

SENATE BILL No. 243

By Committee on Judiciary

2-10

1 AN ACT concerning minors; relating to settlement agreements; providing
2 requirements and procedures for a person having legal custody of a
3 minor to enter into a settlement agreement on behalf of the minor.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) A person having legal custody of a minor may settle or
7 compromise and enter into a settlement agreement with a person against
8 whom the minor has a claim or from whom the minor is to receive
9 proceeds from the sale of real estate, for the settlement of any estate or
10 from any other source if:

11 (1) A guardian or conservator has not been appointed for the minor;

12 (2) the total amount of the settlement proceeds due to the minor, after
13 reduction from the total settlement amount of all medical expenses,
14 medical liens, all other liens and reasonable attorney fees and costs, is
15 \$25,000 or less if paid in cash, by draft or check, by direct deposit or by
16 the purchase of a premium for an annuity;

17 (3) the moneys payable under the settlement agreement will be paid
18 as provided in subsections (c) and (d); and

19 (4) the person entering into the settlement agreement on behalf of the
20 minor completes an affidavit or verified statement that attests that the
21 person:

22 (A) Has made a reasonable inquiry and that to the best of the person's
23 knowledge:

24 (i) The minor will be fully compensated by the settlement; or

25 (ii) there is no practical way to obtain additional amounts from the
26 party or parties entering into the settlement agreement with the minor; and

27 (B) understands and acknowledges that such person is obligated by
28 law to deposit the settlement directly into a restricted savings or other
29 restricted investment account or purchase an annuity as provided in
30 subsection (c).

31 (b) The attorney representing the person entering into the settlement
32 agreement on behalf of the minor, if any, shall maintain the affidavit or
33 verified statement completed under subsection (a)(4) in the attorney's file
34 for a period of five years.

35 (c) The moneys payable under the settlement agreement shall be paid
36 as follows:

1 (1) If the minor or person entering into the settlement agreement on
2 behalf of the minor is represented by an attorney and the settlement is paid
3 in cash, by draft or check or by direct deposit into the attorney's trust
4 account maintained in compliance with supreme court rules to be held for
5 the benefit of the minor, the attorney shall:

6 (A) Timely deposit the moneys received on behalf of the minor
7 directly into a restricted savings or other restricted investment account that
8 only allows withdrawals from the account under the circumstances
9 specified in subsection (d); or

10 (B) purchase an annuity by direct payment to the issuer of the annuity
11 with the minor designated as the sole beneficiary of the annuity.

12 (2) If the minor or person entering into the settlement agreement on
13 behalf of the minor is not represented by an attorney and the settlement is
14 paid by check, draft or direct deposit, the minor or person entering into the
15 settlement agreement on behalf of the minor shall provide the person or
16 entity with whom the minor has settled the claim with the information
17 sufficient to draw a check or draft made payable, or complete an electronic
18 transfer of settlement funds:

19 (A) Into a restricted savings or other restricted investment account
20 that only allows withdrawals from the account under the circumstances
21 specified in subsection (d); or

22 (B) to purchase an annuity by direct payment to the issuer of the
23 annuity with the minor designated as the sole beneficiary of the annuity.

24 (3) If the minor is under the care, custody and control of the state, the
25 secretary for children and families shall establish a restricted trust account
26 or subaccount of a trust account that earns interest for the benefit of the
27 minor for the purpose of receiving moneys payable to the minor under the
28 settlement agreement. If the settlement is paid:

29 (A) In cash or by draft or check, the moneys received on behalf of the
30 minor shall be timely deposited into the account established under this
31 paragraph and notice of the deposit to the minor and the person entering
32 into the settlement agreement on behalf of the minor shall be delivered by
33 personal service or first-class mail;

34 (B) by direct deposit, the minor, the person entering into the
35 settlement on behalf of the minor or the department, shall provide the
36 person or entity with whom the minor has settled the claim with the
37 information sufficient to complete an electronic transfer of settlement
38 funds into the account established under this paragraph and notice of the
39 deposit to the minor and the person entering into the settlement agreement
40 on behalf of the minor shall be delivered by personal service or first-class
41 mail; or

42 (C) through the purchase of an annuity, direct payment shall be made
43 to the issuer of the annuity with the minor designated as the sole

1 beneficiary of the annuity.

2 (d) The moneys in the minor's restricted savings or other restricted
3 investment account, trust account or trust subaccount established under
4 subsection (c) may not be withdrawn, removed, paid out or transferred to
5 any person, including the minor, except as follows:

6 (1) Pursuant to court order;

7 (2) upon the minor attaining the age of majority or being otherwise
8 emancipated; or

9 (3) upon the minor's death.

10 (e) A signed settlement agreement entered into on behalf of the minor
11 in compliance with subsection (a) is binding on the minor without the need
12 for court approval or review, has the same force and effect as if the minor
13 were a competent adult entering into the settlement agreement, shall serve
14 to fully release all claims of the minor encompassed by the settlement
15 agreement and may be relied on by a financial institution or other entity, in
16 lieu of a court order, when opening a restricted savings or other restricted
17 investment account or purchasing an annuity on behalf of a minor pursuant
18 to this section.

19 (f) (1) Any person or entity against whom a minor has a claim that
20 settles the claim with the minor in good faith under this section shall not
21 be liable to the minor for any claims arising from the settlement of the
22 claim.

23 (2) An insurer who in good faith transfers funds into a restricted
24 savings or other restricted investment account or to purchase an annuity at
25 the direction of the minor or the minor's representatives who entered into a
26 settlement agreement shall not be liable to the minor or the minor's
27 representatives for any claims arising from the use of such funds after the
28 transfer is completed.

29 (g) Nothing in this section shall prevent any person acting on behalf
30 of the minor from filing for guardianship, limited guardianship or
31 conservatorship in an appropriate district court and requesting the district
32 court to approve the settlement on behalf of the minor and oversee the
33 settlement proceeds.

34 Sec. 2. This act shall take effect and be in force from and after its
35 publication in the statute book.