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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3768

- 02/24/2022 Authored by Koegel and Moller
- The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law
- 03/17/2022 Adoption of Report: Re-referred to the Committee on Commerce Finance and Policy
- 03/28/2022 Adoption of Report: Placed on the General Register
- Read for the Second Time
- 04/26/2022 By motion, re-referred to the Committee on Ways and Means

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; providing for enforcement of violations of prohibited practices;

1.4 amending Minnesota Statutes 2020, sections 549.30, subdivisions 3, 6, 15, 19, by

1.5 adding subdivisions; 549.31; 549.32; 549.34; proposing coding for new law in

1.6 Minnesota Statutes, chapter 549.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2020, section 549.30, subdivision 3, is amended to read:

1.9 Subd. 3. **Applicable law.** "Applicable law" means: (1) the laws of the United States; (2)

1.10 the laws of this state, including principles of equity applied in the courts of this state; and

1.11 (3) the laws of any other jurisdiction: (i) which is the domicile of the payee ~~or any other~~

1.12 ~~interested party~~; (ii) under whose laws a structured settlement agreement was approved by

1.13 a court or responsible administrative authority; or (iii) in whose courts a settled claim was

1.14 pending when the parties entered into a structured settlement agreement.

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 payment rights from a transferee.

1.19 Sec. 3. Minnesota Statutes 2020, section 549.30, is amended by adding a subdivision to

1.20 read:

1.21 Subd. 5a. **Effective equivalent annual interest rate.** "Effective equivalent annual

1.22 interest rate" means the annualized rate of interest on the net advance amount, calculated

2.1 by treating the transferred settlement payments as if they were installment payments on a
 2.2 loan, with each payment applied first to the accrued unpaid interest and then to the principal.

2.3 Sec. 4. Minnesota Statutes 2020, section 549.30, subdivision 6, is amended to read:

2.4 Subd. 6. **Independent professional advice.** "Independent professional advice" means
 2.5 advice of an attorney, certified public accountant, actuary, financial adviser, or other licensed
 2.6 professional adviser: (1) who is engaged by a payee to render advice concerning the legal,
 2.7 tax, and financial implications of a transfer of structured settlement payment rights; (2) to
 2.8 whom the payee is not referred directly or indirectly and who is not in any manner affiliated
 2.9 with or compensated by the transferee of the transfer; and (3) whose compensation for
 2.10 providing the advice is not affected by whether a transfer occurs or does not occur.

2.11 Sec. 5. Minnesota Statutes 2020, section 549.30, subdivision 15, is amended to read:

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

2.19 Sec. 6. Minnesota Statutes 2020, section 549.30, subdivision 19, is amended to read:

2.20 Subd. 19. **Transferee.** "Transferee" means a person ~~who is receiving or will receive~~
 2.21 acquiring or proposing to acquire structured settlement payment rights ~~resulting from a~~
 2.22 ~~transfer.~~

2.23 Sec. 7. Minnesota Statutes 2020, section 549.31, is amended to read:

2.24 **549.31 CONDITIONS TO TRANSFERS OF STRUCTURED SETTLEMENT**
 2.25 **PAYMENT RIGHTS AND STRUCTURED SETTLEMENT AGREEMENTS.**

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

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

3.3 (b) not less than ten days before the date on which the payee first incurred an obligation
3.4 with respect to the transfer, the transferee has provided to the payee, an attorney representing
3.5 the payee or advising the payee, or any other professional known to be advising the payee
3.6 a disclosure statement in bold type, no smaller than 14 points, specifying:

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

3.8 (2) the aggregate amount of the payments;

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

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

3.12 (5) an itemized listing of all brokers' commissions, service charges, application fees,
3.13 processing fees, closing costs, filing fees, referral fees, administrative fees, legal fees, notary
3.14 fees, and other commissions, fees, costs, expenses, and any other charges payable by the
3.15 payee or deductible from the gross amount otherwise payable to the payee and verification
3.16 that the total fees and charges do not exceed two percent of the total compensation payable
3.17 to the payee;

3.18 (6) the net amount payable to the payee after deduction of all commissions, fees, costs,
3.19 expenses, and charges described in clause (5);

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

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

3.25 (9) the effective equivalent annual interest rate, disclosed in the following form: "Based
3.26 on the net amount that you will receive from us and the amounts and timing of the structured
3.27 settlement payments you are transferring to us, in effect you will be paying us at an interest
3.28 rate of % per year"; and

3.29 (10) that the payee is advised to obtain independent professional advice about the transfer,
3.30 disclosed in the following form: "Before agreeing to sell any of your payment rights, you
3.31 should seek guidance from an attorney, accountant, actuary, financial adviser, or tax or
3.32 other licensed professional adviser who is not associated with the buyer. It is illegal for the

4.1 buyer to refer you to anyone for this advice and for anyone associated with or paid for by
4.2 the buyer to give you advice.";

4.3 (c) based on the files, records, disclosures, and evidence presented at the hearing, the
4.4 payee court has established that the financial terms of the proposed transfer are fair and
4.5 reasonable and the proposed transfer is in the best interests of the payee and the payee's
4.6 dependents; after considering:

4.7 (1) the payee's age, legal knowledge, and apparent maturity level, and any other relevant
4.8 factors and the stated purpose of the transfer;

4.9 (2) whether the payee has the capacity to fully understand the financial terms and
4.10 implications of the transfer agreement;

4.11 (3) whether the payee is employed or employable;

4.12 (4) the ability of the payee to meet ongoing and known future living expenses, including
4.13 medical expenses, and the current and future financial obligations of the payee and the
4.14 payee's dependents, including child support and spousal maintenance;

4.15 (5) whether the payee completed previous transactions involving the payee's structured
4.16 settlement payments, and the timing, size, stated purpose, and actual use of the proceeds;

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

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

4.20 (d) the payee has or has not received independent professional advice regarding the
4.21 legal, tax, and financial implications of the transfer;

4.22 (e) the transferee has given written notice of the transferee's name, address, and taxpayer
4.23 identification number to the annuity issuer and the structured settlement obligor and has
4.24 filed a copy of the notice with the court or responsible administrative authority; and

4.25 (f) that the transfer agreement provides that any disputes between the parties will be
4.26 governed, interpreted, construed, and enforced in accordance with the laws of this state and
4.27 that the domicile state of the payee is the proper place of venue to bring any cause of action
4.28 in district court arising out of a breach of the agreement. The transfer agreement must also
4.29 provide that the parties agree to the jurisdiction of any court of competent jurisdiction located
4.30 in this state and that no predispute arbitration is required by the agreement.

4.31 ~~If the transfer would contravene the terms of the structured settlement, upon the filing~~
4.32 ~~of a written objection by any interested party and after considering the objection and any~~

5.1 ~~response to it, the court or responsible administrative authority may grant, deny, or impose~~
5.2 ~~conditions upon the proposed transfer as the court or responsible administrative authority~~
5.3 ~~deems just and proper under the facts and circumstances in accordance with established~~
5.4 ~~principles of law.~~ Any order approving a transfer must require that the transferee indemnify
5.5 the annuity issuer and the structured settlement obligor for any liability including reasonable
5.6 costs and attorney fees arising from compliance by the issuer or obligor with the order of
5.7 the court or responsible administrative authority.

5.8 Subd. 1a. **Appointment of evaluator.** The court may, in its discretion in any case,
5.9 appoint an attorney to make an independent assessment and advise the court whether the
5.10 financial terms of the proposed transfer agreement are fair and reasonable, and whether the
5.11 transfer is in the best interests of the payee and the payee's dependents. The evaluator must
5.12 present the findings of the evaluation to the court at or prior to a hearing on the application.
5.13 All costs and reasonable fees for the evaluator shall be borne by the transferee.

5.14 Subd. 1b. **Obligations of annuity issuers and structured settlement obligors; liability**
5.15 **of transferees.** (a) The annuity issuer and the structured settlement obligor may rely on the
5.16 court order approving the transfer of structured settlement payment rights in redirecting
5.17 periodic payments and, as to all parties except the transferee or an assignee, be discharged
5.18 and released from any and all liability for the redirected payments. The failure of any party
5.19 to the transfer to comply with sections 549.30 to 549.34 or with the court order approving
5.20 the transfer has no effect on the discharge and release.

5.21 (b) The transferee is liable to the structured settlement obligor and annuity issuer:

5.22 (1) if the transfer contravenes the terms of the structured settlement, and for any taxes
5.23 incurred by the structured settlement obligor or annuity issuer resulting from the transfer;
5.24 or

5.25 (2) for any other liabilities or costs, including reasonable attorney fees, arising from
5.26 compliance by the annuity issuer or the structured settlement obligor with the court order
5.27 approving the transfer, or from the failure of any party to the transfer to comply with sections
5.28 549.30 to 549.34.

5.29 (c) Compliance with the requirements set forth in sections 549.30 to 549.34 regarding
5.30 any transfer of structured settlement payment rights is solely the responsibility of the
5.31 transferee, and neither the annuity issuer nor the structured settlement obligor bears any
5.32 responsibility for, or any liability arising from, the failure to comply with the requirements
5.33 or failure to fulfill the conditions of the transfer.

