

S.F. No. 3636 – Transfer of structured settlement payment rights modified (2nd engrossment)

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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.” The entity purchasing the payments rights is referred to as the “transferee.”

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

- Requiring a transferee to register as a structured settlement purchase company with the Secretary of State and obtain a surety bond, letter of credit, or post a cash bond of \$50,000;
- Prohibiting a transferee or structured settlement purchase company from engaging in certain practices;
- Authorizing enforcement of violations of prohibited practices;
- Requiring certain disclosures and notices to a payee and other interested parties;
- Requiring court approval of transfers, a hearing before the court, and the payee’s in-person appearance during the hearing;
- Requiring the court to consider certain factors when assessing the best interests of the payee;
- Permitting the court to an attorney evaluator to advise the court; and
- Requiring the transfer to be filed in the county where the payee resides.

Summary

Section 1. [549.30, subd. 1] Application. Makes a conforming change.

Section 2. [549.30, subd. 3a] Assignee. Defines “assignee.”

Section 3. [549.30, subd. 3b] Secretary. Defines “secretary.”

Section 4. [549.30, subd. 5] Discounted present value. Clarifies the definition of “discounted present value.”

Section 5. [549.30, subd. 5a] Gross advance amount. Defines “gross advance amount.”

Section 6. [549.30, subd. 6] Independent professional advice. Requires other professional advisers to be licensed. Removes language in current law requiring the advisor to be a disinterested party.

Section 7. [549.30, subd. 7]. Interested parties. Clarifies the definition of “interested parties.”

Section 8. [549.30, subd. 7a] Net advance amount. Defines “net advance amount.”

Section 9. [549.30, subd. 8a] Periodic payments. Defines “periodic payments.”

Section 10. [549.30, subd. 9] Qualified assignment agreement. Removes a specific date through which a federal law is referenced.

Section 11. [549.30, subd. 13] Structured settlement agreement. Clarifies the definition of “structured settlement agreement.”

Section 12. [549.30, subd. 15] Structured settlement payment rights. Clarifies the definition of “structured settlement payment rights.”

Section 13. [549.30, subd. 15a] Structured settlement purchase company. Defines “structured settlement purchase company.”

Section 14. [549.30, subd. 15b] Structured settlement transfer proceeding. Defines “structured settlement transfer proceeding.”

Section 15. [549.30, subd. 17]. Transfer. Provides that a “transfer” does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement with an insured depository institution as long as there is no action to redirect the payments to that institution.

Section 16. [549.30, subd. 18a] Transfer expense. Defines “transfer expense.”

Section 17. [549.30, subd. 18b] Transfer order. Defines “transfer order.”

Section 18. [549.35] Registration; surety bond.

[subd. 1] Registration required. Requires any person seeking to acquire structured settlement payments rights to register with the secretary of state as a structured settlement purchase company.

[subd. 2] Forms; process. Applicants for registration must use a form prescribed by the secretary. Registrations are valid for one year and may be renewed annually.

[subd. 3] Application; surety bond. Requires applicants to submit a sworn statement certifying that the applicant has secured a surety bond, has been issued a letter of credit, or posted a cash bond in the amount of \$50,000.

[subd. 4] Postjudgment notice. Requires a structured settlement purchase company to file a notice with the secretary within ten days following a judgment obtained against the company by a payee.

[subd. 5] Effect on liability and transfer orders. Provides that the liability of the surety issuing the surety bond is not affected by acts or omissions of the structured settlement purchase company or insolvency or bankruptcy of the structured settlement purchase company. Provides that if a non-registered settlement purchase company obtains a transfer order, that transfer order is not a qualified order under a federal law governing tax implications for the transfer of structured settlement payment rights.

[subd. 6] Cancellation or modification. Prohibits the surety issuing the surety bond from cancelling or modifying the surety bond during the term it was issued unless written notice is provided to the secretary 20 days before the effective date of the cancellation or modification. If a modification or cancellation results in noncompliance with the sections in this bill, the structured settlement purchase company's registration automatically expires unless a new surety bond, letter of credit, or cash bond is issued prior to the cancellation or modification.

[subd. 7] Exemptions. Exempts assignees and employees of a structured settlement purchase company from registration requirements.

[subd. 8] Fee. Requires an application fee to be paid to the secretary.

Section 19. [549.36] Prohibited practices; private right of action; penalties

[subd. 1] Prohibited practices. Prohibits a transferee, structured settlement purchase company, or their employees and other representatives from engaging in the following: refusing or failing to fund a transfer post court approval; acquiring payment rights without obtaining court approval; unless exempted, paying a commission or finder's fee to a person arranging for a transfer; intentionally advertising false or misleading information; attempting to bribe or intimidate a payee; attempting to defraud parties to the transfer; unless exempted, intervening in a pending transfer proceeding; unless exempted, knowingly contacting a payee who has signed a transfer agreement; failing to dismiss a pending transfer at the request of the payee; instructing a payee to hire a specific professional; soliciting a payee through a false check; and excessively contacting or harassing a payee.

