

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 3636

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DATE	D-PG	OFFICIAL STATUS
03/02/2022	5180	Introduction and first reading Referred to Civil Law and Data Practices Policy
03/03/2022	5208	Author added Bigham
03/16/2022	5371	Chief author stricken, shown as co-author Mathews Chief author added Utke
03/28/2022	5634a	Comm report: To pass as amended and re-refer to Commerce and Consumer Protection Finance and Policy
03/29/2022		Comm report: To pass as amended and re-refer to Finance

- 1.1 A bill for an act
- 1.2 relating to civil law; amending process for and approval of transfer of structured
- 1.3 settlement payment rights; requiring structured settlement purchase companies to
- 1.4 register and provide a surety bond; requiring disclosures to payees; prohibiting
- 1.5 certain practices; authorizing enforcement of prohibited practices and judicial
- 1.6 sanctions; requiring judicial consideration of best interest factors; authorizing
- 1.7 appointment of attorney evaluator; amending Minnesota Statutes 2020, section
- 1.8 549.30, subdivisions 1, 5, 6, 7, 9, 13, 15, 17, by adding subdivisions; proposing
- 1.9 coding for new law in Minnesota Statutes, chapter 549; repealing Minnesota
- 1.10 Statutes 2020, sections 549.30, subdivision 3; 549.31; 549.32; 549.33; 549.34.
- 1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.12 Section 1. Minnesota Statutes 2020, section 549.30, subdivision 1, is amended to read:
- 1.13 Subdivision 1. **Application.** For purposes of sections 549.30 to ~~549.34~~ 549.41, the terms
- 1.14 defined in this section have the meanings given them.
- 1.15 Sec. 2. Minnesota Statutes 2020, section 549.30, is amended by adding a subdivision to
- 1.16 read:
- 1.17 Subd. 3a. **Assignee.** "Assignee" means a person acquiring or proposing to acquire
- 1.18 structured settlement payments from a structured settlement purchase company or transferee
- 1.19 after, or concurrently with, the transfer of the structured settlement payment rights by the
- 1.20 payee to the structured settlement purchase company or transferee.
- 1.21 Sec. 3. Minnesota Statutes 2020, section 549.30, is amended by adding a subdivision to
- 1.22 read:
- 1.23 Subd. 3b. **Commissioner.** "Commissioner" means the commissioner of commerce.

2.1 Sec. 4. Minnesota Statutes 2020, section 549.30, subdivision 5, is amended to read:

2.2 Subd. 5. **Discounted present value.** "Discounted present value" means, ~~with respect to~~
2.3 ~~a proposed transfer of structured settlement payment rights,~~ the fair present value of future
2.4 payments, as determined by discounting the payments to the present using the most recently
2.5 published applicable federal rate for determining the present value of an annuity, as issued
2.6 by the United States Internal Revenue Service.

2.7 Sec. 5. Minnesota Statutes 2020, section 549.30, is amended by adding a subdivision to
2.8 read:

2.9 Subd. 5a. **Gross advance amount.** "Gross advance amount" means the sum payable to
2.10 the payee or for the payee's account as consideration for a transfer of structured settlement
2.11 payment rights before any reductions for transfer expenses or other deductions to be made
2.12 from such consideration.

2.13 Sec. 6. Minnesota Statutes 2020, section 549.30, subdivision 6, is amended to read:

2.14 Subd. 6. **Independent professional advice.** "Independent professional advice" means
2.15 advice of an attorney, certified public accountant, actuary, or other licensed professional
2.16 adviser: ~~(1) who is engaged by a payee to render advice concerning the legal, tax, and~~
2.17 ~~financial implications of a transfer of structured settlement payment rights; (2) who is not~~
2.18 ~~in any manner affiliated with or compensated by the transferee of the transfer; and (3) whose~~
2.19 ~~compensation for providing the advice is not affected by whether a transfer occurs or does~~
2.20 ~~not occur.~~

2.21 Sec. 7. Minnesota Statutes 2020, section 549.30, subdivision 7, is amended to read:

2.22 Subd. 7. **Interested parties.** "Interested parties" means the payee, a beneficiary
2.23 irrevocably designated under the annuity contract to receive payments following the payee's
2.24 death or, if the designated beneficiary is a minor, the designated beneficiary's parent or
2.25 guardian, the annuity issuer, the structured settlement obligor, and any other party that has
2.26 continuing rights or obligations to receive or make payments under the structured settlement.

2.27 Sec. 8. Minnesota Statutes 2020, section 549.30, is amended by adding a subdivision to
2.28 read:

2.29 Subd. 7a. **Net advance amount.** "Net advance amount" means the gross advance amount,
2.30 less the aggregate amount of the actual and estimated transfer expenses.

3.1 Sec. 9. Minnesota Statutes 2020, section 549.30, is amended by adding a subdivision to
3.2 read:

3.3 Subd. 8a. **Periodic payments.** "Periodic payments" includes both recurring payments
3.4 and scheduled future lump-sum payments.

