

CHAPTER 549

COSTS, DISBURSEMENTS

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549.01 AGREEMENT AS TO FEES OF ATTORNEY.

A party shall have an unrestricted right to agree with an attorney as to compensation for services, and the measure and mode thereof; but certain sums may be allowed to the prevailing party for expenses in an action, which are termed costs.

History: (9470) RL s 4337; 1986 c 444

549.02 COSTS.

Subdivision 1. **District court.** In actions commenced in the district court, costs shall be allowed as follows:

To plaintiff: (1) Upon a judgment in the plaintiff's favor of \$100 or more in an action for the recovery of money only, \$200. (2) In all other actions, including an action by a public employee for wrongfully denied or withheld employment benefits or rights, except as otherwise specially provided, \$200.

To defendant: Upon discontinuance or dismissal or when judgment is rendered in the defendant's favor on the merits, \$200.

To the prevailing party: \$5.50 for the cost of filing a satisfaction of the judgment.

This section does not apply to actions removed to district court from conciliation court.

Subd. 2. **On appeal.** Upon a judgment on the merits on appeal to the Court of Appeals or Supreme Court, additional costs in the amount of \$300 shall be allowed to the prevailing party.

Subd. 3. **Limitation.** Notwithstanding subdivisions 1 and 2, where the state agency is named or intervenes as a party to enforce the agency's rights under section 256B.056, the agency shall not be liable for costs to any prevailing defendant.

History: (9471) *RL s 4338; 1974 c 413 s 1; 1986 c 444; 1988 c 484 s 3; 1992 c 591 s 20; 1993 c 192 s 103; 1Sp2005 c 4 art 8 s 78*

549.03 ACTIONS FOR SERVICES; DOUBLE COSTS.

When any person who employed another to perform any labor or service neglects or refuses to pay the agreed price, or the reasonable value if there is no agreement, for 30 days after it is due and payment is demanded, and the payment is recovered by action, there shall be allowed to the plaintiff, and included in the judgment, all of the disbursements allowed by law and double the costs.

History: (9472) *RL s 4339; 1907 c 200 s 1; 1983 c 359 s 77; 1986 c 444*

549.04 DISBURSEMENTS; TAXATION AND ALLOWANCE.

Subdivision 1. **Generally.** In every action in a district court, the prevailing party, including any public employee who prevails in an action for wrongfully denied or withheld employment benefits or rights, shall be allowed reasonable disbursements paid or incurred, including fees and mileage paid for service of process by the sheriff or by a private person.

Subd. 2. **Limitation.** Notwithstanding subdivision 1, where the state agency is named or intervenes as a party to enforce the agency's rights under section 256B.056, the agency shall not be liable for disbursements to any prevailing defendant.

History: (9473) *RL s 4340; 1943 c 508 s 1; 1974 c 413 s 2; 1983 c 93 s 1; 1Sp2005 c 4 art 8 s 79*

549.05 COSTS IN CERTAIN CASES COMMENCED IN DISTRICT COURT OF FOURTH JUDICIAL DISTRICT COGNIZABLE BY MUNICIPAL COURT.

In any action commenced in the district court of the Fourth Judicial District, no costs or disbursements shall be allowed the plaintiff where there is a municipal court in the district where such action is brought, having jurisdiction of the subject matter and in which jurisdiction of the defendant or defendants could be acquired, and in case the amount of recovery by the plaintiff in such an action is less than \$200, the plaintiff shall pay the defendant's costs and disbursements.

History: (9473-1) *1925 c 326*

549.06 SEVERAL ACTIONS; COSTS, HOW ALLOWED.

When several actions are brought on one instrument, or for the same cause of action, against several parties who might have been joined as defendants in the same action, costs shall be allowed to the plaintiff in but one of such actions, to be selected by the plaintiff, if at the commencement of such action the defendants in the other actions were openly within the state; but plaintiff's disbursements may be allowed as provided in section 549.04.

History: (9474) *RL s 4341; 1977 c 347 s 62; 1986 c 444*

549.07 EQUITABLE ACTIONS; SEVERAL DEFENDANTS.

In equitable actions, costs may be allowed or not, and, if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court. When there are several defendants not united in interest, and making separate defenses by separate answers, and

plaintiff fails to recover judgment against all, the court may award costs to such defendants as have judgment in their favor, or any of them.

History: (9475) *RL s 4342*

549.08 ACTION ON JUDGMENT.

Costs shall not be allowed to plaintiff in an action upon a domestic judgment between the same parties, unless such action was brought with previous leave of the court for cause shown; but this shall not apply to an action upon the judgment of a justice brought in another county or in the same county where the summons was not served upon all the defendants, or in case of the death of a party, or the death, resignation, incapacity to act, or removal from the county of the justice, or the loss of the docket.

