

The House Committee on Judiciary offers the following substitute to HB 1130:

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 10, 29, and 53 of the Official Code of Georgia Annotated, relating
2 respectively to commerce, guardian and ward, and wills, trusts, and administration of estates,
3 so as to correct cross-references from the enactment of Ga. L. 2004, p. 161; to allow
4 temporary petitions for guardianships to be filed in the county where the minor is located
5 under certain circumstances; to provide for distribution of the estate of an intestate minor or
6 adult ward by the conservator; to provide for payment of expenses of certain hearings under
7 certain circumstances; to change the amount of the funds for which a probate judge can be
8 legal custodian; to change provisions relating to satisfaction of requirements of
9 authentication or exemplification; to allow probate court judges to hold certain funds for a
10 missing heir or beneficiary under a decedent's will; to change certain provisions relating to
11 bonds for public guardians; to provide for related matters; to repeal conflicting laws; and for
12 other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Title 10 of the Official Code of Georgia Annotated, relating to commerce, is amended by
16 striking Code Section 10-6-4, relating to authorization for fiduciaries to convey by attorneys
17 in fact, and inserting in lieu thereof the following:

18 "10-6-4.

19 Executors, administrators, guardians, conservators, and trustees are authorized to sell and
20 convey property by attorneys in fact in all cases where they may lawfully sell and convey
21 in person."

22 **SECTION 2.**

23 Said title is further amended by striking Code Section 10-6-30, relating to the requirement
24 that agents and fiduciaries keep accounts, and inserting in lieu thereof the following:

1 "10-6-30.

2 It shall be the duty of agents, trustees, administrators, guardians, conservators, receivers,
3 and all other fiduciaries to keep their accounts in a regular manner and to be always ready
4 with them supported by proper vouchers; neglect of this duty shall be ground for charging
5 them with interest on balances on hand and with costs."

6 **SECTION 3.**

7 Title 29 of the Official Code of Georgia Annotated, relating to guardians and wards, is
8 amended by striking subsection (b) and paragraph (3) of subsection (c) of Code Section
9 29-2-5, relating to petitions for temporary guardianships, and inserting in lieu thereof the
10 following:

11 "(b) The petition shall be filed in the probate court of the county of domicile of the
12 petitioner; however, if the petitioner is not a domiciliary of this state, the petition may be
13 filed in the probate court of the county where the minor is found."

14 "(3) A statement that the petitioner has physical custody of the minor and:

15 (A) Is is domiciled in the county in which the petition is being filed and has physical
16 custody of the minor; or

17 (B) Is not a domiciliary of this state and the petition is being filed in the county where
18 the minor is found;"

19 **SECTION 4.**

20 Said title is further amended by striking subsection (b) of Code Section 29-2-30, relating to
21 circumstances when guardianship terminates, and inserting in lieu thereof the following:

22 "(b) Within six months prior to the date the minor reaches 18 years of age, the guardian
23 or any other interested person may file a petition for the appointment of a guardian for the
24 minor when that minor becomes an adult, in accordance with the provisions of Article 2
25 of Chapter 5 4 of this title, to take effect on or after the date the minor reaches 18 years of
26 age."

27 **SECTION 5.**

28 Said title is further amended by striking subsection (h) of Code Section 29-3-3, relating to
29 the definition of "gross settlement" and the compromise of a claim, and inserting in lieu
30 thereof the following:

31 "(h) If an order of approval is obtained from the ~~judge of the probate~~ court based upon the
32 best interest of the minor, the natural guardian or conservator is authorized to compromise
33 any contested or doubtful claim in favor of the minor without receiving consideration for
34 such compromise as a lump sum. Without limiting the foregoing, the compromise may be

1 in exchange for an arrangement that defers receipt of part or all of the consideration for the
 2 compromise until after the minor reaches the age of majority and may involve a structured
 3 settlement or creation of a trust on terms which the court approves."