3.5 Sec. 10. Minnesota Statutes 2020, section 549.30, subdivision 9, is amended to read:

3.6 Subd. 9. **Qualified assignment agreement.** "Qualified assignment agreement" means
3.7 an agreement providing for a qualified assignment as provided by the United States Internal
3.8 Revenue Code, title 26, section 130, as amended ~~through December 31, 1998.~~

3.9 Sec. 11. Minnesota Statutes 2020, section 549.30, subdivision 13, is amended to read:

3.10 Subd. 13. **Structured settlement agreement.** "Structured settlement agreement" means
3.11 the agreement, judgment, stipulation, or release embodying the terms of a structured
3.12 settlement, ~~including the rights of the payee to receive periodic payments.~~

3.13 Sec. 12. Minnesota Statutes 2020, section 549.30, subdivision 15, is amended to read:

3.14 Subd. 15. **Structured settlement payment rights.** "Structured settlement payment
3.15 rights" means rights to receive periodic payments, ~~including lump-sum payments,~~ under a
3.16 structured settlement, whether from the settlement obligor or the annuity issuer, where: (1)
3.17 the payee or any other interested party is domiciled in the state; or (2) the structured
3.18 settlement agreement was approved by a court or responsible administrative authority in
3.19 the state; ~~or (3) the settled claim was pending before the courts of this state when the parties~~
3.20 ~~entered into the structured settlement agreement.~~

3.21 Sec. 13. Minnesota Statutes 2020, section 549.30, is amended by adding a subdivision to
3.22 read:

3.23 Subd. 15a. **Structured settlement purchase company.** "Structured settlement purchase
3.24 company" means a person that acts as a transferee in the state and who is registered with
3.25 the commissioner pursuant to section 549.35.

3.26 Sec. 14. Minnesota Statutes 2020, section 549.30, is amended by adding a subdivision to
3.27 read:

3.28 Subd. 15b. **Structured settlement transfer proceeding.** "Structured settlement transfer
3.29 proceeding" means a court proceeding filed by a structured settlement purchase company
3.30 seeking court approval of a transfer in accordance with sections 549.30 to 549.41.

4.1 Sec. 15. Minnesota Statutes 2020, section 549.30, subdivision 17, is amended to read:

4.2 Subd. 17. **Transfer.** "Transfer" means a sale, assignment, pledge, hypothecation, or
4.3 other form of alienation or encumbrance made by a payee for consideration. A transfer does
4.4 not include the creation or perfection of a security interest in structured settlement payment
4.5 rights under a blanket security agreement entered into with an insured depository institution,
4.6 in the absence of any action to redirect the structured settlement payments to such insured
4.7 depository institution, or an agent or successor in interest thereof, or otherwise to enforce
4.8 such blanket security interest against the structured settlement payment rights.

4.9 Sec. 16. Minnesota Statutes 2020, section 549.30, is amended by adding a subdivision to
4.10 read:

4.11 Subd. 18a. **Transfer expense.** "Transfer expense" means all expenses of a transfer that
4.12 are required under the transfer agreement to be paid by the payee or deducted from the gross
4.13 advance amount, including, without limitation, court filing fees, attorney fees, escrow fees,
4.14 lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other
4.15 payments to a broker or other intermediary. Transfer expense does not include preexisting
4.16 obligations of the payee payable for the payee's account from the proceeds of the transfer.

4.17 Sec. 17. Minnesota Statutes 2020, section 549.30, is amended by adding a subdivision to
4.18 read:

4.19 Subd. 18b. **Transfer order.** "Transfer order" means an order approving a transfer in
4.20 accordance with sections 549.30 to 549.41.

4.21 Sec. 18. **[549.35] REGISTRATION; SURETY BOND.**

4.22 Subdivision 1. **Registration required.** A person shall not act as a transferee, attempt to
4.23 acquire structured settlement payment rights through a transfer from a payee who resides
4.24 in this state, or file a structured settlement transfer proceeding unless the person is registered
4.25 with the commissioner to do business in this state as a structured settlement purchase
4.26 company.

4.27 Subd. 2. **Forms; process.** A person may apply pursuant to this section with the
4.28 commissioner of commerce for a registration to do business in this state as a structured
4.29 settlement purchase company. An application for an initial or renewed registration must be
4.30 submitted on a form prescribed by the commissioner. An initial or renewed registration is
4.31 valid for one year from the date it is issued, expires one year after it is issued, and may be
4.32 renewed annually by the registrant on or before the expiration date.

5.1 Subd. 3. **Application; surety bond.** (a) Each initial or renewal application must contain
5.2 a sworn certification by an owner; officer; director or manager of the applicant, if the
5.3 applicant is not a natural person; or by the applicant if the applicant is a natural person,
5.4 certifying that:

5.5 (1) the applicant has secured a surety bond payable to the state, has been issued a letter
5.6 of credit, or has posted a cash bond in the amount of \$50,000. The security device must be
5.7 in a form satisfactory to the commissioner and must run to the state for the benefit of any
5.8 payee claimant to secure the faithful performance of the obligation of the structured
5.9 settlement purchase company under the law; and

5.10 (2) the applicant shall comply with sections 549.30 to 549.41 when acting as a structured
5.11 settlement purchase company and filing structured settlement transfer proceedings.

