

1 **H. B. 2972**

2
3 (By Delegate R. Walters and Miley)

4 [Introduced March 19, 2013; referred to the
5 Committee on Banking and Insurance then the Judiciary.]

6
7
8
9
10 A BILL to amend and reenact §44-10-14 of the Code of West Virginia,
11 1931, as amended, relating to providing for structured
12 settlements for minors who are injured or otherwise suffer a
13 loss; permitting annuities under certain circumstances;
14 setting forth requirements for settlements that are less than
15 \$10,000 and for those that are more than \$10,000; setting
16 forth bonding requirements; defining terms; and identifying
17 who may serve as a conservator.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §44-10-14 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted to read as follows:

21 **ARTICLE 10. GUARDIANS AND WARDS GENERALLY.**

22 **§44-10-14. Minor settlement proceedings.**

23 This section shall be known as the "Minor Settlement

1 Proceedings Reform Act".

2 (a) If a minor suffers injury to his or her person or
3 property, the parent, guardian or next friend of the minor may
4 negotiate a settlement, including the specific terms of a
5 structured settlement annuity and accounts insured by the Federal
6 Deposit Insurance Corporation, of the minor's claim for damages
7 prior to or subsequent to the filing of an action for damages.

8 (b) *Filing of petition or motion.* -- In order to secure a
9 release of the party or parties allegedly responsible for the
10 injury or loss, the parent, next friend or guardian of the minor
11 shall file a verified petition in the circuit court of the county
12 in which the minor resides or in which an action for damages may be
13 filed in accordance with ~~the provisions of~~ section one, article
14 one, chapter fifty-six of this code: *Provided,* That if an action
15 for damages of the minor is pending in circuit court, the petition
16 shall be filed, verified and served as a motion in the pending
17 action and may be filed by a parent, guardian or next friend.

18 (c) *Contents of petition or motion.* -- The petition or motion
19 shall request approval by the court of the terms of the proposed
20 settlement, the release of liability and the manner of distribution
21 of settlement proceeds. The petition or motion shall also state
22 the following:

23 (1) The name, gender and age of the minor;

24 (2) The facts of the injury and damages of the minor relied

1 upon in requesting the court to consider and approve the proposed
2 settlement and release;

3 (3) The circumstances and events leading to the injury or loss
4 at issue and the identities of the persons or entities alleged to
5 be responsible for the injury or loss;

6 (4) The identities of the persons or entities to be released;

7 (5) The circumstances of the minor at the time of the petition
8 or motion;

9 (6) The relationship of the petitioner or moving party to the
10 minor;

11 (7) The nature and effect of the injury;

12 (8) The sum of expenses expended for the treatment and care of
13 the minor for the injuries at issue;

14 (9) An estimate of future expenses for the treatment and care
15 of the minor related to the injury and how such expenses would be
16 satisfied from the settlement proceeds;

17 (10) A proposal as to how the costs and expenses of processing
18 the settlement and release are to be satisfied;

19 (11) A proposal for distribution of other settlement proceeds;
20 and

21 (12) A request for such other relief as the court may
22 determine is appropriate in the best interests of the child.

23 (d) *Guardian ad litem*. -- Upon the filing of a petition or
24 motion, the court shall appoint a guardian ad litem to:

1 (1) Review and confirm the facts set forth in the petition and
2 the facts and circumstances of the minor, including the injuries
3 and losses of the minor alleged to have been caused by the party or
4 parties to be released as alleged in the petition or motion; the
5 treatment and conditions past, present and in the foreseeable
6 future of the minor as a result of the injuries and losses at
7 issue; the proposed amounts and procedures for distribution of
8 settlement proceeds; ~~and~~ other relevant information appearing in
9 the petition or motion or otherwise; and review proposed Federal
10 Deposit Insurance Corporation-Insured Accounts or Structured
11 Settlement Arrangements; and

12 (2) File an answer to the petition or motion on behalf of the
13 minor, stating the opinion of the guardian ad litem as to whether
14 or not the proposed settlement and release and the proposed
15 distribution of proceeds are in the best interest of the minor.

16 (e) *Hearing.* -- A hearing shall be conducted on the petition
17 or motion, at which time the court shall take testimony and
18 consider arguments regarding the alleged injuries or losses and the
19 proposals for the settlement, release, initial payment of expenses
20 and the distribution of settlement proceeds: *Provided*, That the
21 court may order that the minor appear and testify if the court
22 finds that his or her appearance or testimony is appropriate for
23 consideration by the court of the proposed settlement.

