

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 ***increasing certain related dollar amounts in the Kansas uniform***
5 ***transfers to minors act and the act for obtaining a guardian or a***
6 ***conservator, or both; amending K.S.A. 38-1707, 59-3053 and 59-3055***
7 ***and repealing the existing sections.***
8

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

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

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

16 (2) the total amount of the settlement proceeds due to the minor, after
17 reduction from the total settlement amount of all medical expenses,
18 medical liens, all other liens and reasonable attorney fees and costs, is
19 \$25,000 or less if paid in cash, by draft or check, by direct deposit or by
20 the purchase of a premium for an annuity;

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

23 (4) the person entering into the settlement agreement on behalf of the
24 minor completes an affidavit or verified statement that attests that the
25 person:

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

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

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

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

35 (b) The attorney representing the person entering into the settlement
36 agreement on behalf of the minor, if any, shall maintain the affidavit or

1 verified statement completed under subsection (a)(4) in the attorney's file
2 for a period of five years.

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

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

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

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

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

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

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

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

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

38 (B) by direct deposit, the minor, the person entering into the
39 settlement on behalf of the minor or the department, shall provide the
40 person or entity with whom the minor has settled the claim with the
41 information sufficient to complete an electronic transfer of settlement
42 funds into the account established under this paragraph and notice of the
43 deposit to the minor and the person entering into the settlement agreement

1 on behalf of the minor shall be delivered by personal service or first-class
2 mail; or

3 (C) through the purchase of an annuity, direct payment shall be made
4 to the issuer of the annuity with the minor designated as the sole
5 beneficiary of the annuity.

6 (d) **(1)** The moneys in the minor's restricted savings or other restricted
7 investment account, trust account or trust subaccount established under
8 subsection (c) may not be withdrawn, removed, paid out or transferred to
9 any person, including the minor, except as follows:

10 ~~(1)(A)~~ Pursuant to court order;

11 ~~(2)(B)~~ upon the minor attaining the age of majority or being
12 otherwise emancipated; or

13 ~~(3)(C)~~ upon the minor's death.

14 **(2)** *Upon the minor's or account holder's death, the balance of such*
15 *account shall be paid to the payable on death beneficiary in accordance*
16 *with K.S.A. 9-1215, and amendments thereto, or, in the absence of a*
17 *named payable on death beneficiary, in accordance with the provisions*
18 *of the Kansas probate code.*

19 (e) A signed settlement agreement entered into on behalf of the minor
20 in compliance with subsection (a) is binding on the minor without the need
21 for court approval or review, has the same force and effect as if the minor
22 were a competent adult entering into the settlement agreement, shall serve
23 to fully release all claims of the minor encompassed by the settlement
24 agreement and may be relied on by a financial institution or other entity, in
25 lieu of a court order, when opening a restricted savings or other restricted
26 investment account or purchasing an annuity on behalf of a minor pursuant
27 to this section.

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

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

38 **(3)** *A financial institution who in good faith opens a restricted*
39 *savings or other restricted investment account at the direction of the*
40 *minor or the minor's representatives who entered into a settlement*
41 *agreement shall not be liable to the minor or the minor's representatives*
42 *for any claims arising from the use of such funds.*

43 (g) Nothing in this section shall prevent any person acting on behalf

1 of the minor from filing for guardianship, limited guardianship or
2 conservatorship in an appropriate district court and requesting the district
3 court to approve the settlement on behalf of the minor and oversee the
4 settlement proceeds.

5 *(h) Nothing in this section shall prevent the minor or any person*
6 *acting on behalf of the minor from filing in an appropriate district court*
7 *and requesting the district court to approve the settlement agreement,*
8 *the affidavit or verified statement of the person entering into the*
9 *settlement agreement, the terms and disposition of the settlement*
10 *proceeds or any other matter or agreement relating to or arising from*
11 *the claims encompassed by the settlement agreement. The district court*
12 *shall award any docket fees required to file the action to the minor or*
13 *person acting on behalf of the minor.*