4 **SECTION 6.**

5 Said title is further amended by striking subsection (a) of Code Section 29-3-6, relating to
 6 power to appoint a conservator, and inserting in lieu thereof the following:

7 "(a) The ~~judge of the court~~ of the county in which a minor is found or in which the
 8 proposed conservator is domiciled shall have the power to appoint a conservator for the
 9 minor."

10 **SECTION 7.**

11 Said title is further amended by striking paragraph (6) of subsection (c) of Code Section
 12 29-3-22, relating to the power of the conservator, and inserting in lieu thereof the following:

13 "(6) To release the debtor and compromise a debt which is in the amount of more than
 14 \$15,000.00 ~~or more~~ when the collection of the debt is doubtful;"

15 **SECTION 8.**

16 Said title is further amended by striking the introductory language of subsection (a) of Code
 17 Section 29-3-50, relating to compensation for conservators, and inserting in lieu thereof the
 18 following:

19 "(a) Other than ~~an emergency conservator or~~ a temporary substitute conservator, a
 20 conservator shall be entitled to compensation for services rendered equal to:"

21 **SECTION 9.**

22 Said title is amended further amended by adding a new subsection to the end of Code Section
 23 29-3-71, relating to final settlements and return of property to a minor, to read as follows:

24 "(e) When a minor ward for whom the county administrator or county guardian has been
 25 previously appointed as conservator dies intestate, the conservator shall proceed to
 26 distribute the minor ward's estate in the same manner as if the conservator had been
 27 appointed administrator of the estate. The sureties on the conservator's bond shall be
 28 responsible for the conservator's faithful administration and distribution of the estate."

29 **SECTION 10.**

30 Said title is further amended by striking paragraph (3) of subsection (c) of Code Section
 31 29-4-15, relating to prerequisite findings prior to the appointment of emergency guardians,
 32 and inserting in lieu thereof the following:

1 "29-6-1.
 2 The judges of the probate courts are, in their discretion, made the legal custodians and
 3 distributors of all moneys up to ~~\$2,500.00~~ \$15,000.00 due and owing to any minor or
 4 incapacitated adult who is in need of a conservator but who has no legal and qualified
 5 conservator; and the judges are authorized to receive and collect all such moneys arising
 6 from insurance policies, benefit societies, legacies, inheritances, or any other source.
 7 Without any appointment or qualifying order, the judge is authorized to take charge of the
 8 moneys or funds of the minor or adult by virtue of the judge's office as judge of the probate
 9 court in the county of residence of the minor or adult; provided, however, that notice shall
 10 be given to the living parents of a minor, if any, or the guardian of an adult, if any. The
 11 certificate of the judge that no legally qualified conservator has been appointed shall be
 12 conclusive and shall be sufficient authority to justify any debtor in making payment on
 13 claims made by the judge."

14 **SECTION 17.**

15 Said title is further amended by striking paragraph (1) of Code Section 29-6-9, relating to
 16 circumstances under which custodial property shall be returned, and inserting in lieu thereof
 17 the following:

18 "(1) A conservator if the custodial funds exceed ~~\$2,500.00~~ \$15,000.00;"

19 **SECTION 18.**

20 Said title is further amended by striking subsection (a) of Code Section 29-7-15, relating to
 21 compensation for guardian, and inserting in lieu thereof the following:

22 "(a) As compensation for service, a VA guardian shall earn a commission of 5 percent on
 23 all income of the ward coming into the VA guardian's hands during any months while the
 24 VA guardian serves. If the ward receives ~~less than~~ at least \$350.00 per month, the
 25 minimum fee shall be \$35.00 per month."

26 **SECTION 19.**

27 Said title is further amended by striking Code Section 29-8-5, relating to revocation of letters
 28 of guardianship or conservatorship or other court orders necessary for the good of a ward,
 29 and inserting in lieu thereof the following:

30 "29-8-5.

