

House Bill 495 (AS PASSED HOUSE AND SENATE)

By: Representatives Lane of the 167<sup>th</sup>, Maxwell of the 17<sup>th</sup>, and Weldon of the 3<sup>rd</sup>

A BILL TO BE ENTITLED  
AN ACT

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

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

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

12 "15-9-2.1.

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

14 (1) The judge of the probate court may appoint one or more persons to serve as associate  
15 judges of the probate court in probate matters on a full-time or part-time basis subject to  
16 the approval of the governing authority of the county. Such associate judges of the  
17 probate court shall serve at the pleasure of the judge of the probate court.

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

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

25 (4) Compensation of the associate judges of the probate court shall be fixed by the judge  
26 of the probate court subject to the approval of the governing authority or governing

27 authorities of the county or counties for which the associate judge of the probate court is  
 28 appointed. The salary and any employment benefits of each associate judge of the  
 29 probate court shall be paid from county funds. No associate judge of the probate court  
 30 shall be eligible to participate in the Judges of the Probate Courts Retirement Fund of  
 31 Georgia.

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

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

40 (c) Qualifications and training requirements.

41 (1) With the exception of the residency requirement set forth in subparagraph (a)(1)(B)  
 42 of Code Section 15-9-2, all associate judges of the probate court shall have the same  
 43 qualifications required of the elected judge of the probate court of the county or counties  
 44 for which the associate judge of the probate court is appointed.

45 (2) All full-time associate judges of the probate court shall complete the training  
 46 requirements set forth for judges of the probate court in Code Section 15-9-1.1. All  
 47 part-time associate judges of the probate court shall be required to attend a minimum of  
 48 nine hours in an area related to probate court, mental health, or traffic matters as  
 49 determined by the elected judge of the probate court. All probate required training shall  
 50 be paid for by the governing authority or governing authorities of the county or counties  
 51 for which the associate judge of the probate court is appointed.

52 (d) Oath and bond.

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

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

60 (2) The clerk of the probate court shall make an entry of the oath of each associate judge  
 61 of the probate court on the minutes of the probate court. In the case of an associate judge  
 62 of the probate court serving as a magistrate, no oath, certificate, or commission shall be

63 required except the oath and commission of the associate judge of the probate court as  
 64 an associate judge of the probate court.

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

66 (1) It shall be unlawful for any full-time associate judge of the probate court to engage  
 67 in any practice of law outside his or her role as an associate judge of the probate court.

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

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

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

81 Notwithstanding the provisions of subsection (c) of Code Section 15-9-2 or Code  
 82 Sections 15-9-10, 15-9-11, and 15-9-11.1, the senior full-time associate judge of the  
 83 probate court shall be the first in line to serve as judge of the probate court in the event of  
 84 a vacancy in the office of the judge of probate court and shall dispense with any and all  
 85 unfinished proceedings pursuant to Code Section 15-9-12. The associate judge of the  
 86 probate court shall be eligible to fill a vacancy in the office of probate judge for the  
 87 remainder of the unexpired term without regard to whether such associate probate judge  
 88 meets any residency requirements otherwise imposed by law; however, the associate  
 89 probate judge shall become a resident of the county before qualifying for election to the  
 90 office of probate judge. Any associate probate judge taking office as authorized by this  
 91 subsection shall thereafter be eligible to succeed himself or herself as long as he or she  
 92 remains a resident of the county.

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

96 **SECTION 2.**

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

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

106 **SECTION 3.**

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

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

119 **SECTION 4.**

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

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

- 124 (1) The probate of wills;
- 125 (2) The granting of letters testamentary and of administration and the repeal or  
 126 revocation of the same;
- 127 (3) All controversies in relation to the right of executorship or administration;
- 128 (4) The sale and disposition of the property belonging to, and the distribution of,  
 129 deceased persons' estates;
- 130 (5) The appointment and removal of guardians of minors, conservators of minors,  
 131 guardians of incapacitated adults, and conservators of incapacitated adults and persons  
 132 who are incompetent because of mental illness or mental retardation;

- 133 (6) All controversies as to the right of guardianship and conservatorship, except that the  
134 probate court shall not be an appropriate court to take action under Code Section 19-7-4;
- 135 (7) The auditing and passing of returns of all executors, administrators, guardians of  
136 property, conservators, and guardians;
- 137 (8) The discharge of former sureties and the requiring of new sureties from  
138 administrators, guardians of property, conservators, and guardians;
- 139 (9) All matters as may be conferred on them by Chapter 3 of Title 37;
- 140 (10) All other matters and things as appertain or relate to estates of deceased persons and  
141 to persons who are incompetent because of mental illness or mental retardation; and
- 142 (11) All matters as may be conferred on them by the Constitution and laws."

143

**SECTION 5.**

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