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MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: March 8, 2023
Subject: Bill Brief for SB 243

Senate Bill 243, As Amended by Senate Committee, provides requirements and procedures for settlement agreements involving a minor.

Section 1 adds a new section of law to provide that a person with 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 under certain circumstances. First, the minor cannot have an appointed guardian or conservator. Second, 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, must be \$25,000 or less. Third, the moneys payable under the settlement agreement must be paid as provided in subsections (c) and (d). Finally, the person entering into the settlement agreement on behalf of the minor must complete an affidavit or verified statement that attests that the person: (1) 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 from the party or parties entering into the settlement agreement with the minor; and (2) understands and acknowledges that such person is obligated by law to deposit the settlement directly into a restricted savings or other restricted investment account or purchase an annuity as provided in subsection (c).

Subsection (c) provides that moneys paid under the settlement agreement shall be deposited into a restricted savings or other restricted investment account that only allows withdrawals from the account under the circumstances specified in subsection (d) or used to purchase an annuity by direct payment to the issuer of the annuity with the minor designated as the sole beneficiary of the annuity. If the minor is under the care, custody and control of the state, the secretary for children

and families shall establish a restricted trust account or subaccount of a 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. Subsection (d) provides that the moneys in the minor's restricted savings or other restricted account may not be withdrawn, removed, paid out or transferred to any person, including the minor, except pursuant to court order, upon the minor attaining the age of majority or being otherwise emancipated, or upon the minor's death. The Senate Committee added an amendment to provide that upon the minor's or account holder's death, the balance of such account shall be paid to the payable on death beneficiary or, in the absence of a named payable on death beneficiary, in accordance with the probate code.

Subsection (e) provides that a signed settlement agreement entered into on behalf of the minor in compliance with subsection (a) is binding on the minor without the need for court approval or review, has the same force and effect as if the minor were a competent adult entering into the settlement agreement, shall serve to fully release all claims of the minor encompassed by the settlement agreement and may be relied on by a financial institution or other entity when opening a restricted savings or other restricted investment account or purchasing an annuity on behalf of a minor. Subsection (f) provides that any person or entity against whom a minor has a claim that settles the claim with the minor in good faith under this section shall not be liable to the minor for any claims arising from the settlement of the claim. Further, an insurer who in good faith transfers funds into a restricted savings or other restricted investment account or to purchase an annuity at the direction of the minor or the minor's representatives who entered into a settlement agreement shall not be liable to the minor or the minor's representatives for any claims arising from the use of such funds after the transfer is completed. The Senate Committee added an amendment to provide that a financial institution who in good faith opens a restricted savings or other restricted investment account at the direction of the minor or the minor's representatives who entered into a settlement agreement shall not be liable to the minor or the minor's representatives for any claims arising from the use of such funds.

Subsection (g) provides that nothing in this section shall prevent any person acting on behalf of the minor from filing for guardianship, limited guardianship or conservatorship in an appropriate district court and requesting the district court to approve the settlement on behalf of the minor and oversee the settlement proceeds. The Senate Committee also added a new subsection (h) to provide that nothing in the section shall prevent the minor or any person acting on behalf of

the minor from filing and asking for approval from the court for the settlement agreement, the affidavit or verified statement of the person entering into the settlement agreement, the terms and disposition of the settlement proceeds or any other matter or agreement relating to or arising from the claims encompassed by the settlement agreement. The court shall award any docket fees required to file the action to the minor or person acting on behalf of the minor.

The Senate Committee added three amendatory sections to the bill. Section 2 amends K.S.A. 38-1707, the Kansas uniform transfers to minors act statute allowing fiduciaries to make a transfer for the benefit of a minor. Current law authorizes a transfer over \$10,000 to be made only if authorized by the court, and this amendment would require authorization by the court for transfers over \$25,000.

Section 3 amends K.S.A. 59-3053, the act for obtaining a guardian or a conservator statute providing a natural guardian of a minor the right to control the minor child unless a guardian has been appointed. Current law in this section authorizes the natural guardian to hold in trust and manage the minor's estate when the total of the property does not exceed \$10,000 in value unless a guardian or conservator has been appointed for the minor. This bill changes that amount to \$25,000 in value.

Section 4 amends K.S.A. 59-3055, the act for obtaining a guardian or a conservator statute that authorizes a court having control over assets vested in a minor to do certain things with those assets. Current law provides that a court with control of an amount not exceeding \$10,000 may order payment of the money to the minor or any person to hold in trust and manage for the minor. This bill allows that payment when the court has control over an amount not exceeding \$25,000. Current law also provides that, when a guardian has been appointed, a court with control of an amount not exceeding \$10,000 may authorize the deposit of money in a savings account payable to the guardian for the benefit of the minor. This bill allows that deposit when the court has control over an amount not exceeding \$25,000.