

Settlement Agreements Involving a Minor; SB 243

SB 243 creates law concerning requirements and procedures for a person having legal custody of a minor to enter into a settlement agreement without court approval on behalf of the minor when the settlement is less than a net amount of \$25,000. The bill also amends law concerning certain dollar amounts referenced in the Kansas Uniform Transfers to Minors Act; the Act for Obtaining a Guardian or a Conservator, or Both; and a statute concerning payments to minor beneficiaries under the Kansas Public Employees Retirement System (KPERS).

Settlement Agreements on Behalf of a Minor

The bill provides that a person having legal custody of a minor may settle or compromise and enter into a settlement agreement with a person against whom the minor has a claim or from whom the minor is to receive proceeds from the sale of real estate, for the settlement of any estate or from any other source if:

- A guardian or conservator has not been appointed for the minor;
- The total amount of the settlement proceeds due to the minor, after reduction from the total settlement amount of all medical expenses, medical liens, all other liens and reasonable attorney fees and costs, is \$25,000 or less if paid in cash, by draft or check, by direct deposit, or by the purchase of a premium for an annuity;
- The moneys payable under the settlement agreement will be paid as provided by the bill; and
- The person entering into the settlement agreement on behalf of the minor completes an affidavit or verified statement that attests to certain information.

Affidavit or Verified Statement

The bill requires the person entering into the agreement on behalf of the minor to attest that such person:

- Has made a reasonable inquiry and that, to the best of the person's knowledge, the minor will be fully compensated by the settlement or there is no practical way to obtain additional amounts; and
- Understands and acknowledges that such person is obligated by law to deposit the settlement directly into a restricted savings or investment account or by purchase of an annuity.

The bill requires that if an attorney represents the person entering into the agreement on behalf the minor, such attorney must maintain the affidavit or verified statement in the attorney's file for five years.

Payment of Settlements

The bill describes how proceeds resulting from a settlement agreement are to be payable, as follows.

When Minor is Represented by an Attorney

If the minor or person entering into the settlement agreement on behalf of the minor is represented by an attorney and the settlement is paid in cash, by draft or check, or by direct deposit into the attorney's trust account held for the benefit of the minor, the attorney is required to:

- Timely deposit the moneys received on behalf of the minor directly into a restricted savings or investment account that allows withdrawals from the account only under the certain specified circumstances; or
- Purchase an annuity by direct payment to the issuer of the annuity with the minor designated as the sole beneficiary of the annuity.

When Minor is Not Represented by an Attorney

If the minor or person entering into the settlement agreement on behalf of the minor is not represented by an attorney and the settlement is paid by check, draft, or direct deposit, the minor or person entering into the settlement agreement on behalf of the minor is required to provide the person or entity with whom the minor has settled the claim with sufficient information to draw a check made payable, or complete an electronic transfer of settlement funds:

- Into a restricted savings or investment account that allows withdrawals from the account only under certain specified circumstances; or
- To purchase an annuity by direct payment to the issuer of the annuity with the minor designated as the sole beneficiary of the annuity.

When Minor is in Custody of the State

If the minor is under the care, custody, and control of the State, the Secretary for Children and Families is required to establish a restricted trust account that earns interest for the benefit of the minor for the purpose of receiving moneys payable to the minor under the settlement agreement.

If the settlement is paid in cash or check, the moneys received on behalf of the minor must be timely deposited into the account described above and notice of the deposit provided to the minor and the person entering into the agreement on the minor's behalf by personal service or first-class mail.

If the settlement is paid by direct deposit, the minor, the person entering into the settlement on behalf of the minor, or the Department for Children and Families is required to provide sufficient information for the purpose of completing an electronic transfer of settlement funds into the account established under the bill. Notice of such deposit must be delivered to the minor and person entering in the agreement on the minor's behalf by personal service or first-class mail.

The bill also allows payment to be made through the purchase of an annuity with the minor designated as the sole beneficiary of the annuity.

Restrictions on Moneys

The bill places restrictions on how the money in the minor's restricted savings, investment, or trust account or subaccount established pursuant to the bill may be used. Under the bill, moneys may not be withdrawn, removed, paid out or transferred to any person, including the minor, except in the following circumstances:

- Pursuant to court order;
- Upon the minor attaining the age of majority or being otherwise emancipated; or
- Upon the minor's death.

The bill states that, upon the minor's or account holder's death, the balance of the account is to be paid to the payable on death beneficiary in accordance with the Kansas Banking Code and, in the absence of a named beneficiary, in accordance with the Kansas Probate Code.

Validity and Effect of Signed Agreement

The bill provides that a signed settlement agreement entered into on behalf of the minor under the bill is binding on the minor without the need for court approval or review, and has the same force and effect as if the minor were a competent adult entering into the agreement.

Such agreement also fully releases all claims of the minor encompassed in the settlement agreement and may be relied on by a financial institution in lieu of a court order when opening a restricted savings or investment account or purchasing an annuity on behalf of a minor.

Release of Liability

The bill specifies that any person or entity that settles with a minor in good faith pursuant to the bill's provisions is not liable to the minor for any claims arising from the settlement of the claim.

The bill also specifies that an insurer who in good faith transfers funds into an account specified by the bill, or purchases an annuity at the direction of the minor or minor's representatives, is not liable to the minor or minor's representatives for any claims arising from the use of such funds after the transfer is completed.

Finally, the bill specifies a financial institution that in good faith opens a restricted account specified by the bill at the direction of the minor or minor's representatives is not liable to the minor or minor's representatives for any claim arising from the use of such funds.

Judicial Intervention

The bill states that nothing in the bill prevents any person acting on behalf of the minor from filing for guardianship, limited guardianship, or conservatorship in district court and requesting such court to approve the settlement on behalf of the minor and oversee the settlement proceeds.

The bill also states that nothing in the bill prevents a minor or minor's representative from requesting a court approve:

- A settlement agreement;
- The affidavit or verified statement required by the bill;
- The terms and disposition of settlement proceeds; or
- Any other matter or agreement related to the settlement agreement.

The bill requires the district court to award any required docket fees associated with such action to the minor or minor's representative.

Maximum Dollar Amounts

The bill increases maximum dollar amounts specified in the Kansas Uniform Transfers to Minors Act and the Act for Obtaining a Guardian or a Conservator, or Both with respect to moneys in accounts owned by a minor to \$25,000. The bill also amends law concerning lump-sum benefits payable to minor beneficiaries under KPERS to increase the maximum dollar amounts specified to \$25,000, from \$10,000.