

The House Committee on Judiciary offers the following substitute to HB 620:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 29, Chapter 4 of Title 51, and Article 6 of Chapter 6 of Title 53 of the
2 Official Code of Georgia Annotated, relating to guardian and ward, wrongful death, and
3 bond, respectively, so as to clarify and revise procedures and requirements for the payment
4 of certain settlements involving claims of minors; to revise and provide for definitions; to
5 revise when the natural guardian or next friend of a minor may receive the personal property
6 of a minor for certain purposes; to revise certain bond requirements; to provide for related
7 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is
11 amended by revising Code Section 29-3-1, relating to "personal property" defined, natural
12 guardian must qualify as conservator, and exception, as follows:

13 "29-3-1.

14 (a) For purposes of this Code section, the term 'personal property' does not include the
15 value of property that is held for the minor's benefit in trust or by a custodian under
16 Article 5 of Chapter 5 of Title 44, 'The Georgia Transfers to Minors Act.'

H. B. 620 (SUB)

17 (b) The natural guardian or next friend of a minor may not receive the personal property
18 of the minor until the natural guardian or next friend becomes the legally qualified
19 conservator of the minor; provided, however, that when the total value of all personal
20 property of the minor is ~~\$15,000.00~~ \$25,000.00 or less, the natural guardian may receive
21 and shall thereafter hold and use all or part of the personal property for the benefit of the
22 minor and shall be accountable for the personal property but shall not be required to
23 become the legally qualified conservator as to that personal property.

24 (c) Upon receiving an affidavit:

25 (1) That the value of all the personal property of a minor will not exceed ~~\$15,000.00~~
26 \$25,000.00 in value;

27 (2) That no conservator has been appointed for the minor's estate; and

28 (3) That the affiant is the natural guardian of the minor,

29 any person indebted to or holding personal property of the minor shall be authorized to pay
30 the amount of the indebtedness or to deliver the personal property to the affiant. In the
31 same manner and upon like proof, any person having the responsibility for the issuance or
32 transfer of stocks, bonds, or other personal property shall be authorized to issue or transfer
33 the stocks, bonds, or personal property to or in the name of the affiant. Upon such
34 payment, delivery, transfer, or issuance pursuant to the affidavit, the person shall be
35 released to the same extent as if the payment, delivery, transfer, or issuance had been made
36 to the legally qualified conservator of the minor and shall not be required to see to the
37 application or disposition of the personal property.

38 (d) This Code section shall not authorize a temporary, testamentary, or permanent guardian
39 to receive personal property of the minor unless the guardian becomes the legally qualified
40 conservator of the minor."

41 **SECTION 2.**

42 Said title is further amended by revising Code Section 29-3-2, relating to release of debtor
43 when collection doubtful, as follows:

44 "29-3-2.

45 The natural guardian of a minor who has no conservator may release the debtor and
46 compromise a debt when the collection of the debt is doubtful without becoming the
47 conservator of the minor and without such action being approved by the court if the amount
48 of the debt is not more than \$25,000.00 ~~\$15,000.00 or less.~~"

49 **SECTION 3.**

50 Said title is further amended by revising Code Section 29-3-3, relating to "gross settlement"
51 defined, compromise of claim, and finality of settlement, as follows:

52 "29-3-3.

53 (a) For purposes of this Code section, the term '~~gross settlement~~':

54 (1) 'Gross settlement' means the present value of all amounts paid or to be paid in
55 settlement of ~~the~~ a minor's claim, including cash, ~~medical expenses~~, expenses of
56 litigation, attorney's fees, and any amounts paid to purchase an annuity or other similar
57 financial arrangement. Such term shall include the total amount paid or to be paid on
58 behalf of all settling parties.

59 (2) 'Net settlement' means the gross settlement reduced by:

60 (A) Attorney's fees, expenses of litigation, and legally enforceable liens against the
61 settlement that are to be paid from the settlement proceeds;

62 (B) The present value of amounts to be received by the minor after reaching the age
63 of majority; and

64 (C) The present value of amounts to be placed into a trust for the benefit of a minor.

65 (b) If the minor has a conservator, the only person who can compromise a minor's claim
66 is the conservator.

67 (c) ~~Whether or not legal action has been initiated, if~~ If the proposed gross settlement of a
68 minor's claim is ~~\$15,000.00~~ \$25,000.00 or less, the natural guardian of the minor may
69 compromise the claim without becoming the conservator of the minor and without court
70 approval. The natural guardian must qualify as the conservator of the minor in order to
71 receive payment of the settlement if necessary to comply with Code Section 29-3-1.

72 (d) If no legal action has been initiated and the proposed gross settlement of a minor's
73 claim is more than ~~\$15,000.00~~ \$25,000.00, the settlement must be submitted for approval
74 to the probate court.

