

Senate Bill 436

By: Senators Strickland of the 17th and Mullis of the 53rd

AS PASSED

**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 change and modernize certain general provisions for probate courts;
3 to change provisions relating to training, the appointment of associate probate judges, bond,
4 and the filling of a vacancy of the probate court judge and procedures connected thereto; to
5 repeal provisions relating to the sheriff acting as administrator under certain circumstances;
6 to change provisions relating to The Council of Probate Judges of Georgia; to change
7 provisions relating to the authority of retired probate judges to perform marriage ceremonies;
8 to change provisions relating to judges acting as clerk of probate court; to change provisions
9 relating to recording of proceedings; to repeal provisions relating to fee systems being
10 continued; to change provisions relating to probate court office hours; to require certain
11 pleadings be verified; to change certain provisions relating to the Probate Judges Training
12 Council; to conform cross-references; to amend Code Section 1-3-1 of the Official Code of
13 Georgia Annotated, relating to construction of statutes generally, so as to conform a
14 cross-reference; to amend Article 1 of Chapter 5 of Title 53 of the Official Code of Georgia
15 Annotated, relating to general provisions for probate, so as to define a term for the purpose
16 of the right to offer a will for probate; to provide for related matters; to repeal conflicting
17 laws; and for other purposes.

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

19 **PART I**
20 **SECTION 1-1.**

21 Chapter 9 of Title 15 of the Official Code of Georgia Annotated, relating to probate courts,
22 is amended by revising Code Section 15-9-1.1, relating to required training courses, filing
23 certificate of completion, and expenses, as follows:

24 "15-9-1.1.

25 ~~(a) Any person who is or was elected, appointed, or made a judge of the probate court by~~
 26 ~~operation of law on or prior to January 1, 1990, shall satisfactorily complete the required~~
 27 ~~initial training course in the performance of his or her duties conducted by the Institute of~~
 28 ~~Continuing Judicial Education of Georgia and shall file a certificate of such training issued~~
 29 ~~by such institute with the Probate Judges Training Council on or before December 31,~~
 30 ~~1990, in order to become a certified judge of the probate court. The time and place of such~~
 31 ~~training course and number of hours shall be determined by the Probate Judges Training~~
 32 ~~Council and the Institute of Continuing Judicial Education of Georgia.~~

33 ~~(b)~~(a) Any person individual who is elected, appointed, or becomes a judge of the probate
 34 court by operation of law after January 1, 1990, ~~and who does not after taking office as~~
 35 ~~judge of the probate court, shall~~ satisfactorily complete ~~the initial~~ a new judge orientation
 36 training course prescribed by the Probate Judges Training Council and the Institute of
 37 Continuing Judicial Education of Georgia ~~or who does not file a certificate at the first~~
 38 ~~occasion such course is offered. Such judge shall complete an attendance record of such~~
 39 training issued by the Institute of Continuing Judicial Education of Georgia and file it with
 40 the Probate Judges Training Council ~~within one year after taking office as a judge of the~~
 41 ~~probate court shall, subject to subsection (d) of this Code section, become a certified judge~~
 42 ~~of the probate court upon completion of such requirements at any later time.~~

43 ~~(c)~~(b) Each judge of the probate court shall be required to complete additional training
 44 prescribed by the Probate Judges Training Council and the Institute of Continuing Judicial
 45 Education of Georgia during each year he or she serves as a judge of the probate court ~~after~~
 46 ~~the initial year of training and shall file a certificate of such additional~~ and complete an
 47 attendance record of such training issued by the Institute of Continuing Judicial Education
 48 of Georgia and file it with the Probate Judges Training Council.

49 ~~(2) For the calendar years 2009 and 2010 only, the Probate Judges Training Council may~~
 50 ~~suspend, in whole or in part, the training requirements of this subsection. If the council~~
 51 ~~suspends such requirements, and if any probate judge has completed all or a portion of~~
 52 ~~the required training prior to suspension of the training requirements, credit for the~~
 53 ~~training so completed shall be carried over and applied to calendar year 2010 or 2011.~~

54 ~~(d)~~(c) Any judge who fails to become a certified judge within one year after taking office
 55 as a judge of the probate court complete the new judge orientation training course as
 56 required by subsection (a) of this Code section or to earn the required cumulative annual
 57 minimal credit hours of training during any one-year period after the ~~initial year of~~ new
 58 judge orientation training may be given a six-month administrative extension by the
 59 Probate Judges Training Council during which to fulfill this requirement. Individual
 60 requests for extensions beyond the initial six-month extension for reasons of disability,

61 hardship, or extenuating circumstance may be approved on a case-by-case basis by the
 62 Probate Judges Training Council. Upon failure to earn the required hours within the
 63 six-month extension period or additional extension period or periods granted, the Probate
 64 Judges Training Council shall promptly notify the Judicial Qualifications Commission
 65 which shall recommend to the Supreme Court removal of the probate judge from office
 66 unless the Judicial Qualifications Commission finds that the failure was caused by facts
 67 circumstances beyond the control of the probate judge.

68 ~~(e)~~(d) All expenses of training authorized or required by this Code section, including any
 69 tuition which may be fixed by the Institute of Continuing Judicial Education, shall be paid
 70 by the probate judge or probate judge elect taking the training; but the probate judge or
 71 probate judge elect shall be reimbursed by the Institute of Continuing Judicial Education
 72 of Georgia to the extent that funds are available to the institute for such purpose; provided,
 73 however, that if such funds are not available, each probate judge or probate judge elect
 74 shall be reimbursed from county funds by action of the county governing authority."

