

House Bill 639 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 44<sup>th</sup> and Martin of the 47<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 1 of Chapter 2 of Title 53 of the Official Code of Georgia Annotated, the  
2 Revised Probate Code of 1998, relating to general provisions relative to descent and  
3 distribution, so as to repeal a provision prohibiting the father and other paternal kin from  
4 inheriting from or through a child born out of wedlock if the father failed or refused to treat  
5 the child openly as his own or to provide support for the child; to provide for such  
6 inheritance if the father, during the child's lifetime, has signed the child's birth certificate or  
7 has executed a signed, sworn statement attesting to the relationship; to amend Article 5 of  
8 Chapter 4 of Title 53 of the Official Code of Georgia Annotated, the Revised Probate Code  
9 of 1998, relating to revocation and repudiation of wills, so as to provide for inheritance when  
10 a will is revoked by operation of law; to amend Code Section 53-5-22 of the Official Code  
11 of Georgia Annotated, relating to notice of petition for probate in solemn form, so as to  
12 change provisions relating to such notice; to amend Chapter 7 of Title 53 of the Official Code  
13 of Georgia Annotated, the Revised Probate Code of 1998, relating to administration of  
14 estates generally, so as to provide for service upon creditors whose claims have not been paid  
15 in full due to insolvency of the estate of a citation relating to a petition for discharge of a  
16 personal representative; to provide for notice of the settlement of the personal  
17 representative's accounts to persons who claim to be creditors whose claims the personal  
18 representative disputes or cannot pay in full; to provide that such settlement shall be  
19 conclusive on such persons who receive notice; to amend Chapter 11 of Title 53 of the  
20 Official Code of Georgia Annotated, the Revised Probate Code of 1998, relating to  
21 proceedings in probate court, so as to remove certain provisions relating to service on  
22 unknown persons by publication; to amend Article 13 of Chapter 12 of Title 53 of the  
23 Official Code of Georgia Annotated, relating to trust investments, so as to provide for the  
24 delegation of certain fiduciary functions; to amend Article 1 of Chapter 4 of Title 53 of the  
25 Official Code of Georgia Annotated, the Pre-1998 Probate Code, relating to general  
26 provisions relative to descent and distribution, so as to repeal a provision prohibiting the  
27 father and other paternal kin from inheriting from or through a child born out of wedlock if  
28 the father failed or refused to treat the child openly as his own or to provide support for the  
29 child; to provide for such inheritance if the father, during the child's lifetime, has signed the

1 child's birth certificate or has executed a signed, sworn statement attesting to the  
2 relationship; to amend Code Section 15-9-127 of the Official Code of Georgia Annotated,  
3 relating to probate courts having concurrent jurisdiction with superior courts, so as to provide  
4 for jurisdiction for motions seeking orders for disinterment and deoxyribonucleic acid  
5 testing; to provide for related matters; to provide for an effective date and a certain  
6 contingent repeal; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 1 of Chapter 2 of Title 53 of the Official Code of Georgia Annotated, the Revised  
10 Probate Code of 1998, relating to general provisions relative to descent and distribution, is  
11 amended in Code Section 53-2-4, relating to inheritance from children born out of wedlock,  
12 by striking subsection (b) in its entirety and inserting in lieu thereof the following:

13 "(b)(1) The father of a child born out of wedlock, the other children of the father, and other  
14 paternal kin may inherit from and through the child born out of wedlock in the same  
15 manner as if the child were legitimate if:

16 (A)(1) A court of competent jurisdiction has entered an order declaring the child to be  
17 legitimate under the authority of Code Section 19-7-22 or such other authority as may be  
18 provided by law;

19 (B)(2) A court of competent jurisdiction has otherwise entered a court order establishing  
20 paternity;

21 (C)(3) The father has, during the lifetime of the child, executed a sworn statement signed  
22 by him the father attesting to the parent-child relationship;

23 (D)(4) The father has, during the lifetime of the child, signed the birth certificate of the  
24 child; or

25 (E)(5) The presumption of paternity described in division (2)(B)(ii) of Code Section  
26 53-2-3 has been established and has not been rebutted by clear and convincing evidence.