75 (e) If legal action has been initiated and the proposed gross settlement of a minor's claim
76 is more than ~~\$15,000.00~~ \$25,000.00, the settlement must be submitted for approval to the
77 court in which the action is pending. ~~The natural guardian or conservator shall not be~~
78 ~~permitted to dismiss the action and present the settlement to the court for approval without~~
79 ~~the approval of the court in which the action is pending.~~ The approval of such settlement
80 by the probate court shall not be required.

81 (f) If legal action has been initiated and the proposed gross settlement of a minor's claim
82 is more than ~~\$15,000.00~~ \$25,000.00, but the gross net settlement reduced by:

83 (1) ~~Attorney's fees, expenses of litigation, and medical expenses which shall be paid~~
84 ~~from the settlement proceeds; and~~

85 (2) ~~The present value of amounts to be received by the minor after reaching the age of~~
86 ~~majority~~

87 is ~~\$15,000.00~~ \$25,000.00 or less, the ~~natural guardian may seek approval of the proposed~~
88 ~~settlement from the appropriate court without becoming the conservator of the minor~~
89 settlement shall be submitted for approval to the court in which the action is pending, but
90 no conservator or approval of the probate court is required. The natural guardian must
91 qualify as the conservator of the minor in order to receive payment of the settlement if
92 necessary to comply with Code Section 29-3-1.

93 (g) If legal action has been initiated and the proposed gross settlement of a minor's claim
 94 is more than \$25,000.00 and the proposed gross net settlement of a minor's claim is more
 95 than \$15,000.00, but such gross settlement reduced by:

96 (1) ~~Attorney's fees, expenses of litigation, and medical expenses which shall be paid~~
 97 ~~from the settlement proceeds; and~~

98 (2) ~~The present value of amounts to be received by the minor after reaching the age of~~
 99 ~~majority~~

100 is also more than ~~\$15,000.00~~ \$25,000.00, the natural guardian may not seek approval of
 101 the proposed settlement from the appropriate court without becoming the conservator of
 102 ~~the minor~~ settlement shall be submitted by the conservator of the minor for approval to the
 103 court in which the action is pending. The approval of such settlement by the probate court
 104 that appointed such conservator is not required.

105 (h) If an order of approval is obtained from the probate court; or a court in which ~~the~~ legal
 106 action is pending, based upon the best interest of the minor, the natural guardian, next
 107 friend, or conservator shall be authorized to compromise any contested or doubtful claim
 108 in favor of the minor without receiving consideration for such compromise as a lump sum.

109 Without limiting the foregoing, the compromise may ~~be~~:

110 (1) Involve a structured settlement or creation of a trust on terms that the probate court
 111 or court in which the action is pending approves or creates, including, but not limited to,
 112 funding; and

113 (2) Be in exchange for an:

114 (A) The resolution of the action; or

115 (B) An arrangement that defers receipt:

116 (i) Receipt of part, not to exceed a total distribution of \$15,000.00 \$25,000.00 prior
 117 to a minor reaching the age of majority, or all; or

118 (ii) All of the consideration for the compromise until after the minor reaches the age
119 of majority and may involve a structured settlement or creation of a trust on terms
120 which the court approves.

121 (i) Any settlement entered consistent with the provisions of this Code section shall be final
122 and binding upon all parties, including the minor.

123 (j) It shall be within the discretion of the court in which the action is pending to hold a
124 hearing on compliance with the requirements of this Code section; provided, however, that
125 a hearing shall not be required if compliance with such requirements is evident from the
126 record.

127 (k)(1) Notwithstanding any provision of this Code section to the contrary, where a
128 settlement has been submitted to a court for approval, an action shall not be voluntarily
129 dismissed pursuant to subsection (a) of Code Section 9-11-41, or otherwise dismissed
130 upon motion, except upon order of the court in which the action is pending and upon the
131 terms and conditions as that court deems proper.

132 (2) If specifically indicated in the dismissal order, the court in which the action is
133 pending may retain exclusive jurisdiction to approve any subsequent settlement."

134 **SECTION 4.**

135 Said title is further amended by revising paragraphs (12) and (13) of subsection (a) and
136 paragraphs (5) and (6) of subsection (c) of Code Section 29-3-22, relating to power of
137 conservator and cooperation with guardian of minor, as follows:

138 "(12) Compromise any contested or doubtful claim for or against the minor if the
139 proposed gross settlement as defined in Code Section 29-3-3 is in ~~the~~ an amount of
140 ~~\$15,000.00 or less~~ not greater than \$25,000.00; and

141 (13) Release the debtor and compromise all debts in ~~the~~ an amount of ~~\$15,000.00 or less~~
142 not greater than \$25,000.00 when the collection of the debt is doubtful."