75 SECTION 1-2.

76 Said chapter is further amended by revising subsections (a) and (b) of Code Section 15-9-2,
 77 relating to eligibility for judgeship and restrictions on fiduciary role, as follows:

78 "(a)(1) Except as otherwise provided in subsection (c) of this Code section, no ~~person~~
 79 individual shall be eligible to offer for election to or hold the office of judge of the
 80 probate court unless the ~~person~~ individual:

81 (A) Is a citizen of the United States;

82 (B) Is a resident of the county in which the ~~person~~ individual seeks the office of judge
 83 of the probate court for at least two years prior to qualifying for election to the office
 84 and remains a resident of such county during the term of office;

85 (C) Is a registered voter;

86 (D) Has attained the age of 25 years prior to the date of qualifying for election to the
 87 office, but this subparagraph shall not apply to any ~~person~~ individual who was holding
 88 the office of judge of the probate court on July 1, 1981;

89 (E) Has obtained a high school diploma or its recognized equivalent; and

90 (F) Has not been convicted of a felony offense or any offense involving moral
 91 turpitude contrary to the laws of this state, any other state, or the United States.

92 (2) Each ~~person~~ individual offering as a candidate for the office of judge of the probate
 93 court shall file an affidavit with the officer before whom such ~~person~~ individual has
 94 qualified to seek the office of judge of the probate court prior to or at the time of
 95 qualifying as a candidate. The affidavit shall affirm that the ~~person~~ individual meets all
 96 the qualifications required by subparagraphs (A), (C), (D), (E), and (F) of paragraph (1)

97 of this subsection and either subparagraph (B) of paragraph (1) of this subsection or
 98 subsection (c) of this Code section.

99 (b) The judge of the probate court ~~cannot~~ shall not, during his or her term of office, be
 100 executor, administrator, or guardian, or other agent of a fiduciary nature required to
 101 account to his or her court. When any ~~person~~ individual holding such trust is elected judge
 102 of the probate court, his or her letters and powers immediately abate upon his or her
 103 qualification. However, a judge of the probate court may be an administrator, guardian,
 104 or executor in a case where the jurisdiction belongs to another county or in a special case
 105 ~~where~~ when he or she is allowed by law and required to account to the judge of the probate
 106 court of another county."

107 **SECTION 1-3.**

108 Said chapter is further amended by revising Code Section 15-9-2.1, relating to appointment,
 109 compensation, term, authority, qualifications, training, and other limitations of associate
 110 probate court judges, as follows:

111 "15-9-2.1.

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

113 (1) The judge of the probate court may appoint one or more ~~persons~~ individuals to serve
 114 as associate judges of the probate court in probate matters on a full-time or part-time
 115 basis subject to the approval of the governing authority of the county. Such associate
 116 judges of the probate court shall serve at the pleasure of the judge of the probate court.

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

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

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

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

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

139 (c) **Qualifications and training requirements.**

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

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

151 (d) **Oath and bond.**

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

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

159 (2) The clerk of the probate court shall make an entry of the oath of each associate judge
 160 of the probate court on the minutes of the probate court. In the case of an associate judge
 161 of the probate court serving as a magistrate, no oath, certificate, or commission shall be
 162 required except the oath and commission of the associate judge of the probate court as
 163 an associate judge of the probate court.

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

165 (1) ~~It shall be unlawful for any full-time associate judge of the probate court to engage~~
 166 ~~in any practice of law outside his or her role as an associate judge of the probate court;~~
 167 ~~provided, however, that such prohibition shall not apply when he or she is serving as a~~

168 ~~judge advocate general or in any other military role in a reserve component of the United~~
 169 ~~States Army, United States Navy, United States Marine Corps, United States Coast~~
 170 ~~Guard, United States Air Force, United States National Guard, Georgia National Guard,~~
 171 ~~Georgia Air National Guard, Georgia Naval Militia, or the State Defense Force.~~ It shall
 172 be unlawful for any ~~part-time~~ associate judge of the probate court to engage directly or
 173 indirectly in the practice of law in his or her own name or in the name of another as a
 174 partner in any manner in any case, proceeding, or matter of any kind in his or her own
 175 court or in any other court in any case, proceeding, or any other matters of which his or
 176 her own court has pending jurisdiction or has jurisdiction. It shall be unlawful for any
 177 associate judge of the probate court, ~~full-time or part-time,~~ to give advice or counsel to
 178 any ~~person~~ individual on any matter of any kind whatsoever that has arisen directly or
 179 indirectly in his or her own court, ~~except such advice or counsel as he or she is called~~
 180 ~~upon to give while performing the duties of an associate judge of the probate court.~~
 181 Nothing in this chapter shall be construed to limit in any way the ability of an associate
 182 judge of the probate court to serve as or offer advice in his or her role as a judge advocate
 183 or in any other military role in an active duty or reserve component of the United States
 184 Army, United States Navy, United States Marine Corps, United States Coast Guard,
 185 United States Air Force, United States National Guard, Georgia National Guard, Georgia
 186 Air National Guard, Georgia Naval Militia, the Georgia State Defense Force, or in the
 187 National Guard or Air National Guard of any state or territory of the United States.

188 (2) ~~The provisions of subsection~~ Subsection (b) of Code Section 15-9-2 regarding a
 189 judge's limitations on the fiduciary role shall apply to ~~both full-time and part-time~~ all
 190 associate judges of the probate court.

