

Senate Bill 134

By: Senator Hamrick of the 30th

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Title 29, Chapter 9 of Title 34, and Chapter 12 of Title 53 of the Official Code of
2 Georgia Annotated, relating to guardian and ward, workers' compensation, and trusts,
3 respectively, so as make technical corrections, correct terminology, and update
4 cross-references reflecting the enactment of the guardianship and trust codes in recent
5 legislative sessions; to allow natural guardians of children to consent on behalf of a
6 beneficiary if there is no conflict of interest; to provide for related matters; to provide for an
7 effective date; to repeal conflicting laws; and for other purposes.

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

9 **SECTION 1.**

10 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is
11 amended by revising subsection (a) of Code Section 29-4-41, relating to modification of
12 guardianship, as follows:

13 "(a) Upon the petition of any interested person, including the ward, or upon the court's own
14 motion, the court may modify the guardianship by adjusting the duties or powers of the
15 guardian, as defined in Code Sections ~~29-4-14 and 29-4-15~~ 29-4-22 and 29-4-23, or the
16 powers of the ward, as defined in Code ~~Section 29-4-13~~ Sections 29-4-20 and 29-4-21, or
17 by making other appropriate adjustments to reflect the extent of the current capacity of the
18 ward or other circumstances of the guardianship. Except for good cause shown, the court
19 shall order that notice of the petition be given, in whatever form the court deems
20 appropriate, to the ward, the guardian, the ward's legal counsel, and the ward's conservator,
21 if any. In any proceeding under this Code section that would expand or increase the
22 powers of the guardian or further restrict the rights of the ward, the court shall appoint legal
23 counsel for the ward. In all other cases, the court, in its discretion, may appoint legal
24 counsel for the ward or a guardian ad litem, or both."

25 **SECTION 2.**

26 Said title is further amended by revising subsection (a) of Code Section 24-5-71, relating to
 27 modification of conservatorship, as follows:

28 "(a) Upon the petition of any interested person, including the ward, or upon the court's own
 29 motion, the court may modify the conservatorship by adjusting the duties or powers of the
 30 conservator, as defined in Code Sections ~~29-5-14 and 29-5-15~~ 29-5-22 and 29-5-23, or the
 31 powers of the ward, as defined in Code ~~Section 29-5-13~~ 29-5-20 and 29-5-21, or by making
 32 other appropriate adjustments to reflect the extent of the current capacity of the ward or
 33 other circumstances of the conservatorship. Except for good cause shown, the court shall
 34 order that notice of the petition be given, in whatever form the court deems appropriate, to
 35 the ward, the conservator, the ward's legal counsel, if any, and the ward's guardian, if any.
 36 In any proceeding under this Code section that would expand or increase the powers of the
 37 conservator or further restrict the rights of the ward, the court shall appoint legal counsel
 38 for the ward. In all other cases, the court, in its discretion, may appoint legal counsel for
 39 the ward or a guardian ad litem, or both."

40 **SECTION 3.**

41 Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers'
 42 compensation, is amended by revising subsection (c) of Code Section 34-9-102, relating to
 43 hearing before an administrative law judge, as follows:

44 "(c) **Authority of administrative law judge.** The administrative law judge conducting
 45 the hearing shall have, in addition to all powers necessary to implement this chapter, the
 46 following powers: to administer oaths and affirmations, to issue subpoenas, to rule upon
 47 offers of proof, to regulate the course of the hearing, to set the time and place for continued
 48 hearings, to fix the time for filing briefs, to dispose of motions to dismiss for lack of board
 49 jurisdiction, to rule on requests for continuance, to add or delete parties with or without
 50 motion, to issue interlocutory orders, to rule upon or dispose of all other motions, to
 51 appoint ~~guardians~~ conservators under Code Section 34-9-226, to reprimand or exclude
 52 from the hearing any person for any indecorous or improper conduct committed in the
 53 presence of the administrative law judge, and to require any party to provide the board with
 54 the name of its legal representative, if any, within 21 days from the date of the hearing
 55 notice."