143 "(5) Pursuant to the provisions of Code Section 29-3-3, to compromise a contested or
 144 doubtful claim for or against the minor if the proposed gross settlement as defined in
 145 Code Section 29-3-3 is ~~more than the~~ in an amount of ~~\$15,000.00~~ greater than
 146 \$25,000.00;

147 (6) To release the debtor and compromise a debt ~~which that~~ is in ~~the~~ an amount of ~~more~~
 148 greater than ~~\$15,000.00~~ \$25,000.00 when the collection of the debt is doubtful;

149 **SECTION 5.**

150 Said title is further amended by revising Code Section 29-3-40, relating to bond required,
 151 exception, and recording of bonds, as follows:

152 "29-3-40.

153 (a) A conservator appointed by the court shall give bond with good and sufficient security.
 154 A guardian or conservator appointed without bond shall have no authority to receive assets
 155 of the estate until a bond is posted.

156 (b) A financial institution, trust company, national or state bank, savings bank, or savings
 157 and loan association described in Code Section 7-1-242 that seeks to qualify as a
 158 conservator is not required to give bond for the faithful performance of its duties unless its
 159 combined capital, surplus, and undivided profits are less than \$3 million as reflected in its
 160 last statement filed with the Comptroller of the Currency of the United States or the
 161 commissioner of banking and finance.

162 (c) The clerk of the court shall record bonds in books kept for that purpose and shall retain
 163 custody of the bonds."

164 **SECTION 6.**

165 Said title is further amended by revising Code Section 29-3-41, relating to requirements of
 166 bond, term and value of bond, and substantial compliance sufficient, as follows:

167 "29-3-41.

168 (a) The bond of a conservator shall be:

169 (1) Secured by an individual who is a domiciliary of this state or by a licensed
170 commercial surety authorized to transact business in this state;

171 (2) Payable to the court for the benefit of the minor;

172 (3) Conditioned upon the faithful discharge of the conservator's duty, as is required by
173 law; and

174 (4) Attested by the judge or clerk of the court.

175 (b) The court may order a conservator who is required to give bond to post bond for a
176 period of time greater than one year, as may be appropriate in the circumstances. A surety
177 on a bond posted pursuant to this subsection shall not be relieved of liability merely
178 because of the expiration of the term of the bond but shall be subject to the provisions of
179 law for the discharge of a surety applicable to other bonds.

180 (c) Except as provided in subsection (d) of this Code section, the ~~The~~ bond shall be in a
181 value equal to double the estimated value of the minor's estate; provided, however, that the
182 bond shall be in an amount equal to the estimated value of the estate if secured by a
183 licensed commercial surety authorized to transact business in this state. The value of the
184 estate for purposes of the bond shall be determined without regard to the value of any real
185 property or improvements thereon but, upon conversion of the real property into personal
186 property, a bond shall be given based upon the value of the estate, including the value of
187 the personal property into which the real property was converted.

188 (d) No bond shall be required where the only asset of the estate is a chose in action of
189 indeterminate value until the value of such chose in action is able to be determined by
190 settlement or judgment, whereupon the value of the bond shall be as provided in
191 subsection (c) of this Code section. The term 'chose in action' shall have the same meaning
192 as provided in Article 2 of Chapter 12 of Title 44.

193 (e) Substantial compliance with these requirements for the bond shall be deemed
 194 sufficient; and no bond shall be declared invalid by reason of any variation from these
 195 requirements as to payee, amount, or condition, where the manifest intention was to give
 196 bond as conservator and a breach of the fiduciary's duty as such has been proved."

197 **SECTION 7.**

198 Said title is further amended by revising paragraphs (13) and (14) of subsection (a) and
 199 paragraphs (5) and (6) of subsection (c) of Code Section 29-5-23, relating to authority of
 200 conservator and cooperation with guardian or other interested parties, as follows:

201 "(13) Compromise any contested or doubtful claim for or against the ward if the
 202 proposed gross settlement as defined in Code Section 29-3-3 is in the amount of
 203 ~~\$15,000.00~~ \$25,000.00 or less; and

204 (14) Release the debtor and compromise all debts in the amount of ~~\$15,000.00~~
 205 \$25,000.00 or less when the collection of the debt is doubtful."

