

<b>LFC Requester:</b>	<b>Chavez, Felix</b>
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

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*(Analysis must be uploaded as a PDF)*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 2/5/25 *Check all that apply:*  
**Bill Number:** SB 282 Original  Correction   
 Amendment  Substitute

**Sponsor:** Sen. Joseph Cervantes **Agency Name and Code:** AOC  
**Short Title:** Structured Settlement Guardian Ad Litem **Number:** 218  
**Person Writing:** Kathleen Sabo  
**Phone:** 505-470-3214 **Email:** aoccaj@nmcourts.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: SB 282 amends statutory sections within the Structured Settlement Protection Act (SSPA), Section 39-1A-1 NMSA 1978 et. seq., to require the appointment of a guardian ad litem in all structured settlement transfers.

SB 282 amends Section 39-1A-6 NMSA 1978, governing the procedure for approval of transfers, to require the court to appoint a guardian ad litem for the payee, upon the filing of an application for the transfer of structured settlement payment rights, to make an independent assessment and to advise the court whether the proposed transfer is in the best interests of the payee. SB 282 lists circumstances the guardian ad litem is required to consider in advising the court, including “any other factors or facts that the court or the guardian ad litem determines to be relevant.”

SB 282 permits the guardian ad litem to consult with a CPA an actuary or other licensed professional with all costs and reasonable fees for the guardian ad litem to be borne by the transferee in an amount determined by the court.

Under the SB 282 amendment, the guardian ad litem is required to file an interim report with the court no later than 10 days prior to the date of the scheduled hearing. Written responses to the interim report of the guardian ad litem are required to be filed with the court no later than 5 days before the scheduled hearing. SB 282 requires the guardian ad litem to file a final report with the court no later than 2 days before the date of the scheduled hearing.

#### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and appointments of guardian ad litem upon the filing of applications for the transfer of structured settlement payment rights. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

#### **SIGNIFICANT ISSUES**

- 1) In *The New Mexico Structured Settlement Protection Act: Whose best interests does the legislation protect?*, University of New Mexico School of Law, 2013, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2369080](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2369080) (paper can be downloaded or displayed in browser as a PDF), the writer explores New Mexico’s SSPA, revealing that the Second Judicial District had been attempting to ascertain the structured settlement owner’s best interests by appointing a guardian ad litem when the payee cannot effectively determine their own interests. After revealing a percentage rate above 60% for granting transfers statewide, the paper pointed to encouraging results in the cases where a guardian ad litem was appointed, reporting that of the thirteen cases where a guardian ad litem was appointed, only six transfers were approved, resulting in an approval percentage of 46.15%, compared to an approval percentage of 72.73% in

instances where a guardian ad litem was not appointed.

The writer also notes that structured settlement transfer cases are difficult for judges to handle.

In most cases, a district court judge is faced with using his or her discretion to rule on an unopposed petition for transfer of a structured settlement with mere guidance from the legislature to approve the transfer if it is in the “best interests” of the structured settlement owner. The structured settlement owner, in most cases, needs the money to pay some present financial obligation. The attorney who filed the petition, whose fee is paid for by the factoring company, will tell the judge it is in the individual’s best interests, and, indeed, the individual themselves will instruct the judge that selling his or her structured settlement is in his or her best interests.

Id. at 24.

The writer also notes the following ways that the SSPA can be reformed to better equip judges handling these cases and to further protect the interests of the structured settlement owner and the public from predatory practices of the factoring industry:

- The legislature could expand the “best interest” test with factors to provide the judiciary with a more concrete test to apply.
- The legislature could add provisions for the structured settlement owner to obtain independent legal advice at the factoring company’s expense.
- The legislature could instill a rebuttable presumption in the NM SSPA that a guardian ad litem be appointed to determine the payee’s best interests.

Id. at 25.

In SB 282’s Section 39-1A-6 NMSA 1978 amendment, there is no rebuttable presumption that a guardian ad litem be used for an adult, no examination as to whether the adult is deemed to lack the capacity to understand the terms of a structured settlement. The guardian ad litem is simply required to be appointed in *all* structured settlement cases.

- 2) Black’s Law Dictionary defines a guardian ad litem as a guardian, usually a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party. BLACK’S LAW DICTIONARY 608 (9th ed. 2010) A guardian ad litem is usually only appointed when a minor child is involved or if issues of competency arise regarding the payee.

## **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

## **ADMINISTRATIVE IMPLICATIONS**

See “Fiscal Implications,” above.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

**TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**AMENDMENTS**