14 *Sec. 2. K.S.A. 38-1707 is hereby amended to read as follows: 38-*
15 *1707. (a) Subject to subsection (c), a personal representative or trustee*
16 *may make an irrevocable transfer to another adult or trust company as*
17 *custodian for the benefit of a minor pursuant to K.S.A. 38-1710, and*
18 *amendments thereto, in the absence of a will or under a will or trust that*
19 *does not contain an authorization to do so.*

20 *(b) Subject to subsection (c), a conservator may make an*
21 *irrevocable transfer to another adult or trust company as custodian for*
22 *the benefit of the minor pursuant to K.S.A. 38-1710, and amendments*
23 *thereto.*

24 *(c) A transfer under subsection (a) or (b) may be made only if~~(i)~~:*

25 *(1) The personal representative, trustee, or conservator considers*
26 *the transfer to be in the best interest of the minor;~~(ii)~~:*

27 *(2) the transfer is not prohibited by or inconsistent with provisions*
28 *of the applicable will, trust agreement, or other governing instrument;*
29 *and~~(iii)~~*

30 *(3) the transfer is authorized by the court if~~it~~ such transfer exceeds*
31 *~~\$10,000~~ \$25,000 in value.*

32 *Sec. 3. K.S.A. 59-3053 is hereby amended to read as follows: 59-*
33 *3053. (a) A natural guardian shall have the right to the custody of the*
34 *natural guardian's minor child and the right to exercise control over the*
35 *person of the natural guardian's minor child as provided by law, unless*
36 *a guardian has been appointed for the minor. The natural guardian of*
37 *such minor has the right and responsibility to hold in trust and manage*
38 *such person's estate for such person's benefit all of the personal and*
39 *real property vested in such minor when the total of such property does*
40 *not exceed~~\$10,000~~ \$25,000 in value, unless a guardian or conservator*
41 *has been appointed for the minor.*

42 *(b) Nothing in this act shall be construed to relieve a natural*
43 *guardian of any obligation imposed by law for the support, maintenance,*

1 *care, treatment, habilitation or education of that natural guardian's*
2 *minor child.*

3 *Sec. 4. K.S.A. 59-3055 is hereby amended to read as follows: 59-*
4 *3055. (a) Any court having either control over or possession of any*
5 *amount of money not exceeding \$100,000, the right to which is vested in*
6 *a minor, shall have the discretion to authorize, without the appointment*
7 *of a conservator or the giving of bond, and notwithstanding the*
8 *authority of a natural guardian as provided for in K.S.A. 59-3053, and*
9 *amendments thereto, the deposit of the money in a savings account of a*
10 *bank, credit union, savings and loan association or any other investment*
11 *account that the court may authorize, payable either to a conservator, if*
12 *one shall be appointed for the minor, or to the minor upon attaining the*
13 *age of 18 years of age.*

14 *(b) Any court having either control over or possession of any*
15 *amount of money not exceeding ~~\$10,000~~ \$25,000, the right to which is*
16 *vested in a minor, shall have the discretion to order the payment of the*
17 *money to any person, including the natural guardian of the minor, or*
18 *the minor. If the person is the conservator for the minor, the court may*
19 *waive or recommend the waiver of the requirement of a bond. If the*
20 *person is anyone other than the minor, the court shall order that person*
21 *to hold in trust and manage such person's estate for such person's*
22 *benefit.*

23 *(c) Any court having either control over or possession of any*
24 *amount of money not exceeding ~~\$10,000~~ \$25,000, the right to which is*
25 *vested in a person for whom a guardian has been appointed, shall have*
26 *the discretion to authorize, without the appointment of a conservator or*
27 *the giving of bond, the deposit of the money in a savings account of a*
28 *bank, credit union or savings and loan association, payable to the*
29 *guardian for the benefit of the ward if authorized pursuant to subsection*
30 *~~(e)(8)~~ of K.S.A. 59-3075(e)(8), and amendments thereto, payable to a*
31 *conservator, if one shall be appointed for the person, or payable to the*
32 *ward on restoration to capacity.*

33 *Sec. 5. K.S.A. 38-1707, 59-3053 and 59-3055 are hereby repealed.*

34 ~~Sec. 2:~~ 6. This act shall take effect and be in force from and after its
35 publication in the statute book.