

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2361

By: Weaver of the House
and
Brown of the Senate

An Act relating to civil procedure; amending 12 O.S. 1991, Section 83, as amended by Section 1, Chapter 98, O.S.L. 1993 (12 O.S. Supp. 1995, Section 83), which relates to conserving monies obtained for or in behalf of persons under eighteen years of age in court proceedings; permitting investment of certain monies by trust department of a banking institution; and providing an effective date.

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"An Act relating to estates of minors; amending 12 O.S. 1991, Section 83, as amended by Section 1, Chapter 98, O.S.L. 1993 (12 O.S. Supp. 1995, Section 83), which relates to conserving moneys obtained for or in behalf of persons under eighteen years of age in court proceedings; permitting investment of certain moneys by trust department of a banking institution; amending 30 O.S. 1991, Sections 2-116 and 4-709, as amended by Section 18, Chapter 351, O.S.L. 1995 (30 O.S. Supp. 1995, Section 4-709), which relate to property and investments of minors and other incapacitated persons; clarifying that estates of minors may be divided for purposes of payment of certain expenses, management, and investment; clarifying language; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 83, as amended by Section 1, Chapter 98, O.S.L. 1993 (12 O.S. Supp. 1995, Section 83), is amended to read as follows:

Section 83. A. Moneys recovered in any court proceeding by a next friend 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) over sums sufficient for paying costs and expenses including medical bills and attorney's fees shall be deposited, by order of the court, in one or more federally insured banking, credit union or savings and loan institutions, or invested by a trust department of a banking institution, 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.

B. Until the person becomes eighteen (18) years of age, withdrawals of moneys from such account or accounts shall be solely pursuant to order of the court made in the case in which recovery was had.

C. When an application for the order is made by a person who is not represented by an attorney-at-law, the judge of the court shall prepare the order.

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

SECTION 2. AMENDATORY 30 O.S. 1991, Section 2-116, is amended to read as follows:

Section 2-116. A. 1. When the whole estate of a minor does not exceed the value of Ten Thousand Dollars (\$10,000.00), the court may, in its discretion, without the appointment of a guardian or the giving of bond, authorize and direct:

~~1.~~ a. the delivery of ~~such the~~ the property or any portion thereof to ~~a custodian~~ one or more custodians pursuant to the Oklahoma Uniform Transfers to Minors Act or to ~~such one or more other custodian~~ custodians designated by the court~~,~~ or

~~2.~~ b. the payment or delivery of the property or any portion thereof to the parent of the minor, or to the person having the care or custody of the minor, or to the minor himself. The ~~parent or person receiving such money or other assets~~ the property shall pay necessary expenses of the minor and hold, manage, and dispose of the ~~same~~ property in the manner directed by the court.

2. When the whole estate of a minor exceeds the value of Ten Thousand Dollars (\$10,000.00), the court may, in its discretion, without the appointment of a guardian or the giving of bond, authorize and direct:

a. the delivery of property having a value of up to Ten Thousand Dollars (\$10,000.00) to one or more custodians pursuant to the Oklahoma Uniform Transfers to Minors Act or to one or more other custodians designated by the court, or

b. the payment or delivery of the property or any portion thereof to the parent of the minor, or to the person having the care or custody of the minor, or to the minor. The person receiving the property shall pay necessary expenses of the minor and hold, manage, and

dispose of the property in the manner directed by the court.

B. The person making payment, delivery, transfer or issuance of property or evidence thereof to the individual or custodian designated by the court pursuant to this section is discharged and released to the same extent as if ~~such~~ payment, delivery, transfer, or issuance was made to a guardian of the minor, and ~~such~~ the person is not required to see to the application thereof. A person making payment, delivery, transfer, or issuance of property, or evidence thereof, to a next friend or guardian ad litem may be discharged and released as provided for by this act.

SECTION 3. AMENDATORY 30 O.S. 1991, Section 4-709, as amended by Section 18, Chapter 351, O.S.L. 1995 (30 O.S. Supp. 1995, Section 4-709), is amended to read as follows:

Section 4-709. A. Except as may be otherwise provided by law ~~otherwise~~, the money belonging to estates of minors and incapacitated or partially incapacitated persons, subject to the jurisdiction of the court, can only be invested in ~~real~~ one or more of the following:

1. Real estate and first mortgages upon real property which do not exceed fifty percent (50%) of the actual value of the property~~;~~;
2. United States bonds, or any other type of security certificate, or evidence of indebtedness which is guaranteed by the United States Government, or any authorized agency thereof~~;~~;
3. State bonds~~;~~;
4. Bonds of municipal corporations~~;~~; or
5. Accounts in savings and loan associations and credit unions located in this state, and all types of interest-bearing time deposits and certificates of banks, savings and loan associations, and credit unions located in this state, not to exceed the amount insured by the United States Government.

B. Upon application to the court by the guardian of the estate of the incapacitated or partially incapacitated person, showing to the satisfaction of the court:

~~(a)~~ 1. That the incapacitated or partially incapacitated person is vitally in need of a home; and

~~(b)~~ 2. That the incapacitated or partially incapacitated person owns no suitable homestead; and

~~(c)~~ 3. That the incapacitated or partially incapacitated person has sufficient monthly, semi-annual, or annual fixed income to retire an incurred indebtedness for the remaining unpaid cost of ~~such a~~ a homestead; and

~~(d)~~ 4. That it would be ~~to~~ in the best interest of the incapacitated or partially incapacitated person that a suitable homestead be purchased ~~for such person~~ on that basis, ~~the~~ the. The court may enter an order authorizing the guardian to execute and deliver a note and mortgage, under such tenor and terms as the court will approve, for the purpose of securing payment of any remaining cost of such a homestead. Any note and mortgage given by a guardian under the provisions of this section shall, if authorized by the court as provided for in this section, be endorsed "approved" by the judge. When so authorized and endorsed, the note and mortgage shall be a binding obligation against the ward and the estate of the ward until fully paid. The ward, if subsequently restored to competency to transact business, shall be held firmly bound by the note and mortgage in the same manner and to the same extent as though the ward had given the homestead purchase-money note and mortgage.

C. When the guardian is a bank or trust company qualified and acting under the supervision of the State Banking Board, or of the Comptroller of the Currency of the United States of America, the guardian may, upon application to the court, invest funds coming into its hands as guardian in any property, real, personal or mixed, in which an individual may invest the individual's own funds

pursuant to the provisions of the Oklahoma Uniform Prudent Investor Act, unless otherwise provided by law.

SECTION 4. This act shall become effective November 1, 1996."

Passed the Senate the 2nd day of April, 1996.

President of the Senate

Passed the House of Representatives the ____ day of

_____, 1996.

Speaker of the House of Representatives