) The net advance amount ~~payable to the payee after~~ 235
~~deduction from the gross amount payable to the payee as~~ 236
~~described in division (D) of this section of all commissions,~~ 237
~~fees, costs, expenses, and charges described in division (E) of~~ 238
~~this section;~~ 239

(G) The ~~quotient, expressed as a percentage, obtained by~~ 240
~~dividing the net amount payable to the payee as described in~~ 241
~~division (F) of this section by the discounted present value of~~ 242
~~the payments described in division (C) of this section~~ effective 243
annual interest rate, which shall be disclosed as follows: "On 244
the basis of the net amount that you will receive from us and 245
the amounts and timing of the structured settlement payments 246
that you are transferring to us, you will, in effect, be paying 247
interest to us at a rate of per cent per year"; 248

(H) The aggregate amount of any penalty ~~and the aggregate~~ 249

~~amount of any or liquidated damages, including penalties,~~ 250
payable by the payee in the event of any breach of the transfer 251
agreement by the payee; 252

(I) That the payee has the right to cancel the transfer 253
agreement, without penalty or further obligation, not later than 254
the third business day after the date the agreement is signed by 255
the payee; 256

(J) That the payee has the right to seek and receive 257
independent professional advice regarding the proposed transfer 258
and should consider doing so before agreeing to transfer any 259
structured settlement payment rights. 260

Sec. 2323.583. ~~A court of competent jurisdiction may~~ 261
~~approve~~ Following a transfer of structured settlement payment 262
rights only in a final order that is based on the express 263
~~findings of the court, and the express findings shall include~~ 264
pursuant to sections 2323.58 to 2323.585 of the Revised Code, 265
all of the following apply: 266

~~(A) The transferee has provided to the payee a disclosure~~ 267
~~statement that complies with section 2323.582 of the Revised~~ 268
~~Code, and the payee has confirmed the payee's receipt of the~~ 269
~~disclosure statement, as evidenced by the payee's notarized~~ 270
~~signature on a copy of the disclosure statement~~ structured 271
settlement obligor and the annuity issuer may rely on the court 272
order approving the transfer in redirecting periodic payments to 273
an assignee or transferee in accordance with the order approving 274
the transfer and shall, as to all parties except the transferee 275
or an assignee designated by the transferee, be discharged and 276
released from any and all liability for the redirected payments. 277
That discharge and release shall not be affected by the failure 278
of any party to the transfer to comply with sections 2323.58 to 279

<u>2323.585 of the Revised Code or with the court order approving</u>	280
<u>the transfer.</u>	281
(B) (1) Except as provided in division (B) (2) of this	282
section, the payee has established that the transfer is fair and	283
reasonable and in the best interests of the payee and the	284
payee's dependents.	285
(2) If, on the effective date of the transfer agreement, a	286
federal hardship standard exists, the payee has established that	287
the transfer meets that hardship standard.	288
(C) The payee has received independent professional advice	289
regarding the legal and other implications of the transfer.	290
(D) If <u>The transferee shall be liable to the structured</u>	291
<u>settlement obligor and the annuity issuer, as follows:</u>	292
<u>(1) For any taxes incurred by the structured settlement</u>	293
<u>obligor or annuity issuer as a consequence of the transfer, if</u>	294
<u>the transfer contravenes the terms of the structured settlement</u>	295
<u>involved, all of the following have been complied with:</u>	296
(1) Each dependent whom the payee is legally obligated to	297
support by court order or decree, in a written approval and	298
waiver, approves the transfer and waives the right to require	299
that the structured settlement payments be made to the payee in	300
accordance with the terms of the structured settlement.;	301
(2) Any court or responsible administrative authority that	302
previously approved the structured settlement, other than the	303
court from which the approval of the transfer is sought under	304
sections 2323.58 to 2323.585 of the Revised Code, has expressly	305
approved the transfer in writing <u>For any other liabilities or</u>	306
<u>costs, including reasonable costs and attorneys' fees, arising</u>	307
<u>from compliance by the structured settlement obligor or annuity</u>	308

issuer with the court order approving the transfer or from the 309
failure of any party to the transfer to comply with sections 310
2323.58 to 2323.585 of the Revised Code. 311