History: (9476) *RL s 4343; 1986 c 444*

549.09 INTEREST ON VERDICTS, AWARDS, AND JUDGMENTS.

Subdivision 1. **When owed; rate.** (a) When a judgment or award is for the recovery of money, including a judgment for the recovery of taxes, interest from the time of the verdict, award, or report until judgment is finally entered shall be computed by the court administrator or arbitrator as provided in paragraph (c) and added to the judgment or award.

(b) Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed as provided in paragraph (c) from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first, except as provided herein. The action must be commenced within two years of a written notice of claim for interest to begin to accrue from the time of the notice of claim. If either party serves a written offer of settlement, the other party may serve a written acceptance or a written counteroffer within 30 days. After that time, interest on the judgment or award shall be calculated by the judge or arbitrator in the following manner. The prevailing party shall receive interest on any judgment or award from the time of commencement of the action or a demand for arbitration, or the time of a written notice of claim, or as to special damages from the time when special damages were incurred, if later, until the time of verdict, award, or report only if the amount of its offer is closer to the judgment or award than the amount of the opposing party's offer. If the amount of the losing party's offer was closer to the judgment or award than the prevailing party's offer, the prevailing party shall receive interest only on the amount of the settlement offer or the judgment or award, whichever is less, and only from the time of commencement of the action or a demand for arbitration, or the time of a written notice of claim, or as to special damages from when the special damages were incurred, if later, until the time the settlement offer was made. Subsequent offers and counteroffers supersede the legal effect of earlier offers and counteroffers. For the purposes of clause (2), the amount of settlement offer must be allocated between past and future damages in the same proportion as determined by the trier of fact. Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest shall not be awarded on the following:

- (1) judgments, awards, or benefits in workers' compensation cases, but not including third-party actions;
- (2) judgments or awards for future damages;
- (3) punitive damages, fines, or other damages that are noncompensatory in nature;
- (4) judgments or awards not in excess of the amount specified in section 491A.01; and

(5) that portion of any verdict, award, or report which is founded upon interest, or costs, disbursements, attorney fees, or other similar items added by the court or arbitrator.

(c)(1) For a judgment or award of \$50,000 or less or a judgment or award for or against the state or a political subdivision of the state, regardless of the amount, the interest shall be computed as simple interest per annum. The rate of interest shall be based on the secondary market yield of one year United States Treasury bills, calculated on a bank discount basis as provided in this section.

On or before the 20th day of December of each year the state court administrator shall determine the rate from the one-year constant maturity treasury yield for the most recent calendar month, reported on a monthly basis in the latest statistical release of the board of governors of the Federal Reserve System. This yield, rounded to the nearest one percent, or four percent, whichever is greater, shall be the annual interest rate during the succeeding calendar year. The state court administrator shall communicate the interest rates to the court administrators and sheriffs for use in computing the interest on verdicts and shall make the interest rates available to arbitrators.

This clause applies to any section that references section 549.09 by citation for the purposes of computing an interest rate on any amount owed to or by the state or a political subdivision of the state, regardless of the amount.

(2) For a judgment or award over \$50,000, other than a judgment or award for or against the state or a political subdivision of the state, the interest rate shall be ten percent per year until paid.

(3) When a judgment creditor, or the judgment creditor's attorney or agent, has received a payment after entry of judgment, whether the payment is made voluntarily by or on behalf of the judgment debtor, or is collected by legal process other than execution levy where a proper return has been filed with the court administrator, the judgment creditor, or the judgment creditor's attorney, before applying to the court administrator for an execution shall file with the court administrator an affidavit of partial satisfaction. The affidavit must state the dates and amounts of payments made upon the judgment after the most recent affidavit of partial satisfaction filed, if any; the part of each payment that is applied to taxable disbursements and to accrued interest and to the unpaid principal balance of the judgment; and the accrued, but the unpaid interest owing, if any, after application of each payment.

(d) This section does not apply to arbitrations between employers and employees under chapter 179 or 179A. An arbitrator is neither required to nor prohibited from awarding interest under chapter 179 or under section 179A.16 for essential employees.

(e) For purposes of this subdivision:

(1) "state" includes a department, board, agency, commission, court, or other entity in the executive, legislative, or judicial branch of the state; and

(2) "political subdivision" includes a town, statutory or home rule charter city, county, school district, or any other political subdivision of the state.