31 The court may, for good cause shown, as provided in Code Section ~~29-5-14~~ 29-5-92,
 32 revoke the letters of guardianship or conservatorship of the county guardian, require
 33 additional security on the county guardian's bond, or issue any other order as is expedient

1 and necessary for the good of any particular conservatorship in the hands of the county
2 guardian."

3 **SECTION 20.**

4 Said title is further amended by striking Code Section 29-9-13, relating to satisfaction of
5 requirements of authentication or exemplification, and inserting in lieu thereof the following:

6 "29-9-13.

7 (a) Except as otherwise provided by law or directed by the judge with respect to any
8 particular proceeding, the date on or before which any objection is required to be filed shall
9 be not less than ten days after the date the person is personally served. For persons within
10 the United States who are served by registered or certified mail or statutory overnight
11 delivery, return receipt requested, the date on or before any objection is required to be filed
12 shall not be less than 14 days from the date of mailing or delivering; provided, however,
13 that if a return receipt from any recipient is received by the court within 14 days from the
14 date of mailing or delivering, the date on or before which any objection is required to be
15 filed by such recipient shall be ten days from the date of receipt as shown on the return
16 receipt. For a person outside the United States who is served by registered or certified mail
17 or statutory overnight delivery, return receipt requested, the date on or before any objection
18 is required to be filed shall not be less than 30 days from the date the citation is mailed or
19 delivered; provided, however, that if the return receipt from any recipient is received by the
20 court during such 30 day period the date on or before which any objection is required to
21 be filed by such recipient shall not be earlier than ten days from the date of receipt shown
22 on such return receipt. For a person served by publication, the date on or before which any
23 objection is required to be filed shall be no sooner than the first day of the week following
24 publication once each week for four weeks.

25 (b) Except as otherwise provided by law or directed by the judge with respect to any
26 particular proceeding, the date on which any required hearing shall be held shall be the date
27 by which any objection is required to be filed or such later date as the court may specify.
28 When the matter is set for hearing on a date that was not specified in the citation, the court
29 shall send by first-class mail a notice of the time of the hearing to the petitioner and all
30 parties who have served responses at the addresses given by each of them in their
31 pleadings.

32 ~~(c) Except as otherwise provided by law, the date on which any required hearing shall be~~
33 ~~held shall be the date by which any objection is required to be filed or such later date as the~~
34 ~~court may specify. When the matter is set for hearing on a date that was not specified in~~
35 ~~the petition, the court shall, by first-class mail, send a notice of the time of the hearing to~~

1 ~~the petitioner and all parties who have served responses at the addresses given by each of~~
 2 ~~them in their pleadings.~~

3 (d) Notwithstanding the other provisions of this Code section, the date by which objections
 4 must be filed or on which the hearing shall be held shall be no earlier than ten days after
 5 the date of service on any person who is entitled to personal service."

6 **SECTION 21.**

7 Said title is further amended by striking Code Section 29-10-5, relating to bonds for public
 8 guardians, and inserting in lieu thereof the following:

9 "29-10-5.

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

16 **SECTION 22.**

17 Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and
 18 administration of estates, is amended by adding a new Code Section 53-9-8 to the end of
 19 Article 1 of Chapter 9, relating to administration of estates for missing persons and persons
 20 believed to be dead, to read as follows:

21 "53-9-8.

22 (a) The judges of the probate court, in their discretion, shall also be the depositories for
 23 and custodians of all moneys of any heir or beneficiary of any estate who cannot be located
 24 by the personal representative for moneys that may be distributed to the heir or beneficiary.
 25 Any personal representative shall be authorized to pay over to the judge any such moneys;
 26 and the judge shall be authorized to take charge thereof as provided for in this Code
 27 section.

28 (b) The judge shall turn over to the Department of Revenue all custodial property held
 29 pursuant to this Code section 15 years after receipt by the judge of such property."

30 **SECTION 23.**

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