~~(3) The transferee has provided to the court in which the~~ 312
~~application for approval of the transfer was filed all of the~~ 313
~~signed original copies of the approvals required under divisions~~ 314
~~(D) (1) and (2) of this section.~~ 315

~~(4) The transferee has furnished each interested party~~ 316
~~copies of the approvals required under divisions (D) (1) and (2)~~ 317
~~of this section.~~ 318

~~(E) The transferee has given written notice of the~~ 319
~~transferee's name, address, and taxpayer identification number~~ 320
~~to the annuity issuer and the structured settlement obligor and~~ 321
~~has filed a copy of that notice with the court in which the~~ 322
~~application for approval of the transfer was filed.~~ 323

~~(F) The~~ (C) Neither the annuity issuer nor the structured 324
settlement obligor may be required to divide any periodic 325
payment between the payee and any transferee or assignee or 326
between two or more transferees or assignees. 327

(D) Any further transfer of structured settlement payment 328
rights by the payee may be made only if the transfer complies 329
with all of the requirements of sections 2323.58 to 2323.585 of 330
the Revised Code ~~and does not contravene any applicable law.~~ 331

Sec. 2323.584. (A) A ~~person~~ transferee shall file an 332
application under sections 2323.58 to 2323.585 of the Revised 333
Code for the approval in advance of a transfer of structured 334
settlement payment rights in the probate division of the court 335
of common pleas of the county in which the payee resides, except 336
that if the structured settlement agreement was approved by a 337

court of common pleas or other Ohio state court, the application 338
shall be filed in the Ohio state court that approved the 339
structured settlement agreement. ~~If the structured settlement~~ 340
~~agreement was not approved by an Ohio court, a person shall file~~ 341
~~an application under sections 2323.58 to 2323.585 of the Revised~~ 342
~~Code for the approval in advance of a transfer of structured~~ 343
~~settlement payment rights in the probate division of the court~~ 344
~~of common pleas of the county in which the payee, the structured~~ 345
~~settlement obligor, or the annuity issuer resides.~~ 346

(B) The following procedures shall apply to an application 347
for the approval in advance by a court of a transfer of 348
structured settlement payment rights under division (A) of this 349
section: 350

(1) ~~Upon the filing of the application, the~~ The court 351
~~shall set a date and time for hold a timely hearing on the~~ 352
~~application and shall notify the transferee of the date, time,~~ 353
~~and place of the hearing. The payee shall appear in person at~~ 354
the hearing unless the court determines that good cause exists 355
to excuse the payee from appearing in person. 356

(2) Not less than twenty days prior to the date set by the 357
court for the hearing on an application filed pursuant to this 358
section, the transferee shall file with the court and shall 359
~~serve on the court or any responsible administrative authority~~ 360
~~that previously approved the structured settlement, on all~~ 361
~~interested parties, and on the annuity issuer and the structured~~ 362
~~settlement obligor~~ including a parent or other guardian or 363
authorized legal representative of any interested party who is 364
not legally competent, in the manner prescribed in the Rules of 365
Civil Procedure for the service of process, a notice of the 366
proposed transfer and the application for its approval in 367

advance. The notice shall include all of the following: 368

(a) A copy of the application; 369

(b) A copy of the transfer agreement; 370

(c) A copy of the disclosure statement provided by the 371
transferee pursuant to section 2323.582 of the Revised Code ~~and~~ 372
~~signed by the payee pursuant to division (A) of section 2323.583~~ 373
~~of the Revised Code;~~ 374

(d) The payee's name, age, and county of residence and the 375
number and ages of each of the payee's dependents; 376

(e) A summary of both of the following: 377

(i) Any prior transfers by the payee to the transferee or 378
an affiliate, or through the transferee or an affiliate to an 379
assignee, within the four years preceding the date of the 380
transfer agreement and any proposed transfers by the payee to 381
the transferee or an affiliate, or through the transferee or an 382
affiliate to an assignee, applications for approval of which 383
were denied within the two years preceding the date of the 384
transfer agreement; 385

(ii) Any prior transfers by the payee to any person or 386
entity other than the transferee or an affiliate, or an assignee 387
of the transferee or an affiliate, within the three years 388
preceding the date of the transfer agreement and any prior 389
proposed transfers by the payee to any person or entity other 390
than the transferee or an affiliate, or an assignee of a 391
transferee or affiliate, applications for approval of which were 392
denied within the one year preceding the date of the current 393
transfer agreement, to the extent that the transfers or proposed 394
transfers have been disclosed to the transferee by the payee in 395
writing or otherwise are actually known to the transferee. 396

