

2023 Kansas Statutes

38-152. Settlement agreement by person with legal custody of a minor; affidavit or verified statement required; payment; restrictions on withdrawal or transfer of funds; effect of agreement; liability; filing for guardianship or conservatorship; court actions. (a) 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:

- (1) A guardian or conservator has not been appointed for the minor;
 - (2) 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;
 - (3) the moneys payable under the settlement agreement will be paid as provided in subsections (c) and (d); and
 - (4) the person entering into the settlement agreement on behalf of the minor completes an affidavit or verified statement that attests that the person:
 - (A) Has made a reasonable inquiry and that to the best of the person's knowledge:
 - (i) The minor will be fully compensated by the settlement; or
 - (ii) there is no practical way to obtain additional amounts from the party or parties entering into the settlement agreement with the minor; and
 - (B) 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).
- (b) The attorney representing the person entering into the settlement agreement on behalf of the minor, if any, shall maintain the affidavit or verified statement completed under subsection (a)(4) in the attorney's file for a period of five years.
- (c) The moneys payable under the settlement agreement shall be paid as follows:
- (1) 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 maintained in compliance with supreme court rules to be held for the benefit of the minor, the attorney shall:
 - (A) Timely deposit the moneys received on behalf of the minor directly into a restricted savings or other restricted investment account that only allows withdrawals from the account under the circumstances specified in subsection (d); or
 - (B) purchase an annuity by direct payment to the issuer of the annuity with the minor designated as the sole beneficiary of the annuity.
 - (2) 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 shall provide the person or entity with whom the minor has settled the claim with the information sufficient to draw a check or draft made payable, or complete an electronic transfer of settlement funds:
 - (A) Into a restricted savings or other restricted investment account that only allows withdrawals from the account under the circumstances specified in subsection (d); or
 - (B) to purchase an annuity by direct payment to the issuer of the annuity with the minor designated as the sole beneficiary of the annuity.
 - (3) 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. If the settlement is paid:
 - (A) In cash or by draft or check, the moneys received on behalf of the minor shall be timely deposited into the account established under this paragraph and notice of the deposit to the minor and the person entering into the settlement agreement on behalf of the minor shall be delivered by personal service or first-class mail;
 - (B) by direct deposit, the minor, the person entering into the settlement on behalf of the minor or the department, shall provide the person or entity with whom the minor

has settled the claim with the information sufficient to complete an electronic transfer of settlement funds into the account established under this paragraph and notice of the deposit to the minor and the person entering into the settlement agreement on behalf of the minor shall be delivered by personal service or first-class mail; or

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

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

(A) Pursuant to court order;

(B) upon the minor attaining the age of majority or being otherwise emancipated; or

(C) upon the minor's death.

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

(e) 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, in lieu of a court order, when opening a restricted savings or other restricted investment account or purchasing an annuity on behalf of a minor pursuant to this section.

(f) (1) 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.

(2) 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.

(3) 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.

(g) 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.

(h) Nothing in this section shall prevent the minor or any person acting on behalf of the minor from filing in an appropriate district court and requesting the district court to approve 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 district court shall award any docket fees required to file the action to the minor or person acting on behalf of the minor.

History: L. 2023, ch. 65, § 1; July 1.