191 ~~(f) Assumption of duties upon vacancy in the office of judge of probate court.~~
 192 ~~Notwithstanding the provisions of subsection (c) of Code Section 15-9-2 or Code Sections~~
 193 ~~15-9-10, 15-9-11, and 15-9-11.1, the senior full-time associate judge of the probate court~~
 194 ~~shall be the first in line to serve as judge of the probate court in the event of a vacancy in~~
 195 ~~the office of the judge of probate court and shall dispense with any and all unfinished~~
 196 ~~proceedings pursuant to Code Section 15-9-12. The associate judge of the probate court~~
 197 ~~shall be eligible to fill a vacancy in the office of probate judge for the remainder of the~~
 198 ~~unexpired term without regard to whether such associate probate judge meets any residency~~
 199 ~~requirements otherwise imposed by law; however, the associate probate judge shall become~~
 200 ~~a resident of the county before qualifying for election to the office of probate judge. Any~~
 201 ~~associate probate judge taking office as authorized by this subsection shall thereafter be~~
 202 ~~eligible to succeed himself or herself as long as he or she remains a resident of the county.~~

203 ~~(g)~~(f) **Proceedings when an associate judge of the probate court is disqualified.**
 204 Whenever the judge of the probate court is ~~disqualified~~ unable to act in any case pursuant

205 ~~to Code Section 15-9-13, the~~ because of a conflict of interest, an unlawful act or the
 206 accusation of an unlawful act by such judge, or other disqualification of such judge, any
 207 associate judge of the probate court shall also be disqualified."

208 **SECTION 1-4.**

209 Said chapter is further amended by revising Code Section 15-9-3, relating to restrictions on
 210 the practice of law, as follows:

211 "15-9-3.

212 No judge of a probate court shall engage, directly or indirectly, in the practice of law in his
 213 or her own name or in the name of another, as open or silent partner, or otherwise:

214 (1) In any case or proceeding in his or her own court;

215 (2) In another court in a case or matter of which his or her own court has, has had, or
 216 may have jurisdiction; or

217 (3) In any court or any matter whatever, ~~in~~ on behalf of or against any executor,
 218 administrator, guardian, trustee, or other ~~person~~ individual acting in a representative
 219 capacity whose duty it is to make returns to his or her court, except to give such advice
 220 or instructions as his or her duty may require ~~of him~~ as judge in his or her own court, for
 221 which he or she shall receive only such fees as are prescribed by law."

222 **SECTION 1-5.**

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

225 "(a) No ~~person~~ individual elected judge of the probate court in any county provided for in
 226 this Code section shall engage in the private practice of law."

227 **SECTION 1-6.**

228 Said chapter is further amended by revising Code Section 15-9-5, relating to when a judge
 229 is ineligible for election, as follows:

230 "15-9-5.

231 If any judge of the probate court fails to account faithfully as executor, administrator, or
 232 guardian after becoming judge, for all trusts he or she held at the time of his or her election,
 233 ~~he is~~ such judge shall be ineligible for reelection."

234 **SECTION 1-7.**

235 Said chapter is further amended by revising Code Section 15-9-7, relating to bond, as
 236 follows:

237 "15-9-7.

238 The judges of the probate courts ~~must~~ shall give bond or surety in the sum of ~~\$25,000.00~~
 239 \$100,000.00, which amount may be increased in any county by local Act, for the faithful
 240 discharge of their duties as clerks of the judges of the probate courts. The county
 241 governing authority shall pay such bond."

242 **SECTION 1-8.**

243 Said chapter is further amended by revising Code Section 15-9-8, relating to qualification
 244 and bond, as follows:

245 "15-9-8.

246 The several judges of the superior courts in their respective circuits shall have the power
 247 and it shall be their duty to qualify the judges of the probate courts of the several counties
 248 in their circuits, to approve the official bonds of the judges of the probate courts, and to
 249 cause the bonds to be returned to the Secretary of State with the dedimus, to be filed with
 250 the office of the Secretary of State. In all cases a certified copy of the bond shall be
 251 sufficient original evidence on which to bring an action and recover. ~~This Code section~~
 252 ~~shall extend to clerks of the superior courts when serving as judges of the probate court~~
 253 ~~during vacancies in that office, and such officers must qualify at or before the spring term~~
 254 ~~of the court after their election."~~

255 **SECTION 1-9.**

256 Said chapter is further amended by revising Code Section 15-9-9, relating to when other
 257 security ordered and failure to comply, as follows:

258 "15-9-9.

259 If, at any time during the term of the judge of the probate court, it is made satisfactorily to
 260 appear to the judge of the superior court that the bond of the judge of the probate court is
 261 insufficient or the security thereof insolvent, it shall be his or her duty to require other
 262 security. On failure of the judge of the probate court to comply with the order of the
 263 superior court judge, a vacancy shall be declared as if ~~he~~ such judge had failed to give
 264 security in the first instance."

265 **SECTION 1-10.**

266 Said chapter is further amended by revising Code Section 15-9-10, relating to temporary
 267 filing of vacancy and compensation, as follows:

268 "15-9-10.

269 (a) ~~Until a vacancy in the office of judge of the probate court is filled, the chief judge of~~
 270 ~~the city or state court, as the case may be, shall serve as the judge and shall be vested with~~

271 ~~all the powers of the judge. If there is no such chief judge or if for some reason the chief~~
 272 ~~judge cannot serve as judge, the clerk of the superior court of the county shall serve as~~
 273 ~~judge and shall be vested with all the powers of the judge. In the event that the clerk of the~~
 274 ~~superior court, for some reason, cannot serve as judge, the chief judge of the superior court~~
 275 ~~of the county shall appoint a person to serve as judge; such person shall be vested with all~~
 276 ~~the powers of the judge. If at any time there is a vacancy in the office of judge of the~~
 277 probate court, such vacancy shall be filled as set forth in Code Section 15-9-11. Any
 278 individual serving during such vacancy shall be vested with all the powers of the judge of
 279 the probate court.

