

1 **SENATE FLOOR VERSION**

2 April 4, 2023

3 ENGROSSED HOUSE
4 BILL NO. 1547

By: Moore of the House

5 and

6 Howard of the Senate

7
8 An Act relating to civil procedure; amending 12 O.S.
9 2021, Section 83, which relates to conserving monies
10 obtained for or on behalf of persons under eighteen
11 years of age in court proceedings; increasing
12 monetary minimum; providing for conserving monies
13 obtained for or on behalf of persons under eighteen
14 years of age when sum is under a certain amount;
15 modifying when withdrawals of monies can be made;
16 providing when a settlement agreement is binding on
17 the minor without court approval; providing that a
18 person acting in good faith on behalf of a minor is
19 not liable to the minor for the monies paid in
20 settlement; providing that no insurer shall be liable
21 to the minor or anyone else for any deviation from
22 such obligations except upon proving by clear and
23 convincing evidence that the deviation was an
24 intentional act to harm the minor; providing that
person or entity against whom a minor has a claim
that settles the claim with a minor in good faith not
be liable to the minor for any claims arising from
the settlement of the claim; requiring an adult
acting on behalf of a person who is less than
eighteen years of age to complete an affidavit or
verified statement; providing affidavit form;
requiring any federally insured banking, credit union
or savings and loan institution receiving the monies
for deposit shall complete a receipt of deposit;
providing receipt of deposit form; repealing 12 O.S.
2021, Sections 86 and 86.1, which relate to the
Oklahoma Statutory Thresholds for Settlements
Involving Minors Act of 2022; and providing an
effective date.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2021, Section 83, is amended to read as follows:

Section 83. A. Monies recovered in any court proceeding by a next ~~friend~~ of kin or guardian ad litem for or on behalf of a person who is less than eighteen (18) years of age in excess of ~~One Thousand Dollars (\$1,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) over sums sufficient for paying costs and expenses including medical bills and ~~attorney's~~ attorney fees shall be deposited, by order of the court, in one or more federally insured banking, credit union or savings and loan institutions, a trust established for the person approved by the court, or invested by a bank or trust company having trust powers under federal or state law, approved by the court; provided, that the court may approve a structured settlement, by the terms of which the proceeds of a settlement may be invested by the plaintiff or the defendant in an annuity to be paid to or for the benefit of the minor by an insurance company licensed in this state. If authorized by the court at the request of the next ~~friend~~ of kin or guardian ad litem, all or a portion of the recovered monies may be deposited in an account pursuant to the Oklahoma College Savings Plan Act with the minor designated as beneficiary of the account.

1 B. A minor's parent or guardian may enter into a settlement
2 agreement outside of court with a person against whom the minor has
3 a claim if a guardian ad litem, guardian, or conservator has not
4 been appointed for the minor, and the total amount of the settlement
5 proceeds is in excess of One Thousand Five Hundred Dollars
6 (\$1,500.00), and less than Twenty-five Thousand Dollars
7 (\$25,000.00), after reduction from the total settlement amount of
8 all medical expenses, medical liens, all other liens, and reasonable
9 attorney fees and costs. Monies recovered from such a settlement
10 shall be deposited by the parent or guardian in one or more
11 federally insured banking, credit union, or savings and loan
12 institution, or a structured settlement, by the minor's parent or
13 guardian in an annuity to be paid to or for the sole benefit of the
14 minor by an insurance company licensed in this state. All or a
15 portion of the recovered monies may also be deposited in an account
16 pursuant to the Oklahoma College Savings Plan Act with the minor
17 designated as the sole beneficiary of the account.

18 The parent or guardian acting on behalf of the person who is
19 less than eighteen (18) years of age shall complete an affidavit or
20 verified statement in conformity with this section. The parent or
21 guardian entering into the settlement agreement on behalf of the
22 minor shall retain a copy of the affidavit or verified statement for
23 the minor until the minor reaches the age of majority. If the minor
24 is represented by counsel, the attorney shall also retain in the

1 attorney file a copy of the affidavit or verified statement until
2 one (1) year after the minor attains eighteen (18) years of age.

