

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 1405

By: Culver

4
5
6 AS INTRODUCED

7 An Act relating to civil procedure; amending 12 O.S.
8 2021, Section 83, which relates to conserving monies
9 obtained for or on behalf of persons under eighteen
10 years of age in court proceedings; increasing
11 monetary minimum; providing for conserving monies
12 obtained for or on behalf of persons under eighteen
13 years of age when sum is under a certain amount;
14 modifying when withdrawals of monies can be made;
15 providing when a settlement agreement is binding on
16 the minor without court approval; providing that a
17 person acting in good faith on behalf of a minor is
18 not liable to the minor for the monies paid in
19 settlement; providing that person or entity against
20 whom a minor has a claim that settles the claim with
21 a minor in good faith not be liable to the minor for
22 any claims arising from the settlement of the claim;
23 requiring an adult acting on behalf of a person who
24 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.

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

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

1 Section 83. A. Monies recovered in any court proceeding by a
2 next ~~friend~~ of kin or guardian ad litem for or on behalf of a person
3 who is less than eighteen (18) years of age in excess of ~~One~~
4 ~~Thousand Dollars (\$1,000.00)~~ Twenty-five Thousand Dollars
5 (\$25,000.00) over sums sufficient for paying costs and expenses
6 including medical bills and attorney's fees shall be deposited, by
7 order of the court, in one or more federally insured banking, credit
8 union or savings and loan institutions, a trust established for the
9 person approved by the court, or invested by a bank or trust company
10 having trust powers under federal or state law, approved by the
11 court; provided, that the court may approve a structured settlement,
12 by the terms of which the proceeds of a settlement may be invested
13 by the plaintiff or the defendant in an annuity to be paid to or for
14 the benefit of the minor by an insurance company licensed in this
15 state. If authorized by the court at the request of the next ~~friend~~
16 of kin or guardian ad litem, all or a portion of the recovered
17 monies may be deposited in an account pursuant to the Oklahoma
18 College Savings Plan Act with the minor designated as beneficiary of
19 the account.

20 B. Monies recovered in any court proceeding or settlement
21 without the filing of an action in excess of One Thousand Dollars
22 (\$1,000.00), and less than Twenty-five Thousand Dollars
23 (\$25,000.00), over the sum sufficient for paying costs and expenses
24 including medical bills and attorney fees, by a next of kin or

1 guardian ad litem for or on behalf of a person who is less than
2 eighteen (18) years of age shall be deposited in one or more
3 federally insured banking, credit union or savings and loan
4 institutions, or a structured settlement, by the terms of which the
5 proceeds of a settlement may be invested by the plaintiff or the
6 defendant in an annuity to be paid to or for the sole benefit of the
7 minor by an insurance company licensed in this state. All or a
8 portion of the recovered monies may be deposited in an account
9 pursuant to the Oklahoma College Savings Plan Act with the minor
10 designated as the sole beneficiary of the account.

11 The adult acting on behalf of the person who is less than
12 eighteen (18) years of age shall complete an affidavit or verified
13 statement in conformity with this section. The adult entering into
14 the settlement agreement on behalf of the minor, shall retain a copy
15 of the affidavit or verified statement for the minor until the minor
16 reaches the age of majority. If the minor is represented by
17 counsel, the attorney shall also retain in the attorney file a copy
18 of the affidavit or verified statement until one (1) year after the
19 minor attains eighteen (18) years of age. If the minor is not
20 represented by counsel, the insurance company paying monies shall
21 retain in the claim file a copy of the affidavit or verified
22 statement until one (1) year after the minor attains eighteen (18)
23 years of age.

24

1 Any federally insured banking, credit union or savings and loan
2 institution receiving the monies for deposit shall complete a
3 receipt of deposit signed by an officer of the bank, credit union,
4 or savings and loan in conformity with subsection J of this section.

5 C. Until the person becomes eighteen (18) years of age,
6 withdrawals of monies from the account or accounts shall be solely
7 pursuant to order of the court made in the case in which recovery
8 was had or by filing an action if no case had previously been filed.

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

12 ~~D.~~ E. This section shall not apply if a legal guardian has been
13 appointed for the minor prior to any award of monies pursuant to
14 subsection A of this section. If a legal guardian is appointed
15 after any award of monies pursuant to subsection A of this section,
16 the legal guardian may petition the district court in the county
17 where the federally insured funds are held for an order directing
18 the bank, credit union or savings and loan to transfer the funds to
19 the legal guardian. The district court may make the granting of the
20 request to transfer funds subject to reasonable safeguards.