Subd. 2. **Accrual of interest.** During each calendar year, interest shall accrue on the unpaid balance of the judgment or award from the time that it is entered or made until it is paid, at the annual rate provided in subdivision 1. The court administrator shall compute and add the accrued interest to the total amount to be collected when the execution is issued and compute the amount of daily interest accruing during the calendar year. The person authorized by statute to make the levy shall compute and add interest from the date that the writ of execution was issued to the date

of service of the writ of execution and shall direct the daily interest to be computed and added from the date of service until any money is collected as a result of the levy.

Subd. 3. **Deductions.** If an affidavit is filed pursuant to subdivision 4, a judgment creditor, or the judgment creditor's attorney or agent, is entitled to deduct from any payment made upon a judgment, whether the payment is made voluntarily by or on behalf of the judgment debtor, or is collected by legal process, all disbursements that are made taxable by statute or by rule of court, that have been paid or incurred by the judgment creditor or the judgment creditor's attorney, after the entry of judgment. Any remaining portion of the payment must be applied to the interest that has accrued upon the unpaid principal balance of the judgment before any remaining part is applied to reduce the unpaid principal balance of the judgment.

Subd. 4. **Affidavit.** A judgment creditor, or the judgment creditor's attorney, may file an affidavit specifying the nature and amount of taxable disbursements paid or incurred by the judgment creditor, or the judgment creditor's attorney, after the entry of judgment. An execution issued by the court administrator must include increased disbursements as are included in the affidavit filed with the court administrator.

History: (9477) *RL s 4344; 1909 c 371 s 1; 1979 c 105 s 1; 1980 c 509 s 179; 1984 c 399 s 1; 1984 c 472 s 2; 1986 c 455 s 81; 1Sp1986 c 3 art 1 s 82; 1987 c 273 s 3; 1988 c 503 s 1; 1991 c 266 s 10; 1991 c 321 s 7; 1992 c 363 art 1 s 8; 1993 c 321 s 5; 1994 c 465 art 1 s 58; 2002 c 247 s 1; 2009 c 83 art 2 s 35; 2010 c 249 s 1; 2010 c 385 s 8*

549.10 [Repealed, 1974 c 394 s 12]

549.11 COSTS ALLOWED ON MOTION OR DEMURRER.

Costs may be allowed on motion, demurrer, or appeal from taxation of costs, in the discretion of the court or judge, not exceeding \$10, and may be absolute, or directed to abide the event of the action.

History: (9479) *RL s 4346*

549.12 AGAINST GUARDIAN OF INFANT PLAINTIFF.

When costs or disbursements are adjudged against an infant plaintiff, the guardian by whom the infant appears in the action shall be responsible for them, and judgment therefor may be entered against both infant and guardian.

History: (9480) *RL s 4347; 1986 c 444*

549.13 DEFENDANT AFTER TENDER.

When in an action on contract, express or implied, the defendant alleges in the answer that before the commencement of the action the defendant tendered to the plaintiff the full amount to which the plaintiff was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation is found true, the defendant shall be entitled to costs and disbursements.

History: (9481) *RL s 4348; 1986 c 444*

549.14 CHARGEABLE ON ESTATE OR FUND.

In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or person expressly authorized by statute, costs and disbursements may be recovered as in an action by and against a person prosecuting or defending in the person's own right. The same

shall be made chargeable only upon the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in the action; but no costs or disbursements are recoverable against an executor or administrator unless it appears that the demand was first presented to the executor or administrator, verified by oath, and payment demanded.

History: (9482) *RL s 4349; 1986 c 444*

549.15 RELATOR ENTITLED TO, AND LIABLE FOR, COSTS.

When an action or proceeding is instituted in the name of the state on the relation or petition of any citizen, such relator or petitioner is entitled to, and liable for, costs and disbursements in the same cases and to the same extent as if such action or proceeding had been instituted in the relator's or petitioner's own name.

History: (9483) *RL s 4350; 1986 c 444*

549.16 [Repealed, 1983 c 359 s 151]

549.17 ADDITIONAL COSTS ON CHANGE OF VENUE; AMOUNT; PAYMENT OR WAIVER OF; TAXATION.

When service of summons is made upon a defendant within a county of which the defendant is an actual resident at the time of such service, and the place of trial of such action is thereafter changed to such county in the manner provided by section 542.10, or when service of summons is made upon a defendant in a county of which the defendant is not a resident, and the place of such trial is in like manner changed to a county of which the defendant has been an actual resident for more than one year immediately preceding such service, which fact shall be set forth in defendant's affidavit for change of venue, the plaintiff shall forthwith in either case, pay to each defendant demanding such change of venue the sum of \$10 as additional costs.

