

House Bill 620 (AS PASSED HOUSE AND SENATE)

By: Representatives Leverett of the 33rd, Oliver of the 82nd, Efstoration of the 104th, Wilson of the 80th, and Scoggins of the 14th

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.'

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~~ allocated to a
57 structured settlement or other similar financial arrangement. Such term shall include the
58 total amount paid or to be paid on 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 that the probate court or
65 court in which the action is pending approves or creates for the benefit of the minor.

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

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

76 (A) May compromise the claim; or

77 (B) May receive payment of and shall thereafter hold and use the settlement for the
78 benefit of the minor and shall be accountable for the same as provided in Code Section
79 29-3-1.

80 (2) If the proposed gross settlement of a minor's claim is more than \$25,000.00, and the
81 net settlement is \$25,000.00 or less:

82 (A) The settlement shall be submitted for approval to:

83 (i) The probate court if no legal action has been initiated, or

84 (ii) The court in which the legal action is pending if legal action has been initiated,
85 and such court shall have exclusive jurisdiction to approve the settlement, except as
86 provided in subsection (g) of this Code section;

87 (B) No conservator shall be required to compromise the claim; and

88 (C) No conservator shall be required to receive payment of the settlement; provided,
89 however, that the natural guardian receiving payment of the settlement shall thereafter
90 hold and use the settlement for the benefit of the minor and shall be accountable for the
91 same as provided in Code Section 29-3-1.

92 (3) If the proposed gross settlement of a minor's claim is more than \$25,000.00, and the
93 net settlement is more than \$25,000.00:

94 (A) A conservator shall be required to compromise the claim;

95 (B) A conservator shall be required to receive payment of the settlement and shall
96 thereafter hold and use the settlement for the benefit of the minor and shall be
97 accountable for the same as provided in Code Section 29-3-1; and

98 (C) Such conservator shall submit the settlement for approval to:

99 (i) The probate court if no legal action has been initiated, or

100 (ii) The court in which the legal action is pending if legal action has been initiated,
101 and such court shall have exclusive jurisdiction to approve the settlement, except as
102 provided in subsection (g) of this Code section.

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

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

110 ~~(f) If the proposed gross settlement of a minor's claim is more than \$15,000.00, but the~~
111 ~~gross settlement reduced by:~~

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

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

116 ~~is \$15,000.00 or less, the natural guardian may seek approval of the proposed settlement~~
117 ~~from the appropriate court without becoming the conservator of the minor. The natural~~

118 ~~guardian must qualify as the conservator of the minor in order to receive payment of the~~
 119 ~~settlement if necessary to comply with Code Section 29-3-1.~~

120 ~~(g) If the proposed gross settlement of a minor's claim is more than \$15,000.00, but such~~
 121 ~~gross settlement reduced by:~~

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

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

126 ~~is more than \$15,000.00, the natural guardian may not seek approval of the proposed~~
 127 ~~settlement from the appropriate court without becoming the conservator of the minor.~~

128 ~~(h)(d)(1) If an order of approval is obtained from the probate court, or a court in which~~
 129 ~~the legal action is pending, based upon the best interest of the minor, the natural guardian,~~
 130 ~~next friend, or conservator shall be authorized, subject to Code Section 29-3-22, to~~
 131 ~~compromise any contested or doubtful claim in favor of the minor without receiving~~
 132 ~~consideration for such compromise as a lump sum.~~

133 ~~(2) Without limiting the foregoing, the compromise may be:~~

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

137 ~~(B) Be in exchange for an:~~

138 ~~(i) The resolution of the action; or~~

139 ~~(ii) An arrangement that defers receipt:~~

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

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

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

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

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

156 (2) If specifically indicated in the dismissal order, or if a settlement is reached while the
157 case is pending in the Court of Appeals or the Supreme Court, the trial court shall retain
158 exclusive jurisdiction to approve any settlement.

