

Senate Bill 508

By: Senators Meyer von Bremen of the 12th, Harp of the 29th, Adelman of the 42nd and Weber of the 40th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 6 of Title 10, Chapter 9 of Title 15, Title 29, and Title 53 of
2 the Official Code of Georgia Annotated, relating to the relations between principal and agent,
3 probate courts, guardian and ward, and wills, trusts, and administration of estates,
4 respectively, so as to update and change provisions affecting the probate courts; to update
5 a reference to a conservator involving incompetency or incapacity of a principal on a power
6 of attorney; to change references relating to the power to cite absconding fiduciaries; to
7 change provisions relating to place and time for holding court; to provide for quarterly terms
8 of court rather than monthly; to change provisions relating to the composition of the Probate
9 Judges Training Council, the terms of councilmembers, and vacancies; to provide for
10 definitions; to provide for additional concurrent jurisdiction with superior courts; to change
11 certain provisions relating to compromise of a claim involving a gross settlement; to change
12 provisions relating to sealing of records; to provide for recordation of certain information
13 relating to real property when no administration is necessary; to eliminate year's support as
14 a bar for probate of a will after five years; to provide for related matters; to repeal conflicting
15 laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Article 2 of Chapter 6 of Title 10 of the Official Code of Georgia Annotated, relating to the
19 relations between principal and agent, is amended by revising Code Section 10-6-36, relating
20 to revocation of agency and the effect of incompetency or incapacity of principal on a power
21 of attorney, as follows:

22 "10-6-36.

23 A written power of attorney, unless expressly providing otherwise, shall not be terminated
24 by the incompetency or incapacity of the principal. The power to act as an attorney in fact
25 for a principal who subsequently becomes incompetent or incapacitated shall remain in
26 force until such time as a ~~guardian of the property~~ conservator or receiver shall be

1 appointed for the principal or until some other judicial proceeding shall terminate the
2 power."

3 **SECTION 2.**

4 Chapter 9 of Title 15 of the Official Code of Georgia Annotated, relating to probate courts,
5 is amended by revising Code Section 15-9-35, relating to the power to cite absconding
6 fiduciaries, as follows:

7 "15-9-35.

8 (a) Where any guardian, ~~administrator, executor~~ conservator, personal representative,
9 surety on their bonds, or other person removes himself or herself beyond the limits of this
10 state or absconds or conceals himself or herself, the judge of the probate court shall have
11 the power to cite such guardian, ~~administrator, executor~~ conservator, personal
12 representative, surety, or other person to appear before ~~him~~ the judge relative to the
13 performance of his or her duties or any other matter related to the probate court pertaining
14 to such person. Service may be had upon the guardian, ~~administrator, executor~~ conservator,
15 personal representative, surety, or other person by publication in the manner prescribed in
16 subsection (b) of this Code section.

17 (b) The judge of the probate court shall cause to be published ~~his~~ the judge's order calling
18 upon a person described in subsection (a) of this Code section to appear, in the newspaper
19 of ~~his~~ the county in which sheriff's advertisements are published, once a week for four
20 weeks immediately preceding the court day on which the person is cited to appear. The
21 published order shall be directed to the guardian, ~~administrator, executor~~ conservator,
22 personal representative, surety, or other person, shall set the date and time on which the
23 matter in question will be heard, shall indicate all matters to be passed upon at such time,
24 and shall be signed by the judge of the probate court in ~~his~~ the judge's official capacity.
25 Where the address of the guardian, ~~administrator, executor~~ conservator, personal
26 representative, surety, or other person is known, a copy of the published order shall be
27 mailed to the party named in the order. The judge of the probate court shall make an entry
28 of his or her actions upon the minutes of the court."

29 **SECTION 3.**

30 Said chapter is further amended by revising Code Section 15-9-82, relating to place and time
31 for holding court, as follows:

32 "15-9-82.

33 The probate court shall be held at the place prescribed for the superior court or in the office
34 of the judge of the probate court in each county, by the judge thereof, on the first Monday
35 in ~~each month~~ January, April, July, and October and shall continue in session from day to

1 day as the business of the court may require. If the first Monday in a given month term
 2 should happen to fall on a legal holiday, the probate courts throughout this state shall
 3 convene on the following day."

4 SECTION 4.

5 Said chapter is further amended by revising Code Section 15-9-102, relating to the
 6 composition of the Probate Judges Training Council, terms of office, and vacancies, as
 7 follows:

8 "15-9-102.

