

House Bill 500

By: Representatives Walker of the 107th, O'Neal of the 146th, Willard of the 49th, Cooper of the 41st, and Brown of the 69th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 29 of the Official Code of Georgia Annotated, relating to guardians and
2 wards, as such title was amended by an Act approved May 5, 2004 (Ga. L. 2004, p. 161),
3 which Act becomes effective July 1, 2005, so as to add a definition; to change certain
4 provisions relating to qualifications of guardians of adults; to change certain provisions
5 relating to order of preference in selection of guardians of adults; to repeal and reserve Code
6 Section 29-9-10, relating to the role of the director of a county department of family and
7 children services; to enact a new chapter relating to public guardians; to provide for a
8 definition; to provide for an oath of guardianship; to provide for qualifications and
9 requirements of a public guardian; to provide for registration of a public guardian with the
10 probate court; to provide for a bond by the public guardian; to provide for letters of
11 guardianship; to provide for recordkeeping and reporting; to provide for additional security
12 on a bond; to provide for revocation of letters of guardianship; to provide for compensation;
13 to provide for the appropriation of funds for compensation in certain circumstances; to
14 provide for related matters; to provide for an effective date and applicability; to repeal
15 conflicting laws; and for other purposes.

16 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

17 **SECTION 1.**

18 Title 29 of the Official Code of Georgia Annotated, relating to guardians and wards, as such
19 title was amended by an Act approved May 5, 2004 (Ga. L. 2004, p. 161), which Act
20 becomes effective July 1, 2005, is amended in Code Section 29-1-1, relating to definitions,
21 by inserting after paragraph (16) a new paragraph to read as follows:

22 "(16.1) 'Public guardian' means an individual or private entity, including a nonprofit entity,
23 appointed pursuant to Chapter 10 of this title."

1 (7) A friend, relative, or any other individual; and

2 (8) The county guardian ~~or the director of the department of family and children services~~
 3 ~~of the county of domicile of the adult or of the county in which the adult is found;~~
 4 ~~provided, however, that the director of the county department of family and children~~
 5 ~~services may delegate the guardianship duties to responsible employees of the~~
 6 ~~department.~~

7 (b.1) If no other person is available to be the guardian of the ward, the judge may appoint
 8 a public guardian in accordance with Chapter 10 of this title. A public guardian may be
 9 appointed only in instances of a person whose needs cannot be met through alternatives
 10 to guardianship or through less drastic means of intervention than an adjudication of
 11 incapacity."

12 SECTION 4.

13 Said title, as amended by an Act approved May 5, 2004 (Ga. L. 2004, p. 161), is further
 14 amended by striking Code Section 29-9-10, relating to the role of the director of a county
 15 department of family and children services, in its entirety and inserting in lieu thereof the
 16 following:

17 "29-9-10.

18 ~~The director of the county department of family and children services or a duly appointed~~
 19 ~~delegate is authorized to take the oath of conservatorship or guardianship before the judge~~
 20 ~~of the Probate Court of Fulton County or before the judge of the court making the~~
 21 ~~appointment of conservatorship or guardianship~~ Reserved."

22 SECTION 5.

23 Said title, as amended by an Act approved May 5, 2004 (Ga. L. 2004, p. 161), is further
 24 amended by inserting at the end of such title a new chapter to read as follows:

25 "CHAPTER 10

26 29-10-1.

27 As used in this chapter, the term 'public guardian' means an individual or private entity,
 28 including a nonprofit entity, who meets the qualifications required in this chapter and has
 29 registered with and been duly approved by the probate court to serve as a public guardian
 30 of an adult pursuant to Code Section 29-4-3.

1 29-10-2.

2 A public guardian is authorized to take the oath of guardianship before the judge of the
3 probate court making the appointment of guardianship. In the event of a public guardian
4 that is a private entity, the employee or agent of such entity who will have direct contact
5 with the ward shall take the oath required by this Code section.

6 29-10-3.

