

The Senate Committee on Judiciary offered 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.'

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

(c) Upon receiving an affidavit:

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

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

(3) That the affiant is the natural guardian of the minor,
any person indebted to or holding personal property of the minor shall be authorized to pay the amount of the indebtedness or to deliver the personal property to the affiant. In the same manner and upon like proof, any person having the responsibility for the issuance or transfer of stocks, bonds, or other personal property shall be authorized to issue or transfer the stocks, bonds, or personal property to or in the name of the affiant. Upon such payment, delivery, transfer, or issuance pursuant to the affidavit, the person shall be released to the same extent as if the payment, delivery, transfer, or issuance had been made to the legally qualified conservator of the minor and shall not be required to see to the application or disposition of the personal property.

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

SECTION 2.

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

"29-3-2.

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

SECTION 3.

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

"29-3-3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Be in exchange for an:

(A) The resolution of the action; or

(B) An arrangement that defers receipt:

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

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

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

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

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

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

SECTION 4.

Said title is further amended by revising paragraphs (4), (12), and (13) of subsection (a) and paragraphs (5) and (6) of subsection (c) of Code Section 29-3-22, relating to power of conservator and cooperation with guardian of minor, as follows:

"(4) Receive, collect, and hold the minor's property, additions to the minor's property, and all related records, subject to subsection (d) of Code Section 29-3-41;"

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

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

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

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

SECTION 5.

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

"29-3-41.

(a) The bond of a conservator shall be:

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

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

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

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

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

(c) Except as provided in subsection (d) of this Code section, the ~~The~~ bond shall be in a value equal to double the estimated value of the minor's estate; provided, however, that the

bond shall be in an amount equal to the estimated value of the estate if secured by a licensed commercial surety authorized to transact business in this state. The value of the estate for purposes of the bond shall be determined without regard to the value of any real property or improvements thereon but, upon conversion of the real property into personal property, a bond shall be given based upon the value of the estate, including the value of the personal property into which the real property was converted.

(d) When the assets of the estate consist only of one or more choses in action of indeterminate value, no bond shall be required until the value of any such chose in action is able to be determined by settlement or judgment, whereupon bond shall be set in an amount to be determined in accordance with subsection (c) of this Code section; provided, however, that a conservator appointed without bond pursuant to this subsection shall have no authority to receive assets of the minor's estate other than a chose or choses in action until such conservator has posted bond in accordance with this Code section. As used in this subsection, the term 'chose in action' shall have the same meaning as provided in Article 2 of Chapter 12 of Title 44.

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

SECTION 6.

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

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

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

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

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

SECTION 7.

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

"51-4-2.

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

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

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

(c) The surviving spouse may release the alleged wrongdoer without the concurrence of
the child or children or any conservator, guardian, next friend, or other authorized
representative thereof and without any order of court, provided that such spouse shall hold

the consideration for such release subject to subsection (d) of this Code section and shall be accountable for same.

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

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

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

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

SECTION 8.

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

"53-6-50.

(a) Unless otherwise provided in this Code section, any person who seeks to qualify to serve as the personal representative of an intestate estate or as a temporary administrator shall be required to give bond with good and sufficient security.

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

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

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

(e)(1) When the assets of the estate consist only of one or more choses in action of indeterminate value and the personal representative or temporary administrator is not relieved from the requirement for giving bond by subsection (b) or (c) of this Code section, no bond shall be required under subsection (a) of this Code section until the value of any such chose in action is able to be determined by settlement or judgment, whereupon bond shall be set in an amount to be determined in accordance with subsection (c) of Code Section 53-6-51. If the value of any additional such chose in action subsequently is determined by settlement or judgment, the amount of the bond shall be increased in accordance with subsection (c) of Code Section 53-6-51. As used in this paragraph, the term 'chose in action' shall have the same meaning as provided in Article 2 of Chapter 12 of Title 44.

(2) A personal representative or temporary administrator who qualifies to serve without bond pursuant to paragraph (1) of this subsection shall have no authority to receive the settlement or judgment of a chose in action under this subsection until:

(A) Such personal representative or temporary administrator has posted bond in accordance with paragraph (1) of this subsection; and

(B) Upon the initial posting of bond by such personal representative or temporary administrator in the first instance in which the value of a chose in action is determined by settlement or judgment, amended letters have been issued accordingly."

SECTION 9.

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

SECTION 10.

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