(f) Notification of the date, time, and place of the hearing on the application; 397
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~~(e)~~ (g) 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; 399
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~~(f)~~ (h) 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 shall be not less than fifteen days after the service of the transferee's notice, in order for the court to consider it. 405
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~~(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.~~ 410
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~~(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.~~ 415
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~~(5) An order of the court made under division (B) (4) of this section is a final and appealable order.~~ 423
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Sec. 2323.585. (A) No payee who proposes to make a 425

transfer of structured settlement payment rights shall incur any 426
penalty, forfeit any application fee or other payment, or 427
otherwise incur any liability to the proposed transferee or any 428
assignee based on a failure of the transfer to comply with any 429
of the requirements of sections 2323.581 to 2323.584 of the 430
Revised Code. 431

(B) No provision of this section or section 2323.581, 432
2323.582, 2323.583, or 2323.584 of the Revised Code may be 433
waived by any payee. 434

(C) No provision of this section or section 2323.581, 435
2323.582, 2323.583, or 2323.584 of the Revised Code authorizes 436
any transfer of structured settlement payment rights in 437
contravention of applicable law or ~~gives effect to~~ implies that 438
~~any transfer of structured settlement payment rights that is~~ 439
~~void under any applicable law~~ under a transfer agreement that 440
was entered into prior to the effective date of this amendment 441
is valid or invalid. 442

(D) Any transfer agreement entered into on or after the 443
effective date of this amendment by a payee who resides in this 444
state shall provide that disputes under the transfer agreement, 445
including any claim that the payee has breached the agreement, 446
are to be determined in and under the laws of this state. No 447
such transfer agreement shall authorize the transferee or any 448
other party to confess judgment or consent to entry of judgment 449
against the payee. 450

(E) No transfer of structured settlement payment rights 451
shall extend to any payments that are life-contingent unless, 452
prior to the date on which the payee signs the transfer 453
agreement, the transferee has established and has agreed to 454
maintain procedures reasonably satisfactory to the annuity 455

issuer and the structured settlement obligor for both of the 456
following: 457

(1) Periodically confirming the payee's survival; 458

(2) Giving the annuity issuer and the structured 459
settlement obligor prompt written notice in the event of the 460
payee's death. 461

(F) If the payee cancels a transfer agreement, or if the 462
transfer agreement otherwise terminates, after an application 463
for approval of a transfer of structured settlement payment 464
rights has been filed and before it has been granted or denied, 465
the transferee shall promptly request dismissal of the 466
application. 467

Sec. 2323.586. ~~The~~ Compliance with section 2323.582 of the 468
Revised Code and the fulfillment of the conditions set forth in 469
section 2323.581 of the Revised Code shall be solely the 470
responsibility of the transferee in any transfer of structured 471
settlement payment rights, and neither the structured settlement 472
obligor and nor the annuity issuer under a transfer or transfer 473
agreement are immune from shall bear any responsibility for, or 474
any liability based upon any claim by the payee, or any party, 475
other than a transferee, claiming through the payee, as to any 476
structured settlement payment rights or periodic payments that 477
are the subject of the transfer or transfer agreement arising 478
from, noncompliance with the requirements or failure to fulfill 479
the conditions. 480

Sec. 2323.587. A violation of or failure to comply with 481
section 2323.581, 2323.582, 2323.583, 2323.584, 2323.585, or 482
2323.586 of the Revised Code is an unfair or deceptive act or 483
practice in violation of section 1345.02 of the Revised Code. 484

Section 2. That existing sections 2109.41, 2323.58, 485
2323.581, 2323.582, 2323.583, 2323.584, 2323.585, 2323.586, and 486
2323.587 of the Revised Code are hereby repealed. 487

Section 3. Sections 2323.58, 2323.581, 2323.582, 2323.583, 488
2323.584, 2323.585, 2323.586, and 2323.587 of the Revised Code, 489
as amended by this act, shall apply to a transfer of structured 490
settlement payment rights under any transfer agreement entered 491
into on or after the effective date of this act. 492