No judgment shall be entered by plaintiff in any cause, the venue of which has been changed as aforesaid, until the plaintiff shall have filed with the court administrator a receipt for, or a waiver of, such sum by all of the defendants who demanded such change of venue, or their respective attorneys. Such sums if not paid by plaintiff, or waived by defendant, may be taxed against plaintiff by defendant as other costs if defendant prevails, or deducted from plaintiff's judgment, if plaintiff prevails. The provisions of this section shall not apply to causes where there are several defendants residing in different counties, or an even number of defendants, and the place or trial is determined by joinder of demands or nearness to the county seat and not by actual residence of the defendants as of right.

History: (9487-1) *1925 c 242 s 1; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

549.18 SECURITY FOR COSTS.

When an action is begun in the district court by a plaintiff who is committed for a crime, or is a nonresident or a foreign corporation, or when such action is brought into the district court on appeal by defendant, such plaintiff shall file a bond to the court administrator, before service of summons, or in case of appeal within five days after perfecting the same, in the sum of at least \$75, conditioned for the payment of all costs and disbursements that may be adjudged against the plaintiff. If, after the commencement of the action or the taking of an appeal, all parties plaintiff therein become nonresidents, or the sureties on the bond remove from the state or become insolvent, the court, on motion, may require such bond, or an additional bond, to be filed,

conditioned as aforesaid. This section shall not apply to any action brought for the recovery of wages or claims for personal services.

History: (9488) *RL s 4355; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

549.19 NEGLECT TO FILE SECURITY; PROSECUTION OF BOND.

When any party shall commence an action without filing a bond, or fail to provide an additional bond when so required, the court, on motion of defendant, may order a stay of all proceedings in such action, or a dismissal thereof at the cost of the attorney commencing the same. When judgment is entered against any party who has given security as required, and the costs and disbursements adjudged against the party remain unpaid in whole or in part for ten days, such bond may be put in suit and prosecuted to final judgment.

History: (9489) *RL s 4356; 1986 c 444*

549.191 CLAIM FOR PUNITIVE DAMAGES.

Upon commencement of a civil action, the complaint must not seek punitive damages. After filing the suit a party may make a motion to amend the pleadings to claim punitive damages. The motion must allege the applicable legal basis under section 549.20 or other law for awarding punitive damages in the action and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim punitive damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

History: *1986 c 455 s 82*

549.20 PUNITIVE DAMAGES.

Subdivision 1. **Standard.** (a) Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others.

(b) A defendant has acted with deliberate disregard for the rights or safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and:

(1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or

(2) deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

Subd. 2. **Master and principal.** Punitive damages can properly be awarded against a master or principal because of an act done by an agent only if:

(1) the principal authorized the doing and the manner of the act;

(2) the agent was unfit and the principal deliberately disregarded a high probability that the agent was unfit;

(3) the agent was employed in a managerial capacity with authority to establish policy and make planning level decisions for the principal and was acting in the scope of that employment; or

(4) the principal or a managerial agent of the principal, described in clause (3), ratified or approved the act while knowing of its character and probable consequences.

Subd. 3. **Factors.** Any award of punitive damages shall be measured by those factors which justly bear upon the purpose of punitive damages, including the seriousness of hazard to the public arising from the defendant's misconduct, the profitability of the misconduct to the defendant, the duration of the misconduct and any concealment of it, the degree of the defendant's awareness of the hazard and of its excessiveness, the attitude and conduct of the defendant upon discovery of the misconduct, the number and level of employees involved in causing or concealing the misconduct, the financial condition of the defendant, and the total effect of other punishment likely to be imposed upon the defendant as a result of the misconduct, including compensatory and punitive damage awards to the plaintiff and other similarly situated persons, and the severity of any criminal penalty to which the defendant may be subject.

Subd. 4. **Separate proceeding.** In a civil action in which punitive damages are sought, the trier of fact shall, if requested by any of the parties, first determine whether compensatory damages are to be awarded. Evidence of the financial condition of the defendant and other evidence relevant only to punitive damages is not admissible in that proceeding. After a determination has been made, the trier of fact shall, in a separate proceeding, determine whether and in what amount punitive damages will be awarded.

Subd. 5. **Judicial review.** The court shall specifically review the punitive damages award in light of the factors set forth in subdivision 3 and shall make specific findings with respect to them. The appellate court, if any, also shall review the award in light of the factors set forth in that subdivision. Nothing in this section may be construed to restrict either court's authority to limit punitive damages.

