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## National Council of Insurance Legislators (NCOIL)

### Model Act Concerning Statutory Thresholds for Settlements Involving Minors

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*\*Sponsored by Rep. Joe Fischer (KY) and Rep. Tom Oliverson, M.D. (TX)*

*\*Adopted by the Financial Services & Multi-Lines Issues Committee and Executive Committee on September 26th, 2020.*

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#### **Section 1. Title**

This Act shall be known and cited as the “[State] Statutory Thresholds for Settlements Involving Minors Act.”

#### **Section 2. Purpose**

The purpose of this Act is to set forth standards and procedures for settling claims involving minors.

#### **Section 3. Procedures for Settling Claims Involving Minors**

(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 a minor;

- (b) The total amount of the claim, not including reimbursement of medical expenses, liens, reasonable attorney fees and costs of suit, is \$25,000 or less if paid in cash or if paid by the purchase of a premium for an annuity;
  - (c) The moneys 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 subsection (1)(d) of this section in the attorney's file for two years after the minor attains the age of 21 years.
- (3) The moneys payable under the settlement agreement must 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, by direct deposit into the attorney's trust account maintained pursuant to rules of professional conduct adopted under [State Attorney Trust Accounting Rules] to be held for the benefit of the minor. The attorney shall deposit the moneys received on behalf of the minor directly into a federally insured savings account that earns interest in the sole name of the minor, 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 or by draft, directly into a federally insured savings account that earns interest in the sole name of the minor. Notice of the deposit to the minor shall be delivered by personal service or first-class mail. The minor or person entering into the settlement agreement on behalf of the minor shall open the federally insured savings account and provide the person or entity with whom the minor has settled the claim with information sufficient to complete an electronic transfer of settlement funds within 10 business days of the settlement;
  - (c) If paid by purchase of an annuity, by direct payment to the provider of the annuity with the minor designated as the sole beneficiary of the annuity.

- (d) If the minor is a [ward of the state] and the settlement is paid in cash, directly into a trust account, or subaccount of a trust account, established by the [department responsible for wards of the state, or similar state mechanism] for the purpose of receiving moneys payable to the ward under the settlement agreement and that earns interest for the benefit of the ward.
- (4) The moneys in the minor's savings 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's attainment of 18 years of age; or
  - (c) 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 person acting in good faith on behalf of a minor under this section is not liable to the minor for the moneys paid in settlement or for any other claim arising out of the settlement.
- (7) Any person or entity 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.

#### **Section 4. Effective Date**

This Act shall take effect [xxx days] following enactment.