

38-620. Same; portion of earnings to be set aside in trust fund or savings plan; appointment of trustee; requirements of trust fund; fiduciary relationship established. (a) A parent or guardian, as the case may be, entitled to the physical custody, care and control of a minor child who enters into a contract of a type described in K.S.A. 38-618, and amendments thereto, shall provide a certified copy of the minor child's birth certificate indicating the minor child's minority to the other party or parties to the contract, and in addition, in the case of a guardian, a certified copy of the court document appointing the person as the minor child's legal guardian.

(b) (1) Notwithstanding any other statute, in an order approving a minor child's contract of a type described in K.S.A. 38-618, and amendments thereto, the court shall require that 15% of the minor child's gross earnings pursuant to the contract be set aside by the minor child's employer and preserved for the benefit of the minor child, either in a trust fund or other savings plan approved by the district court.

(2) The district court shall require that at least one parent or legal guardian entitled to the physical custody, care and control of the minor child at the time the order is issued be appointed as trustee of the funds ordered to be set aside for the benefit of the minor child, unless the district court shall determine that appointment of a different individual, individuals, entity or entities as trustee or trustees is required in the best interest of the minor child.

(3) The trustee or trustees of the funds ordered to be set aside shall promptly provide the minor child's employer with the name, address and telephone number of the financial institution where the funds will be held, the name of the account, the number of the account, the name of the minor child beneficiary, the name of the trustee or trustees of the account and any additional information needed by the minor child's employer to deposit into the account the portion of the minor child's gross earnings in accordance with the order. The trustee or trustees shall attach to the written statement a true and accurate photocopy of any information received from the financial institution confirming the creation of the account, such as an account agreement, account terms, passbook or other similar writings.

(4) The minor child's employer shall deposit or disburse the funds as required by the order within 15 business days of receiving the order and receiving from the trustee or trustees the account information required by this section. Notwithstanding any other statute, pending receipt of the trustee's statement, the minor's employer shall hold for the benefit of the minor the percentage ordered by the court of the minor's gross earnings pursuant to the contract.

(5) When making the initial deposit of funds pursuant to the order, the minor child's employer shall provide the financial institution with a copy of the order.

(6) Once the minor child's employer deposits the set aside funds into a trust fund or other savings plan approved by the district court, the minor child's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the trust fund or other savings plan shall be the only individual, individuals, entity or entities with the obligation or duty to monitor and account for those funds once they have been deposited by the minor child's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with K.S.A. 59-1606, and amendments thereto.

(7) The district court shall have continuing jurisdiction over the trust fund or other savings plan established pursuant to the order and may at any time, on good cause shown, order that the trust fund or other savings plan be amended or terminated, notwithstanding the provisions of the declaration of trust or other savings plan. If the beneficiary is a minor child, an order amending or terminating a trust fund or other savings plan may be made only after reasonable notice to the beneficiary, to the parent or guardian, if any, and to the trustee or trustees of the funds, with opportunity for all parties to appear and be heard.

(8) The trustee or trustees of the funds ordered to be set aside shall promptly notify the minor child's employer in writing of any change in facts that affect the employer's obligation or ability to set aside the funds in accordance with the order, including, but not limited to, a change of financial institution or account number or the existence of a new or amended order issued pursuant to paragraph (b)(7) amending or terminating the employer's obligations under the original order. The written notification shall include the information set forth in paragraph (b)(3) and shall be accompanied by a true and accurate photocopy of the new or amended order.

(9) A parent or legal guardian, as the case may be, entitled to the physical custody, care and control of the minor child, the minor child through a guardian ad litem or the trustee or trustees, may at any time petition the court to request an increase in the percentage of gross earnings that are set aside for the benefit of the minor child.

