

SB 215

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2002*

**ENROLLED**

*Committee Substitute for*

**SENATE BILL NO. 215**

(By Senator Redd, et al )

**PASSED February 20, 2002**

**In Effect ninety days from Passage**

FILED

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## ENROLLED

COMMITTEE SUBSTITUTE

FOR

### Senate Bill No. 215

(SENATORS REDD, BURNETTE, CALDWELL, HUNTER, MINARD,  
ROWE, SNYDER, WOOTON AND MITCHELL, *original sponsors*)

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[Passed February 20, 2002; in effect ninety days from passage.]

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AN ACT to repeal section fifteen, article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section four, article ten, chapter fifty-six of said code; and to amend and reenact section fourteen, article ten, chapter forty-four of said code, relating to the settlement of claims for damages on behalf of minor children; permitting a parent or next friend to negotiate a settlement on behalf of a minor; allowing a petition to approve a settlement to be filed in the county in which the minor resides or in which venue lies for an action to recover damages for the injuries to the minor; requiring a motion to approve a settlement to be filed in a civil action seeking damages for injuries to a minor; setting forth the contents of a petition to approve a settlement; setting forth duties of guardian ad litem; permitting the court to require the minor

to testify or appear at the hearing on the petition or motion to approve the proposed settlement; prescribing form of release; permitting release to be executed by any person authorized by the court; requiring certain findings and other provisions in the order approving a settlement; establishing circumstances that the court must consider in considering a settlement proposal; permitting the court to authorize a person to pay certain initial expense payments; designating proceeds of a settlement remaining after the payment of initial expenses as net settlement trust proceeds; permitting deposit of net settlement proceeds of less than twenty-five thousand dollars into a regulated state bank payable to the minor on reaching majority; requiring the filing of acknowledgment by the bank of receipt of funds and that funds may only be withdrawn by the minor upon reaching majority; requiring initial statement of initial expense payments to be filed; authorizing the appointment of a conservator; providing for bond of a conservator; requiring clerk of the circuit court to send copy of order approving settlement to fiduciary commissioner; and permitting the court to waive bond by a conservator or other filing requirements under certain circumstances.

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

That section fifteen, article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section four, article ten, chapter fifty-six of said code be repealed; and that section fourteen, article ten, chapter forty-four of said code be amended and reenacted to read as follows:

**ARTICLE 10. MISCELLANEOUS PROVISIONS RELATING TO PROCEDURE.**

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

- 1 This section shall be known as the "Minor Settlement
- 2 Proceedings Reform Act".
- 3 (a) If a minor suffers injury to his or her person or
- 4 property, the parent, guardian or next friend of the minor

5 may negotiate a settlement of the minor's claim for  
6 damages prior to or subsequent to the filing of an action  
7 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  
11 minor shall file a verified petition in the circuit court of  
12 the county in which the minor resides or in which an  
13 action for damages may be filed in accordance with the  
14 provisions of section one, article one, chapter fifty-six of  
15 this code: *Provided*, That if an action for damages of the  
16 minor is pending in circuit court, the petition shall be  
17 filed, verified and served as a motion in the pending action  
18 and may be filed by a parent, guardian or next friend.

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

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

25 (2) The facts of the injury and damages of the minor  
26 relied upon in requesting the court to consider and ap-  
27 prove the proposed settlement and release;

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

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

32 (5) The circumstances of the minor at the time of the  
33 petition or motion;

34 (6) The relationship of the petitioner or moving party to  
35 the minor;

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

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

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

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

44 (11) A proposal for distribution of other settlement  
45 proceeds; and

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

48 (d) *Guardian ad litem.* – Upon the filing of a petition or  
49 motion, the court shall appoint a guardian ad litem to:

50 (1) Review and confirm the facts set forth in the petition  
51 and the facts and circumstances of the minor, including  
52 the injuries and losses of the minor alleged to have been  
53 caused by the party or parties to be released as alleged in  
54 the petition or motion; the treatment and conditions past,  
55 present and in the foreseeable future of the minor as a  
56 result of the injuries and losses at issue; the proposed  
57 amounts and procedures for distribution of settlement  
58 proceeds; and other relevant information appearing in the  
59 petition or motion or otherwise; and

60 (2) File an answer to the petition or motion on behalf of  
61 the minor, stating the opinion of the guardian ad litem as  
62 to whether or not the proposed settlement and release and  
63 the proposed distribution of proceeds are in the best  
64 interest of the minor.