3 Any federally insured banking, credit union, or savings and loan
4 institution receiving the monies for deposit shall complete a
5 receipt of deposit signed by an officer of the bank, credit union,
6 or savings and loan institution in conformity with subsection I of
7 this section. A federally insured banking, credit union, or savings
8 and loan institution may accept the affidavit without further
9 investigation and the bank, credit union, or savings and loan
10 institution is not liable to the minor or parent or guardian
11 provided the account is administered as set forth in the affidavit
12 and receipt of deposit provided for in this section.

13 C. Until the ~~person~~ minor becomes eighteen (18) years of age,
14 withdrawals of monies from the account or accounts shall be solely
15 pursuant to order of the court made in the case in which recovery
16 was had, or by filing an action if no case had previously been
17 filed, or upon the minor's death.

18 ~~C.~~ D. When an application for the order is made by a person who
19 is not represented by an attorney, the judge of the court shall
20 prepare the order.

21 ~~D.~~ ~~This section shall not apply if~~

22 E. If a legal guardian has been appointed for the minor prior
23 to any award of monies pursuant to ~~subsection A~~ of this section. ~~If~~
24 ~~a legal guardian is appointed after any award of monies pursuant to~~

1 ~~subsection A of this section~~, the legal guardian may petition the
2 district court in the county where the federally insured funds are
3 held for an order directing the bank, credit union or savings and
4 loan to transfer the funds to the legal guardian. The district
5 court may make the granting of the request to transfer funds subject
6 to reasonable safeguards.

7 F. If a settlement agreement is entered into in compliance with
8 subsection B of this section, the signature of the parent or
9 guardian entering into the settlement agreement on behalf of the
10 minor is binding on the minor without the need for court approval or
11 review, and has the same force and effect as if the minor were a
12 competent adult entering into the settlement agreement.

13 G. A person acting in good faith on behalf of a minor pursuant
14 to subsection B of this section is not liable to the minor for the
15 monies paid in the settlement or for any other claim arising out of
16 the settlement.

17 H. Any person or entity against whom a minor has a claim that
18 settles the claim with a minor in good faith under this section
19 shall not be liable to the minor or the minor's parent or guardian
20 for any claims arising from the settlement of the claim.

21 I. The minor's parent or guardian shall complete an affidavit
22 or verified statement in substantial conformity with the applicable
23 provisions below:

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1 "I, [Name of Affiant], being of lawful age and after being duly
2 sworn upon oath, state as follows:

3 1. I am the parent or guardian of [Name of minor child] ("XX"),
4 a minor child.

5 2. XX's date of birth is MM-DD-YYYY.

6 3. [Briefly state when, where, and how the incident in question
7 occurred.]

8 4. [Briefly state how minor was injured in the incident,
9 describe his or her injuries, medical care received, if any, and how
10 they are doing today.]

11 5. As a result of the injuries sustained by XX in the incident
12 in question, I, individually and on behalf of XX, a minor, agreed to
13 settle the claims of XX against [Name of tortfeasor(s)], with their
14 insurer, [if any, provide the name of Third-Party Liability
15 Insurance Carrier(s)], in the amount of \$XXXX; and with my UM/UIM
16 insurer, [if any, provide the name of First-Party-Liability
17 Insurance Carrier(s)], in the amount of \$XXXX, [add additional
18 tortfeasor or first-party coverages where applicable] for a total
19 settlement in the amount of \$XXXX.

20 6. I understand that all medical expenses, liens and
21 subrogation claims must be paid from the settlement: [List all
22 outstanding medical expenses, liens and subrogation providers and
23 the amounts.]

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1 7. I understand that I (or another parent or guardian of the
2 minor) may be reimbursed from the settlement for medical expenses
3 that I or we have paid for the care or treatment of XX as a result
4 of injuries incurred by XX due to the subject incident as follows:
5 [List all relevant medical expenses of XX, paid for by a parent or
6 guardian, for which reimbursement is sought from the settlement.]

7 8. I understand that \$XXXX will be paid from the settlement to
8 [Name of Firm/Attorney, if any] for attorney fees and costs in
9 securing the settlement pursuant to my contract with [Name of
10 Firm/Attorney].