History: 1978 c 738 s 4; 1986 c 444; 1990 c 555 s 15-18

549.21 [Repealed, 1997 c 213 art 2 s 6]

549.211 SANCTIONS IN CIVIL ACTIONS.

Subdivision 1. **Acknowledgment required.** The parties by their attorneys in a civil action shall attach to and make a part of the pleading, written motions, and papers served on the opposite party or parties a signed acknowledgment stating that the parties acknowledge that sanctions may be imposed under this section.

Subd. 2. **Effect of acknowledgment.** By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Subd. 3. **Sanctions may be imposed.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision 2 has been violated, the court may, subject to the conditions in this section, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision 2 or are responsible for the violation.

Subd. 4. **How initiated.** (a) A motion for sanctions under this section must be made separately from other motions or requests and describe the specific conduct alleged to violate subdivision 2. It must be served as provided under the Rules of Civil Procedure, but may not be filed with or presented to the court unless, within 21 days after service of the motion, or another period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm is jointly responsible for violations committed by its partners, associates, and employees.

(b) On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision 2 and directing an attorney, law firm, or party to show cause why it has not violated subdivision 2 with respect to that conduct.

Subd. 5. **Nature of sanction; limitations.** (a) A sanction imposed for violation of this section must be limited to what is sufficient to deter repetition of the conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraph (b), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

(b) Monetary sanctions may not be awarded against a represented party for a violation of subdivision 2, clause (2). Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(c) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

Subd. 6. **Application; effect on other sanctions.** (a) This section does not apply to disclosures and discovery requests, responses, objections, and motions that are subject to discovery provisions and remedies of the Rules of Civil Procedure.

(b) An order or award of sanctions under this section is without prejudice and an alternative to sanctions that may be asserted under the Rules of Civil Procedure.

History: 1997 c 213 art 1 s 1

549.23 [Repealed, 1990 c 555 s 23]

549.24 [Repealed, 1990 c 555 s 23]

549.25 FUTURE DAMAGES; PAYMENT.

Where a claimant is awarded an amount representing future damages greater than \$100,000, the court shall hold a hearing prior to ordering entry of judgment to allow the claimant to consider whether payment of the future damages over time as the damages are incurred is in the best interests of the claimant. The following factors may be considered at the hearing, as well as any others as justice requires:

(1) the claimant's financial ability to meet obligations likely to be incurred as a result of the injury at issue in the trial;

(2) the advantages, if any, to the claimant from voluntarily entering into a structured settlement; and

(3) the interests of the claimant in self-determination over the claimant's financial affairs.

If the claimant decides, after the hearing, that structured payments of future damages would be in the claimant's best interests, the court shall make available information to assist the claimant in seeking an appropriate financial instrument to provide such payments. Judgment may not be entered until the claimant has notified the court that the claimant does not wish to enter into a structured settlement.

History: 1988 c 503 s 2

STRUCTURED SETTLEMENTS

549.30 DEFINITIONS.

Subdivision 1. **Application.** For purposes of sections 549.30 to 549.34, the terms defined in this section have the meanings given them.

Subd. 2. **Annuity issuer.** "Annuity issuer" means an insurer that has issued an annuity contract to be used to fund periodic payments under a structured settlement.

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.

Subd. 4. **Dependents.** "Dependents" means a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including spousal maintenance.

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

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

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

Subd. 8. **Payee.** "Payee" means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights under the structured settlement.

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

Subd. 10. **Responsible administrative authority.** "Responsible administrative authority" means a government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

Subd. 11. **Settled claim.** "Settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement.

Subd. 12. **Structured settlement.** "Structured settlement" means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim.

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

Subd. 14. **Structured settlement obligor.** "Structured settlement obligor" means the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

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

Subd. 16. **Terms of the structured settlement.** "Terms of the structured settlement" means the terms of the structured settlement agreement, the annuity contract, a qualified assignment agreement, and an order or approval of a court, responsible administrative authority, or other government authority authorizing or approving the structured settlement.

Subd. 17. **Transfer.** "Transfer" means a sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration.

Subd. 18. **Transfer agreement.** "Transfer agreement" means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

Subd. 19. **Transferee.** "Transferee" means a person who is receiving or will receive structured settlement payment rights resulting from a transfer.

History: 1999 c 212 s 2

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 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.

History: 1999 c 212 s 3

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; and

(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.

History: *1999 c 212 s 4*

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

History: *1999 c 212 s 5*

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.

History: *1999 c 212 s 6*