

SENATE BILL No. 243

AN ACT concerning minors; relating to settlement agreements; providing requirements and procedures for a person having legal custody of a minor to enter into a settlement agreement on behalf of the minor; increasing certain related dollar amounts in the Kansas uniform transfers to minors act and the act for obtaining a guardian or a conservator, or both; amending K.S.A. 38-1707, 38-1708, 59-3053, 59-3055 and 74-49,127 and K.S.A. 2022 Supp. 59-3075 and repealing the existing sections.

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

New Section 1. (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.

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

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

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

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

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

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

Sec. 3. K.S.A. 38-1708 is hereby amended to read as follows: 38-1708. (a) Subject to subsections (b) and (c), a person not subject to K.S.A. 38-1706 or 38-1707, *and amendments thereto*, who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to K.S.A. 38-1710, *and amendments thereto*.

(b) If a person having the right to ~~do so~~ *nominate a custodian* under K.S.A. 38-1704, *and amendments thereto*, has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under K.S.A. 38-1704, *and amendments thereto*, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ~~\$10,000~~ *\$25,000 in value.*

Sec. 4. K.S.A. 59-3053 is hereby amended to read as follows: 59-3053. (a) A natural guardian shall have the right to the custody of the natural guardian's minor child and the right to exercise control over the person of the natural guardian's minor child as provided by law, unless a guardian has been appointed for the minor. The natural guardian of such minor has the right and responsibility to hold in trust and manage such person's estate for such person's benefit all of the personal and real

property vested in such minor when the total of such property does not exceed ~~\$10,000~~ \$25,000 in value, unless a guardian or conservator has been appointed for the minor.

(b) Nothing in this act shall be construed to relieve a natural guardian of any obligation imposed by law for the support, maintenance, care, treatment, habilitation or education of that natural guardian's minor child.

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

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

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

Sec. 6. K.S.A. 2022 Supp. 59-3075 is hereby amended to read as follows: 59-3075. (a) (1) The individual or corporation appointed by the court to serve as the guardian shall carry out diligently and in good faith, the general duties and responsibilities, and shall have the general powers and authorities, provided for in this section as well as any specific duties, responsibilities, powers and authorities assigned to the guardian by the court. In doing so, a guardian shall at all times be subject to the control and direction of the court, and shall act in accordance with the provisions of any guardianship plan filed with the court pursuant to K.S.A. 59-3076, and amendments thereto. The court shall have the authority to appoint counsel for the guardian, and the fees of such attorney may be assessed as costs pursuant to K.S.A. 59-3094, and amendments thereto.

(2) A guardian shall become and remain personally acquainted with the ward, the spouse of the ward and with other interested persons associated with the ward and who are knowledgeable about the ward, the ward's needs and the ward's responsibilities. A guardian shall exercise authority only as necessitated by the ward's limitations. A guardian shall encourage the ward to participate in making decisions affecting the ward. A guardian shall encourage the ward to act on the ward's own behalf to the extent the ward is able. A guardian shall encourage the ward to develop or regain the skills and abilities

necessary to meet the ward's own essential needs and to otherwise manage the ward's own affairs. In making decisions on behalf of the ward, a guardian shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian shall strive to assure that the personal, civil and human rights of the ward are protected. A guardian shall at all times act in the best interests of the ward and shall exercise reasonable care, diligence and prudence.

(b) A guardian shall have the following general duties, responsibilities, powers and authorities:

(1) If the ward is a minor, to have the custody and control of the minor; and to provide for the minor's care, treatment, habilitation, education, support and maintenance;

(2) if the ward is an adult, to take charge of the person of the ward; and to provide for the ward's care, treatment, habilitation, education, support and maintenance;

(3) to consider and either provide on behalf of the ward necessary or required consents or refuse the same;

(4) to assure that the ward resides in the least restrictive setting appropriate to the needs of the ward and which is reasonably available;

(5) to assure that the ward receives any necessary and reasonably available medical care, consistent with the provisions of K.S.A. 59-3077, and amendments thereto, when applicable, and any reasonably available nonmedical care or other services as may be needed to preserve the health of the ward or to assist the ward to develop or retain skills and abilities;

(6) to promote and protect the comfort, safety, health and welfare of the ward;

(7) to make necessary determinations and arrangements for, and to give the necessary consents in regard to, the ward's funeral arrangements, burial or cremation, the performance of an autopsy upon the body of the ward, and anatomical gifts of the ward, subject to the provisions and limitations provided for in K.S.A. 65-3228, K.S.A. 65-2893 and 65-1734, and amendments thereto; and

(8) to exercise all powers and to discharge all duties necessary or proper to implement the provisions of this section.