6.1 (d) Neither the annuity issuer nor the structured settlement obligor shall be required to
 6.2 divide any periodic payment between the payee and any transferee or assignee or between
 6.3 two or more transferees or assignees.

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

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

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

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

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

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

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

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

6.28 Sec. 8. **[549.315] DISCOUNT RATE.**

6.29 The discount rate used in determining the net amount payable to the payee under the
 6.30 transfer agreement may not exceed an annual percentage rate of prime plus five percentage
 6.31 points calculated as if the net amount payable to the payee was the principal of a consumer
 6.32 loan made by the transferee to the payee, and if the structured settlement payments to be

7.1 transferred to the transferee were the payee's payments of principal plus interest on such
7.2 loan. For purposes of this subdivision, the prime rate shall be as reported by the Federal
7.3 Reserve Statistical Release H.15 on the first Monday of the month in which the transfer
7.4 agreement is signed by both the payee and the transferee, except when the transfer agreement
7.5 is signed prior to the first Monday of that month then the prime rate shall be as reported by
7.6 the Federal Reserve Statistical Release H.15 on the first Monday of the preceding month.

7.7 Sec. 9. Minnesota Statutes 2020, section 549.32, is amended to read:

7.8 **549.32 ~~JURISDICTION~~ APPLICATION; PROCEDURE FOR APPROVAL OF**
7.9 **TRANSFERS.**

7.10 Subdivision 1. **Jurisdiction; venue.** ~~The district court has nonexclusive jurisdiction~~
7.11 ~~over~~ (a) An application for authorization under section 549.31 of a transfer of structured
7.12 settlement payment rights must be filed in the district court in the county in which the payee
7.13 resides.

7.14 (b) The payee must appear in person at the hearing unless the court determines that good
7.15 cause exists to excuse the payee from appearing in person.

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

7.22 (1) a copy of the transferee's application to the court or responsible administrative
7.23 authority, which must contain the payee's name and age;

7.24 (2) a copy of the transfer agreement;

7.25 (3) a copy of the disclosure statement required under section 549.31, subdivision 1,
7.26 paragraph (b), and proof that the disclosure statement has been delivered to the payee, to
7.27 an attorney representing or advising the payee, and to any other professional known to be
7.28 advising the payee;

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

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

8.5 (6) notification of the date and ~~judicial district~~ court, and details of any prior application
8.6 for transfer filed by the transferee, an affiliate or assignee of the transferee, or any other
8.7 transferee relating to a prior proposed transfer with the payee, including whether the prior
8.8 application was granted or denied. If any prior application was granted, the notice shall
8.9 provide the amount and due dates of any structured settlement payments that were transferred,
8.10 the aggregate amount of the payments, the discounted present value of the payments, and
8.11 the gross amount that was payable to the payee in exchange for the payments.

8.12 Sec. 10. **[549.325] PROHIBITED PRACTICES.**

8.13 Subdivision 1. Prohibitions. No transferee shall:

8.14 (1) represent the payee;

8.15 (2) intervene in a pending structured settlement transfer proceeding, if the transferee is
8.16 not a party to such proceeding or an interested party relative to the proposed transfer that
8.17 is the subject of the pending structured settlement transfer proceeding;

8.18 (3) offer or provide any gift, loan, extension of credit, or advance as an inducement to
8.19 enter into a transfer agreement or pay a fee to any person to refer a potential payee to the
8.20 transferee or any affiliate of the transferee;

8.21 (4) communicate with a payee or a person associated with the payee with excessive
8.22 frequency, at unusual hours, or in any other manner as reasonably may be expected to abuse
8.23 or harass the payee in connection with a proposed transfer;

8.24 (5) solicit a prospective payee through the conveyance of a document in any way
8.25 resembling a check or other form of payment;

8.26 (6) provide in a transfer agreement or related document that gives to the transferee the
8.27 first choice or option to purchase any remaining structured settlement rights belonging to
8.28 the payee; or

8.29 (7) solicit or petition for a transfer of a structured settlement from a minor or a parent
8.30 or guardian of a minor.

8.31 Subd. 2. Enforcement. A violation of this section is a deceptive practice in violation of
8.32 section 325F.69.

9.1 Sec. 11. Minnesota Statutes 2020, section 549.34, is amended to read:

9.2 **549.34 CONSTRUCTION.**

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

9.7 (b) No transfer of structured settlement payment rights shall extend to any payments
9.8 that are life contingent unless, prior to the date on which the payee signs the transfer
9.9 agreement, the transferee has established and has agreed to maintain procedures reasonably
9.10 satisfactory to the annuity issuer and the structured settlement obligor for:

9.11 (1) periodically confirming the payee's survival; and

9.12 (2) giving the annuity issuer and the structured settlement obligor prompt written notice
9.13 in the event of the payee's death.