

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 558

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE UNIFORM PROBATE CODE; AMENDING SECTION 15-5-409a, IDAHO  
2 CODE, TO PROVIDE THAT CERTAIN PERSONS MAY PETITION FOR A COMPROMISE OF  
3 THE CLAIM OF A MINOR, TO PROVIDE FOR THE ORDER OF PRIORITY TO MAKE A PE-  
4 TITION, TO AUTHORIZE A COURT TO PASS OVER A PERSON HAVING PRIORITY UNDER  
5 CERTAIN CONDITIONS, TO PROVIDE REQUIREMENTS FOR A PETITION, TO AUTHO-  
6 RIZE A COURT TO TAKE CERTAIN ACTIONS REGARDING A COMPROMISE, TO PROVIDE  
7 FOR APPROVAL OF A COMPROMISE AND PAYMENT AND TO PROVIDE THAT NO FILING  
8 FEE SHALL BE CHARGED FOR THE FILING OF A PETITION.  
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Section 15-5-409a, Idaho Code, be, and the same is  
12 hereby amended to read as follows:

13 15-5-409a. COMPROMISE OF ~~DISPUTED~~ CLAIM OF MINOR -- PROCEDURE. (1)  
14 When a minor ~~shall have~~ has a disputed claim for money against a third person,  
15 the ~~father or mother or both with whom the minor resides and who has the care~~  
16 ~~and custody of such minor shall have the right to compromise such claim,~~  
17 ~~but before the compromise shall be valid or of any effect the same shall be~~  
18 ~~approved by the court of the county where the minor resides upon a verified~~  
19 ~~petition in writing, regularly filed with said court. If the court approves~~  
20 ~~such compromise he may direct the money paid to the father or mother of said~~  
21 ~~minor subject to the provisions of section 15-5-103, Idaho Code, or he, or~~  
22 ~~any other court of competent jurisdiction, may direct the money be paid sub-~~  
23 ~~ject to the provisions of an appropriate protective order which he, or any~~  
24 ~~other court of competent jurisdiction, may issue, or he may require that the~~  
25 ~~money be paid to a conservator appointed pursuant to chapter 5, part 4, of~~  
26 ~~this code, or he may approve the compromise under the provisions of chapter~~  
27 ~~14, title 68, Idaho Code. No filing fee shall be charged for the filing of~~  
28 ~~any petition for leave to compromise as provided herein persons or entities~~  
29 ~~listed below have the right to petition for a compromise of the claim in the~~  
30 ~~following order of priority:~~

31 (a) An appointed conservator of the minor;

32 (b) A guardian of the minor, if appointed;

33 (c) Either or both parents, provided that:

34 (i) If the parents are living separate and apart, then the parent  
35 who has been awarded primary physical custody; or

36 (ii) If no custody award has been made, the parent with whom the  
37 minor is living;

38 (d) A de facto custodian; and

39 (e) Any other legal representative.

40 (2) The court for good cause may pass over a person having priority un-  
41 der subsection (1) of this section and appoint a person having less priority  
42 or no priority; provided that the court shall not pass over a parent or par-

1 ents unless the court concludes that the parent or parents are incapable or  
 2 unwilling to act reasonably and in the best interest of the minor. Such pro-  
 3 posed compromise is not effective until it is approved by the district court  
 4 of the county where the minor resides or, if the minor is not a resident of  
 5 the state of Idaho, by the district court of the county where the claim arose,  
 6 upon verified petition, filed with the court.

7 (3) A verified petition made pursuant to this section shall include the  
 8 following:

9 (a) The name, age and residence of the minor;

10 (b) The facts that bring the minor within the purview of this section,  
 11 including the circumstances that make it a claim for money, the name of  
 12 the third person against whom the claim is made and, if the claim is the  
 13 result of an accident, the date, place and facts of the accident;

14 (c) The names and residence of the parents or guardian of the minor;

15 (d) The name and residence of the person or persons having physical cus-  
 16 tody or control of the minor;

17 (e) The name and residence of the petitioner, the relationship of the  
 18 petitioner to the minor and the basis of the petitioner's right to com-  
 19 promise the claim;

20 (f) The total amount of proceeds of the proposed compromise, the ap-  
 21 portionment of those proceeds and whether the fees and expenses are to  
 22 be deducted before or after the calculation of any contingency fee, in-  
 23 cluding the amount to be used for:

24 (i) Attorney's fees and whether the attorney's fees are fixed or  
 25 contingent fees;

26 (ii) Medical expenses; or

27 (iii) Other expenses;

28 (g) Whether the petitioner believes the acceptance of this compromise  
 29 is in the best interest of the minor;

30 (h) That the petitioner has been advised and understands that accep-  
 31 tance of the compromise will bar the minor from seeking further relief  
 32 from the third person offering the compromise;

33 (i) If the claim involves a personal injury suffered by the minor, a  
 34 summary of:

35 (i) The injury, prognosis, treatment and progress of recovery of  
 36 the minor; and

37 (ii) The amount of medical expenses incurred to date, the nature  
 38 and amount of medical expenses that have been paid and by whom, any  
 39 amount owing for medical expenses and an estimate of the amount of  
 40 medical expenses that may be incurred in the future; and

41 (j) The policy limits of the insurance contract, if applicable.

42 (4) (a) If the minor's claim is less than ten thousand dollars (\$10,000)  
 43 and the court is satisfied after review of the verified petition that  
 44 the compromise is reasonable and in the best interest of the minor, the  
 45 court may approve the compromise or set a hearing;

46 (b) If the minor's claim is ten thousand dollars (\$10,000) or more, the  
 47 court shall set a hearing for approval of the compromise.

48 (5) If the court finds the compromise is reasonable and in the best in-  
 49 terest of the minor, the court may approve such compromise and may direct the  
 50 money be paid:

- 1        (a) To the parents, guardian, trustee, conservator, legal representa-
- 2        tive or the designated payee thereof in accordance with this chapter;
- 3        (b) Subject to the provisions of an appropriate protective order; or
- 4        (c) In accordance with the provisions of chapter 14, title 68, Idaho
- 5        Code.
- 6        (6) No filing fee shall be charged for the filing of any petition under
- 7        the provisions of this section.