(c) A guardian shall not be obligated by virtue of the guardian's appointment to use the guardian's own financial resources for the support of the ward.

(d) A guardian shall not be liable to a third person for the acts of the ward solely by virtue of the guardian's appointment, nor shall a guardian who exercises reasonable care in selecting a third person to provide any medical or other care, treatment or service for the ward be liable for any injury to the ward resulting from the wrongful conduct of that third person.

(e) A guardian shall not have the power:

(1) To prohibit the marriage or divorce of the ward;

(2) to consent, on behalf of the ward, to the termination of the ward's parental rights;

(3) to consent to the adoption of the ward, unless approved by the court;

(4) to consent, on behalf of the ward, to any psychosurgery, removal of any bodily organ; or amputation of any limb, unless such surgery, removal or amputation has been approved in advance by the court, except in an emergency and when necessary to preserve the life of the ward or to prevent serious and irreparable impairment to the physical health of the ward;

(5) to consent, on behalf of the ward, to the sterilization of the ward, unless approved by the court following a due process hearing held for the purposes of determining whether to approve such, and

during which hearing the ward is represented by an attorney appointed by the court;

(6) to consent, on behalf of the ward, to the performance of any experimental biomedical or behavioral procedure on the ward, or for the ward to be a participant in any biomedical or behavioral experiment, without the prior review and approval of such by either an institutional review board as provided for in title 45, part 46 of the code of federal regulations, or if such regulations do not apply, then by a review committee established by the agency, institution or treatment facility at which the procedure or experiment is proposed to occur, composed of members selected for the purposes of determining whether the proposed procedure or experiment:

(A) Does not involve any significant risk of harm to the physical or mental health of the ward, or the use of aversive stimulants, and is intended to preserve the life or health of the ward or to assist the ward to develop or regain skills or abilities; or

(B) involves a significant risk of harm to the physical or mental health of the ward, or the use of an aversive stimulant, but that the conducting of the proposed procedure or experiment is intended either to preserve the life of the ward, or to significantly improve the quality of life of the ward, or to assist the ward to develop or regain significant skills or abilities, and that the guardian has been fully informed concerning the potential risks and benefits of the proposed procedure or experiment or of any aversive stimulant proposed to be used, and as to how and under what circumstances the aversive stimulant may be used, and has specifically consented to such;

(7) to consent, on behalf of the ward, to the withholding or withdrawal of life-saving or life-sustaining medical care, treatment, services or procedures, except:

(A) In accordance with the provisions of any declaration of the ward made pursuant to the provisions of K.S.A. 65-28,101 through 65-28,109, and amendments thereto; or

(B) if the ward, prior to the court's appointment of a guardian pursuant to K.S.A. 59-3067, and amendments thereto, shall have executed a durable power of attorney for health care decisions pursuant to K.S.A. 58-629, and amendments thereto, and such shall not have been revoked by the ward prior thereto, and there is included ~~therein~~ *in such power of attorney* any provision relevant to the withholding or withdrawal of life-saving or life-sustaining medical care, treatment, services or procedures, then the guardian shall have the authority to act as provided for ~~therein~~ *in such power of attorney*, even if the guardian has revoked or otherwise amended that power of attorney pursuant to the authority of K.S.A. 58-627, and amendments thereto, or the guardian may allow the agent appointed by the ward to act on the ward's behalf if the guardian has not revoked or otherwise amended that power of attorney; or

(C) in the circumstances where the ward's treating physician shall certify in writing to the guardian that the ward is in a persistent vegetative state or is suffering from an illness or other medical condition for which further treatment, other than for the relief of pain, would not likely prolong the life of the ward other than by artificial means, nor would be likely to restore to the ward any significant degree of capabilities beyond those the ward currently possesses, and which opinion is concurred in by either a second physician or by any medical ethics or similar committee to which the health care provider has access established for the purposes of reviewing such circumstances and the appropriateness of any type of physician's order which would have the effect of withholding or withdrawing life-saving or life-sustaining medical care, treatment, services or procedures. Such written

certification shall be approved by an order issued by the court;

(8) to exercise any control or authority over the ward's estate, except if the court shall specifically authorize such. The court may assign such authority to the guardian, including the authority to establish certain trusts as provided in K.S.A. 59-3080, and amendments thereto, and may waive the requirement of the posting of a bond, only if:

(A) Initially, the combined value of any funds and property in the possession of the ward or in the possession of any other person or entity, but which the ward is otherwise entitled to possess, equals ~~\$10,000~~ \$25,000 or less; and

(B) either the court requires the guardian to report to the court the commencement of the exercising of such authority, or requires the guardian to specifically request of the court the authority to commence the exercise of such authority, as the court shall specify; and

(C) the court also requires the guardian, whenever the combined value of such funds and property exceeds ~~\$10,000~~ \$25,000, to:

(i) File a guardianship plan as provided for in K.S.A. 59-3076, and amendments thereto, which contains elements similar to those which would be contained in a conservatorship plan as provided for in K.S.A. 59-3078, and amendments thereto;

(ii) petition the court for appointment of a conservator as provided for in K.S.A. 59-3058, 59-3059 or 59-3060, and amendments thereto; or

(iii) notify the court as the court shall specify that the value of the conservatee's estate has equaled or exceeded ~~\$10,000~~ \$25,000, if the court has earlier appointed a conservator but did not issue letters of conservatorship pending such notification;

(9) to place the ward in a treatment facility as defined in K.S.A. 59-3077, and amendments thereto, except if authorized by the court as provided for ~~therein~~ in that section; or

(10) to access digital assets of the ward except if authorized by the court pursuant to K.S.A. 2022 Supp. 58-4814, and amendments thereto.

(f) The guardian shall file with the court reports concerning the status of the ward and the actions of the guardian as the court shall direct pursuant to K.S.A. 59-3083, and amendments thereto.

Sec. 7. K.S.A. 74-49,127 is hereby amended to read as follows: 74-49,127. (1) Any payment made to a named beneficiary as provided in this section, shall be a full discharge and release to the system from any further claims. Any payment made to a beneficiary as provided in ~~clauses (A), (B), (C), (D), (E) or (F) of subsection (7) of K.S.A. 74-4902(7)(A), (B), (C), (D), (E) or (F) or in clauses (1), (2), (3), (4), (5) or (6) of subsection (k) of K.S.A. 20-2601(k)(1), (2), (3), (4), (5) or (6),~~ and amendments thereto, as determined by the board, shall be a full discharge and release to the system from any further claims. Whenever any payment is payable to more than one beneficiary, such payment shall be made to such beneficiaries jointly.

(2) Any benefits payable to a beneficiary or beneficiaries who are incompetent shall be made in the name of the beneficiary or beneficiaries and delivered to the lawfully appointed conservator of such beneficiaries who was nominated by will or as otherwise provided by law, except that in those cases where the benefit involves an amount not to exceed \$500, the board is hereby authorized in its discretion without the appointment of a conservator or in the giving of a bond to pay such amount as is due to the incompetent person or persons themselves.

(3) Any lump-sum benefits payable to a beneficiary or beneficiaries who are minor children and which amount totals ~~\$10,000~~ \$25,000 or more shall be made in the name of the beneficiary or

beneficiaries and delivered to the lawfully appointed conservator of such beneficiaries who was nominated by will or as otherwise provided by law except that in those cases where the benefit involves an amount not to exceed \$500, the board is hereby authorized in its discretion without the appointment of a conservator or the giving of a bond to pay such amount as is due to the minor or minors themselves. If no conservator is lawfully appointed, the system will credit interest at 4% on all benefits due and payable and shall pay all benefits plus interest to the beneficiary or beneficiaries who are minor children when they attain age 18 years. Any benefits payable to a beneficiary or beneficiaries who are minor children and which amount which totals more than \$500 but less than ~~\$10,000~~ \$25,000, may be made in the name of the beneficiary or beneficiaries and paid under the uniform transfers to minors act as provided in K.S.A. 38-1701 et seq., and amendments thereto.

(4) Any monthly benefits payable to a beneficiary or beneficiaries who are minor children shall be made in the name of the beneficiary or beneficiaries and delivered to the lawfully appointed conservator of such beneficiaries who was nominated by will or as otherwise provided by law. If no conservator is lawfully appointed, the system will credit interest at 4% on all benefits due and payable and shall pay all benefits plus interest to the beneficiary or beneficiaries who are minor children when they attain age 18 years.

(5) As used in this section, "system" means the Kansas public employees retirement system, the Kansas police and firemen's retirement system and the retirement system for judges.

Sec. 8. K.S.A. 38-1707, 38-1708, 59-3053, 59-3055 and 74-49,127 and K.S.A. 2022 Supp. 59-3075 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.