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SENATE BILL NO. 1293

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact § 8.01-424 of the Code of Virginia, relating to approval of compromises on behalf of persons under a disability in suits or actions to which they are parties.

Patron—Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-424 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-424. Approval of compromises on behalf of persons under a disability in suits or actions to which they are parties.

A. In any action or suit wherein a person under a disability is a party, the court in which the matter is pending shall have the power to approve and confirm a compromise of the matters in controversy on behalf of such party, including claims under the provisions of any liability insurance policy, if such compromise is deemed to be to the interest of the party. Any order or decree approving and confirming the compromise shall be binding upon such party, except that the same may be set aside for fraud.

B. In case of damage to the person or property of a person under a disability, caused by the wrongful act, neglect or default of any person, when death did not ensue therefrom, any person or insurer interested in compromise of any claim for such damages, including any claim under the provisions of any liability insurance policy, may, upon motion to the court in which the action is pending for the recovery of damages on account of such injury, or if no such action is pending, then to any circuit court, move the court to approve the compromise. The court shall require the movant to give reasonable notice of such motion to all parties and to any person found by the court to be interested in the compromise.

C. A compromise action involving a claim for wrongful death shall be in accordance with the applicable provisions of § 8.01-55. Nothing in this section shall be construed to affect the provisions of § 8.01-76.

D. In any compromise action the court shall direct the payment of the proceeds of the compromise agreement, when approved, as follows:

1. Payment of the sum into court as provided by § 8.01-600 or to the general receiver of such court;
2. To a duly qualified fiduciary of the person under a disability, after due inquiry as to the adequacy of the bond of such fiduciary;
3. As provided in § 8.01-606; or

4. Where the agreement of settlement provides for payments to be made over a period of time in the future, whether such payments are lump sum, periodic, or a combination of both, the court shall approve the settlement only if it finds that all payments which are due to be made are (i) secured by a bond issued by an insurance company authorized to write such bonds in this Commonwealth or (ii) to be made *or irrevocably guaranteed* by an insurance company or companies authorized to do business in this Commonwealth and ~~which~~ is rated "A plus" (A+) or better by Best's Insurance Reports. Payments made under this subdivision totaling not more than \$4,000 in any calendar year may be paid in accordance with § 8.01-606. Payments made under this subdivision, totaling more than \$4,000 in any calendar year while the recipient is under a disability, shall be paid to a duly qualified fiduciary after due inquiry as to adequacy of the bond of such fiduciary.

E. Payments made under this section, in the case of damage to the person or property of a minor, may be made payable in the discretion of the court to the parent or guardian of the minor to be held in trust for the benefit of the minor. Any such trust shall be subject to court approval and the court may provide for the termination of such trust at any time following attainment of majority which the court deems to be in the best interest of the minor. In an order authorizing the trust or additions to an existing trust the court may order that the trustee thereof be subject to the same duty to qualify in the clerk's office and to file an inventory and annual accountings with the commissioner of accounts as would apply to a testamentary trustee.

INTRODUCED

SB1293