**South Carolina General Assembly**

118th Session, 2009-2010

**S. 575**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Sheheen and Malloy

Document Path: l:\council\bills\dka\3676mm09.docx

Introduced in the Senate on March 12, 2009

Currently residing in the Senate

Summary: Probate and circuit courts

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/12/2009 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2009\03-12-09.docx)‑3

3/12/2009 Senate Referred to Committee on **Judiciary** [SJ](file:///h:\SJ%20Archive\2009\03-12-09.docx)‑3

3/13/2009 Senate Referred to Subcommittee: Malloy (ch), Ford, Massey, S.Martin, Mulvaney

5/6/2009 Senate Committee report: Favorable with amendment **Judiciary** [SJ](file:///h:\SJ%20Archive\2009\05-06-09.docx)‑12

**VERSIONS OF THIS BILL**

[3/12/2009](file:///p:\pprever\2009-10\575_20090312.docx)

[5/6/2009](file:///p:\pprever\2009-10\575_20090506.docx)

~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 6, 2009

**S. 575**

Introduced by Senators Sheheen and Malloy

S. Printed 5/6/09--S.

Read the first time March 12, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 575) to amend Section 62‑5‑433, as amended, Code of Laws of South Carolina, 1976, relating to settlement of claims of minors or incapacitated persons, so, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill as and if amended, by striking all after the enacting words and inserting the following:

/ SECTION 1. Section 62‑5‑433 of the 1976 Code, as last amended by Act 398 of 2000, is further amended to read:

“Section 62-5-433. (A)(1) For purposes of this section and for ~~any~~ a claim exceeding ~~twenty‑five~~ one hundred thousand dollars in favor of or against any minor or incapacitated person, ‘court’ means the circuit court of the county in which the minor or incapacitated person resides or the circuit court in the county in which the suit is pending. For purposes of this section and for ~~any~~ a claim not exceeding ~~twenty‑five~~ one hundred thousand dollars in favor of or against any minor or incapacitated person, ‘court’ means either the circuit court or the probate court of the county in which the minor or incapacitated person resides or the circuit court or probate court in the county in which the suit is pending.

(2) ‘Claim’ means the net or actual amount accruing to or paid by the minor or incapacitated person as a result of the settlement.

(3) ‘Petitioner’ means either a conservator appointed by the probate court for the minor or incapacitated person or the parents, guardian, or guardian ad litem of the minor or incapacitated person if a conservator has not been appointed.

(B) The settlement of ~~any~~ a claim over ~~twenty‑five~~ one hundred thousand dollars in favor of or against any minor or incapacitated person for the payment of money or the possession of personal property must be effected on his behalf in the following manner:

(1) The petitioner ~~must~~ shall file with the court a verified petition setting forth all of the pertinent facts concerning the claim, payment, attorney’s fees, and expenses, ~~if any,~~ and the reasons why, in the opinion of the petitioner, the proposed settlement should be approved~~. For all claims that exceed twenty‑five thousand dollars, the verified petition must include a statement by the petitioner that, in his opinion, the proposed settlement~~ and is in the best interests of the minor or incapacitated person. The petition must be served on the conservator, parents or guardian, and guardian ad litem for the minor or incapacitated person, if that person is not the petitioner. Notice of hearing to approve the settlement must be sent to the conservator, parents or guardian, and guardian ad litem.

(2) If, upon consideration of the petition and after hearing the testimony ~~as~~ it ~~may require~~ requires concerning the matter, the court concludes that the proposed settlement is proper and in the best interests of the minor or incapacitated person, the court shall issue its order approving the settlement and authorizing the petitioner to consummate it and, if the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, to receive the money or personal property and execute a proper receipt and release or covenant not to sue ~~therefor~~ on it, which is binding upon the minor or incapacitated person.

(3) The order authorizing the settlement must require that payment or delivery of the money or personal property be made through the conservator. If a conservator has not been appointed, the petitioner ~~shall~~, upon receiving the money or personal property, shall pay and deliver it to the court pending the appointment and qualification of a duly appointed conservator. If a party subject to the court order fails or refuses to pay the money or deliver the personal property as required by the order, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.