5.12 (b) A surety bond, letter of credit, or cash bond obtained under this section must be
5.13 effective concurrently with the registration of the applicant and must remain in effect for
5.14 not less than three years after the expiration or termination of the registration. The surety
5.15 bond, letter of credit, or cash bond must be renewed each year as needed to keep it
5.16 continuously in effect when the registration of the applicant is renewed.

5.17 Subd. 4. **Postjudgment notice.** No later than ten days after a judgment is obtained
5.18 against a structured settlement purchase company by a payee, the structured settlement
5.19 purchase company shall file a notice with the commissioner and, if applicable, the surety
5.20 which issued the surety bond used by the structured settlement purchase company to satisfy
5.21 the requirements under subdivision 3. The notice must contain:

5.22 (1) a copy of the judgment;

5.23 (2) the name and address of the judgment creditor; and

5.24 (3) the status of the matter, including whether the judgment will be appealed or has been
5.25 paid or satisfied.

5.26 Subd. 5. **Effect on liability and transfer orders.** (a) The liability of the surety which
5.27 issued a surety bond used by a structured settlement purchase company to satisfy the
5.28 requirements under subdivision 3 must not be affected by a:

5.29 (1) breach of contract, breach of warranty, failure to pay a premium, or other act or
5.30 omission of the structured settlement purchase company; or

5.31 (2) insolvency or bankruptcy of the structured settlement purchase company.

6.1 (b) Except as otherwise provided in section 549.36, a transfer order signed by a court
6.2 of competent jurisdiction pursuant to section 549.40 constitutes a qualified order under
6.3 United States Code, title 26, section 5891. If a transferee to which the transfer order applies
6.4 is not registered as a structured settlement purchase company pursuant to this section at the
6.5 time the transfer order is signed, the transfer order does not constitute a qualified order
6.6 under United States Code, title 26, section 5891.

6.7 Subd. 6. **Cancellation or modification.** (a) A surety which issued a surety bond used
6.8 by a structured settlement purchase company to satisfy the requirements under subdivision
6.9 3 and the structured settlement purchase company which obtained the surety bond shall not
6.10 cancel or modify the surety bond during the term for which it is issued unless the surety or
6.11 the structured settlement purchase company provides written notice to the commissioner at
6.12 least 20 days before the effective date of the cancellation or modification.

6.13 (b) If a surety bond used by a structured settlement purchase company to satisfy the
6.14 requirements of subdivision 3 is modified so as to make the surety bond not comply with
6.15 any provision of sections 549.30 to 549.41, or the surety bond is canceled, the registration
6.16 of the structured settlement purchase company automatically expires on the effective date
6.17 of the modification or cancellation unless a new surety bond, letter of credit, or cash bond
6.18 which complies with sections 549.30 to 549.41, is filed with the commissioner on or before
6.19 the effective date of the modification or cancellation.

6.20 (c) A modification or cancellation of a surety bond used by a structured settlement
6.21 purchase company to satisfy the requirements of subdivision 3 does not affect any liability
6.22 of the bonded surety company incurred before the modification or cancellation of the surety
6.23 bond.

6.24 Subd. 7. **Exemptions.** (a) An assignee is not required to register as a structured settlement
6.25 purchase company to acquire structured settlement payment rights or to take security interest
6.26 in structured settlement payment rights that were transferred by the payee to a structured
6.27 settlement purchase company.

6.28 (b) An employee of a structured settlement purchase company, if acting on behalf of the
6.29 structured settlement purchase company in connection with a transfer, is not required to be
6.30 registered.

7.1 Sec. 19. **[549.36] PROHIBITED PRACTICES; PRIVATE RIGHT OF ACTION;**
7.2 **PENALTIES.**

7.3 Subdivision 1. Prohibited practices. A transferee or structured settlement purchase
7.4 company and an employee or other representative of a transferee or structured settlement
7.5 purchase company shall not engage in the following actions:

7.6 (1) pursue or complete a transfer with a payee without complying with all applicable
7.7 provisions of sections 549.30 to 549.41;

7.8 (2) refuse or fail to fund a transfer after court approval of the transfer;

7.9 (3) acquire structured settlement payment rights from a payee without complying with
7.10 all applicable provisions of sections 549.30 to 549.41, including obtaining court approval
7.11 of the transfer;

7.12 (4) intentionally file a structured settlement transfer proceeding in any court other than
7.13 the court specified in section 549.40, unless the transferee is required to file in a different
7.14 court by applicable law;

7.15 (5) except as otherwise provided in this clause, pay a commission or finder's fee to any
7.16 person for facilitating or arranging a structured settlement transfer with a payee. The
7.17 provisions of this clause do not prevent a structured settlement purchase company from
7.18 paying:

7.19 (i) a salary, commission, or other compensation to a person who is an employee of a
7.20 structured settlement purchase company; or

7.21 (ii) routine transfer expenses to third parties, including, without limitation, court filing
7.22 fees, escrow fees, lien recordation fees, judgment and lien search fees, attorney fees, and
7.23 other similar fees relating to a transfer;

7.24 (6) intentionally advertise materially false or misleading information regarding the
7.25 products or services of the transferee or structured settlement purchase company;

7.26 (7) attempt to coerce, bribe, or intimidate a payee seeking to transfer structured settlement
7.27 payment rights, including providing any gift, loan, extension of credit, advance, or other
7.28 forms of consideration paid to or given to the payee as an inducement to enter a transfer
7.29 agreement;

7.30 (8) attempt to defraud a payee or any party to a structured settlement transfer or any
7.31 interested party in a structured settlement transfer proceeding by means of forgery or false
7.32 identification;

8.1 (9) except as otherwise provided in this clause, intervene in a pending structured
8.2 settlement transfer proceeding if the transferee or structured settlement purchase company
8.3 is not a party to the proceeding or an interested party relative to the proposed transfer which
8.4 is the subject of the pending structured settlement transfer proceeding. The provisions of
8.5 this clause do not prevent a structured settlement purchase company from intervening in a
8.6 pending structured settlement transfer proceeding if the payee has signed a transfer agreement
8.7 with the structured settlement purchase company within 60 days before the filing of the
8.8 pending structured settlement transfer proceeding and the structured settlement purchase
8.9 company which filed the pending structured settlement transfer proceeding violated any
8.10 provision in sections 549.30 to 549.41 in connection with the proposed transfer that is the
8.11 subject of the pending structured settlement transfer proceeding;

8.12 (10) except as otherwise provided in this clause, knowingly contact a payee who has
8.13 signed a transfer agreement and is pursuing a proposed transfer with another structured
8.14 settlement purchase company for the purpose of inducing the payee into canceling the
8.15 proposed transfer or transfer agreement with the other structured settlement purchase
8.16 company if a structured settlement transfer proceeding has been filed by the other structured
8.17 settlement purchase company and is pending. The provisions of this clause do not apply if
8.18 no hearing has been held in the pending structured settlement transfer proceeding within
8.19 90 days after the filing of the pending structured settlement transfer proceeding;

8.20 (11) fail to dismiss a pending structured settlement transfer proceeding at the request of
8.21 the payee. A dismissal of a structured settlement proceeding after a structured settlement
8.22 purchase company has violated the provisions of this clause does not exempt the structured
8.23 settlement purchase company from any liability under this section;

8.24 (12) instruct a payee to hire or directly refer a payee to seek independent professional
8.25 advice from a specific person, except that a structured settlement purchase company may
8.26 refer a payee to a state or local referral service, bar association, legal aid, or any other entity
8.27 unrelated to the structured settlement purchase company which assists people with locating
8.28 independent professional advice;

8.29 (13) solicit a prospective payee through the conveyance of a document which resembles
8.30 a check or other form of payment;

8.31 (14) contact a payee in violation of section 609.79; or

8.32 (15) provide a transfer agreement or related document that purports to give the transferee
8.33 the first choice or option to purchase any remaining structured settlement payments rights
8.34 belonging to the payee which are not subject to the structured settlement transfer proceeding.

9.1 Subd. 2. **Enforcement; remedies.** (a) A violation of this section is a deceptive practice
9.2 in violation of section 325F.69.

9.3 (b) A payee may file a motion in the district court in which the structured settlement
9.4 transfer proceeding was pending alleging a violation of subdivision 1 and may pursue all
9.5 rights and remedies to which the payee may be entitled pursuant to sections 549.30 to 549.41,
9.6 or any other applicable law.

9.7 (c) A structured settlement purchase company may file a motion in district court in which
9.8 the structured settlement transfer proceeding was pending to enforce subdivision 1, clauses
9.9 (4), (7), and (9) to (11), and may pursue all remedies to which the structured settlement
9.10 purchase company may be entitled pursuant to sections 549.30 to 549.41, or any other
9.11 applicable law.

9.12 (d) If a court finds that a structured settlement purchase company or transferee is in
9.13 violation of subdivision 1, the court may:

9.14 (1) revoke the registration of the structured settlement purchase company;

9.15 (2) suspend the registration of the structured settlement purchase company for a period
9.16 to be determined at the discretion of the court; and

9.17 (3) enjoin the structured settlement purchase company or transferee from filing new
9.18 structured settlement transfer proceedings in this state or otherwise pursuing transfers in
9.19 this state.