159 (3) If legal action has been initiated but is no longer pending, and the trial court has not
160 specifically retained jurisdiction pursuant to paragraph (2) of this subsection, then any
161 settlement approved by the court in which the legal action is pending as required by
162 subsection (c) of this Code section, shall instead be submitted for approval to the probate
163 court."

164 **SECTION 4.**

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

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

170 "(12) Compromise any contested or doubtful claim for or against the minor if the
 171 proposed gross settlement as defined in Code Section 29-3-3 is in ~~the~~ an amount of
 172 ~~\$15,000.00 or less~~ not greater than \$25,000.00; and

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

175 "(5) Pursuant to the provisions of Code Section 29-3-3, to compromise a contested or
 176 doubtful claim for or against the minor if the proposed gross settlement as defined in
 177 Code Section 29-3-3 is ~~more than the~~ in an amount of ~~\$15,000.00~~ greater than
 178 \$25,000.00;

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

181 **SECTION 5.**

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

184 "29-3-41.

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

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

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

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

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

192 (b) The court may order a conservator who is required to give bond to post bond for a
 193 period of time greater than one year, as may be appropriate in the circumstances. A surety
 194 on a bond posted pursuant to this subsection shall not be relieved of liability merely

195 because of the expiration of the term of the bond but shall be subject to the provisions of
196 law for the discharge of a surety applicable to other bonds.

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

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

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

218 **SECTION 6.**

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

222 "(13) Compromise any contested or doubtful claim for or against the ward if the
223 proposed gross settlement as defined in Code Section 29-3-3 is in the amount of
224 ~~\$15,000.00~~ \$25,000.00 or less; and

225 (14) Release the debtor and compromise all debts in the amount of ~~\$15,000.00~~
226 \$25,000.00 or less when the collection of the debt is doubtful."

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

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

231 **SECTION 7.**

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

237 "51-4-2.

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

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

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

247 (3) If there is no surviving spouse and an action for wrongful death is brought by a minor
248 child or minor children under subsection (a) of this Code section, the natural guardian,
249 guardian, or next friend of any such minor child shall:

250 (A) Qualify as a conservator if necessary to receive payment of the settlement and shall
251 thereafter hold and use the settlement for the benefit of the minor and shall be
252 accountable for the same as provided in Code Section 29-3-1, and

253 (B) Obtain court approval of such settlement of such minor child or minor children as
254 provided in Code Section 29-3-3.

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

260 (d)(1) Any amount recovered under subsection (a) of this Code section shall be equally
261 divided, share and share alike, among the surviving spouse and the children per capita,
262 and the descendants of children shall take per stirpes; ~~provided that any such recovery to~~
263 ~~which a minor child is entitled and which equals less than \$15,000.00 shall be held by the~~
264 ~~natural guardian of the child, who shall hold and use such money for the benefit of the~~
265 ~~child and shall be accountable for same; and any such recovery to which a minor child~~
266 ~~is entitled and which equals \$15,000.00 or more shall be held by a guardian of the~~
267 ~~property of such child.~~

268 (2) Notwithstanding paragraph (1) of this subsection, the surviving spouse shall receive
269 no less than one-third of such recovery as such spouse's share. If there is no surviving
270 spouse, the amount recovered under subsection (a) of this Code section shall be equally

271 divided, share and share alike, among the children per capita, and the descendants of
272 children shall take per stirpes.

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

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

277 **SECTION 8.**

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

281 "53-6-50.

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

285 (b) A national banking association or a bank or trust company organized under the laws
286 of this state that seeks to qualify as a personal representative of an intestate estate or
287 temporary administrator shall not be required to give bond for the faithful performance of
288 its duties unless its combined capital, surplus, and undivided profits are less than
289 \$400,000.00 as reflected in its last statement filed with the comptroller of the currency of
290 the United States or the commissioner of banking and finance or unless the instrument
291 under which it seeks to qualify expressly provides that it shall give bond.

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

297 effective if the person consenting is the person petitioning to serve as personal
298 representative.

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

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

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

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

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

320 SECTION 9.

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

323

SECTION 10.

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