

House Bill 495

By: Representatives Lane of the 167th, Maxwell of the 17th, and Weldon of the 3rd

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 9 of Title 15 of the Official Code of Georgia Annotated, relating to probate courts, so as to provide for the appointment, compensation, term, authority, qualifications, training, and limitations of associate probate court judges; to provide for the filling of vacancies in the office of judge of the probate court; to provide for the qualifications of certain judges of the probate court; to provide for the jurisdiction of judges of the probate court; to update language regarding conservators and guardians; to amend Article 2 of Chapter 6 of Title 10 of the Official Code of Georgia Annotated, relating to relations between principal and agent, so as to update language regarding conservators and guardians; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 9 of Title 15 of the Official Code of Georgia Annotated, relating to probate courts, is amended by adding a new Code section to read as follows:

"15-9-2.1.

(a) *Appointment, compensation, and term.*

(1) The judge of the probate court may appoint one or more persons to serve as associate judges of the probate court in probate matters on a full-time or part-time basis. Such associate judges of the probate court shall serve at the pleasure of the judge of the probate court.

(2) Whenever a full-time associate judge of the probate court is appointed to serve in a probate court, the clerk of the probate court shall forward a certified copy of the order of appointment to the Council of Probate Court Judges of Georgia.

(3) Full-time associate judges of the probate court shall be included in the list of members of the Council of Probate Court Judges of Georgia as set forth in Code Section 15-9-15. An associate judge of the probate court shall not be a voting member and shall not serve as an officer of the Council of Probate Court Judges of Georgia.

(4) Compensation of the associate judges of the probate court shall be fixed by the judge of the probate court with the approval of the governing authority or governing authorities of the county or counties for which the associate judge of the probate court is appointed. The salary and any employment benefits of each associate judge of the probate court shall be paid from county funds. No associate judge of the probate court shall be eligible to participate in the Judges of the Probate Courts Retirement Fund of Georgia.

(5) The term of employment of an associate judge of the probate court shall run concurrently with the term of the elected judge of the probate court pursuant to Code Section 15-9-1.

(b) Authority. Both full-time and part-time associate judges of the probate court shall be vested with all of the authority of the judge of the probate court of the county or counties for which the associate judge of the probate court is appointed. In all proceedings before the court, the judgment of the associate judge of the probate court shall be the final judgment of the court for appeal purposes.

(c) Qualifications and training requirements.

(1) In addition to the minimum requirements of subsection (a) of Code Section 15-9-2, all associate judges of the probate court shall have the same qualifications required of the elected judge of the probate court of the county or counties for which the associate judge of the probate court is appointed.

(2) All full-time associate judges of the probate court shall complete the training requirements set forth for judges of the probate court in Code Section 15-9-1.1. All part-time associate judges of the probate court shall be required to attend a minimum of nine hours in an area related to probate court, mental health, or traffic matters as determined by the elected judge of the probate court and shall maintain the continuing legal education requirements of an attorney at law. All probate required training shall be paid for by the governing authority or governing authorities of the county or counties for which the associate judge of the probate court is appointed.

(d) Oath and bond.

(1) Before entering on the duties of their offices, all full-time and part-time associate judges of the probate court shall take the oaths required of all civil officers and, in addition, the following oath:

'I do swear that I will well and faithfully discharge the duties of associate judge of the probate court for the County of _____ during my continuation in office, according to law, to the best of my knowledge and ability, without favor or affection to any party. So help me God.'

(2) The clerk of the probate court shall make an entry of the oath of each associate judge of the probate court on the minutes of the probate court. In the case of an associate judge

of the probate court serving as a magistrate, no oath, certificate, or commission shall be required except the oath and commission of the associate judge of the probate court as an associate judge of the probate court.

(e) Restriction on the practice of law and the fiduciary role.

(1) It shall be unlawful for any full-time associate judge of the probate court to engage in any practice of law outside his or her role as an associate judge of the probate court. It shall be unlawful for any part-time associate judge of the probate court to engage directly or indirectly in the practice of law in his or her own name or in the name of another as a partner in any manner in any case, proceeding, or matter of any kind in his or her own court or in any other court in any case, proceeding, or any other matters of which his or her own court has pending jurisdiction or has jurisdiction. It shall be unlawful for any associate judge of the probate court, full-time or part-time, to give advice or counsel to any person on any matter of any kind whatsoever that has arisen directly or indirectly in his or her own court, except such advice or counsel as he or she is called upon to give while performing the duties of an associate judge of the probate court.