9.20 **Sec. 20. [549.37] REQUIRED DISCLOSURES TO PAYEE.**

9.21 Not less than ten days before the date on which a payee signs a transfer agreement, the
9.22 transferee shall provide to the payee a separate disclosure statement, in bold type no smaller
9.23 than 14-point font, setting forth the following:

9.24 (1) the amounts and due dates of the structured settlement payments to be transferred;

9.25 (2) the aggregate amount of such payments;

9.26 (3) the discounted present value of the payments to be transferred, which must be
9.27 identified as the "calculation of current value of the transferred structured settlement payments
9.28 under federal standards for valuing annuities," and the amount of the applicable federal rate
9.29 used in calculating such discounted present value;

9.30 (4) the gross advance amount;

10.1 (5) an itemized list of all applicable transfer expenses, other than attorney fees and related
 10.2 disbursements, payable in connection with the transferee's application for approval of the
 10.3 transfer, and the transferee's best estimate of the amount of any such attorney fees and related
 10.4 disbursements;

10.5 (6) the effective annual interest rate, which must be disclosed in a statement in the
 10.6 following form: "On the basis of the net amount that you will receive from us and the
 10.7 amounts and timing of the structured settlement payments that you are transferring to us,
 10.8 you will, in effect be paying interest to us at a rate of percent per year.";

10.9 (7) the net advance amount;

10.10 (8) the amount of any penalties or liquidated damages payable by the payee in the event
 10.11 of any breach of the transfer agreement by the payee;

10.12 (9) that the payee has the right to cancel the transfer agreement, without penalty or further
 10.13 obligation, until the transfer is approved by the court;

10.14 (10) that the payee has the right to seek and receive independent professional advice
 10.15 regarding the proposed transfer and should consider doing so before agreeing to the transfer
 10.16 of any structured settlement payment rights; and

10.17 (11) that the payee has the right to seek out and consider additional offers for transferring
 10.18 the structured settlement payment rights and should do so.

10.19 **Sec. 21. [549.38] CONDITIONS AND APPROVAL OF TRANSFERS OF**
 10.20 **STRUCTURED SETTLEMENT PAYMENT RIGHTS AND STRUCTURED**
 10.21 **SETTLEMENT AGREEMENTS.**

10.22 (a) No direct or indirect transfer of structured settlement payment rights shall be effective
 10.23 and no structured settlement obligor or annuity issuer shall be required to make any payment
 10.24 directly or indirectly to any transferee or assignee of structured settlement payment rights
 10.25 unless the transfer has been approved in advance in a final court order based on express
 10.26 findings by the court that:

10.27 (1) the transfer is in the best interests of the payee, taking into account the welfare and
 10.28 support of the payee's dependents, if any;

10.29 (2) the payee has been advised in writing by the transferee to seek independent
 10.30 professional advice regarding the transfer and has either received advice or knowingly
 10.31 waived in writing the opportunity to seek and receive advice; and

11.1 (3) the transfer does not contravene any applicable statute or order of any court or other
 11.2 governmental authority.

11.3 (b) In determining whether a proposed transfer is in the best interests of the payee, taking
 11.4 into consideration the payee's dependents, if any, the court shall, among other things, consider
 11.5 the following:

11.6 (1) the reasonable preference of the payee, in light of the payee's age, mental capacity,
 11.7 maturity level, and stated purpose for the transfer;

11.8 (2) if the periodic payments were intended to cover future income loss or future medical
 11.9 expenses, whether the payee has means of support aside from the structured settlement to
 11.10 meet these obligations;

11.11 (3) whether the offered discount rate is in line with the market rate for similar transfers;

11.12 (4) whether the payee can meet the financial needs of, and obligations to, the payee's
 11.13 dependents if the transfer is allowed to proceed, including child support and spousal
 11.14 maintenance;

11.15 (5) whether the payee completed previous transactions involving the payee's structured
 11.16 settlement payment rights and the timing, size, stated purpose, and actual use of the proceeds;

11.17 (6) the impact of the proposed transfer on current or future eligibility of the payee or
 11.18 the payee's dependents for public benefits; and

11.19 (7) any other factors or facts the court determines are relevant and should be considered.

11.20 **Sec. 22. [549.39] EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT**
 11.21 **PAYMENT RIGHTS.**

11.22 Following a transfer of structured settlement payment rights:

11.23 (1) the structured settlement obligor and the annuity issuer may rely on the court order
 11.24 approving the transfer in redirecting periodic payments to an assignee or transferee in
 11.25 accordance with the order approving the transfer and shall, as to all parties except the
 11.26 transferee or an assignee designated by the transferee, be discharged and released from any
 11.27 and all liability for the redirected payments and such discharge and release shall not be
 11.28 affected by the failure of any party to the transfer to comply with this chapter or with the
 11.29 court order approving the transfer;

11.30 (2) the transferee is liable to the structured settlement obligor and the annuity issuer:

12.1 (i) if the transfer contravenes the terms of the structured settlement, for any taxes incurred
 12.2 by the structured settlement obligor or annuity issuer as a consequence of the transfer; and

12.3 (ii) for any other liabilities or costs, including reasonable costs and attorney fees, arising
 12.4 from compliance by the structured settlement obligor or annuity issuer with the court order
 12.5 or order of the responsible administrative authority approving the transfer or from the failure
 12.6 of any party to the transfer to comply with sections 549.30 to 549.41;

12.7 (3) neither the annuity issuer nor the structured settlement obligor may be required to
 12.8 divide any periodic payment between the payee and any transferee or assignee or between
 12.9 two or more transferees or assignees; and

12.10 (4) any further transfer of structured settlement payment rights by the payee may be
 12.11 made only after compliance with all of the requirements of sections 549.30 to 549.41.

