

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 233 (Umberg)
Version: March 1, 2021
Hearing Date: April 6, 2021
Fiscal: No
Urgency: No
JT

SUBJECT

Protective proceedings: compromise of minor's disputed claim

DIGEST

This bill requires courts to hear minors' compromise petitions within 30 days of filing and to issue a decision at the conclusion of the hearing if the petition is uncontested.

EXECUTIVE SUMMARY

Existing law provides that when a minor has a disputed claim for damages, money, or other property and does not have a guardian of the estate, the parents generally have the right to compromise or settle the claim on the minor's behalf, subject to judicial approval. However, judicial approval to release the funds can take several months, even when the petition to access the funds is uncontested.

To expedite this process, this bill would require a court to schedule a hearing on a petition for compromise of a minor's disputed claim within 30 days from the date of filing. If the petition is unopposed, the court must issue a decision on the petition at the conclusion of the hearing.

The bill is co-sponsored by Consumer Attorneys of California (CAOC) and California Defense Counsel. It has no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that when a minor has a disputed claim for damages, money, or other property and does not have a guardian of the estate, the following persons (unless the claim is against them) have the right to compromise, or to execute a covenant not to sue on, or a covenant not to enforce judgment on, the claim:
 - a) either parent if the parents of the minor are not living separate and apart;
or
 - b) the parent having the care, custody, or control of the minor if the parents of the minor are living separate and apart. (Prob. Code § 3500(a).)¹
- 2) Provides that the compromise or covenant is valid only after it has been approved, upon the filing of a petition, by the superior court of either the county in which the minor resides when the petition is filed, or any county where suit on the claim or matter properly could be brought. (*Id.* at (b).)
- 3) Requires that any money or other property to be paid or delivered for the benefit of the minor pursuant to the compromise or covenant be paid and delivered according to specified procedures. (*Id.* at (c).)
- 4) Provides that after the money has been paid or delivered in accordance with those procedures, the parent may execute a full release and satisfaction, or execute a covenant not to sue on or a covenant to enforce judgment on the disputed claim. If the court orders that all or any part of the money to be paid under the compromise or covenant be deposited in an insured account in a financial institution in California, or in a single-premium deferred annuity, the release and satisfaction or covenant is not effective for any purpose until the money has been deposited as directed in the order of the court. (*Id.* at (d).)

This bill requires a court to schedule a hearing on a petition for compromise of a minor's disputed claim pursuant to the provisions described above within 30 days from the date of filing. If the petition is unopposed, the court must issue a decision on the petition at the conclusion of the hearing.

COMMENTS

1. Minor's compromise petitions

"Under the doctrine of *parens patriae* the state, acting through the Legislature, has the inherent power to provide protection to all persons *non sui juris*, and to make and

¹ All further section references are to the Probate Code unless otherwise indicated.

enforce such rules and regulations as it deems proper for the management and control of their property and their affairs.” (*Darlington v. Basalt Rock Co.* (1958) 157 Cal.App.2d 575, 581.) It has long been the rule in California that a minor has limited capacity to enter into contracts (Fam. Code §§ 6700, 6701), and when the minor appears in litigation they must do so through a guardian ad litem or some other adult representative. (*Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333, 1337.) Existing law provides that when a minor has a disputed claim for damages, money, or other property and does not have a guardian of the estate, the parents generally have the right to compromise or settle the claim on the minor’s behalf, subject to judicial approval. (§ 3500(a), (b).)

CAOC, a co-sponsor of the bill, argues that parents and guardians of injured minors entitled to financial settlements are often unable to access funds through a minor’s compromise petition in a timely fashion due to the absence of any mandatory timeframes for courts to approve the release of funds. Although these motions are often uncontested, they frequently linger for months on backlogged dockets congested by complications arising from the COVID-19 pandemic. Meanwhile, injured minors and their families are left in the lurch.

To expedite this process, the bill would require a court to schedule a hearing on a petition for compromise of a minor’s disputed claim within 30 days from the date of filing. If the petition is unopposed, the court must issue a decision on the petition at the conclusion of the hearing.

The author writes:

SB 233 is a court efficiency measure designed to at achieve uniformity and greater efficiency in civil courts across California by prioritizing sensitive judicial proceedings. California currently lacks a statewide, minimum standard for justice that ensures timely access to the court system regardless of where you live. An example of this can be seen in minor’s compromises. When an injured minor is entitled to a financial settlement, but is unable to access it until they become an adult, a parent or legal guardian can access those funds through a minor’s compromise petition. Often, these motions are uncontested, agreed upon by both the plaintiff’s and defendant’s counsel. In these cases, a judge simply needs to sign a form for funds to be released. However, due to the pandemic and a lack of basic standards, uncontested minor’s compromise petitions are not being heard and approved by the courts in a timely fashion, preventing injured children from gaining access to the funds they so desperately need. Therefore, SB 233 requires courts to schedule a hearing on a petition for compromise of a minor’s claim within 30 days from the date of filing. Further, if the motion is not contested, the court will be required to issue a decision on the petition at the conclusion of the hearing.

SUPPORT

California Defense Counsel (co-sponsor)

Consumer Attorneys of California (co-sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.