280 (b)(1) Except as provided in subsection (b) of Code Section 15-9-11, until such time as
 281 a special election can be held, a vacancy shall be filled in the following order of priority:

282 (A) By an associate judge of the probate court, in order of seniority. In any county in
 283 which an associate judge of the probate court has been appointed and such associate
 284 judge meets all of the qualifications for serving as probate judge, then he or she shall
 285 discharge the duties of the office of judge of the probate court. An associate judge shall
 286 be eligible to fill a vacancy in the office of probate judge until the special election
 287 without regard to whether such associate judge meets the residency requirement set
 288 forth in subparagraph (a)(1)(B) of Code Section 15-9-2; provided, however, that the
 289 associate judge shall meet the requirements of law before qualifying for election to the
 290 office of judge of the probate court; or

291 (B) By the chief clerk of the probate court. In any county in which a chief clerk of the
 292 probate court has been appointed and such clerk meets all of the qualifications for
 293 serving as probate judge, then he or she shall discharge the duties of the office of judge
 294 of the probate court.

295 (2) If any individual designated in paragraph (1) of this subsection does not wish to serve
 296 as judge of the probate court to fill a vacancy, he or she shall express that desire by
 297 delivering such declination in writing to the chief judge of the superior court for the
 298 circuit to which the county is assigned.

299 (3) If there is no associate judge for the probate court and the chief clerk is not eligible
 300 to serve or all such individuals decline to serve, the chief judge of the superior court in
 301 the circuit to which the county is assigned shall appoint an individual to serve as judge
 302 during a vacancy.

303 (c) The sole county commissioner or the board of county commissioners or, in those
 304 counties which have no commissioners, the chief judge of the superior court shall fix the
 305 compensation of the person individual who serves as judge until the vacancy is filled. The
 306 compensation shall be paid from the general funds of the county. The fees collected during
 307 such period of time shall be paid into the general funds of the county.

308 ~~(b) Reserved."~~

309 **SECTION 1-11.**

310 Said chapter is further amended by revising Code Section 15-9-11, relating to special election
311 to fill vacancy and term of person elected, as follows:

312 "15-9-11.

313 (a) When a vacancy occurs in the office of judge of the probate court in any county, it shall
314 be the duty of the ~~person~~ individual who assumes the duties of the judge, as provided in
315 Code Section 15-9-10, within ten days after the vacancy occurs, to order a special election
316 for the purpose of filling the vacancy. ~~He or she~~ The election superintendent shall give
317 notice of the special election by publication in the newspaper in which the citations of the
318 judge of the probate court are published. The special election shall be held in accordance
319 with Chapter 2 of Title 21.

320 ~~(b) Notwithstanding the provisions of this subsection (a) of this Code section,~~ if the
321 vacancy occurs after January 1 in the last year of the term of office of the judge of probate
322 court, the ~~person~~ individual assuming the duties of the judge of the probate court shall be
323 commissioned for and shall serve the remainder of the unexpired term of office.

324 ~~(b)(c) The person~~ If a special election is held, the individual elected to fill the vacancy
325 shall be commissioned for the unexpired term."

326 **SECTION 1-12.**

327 Said chapter is further amended by revising Code Section 15-9-11.1, relating to assumption
328 of duties by chief clerk upon vacancy in office of probate judge, the filling of the vacancy,
329 and compensation, as follows:

330 "~~15-9-11.1.~~

331 ~~(a) Notwithstanding the provisions of Code Sections 15-9-10 and 15-9-11, in any county~~
332 ~~in which a chief clerk of the probate judge has been appointed and said chief clerk meets~~
333 ~~all qualifications for the office of probate judge, the person serving as chief clerk at the~~
334 ~~time of occurrence of a vacancy in the office of probate judge shall discharge the duties of~~
335 ~~the office of the judge of the probate court.~~

336 ~~(b) Vacancies in the office of judge of the probate court having a chief clerk as provided~~
337 ~~for in subsection (a) of this Code section shall be filled as follows:~~

338 ~~(1) The chief clerk shall discharge such duties of the judge of the probate court until the~~
339 ~~first day of January following the next succeeding general election which occurs more~~
340 ~~than 60 days after the vacancy or the expiration of the remaining term of office,~~
341 ~~whichever occurs first; and~~

342 ~~(2) If the next succeeding general election is not one at which county officers are elected~~
 343 ~~and is more than 60 days after the occurrence of the vacancy, a duly qualified person~~
 344 ~~shall be elected judge of the probate court at a special election held at the same time as~~
 345 ~~the general election. The person so elected shall take office on the first day of January~~
 346 ~~following such election and shall serve for the remainder of the unexpired term of office.~~
 347 ~~(c) The chief clerk performing the duties as judge of the probate court shall receive the~~
 348 ~~same compensation, less any longevity raises received by the prior judge, and shall be paid~~
 349 ~~in the same manner, as such judge of the probate court would have received."~~

350 SECTION 1-13.

351 Said chapter is further amended by revising Code Section 15-9-13, relating to procedure
 352 when judge disqualified or unable to act and compensation, as follows:

353 "15-9-13.