[subd. 2] Enforcement; remedies. Provides that a violation of this section is a deceptive practice under section 325.69, thereby authorizing attorney general enforcement. Authorizes a payee or a structured settlement purchase company to bring a motion to enforce violations of any prohibited practice described in **subdivision 1**. Permits the court to revoke the company's registration, suspend registration for a certain period, and enjoin the company from filing for new transfers.

Section 20. [549.37] Required disclosures to payee. Requires transferees to provide the payee with a disclosure statement at least ten days before the payee signs the transfer agreement. The disclosure statement must include all financial terms related to the structured settlement payment amounts; the

interest rate; an itemized list of all transfer expenses; penalties or damages owed by the payee; the payee's right to cancel the agreement without penalty prior to court approval; the payee's right to seek independent professional advice; and the payee's right to seek out and consider additional offers.

Section 21. [549.38] Condition and approval of transfers of structured settlement payment rights and structured settlement agreements. Provides that no transfer is effective unless the transfer has been approved in advance by a court and the court finds that the transfer is in the best interests of the payee and the payee has been advised to seek independent professional advice. Provides a list of factors the court must consider when assessing the best interests of the payee, including the payee's age and mental capacity, the reasonable preference of the payee, and whether the discounted rate is in line with the market rate for similar transfers.

Section 22. [549.39] Effects of transfer of structured settlement payment rights. Provides that the obligor and annuity issuer may rely upon the court order approving the transfer to redirect payments to an assignee or transferee. Releases the obligor and annuity issuer from liability for redirection of payments. Provides that the transferee is liable to the obligor and annuity issuer.

Section 23. [549.40] Procedure for approval of transfers.

[subd. 1] Application; proof of registration. Requires the transferee to apply for a transfer with the district court where the payee is domiciled, unless otherwise required by the structured settlement agreement. The application must include proof of registration.

[subd. 2] Hearing. Requires the court to hold a timely hearing and requires the payee to appear in person, unless the court determines that good cause exists to excuse an in-person appearance.

[subd. 3] Notice. Requires the transferee to provide a notice of the proposed transfer and application to all interested parties at least 20 days before a hearing. The notice must include a copy of the application; a copy of the proposed transfer agreement; the disclosure statement to the payee; the payee's name, age, and county of domicile; information about the payee's dependents; summary of any prior transfers by the payee to the transferee within the last four years; summary of any transfer by the payee to other parties within the last three years; and notice to interested parties that they are entitled to respond to the transferee's application and participate in the hearing.

[subd. 4] Dismissal. Requires the transferee to request dismissal of the application if the payee cancels the agreement prior to court approval.

Section 24. [549.405] Appointment of attorney.

[subd. 1] Discretionary appointment. Permits the court to appoint an attorney to make an independent assessment and advise the court of whether the proposed transfer is in the best interests of the payee. Requires the transferee to pay for all costs and reasonable fees for the appointment attorney, not to exceed \$1,500.

[subd. 2] Mandatory appointment. Requires the court to appoint an attorney if the transfer involves a payee who is a minor or a payee who suffers from a mental or cognitive impairment.

[subd. 3] Required motion; mental or cognitive impairment of payee. Requires the transferee to file a motion for appointment of an attorney if the transferee is aware of the payee's mental or cognitive impairment.

Section 25. [549.41] General provisions; construction.

[subd. 1] Waiver prohibited. Prohibits the payee from waiving the requirements established in this bill.

[subd. 2] Choice of law; venue. Provides that all transfer agreements must require that disputes under the transfer agreement must be venued in Minnesota and adjudicated under Minnesota law.

[subd. 3] Life-contingent payments. Provides that a transfer of a life-contingent structured settlement is not prohibited unless the transferee established satisfactory procedures to periodically confirm the payee's survival and gives the annuity issuer and obligor prompt written notice in the event of the payee's death.

[subd. 4] Liability. Exempts a payee from any liability to a proposed transferee or assignee if the transfer fails to comply with the sections established in this bill.

[subd. 5] Construction. Provides that the sections established in this bill do not apply to transfer agreements entered into or filed before August 1, 2022.

[subd. 6] Application. Clarifies the sections established in this bill apply to transfer filed on or after August 1, 2022.

Section 26. Repealer. Repeals sections governing the current law on transfers of structured settlement payment rights.

Section 27. Effective date. This bill is effective August 1, 2022 and applies to transfers of structured settlement payments rights filed on or after that date.