

S.F. No. 3636 – Transfer of structured settlement payment rights modified

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Overview

A structured settlement is an arrangement for periodic payments of damages to the injured party (“payee”) for personal injuries in a tort claim or a workers' compensation claim. Structured settlement payment rights may be sold and that process is called a “transfer.”

S.F. 3636 modifies requirements for the transfer of structured settlement payment rights, including:

- requiring a notice and hearing prior to court approval of the transfer;
- requiring the court to assess the fairness of the financial terms of the transfer;
- authorizing the court to appoint an independent attorney evaluator;
- requiring the transfer proceeding to be venued in the district court where the payee resides; and
- prohibiting the transferee from engaging in certain practices and authorizing the attorney general to enforce any resulting violations.

Summary

Section 1. [549.30, subd. 3] Applicable law. Removes the laws of another jurisdiction where any other interested party is domiciled from the definition of “applicable law.”

Section 2. [549.30, subd. 3a] Assignee. Provides a definition for “assignee.”

Section 3. [549.30, subd. 5a] Effective equivalent annual interest rate. Provides a definition for “effective equivalent annual interest rate.”

Section 4. [549.30, subd. 6] Independent professional advice. Adds financial adviser to the list of persons who may provide independent professional advice. Requires other professional advisers to

be licensed. Clarifies that the payee must not be directly or indirectly referred to the payee by the transferee.

Section 5. [549.30, subd. 15] Structured settlement payments rights. Makes a conforming change.

Section 6. [549.30, subd. 19] Transferee. Clarifies the definitions of transferee.

Section 7. [549.31] Conditions to transfers of structured settlement payment rights and structured settlement agreements.

[subd. 1] Generally. Requires a notice and hearing before the court approves a transfer. Requires the transferee to provide a notice to the attorney and any other professional representing the payee. Adds the following required disclosures to the notice required under current law: (1) verification that the total fees do not exceed two percent of the total compensation payable to the payee; (2) the annual interest rate; and (3) advice to the payee about seeking independent professional advice.

Requires the court to determine whether the financial terms of the proposed transfer are fair and reasonable. Provides a list of factors for the court to consider when making this determination and determining the best interests of the payee and the payee's dependents. Provides that a transfer agreement must not include a predispute arbitration requirement.

[subd. 1a] Appointment of evaluator. Permits the court to appoint an attorney to evaluate whether the financial terms of the proposed transfer agreement are fair and reasonable and in the best interests of the payee and the payee's dependents. Requires the transferee to pay for the cost of the evaluation.

[subd. 1b] Obligations of annuity issuers and structured settlement obligors; liability of transferees. Clarifies that the annuity issuer and structured settlement obligor may rely on the court order approving the transfer and discharges them from liability. Assigns liability to the transferee as to the obligor and annuity issuer.

[subd. 2] Unenforceable confessions of judgment. Makes a conforming change.

Section 8. [549.315] Discount rate. Requires the discount rate under the transfer agreement to be under the annual percentage rate of prime plus five percentage points and provides for how to calculate that amount.

Section 9. [549.32] Application; procedure for approval of transfers.

[subd. 1] Jurisdiction; venue. Requires an application for transfer of structured settlement payment rights to be venued in the district court in the county in which the payee resides. Requires the payee to appear in person unless the court determines good cause exists to excuse an in-person appearance.

[subd. 2] Notice. Clarifies that the notice must include the payee's name, age, and proof that the disclosure statement was provided to the payee and their advisors.

Section 10. [549.325] Prohibited practices.

[subd. 1] Prohibitions. Prohibits the transferee from representing the payee; intervening in a pending structured settlement transfer proceeding if the transferee is not an interested party; offering incentives to induce a transfer; communicating excessively with the payee; soliciting payees with documents resembling a check or other forms of payment; and soliciting payees who are minors or their guardians.

[subd. 2] Enforcement. Provides that a violation of this section is a deceptive trade practice, which are enforced under current law by the attorney general.

Section 11. [549.34] Construction. Provides that transfers do not apply to life contingent structured settlements unless the transferee establishes satisfactory procedures to periodically confirm the payee's survival and provide prompt notice of the payee's death to the annuity issuer and obligor.