354 (a) Whenever a judge of the probate court is ~~disqualified~~ unable to act in any case ~~or~~
 355 because of sickness, absence, or any other reason is ~~unable to act in any case, an associate~~
 356 judge of the probate court, in order of seniority, shall exercise the jurisdiction of the
 357 probate court, unless he or she is disqualified under subsection (f) of Code Section
 358 15-9-2.1. Whenever a judge of the probate court is unable to act in any case because of
 359 sickness, absence, or any other reason and an associate judge is unable to act, the judge of
 360 the probate court may appoint an attorney at law who is a member of the State Bar of
 361 Georgia to exercise the jurisdiction of the probate court. ~~If the judge of the probate court~~
 362 ~~does not so appoint, the judge of the city or state court, as the case may be, shall exercise~~
 363 ~~all the jurisdiction of the judge of the probate court in the case.~~ If, however, the inability
 364 of the probate judge to act arises from any unlawful act or the accusation of an unlawful
 365 act on the part of the probate judge, the probate judge ~~may~~ shall not appoint an attorney and
 366 only another judge shall exercise the jurisdiction of the probate court.

367 ~~(b) If there is no such judge or if for some reason the judge cannot serve in the case, the~~
 368 ~~clerk of the judge of the probate court shall exercise all the jurisdiction of the judge of the~~
 369 ~~probate court in the case.~~

370 ~~(c)(b) If for any reason the clerk of the judge of the probate court cannot serve in such case~~
 371 fails to appoint an attorney to serve, the chief judge of the superior court shall appoint a
 372 person an individual to serve and exercise the jurisdiction of the judge of the probate court
 373 in the case.

374 ~~(d)(c) Except as otherwise provided in paragraph (4) of subsection (a) of Code Section~~
 375 15-9-2.1, the ~~The~~ compensation of the ~~person~~ individual serving as provided in this Code
 376 section shall be fixed by the board of county commissioners or, in those counties which
 377 have no county commissioners, by the chief judge of the superior court. The compensation

378 shall be paid from the general funds of the county. All fees collected during ~~the~~ such
 379 service by an individual who is not an associate judge of the probate court shall be paid into
 380 the general funds of the county."

381 **SECTION 1-14.**

382 Said chapter is further amended by revising Code Section 15-9-14, relating to sheriffs to act
 383 as administrators when probate judge is superior court clerk in absence of county
 384 administrator, as follows:

385 "15-9-14.

386 ~~When the judge of the probate court is also the clerk of the superior court and there is no~~
 387 ~~county administrator or other person upon whom the law casts the administration of~~
 388 ~~unrepresented estates, such administrations are cast upon the sheriffs of the several~~
 389 ~~counties, who must become such administrators~~ Reserved."

390 **SECTION 1-15.**

391 Said chapter is further amended by revising subsection (a) of Code Section 15-9-15, relating
 392 to the Council of Probate Court Judges of Georgia, as follows:

393 "(a) There is created a council to be known as 'The Council of Probate Court Judges of
 394 Georgia.' The council shall be composed of the judges ~~and judges emeriti~~ of the probate
 395 courts of this state. The council is authorized to organize itself and to develop a
 396 constitution and bylaws. The officers of said council shall consist of a president, ~~first vice~~
 397 ~~president, second president-elect,~~ vice president, secretary-treasurer, and such other officers
 398 and committees as the council shall deem necessary."

399 **SECTION 1-16.**

400 Said chapter is further amended by revising Code Section 15-9-16, relating to the authority
 401 of retired judge to perform marriage ceremonies, as follows:

402 "15-9-16.

403 A retired judge of a probate court of any county of this state shall be vested with the same
 404 authority as an active judge of this state for the purpose of performing marriage
 405 ceremonies. ~~For purposes of this Code section, a retired judge of a probate court shall be~~
 406 ~~one who has served as probate judge not less than 12 years."~~

407 **SECTION 1-17.**

408 Said chapter is further amended by revising Code Section 15-9-17, relating to serving a
 409 minor or incapacitated adult, as follows:

410 "15-9-17.

411 (a) Notwithstanding the provisions of Code Section 15-9-122 or any other provision of law
412 to the contrary, in any action before the probate court in which the service of a minor or an
413 incapacitated adult is required, such service may be made by:

414 (1) Mailing by the probate court of a copy of the document to be served to the minor or
415 incapacitated adult by certified mail or statutory overnight delivery; and

416 (2) Serving the legal guardian or guardian ad litem of such minor or incapacitated adult
417 if such legal guardian or guardian ad litem:

418 (A) Acknowledges receipt of such service; and

419 (B) Certifies that he or she has delivered a copy of the document so served to the minor
420 or incapacitated adult.

421 (b) The acknowledgment and certification of the legal guardian or guardian ad litem and
422 the certificate of the mailing to the minor or incapacitated adult shall be filed with the court
423 as proof of such service."

424 **SECTION 1-18.**

425 Said chapter is further amended by revising Code Section 15-9-18, relating to remittance of
426 interest from cash bonds, as follows:

427 "15-9-18.

428 Whenever the sheriff transfers cash bonds to the clerk of the court, pursuant to Code
429 Section 15-16-27, the clerk of the probate court shall deposit such funds into
430 interest-bearing trust accounts, and the interest from those funds shall be remitted to the
431 Georgia Superior Court Clerks' Cooperative Authority in accordance with ~~the provisions~~
432 ~~of~~ subsections (c) through (i) of Code Section 15-6-76.1 for distribution to the Georgia
433 Public Defender Council."

