

CHAPTER 182

(HB 170)

AN ACT relating to civil proceedings and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS 387.010 TO 387.280 IS CREATED TO READ AS FOLLOWS:

- (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.*

➔Section 2. KRS 387.280 is amended to read as follows:

- (1) When a ~~minor or other~~ person under disability **who has reached the age of eighteen (18)**, having no guardian or conservator, is entitled to receive a sum not exceeding ten thousand dollars (\$10,000), exclusive of interest, in any action in which real estate has been sold, or in the settlement of any estate, or from any other source, the person having custody of the ~~minor or other~~ person under disability may settle or compromise the dollar amount when in the interest of the ~~minor or other~~ person under disability.
- (2) The court in which the action is pending, or, if the sum does not derive from the action, the District Court, may order the sum to be paid to the person having custody of the ~~minor or other~~ person under disability. Before entering the order, the court shall approve any settlement or compromise and shall be satisfied by affidavit or oral testimony that the ~~minor or other~~ person under disability is in the custody of the person to whom it is proposed to pay the money and the latter, upon withdrawal of the money, shall be under obligation as trustee to expend it, for the support, maintenance, or education of the ~~minor or other~~ person under disability.

(3) When the order is made, no bond shall be required of the person having custody of the ~~minor or other~~ person under disability. ***If the sum due to the person under disability is from the sale of real property,*** ~~and~~ the purchaser of the real property may pay the share of the ~~minor or other~~ person under disability into court, and no lien shall remain on the property therefor. ~~and~~ The money may be withdrawn by the person mentioned in the order without that person giving bond.

(4) A release executed by the person to whom the court has ordered the sum paid shall have the same effect as a release by a duly appointed guardian.

➔Section 3. KRS 387.740 is amended to read as follows:

(1) The court may exercise the powers of a limited guardian or limited conservator or may appoint an individual or agency to exercise such powers ***before or if,*** during the pendency of a proceeding for a determination of partial disability or disability or an appeal therefrom, ***if*** it appears that there is danger of serious impairment to the health or safety of the respondent or damage or dissipation to his property if immediate action is not taken.

(2) Prior to a hearing on the need for an emergency appointment of a limited guardian or limited conservator, a petition shall be filed ***by any person or entity*** which sets forth the following:

- (a) The name, age, and address of the respondent;
- (b) The danger alleged to be imminent;
- (c) The type of appointment and the protection and assistance requested;
- (d) The facts and reasons supporting the request;
- (e) The name, address, and qualifications of the proposed limited guardian or limited conservator, if any;
- (f) The name, address, and interest of the petitioner;
- (g) The names and addresses of the respondent's next of kin, if known;
- (h) The name and address of the individual or facility, if any, having custody of the respondent; and
- (i) The date of filing of the petition for determination of disability or partial disability.

(3) (a) ***The court shall review any and all petitions for an emergency appointment of a limited guardian or limited conservator without delay and not more than one (1) week after the petition is filed. The circuit clerk in the county in which the petition is filed shall accept all petitions and the Commonwealth shall not exclude any petition filed under this section from presentation to the court.*** Within one (1) week of the filing of a petition pursuant to this section, the court shall conduct a hearing at which the respondent shall be entitled to counsel.

(b) Notice of the time and place of the hearing shall be given not less than forty-eight (48) hours prior to the hearing to all persons named in the petition, ***the petitioner,*** and ~~to~~ the ***Commonwealth unless waived in writing or on the record.***

(4) ***The Commonwealth shall present evidence at the hearing. The petitioner shall have the right to present evidence in support of the petition at the hearing in addition to any evidence presented by the Commonwealth, and shall have the right to cross-examine witnesses***~~[county attorney].~~

~~(5)~~(4) The burden shall be on the Commonwealth ***and the petitioner*** to prove by clear and convincing evidence the need for the emergency appointment of a limited guardian or conservator.

~~(6)~~(5) If the court exercises the powers of a limited guardian or limited conservator or appoints another to do so in an emergency situation as set forth in subsection (1) of this section, the court shall state on the record findings of fact as to the danger determined to be imminent, the sources relied on in arriving at such determination, the type of assistance to be provided, and the powers and duties of the emergency guardian or conservator. The authority of the guardian or conservator shall expire upon resolution of the appeal or action.

