

387.278 Settlement agreement by person with legal custody of minor -- Affidavit or verified statement -- Payment -- Withdrawal or transfer from account -- Effect of agreement -- Liability -- Filing for guardianship or conservatorship.

- (1) 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) A guardian or conservator has not been appointed for the minor;
 - (b) 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 twenty-five thousand dollars (\$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;
 - (c) The moneys payable under the settlement agreement will be paid as provided in subsections (3) and (4) of this section; and
 - (d) The person entering into the settlement agreement on behalf of the minor completes an affidavit or verified statement that attests that the person:
 1. Has made a reasonable inquiry and that to the best of the person's knowledge:
 - a. The minor will be fully compensated by the settlement; or
 - b. There is no practical way to obtain additional amounts from the party or parties entering into the settlement agreement with the minor; and
 2. Understands and acknowledges that he or she 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 (3) of this section.
- (2) 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 (1)(d) of this section in the attorney's file for a period of five (5) years.
- (3) The moneys payable under the settlement agreement shall be paid as follows:
 - (a) 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 under Rule 3.830 of the Supreme Court of Kentucky to be held for the benefit of the minor, the attorney shall:
 1. 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 any of the circumstances set forth in subsection (4) of this section; or
 2. Purchase an annuity by direct payment to the issuer of the annuity with the minor designated as the sole beneficiary of the annuity;
 - (b) 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:

1. Into a restricted savings or other restricted investment account that only allows withdrawals from the account under any of the circumstances set forth in subsection (4) of this section; or
 2. To purchase an annuity by direct payment to the issuer of the annuity with the minor designated as the sole beneficiary of the annuity; and
- (c) If the minor is under the care, custody, and control of the Commonwealth, the Cabinet for Health and Family Services 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:
1. 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;
 2. By direct deposit, the minor, the person entering into the settlement on behalf of the minor, or the cabinet 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
 3. 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.
- (4) The moneys in the minor's restricted savings or other restricted investment account, trust account, or trust subaccount established under subsection (3) of this section 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.
- (5) A signed settlement agreement entered into on behalf of the minor in compliance with subsection (1) of this section 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.

- (6) (a) 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.
 - (b) An insurer who in good faith transfers funds at the direction of the settling minor or the minor's representatives into a restricted savings or other restricted investment account, or to purchase an annuity, shall not be liable to the minor or the minor's representatives for any claims arising from the use of those funds after the transfer is completed.
- (7) Nothing in this section shall prevent anyone acting on behalf of the minor from filing for guardianship, limited guardianship, or conservatorship in the District Court and requesting the District Court to approve the settlement on behalf of the minor and oversee the settlement proceeds.

Effective: April 8, 2022

History: Created 2022 Ky. Acts ch. 182, sec. 1, effective April 8, 2022.