434 **SECTION 1-19.**

435 Said chapter is further amended by revising paragraph (9) of subsection (b) of Code Section
436 15-9-30, relating to probate court jurisdiction and additional powers, as follows:

437 "(9) ~~Receive pleas of guilty and impose sentences in~~ Hear cases of violations of game
438 and fish laws;"

439 **SECTION 1-20.**

440 Said chapter is further amended by revising subsection (b) of Code Section 15-9-36, relating
441 to the authority to appoint clerks, as follows:

442 "(b) The appointed clerks, including the chief clerk of the probate judge, may do all acts
443 the judges of the probate courts could do which are not judicial in their nature ~~and may act~~

444 ~~for judges of the probate courts in those cases in which they are authorized to act for the~~
 445 ~~judge by Code Section 15-9-13.~~ The chief clerk of the probate judge shall also have the
 446 authority prescribed in Code Section ~~15-9-11.1~~ 15-9-10."

447 **SECTION 1-21.**

448 Said chapter is further amended by revising Code Section 15-9-37, relating to duties of clerks
 449 or probate judges acting as clerks, by adding a new subsection to read as follows:

450 "(c) The judge of the probate court or any other authority performing the functions
 451 required to be performed by such judge or by the probate court in any county of this state
 452 shall be authorized to install and to use photostatic equipment or other photographic
 453 equipment for recording any documents authorized or required to be recorded in the office
 454 of the judge or of the probate court or for recording and preserving the minutes of the court.
 455 Such equipment may be installed and used by the judge or by the probate court for the
 456 same purposes and in lieu of the commonly used method of printing, typing, and
 457 handwriting the documents, records, and minutes. Such equipment may be provided or
 458 its use permitted by the proper county authorities. The authority given by this subsection
 459 for the installation and use of photostatic and photographic equipment is permissive only."

460 **SECTION 1-22.**

461 Said chapter is further amended by revising Code Section 15-9-40, relating to the filing and
 462 recording of proceedings and fees, as follows:

463 "15-9-40.

464 The proceedings shall always be kept on file; and, whenever the final order is granted, the
 465 proceedings shall be recorded in a book to be kept for ~~that~~ such purpose, ~~for which the~~
 466 ~~judge of the probate court shall receive the same fees as are allowed clerks of the superior~~
 467 ~~courts for similar services."~~

468 **SECTION 1-23.**

469 Said chapter is further amended by revising Code Section 15-9-42, relating to the docket of
 470 fiduciaries, as follows:

471 "15-9-42.

472 (a) The judge of the probate court shall keep a docket of all the executors, administrators,
 473 guardians, and trustees who are liable to make returns in his or her court, with regular
 474 entries of their returns, and of such fiduciaries as have failed to make returns as required
 475 by law and by the order of the court.

476 (b) Nothing in this Code section shall restrict or otherwise prohibit a clerk or a probate
 477 judge acting as such from electing to store for computer retrieval any or all books, records,

478 dockets, files, or indices; nor shall a clerk or a probate judge acting as such be prohibited
 479 from combining or consolidating any books, records, dockets, files, or indices in
 480 connection with the filing for record of papers of the kind specified in this Code section or
 481 in any other law; provided, however, that any automated or computerized record-keeping
 482 method or system shall provide for the systematic and safe preservation and retrieval of all
 483 books, records, dockets, files, or indices. When the clerk or a probate judge acting as such
 484 elects to store for computer retrieval any or all books, records, dockets, files, or indices, the
 485 same data elements used in a manual system shall be used, and the same integrity and
 486 security shall be maintained."

487 **SECTION 1-24.**

488 Said chapter is further amended by revising Code Section 15-9-44, relating to the use of
 489 photostatic and photographic equipment, as follows:

490 "15-9-44.

491 ~~(a) The judge of the probate court or any other authority performing the functions required~~
 492 ~~to be performed by the judge or by the probate court in any county of the state is authorized~~
 493 ~~to install and to use photostatic equipment or other photographic equipment for recording~~
 494 ~~any documents authorized or required to be recorded in the office of the judge or of the~~
 495 ~~probate court or for recording and preserving the minutes of the court. The equipment may~~
 496 ~~be installed and used by the judge or by the probate court for the same purposes and in lieu~~
 497 ~~of the commonly used method of printing, typing, and handwriting the documents, records,~~
 498 ~~and minutes. The equipment may be provided or its use permitted by the proper county~~
 499 ~~authorities.~~

500 ~~(b) The authority given by this Code section for the installation and use of photostatic and~~
 501 ~~photographic equipment is permissive only Reserved."~~

502 **SECTION 1-25.**

503 Said chapter is further amended by revising Code Section 15-9-45, relating to filing of
 504 photostatic records, as follows:

505 "15-9-45.

506 ~~If and when the equipment specified in Code Section 15-9-44 is installed and used in the~~
 507 ~~several counties for the purposes authorized by Code Section 15-9-44, provision shall be~~
 508 ~~made for the proper and orderly filing in a book or receptacle provided for that purpose of~~
 509 ~~the pictures or photostatic or other photographic results of the instruments in question or~~
 510 ~~for the proper and orderly filing in a receptacle provided for that purpose of the films or~~
 511 ~~negatives produced as a result of the photostatic or photographic method of recording~~
 512 ~~Reserved."~~

513 **SECTION 1-26.**

514 Said chapter is further amended by revising Code Section 15-9-65, relating to longevity
 515 increases, as follows:

516 "15-9-65.

