

LFC Requester:

Felix Chavez

### AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

#### SECTION I: GENERAL INFORMATION

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

Date Prepared: 2/5/2025

Check all that apply:

Bill Number: SB 282

Original  Correction   
Amendment  Substitute

Sponsor: Sen. Joseph Cervantes

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing Analysis: Alex Tucker

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#### SECTION II: FISCAL IMPACT

##### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

##### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(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>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis: SB 282 amends the Structured Settlement Protection Act (Act), NMSA 1978, §§ 39-1A-1 to -7 (2005) to require appointment of a guardian ad litem (GAL) in all structured settlement transfers.

First, SB 282 strikes language throughout the Act referencing other sections of the Act in plain language and replaces those internal references with numerical statutory citation (*i.e.* replacing “Section 4 of the Structed Settlement Protection Act” with “39-1A-4 NMSA 1978”). This has no substantive impact on the law but perhaps helps the Act be more precise in its internal references.

SB 282 amends Section 39-1A-6, which governs procedure for judicial approval of a transfer of a structured settlement. SB 282 would add subsections to Section 39-1A-6 as follows.

Proposed Section 39-1A-6(D) would require that upon the filing of an application for the transfer of structured settlement payment rights, the court shall appoint a GAL for the payee to make an independent assessment and to advise the court whether the proposed transfer is in the best interests of the payee. In advising the court, the GAL would be required to consider:

- (1) the reasonable preference of the payee in light of the payee’s age, mental capacity, maturity level, understanding of the terms of the agreement, and stated purpose for the transfer;
- (2) if the periodic payments are intended to cover future income or losses or future medical expenses, whether the payee has means of support aside from the structured settlement to meet those obligations;
- (3) whether the payee can meet the financial need of, and obligations to, the payee’s dependents if the transfer is allowed to proceed, including child support and spousal maintenance;
- (4) whether the payee completed previous transactions involving the payee’s structured settlement payment rights and the timing, amount, stated purpose, and actual use of the

proceeds;

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

(6) any other factors or facts that the GAL determines to be relevant.

Proposed Section 39-1A-6(E) would enable the GAL to consult with a certified public accountant, an actuary or other licensed professional, for the purpose of obtaining independent professional advice. It also provides that the costs and reasonable fees of the GAL shall be borne by the transferee in an amount determined by the court.

Proposed Section 39-1A-6(F) would require the GAL to file an interim report with the court no later than ten days prior to the date of the scheduled hearing.

Proposed Section 39-1A-6(G) would require any written responses to the GAL's interim report to be filed with the court no later than five days before the scheduled hearing.

Proposed Section 39-1A-6(H) would require the GAL to file a final report with the court no later than two days before the date of the scheduled hearing.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

See Technical Issues, and specifically, the portion thereof addressing potential ambiguity in Section 39-1A-6(E).

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

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

May relate to other legislation potentially impacting GALs such as HB 124. There appears to be a low likelihood of conflict with these bills or existing law.

## **TECHNICAL ISSUES**

In proposed Section 39-1A-6(D)(1), the language "maturity level" is somewhat vague and potentially redundant to other factors listed therein.

If any of the factors in proposed Section 39-1A-6(D)(1)-(6) are intended to have more weight than other factors, or if they are alternatively intended to be considered as part of a totality of circumstances analysis, then it might be helpful to specify in Section 39-1A-6(D) that the factors are or are not intended to be given certain weight in relation to others.

The contents required for the “interim report” and “final report” referenced in proposed Sections 39-1A-6(E)-(G) are not defined. Therefore, it may be helpful to include language stating what the reports must contain.

There is potential ambiguity arising from proposed Section 39-1A-6(E). Specifically, it is not completely clear whether the GAL’s reasonable costs and fees for which the transferee shall be liable also include the consultations with certified professionals referenced therein. In other words, it is unclear from the language of Section 39-1A-6(E) whether the transferee (1) shall be liable for *only* the GAL’s attorneys’ fees and costs, (2) whether costs for professional consultations may *in some cases* be considered part of the GAL’s reasonable costs upon a finding of reasonableness by a court (similar to how attorneys’ fees petitions are decided), or (3) whether the statute intends to require the transferee to bear costs for professional consultations in *all instances* where a GAL uses said professional services. Therefore, revisions might address who bears responsibility for the costs of professional consultations and the GAL, respectively. Alternatively, revisions might instead clearly identify in Section 39-1A-6(E) the extent to which the GAL’s reasonable costs and fees include those incurred when the GAL consults with licensed professionals.

#### **OTHER SUBSTANTIVE ISSUES**

N/A

#### **ALTERNATIVES**

N/A

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

Status quo.

#### **AMENDMENTS**

N/A