

1 AN ACT relating to settlements with minors and declaring an emergency.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 387.278 is amended to read as follows:

- 4 (1) A person having legal custody of a minor may settle or compromise and enter into a
5 settlement agreement with a person against whom the minor has a claim or from
6 whom the minor is to receive proceeds from the sale of real estate, for the
7 settlement of any estate, or from any other source if:
- 8 (a) A guardian or conservator has not been appointed for the minor;
 - 9 (b) The total amount of the settlement proceeds due to the minor, after reduction
10 from the total settlement amount of all medical expenses, medical liens, all
11 other liens, and reasonable attorney fees and costs, is twenty-five thousand
12 dollars (\$25,000) or less if paid in cash, by draft or check, by direct deposit, or
13 by the purchase of a premium for an annuity;
 - 14 (c) The moneys payable under the settlement agreement will be paid as provided
15 in subsections (3) and (4) of this section; and
 - 16 (d) The person entering into the settlement agreement on behalf of the minor
17 completes an affidavit or verified statement that attests that the person:
 - 18 1. Has made a reasonable inquiry and that to the best of the person's
19 knowledge:
 - 20 a. The minor will be fully compensated by the settlement; or
 - 21 b. There is no practical way to obtain additional amounts from the
22 party or parties entering into the settlement agreement with the
23 minor; and
 - 24 2. Understands and acknowledges that he or she is obligated by law to
25 deposit the settlement directly into a restricted savings or other restricted
26 investment account, or purchase an annuity, as provided in subsection
27 (3) of this section.

1 (2) The attorney representing the person entering into the settlement agreement on
2 behalf of the minor, if any, shall maintain the affidavit or verified statement
3 completed under subsection (1)(d) of this section in the attorney's file for a period
4 of five (5) years.

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

6 (a) If the minor or person entering into the settlement agreement on behalf of the
7 minor is represented by an attorney and the settlement is paid in cash, by draft
8 or check, or by direct deposit into the attorney's trust account maintained
9 under Rule 3.830 of the Supreme Court of Kentucky to be held for the benefit
10 of the minor, the attorney shall:

11 1. Timely deposit the moneys received on behalf of the minor directly into
12 a restricted savings or other restricted investment account that only
13 allows withdrawals from the account under any of the circumstances set
14 forth in subsection (4) of this section; or

15 2. Purchase an annuity by direct payment to the issuer of the annuity with
16 the minor designated as the sole beneficiary of the annuity;

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

24 1. Into a restricted savings or other restricted investment account that only
25 allows withdrawals from the account under any of the circumstances set
26 forth in subsection (4) of this section; or

27 2. To purchase an annuity by direct payment to the issuer of the annuity

1 with the minor designated as the sole beneficiary of the annuity; and

2 (c) If the minor is under the care, custody, and control of the Commonwealth, the
3 Cabinet for Health and Family Services shall establish a restricted trust
4 account, or subaccount of a trust account, that earns interest for the benefit of
5 the minor, for the purpose of receiving moneys payable to the minor under the
6 settlement agreement. If the settlement is paid:

7 1. In cash or by draft or check, the moneys received on behalf of the minor
8 shall be timely deposited into the account established under this
9 paragraph, and notice of the deposit to the minor and the person entering
10 into the settlement agreement on behalf of the minor shall be delivered
11 by personal service or first-class mail;

12 2. By direct deposit, the minor, the person entering into the settlement on
13 behalf of the minor, or the cabinet shall provide the person or entity with
14 whom the minor has settled the claim with the information sufficient to
15 complete an electronic transfer of settlement funds into the account
16 established under this paragraph, and notice of the deposit to the minor
17 and the person entering into the settlement agreement on behalf of the
18 minor shall be delivered by personal service or first-class mail; or

19 3. Through the purchase of an annuity, direct payment shall be made to the
20 issuer of the annuity with the minor designated as the sole beneficiary of
21 the annuity.

22 (4) The moneys in the minor's restricted savings or other restricted investment account,
23 trust account, or trust subaccount established under subsection (3) of this section
24 may not be withdrawn, removed, paid out, or transferred to any person, including
25 the minor, except as follows:

26 (a) Pursuant to court order;

27 (b) Upon the minor attaining the age of majority or being otherwise emancipated;

1 or

2 (c) Upon the minor's death.

3 (5) A signed settlement agreement entered into on behalf of the minor in compliance
4 with subsection (1) of this section:

5 (a) Is binding on the minor without the need for court approval or review;~~[-]~~

6 (b) Has the same force and effect as if the minor were a competent adult entering
7 into the settlement agreement; and~~[-]~~

8 (c) Shall serve to fully release all claims of the minor encompassed by the
9 settlement agreement~~[-, and may be relied on by a financial institution or other~~
10 ~~entity, in lieu of a court order, when opening a restricted savings or other~~
11 ~~restricted investment account, or purchasing an annuity, on behalf of a minor~~
12 ~~pursuant to this section].~~

13 (6) (a) As used in this subsection, "financial institution" means any person doing
14 business under the laws of any state or commonwealth or the United States
15 relating to banks, bank holding companies, savings banks, savings and loan
16 associations, trust companies, or credit unions.

17 (b) A financial institution or other entity may open a restricted savings or other
18 restricted investment account, or issue an annuity, pursuant to this section.

19 (c) If a financial institution or other entity elects to open a restricted savings or
20 other restricted investment account, or issue an annuity, pursuant to this
21 section, a court order shall not be required to open the account or issue the
22 annuity.

23 (d) A person that elects to deposit or otherwise direct moneys into a restricted
24 savings or other restricted investment account in accordance with
25 subsection (3) of this section may execute documents to open and
26 administer the account.

27 (7) A restricted savings or other restricted investment account that is opened and

1 *administered pursuant to this section shall be exempt from the provisions of KRS*
2 *Chapter 393A until the earlier of one (1) of the circumstances set forth in*
3 *subsection (4) of this section.*

4 ~~(8)~~~~(6)~~ (a) Any person or entity against whom a minor has a claim that settles the
5 claim with the minor in good faith under this section shall not be liable to the
6 minor for any claims arising from the settlement of the claim.

7 (b) An insurer who in good faith transfers funds at the direction of the settling
8 minor or the minor's representatives into a restricted savings or other
9 restricted investment account, or to purchase an annuity, shall not be liable to
10 the minor or the minor's representatives for any claims arising from the use of
11 those funds after the transfer is completed.

12 ~~(9)~~~~(7)~~ Nothing in this section shall prevent anyone acting on behalf of the minor
13 from filing for guardianship, limited guardianship, or conservatorship in the District
14 Court and requesting the District Court to approve the settlement on behalf of the
15 minor and oversee the settlement proceeds.

16 ➔Section 2. Whereas there is a significant and legitimate need to ensure prompt
17 and secure payments for the benefit of minors in accordance with settlements made under
18 existing law, an emergency is declared to exist, and this Act takes effect upon its passage
19 and approval by the Governor or upon its otherwise becoming a law.