65 (e) *Hearing.* – A hearing shall be conducted on the  
66 petition or motion, at which time the court shall take  
67 testimony and consider arguments regarding the alleged  
68 injuries or losses and the proposals for the settlement,  
69 release, initial payment of expenses and the distribution of  
70 settlement proceeds: *Provided*, That the court may order

71 that the minor appear and testify if the court finds that his  
72 or her appearance or testimony is appropriate for consid-  
73 eration by the court of the proposed settlement.

74 (f) *Release form.* – If the court grants the requested relief,  
75 a release of the claim of the minor against the persons or  
76 entities alleged to be responsible for the injuries or losses  
77 and who are identified in the petition or motion to be  
78 released from liability, any other persons or entities  
79 making payment on behalf of those persons or entities and  
80 any subsidiaries or successor persons or entities shall be  
81 executed by a party authorized by the court to execute the  
82 release. The release shall be in form or effect as follows:

83 I, ....., the [guardian or other person authorized to  
84 execute the release] of ....., a minor, in consideration of  
85 the sum of \$....., and under authority of an order of the  
86 Circuit Court of ..... County, entered on the ..... day of  
87 ....., 20....., pursuant to West Virginia Code 44-10-14, do  
88 hereby release ..... from all claims and demands on  
89 account of injuries allegedly inflicted upon the minor and  
90 any property of the minor on the ..... day of .....,  
91 ....., at .....

92 \_\_\_\_\_ (Signature) \_\_\_\_\_

93 [Guardian or other person authorized by the court to  
94 execute the release] of .....

95 (g) *Order approving or rejecting settlement.* – The court  
96 shall enter an order with findings of fact and granting or  
97 rejecting the proposed settlement, release and distribution  
98 of settlement proceeds. If the requested relief is granted,  
99 the court shall provide by order that an attorney appearing  
100 in the proceeding or other responsible person shall negoti-  
101 ate, satisfy and pay initial expense payments from settle-  
102 ment proceeds, the costs and fees incurred for the settle-  
103 ment and any bond required therefor, expenses for treat-  
104 ment of the minor related to the injury at issue, payments  
105 to satisfy any liens on settlement proceeds, if any, and such

106 other directives as the court finds appropriate to complete  
107 the settlement and secure the proceeds for the minor.

108 (1) In allowing the payment of settlement proceeds for  
109 attorney fees, legal expenses, court costs and other costs of  
110 securing the settlement in such reasonable amounts as the  
111 court finds in its discretion to be appropriate, the court  
112 shall consider the amount to be paid as damages, the age  
113 and necessities of the minor, the nature of the injury, the  
114 difficulties involved in effecting the settlement, legal  
115 expenses and fees paid to attorneys in similar cases and  
116 any other matters which the court determines should be  
117 considered in achieving a proper and equitable distribu-  
118 tion of settlement proceeds.

119 (2) In allowing any sums to be paid to the minor or to  
120 another person to be used for the immediate personal  
121 benefit of the minor, the court shall state further the terms  
122 under which such payments shall be made, including the  
123 use for which such sums may be expended and the times  
124 on which such payments shall be made: *Provided*, That  
125 such payments shall be made no later than twenty-four  
126 months after entry of the order.

127 (3) The order shall provide that settlement proceeds  
128 remaining after the initial payment of expenses shall be  
129 deemed net settlement trust proceeds.