56 **SECTION 4.**

57 Said chapter is further amended by revising subsections (b) and (c) of Code Section
 58 34-9-225, relating to effect of written receipt of widow or widower, minor, or guardian upon
 59 liability of employer, as follows:

60 "(b) Whenever payment in accordance with the terms of this chapter is made to any
 61 employee 18 years of age or over, the written receipt of such person shall release and
 62 discharge the employer. In cases where a person under the age of 18 years shall be entitled
 63 to receive a sum or sums amounting in the aggregate to not more than \$300.00 as
 64 compensation for injuries or as a distributive share by virtue of this chapter, the father or
 65 mother as natural guardian or the legally appointed guardian conservator of such person
 66 shall be authorized and empowered to receive such moneys for the use and benefit of such
 67 person and to receipt therefor; and the release or discharge by such father or mother as
 68 natural guardian or by the legally appointed guardian conservator shall be in full and
 69 complete discharge of all claims or demands of such person thereunder.

70 (c) Whenever payment of over \$300.00, in accordance with the terms of this chapter, is
 71 provided for a person under 18 years of age or for a person over 18 who is physically or
 72 mentally incapable of earning, the payment shall be made to his or her duly and legally
 73 appointed guardian conservator or to some suitable person or corporation appointed as
 74 trustee by the superior court as provided in Code Section 34-9-223; and the receipt of such
 75 guardian conservator or such trustee shall release and discharge the employer."

76 **SECTION 5.**

77 Said chapter is further amended by revising Code Section 34-9-226, relating to appointment
 78 of guardian for minor or incompetent claimant, as follows:

79 "34-9-226.

80 (a) Except as provided in this Code section, the only person capable of representing a
 81 minor or legally incompetent claimant entitled to workers' compensation benefits shall be
 82 a guardian conservator duly appointed and qualified by the probate court of the county of
 83 residence of such minor or legally incompetent person or by a court of competent
 84 jurisdiction outside the State of Georgia. Said guardian conservator shall be required to file
 85 with the board a copy of the guardianship conservatorship returns filed annually with the
 86 probate court or with a court of competent jurisdiction outside the State of Georgia and
 87 give notice to all parties within 30 days of any change in status.

88 (b) The board shall have authority in and shall establish procedures for appointing
 89 temporary guardians conservators for purposes of administering workers' compensation
 90 rights and benefits without such guardian conservator becoming the legally qualified
 91 guardian conservator of any other property, without such guardian's conservator's actions
 92 being approved by a court of record, and without the posting of a bond, in only the
 93 following circumstances:

94 (1) The board may, in its discretion, authorize and appoint a temporary guardian
 95 conservator of a minor or legally incompetent person to receive and administer weekly

96 income benefits on behalf of and for the benefit of said minor or legally incompetent
 97 person for a period not to exceed 52 weeks unless renewed or extended by order of the
 98 board;

99 (2) The board may, in its discretion, authorize and appoint a temporary ~~guardian~~
 100 conservator of a minor or legally incompetent person to compromise and terminate any
 101 claim and receive any sum paid in settlement for the benefits and use of said minor or
 102 legally incompetent person where the net settlement amount approved by the board is less
 103 than \$50,000.00; and

104 (3) If a minor or legally incompetent person does not have a duly appointed
 105 representative or ~~guardian conservator~~, the board may, in its discretion, appoint a
 106 guardian ad litem to bring or defend an action under this chapter in the name of and for
 107 the benefit of said minor or legally incompetent person to serve for a period not to exceed
 108 52 weeks, unless renewed or extended by order of the board. However, no guardian ad
 109 litem appointed pursuant to this Code section shall be permitted to receive the proceeds
 110 from any such action except as provided in this Code section and the board shall have the
 111 authority to determine compensation, if any, for any guardian ad litem appointed pursuant
 112 to this Code section."

113 **SECTION 6.**

114 Chapter 12 of Title 53 of the Official Code of Georgia Annotated, relating to trusts, is
 115 amended by revising paragraph (10) of Code Section 53-12-2, relating to definitions, as
 116 follows:

117 "(10) 'Qualified beneficiary' means a living individual or other existing person who, on
 118 the date of determination of beneficiary status:

119 (A) Is a distributee or permissible distributee of trust income or principal;

120 (B) Would be a distributee or permissible distributee of trust income or principal if the
 121 interests of the distributees described in subparagraph (A) of this paragraph terminated
 122 on that date without causing the trust to terminate; or

123 (C) Would be a distributee or permissible distributee of trust income or principal if the
 124 trust terminated on that date.

