

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE

House Bill 636  
Judiciary

(Delegate Brown)

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Minors - Settlement of Claims and Actions

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This bill clarifies that a parent of a minor, or person in *loco parentis* of the minor, may settle a *claim* or action, including one brought in the name of the State, brought by the parent or person in *loco parentis* for the benefit of the minor.

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Fiscal Summary

**State Effect:** The bill would not materially affect the Judiciary's operations or finances.

**Local Effect:** None – see above.

**Small Business Effect:** None.

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Analysis

**Current Law:** An action, including one in the name of the State, brought by a next friend for the benefit of a minor may be settled by the next friend. If the next friend is not a parent or person in *loco parentis* of the child, the settlement is not effective unless approved by the parent or other person responsible for the child.

If both parents are dead, and there is no person responsible for the care and custody of the child, the settlement is not effective unless approved by the court in which the suit was brought. Approval may be granted only on the written application by the next friend, under oath, stating the facts of the case, and why the settlement is in the best interest of the child.

An individual under disability to sue, including a minor, may sue by a guardian or other like fiduciary or, if none, by next friend, subject to any order of court for the protection of the minor. When a minor is in the sole custody of one of the parents, that parent has the exclusive right to sue on the minor's behalf for a period of one year following the accrual of the cause of action. If the custodial parent fails to institute suit within this period, any person interested in the minor has the right to institute suit on the minor's behalf as next friend, after first mailing notice to the last known address of the custodial parent.

A minor is a person who has not attained the age of 18 years. A next friend is a person who acts without formal appointment as a guardian for the benefit of a minor, a person of unsound mind who has not been judicially declared incompetent, or other person under a disability. Barring unusual circumstances, a parent acts as best friend of the parent's child.

**Background:** It is arguably unclear whether current law allows a parent (or person acting in *loco parentis*) to settle a claim as opposed to an action on behalf of a minor. At least one insurance company operating in the State requires parents to bring an action in court before settling the underlying claim.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - March 8, 2004  
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