12.12 Sec. 23. **[549.40] PROCEDURE FOR APPROVAL OF TRANSFERS.**

12.13 Subdivision 1. **Application; proof of registration.** An application under sections 549.30
 12.14 to 549.41 for approval of a transfer of structured settlement payment rights must be made
 12.15 by the transferee. The application must be brought in the district court of the county in which
 12.16 the payee is domiciled, except that the application may be brought in the court in the state
 12.17 that approved the structured settlement agreement if the structured settlement agreement
 12.18 requires the application be brought in that court. At the time an application is made under
 12.19 this section for the approval of a transfer of structured settlement payment rights, the
 12.20 application of the transferee must include evidence that the transferee is registered to do
 12.21 business in this state as a structured settlement purchase company pursuant to section 549.35.

12.22 Subd. 2. **Hearing.** A timely hearing must be held on an application for approval of a
 12.23 transfer of structured settlement payment rights. The payee must appear in person at the
 12.24 hearing, unless the court determines that good cause exists to excuse the payee from
 12.25 appearing in person.

12.26 Subd. 3. **Notice.** Not less than 20 days before the scheduled hearing on any application
 12.27 for approval of a transfer of structured settlement payment rights pursuant to sections 549.30
 12.28 to 549.41, the transferee shall file with the court and serve on all interested parties a notice
 12.29 of the proposed transfer and application for authorization, including with such notice:

12.30 (1) a copy of the transferee's application;

12.31 (2) a copy of the transfer agreement;

12.32 (3) a copy of the disclosure statement required by section 549.37;

13.1 (4) the payee's name, age, county of domicile, and the number and ages of each of the
 13.2 payee's dependents;

13.3 (5) a summary of:

13.4 (i) any prior transfers by the payee to the transferee or an affiliate, or through the
 13.5 transferee or an affiliate to an assignee, within the four years preceding the date of the
 13.6 transfer agreement and any proposed transfers by the payee to the transferee or an affiliate,
 13.7 or through the transferee or an affiliate, applications for approval of which were denied
 13.8 within the two years preceding the date of the transfer agreement; and

13.9 (ii) any prior transfers by the payee to any person or entity other than the transferee or
 13.10 an affiliate or an assignee of the transferee or an affiliate within the three years preceding
 13.11 the date of the transfer agreement and any prior proposed transfers by the payee to any
 13.12 person or entity other than the transferee or an affiliate or an assignee of a transferee or
 13.13 affiliate, applications for approval of which were denied within the one year preceding the
 13.14 date of the current transfer agreement, to the extent that the transfers or proposed transfers
 13.15 have been disclosed to the transferee by the payee in writing or otherwise are actually known
 13.16 to the transferee;

13.17 (6) notification that any interested party is entitled to support, oppose, or otherwise
 13.18 respond to the transferee's application, either in person or by counsel, by submitting written
 13.19 comments to the court or by participating in the hearing; and

13.20 (7) notification of the time and place of the hearing and notification of the manner in
 13.21 which and the date by which written responses to the application must be filed to be
 13.22 considered by the court, which must not be less than five days before the hearing.

13.23 Subd. 4. **Dismissal.** If the payee cancels a transfer agreement or if the transfer agreement
 13.24 otherwise terminates, after an application for approval of a transfer of structured settlement
 13.25 payment rights has been filed and before it has been granted or denied, the transferee must
 13.26 promptly request the dismissal of the application.

13.27 Sec. 24. [549.405] APPOINTMENT OF ATTORNEY.

13.28 Subdivision 1. **Discretionary appointment.** The court is authorized and may, in its
 13.29 discretion, appoint an attorney to make an independent assessment and advise the court
 13.30 whether the proposed transfer is in the best interest of the payee, taking into consideration
 13.31 the payee's dependents, if any. All costs and reasonable fees for the appointed attorney shall
 13.32 be borne by the transferee, not to exceed \$1,500.

14.1 Subd. 2. **Mandatory appointment.** The court shall appoint an attorney in any case
 14.2 involving:

14.3 (1) a proposed transfer of a minor's structured settlement payments rights by a parent
 14.4 or guardian where the attorney must advise the court on whether the proposed transfer is
 14.5 of direct benefit to the minor; or

14.6 (2) a proposed transfer of structured settlement payment rights involving a payee if it
 14.7 appears to the court that the payee may suffer from a mental or cognitive impairment.