125 The Attorney General has the rights of a qualified beneficiary with respect to a charitable
 126 trust as defined in Code Section 53-12-170, and a person appointed to enforce a trust
 127 created for the care of an animal under Code Section 53-12-28 also has the rights of a
 128 qualified beneficiary."

129 **SECTION 7.**

130 Said chapter is further amended by revising paragraph (5) of subsection (a) of Code Section
 131 53-12-7, relating to when a trust and this chapter are in conflict, as follows:

132 "(5) As to the effect of a provision relieving a trustee from liability as provided in Code
 133 Section ~~53-12-290~~ 53-12-303; and"

134 **SECTION 8.**

135 Said chapter is further amended by adding a new Code section to read as follows:

136 "53-12-8.

137 For purposes of this chapter, a parent may represent and bind such parent's minor child or
 138 unborn child if a conservator or guardian for the child has not been appointed and there is
 139 no conflict of interest between the parent and child."

140 **SECTION 9.**

141 Said chapter is further amended by revising Code Section 53-12-20, relating to an express
 142 trust, as follows:

143 "53-12-20.

144 (a) Except as provided in subsection (d) of this Code section, an ~~An~~ express trust shall be
 145 created or declared in writing and signed by the settlor or an agent for the settlor acting
 146 under a power of attorney containing express authorization.

147 (b) An express trust shall have, ascertainable with reasonable certainty:

148 (1) An intention by a settlor to create such trust;

149 (2) Trust property;

150 (3) Except for charitable trusts or a trust for care of an animal, a beneficiary who is
 151 reasonably ascertainable at the time of the creation of such trust or reasonably
 152 ascertainable within the period of the rule against perpetuities;

153 (4) A trustee; and

154 (5) Trustee duties specified in writing or provided by law.

155 (c) The requirement that a trust have a reasonably ascertainable beneficiary shall be
 156 satisfied if under the trust instrument the trustee or some other person has the power to
 157 select the beneficiaries based on a standard or in the discretion of the trustee or other
 158 person.

159 (d) In the case of a trust created pursuant to 42 U.S.C. Section 1396p(d)(4)(B) by an agent
 160 acting for the settlor, the power of attorney need not contain an express authorization to
 161 create or declare a trust."

162 **SECTION 10.**

163 Said chapter is further amended by revising subsection (d) of Code Section 53-12-201,
 164 relating to appointment and vacancies, as follows:

165 "(d) If all the qualified beneficiaries are sui juris, or if some of the qualified beneficiaries
 166 are not sui juris but all have a guardian or conservator, the qualified beneficiaries may
 167 appoint a trustee by unanimous consent. ~~For purposes of this paragraph a parent may~~
 168 ~~represent and bind such parent's minor or unborn child if a conservator or guardian for the~~
 169 ~~child has not been appointed and there is no conflict of interest between the parent and the~~
 170 ~~child with respect to the appointment of a trustee."~~

171 **SECTION 11.**

172 Said chapter is further amended by revising paragraph (1) of Code Section 53-12-211,
 173 relating to compensation of cotrustees and successor trustees, as follows:

174 "(1) Each cotrustee shall be compensated as specified by the terms of the trust, as each
 175 trustee may have agreed or in accordance with a published fee schedule, and such
 176 compensation among cotrustees shall not be apportioned unless they shall agree
 177 otherwise; and"

178 **SECTION 12.**

179 Said chapter is further amended by revising paragraph (29) of subsection (b) of Code Section
 180 53-12-261, relating to powers of trustees, as follows:

181 "(29) To serve without making and filing inventory and appraisal, without filing any
 182 annual or other returns or reports to any court, and without giving bond; but, ~~in addition~~
 183 ~~to any rights the beneficiaries may have under subsection (b) of Code Section 53-12-243,~~
 184 ~~the fiduciary~~ a personal representative shall furnish to the income beneficiaries, at least
 185 annually, a statement of receipts and disbursements."