7 (a) To be eligible to serve as a public guardian, an individual must:

8 (1) Be at least 18 years of age;

9 (2) Submit to a criminal background check with satisfactory results as prescribed by the
10 Division of Aging Services of the Department of Human Resources;

11 (3) Submit to an investigation of the individual's credit history as prescribed by the
12 Division of Aging Services of the Department of Human Resources;

13 (4) Attend and complete at least 20 hours of training approved by the Division of Aging
14 Services of the Department of Human Resources, including but not limited to training
15 conducted by such division, a professional association, or by the probate court;

16 (5) Demonstrate competency, education, and experience in guardianships, social work,
17 or case management; and fiduciary integrity to perform the duties of a public guardian;
18 and

19 (6) Demonstrate competency and ability to carry out the values of the ward.

20 (b) To be eligible to serve as a public guardian, an entity must:

21 (1) Maintain an appropriate level of liability insurance covering all employees and agents
22 who will have direct contact with a ward in an amount or amounts approved by the
23 probate court;

24 (2) Maintain a record for each employee and agent who will have direct contact with a
25 ward and ensure that each such employee and agent submits to and meets the
26 requirements of subsection (a) of this Code section; and

27 (3) Submit to an investigation of the entity's financial records.

28 (c) An individual or entity shall submit all required documentation as specified by the
29 probate court to show that such individual or entity and such entity's employees and agents
30 meet the requirements of this Code section.

31 (d) After completion of the initial training, a public guardian or employee or agent of a
32 public guardian who will have direct contact with a ward, if an entity, must complete at
33 least 20 additional hours of training every two years. The initial and subsequent training
34 shall include, but not be limited to, instruction in:

35 (A) Basic principles of guardianship;

36 (B) Rights of the ward;

- 1 (C) Alternatives to guardianship;
 2 (D) Court procedures;
 3 (E) Legal duties, responsibilities, and roles of guardians;
 4 (F) Fiduciary responsibilities, record keeping, reporting, administrative duties, intake
 5 process, and planning;
 6 (G) Availability of resources, public benefits, and social services;
 7 (H) Health care and end-of-life planning;
 8 (I) Mental, developmental, and physical disabilities;
 9 (J) Communications;
 10 (K) Case management; and
 11 (L) Property management.
- 12 (e) Any costs incurred by a public guardian to comply with these requirements shall be at
 13 the expense of the individual or private entity and shall not be paid with the assets of any
 14 ward.

15 29-10-4.

16 (a) An individual who meets the requirements of Code Section 29-10-3 may be registered
 17 as a public guardian in the probate court of the county in which he or she is domiciled upon
 18 approval by the probate court. Such individual may also be registered in the probate court
 19 of other counties within a reasonable distance of the county in which he or she is domiciled
 20 as approved by such other probate courts.

21 (b) A private entity that meets the requirements of Code Section 29-10-3 may be registered
 22 as a public guardian in the probate court of any county upon approval by such probate
 23 court.

24 (c) The probate court of a county shall have the sole discretion regarding the approval and
 25 registration of public guardians. Each probate court shall maintain a list of public guardians
 26 who have been registered and approved in its county. The Division of Aging Services of
 27 the Department of Human Resources shall maintain a master list of registered public
 28 guardians throughout the state; and the probate courts shall submit, on January 1 and July
 29 1 of each year or more often as required by the division, the list of registered public
 30 guardians in each county to the Division of Aging Services.

31 (d) The Division of Aging Services of the Department of Human Resources shall develop
 32 a standard form that may be used by probate courts in registering public guardians.

33 29-10-5.

34 A public guardian shall give bond with good security, to be judged by the court, in a sum
 35 of not less than \$10,000.00. The bond shall be payable to the court for the benefit of all

1 concerned. It shall be attested by the judge or clerk of the court and shall be conditioned
2 upon the faithful discharge of the public guardian's duty as such, as required by law.
3 Actions on the bond may be brought by any person aggrieved by the misconduct of the
4 public guardian as provided by law for actions on the bonds of other guardians.