24 (f) *Release form.* -- If the court grants the requested relief,

1 a release of the claim of the minor against the persons or entities
2 alleged to be responsible for the injuries or losses and who are
3 identified in the petition or motion to be released from liability,
4 any other persons or entities making payment on behalf of those
5 persons or entities and any subsidiaries or successor persons or
6 entities shall be executed by a party authorized by the court to
7 execute the release. The release shall be in form or effect as
8 follows:

9 I,, the [guardian or other person authorized to
10 execute the release] of, a minor, in consideration of
11 the sum of \$....., and under authority of an order of the
12 circuit court of County, entered on the day
13 of, 20....., pursuant to West Virginia Code 44-10-14, do
14 hereby release from all claims and demands on account of
15 injuries allegedly inflicted upon the minor and any property of the
16 minor on the day of,, at
17

18

19

20

21

22 _____(Signature)_____

23 [Guardian or other person authorized by the court to execute
24 the release] of

1 (g) *Order approving or rejecting settlement.* -- The court
2 shall enter an order with findings of fact and granting or
3 rejecting the proposed settlement, release and distribution of
4 settlement proceeds. If the requested relief is granted, the court
5 shall provide by order that an attorney appearing in the proceeding
6 or other responsible person shall negotiate, satisfy and pay
7 initial expense payments from settlement proceeds, the costs and
8 fees incurred for the settlement and any bond required therefor,
9 expenses for treatment of the minor related to the injury at issue,
10 payments to satisfy any liens on settlement proceeds, if any, and
11 such other directives as the court finds appropriate to complete
12 the settlement and secure the proceeds for the minor.

13 (1) In allowing the payment of settlement proceeds for
14 attorney fees, legal expenses, court costs and other costs of
15 securing the settlement in such reasonable amounts as the court
16 finds in its discretion to be appropriate, the court shall consider
17 the amount to be paid as damages, the age and necessities of the
18 minor, the nature of the injury, the difficulties involved in
19 effecting the settlement, legal expenses and fees paid to attorneys
20 in similar cases and any other matters which the court determines
21 should be considered in achieving a proper and equitable
22 distribution of settlement proceeds.

23 (2) In allowing any sums to be paid to the minor or to another
24 person to be used for the immediate personal benefit of the minor,

1 the court shall state further the terms under which such payments
2 shall be made, including the use for which such sums may be
3 expended and the times on which such payments shall be made:
4 *Provided*, That such payments shall be made no later than
5 twenty-four months after entry of the order.

6 (3) The order shall provide that settlement proceeds remaining
7 after the initial payment of expenses shall be deemed net
8 settlement trust proceeds.

9 ~~(4) If the net settlement proceeds are less than \$25,000, The~~
10 court ~~may~~ shall order that the person authorized to pay the initial
11 expenses deposit net settlement ~~trust~~ proceeds into either:

12 (A) A regulated financial institution or institutions with a
13 principal place of business in this state, in interest bearing
14 certificates of deposit or accounts ~~or securities~~ that are fully
15 insured by federal deposit insurance corporation, in the name of
16 the minor and payable by the financial institution only to the
17 minor upon presentation of proper identification after the minor
18 attains the age of majority: *Provided*, That such person may be
19 authorized by the court to transfer funds to a substitute qualified
20 institution or institutions from the financial institution or
21 institutions initially selected: *Provided, however*, That any
22 substitution shall be reported to any fiduciary commissioner or
23 supervisor of the county that the court has designated to review of
24 the status of the investment and security of net settlement ~~trust~~

1 proceeds: *Provided further,* That whenever net settlement ~~trust~~
2 proceeds are deposited into a bank pursuant to ~~the provisions of~~
3 this paragraph, such bank shall, within ten days of receipt of such
4 funds, file with the clerk of the court an acknowledgment that the
5 funds have been received and that such funds may be withdrawn only
6 by the minor upon his or her reaching the age of majority or upon
7 order of the court; or

8 (B) A Structured Settlement Annuity, issued by a life
9 insurance company regulated by the Insurance Commissioner.

10 (5) The order shall provide that within sixty days of the
11 entry of the order, a statement of initial expense payments and an
12 inventory of net settlement ~~trust~~ proceeds and any income earned
13 thereon shall be filed by the person authorized to pay initial
14 expenses with the fiduciary commissioner or supervisor of the
15 county commission designated by the court to review the status of
16 settlement proceeds for the minor.