9 (a) As used in this Code section, the term:

10 (1) 'District' means an area of this state containing one or more counties which is
 11 designated and numbered as a district by The Council of Probate Court Judges of
 12 Georgia.

13 (2) 'Training council' means the Probate Judges Training Council. The training council
 14 shall be composed as follows: three members from the state at large elected by the
 15 probate judges at the annual spring business meeting of The Council of Probate Court
 16 Judges of Georgia for three-year staggered terms and one member from each judicial
 17 administrative district who shall be a judge of the probate court and elected by the judges
 18 of the probate courts within the district immediately prior to the annual spring business
 19 meeting of The Council of Probate Court Judges of Georgia for a four-year term;
 20 provided, however, that the initial members elected from judicial administrative districts
 21 1, 2, and 3 shall serve for two-year terms and the initial members elected from judicial
 22 administrative districts 4, 5, and 6 shall serve for three-year terms; provided, further, that,
 23 beginning in the spring of 1989, in order to stagger the terms, the initial term of one
 24 state-at-large member shall be one year, one shall be two years, and one shall be three
 25 years.

26 (b) The training council shall consist of one member from each district as elected by the
 27 judges of the probate courts within such district. Such elections shall occur prior to the
 28 annual spring business meeting of The Council of Probate Court Judges of Georgia.
 29 Training council members shall serve four-year terms; provided, however, that members
 30 from odd-numbered districts shall serve an initial term of two years and members from
 31 even-numbered districts shall serve an initial term of four years. All members may succeed
 32 themselves except for the three state-at-large members. Successors, and successors
 33 shall be elected in the same manner as the original members immediately prior to the expiration
 34 of each member's term of office. The president of The Council of Probate Court Judges
 35 of Georgia if not a district or at-large member of the training council shall be a voting
 36 member of the training council ex officio.

1 ~~(b)~~(c) In the event a vacancy occurs in the membership of the training council as a result
 2 of a death, resignation, removal, or failure of reelection as a probate judge, the ~~remaining~~
 3 members of the ~~training council~~ district in which such vacancy has occurred shall elect a
 4 qualified person from the district to serve for the remainder of the unexpired term of the
 5 member whose seat is vacant. The person elected to fill such vacancy shall take office
 6 immediately upon election."

7 SECTION 5.

8 Said chapter is further amended by revising Code Section 15-9-127, relating to additional
 9 concurrent jurisdiction with superior courts, as follows:

10 "15-9-127.

11 Probate courts subject to this article shall have concurrent jurisdiction with superior courts
 12 with regard to the proceedings for:

13 (1) Declaratory judgments involving fiduciaries pursuant to Code Sections 9-4-4, 9-4-5,
 14 and 9-4-6;

15 (2) Tax motivated estate planning dispositions of wards' property pursuant to Code
 16 Sections 29-3-36 and 29-5-36;

17 (3) Approval of settlement agreements pursuant to Code Section 53-3-22 of the
 18 'Pre-1998 Probate Code,' if applicable, or Code Section 53-5-25 of the 'Revised Probate
 19 Code of 1998';

20 (4) Appointment of new trustee to replace trustee pursuant to Code Section 53-12-170;

21 (5) Acceptance of the resignation of a trustee upon written request of the beneficiaries
 22 pursuant to Code Section 53-12-175;

23 (6) Acceptance of resignation of a trustee upon petition of the trustee pursuant to Code
 24 Section 53-12-175;

25 (7) Motions seeking an order for disinterment and deoxyribonucleic acid (DNA) testing
 26 as provided in Code Section 53-2-27; ~~and~~

27 (8) Conversion to a unitrust and related matters pursuant to Code Section 53-12-221; ~~and~~

28 (9) Adjudication of petitions for direction or construction of a will pursuant to Code
 29 Section 23-2-92."

30 SECTION 6.

31 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is
 32 amended by revising subsection (h) of Code Section 29-3-3, relating to defining gross
 33 settlement, compromise of a claim, and finality of settlement, as follows:

34 "(h) If an order of approval is obtained from the court, or a court in which the action is
 35 pending, based upon the best interest of the minor, the natural guardian or conservator is

1 shall be authorized to compromise any contested or doubtful claim in favor of the minor
 2 without receiving consideration for such compromise as a lump sum. Without limiting the
 3 foregoing, the compromise may be in exchange for an arrangement that defers receipt of
 4 part, not to exceed a total distribution of \$15,000.00 prior to a minor reaching the age of
 5 majority, or all of the consideration for the compromise until after the minor reaches the
 6 age of majority and may involve a structured settlement or creation of a trust on terms
 7 which the court approves."