206 "(5) To compromise a contested or doubtful claim for or against the ward if the proposed
 207 gross settlement as defined in Code Section 29-3-3 is more than ~~\$15,000.00~~ \$25,000.00;

208 (6) To release the debtor and compromise all debts for which the collection is doubtful
 209 when the amount of the debt is ~~\$15,000.00~~ \$25,000.00 or more;"

210 **SECTION 8.**

211 Chapter 4 of Title 51 of the Official Code of Georgia Annotated, relating to wrongful death,
 212 is amended by revising Code Section 51-4-2, relating to persons entitled to bring action for
 213 wrongful death of spouse or parent, survival of action, release of wrongdoer, disposition of
 214 recovery, exemption from liability for decedent's debts, and recovery not barred when child
 215 born out of wedlock, as follows:

216 "51-4-2.

217 (a) The surviving spouse or, if there is no surviving spouse, a child or children, either
218 minor or sui juris, may recover for the homicide of the spouse or parent the full value of
219 the life of the decedent, as shown by the evidence.

220 (b)(1) If an action for wrongful death is brought by a surviving spouse under
221 subsection (a) of this Code section and the surviving spouse dies pending the action, the
222 action shall survive to the child or children of the decedent.

223 (2) If an action for wrongful death is brought by a child or children under subsection (a)
224 of this Code section and one of the children dies pending the action, the action shall
225 survive to the surviving child or children.

226 (c) The surviving spouse may release the alleged wrongdoer without the concurrence of
227 the child or children or any conservator, guardian, next friend, or other authorized
228 representative thereof and without any order of court, provided that such spouse shall hold
229 the consideration for such release subject to subsection (d) of this Code section and shall
230 be accountable for same.

231 (d)(1) Any amount recovered under subsection (a) of this Code section shall be equally
232 divided, share and share alike, among the surviving spouse and the children per capita,
233 and the descendants of children shall take per stirpes, provided that any such recovery to
234 which a minor child is entitled ~~and which equals less than \$15,000.00 shall be held by the~~
235 ~~natural guardian of the child, who shall hold and use such money for the benefit of the~~
236 ~~child and shall be accountable for same; and any such recovery to which a minor child~~
237 ~~is entitled and which equals \$15,000.00 or more shall be held by a guardian of the~~
238 ~~property of such child shall comply with the procedures for compromise and court~~
239 approval of settlement of a minor's claim as provided in Code Section 29-3-3.

240 (2) Notwithstanding paragraph (1) of this subsection, the surviving spouse shall receive
241 no less than one-third of such recovery as such spouse's share.

242 (e) No recovery had under subsection (a) of this Code section shall be subject to any debt
243 or liability of the decedent or of the decedent's estate.

244 (f) In actions for recovery under this Code section, the fact that a child has been born out
245 of wedlock shall be no bar to recovery."

246 **SECTION 9.**

247 Article 6 of Chapter 6 of Title 53 of the Official Code of Georgia Annotated, relating to
248 bond, is amended by revising Code Section 53-6-50, relating to persons required to give, as
249 follows:

250 "53-6-50.

251 (a) Unless otherwise provided in this Code section, any person who seeks to qualify to
252 serve as the personal representative of an intestate estate or as a temporary administrator
253 shall be required to give bond with good and sufficient security. Such personal
254 representative or temporary administrator appointed without bond shall have no authority
255 to receive assets of the estate until a bond is posted.

256 (b) A national banking association or a bank or trust company organized under the laws
257 of this state that seeks to qualify as a personal representative of an intestate estate or
258 temporary administrator shall not be required to give bond for the faithful performance of
259 its duties unless its combined capital, surplus, and undivided profits are less than
260 \$400,000.00 as reflected in its last statement filed with the comptroller of the currency of
261 the United States or the commissioner of banking and finance or unless the instrument
262 under which it seeks to qualify expressly provides that it shall give bond.

263 (c) A person petitioning to qualify as a personal representative of an intestate estate may
264 be relieved from the requirement for giving bond by the unanimous consent of the heirs of
265 the estate. With respect to any heir who is not sui juris, consent may be given by the
266 guardian of the individual. The personal representative of a deceased heir is authorized to
267 consent for that heir. In no case may consent on behalf of an heir who is not sui juris be

268 effective if the person consenting is the person petitioning to serve as personal
269 representative.

270 (d) The provisions of this Code section shall not apply to bonds described in Code
271 Section 53-6-41 and Code Section 53-6-53.

272 (e) No bond shall be required under subsection (a) of this Code section where the only
273 asset of the estate is a chose in action of indeterminate value until the value of such chose
274 in action is able to be determined by settlement or judgment, whereupon the bond shall be
275 required as provided in subsection (a) of this Code section, provided no other exception
276 applies. The term 'chose in action' shall have the same meaning as provided in Article 2
277 of Chapter 12 of Title 44."

278 **SECTION 10.**

279 This Act shall become effective upon its approval by the Governor or upon its becoming law
280 without such approval.

281 **SECTION 11.**

282 All laws and parts of laws in conflict with this Act are repealed.