5 29-10-6.

6 The court shall grant to the public guardian separate letters of guardianship upon each
7 appointment. The public guardian shall be subject to all liabilities and entitled to all the
8 rights and emoluments provided for other guardians and shall be governed by the law
9 provided for other guardians.

10 29-10-7.

11 (a) A public guardian shall keep and maintain proper financial, case control, and statistical
12 records on all matters in which the public guardian serves as guardian.

13 (b) No report or disclosure of the ward's personal or medical records shall be made except
14 as required or authorized by law.

15 (c) A public guardian shall file an annual report with the probate court on the operations
16 of the public guardian for the preceding year, in writing, by August 1.

17 (d) Within six months of appointment as a public guardian, such public guardian shall
18 submit to the probate court for placement in the ward's guardianship file a report on the
19 public guardian's efforts to locate a family member or friend or other individual included
20 in subsection (b) of Code Section 29-4-3 to act as the guardian of the ward and a report on
21 the ward's potential to be restored to capacity.

22 (e) The public guardian or employee or agent of a public guardian, if a private entity, shall
23 visit the ward at least four times per year and more often as necessary.

24 (f) A public guardian who is an individual shall serve no more than five wards at any one
25 time. A public guardian that is an entity shall serve no more than 30 wards at any one time.
26 In the discretion of the probate court, these maximum ratios may be increased or decreased
27 for a particular public guardian, in light of all relevant circumstances.

28 (g) Public guardians, county guardians, and conservators shall be required to work
29 cooperatively together when appointed for the same ward.

30 29-10-8.

31 (a) The probate court may require a public guardian to give additional security on the bond
32 or to give an additional bond with security. The court shall have the authority to fix the
33 amount of the bond and shall cite the public guardian to appear and show cause, if any,
34 why the additional bond or security should not be given.

1 (b) If upon the hearing the public guardian fails to show good cause why the additional
2 bond or additional security should not be given, the court shall issue an order fixing the
3 amount of the bond and direct the public guardian to give additional security on or before
4 a certain date, which date shall be within 30 days of the date of the order.

5 (c) Should the public guardian fail, refuse, or neglect to give additional bond or additional
6 security on or before the date fixed in the order of the court and fail to show good cause
7 why further time should be allowed, it shall be the duty of the court to remove the public
8 guardian and to appoint another public guardian for the unexpired term of office. The order
9 of removal shall be recorded as provided for the order of appointment.

10 29-10-9.

11 The court may, for good cause shown, revoke the letters of guardianship of the public
12 guardian, require additional security on the public guardian's bond, or issue any other order
13 as is expedient and necessary for the good of any particular guardianship in the hands of
14 the public guardian.

15 29-10-10.

16 Public guardians shall receive compensation for their services in accordance with the
17 provisions of Chapter 4 of this title. However, for wards who have insufficient resources
18 or income to pay the compensation provided for in Chapter 4 of this title, at the discretion
19 of the probate court judge, a request for payment for the public guardian to the Division of
20 Aging Services of the Department of Human Resources, as provided for in Code Section
21 29-10-11, shall be made. A public guardian shall be paid the compensation provided for
22 in Chapter 4 of this title pursuant to Code Section 29-10-11 to the extent that the available
23 funds can meet that expense or, at the discretion of the judge, the public guardian's actual
24 expenses may be reimbursed from the funds pursuant to Code Section 29-10-11.

25 29-10-11.

26 (a) The General Assembly is authorized to appropriate state funds, by line item
27 appropriation, for the purpose of providing compensation to public guardians for services
28 to wards who have insufficient resources or income to pay the compensation provided for
29 in Chapter 4 of this title.

30 (b) Any such funds appropriated shall be administered by the Division of Aging Services
31 of the Department of Human Resources and paid, if funds are available, upon submission
32 of appropriate documentation by the probate court pursuant to Code Section 29-10-10."