186 **SECTION 13.**

187 Said chapter is further amended by revising subsection (d) of Code Section 53-12-263,
 188 relating to incorporation of powers by reference, as follows:

189 "(d)(1) A provision in any will or trust instrument which incorporates powers by citation
 190 to Georgia Laws 1973, page 846; Code 1933, Section 108-1204 (Harrison); or former
 191 Code Section 53-12-40 ~~or~~, 53-12-232, or 53-15-3 which were in effect at the time the
 192 trust was created and which was valid under the law in existence at the time the will was
 193 signed by the testator or at the time of the signing by the first settlor who signs the trust
 194 instrument shall be effective notwithstanding the subsequent repeal of such statute.

195 (2) A provision in any will or trust instrument which was signed by the testator or by the
 196 first settlor to sign after June 30, 1991, but before July 1, 1992, and which incorporates
 197 powers by citation to former Code Section 53-12-40 or 53-15-3 in effect on the date of
 198 such signing shall be deemed to mean and refer to the corresponding powers contained
 199 in former Code Section 53-12-232."

200 **SECTION 14.**

201 Said chapter is further amended by revising subsection (a) of Code Section 53-12-321,
 202 relating to foreign entities acting as trustees, as follows:

203 "(a) Any foreign entity may act in this state as trustee, executor, administrator, guardian,
 204 or any other like or similar fiduciary capacity, whether the appointment is by law, will,
 205 deed, inter vivos trust, security deed, mortgage, deed of trust, court order, or otherwise
 206 without the necessity of complying with any law of this state relating to the qualification
 207 of foreign entities to do business in this state or the licensing of foreign entities to do
 208 business in this state, except as provided in this article, and notwithstanding any
 209 prohibition, limitation, or restriction contained in any other law of this state, provided only
 210 that:

211 ~~(1) The foreign entity is eligible to act as a fiduciary in this state under Code Section~~
 212 ~~7-1-242; and~~

213 ~~(2) The the foreign entity is authorized to act in the fiduciary capacity in the state in~~
 214 ~~which it is incorporated or organized or, if the foreign entity is a national banking~~
 215 ~~association, in the state in which it has its principal place of business."~~

216 **SECTION 15.**

217 Said chapter is further amended by revising paragraph (5) of subsection (a) of Code Section
 218 53-12-323, relating to filing statement with the Secretary of the State and appointment of
 219 agent for service, as follows:

220 "(5) That it is authorized to act in a similar fiduciary capacity in the state in which it is
 221 incorporated or organized or, if it is a national banking association, in which it has its
 222 principal place of business ~~and the basis on which it is eligible to act as a fiduciary in~~
 223 ~~Georgia under Code Section 7-1-242; and"~~

224 **SECTION 16.**

225 Said chapter is further amended by redesignating Article 18, relating to allocation of
 226 disbursements during administration of trust, as Part 5 of Article 17, relating to the "Georgia
 227 Principal and Income Act."

228 **SECTION 17.**

229 Said chapter is further amended by revising paragraph (5) of subsection (a) of Code Section
230 53-12-451, relating to disbursements of principal, as follows:

231 "(5) Premiums paid on a policy of insurance not described in ~~Section 501(4) of the~~
232 ~~federal Internal Revenue Code of 1986~~ paragraph (4) of subsection (a) of Code Section
233 53-12-450, of which the trust is the owner and beneficiary;"

234 **SECTION 18.**

235 Said chapter is further amended by revising paragraph (3) of subsection (b) of Code Section
236 53-12-452, relating to transfers from income to principal for depreciation, as follows:

237 "(3) Under this Code section if the trustee is accounting under ~~Section 403 of the federal~~
238 ~~Internal Revenue Code of 1986~~ Code Section 53-12-412 for the business or activity in
239 which the asset is used."

240 **SECTION 19.**

241 This Act shall become effective upon its approval by the Governor or upon its becoming law
242 without such approval.

243 **SECTION 20.**

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