11 9. I understand that pursuant to subsection B of Section 83 of
12 Title 12 of the Oklahoma Statutes, the net of XX's settlement in the
13 amount of \$XXXX must be deposited in one or more federally insured
14 banking, credit union or savings and loan institutions, a savings
15 account that accrues interest, a trust established for XX, or
16 invested by a bank or trust company having trust powers under
17 federal or state law; into a structured settlement, by the terms of
18 which the proceeds of a settlement may be invested in an annuity to
19 be paid to or for the benefit of XX by an insurance company licensed
20 in this state. All or a portion of the recovered monies may be
21 deposited in an account pursuant to the Oklahoma College Savings
22 Plan Act with XX designated as a beneficiary of the account.

23 10. I understand that such funds may not be withdrawn, removed,
24 paid out, or transferred to anyone until XX is 18 years of age,

1 except pursuant to court order or upon the minor's death. When the
2 minor XX reaches the age of eighteen (18) years, the funds may be
3 withdrawn, removed, paid out or transferred by the minor without a
4 court order.

5 11. I understand that I must deposit the funds, secure a
6 Receipt of Deposit from the bank, and if I am represented, to return
7 the Receipt of Deposit to my attorney. I must also advise the minor
8 of the settlement and the location of the settlement funds as soon
9 as the minor has the ability to understand its existence and at the
10 time the minor reaches eighteen (18) years of age.

11 12. I understand that should I not settle this matter on behalf
12 of the minor, I have the right to ask for a jury trial in this
13 matter, and that a jury may have awarded more, less, or the same
14 amount, but by settling XX's claims, I am giving up this right to a
15 jury trial.

16 13. I understand that should I not settle this matter, or
17 pursue a jury trial on behalf of XX, XX would alternatively have a
18 right to bring a cause of action against [Name of Tortfeasor(s)]
19 within the one (1) year between XX's 18th and 19th birthdays;
20 however, by settling this matter at this time on XX's behalf, I am
21 waiving his or her right to bring a cause of action at that time,
22 and relatedly his or her opportunity to obtain a verdict through
23 jury trial.

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1 14. I understand that by settling XX's claims, whether for
2 already known or later-discovered additional injuries from the
3 subject incident and/or if XX requires future medical care, I will
4 not be able to open this claim or bring any future cause of action
5 against [Name of Tortfeasor(s) or their insurer(s)], [Name of
6 Insurance Carrier, if any], to request additional sums of money.

7 15. I believe this is a fair and reasonable settlement of XX's
8 claim: that to the best of my knowledge the minor will be fully
9 compensated by the settlement, or there is no practical way to
10 obtain additional amounts from the other party/parties entering into
11 the settlement agreement.

12 16. I believe this settlement is in the best interests of XX.

13 17. I understand that this settlement is full and final; I have
14 not been coerced, pressured, or threatened into entering this
15 settlement in any way.

16 FURTHER AFFIANT SAYETH NOT.

17 _____

18 _____

19 _____ [Name of Affiant]

20 _____ [Address of Affiant]

21 _____ [Phone Number of Affiant]

22 I state under penalty of perjury under the laws of Oklahoma that the
23 foregoing is true and correct.

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1 _____
2 Date _____ Signature of Parent or Legal Guardian of XX

3 Approved as to form and content by:

4 _____

5 [Attorney Name, if any]

6 J. Any federally insured banking, credit union or savings and
7 loan institution receiving the monies for deposit shall complete a
8 receipt of deposit referenced herein in conformity with the
9 following:

10 RECEIPT OF DEPOSIT

11 The undersigned, an Officer of [Name of Bank], does hereby
12 acknowledge receipt of the Affidavit of [Name of Affiant], and that
13 \$XXXXXX was deposited for the benefit of the minor, XX.

14 It is understood that the funds so deposited, pursuant to provisions
15 under Section 83 of Title 12 of the Oklahoma Statutes, may not be
16 withdrawn, removed, paid out, or transferred by anyone until XX is
17 eighteen (18) years of age, except pursuant to court order or upon
18 the minor's death.

19 When XX reaches the age of eighteen (18) years of age, the funds may
20 be withdrawn, removed, paid out, or transferred by XX without court
21 order.

22 BY:

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Signature

Printed Name

Title

Subscribed and sworn to before me this _____ day of _____,

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Notary Public

My Commission Expires:

_____ "

SECTION 2. REPEALER 12 O.S. 2021, Sections 86 and 86.1,
are hereby repealed.

SECTION 3. This act shall become effective November 1, 2023.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
April 4, 2023 - DO PASS