

SESSION OF 2023

SUPPLEMENTAL NOTE ON SENATE BILL NO. 243

As Amended by Senate Committee on Judiciary

Brief*

SB 243, as amended, would create 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 would also amend law concerning certain dollar amounts in the Kansas Uniform Transfers to Minor Act and the Act for Obtaining a Guardian or a Conservator, or Both.

Settlement Agreements on Behalf of a Minor

The bill would provide 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;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- 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 would require 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 would require 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 would describe how proceeds resulting from a settlement agreement would 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 would be required to:

- Timely deposit the moneys received on behalf of the minor directly into a restricted savings or investment account that only allows withdrawals from the account 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 would be 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 only allows withdrawals from the account 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 would be 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 would be required to be timely deposited into the account described above and provide notice of the deposit 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, would be 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 would be required to 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 would also allow 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 would place 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 could 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 would state that, upon the minor's or account holder's death, the balance of the account would 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 would provide that a signed settlement agreement entered into on behalf of the minor under the bill would be binding on the minor without the need for court approval or review, and would have the same force and effect as if the minor were a competent adult entering into the agreement.

Such agreement would also fully release all claims of the minor encompassed in the settlement agreement and could 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 would specify that any person or entity that settles with a minor in good faith pursuant to the bill's provisions would not be liable to the minor for any claims arising from the settlement of the claim.

The bill would also specify that an insurer who in good faith transfers funds into an account specified by the bill, or to purchase an annuity at the minor's direction or minor's representative, would not be 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 would specify a financial institution who in good faith opens a restricted account specified by the bill at the direction of the minor or minor's representatives would

not be liable to the minor or minor's representatives for any claim arising from the use of such funds.

Judicial Intervention

The bill would state that nothing in the bill would prevent any person acting on behalf of the minor to file for guardianship, limited guardianship, or conservatorship in district court and request such court to approve the settlement on behalf of the minor and oversee the settlement proceeds.

The bill would also state that nothing in the bill would prevent 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 would require the district court award any docket fees required to file the action to the minor or minor's representative.

Maximum Dollar Amounts

The bill would increase maximum dollar amounts specified in the Kansas Uniform Transfers to Minor 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. Current law sets the maximum amounts for moneys in such accounts to \$10,000.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of a representative of the American Property Casualty Insurance Association (APCIA).

Senate Committee on Judiciary

In the Senate Committee hearing on February 21, 2023, a representative of the APCIA testified as a **proponent** of the bill, stating the bill would save courts, minors, and parents time and money by enacting a framework for minor settlement agreements. Written-only proponent testimony was submitted by a representative of the Kansas Association of Property and Casualty Insurance Companies.

Neutral testimony was provided by representatives of the Kansas Bankers Association and the Kansas Trial Lawyers Association. Each representative requested an amendment to address their organizations' respective concerns with the bill.

The Senate Committee adopted amendments to:

- Increase the cap on moneys that may be owned in minor accounts in the Kansas Uniform Transfers to Minor Act and the Act for Obtaining a Guardian or a Conservator, or Both;
- Clarify what happens to accounts when a minor or account holder dies;
- Add financial institutions to the list of entities who would be released from liability when acting in good faith with the bill's provisions; and
- Add a provision specifying nothing in the bill would prevent judicial intervention with respect to minor agreements.

Fiscal Information

The Office of Judicial Administration states enactment of the bill, as introduced, would have a negligible fiscal effect on Judicial Branch operations.

The Department for Children and Families states enactment of the bill would not have a fiscal effect on agency operations.

Minors; settlement agreements