(c) (1) Notwithstanding any other statute, for any minor child's contract of a type described in K.S.A. 38-618, and amendments thereto, that is not being submitted for approval by the district court pursuant to K.S.A. 38-618, and amendments thereto, or for which the district court has issued a final order denying approval, 15% of the minor child's gross earnings pursuant to the contract shall be set aside by the minor child's employer either in a trust fund or other savings plan and preserved for the benefit of the minor child in accordance with K.S.A. 38-621, and amendments thereto. At least one parent or legal guardian, as the case may be, entitled to the physical custody, care and control of the minor, shall be the trustee of the funds set aside for the benefit of the minor, unless the court, upon petition by the parent or legal guardian, the minor, through the minor child's guardian ad litem, or the trustee or trustees of the trust, shall determine that appointment of a different individual, individuals, entity or entities as trustee or trustees is required in the best interest of the minor.

(2) A parent or guardian, as the case may be, entitled to the physical custody, care and control of the minor child, shall promptly provide the minor child's employer with a true and accurate photocopy of the trustee's statement and attachments pursuant to subsection (c) of K.S.A. 38-621, and amendments thereto, and in addition, in the case of a guardian, a certified copy of the district court document appointing the person as the minor child's legal guardian.

(3) The minor child's employer shall deposit 15% of the minor child's gross earnings pursuant to the contract within 15 business days of receiving the trustee's statement and attachments pursuant to subsection (c) of K.S.A. 38-621, and amendments thereto, or if the district court denies approval of the contract, within 15 business days of receiving a final order denying approval of the contract. Notwithstanding any other statute, pending receipt of the trustee's statement and attachments or the final district court order, the minor child's employer shall hold for the benefit of the minor child the 15% of the minor child's gross earnings pursuant to the contract.

(4) Once the minor child's employer deposits the set aside funds into a trust fund or other savings plan pursuant to K.S.A. 38-621, and amendments thereto, the minor child's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the trust fund or other savings plan shall be the only individual, individuals, entity or entities with the obligation or duty to monitor and account for these funds once they have been deposited by the minor child's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with K.S.A. 59-1606, and amendments thereto.

(5) The district court, in any county in which the minor child resides or in which the trust fund or other savings plan is established, at any time, on good cause shown, may order that the trust fund or other savings plan be amended or terminated, notwithstanding the provisions of the declaration of trust or other savings plan upon petition by the parent or legal guardian, the minor through a guardian ad litem or the trustee or trustees. If the beneficiary is a minor child, an order amending or terminating a trust fund or other savings plan may be made only after reasonable notice to the beneficiary, to the parent or guardian, if any, and to the trustee or trustees of the funds, with opportunity for all parties to appear and be heard.

(6) A parent or guardian, entitled to the physical custody, care and control of the minor child, shall promptly notify the minor child's employer in writing of any change in facts that affect the employer's obligation or ability to set aside funds for the benefit of the minor child in accordance with this section, including, but not limited to, a change of financial institution or account number or the existence of a new or amended order issued pursuant to paragraph (c)(5) amending or terminating the employer's obligations under this section. The written notification shall be accompanied by a true and accurate photocopy of the trustee's statement and attachments pursuant to subsection (c) of K.S.A. 38-621, and amendments thereto, or a true and accurate photocopy of the new or amended order.

(d) Where a parent or guardian is entitled to the physical custody, care and control of a minor child who enters into a contract of a type described in K.S.A. 38-618, and amendments thereto, the relationship between the parent or guardian and the minor child is a fiduciary relationship that is governed by the law of trust, whether or not a district court has issued a formal order to that effect. With respect to all earnings and accumulations of the minor child under the contract, the parent or guardian shall pay all liabilities incurred by the minor child under the contract, including, but not limited to, payments for taxes on all earnings, including taxes on the amounts set aside under subsections (b) and (c) of this section, and payments for personal or professional services rendered to the minor child or the business related to the contract. Nothing in this subdivision shall be construed to alter any other existing responsibilities of a parent or legal guardian to provide for the support of a minor child.

History: L. 2000, ch. 174, § 6; July 1.