(C) The settlement of ~~any~~ a claim that does not exceed ~~twenty‑five~~ one hundred thousand dollars in favor of or against a minor or incapacitated person for the payment of money or the possession of personal property may be effected in any of the following manners:

(1) If a conservator has been appointed, he may settle the claim without court authorization or confirmation, as provided in Section 62‑5‑424, or he may petition the court for approval, as provided in items (1), (2), and (3) of subsection (B). If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, the conservator shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor on it, which is binding upon the minor or incapacitated person.

(2) If a conservator has not been appointed, a custodial parent, the guardian, or the guardian ad litem must petition the court for approval of the settlement, as provided in items (1) and (2) of subsection (B)~~, and without the appointment of a conservator~~. The payment or delivery of money or personal property to or for a minor or incapacitated person must be made in accordance with Section 62‑5‑103. If a party subject to the court order fails or refuses to pay the money or deliver the personal property, as required by the order and in accordance with Section 62‑5‑103, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.

(D) The settlement of ~~any~~ a claim that does not exceed two thousand five hundred dollars in favor of or against any minor or incapacitated person for the payment of money or the possession of personal property may be effected by the parent or guardian of the minor or incapacitated person without court approval of the settlement and without the appointment of a conservator. If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, the parent or guardian shall receive the money or personal property and execute a proper receipt and release or covenant not to sue ~~therefor~~ on it, which is binding upon the minor or incapacitated person. The payment or delivery of money or personal property to or for a minor or incapacitated person must be made in accordance with Section 62‑5‑103.”

SECTION 2. Section 15-72-10, as last amended by Act 659 of 1988, is further amended to read:

“Section 15-72-10. Subject to the provisions of Section 62‑5‑433 the circuit court has:

(1) exclusive jurisdiction to approve the settlement of any claim that exceeds ~~ten~~ one hundred thousand dollars in favor of or against any minor or incapacitated person; and

(2) concurrent jurisdiction with the probate court to approve the settlement of any claim not exceeding ~~ten~~ one hundred thousand dollars in favor of or against any minor or incapacitated person.”

SECTION 3. Section 59-150-210 (D), as last amended by Act 59 of 2001, is further amended to read:

“(D) Lottery game tickets or shares must not be sold to persons under eighteen years of age, but a person eighteen years of age or older may purchase lawfully lottery game tickets or shares and make a gift to a person of any age. If a minor lawfully receives a winning lottery game ticket, the commission may direct payment of proceeds of a lottery prize in an amount not exceeding ~~two thousand five hundred~~ ten thousand dollars to the parent or guardian of the minor without court approval and without appointment of a conservator. In the case of a lottery prize greater than ~~two thousand five hundred~~ ten thousand dollars ~~and not exceeding twenty‑five thousand dollars~~, payment must be made ~~in accordance with the procedures outlined in Section 62‑5‑103 as they relate to distribution. In the case of a prize in an amount greater than twenty‑five thousand dollars, payment must be made~~ to a duly appointed conservator to be held for the benefit of the minor, pursuant to Section 62‑5‑433.”

SECTION 4. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

GERALD MALLOY for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department indicates this bill will have no impact on the General Fund of the State, nor on federal and/or other funds.

**LOCAL GOVERNMENT IMPACT:**

Counties in the FIST network of local governments were surveyed to determine the impact of this bill. One county responded and indicated there is no fiscal impact with the adoption of this bill.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTION 62‑5‑433, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SETTLEMENT OF CLAIMS OF MINORS OR INCAPACITATED PERSONS, SO AS TO INCREASE THE JURISDICTIONAL AMOUNT FOR CONCURRENT JURISDICTION OF THE PROBATE COURT AND CIRCUIT COURT FROM TWENTY‑FIVE THOUSAND DOLLARS TO ONE HUNDRED THOUSAND DOLLARS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 62‑5‑433 of the 1976 Code, as last amended by Act 398 of 2000, is further amended to read:

“(A)(1) For purposes of this section and for ~~any~~ a claim exceeding ~~twenty‑five~~ one hundred thousand dollars in favor of or against any minor or incapacitated person, ‘court’ means the circuit court of the county in which the minor or incapacitated person resides or the circuit court in the county in which the suit is pending. For purposes of this section and for ~~any~~ a claim not exceeding ~~twenty‑five~~ one hundred thousand dollars in favor of or against any minor or incapacitated person, ‘court’ means either the circuit court or the probate court of the county in which the minor or incapacitated person resides or the circuit court or probate court in the county in which the suit is pending.