517 The amounts provided in paragraph (1) of subsection (a) of Code Section 15-9-63 and
 518 Code Section 15-9-64, as increased by paragraph (2) of subsection (a) of Code Section
 519 15-9-63, shall be increased by multiplying said amounts by the percentage which equals
 520 5 percent times the number of completed four-year terms of office served by any judge of
 521 a probate court after December 31, 1976, effective the first day of January following the
 522 completion of each such period of service. This Code section shall not be construed to
 523 affect any local legislation except ~~where~~ when the local legislation provides for a salary
 524 lower than the salary provided in Code Sections 15-9-63, 15-9-64, 15-9-66, and this Code
 525 section, ~~and Code Sections 15-9-66 and 15-9-67~~, in which event Code Sections 15-9-63,
 526 15-9-64, 15-9-66, and this Code section, ~~and Code Sections 15-9-66 and 15-9-67~~ shall
 527 prevail."

528 **SECTION 1-27.**

529 Said chapter is further amended by revising Code Section 15-9-66, relating to effect of
 530 minimum salary provisions on judges in office on July 1, 1991, and expenses not covered by
 531 salary, as follows:

532 "15-9-66.

533 Code Sections 15-9-63 through 15-9-65; and this Code section, ~~and Code Section 15-9-67~~
 534 shall not be construed to reduce the salary of any judge of a probate court in office on
 535 July 1, 1991; provided, however, that successors to such judges of the probate courts in
 536 office on July 1, 1991, shall be governed by the provisions of said Code sections. The
 537 minimum salaries provided for in Code Sections 15-9-63 through 15-9-65; and this Code
 538 section, ~~and Code Section 15-9-67~~ shall be considered as salary only. Expenses for deputy
 539 clerks, equipment, supplies, copying equipment, and other necessary and reasonable
 540 expenses for the operation of a probate court shall come from funds other than the funds
 541 specified as salary in Code Sections 15-9-63 through 15-9-65; and this Code section, ~~and~~
 542 ~~Code Section 15-9-67.~~"

543 **SECTION 1-28.**

544 Said chapter is further amended by revising Code Section 15-9-67, relating to fee systems
 545 continued until enactment of local legislation, as follows:

546 "15-9-67.
 547 ~~Code Sections 15-9-63 through 15-9-66 and this Code section shall not be construed so as~~
 548 ~~to place any judge of the probate court who is on the fee system of compensation on a~~
 549 ~~salary system of compensation. Any judge of a probate court who is compensated under~~
 550 ~~the fee system of compensation on July 1, 1978, shall continue to receive compensation~~
 551 ~~under the fee system of compensation until local legislation is enacted by the General~~
 552 ~~Assembly placing such judge of the probate court on an annual salary equal to the salary~~
 553 ~~provided for in Code Sections 15-9-63 through 15-9-66 and this Code section Reserved."~~

554 **SECTION 1-29.**

555 Said chapter is further amended by revising Code Section 15-9-83, relating to time for
 556 transacting business and calendar, as follows:

557 "15-9-83.

558 ~~The judge of the probate court may transact business at any time except Sundays and may~~
 559 ~~close his office not more than one other day in each week. Where authorized or not~~
 560 ~~prohibited by law, any hearing or other proceeding may be had and any order or judgment~~
 561 ~~may be rendered at any time. However, nothing in this Code section shall be construed as~~
 562 ~~prohibiting the judge of the probate court from providing by calendar for the orderly and~~
 563 ~~uniform transaction of business on designated days.~~

564 (a) The office of the judge of the probate court shall be open to conduct business a
 565 minimum of 40 hours each week as determined by the judge of the probate court.

566 (b) Nothing in this Code section shall be construed to require any office of the judge of the
 567 probate court to be open:

568 (1) On any public holiday, legal holiday, day of rest, or similar time that is recognized
 569 and designated as such by the laws of this state or by the governing authority of the
 570 county; or

571 (2) If other county offices are closed because of inclement weather or any other reason."

572 **SECTION 1-30.**

573 Said chapter is further amended by revising Code Section 15-9-86, relating to petitions and
 574 notice and service thereof, as follows:

575 "15-9-86.

576 Every application made to the judge of the probate court for the granting of any order shall
 577 be by verified petition in writing, stating the ground of such application and the order
 578 sought. Unless otherwise provided by law, if notice of the application, other than by
 579 published citation, is necessary under the law or in the judgment of the judge of the probate
 580 court, the judge shall cause a copy of the application, together with a notice of the time of

581 hearing, to be served by the sheriff or some lawful officer upon each party who resides in
 582 this state and to be mailed by registered or certified mail or statutory overnight delivery to
 583 each party who resides outside this state at a known address, at least ten days, plus three
 584 days if mailed, before the hearing. An entry of such service shall be made on the original.
 585 In extraordinary cases, where it is necessary to act before such notice can be given, the
 586 judge of the probate court shall so direct the proceedings as to make no final order until
 587 notice has been given."

588 **SECTION 1-31.**

589 Said chapter is further amended by revising Code Section 15-9-88, relating to objections or
 590 caveats to order, as follows:

591 "15-9-88.

592 All objections or caveats to an order sought shall be in writing and verified, setting forth
 593 the grounds of such caveat."

594 **SECTION 1-32.**

595 Said chapter is further amended by revising Code Section 15-9-101, relating to powers, bond
 596 of personnel, and audits, as follows:

597 "15-9-101.

598 (a) As used in this Code section, the term 'training council' means the Probate Judges
 599 Training Council.