27 ~~(2) Paragraph (1) of this subsection notwithstanding, neither the father nor any child of~~  
28 ~~the father nor any other paternal kin shall inherit from or through a child born out of~~  
29 ~~wedlock if it shall be established by a preponderance of evidence that the father failed or~~  
30 ~~refused openly to treat the child as his own or failed or refused to provide support for the~~  
31 ~~child."~~

**SECTION 2.**

Article 5 of Chapter 4 of Title 53 of the Official Code of Georgia Annotated, the Revised Probate Code of 1998, relating to revocation and repudiation of wills, is amended by striking Code Section 53-4-48, relating to testator's marriage or birth or adoption of a child, and inserting in lieu thereof the following:

"(a) Except as otherwise provided in Code Section 53-4-49, the marriage of the testator, the birth of a child to the testator, including a posthumous child born within ten months of the testator's death, or the adoption of a child by the testator subsequent to the making of a will in which no provision is made in contemplation of such event shall result in a revocation of the will only to the extent provided in the remainder of this Code section.

(b) A provision in a will for a class of the testator's children shall be presumed to be made in contemplation of the birth or adoption of additional members of that class, absent an indication of a contrary intent, and the mere identification in the will of children already born or adopted at the time of the execution of the will shall not defeat this presumption.

(c) If the will was made prior to an event specified in subsection (a) of this Code section, and does not contain a provision in contemplation of such an event, the subsequent spouse or child shall receive the share of the estate he or she would have received if the testator had died intestate. Such share shall be paid from the net residuum remaining after all debts and expenses of administration, including taxes, have been paid. If the residuum proves to be insufficient, then testamentary gifts shall abate in the manner provided in paragraph (b) of Code Section 53-4-63. Any bequest in the will in favor of the subsequent spouse or child shall be given effect and shall count toward the intestate share. If the bequest equals or exceeds the intestate share, then the subsequent spouse or child shall receive the bequest in lieu of the intestate share provided by this subsection."

**SECTION 3.**

Code Section 53-5-22 of the Official Code of Georgia Annotated, relating to notice of petition for probate in solemn form, is amended by striking subsection (a) and inserting in lieu thereof a new subsection (a) to read as follows:

"(a) Probate in solemn form requires due notice to all the heirs of the testator, and ~~to the beneficiaries and propounders of~~, if there is any other purported will of the testator for which probate proceedings are pending in this state, then such notice shall also be given to the beneficiaries and propounders of such purported will. Service of a notice of petition for probate in solemn form shall be personal if the party resides in this state and is known and shall be served at least ten days before probate is to be made, except that, if waived, the ten-day provision shall not apply."

**SECTION 4.**

Chapter 7 of Title 53 of the Official Code of Georgia Annotated, the Revised Probate Code of 1998, relating to administration of estates generally, is amended in Code Section 53-7-50, relating to petitions for discharge and subsequently discovered estate, by striking paragraph (1) of subsection (b) in its entirety and inserting in lieu thereof the following:

"(b)(1) Subject to paragraphs (2) and (3) of this subsection, upon the filing of a petition for discharge, citation shall issue to all heirs or beneficiaries, as provided in Chapter 11 of this title, requiring them to file any objections to the discharge, except that in all cases a citation shall be published one time in the newspaper in which sheriff's advertisements are published in the county in which the petition is filed at least ten days prior to the date on or before which any objection is required to be filed. Any creditors whose claims are disputed or who have not been paid in full due to insolvency of the estate shall be served in accordance with Chapter 11 of this title."

**SECTION 5.**

Said chapter is further amended by striking in its entirety subsection (a) of Code Section 53-7-62, relating to settlement of accounts by the personal representative before the court, and inserting in lieu thereof the following:

"(a) Any person interested as an heir or beneficiary of an estate or the probate court may, after the expiration of six months from the granting of letters, cite the personal representative to appear before the probate court for a settlement of accounts. Alternatively, if the personal representative chooses, the personal representative may cite all the heirs or beneficiaries and all persons who claim to be creditors whose claims the personal representative disputes or cannot pay in full to be present at the settlement of the personal representative's accounts by the court. The settlement shall be conclusive upon the personal representative and upon all the heirs or beneficiaries and all remaining persons who claim to be creditors who receive notice of the hearing. The court may, in the court's discretion, give the personal representative additional time to settle the estate."

**SECTION 6.**

Chapter 11 of Title 53 of the Official Code of Georgia Annotated, the Revised Probate Code of 1998, relating to proceedings in probate court, is amended by striking in its entirety Code Section 53-11-4, relating to service where the person or the person's residence is unknown or where the person resides outside the state, and inserting in lieu thereof the following:

"53-11-4.

(a) Except as otherwise prescribed by law or directed by the probate judge pursuant to Code Section 53-11-5, the provisions of this Code section shall apply in cases when a

1 person to be served has a known current residence address outside this state, ~~is unknown,~~  
 2 ~~or is known but~~ whose current residence address is unknown.