(2) The provisions of subsection (b) of Code Section 15-9-2 regarding limitations on the fiduciary role apply to both full-time and part-time associate judges of the probate court.

(f) Assumption of duties upon vacancy in the office of judge of probate court.

Notwithstanding the provisions of subsection (c) of Code Section 15-9-2 or Code Sections 15-9-10, 15-9-11, and 15-9-11.1, the senior full-time associate judge of the probate court shall be the first in line to serve as judge of the probate court in the event of a vacancy in the office of the judge of probate court and shall dispense with any and all unfinished proceedings pursuant to Code Section 15-9-12.

(g) Proceedings when an associate judge of the probate court is disqualified. Whenever the judge of the probate court is disqualified to act in any case pursuant to Code Section 15-9-13, the associate judge of the probate court shall also be disqualified."

SECTION 2.

Said chapter is further amended by revising subsection (c) of Code Section 15-9-4, relating to additional eligibility requirements in certain counties, as follows:

"(c) A judge of the probate court holding such office on and after June 30, 2000, shall continue to hold such office and shall be allowed to seek reelection for such office. Notwithstanding the requirement that in certain counties the judge of the probate court be admitted to practice law for seven years preceding election, no decision, judgment, ruling or other official action of any judge of the probate court shall be overturned, denied, or

99 overruled based solely on this requirement for qualification, election, and holding the office
100 of judge of the probate court."

101 **SECTION 3.**

102 Said chapter is further amended by revising subsection (a) of Code Section 15-9-11, relating
103 to calling of special election to fill vacancy, as follows:

104 "(a) When a vacancy occurs in the office of judge of the probate court in any county, it
105 shall be the duty of the person who assumes the duties of the judge, as provided in Code
106 Section 15-9-10, within ten days after the vacancy occurs, to order a special election for
107 the purpose of filling the vacancy, except, if the vacancy occurs after January 1 in the last
108 year of the term of office of the judge of probate court, the person assuming the duties of
109 the judge of the probate court shall be commissioned for and shall serve the remainder of
110 the unexpired term of office. He shall give notice of the special election by publication in
111 the newspaper in which the citations of the judge of the probate court are published. The
112 special election shall be held in accordance with Chapter 2 of Title 21."

113 **SECTION 4.**

114 Said chapter is further amended by revising subsection (a) of Code Section 15-9-30, relating
115 to subject matter jurisdiction, as follows:

116 "(a) Probate courts have authority, unless otherwise provided by law, to exercise original,
117 exclusive, and general jurisdiction of the following subject matters:

- 118 (1) The probate of wills;
- 119 (2) The granting of letters testamentary and of administration and the repeal or
120 revocation of the same;
- 121 (3) All controversies in relation to the right of executorship or administration;
- 122 (4) The sale and disposition of the property belonging to, and the distribution of,
123 deceased persons' estates;
- 124 (5) The appointment and removal of guardians of minors, conservators of minors,
125 guardians of incapacitated adults, and conservators of incapacitated adults and persons
126 who are incompetent because of mental illness or mental retardation;
- 127 (6) All controversies as to the right of guardianship and conservatorship, except that the
128 probate court shall not be an appropriate court to take action under Code Section 19-7-4;
- 129 (7) The auditing and passing of returns of all executors, administrators, guardians of
130 property, conservators, and guardians;
- 131 (8) The discharge of former sureties and the requiring of new sureties from
132 administrators, guardians of property, conservators, and guardians;
- 133 (9) All matters as may be conferred on them by Chapter 3 of Title 37;

134 (10) All other matters and things as appertain or relate to estates of deceased persons and
135 to persons who are incompetent because of mental illness or mental retardation; and
136 (11) All matters as may be conferred on them by the Constitution and laws."

137 **SECTION 5.**

138 Article 2 of Chapter 6 of Title 10 of the Official Code of Georgia Annotated, relating to
139 relations between principal and agent, is amended by revising Code Section 10-6-36, relating
140 to effect of incompetency or incapacity of principal on power of attorney, as follows:
141 "10-6-36.

142 A written power of attorney, unless expressly providing otherwise, shall not be terminated
143 by the incompetency or incapacity of the principal. The power to act as an attorney in fact
144 for a principal who subsequently becomes incompetent or incapacitated shall remain in
145 force until such time as a guardian of the property, conservator, or receiver shall be
146 appointed for the principal or until some other judicial proceeding shall terminate the
147 power."

148 **SECTION 6.**

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