600 (b) ~~The Probate Judges Training Council~~ training council shall be a legal entity and an
 601 agency of the State of Georgia; shall have perpetual existence; may contract; may own
 602 property; may accept funds, grants, and gifts from any public or private source for use in
 603 defraying the expenses of the training council in carrying out its duties; may adopt and use
 604 an official seal; may establish a principal office; may employ such administrative or
 605 clerical personnel as may be necessary and appropriate to fulfill its necessary duties; and
 606 shall have such other powers, privileges, and duties as may be reasonable and necessary
 607 for the proper fulfillment of its purposes and duties.

608 ~~(b)(c)~~ (c) The training council shall require a sufficient bond signed by some surety or
 609 guaranty company authorized to do business in this state of any administrative or clerical
 610 personnel employed by the training council and empowered to handle funds of the training
 611 council. The premiums on such bonds shall be paid by the training council from funds
 612 appropriated or otherwise available to the training council.

613 ~~(c)~~(d) The training council shall establish such auditing procedures as may be required in
 614 connection with the handling of public funds. The state auditor is authorized and directed
 615 to make an annual audit of the acts and doings of the training council and to make a

616 complete report of the same to the General Assembly. The state auditor shall not be
 617 required to distribute copies of the audit to the members of the General Assembly but shall
 618 notify the members of the availability of the audit in the manner which he or she deems to
 619 be most effective and efficient. The report shall disclose all moneys received by the
 620 training council and all expenditures made by the training council, including administrative
 621 expense. He or she shall also make an audit of the affairs of the training council at any
 622 time required by a majority of the training council or the Governor of the state."

623 **SECTION 1-33.**

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

627 "15-9-102.

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

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

632 (2) 'Training council' means the Probate Judges Training Council.

633 (b)(1) The training council shall consist of one member from each district as elected by
 634 the judges of the probate courts within such district. Such elections shall occur prior to
 635 the annual spring business meeting of The Council of Probate Court Judges of Georgia.
 636 ~~Training council members~~ councilmembers shall serve four-year terms; provided,
 637 however, that members from odd-numbered districts shall serve an initial term of two
 638 years and members from even-numbered districts shall serve an initial term of four years.
 639 All members may succeed themselves, and successors shall be elected in the same
 640 manner as the original members immediately prior to the expiration of each member's
 641 term of office. The president of The Council of Probate Court Judges of Georgia shall
 642 be a voting member of the training council ex officio.

643 (2) The Council of Probate Judges of Georgia may add up to four additional members
 644 to the training council. Such members shall be selected from the members of The
 645 Council of Probate Judges of Georgia at large and serve for two-year terms. Such
 646 members may succeed themselves if they are reappointed by the council. If a vacancy
 647 occurs for the additional members added, the council shall determine how to fill the
 648 vacancy.

649 (c) In the event a vacancy occurs in the membership of the training council as a result of
 650 a death, resignation, removal, or failure of reelection as a probate judge, the members of
 651 the district in which such vacancy has occurred shall elect a qualified person from the

652 district to serve for the remainder of the unexpired term of the member whose seat is
 653 vacant. The person elected to fill such vacancy shall take office immediately upon
 654 election."

655 **SECTION 1-34.**

656 Said chapter is further amended by revising Code Section 15-9-103, relating to meetings,
 657 officers, and reimbursement of expenses, as follows:

658 "15-9-103.

659 (a) As used in this Code section, the term 'training council' means the Probate Judges
 660 Training Council.

661 (b) The training council shall meet immediately following not later than the annual spring
 662 business meeting of The Council of Probate Court Judges of Georgia and at such other
 663 times and places as it shall determine necessary or convenient to perform its duties. The
 664 training council shall annually elect a chairperson and such other officers as it shall deem
 665 necessary and shall adopt such rules for the transaction of its business as it shall desire.
 666 The members of the training council shall receive no compensation for their services but
 667 shall be reimbursed for their actual expenses incurred in the performance of their duties as
 668 members of the training council."

669 **SECTION 1-35.**

670 Said chapter is further amended by revising Code Section 15-9-104, relating to the eligibility
 671 of a councilmember to hold office of judge of probate court, as follows:

672 "15-9-104.

673 Notwithstanding any other law, a councilmember shall not be ineligible to hold the office
 674 of judge of the probate court by virtue of his or her position as a member of the ~~training~~
 675 ~~council~~ Probate Judges Training Council."

676 **PART II**

677 **SECTION 2-1.**

678 Code Section 1-3-1 of the Official Code of Georgia Annotated, relating to construction of
 679 statutes generally, is amended by revising division (d)(2)(A)(iv), as follows:

680 "(iv) Code Sections 15-9-63 through ~~15-9-67~~ 15-9-66;"

681
682

PART III
SECTION 3-1.

683 Article 1 of Chapter 5 of Title 53 of the Official Code of Georgia Annotated, relating to
684 general provisions for probate, is amended by revising Code Section 53-5-2, relating to the
685 right to offer a will for probate, as follows:

686 "53-5-2.

687 The right to offer a will for probate shall belong to the executor, if one is named. If for any
688 reason the executor fails to offer the will for probate with reasonable promptness, or if no
689 executor is named, any interested person may offer the will for probate. As used in this
690 Code section, the term 'interested person' shall include, but shall not be limited to, any
691 legatee, devisee, creditor of the decedent, purchaser from an heir of the decedent, an
692 administrator appointed for the decedent prior to the discovery of the will, and any
693 individual making a claim under an earlier will."

694
695

PART IV
SECTION 4-1.

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