3 (b) Unless all such persons have known current residence addresses, the probate court shall  
 4 order service to be perfected by publication of the citation in the newspaper in which  
 5 sheriff's advertisements are published in the county in which the petition is made. The  
 6 citation shall be published once a week for four weeks prior to the date on which objections  
 7 must be filed. The records of the court shall show the persons notified and the character  
 8 of the notice given. The published citation shall be directed to the person to be served if  
 9 ~~known, and, if all persons are not known, then to all and singular the parties in interest.~~

10 (c) If the current residence address of such a person is known, service shall be made by  
 11 mailing by certified or registered mail or statutory overnight delivery, return receipt  
 12 requested, a copy of the petition and the citation.

13 (d) When service by publication is ordered pursuant to this Code section, compliance with  
 14 the provisions of this Code section relating to a person to be notified ~~who is unknown or~~  
 15 ~~who is known but whose current residence address is unknown~~ shall be equivalent to  
 16 personal service of a copy of the petition and citation when the fact appears in the records  
 17 of the court showing the persons notified and the character of the notice given. ~~In the case~~  
 18 ~~of an unknown person, it shall be sufficient if the records of the court show published~~  
 19 ~~notice directed to all and singular the parties in interest and compliance with this Code~~  
 20 ~~section.~~ In the case of a known person whose current residence address is unknown, that  
 21 person's name shall appear in the records of the court, and such records shall show as to  
 22 that person compliance with this Code section. In any case in which service by publication  
 23 is granted, one order for publication shall be sufficient and the published citation shall be  
 24 directed as provided in subsection (b) of this Code section."

## 25 **SECTION 7.**

26 Article 13 of Chapter 12 of Title 53 of the Official Code of Georgia Annotated, relating to  
 27 trust investments, is amended by inserting at the end thereof a new Code Section 53-12-290  
 28 to read as follows:

29 "53-12-290.

30 (a) A trustee may delegate investment and management functions that a prudent trustee of  
 31 comparable skills could properly delegate under the circumstances. The trustee shall  
 32 exercise reasonable care, skill, and caution in:

33 (1) Selecting an agent;

34 (2) Establishing the scope and terms of the delegation consistent with the purposes and  
 35 terms of the trust; and

(3) Reviewing periodically the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegation function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this Code section, and who takes reasonable steps to compel an agent to whom the function was delegated to redress a breach of duty to the trust, is not liable to the beneficiaries of the trust or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent waives the defense of lack of personal jurisdiction and submits to the jurisdiction of this state."

## SECTION 8.

Article 1 of Chapter 4 of Title 53 of the Official Code of Georgia Annotated, the Pre-1998 Probate Code, relating to general provisions relative to descent and distribution, is amended in Code Section 53-4-5, relating to inheritance from children born out of wedlock, by striking subsection (b) in its entirety and inserting in lieu thereof the following:

"(b)(1) The father of a child born out of wedlock, the other children of the father, and other paternal kin, whether collateral or lineal, may inherit from and through the child born out of wedlock in the same manner as if the child were legitimate if, after the conception of the child:

(A)(1) A court of competent jurisdiction has entered an order declaring the child to be legitimate under the authority of Code Section 19-7-22 or such other authority as may be provided by law;

(B)(2) A court of competent jurisdiction has otherwise entered a court order establishing the father of the child born out of wedlock;

(C)(3) The father, during the lifetime of the child, executed a sworn statement signed by him the father attesting to the parent-child relationship;

(D)(4) The father, during the lifetime of the child, signed the birth certificate of the child; or

(E)(5) The presumption of paternity described in subparagraph (c)(2)(B) of Code Section 53-4-4 has been established and has not been rebutted by clear and convincing evidence.

~~(2) Paragraph (1) of this subsection notwithstanding, neither the father nor any paternal kin shall inherit from or through a child born out of wedlock if it shall be established, by a preponderance of evidence, that the father, during his lifetime and after the birth of the child, failed or refused to openly treat the child as his own or failed or refused to provide support for the child."~~

**SECTION 9.**

Code Section 15-9-127 of the Official Code of Georgia Annotated, relating to probate courts having concurrent jurisdiction with superior courts, is amended by striking "and" at the end of paragraph (5), striking the period at the end of paragraph (6) and inserting "; and", and by adding a new paragraph (7) to read as follows:

"(7) Motions seeking an order for disinterment and deoxyribonucleic acid (DNA) testing as provided in Code Section 53-2-27."

**SECTION 10.**

This Act shall become effective on July 1, 2002; provided, however, that Section 9 of this Act shall become effective only if Code Section 53-2-27 as enacted at the 2002 regular session of the General Assembly by HB 130 becomes effective, and otherwise Section 9 of this Act shall not become effective and shall stand automatically repealed on July 1, 2002.

**SECTION 11.**

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