14.8 Subd. 3. **Required motion; mental or cognitive impairment of payee.** (a) The transferee
 14.9 shall file a motion for the appointment of an attorney prior to a hearing on the proposed
 14.10 transfer if the transferee:

14.11 (1) is aware that the underlying structured settlement arose from a case in which a finding
 14.12 was made in a court record of a mental or cognitive impairment on the part of the payee;
 14.13 or

14.14 (2) is aware of any other case in which a finding was made in a court record of a mental
 14.15 or cognitive impairment on the part of the payee.

14.16 (b) In conjunction with the motion, the transferee shall provide to the court, either
 14.17 in-camera or as directed by the court in a way to protect the privacy of the payee, any such
 14.18 findings known to the transferee that describe the nature, extent, or consequences of the
 14.19 payee's mental or cognitive impairment.

14.20 Sec. 25. **[549.41] GENERAL PROVISIONS; CONSTRUCTION.**

14.21 Subdivision 1. **Waiver prohibited.** The provisions of sections 549.30 to 549.41 may
 14.22 not be waived by a payee.

14.23 Subd. 2. **Choice of law; venue.** Any transfer agreement entered into by a payee who is
 14.24 domiciled in this state must provide that dispute under the transfer agreement, including
 14.25 any claims that the payee has breached the agreement, and must be determined in and under
 14.26 the laws of this state. No such transfer agreement shall authorize the transferee or any other
 14.27 party to confess judgment or consent to entry of judgment against the payee.

14.28 Subd. 3. **Life-contingent payments.** No transfer of structured settlement payment rights
 14.29 shall extend to any payments that are life contingent unless, prior to the date on which the
 14.30 payee signs the transfer agreement, the transferee has established and has agreed to maintain
 14.31 procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor

15.1 (1) periodically confirms the payee's survival, and (2) gives the annuity issuer and the
15.2 structured settlement obligor prompt written notice in the event of the payee's death.

15.3 Subd. 4. **Liability.** (a) No payee who proposes to make a transfer of structured settlement
15.4 payment rights shall incur any penalty, forfeit any application fee or other payment, or
15.5 otherwise incur any liability to the proposed transferee or any assignee based on any failure
15.6 of such transfer to satisfy the conditions of sections 549.30 to 549.41.

15.7 (b) Compliance with the requirements set forth in sections 549.30 to 549.41 are solely
15.8 the responsibility of the transferee in any transfer of structured settlement payment rights
15.9 and neither the structured settlement obligor nor the annuity issuer, if any, has any
15.10 responsibility for, or any liability arising from, noncompliance with such requirements or
15.11 failure to fulfill such conditions.

15.12 Subd. 5. **Construction.** (a) Nothing contained in sections 549.30 to 549.41 shall be
15.13 construed to authorize the transfer of workers' compensation payment rights in contravention
15.14 of applicable law or to give effect to the transfer of workers' compensation payment rights
15.15 that is invalid under applicable law.

15.16 (b) Nothing contained in sections 549.30 to 549.41 shall:

15.17 (1) be construed to authorize any transfer of structured settlement payment rights in
15.18 contravention of any applicable law or to imply that any transfer under a transfer agreement
15.19 entered into before August 1, 2022, is valid or invalid; or

15.20 (2) affect the validity of any transfer of structured settlement payment rights, whether
15.21 under a transfer agreement entered into or filed before August 1, 2022, in which the structured
15.22 settlement obligor and annuity issuer waived or has not asserted their rights under terms of
15.23 the structured settlement prohibiting or restricting the sale, assignment, or encumbrance of
15.24 the structured settlement payment rights.

15.25 Subd. 6. **Application.** Sections 549.30 to 549.41 apply to any transfer of structured
15.26 settlement payment rights filed on or after August 1, 2022.

15.27 Sec. 26. **REPEALER.**

15.28 Minnesota Statutes 2020, sections 549.30, subdivision 3; 549.31; 549.32; 549.33; and
15.29 549.34, are repealed.

16.1 Sec. 27. **EFFECTIVE DATE.**

16.2 Sections 1 to 25 are effective August 1, 2022, and apply to transfers of structured
16.3 settlement payment rights filed on or after that date.

549.30 DEFINITIONS.

Subd. 3. **Applicable law.** "Applicable law" means: (1) the laws of the United States; (2) the laws of this state, including principles of equity applied in the courts of this state; and (3) the laws of any other jurisdiction: (i) which is the domicile of the payee or any other interested party; (ii) under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or (iii) in whose courts a settled claim was pending when the parties entered into a structured settlement agreement.