17 (6) The order shall direct that a certified copy of the order
18 of the court approving the settlement be provided by the clerk of
19 the circuit court to the fiduciary commissioner or supervisor
20 designated by the court to review the status of settlement
21 proceeds.

22 (h) *Appointment of conservator and reports to fiduciary*
23 *officers.* -- The court may appoint a conservator to serve as the
24 person responsible for ~~investment and~~ control of net settlement

1 ~~trust~~ proceeds until the minor attains the age of majority or at
2 such later time as the court may order upon terms the court finds
3 to be in the best interest of the minor, taking into consideration
4 any special needs of the minor at any age. The conservator may be
5 a guardian appointed pursuant to section three of this article or
6 other responsible person.

7 (1) Neither the corpus nor income accumulated on net
8 settlement ~~trust~~ proceeds shall be used for the maintenance or care
9 of the minor during his or her minority, absent unusual
10 circumstances or special needs of the minor specified in the order
11 approving the settlement. The corpus or income earned thereon may
12 not be invaded, revised or subjected to assignment, levy,
13 garnishment or other order, except as shall be first approved by
14 order of the court approving the settlement.

15 (2) The court shall determine the amount and necessity for
16 bond of the conservator and for any surety of the bond of the
17 conservator, payable on behalf of the minor in an amount sufficient
18 to protect the principal of net settlement ~~trust~~ proceeds, unless
19 the court finds the conservator is already under bond and surety of
20 bond sufficient for the purpose. The bond of the conservator and
21 surety for the bond of the conservator shall be in form and type
22 acceptable to the fiduciary commissioner or supervisor of the
23 county commission designated by the court to review the reports of
24 the conservator and shall be conditioned to account for and pay

1 over the amount of net settlement ~~trust~~ proceeds as provided for by
2 the order of the court. The clerk of the circuit court shall
3 provide to the office of such fiduciary commissioner or supervisor
4 a certified copy of the court's order approving the settlement and
5 distribution of proceeds and such fiduciary commissioner or
6 supervisor shall file and record the order with any bond of the
7 conservator that may be required by the court approving the
8 settlement and distribution of proceeds.

9 (3) A report of net settlement ~~trust~~ proceeds and income
10 earned thereon for each calendar year shall be filed by the
11 conservator by February 1 next following the end of the calendar
12 year in the order approving the settlement is entered and every
13 year thereafter. ~~in accordance with the terms of the court order.~~

14 (4) If the amount of net settlement ~~trust~~ proceeds is less
15 than ~~\$25,000~~ \$10,000, the court may include in the order approving
16 the settlement a waiver of any or all of the requirements regarding
17 reference to a fiduciary officer, the filing of the order or of any
18 other reports or statements of accounts with a fiduciary
19 commissioner or supervisor of the county commission designated by
20 the court, the posting of bond and corporate or other surety of
21 bond of the conservator and any listing and publication of
22 accounts.

23 (5) If the amount of net settlement proceeds is \$10,000 or
24 more, the court may not waive any of the requirements regarding

1 reference to a fiduciary officer, the filing of the order or of any
2 other reports or statements of accounts with a fiduciary
3 commissioner or supervisor of the county commission designated by
4 the court, the posting of bond and corporate or other surety of
5 bond of the conservator and any listing and publication of
6 accounts.

7 (i) For purposes of this section:

8 (1) The bonding may not be blanket bonds and must be "dollar
9 for dollar" covering the entire amount of the settlement. However,
10 this is not required if a settlement is a structured settlement and
11 the structured settlement annuity is issued by an annuity company
12 regulated by the Insurance Commissioner.

13 (2) Only a bank may be or act as a conservator.

14 (3) Federal Deposit Insurance Corporation means the Federal
15 Deposit Corporation and includes any successor to the corporation
16 or any other agency or instrumentality of the United States that
17 undertakes to discharge the purposes of the corporation.

18 (4) Insurance means all products defined or regulated as
19 insurance by the State of West Virginia.

20 (5) Structured settlement annuity is also a settlement and
21 means an arrangement whereby a settlement obligor, an annuity
22 issuer or other person agrees to make future payments to a consumer
23 in resolution of a personal injury or other claim.

NOTE: The purpose of this bill is to provide for structured settlements for minors who are injured or otherwise suffer a loss. The bill permits annuities under certain circumstances. The bill sets forth requirements for settlements that are less than \$10,000 and for those that are \$10,000 or more. The bill defines terms and identifies who may serve as conservators.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.