(2) ‘Claim’ means the net or actual amount accruing to or paid by the minor or incapacitated person as a result of the settlement.

(3) ‘Petitioner’ means either a conservator appointed by the probate court for the minor or incapacitated person or the parents, guardian, or guardian ad litem of the minor or incapacitated person if a conservator has not been appointed.

(B) The settlement of ~~any~~ a claim over ~~twenty‑five~~ one hundred thousand dollars in favor of or against any minor or incapacitated person for the payment of money or the possession of personal property must be effected on his behalf in the following manner:

(1) The petitioner ~~must~~ shall file with the court a verified petition setting forth all of the pertinent facts concerning the claim, payment, attorney’s fees, and expenses, ~~if any,~~ and the reasons why, in the opinion of the petitioner, the proposed settlement should be approved~~. For all claims that exceed twenty‑five thousand dollars, the verified petition must include a statement by the petitioner that, in his opinion, the proposed settlement~~ and is in the best interests of the minor or incapacitated person. The petition must be served on the conservator, parents or guardian, and guardian ad litem for the minor or incapacitated person, if that person is not the petitioner. Notice of hearing to approve the settlement must be sent to the conservator, parents or guardian, and guardian ad litem.

(2) If, upon consideration of the petition and after hearing the testimony ~~as~~ it ~~may require~~ requires concerning the matter, the court concludes that the proposed settlement is proper and in the best interests of the minor or incapacitated person, the court shall issue its order approving the settlement and authorizing the petitioner to consummate it and, if the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, to receive the money or personal property and execute a proper receipt and release or covenant not to sue ~~therefor~~ on it, which is binding upon the minor or incapacitated person.

(3) The order authorizing the settlement must require that payment or delivery of the money or personal property be made through the conservator. If a conservator has not been appointed, the petitioner ~~shall~~, upon receiving the money or personal property, shall pay and deliver it to the court pending the appointment and qualification of a duly appointed conservator. If a party subject to the court order fails or refuses to pay the money or deliver the personal property as required by the order, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.

(C) ~~The settlement of any claim that does not exceed twenty‑five thousand dollars in favor of or against a minor or incapacitated person for the payment of money or the possession of personal property may be effected in any of the following manners:~~

~~(1)~~ ~~If a conservator has been appointed, he may settle the claim without court authorization or confirmation, as provided in Section 62‑5‑424, or he may petition the court for approval, as provided in items (1), (2), and (3) of subsection (B). If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, the conservator shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor on it, which is binding upon the minor or incapacitated person.~~

~~(2)~~ ~~If a conservator has not been appointed, the guardian or guardian ad litem must petition the court for approval of the settlement, as provided in items (1) and (2) of subsection (B), and without the appointment of a conservator. The payment or delivery of money or personal property to or for a minor or incapacitated person must be made in accordance with Section 62‑5‑103. If a party subject to the court order fails or refuses to pay the money or deliver the personal property, as required by the order and in accordance with Section 62‑5‑103, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.~~

~~(D)~~ The settlement of ~~any~~ a claim that does not exceed two thousand five hundred dollars in favor of or against any minor or incapacitated person for the payment of money or the possession of personal property may be effected by the parent or guardian of the minor or incapacitated person without court approval of the settlement and without the appointment of a conservator. If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, the parent or guardian shall receive the money or personal property and execute a proper receipt and release or covenant not to sue ~~therefor~~ on it, which is binding upon the minor or incapacitated person. The payment or delivery of money or personal property to or for a minor or incapacitated person must be made in accordance with Section 62‑5‑103.”

SECTION 2. This act takes effect upon approval by the Governor.

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