21 F. If a settlement agreement is entered into in compliance with
22 subsection B of this section, the signature of the person entering
23 into the settlement agreement on behalf of the minor is binding on
24 the minor without the need for further court approval or review, and

1 has the same force and effect as if the minor were a competent adult
2 entering into the settlement agreement.

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

7 H. Any person or entity against whom a minor has a claim that
8 settles the claim with a minor in good faith pursuant to subsection
9 B shall not be liable to the minor for any claims arising from the
10 settlement of the claim.

11 I. The adult acting on behalf of the person who is less than
12 eighteen (18) years of age shall complete an affidavit or verified
13 statement in substantial conformity to the applicable provisions
14 below:

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

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

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

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

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

1 5. As a result of the injuries sustained by XX in the incident
2 in question, I, individually and on behalf of XX, a minor, agreed to
3 settle the claims of XX against [Name of tortfeasor(s)], with their
4 insurer, [Name of Third-Party Liability Insurance Carrier(s)], in
5 the amount of \$XXXX; and with my UM/UIM insurer, [Name of First-
6 Party Liability Insurance Carrier(s)], in the amount of \$XXXX, [add
7 additional tortfeasor or first party coverages where applicable] for
8 a total settlement in the amount of \$XXXX.

9 6. I understand that all medical expenses, liens and
10 subrogation claims must be paid from the settlement: [List all
11 outstanding medical expenses, liens and subrogation providers and
12 the amounts.]

13 7. I understand that I (or another parent or legal guardian)
14 may be reimbursed from the settlement for medical expenses that I or
15 we have paid for the care or treatment of XX as a result of injuries
16 incurred by XX due to the subject incident as follows: [List all
17 relevant medical expenses of XX, paid for by a parent or legal
18 guardian, for which reimbursement is sought from the settlement.]

- 19 A. _____ ;
- 20 B. _____ ; and
- 21 C. _____ .

22 8. I understand that \$XXXX will be paid from the settlement to
23 [Name of Firm/Attorney] for attorney fees and costs in securing the
24 settlement pursuant to my contract with [Name of Firm/Attorney].

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

13 10. I understand that such funds may not be withdrawn, removed,
14 paid out, or transferred to anyone until XX is 18 years of age,
15 except pursuant to court order or upon the minor's death. When the
16 minor XX reaches the age of eighteen (18) years, the funds may be
17 withdrawn, removed, paid out or transferred by the minor without a
18 court order.

19 11. I understand that I must deposit the funds, secure a
20 Receipt of Deposit from the bank, and return the Receipt of Deposit
21 to my attorney or the representative [Name of Insurance Carrier]
22 within XX days of receiving the funds. I must also advise the minor
23 of the settlement and the location of the settlement funds as soon
24

1 as the minor has the ability to understand its existence and at the
2 time the minor reaches eighteen (18) years of age.

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

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

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

22 15. I believe this is a fair and reasonable settlement of XX's
23 claim: that to the best of my knowledge the minor will be fully
24 compensated by the settlement, or there is no practical way to

1 obtain additional amounts from the other party(ies) entering into
2 the settlement agreement.

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

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

7 FURTHER AFFIANT SAYETH NOT.

8 _____
9 _____

10 _____ [Name of Affiant]

11 _____ [Address of Affiant]

12 _____ [Phone Number of Affiant]

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

15 _____
16 Date _____ Signature of Parent or Legal Guardian of XX

17 Approved as to form and content by:

18 _____
19 [Attorney Name]

20 J. Any federally insured banking, credit union or savings and
21 loan institution receiving the monies for deposit shall complete a
22 receipt of deposit referenced herein in conformity with the
23 following:

24 RECEIPT OF DEPOSIT

1 The undersigned, an Officer of [Name of Bank], does hereby
2 acknowledge receipt of the Affidavit of [Name of Affiant], and that
3 \$XXXXX was deposited for the benefit of the minor, XX.

4 It is understood that the funds so deposited, pursuant to provisions
5 under Sections 83 and 86 of title 12 of the Oklahoma Statutes, may
6 not be withdrawn, removed, paid out, or transferred by anyone until
7 XX is eighteen (18) years of age, except pursuant to court order or
8 upon the minor's death.

9 When XX reaches the age of eighteen (18) years of age, the funds may
10 be withdrawn, removed, paid out, or transferred by XX without court
11 order."

12 BY: _____

13 Signature

14 _____

15 Printed Name

16 _____

17 Title

18 Subscribed and sworn to before me this _____ day of _____,
19 20 .

20 _____

21 Notary Public

22 My Commission Expires:

23 _____

24

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

3 SECTION 3. This act shall become effective November 1, 2023.
4

5 59-1-5409 JL 01/13/23
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24