549.31 CONDITIONS TO TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS AND STRUCTURED SETTLEMENT AGREEMENTS.

Subdivision 1. **Generally.** No direct or indirect transfer of structured settlement payment rights is effective and no structured settlement obligor or annuity issuer is required to make a payment directly or indirectly to a transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or responsible administrative authority, based on the court's or responsible administrative authority's written express findings that:

(a) the transfer complies with the requirements of sections 549.31 to 549.34 and will not contravene other applicable law;

(b) not less than ten days before the date on which the payee first incurred an obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 points, specifying:

(1) the amounts and due dates of the structured settlement payments to be transferred;

(2) the aggregate amount of the payments;

(3) the discounted present value of the payments, together with the discount rate used in determining the discounted present value;

(4) the gross amount payable to the payee in exchange for the payments;

(5) an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, referral 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 deduction of all commissions, fees, costs, expenses, and charges described in clause (5);

(7) the quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments; and

(8) the amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of a breach of the transfer agreement by the payee;

(c) the payee has established that the transfer is in the best interests of the payee and the payee's dependents;

(d) the payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(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 the notice with the court or responsible administrative authority; and

(f) that the transfer agreement provides that any disputes between the parties will be governed, interpreted, construed, and enforced in accordance with the laws of this state and that the domicile state of the payee is the proper place of venue to bring any cause of action arising out of a breach of the agreement. The transfer agreement must also provide that the parties agree to the jurisdiction of any court of competent jurisdiction located in this state.

If the transfer would contravene the terms of the structured settlement, upon the filing of a written objection by any interested party and after considering the objection and any response to it, the court or responsible administrative authority may grant, deny, or impose conditions upon the proposed transfer as the court or responsible administrative authority deems just and proper under the facts and circumstances in accordance with established principles of law. Any order approving a transfer must require that the transferee indemnify the annuity issuer and the structured settlement

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obligor for any liability including reasonable costs and attorney fees arising from compliance by the issuer or obligor with the order of the court or responsible administrative authority.

Subd. 2. **Unenforceable confessions of judgment.** A provision in a transfer agreement giving a transferee power to confess judgment against a payee is unenforceable to the extent the amount of the judgment would exceed the amount paid by the transferee to the payee, less any payments received from the structured settlement obligor or the payee.

Subd. 3. **Initial disclosure of structured settlement terms.** In negotiating a structured settlement of claims brought by or on behalf of a claimant who is domiciled in this state, the structured settlement obligor shall disclose in writing to the claimant or the claimant's legal representative all of the following information that is not otherwise specified in the structured settlement agreement:

(1) the amounts and due dates of the periodic payments to be made under the structured settlement agreement. In the case of payments that will be subject to periodic percentage increases, the amounts of future payments may be disclosed by identifying the base payment amount, the amount and timing of scheduled increases, and the manner in which increases will be compounded;

(2) the amount of the premium payable to the annuity issuer;

(3) the discounted present value of all periodic payments that are not life-contingent, together with the discount rate used in determining the discounted present value;

(4) the nature and amount of any cost that may be deducted from any of the periodic payments;

(5) where applicable, that any transfer of the periodic payments is prohibited by the terms of the structured settlement and may otherwise be prohibited or restricted under applicable law; and

(6) that any transfer of the periodic payments by the claimant may subject the claimant to serious adverse tax consequences.

549.32 JURISDICTION; PROCEDURE FOR APPROVAL OF TRANSFERS.

Subdivision 1. **Jurisdiction.** The district court has nonexclusive jurisdiction over an application for authorization under section 549.31 of a transfer of structured settlement payment rights.

Subd. 2. **Notice.** Not less than 20 days before the scheduled hearing on an application for authorization of a transfer of structured settlement payment rights under section 549.31, the transferee shall file with the court or responsible administrative authority and serve on: any other government authority that previously approved the structured settlement; and all interested parties, a notice of the proposed transfer and the application for its authorization. The notice must include:

(1) a copy of the transferee's application to the court or responsible administrative authority;

(2) a copy of the transfer agreement;

(3) a copy of the disclosure statement required under section 549.31, subdivision 1, paragraph (b);

(4) notification that an interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing;

(5) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, in order to be considered by the court or responsible administrative authority. Written responses to the application must be filed within 15 days after service of the transferee's notice; and

(6) notification of the date and judicial district of any prior application for transfer filed by the transferee relating to a prior proposed transfer with the payee, including whether the prior application was granted or denied. If any prior application was granted, the notice shall provide the amount and due dates of any structured settlement payments that were transferred, the aggregate amount of the payments, the discounted present value of the payments, and the gross amount that was payable to the payee in exchange for the payments.

549.33 NO WAIVER; NO PENALTIES.

Subdivision 1. **No waiver.** The provisions of sections 549.30 to 549.34 may not be waived.

Subd. 2. **No penalty.** No payee who proposes to make a transfer of structured settlement payment rights shall incur a penalty, forfeit an application fee or other payment, or otherwise incur any

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liability to the proposed transferee based on the failure of the transfer to satisfy the conditions of section 549.31.

549.34 CONSTRUCTION.

Nothing contained in sections 549.30 to 549.34 may be construed to authorize the transfer of workers' compensation payment rights in contravention of applicable law or to give effect to the transfer of workers' compensation payment rights that is invalid under applicable law.