➔Section 4. KRS 620.360 is amended to read as follows:

(1) Persons who provide foster care services to children who have been committed to the custody of the state shall be considered a primary partner and member of a professional team caring for foster children. Foster parents shall have the following rights:

- (a) To be treated with respect, consideration, and dignity;

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- (b) To fully understand the role of the cabinet and the role of other members of the child's professional team;
- (c) To receive information and training about foster parents' rights, responsibilities, and access to local and statewide support groups, including but not limited to the Kentucky Foster/Adoptive Care Association, the Kentucky Foster and Adoptive Parent Network, and Adoption Support of Kentucky;
- (d) To receive information and training to improve skills in the daily care and in meeting the special needs of foster children;
- (e) To receive timely and adequate financial reimbursement for knowledgeable and quality care of a child in foster care within budgetary limitations;
- (f) To maintain the foster family's own routines and values while respecting the rights and confidentiality of each foster child placed in their home;
- (g) To receive a period of respite from providing foster care, pursuant to cabinet policies;
- (h) To receive, upon an open records request, a copy of all information contained in the cabinet's records about the family's foster home and the foster care services provided by the family consistent with KRS 605.160;
- (i) To access cabinet support and assistance as necessary twenty-four (24) hours per day, seven (7) days per week;
- (j) To receive, prior to a child being placed in the foster home pursuant to KRS 605.090, information relating to the child's behavior, family background, or health history that may jeopardize the health or safety of any member of the foster family's household, including other foster children, and similar information that may affect the manner in which foster care services are provided, consistent with KRS 605.160. In an emergency situation, the cabinet shall provide information as soon as it is available;
- (k) To refuse placement of a child within the foster home and to request, with reasonable notice to the cabinet, the removal of a child from the foster home without fear of reprisal;
- (l) To communicate, with an appropriate release of information consistent with KRS 605.160, with other professionals who work directly with the foster child, including but not limited to teachers, therapists, and health care practitioners and to notify the cabinet within twenty-four (24) hours of the communication;
- (m) To assist the cabinet in the development of the child's plan of care;
- (n) To receive an explanatory notice from the cabinet, consistent with KRS 620.130 and when it is in the best interest of the child, when a foster child's case plan has changed and, except in an immediate response to a child protective services investigation involving the foster home, an explanatory notice of termination or change in placement affecting the foster home within fourteen (14) days of the change or termination in placement;
- (o) To have priority consideration for placement if a child who has previously been placed in the foster home reenters foster care, consistent with KRS 605.130 and 620.130 and to the extent it is in the best interest of the child;
- (p) To have priority consideration for adoption if a foster child who has been placed in the foster home for a period of at least twelve (12) consecutive months becomes eligible for adoption consistent with KRS 605.130 and 620.130 and to the extent it is in the best interest of the child;
- (q) To maintain contact with the foster child after the child leaves the foster home, unless the child, a biological parent, the cabinet when the cabinet retains custody of the child, or other foster or adoptive parent refuses such contact; and
- (r) To receive notice of, have a right to attend, and have a right to be heard in, either verbally or in writing, any cabinet or court proceeding held with respect to the child currently placed in their care, provided the cabinet has no concerns related to maltreatment of the child while in the foster parent's care. ***The notice required by this paragraph shall be provided to the foster parent by an attorney for the Cabinet for Health and Family Services.*** This paragraph shall not be construed to require that a foster parent caring for the child be made a party to a proceeding solely on the basis of the notice and rights to attend and be heard.

- (2) The responsibilities of foster parents shall include but not be limited to the following:
- (a) To maintain an orderly and clean home;
 - (b) To ensure that the child has adequate resources for personal hygiene and clothing;
 - (c) To provide recreational and spiritual opportunities for the child, in accordance with cabinet policies;
 - (d) To attend all school and case planning meetings involving a foster child placed in their home whenever possible, subject to KRS 620.130 and the confidentiality requirements of 42 U.S.C. sec. 671;
 - (e) To abide by cabinet policies relating to discipline of a foster child; and
 - (f) To support the involvement of a foster child's biological family whenever possible and in accordance with cabinet policies.
- (3) The cabinet shall provide specific training on investigations of alleged child abuse or neglect in a foster home to a person appointed by the Kentucky Foster/Adoptive Care Association. The training shall include the rights of a foster parent during an investigation. Training shall be consistent with 42 U.S.C. sec. 5106(a).
- (4) The cabinet shall promulgate administrative regulations to establish that foster parent approval shall be effective for a minimum of three (3) years before reevaluation is required.
- (5) Nothing in this section shall be construed to establish monetary liability of or cause of action against the cabinet.

➔Section 5. Section 3 of this Act may be cited as the Jeff Tyler Act.

➔Section 6. Whereas it is critically important in uncertain times that minors receive settlement funds due them without unnecessary delay, an emergency is declared to exist and Sections 1 to 3 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor April 8, 2022.