8 SECTION 7.

9 Said title is further amended by revising Code Section 29-9-18, relating to sealing of records
 10 on conservatorships and guardianships, as follows:

11 "29-9-18.

12 (a) All of the records relating to any minor or adult guardianship or conservatorship that
 13 is granted under this title shall be kept sealed, except for a record of the names and
 14 addresses of the minor, ward, and guardian or conservator and their legal counsel of record
 15 and the date of filing, granting, and terminating the guardianship or conservatorship. The
 16 sealed records may be examined by the ward and the ward's legal counsel ~~and by~~ the
 17 minor, the minor's parents, and the minor's legal counsel, the guardian ~~or conservator~~ and
 18 the guardian or conservator's legal counsel, and any surety for the conservator and legal
 19 counsel for the surety at any time.

20 (b) A request by other interested parties to examine the sealed records shall be by petition
 21 to the court and the ward and guardian or conservator shall have at least 30 days' prior
 22 written notice of a hearing on the petition; provided, however, that for good cause shown
 23 to the court, the court may shorten such notice period or grant the petition without notice.
 24 The matter shall come before the court in chambers. The order allowing access shall be
 25 granted upon a finding that the public interest in granting access to the sealed records
 26 clearly outweighs the harm otherwise resulting to the privacy of the person in interest, and
 27 the court shall limit the portion of the file to which access is granted to that which is
 28 required to meet the legitimate needs of the petitioner."

29 SECTION 8.

30 Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and estates, is
 31 amended by revising Code Section 53-2-40, relating to the petition when an individual dies
 32 intestate and no administration is necessary, as follows:

33 "53-2-40.

34 (a) When an individual has died intestate and there has been no personal representative
 35 appointed in this state, any heir of the decedent may file a petition praying for an order that

1 no administration is necessary. The petition shall be filed in the probate court of the county
 2 of the domicile of the decedent, if the decedent was domiciled in this state, or in the county
 3 in which real property is located, if the decedent was not domiciled in this state.

4 (b) The petition shall show: the name and domicile of the decedent; the names, ages or
 5 majority status, and domicile of the heirs of the decedent; a description of the property in
 6 this state owned by the decedent; that the estate owes no debts or that there are known
 7 debts and all creditors have consented or will be served as provided in Chapter 11 of this
 8 title; and that the heirs have agreed upon a division of the estate among themselves. The
 9 agreement containing original signatures of all the heirs, attested to by a clerk of the
 10 probate court or a notary public, shall be attached to the petition. Property subject to an
 11 outstanding security deed or agreement may be subject to this proceeding only if the holder
 12 of the security deed consents or is served and makes no objection.

13 (c) The personal representative of a deceased heir is authorized to agree to the division on
 14 behalf of that heir.

15 (d) In any case involving the approval of a petition for an order that no administration is
 16 necessary, where there is an interest in real property, the court shall file, within 30 days of
 17 granting such petition, a certificate in each county in this state in which the deceased
 18 owned property, to be recorded in the deed records of the county and indexed under the
 19 name of the deceased in the grantor index. The certificate shall be accompanied by the
 20 same fee for filing deeds with the clerk of the superior court. The filing fee and any fee for
 21 the certificate shall be taxed as costs to the estate. The certificate shall set forth:

22 (1) The date of the order granting the petition;

23 (2) The name and address of the deceased; and

24 (3) The name and address of all parties that take title to the real property pursuant to the
 25 order issued by the court."

26 SECTION 9.

27 Said title is further amended by revising Code Section 53-5-3, relating to time limitation, as
 28 follows:

29 "53-5-3.

30 A will shall not be offered for probate following the expiration of five years from the latest
 31 date on which a petition is filed for:

32 (1) The appointment of a personal representative of the decedent's estate;

33 (2) ~~An order granting year's support from the decedent's estate; or~~

34 (3) An order that no administration is necessary on the decedent's estate;

35 provided, however, that the will of a testator who died prior to January 1, 1998, may be
 36 offered for probate at least until December 31, 2002."

1

SECTION 10.

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