

ENGROSSED LEGISLATIVE BILL 341

Introduced by Hallstrom, 1.

A BILL FOR AN ACT relating to settlements; to adopt the Nebraska Statutory Thresholds for Settlements Involving Minors Act.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 3 of this act shall be known and cited as the Nebraska Statutory Thresholds for Settlements Involving Minors Act.

Sec. 2. The purpose of the Nebraska Statutory Thresholds for Settlements Involving Minors Act is to set forth standards and procedures for settling claims involving minors.

Sec. 3. (1) A person having legal custody of a minor may enter into a settlement agreement with a person against whom the minor has a claim if:

(a) A conservator or guardian ad litem has not been appointed for the minor;

(b) The total amount of the claim, not including reimbursement of medical expenses, liens, reasonable attorney's fees and costs of suit, is forty thousand dollars or less if paid in cash, by check, by draft, by direct deposit, or by the purchase of a premium for an annuity;

(c) The money paid under the settlement agreement will be paid as set forth 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 has made a reasonable inquiry and that:

(i) To the best of the person's knowledge, the minor will be fully compensated by the settlement; or

(ii) There is no practical way to obtain additional amounts from the party entering into the settlement agreement with the minor.

(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 subdivision (1)(d) of this section in the attorney's file for four years after the minor attains the age of twenty-one years.

(3) The money 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 check, by draft, or by direct deposit, then payment shall be made into the attorney's trust account maintained pursuant to the rules of the Supreme Court to be held for the benefit of the minor. The attorney shall timely deposit the money received on behalf of the minor directly into an account established pursuant to the Nebraska Uniform Transfers to Minors Act for the sole benefit of the minor that only allows withdrawals pursuant to subsection (4) of this section and provide notice of the deposit to the minor and the person entering into the settlement agreement on behalf of the minor. Notice shall be delivered by personal service or first-class mail;

(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 in cash, by check, by draft, or by direct deposit, then payment shall be made into an account established pursuant to the Nebraska Uniform Transfers to Minors Act for the sole benefit of the minor that only allows withdrawals pursuant to subsection (4) of this section;

(c) If paid by the purchase of a premium for an annuity, then payment shall be by direct payment to the provider of the annuity with the minor designated as the sole beneficiary of the annuity; and

(d) If the minor is a ward of the state and the settlement is paid in cash, by check, by draft, or by direct deposit, then payment shall be made into a trust account, or subaccount of a trust account, established by the Department of Health and Human Services for the purpose of receiving money payable to the ward under the settlement agreement and that earns interest for the benefit of the ward and the department shall provide notice of the deposit

to the ward by personal service or first-class mail.

(4) The money in the minor's savings account, trust account, or trust subaccount described in subsection (3) of this section shall not be withdrawn, removed, or paid out or transferred to any person, including the minor, except as follows:

(a) Pursuant to court order;

(b) At the direction of the custodian for the account established pursuant to the Nebraska Uniform Transfers to Minors Act for the sole benefit of the minor;

(c) Upon the minor's attainment of nineteen years of age; or

(d) Upon the minor's death.

(5) If a settlement agreement is entered into in compliance with subsection (1) of this section, the signature of the person entering into the settlement agreement on behalf of the minor is binding on the minor without the need for further court approval or review and has the same force and effect as if the minor were a competent adult entering into the settlement agreement.

(6)(a) A person acting in good faith on behalf of a minor under this section is not liable to the minor for the money paid in settlement or for any other claim arising out of the settlement.

(b) An insurer who in good faith transfers funds at the direction of the settling minor or the minor's representatives into a restrictive savings or other restrictive 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.

(c) 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 shall not be liable to the minor or the minor's representatives for any claims arising from the use of such funds.

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

(8) For the purposes of this section, minor means a person under nineteen years of age.

(9) Nothing in this section shall prevent anyone acting on behalf of the minor from filing for guardianship, limited guardianship, or conservatorship in the appropriate county court and requesting the county court to approve the settlement on behalf of the minor and oversee the settlement proceeds.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 341 was passed by the One Hundred Ninth Legislature of Nebraska at its First Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR