

The House Committee on Judiciary offers the following substitute to HB 500:

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 provide for the
6 appointment of a public guardian or the Department of Human Resources as a guardian of
7 an adult in certain circumstances; to change certain provisions relating to the role of the
8 director of a county department of family and children services; to enact a new chapter
9 relating to public guardians; to provide for a definition; to provide for an oath of
10 guardianship; to provide for qualifications and requirements of a public guardian; to provide
11 for registration of a public guardian with the probate court; to provide for a bond by the
12 public guardian; to provide for letters of guardianship; to provide for recordkeeping and
13 reporting; to provide for additional security on a bond; to provide for revocation of letters of
14 guardianship; to provide for compensation; to provide for the appropriation of funds for
15 compensation in certain circumstances; to provide for related matters; to provide for an
16 effective date and applicability; to repeal conflicting laws; and for other purposes.

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

18 **SECTION 1.**

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

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

SECTION 2.

Said title, as amended by an Act approved May 5, 2004 (Ga. L. 2004, p. 161), is further amended by striking Code Section 29-4-2, relating to qualifications of guardians selected for adults, in its entirety and inserting in lieu thereof the following:

"29-4-2.

(a) Only an individual may serve as guardian of an adult, except in the event a public guardian or the Department of Human Resources is appointed pursuant to subsection (b.1) of Code Section 29-4-3.

(b) No individual may be appointed as guardian of an adult who:

(1) Is a minor, a ward, or a protected person;

(2) Has a conflict of interest with the adult unless the court determines that the conflict of interest is insubstantial or that the appointment would be in the adult's best interest;

or

(3) Is an owner, operator, or employee of a long-term care or other caregiving institution or facility at which the adult is receiving care, unless related to the adult by blood, marriage, or adoption.

(c) No entity may be appointed as guardian of an adult which:

(1) Has a conflict of interest with the adult unless the court determines that the conflict of interest is insubstantial or that the appointment would be in the adult's best interest;

or

(2) Is a long-term care or other caregiving institution or facility at which the adult is receiving care."

SECTION 3.

Said title, as amended by an Act approved May 5, 2004 (Ga. L. 2004, p. 161), is further amended in Code Section 29-4-3, relating to order of preference in selection of guardians of adults, by striking subsection (b) in its entirety and inserting in lieu thereof the following:

"(b) Individuals who are eligible have preference in the following order:

(1) The individual last nominated by the adult in accordance with the provisions of subsection (c) of this Code section;

(2) The spouse of the adult or an individual nominated by the adult's spouse in accordance with the provisions of subsection (d) of this Code section;

(3) An adult child of the adult or an individual nominated by an adult child of the adult in accordance with the provisions of subsection (d) of this Code section;

(4) A parent of the adult or an individual nominated by a parent of the adult in accordance with the provisions of subsection (d) of this Code section;

(5) A guardian appointed during the minority of the adult;

1 (6) A guardian previously appointed in Georgia or another state;

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

3 (8) Any other person, including a volunteer to the court, found suitable and appropriate
4 who is willing to accept the appointment; and

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

10 (b.1) If no other person is available to serve as guardian of the ward, the judge may
11 appoint a public guardian in accordance with Chapter 10 of this title. In the event the
12 court determines that there is no public guardian registered in accordance with Chapter
13 10 of this title appropriately available to serve as guardian for a ward, the court may
14 appoint the Department of Human Resources as guardian. If so appointed, the department
15 shall designate a representative of the department to provide guardian services who shall
16 take the oath of guardianship. If, after having been so appointed, the department presents
17 to the court a public guardian registered in accordance with Chapter 10 of this title or
18 some other person suitable and appropriate to serve as guardian of a ward and willing to
19 so serve, the court shall allow the department to resign and shall appoint such public
20 guardian or such other person. If the department is appointed pursuant to this subsection,
21 it shall be bound by all the requirements of this chapter, except that it shall not be
22 required to post bond or pay any cost or fee of court associated with the guardianship
23 proceeding. If the department is appointed pursuant to this subsection and enters into a
24 contract with an independent contractor for the provision of guardianship services, the
25 expense of providing such services may be paid for from state funds appropriated for
26 public guardians under Chapter 10 of this title or, upon approval of the court, from the
27 estate of the ward."

28 SECTION 4.

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

33 "29-9-10.

34 The director of the county department of family and children services or When appointed
35 pursuant to subsection (b.1) of Code Section 29-4-3, a duly appointed delegate of the
36 Department of Human Resources is authorized to take the oath of conservatorship or

1 guardianship before the judge of ~~the Probate Court of Fulton County or before the judge~~
 2 ~~of the court making the appointment of conservatorship or guardianship~~ any probate court
 3 of this state."

4 SECTION 5.

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

7 "CHAPTER 10

8 29-10-1.

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

13 29-10-2.

14 When appointed pursuant to subsection (b.1) of Code Section 29-4-3, a public guardian is
 15 authorized to take the oath of guardianship before the judge of any probate court of this
 16 state. In the event of a public guardian that is a private entity, the employee or agent of
 17 such entity who will have direct contact with the ward shall take the oath required by this
 18 Code section.

19 29-10-3.

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

- 21 (1) Be at least 18 years of age;
- 22 (2) Submit to a criminal background check with satisfactory results as prescribed by the
 23 Division of Aging Services of the Department of Human Resources;
- 24 (3) Submit to an investigation of the individual's credit history as prescribed by the
 25 Division of Aging Services of the Department of Human Resources;
- 26 (4) Attend and complete at least 20 hours of training approved by the Division of Aging
 27 Services of the Department of Human Resources, including but not limited to training
 28 conducted by such division, a professional association, or by the probate court;
- 29 (5) Demonstrate competency, education, and experience in guardianships, social work,
 30 or case management; and fiduciary integrity to perform the duties of a public guardian;
- 31 (6) Demonstrate competency and ability to carry out the values of the ward; and

- 1 (7) Agree to abide by the provisions of this chapter and to serve when appointed as
2 public guardian without the ability to decline, except as provided for in Chapter 4 of this
3 title.
- 4 (b) To be eligible to serve as a public guardian, an entity must:
- 5 (1) Maintain an appropriate level of liability insurance covering all employees and agents
6 who will have direct contact with a ward in an amount or amounts approved by the
7 probate court;
- 8 (2) Maintain a record for each employee and agent who will have direct contact with a
9 ward and ensure that each such employee and agent submits to and meets the
10 requirements of subsection (a) of this Code section;
- 11 (3) Submit to an investigation of the entity's financial records;
- 12 (4) Agree to abide by the provisions of this chapter and to serve when appointed as
13 public guardian without the ability to decline, except as provided for in Chapter 4 of this
14 title.
- 15 (c) An individual or entity shall submit all required documentation as specified by the
16 probate court to show that such individual or entity and such entity's employees and agents
17 meet the requirements of this Code section.
- 18 (d) After completion of the initial training, a public guardian or employee or agent of a
19 public guardian who will have direct contact with a ward, if an entity, must complete at
20 least 20 additional hours of training every two years. The initial and subsequent training
21 shall include, but not be limited to, instruction in:
- 22 (A) Basic principles of guardianship;
- 23 (B) Rights of the ward;
- 24 (C) Alternatives to guardianship;
- 25 (D) Court procedures;
- 26 (E) Legal duties, responsibilities, and roles of guardians;
- 27 (F) Fiduciary responsibilities, record keeping, reporting, administrative duties, intake
28 process, and planning;
- 29 (G) Availability of resources, public benefits, and social services;
- 30 (H) Health care and end-of-life planning;
- 31 (I) Mental, developmental, and physical disabilities;
- 32 (J) Communications;
- 33 (K) Case management; and
- 34 (L) Property management.
- 35 (e) Any costs incurred by a public guardian to comply with these requirements shall be at
36 the expense of the individual or private entity and shall not be paid with the assets of any
37 ward.

1 29-10-4.

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

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

10 (c) The probate court of a county shall have the sole discretion regarding the approval and
11 registration of public guardians. Each probate court shall maintain a list of public guardians
12 who have been registered and approved in its county. The Division of Aging Services of
13 the Department of Human Resources shall maintain a master list of registered public
14 guardians throughout the state; and the probate courts shall submit, on January 1 and July
15 1 of each year or more often as required by the division, the list of registered public
16 guardians in each county to the Division of Aging Services.

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

19 29-10-5.

20 A public guardian shall give bond with good security, to be judged by the court, in a sum
21 of not less than \$10,000.00. The bond shall be payable to the court for the benefit of all
22 concerned. It shall be attested by the judge or clerk of the court and shall be conditioned
23 upon the faithful discharge of the public guardian's duty as such, as required by law.
24 Actions on the bond may be brought by any person aggrieved by the misconduct of the
25 public guardian as provided by law for actions on the bonds of other guardians.

26 29-10-6.

27 The court shall grant to the public guardian separate letters of guardianship upon each
28 appointment. The public guardian shall be subject to all liabilities and entitled to all the
29 rights and emoluments provided for other guardians and shall be governed by the law
30 provided for other guardians.

31 29-10-7.

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

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

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

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

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

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

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

18 29-10-8.

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

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

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

32 29-10-9.

33 The court may, for good cause shown, revoke the letters of guardianship of the public
34 guardian, require additional security on the public guardian's bond, or issue any other order

1 as is expedient and necessary for the good of any particular guardianship in the hands of
2 the public guardian.

3 29-10-10.

4 Public guardians shall receive compensation for their services in accordance with the
5 provisions of Chapter 4 of this title. However, for wards who have insufficient resources
6 or income to pay the compensation provided for in Chapter 4 of this title, at the discretion
7 of the probate court judge, a request for payment for the public guardian to the Division of
8 Aging Services of the Department of Human Resources, as provided for in Code Section
9 29-10-11, shall be made. A public guardian shall be paid the compensation provided for
10 in Chapter 4 of this title pursuant to Code Section 29-10-11 to the extent that the available
11 funds can meet that expense or, at the discretion of the judge, the public guardian's actual
12 expenses may be reimbursed from the funds pursuant to Code Section 29-10-11.

13 29-10-11.

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

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

21 **SECTION 6.**

22 This Act shall become effective on July 1, 2005, and all appointments of guardians of the
23 person made pursuant to former Title 29 shall continue in effect and shall thereafter be
24 governed by the provisions of this Act.

25 **SECTION 7.**

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