130 (4) If the net settlement proceeds are less than twenty-  
131 five thousand dollars, the court may order that the person  
132 authorized to pay the initial expenses deposit net settle-  
133 ment trust proceeds into a regulated financial institution  
134 or institutions with a principal place of business in this  
135 state, in interest bearing certificates of deposit or accounts  
136 or securities that are fully insured by federal deposit  
137 insurance, in the name of the minor and payable by the  
138 financial institution only to the minor upon presentation  
139 of proper identification after the minor attains the age of  
140 majority: *Provided*, That such person may be authorized  
141 by the court to transfer funds to a substitute qualified

142 institution or institutions from the financial institution or  
143 institutions initially selected: *Provided, however,* That  
144 any substitution shall be reported to any fiduciary com-  
145 missioner or supervisor of the county that the court has  
146 designated to review of the status of the investment and  
147 security of net settlement trust proceeds: *Provided further,*  
148 That whenever net settlement trust proceeds are deposited  
149 into a bank pursuant to the provisions of this paragraph,  
150 such bank shall, within ten days of receipt of such funds,  
151 file with the clerk of the court an acknowledgment that the  
152 funds have been received and that such funds may be  
153 withdrawn only by the minor upon his or her reaching the  
154 age of majority or upon order of the court.

155 (5) The order shall provide that within sixty days of the  
156 entry of the order, a statement of initial expense payments  
157 and an inventory of net settlement trust proceeds and any  
158 income earned thereon shall be filed by the person autho-  
159 rized to pay initial expenses with the fiduciary commis-  
160 sioner or supervisor of the county commission designated  
161 by the court to review the status of settlement proceeds for  
162 the minor.

163 (6) The order shall direct that a certified copy of the  
164 order of the court approving the settlement be provided  
165 by the clerk of the circuit court to the fiduciary commis-  
166 sioner or supervisor designated by the court to review the  
167 status of settlement proceeds.

168 (h) *Appointment of conservator and reports to fiduciary*  
169 *officers.* – The court may appoint a conservator to serve as  
170 the person responsible for investment and control of net  
171 settlement trust proceeds until the minor attains the age of  
172 majority or at such later time as the court may order upon  
173 terms the court finds to be in the best of the interest of the  
174 minor, taking into consideration any special needs of the  
175 minor at any age. The conservator may be a guardian  
176 appointed pursuant to section three of this article or other  
177 responsible person.

178 (1) Neither the corpus nor income accumulated on net  
179 settlement trust proceeds shall be used for the mainte-  
180 nance or care of the minor during his or her minority,  
181 absent unusual circumstances or special needs of the  
182 minors specified in the order approving the settlement. The  
183 corpus or income earned thereon may not be invaded,  
184 revised or subjected to assignment, levy, garnishment or  
185 other order, except as shall be first approved by order of  
186 the court approving the settlement.

187 (2) The court shall determine the amount and necessity  
188 for bond of the conservator and for any surety of the bond  
189 of the conservator, payable on behalf of the minor in an  
190 amount sufficient to protect the principal of net settlement  
191 trust proceeds, unless the court finds the conservator is  
192 already under bond and surety of bond sufficient for the  
193 purpose. The bond of the conservator and surety for the  
194 bond of the conservator shall be in form and type accept-  
195 able to the fiduciary commissioner or supervisor of the  
196 county commission designated by the court to review the  
197 reports of the conservator and shall be conditioned to  
198 account for and pay over the amount of net settlement  
199 trust proceeds as provided for by the order of the court.  
200 The clerk of the circuit court shall provide to the office of  
201 such fiduciary commissioner or supervisor a certified copy  
202 of the court's order approving the settlement and distribu-  
203 tion of proceeds and such fiduciary commissioner or  
204 supervisor shall file and record the order with any bond of  
205 the conservator that may be required by the court approv-  
206 ing the settlement and distribution of proceeds.

207 (3) A report of net settlement trust proceeds and income  
208 earned thereon for each calendar year shall be filed by the  
209 conservator by the first day of February next following the  
210 end of the calendar year in the order approving the  
211 settlement is entered and every year thereafter in accor-  
212 dance with the terms of the court order.

213 (4) If the amount of net settlement trust proceeds is less  
214 than twenty-five thousand dollars, the court may include

215 in the order approving the settlement a waiver of any or all  
216 of the requirements regarding reference to a fiduciary  
217 officer, the filing of the order or of any other reports or  
218 statements of accounts with a fiduciary commissioner or  
219 supervisor of the county commission designated by the  
220 court, the posting of bond and corporate or other surety of  
221 bond of the conservator and any listing and publication of  
222 accounts.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within is approved this the 4th  
Day of March ....., 2002.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 2/26/02

Time 4:40pm