

The House Committee on Judiciary Non-Civil offers the following substitute to SB 12:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward,  
2 so as to revise the list of providers who are authorized to participate in the processes for  
3 appointment of a guardian for an adult, the modification and termination of such  
4 guardianship, and the appointment of emergency guardian; to revise the list of providers who  
5 are authorized to participate in the processes for appointment of a conservator for an adult,  
6 the modification and termination of such conservatorship, and the appointment of emergency  
7 conservator; to provide for limitations on the powers and duties of certain emergency  
8 conservators; to revise and provide for definitions; to provide for related matters; to repeal  
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is  
13 amended by revising paragraph (10) of Code Section 29-1-1, relating to definitions, as  
14 follows:

15 "(10) 'Licensed clinical social worker' means a social worker who is licensed as such in  
16 accordance with the provisions of Chapter 10A of Title 43."

S. B. 12 (SUB)

17 **SECTION 2.**

18 Said title is further amended in Code Section 29-4-10, relating to petition for appointment  
 19 of guardian and requirements for petition, by revising paragraph (1) of subsection (c) as  
 20 follows:

21 "(c)(1) The petition shall be sworn to by two or more petitioners or shall be supported  
 22 by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43,  
 23 a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant  
 24 licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in  
 25 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage  
 26 and family therapist or professional counselor licensed under Chapter 10A of Title 43,  
 27 or a licensed clinical social worker, or, if the proposed ward is a patient in any federal  
 28 medical facility in which such a physician, psychologist, ~~or~~ physician assistant, nurse  
 29 practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family  
 30 therapist, professional counselor, or licensed clinical social worker is not available, a  
 31 physician, psychologist, ~~or~~ physician assistant, nurse practitioner, clinical nurse specialist  
 32 in psychiatric/mental health, marriage and family therapist, professional counselor, or  
 33 licensed clinical social worker who is authorized to practice in ~~that~~ such federal facility."

34 **SECTION 3.**

35 Said title is further amended in Code Section 29-4-11, relating to prerequisite judicial finding  
 36 of probable cause, notice, petition, evaluations, and reporting requirements for appointment  
 37 for guardians for adults, by revising subsection (d) as follows:

38 "(d)(1) If the petition is not dismissed ~~under~~ pursuant to subsection (b) of this Code  
 39 section, the court shall appoint an ~~evaluating physician~~ evaluator who shall be a physician  
 40 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to  
 41 practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of  
 42 Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health

43 licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or  
44 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical  
45 social worker, or, if the proposed ward is a patient in any federal medical facility in which  
46 such a physician, psychologist, or physician assistant, nurse practitioner, clinical nurse  
47 specialist in psychiatric/mental health, marriage and family therapist, professional  
48 counselor, or licensed clinical social worker is not available, a physician, psychologist,  
49 or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental  
50 health, marriage and family therapist, professional counselor, or licensed clinical social  
51 worker who is authorized to practice in that such federal facility, other than the physician,  
52 psychologist, or physician assistant, nurse practitioner, clinical nurse specialist in  
53 psychiatric/mental health, marriage and family therapist, professional counselor, or  
54 licensed clinical social worker who completed the affidavit attached to the petition  
55 pursuant to subsection (c) of Code Section 29-4-10.

56 (2) When evaluating the proposed ward, the physician, psychologist, or physician  
57 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,  
58 marriage and family therapist, professional counselor, or licensed clinical social worker  
59 shall explain the purpose of the evaluation to the proposed ward. The proposed ward may  
60 remain silent. Any statements made by the proposed ward during the evaluation shall be  
61 privileged and shall be inadmissible as evidence in any proceeding other than a  
62 proceeding under this chapter. The proposed ward's legal counsel shall have the right to  
63 be present but shall not participate in the evaluation.

64 (3) The evaluation shall be conducted with as little interference with the proposed ward's  
65 activities as possible. The evaluation shall take place at the place and time set in the  
66 notice to the proposed ward and ~~the~~ his or her legal counsel and the time set shall not be  
67 sooner than the fifth day after the service of notice on the proposed ward. The court,  
68 however, shall have the exclusive power to change the place and time of the examination  
69 at any time upon reasonable notice being given to the proposed ward and to his or her

70 legal counsel. If the proposed ward fails to appear, the court may order that the proposed  
71 ward be taken directly to and from a medical facility or the office of the physician,  
72 psychologist, or physician assistant, nurse practitioner, clinical nurse specialist in  
73 psychiatric/mental health, marriage and family therapist, professional counselor, or  
74 licensed clinical social worker for purposes of evaluation only. The evaluation shall be  
75 conducted during the normal business hours of the facility or office and the proposed  
76 ward shall not be detained in the facility or office overnight. The evaluation may include,  
77 but not be limited to:

- 78 (A) A self-report from the proposed ward, if possible;
- 79 (B) Questions and observations of the proposed ward to assess the functional abilities  
80 of the proposed ward;
- 81 (C) A review of the records for the proposed ward, including, but not limited to,  
82 medical records, medication charts, and other available records;
- 83 (D) An assessment of cultural factors and language barriers that may impact the  
84 proposed ward's abilities and living environment; and
- 85 (E) All other factors the evaluator determines to be appropriate to the evaluation.
- 86 (4) A written report shall be filed with the court no later than seven days after the  
87 evaluation, and the court shall serve a copy of the report by first-class mail upon the  
88 proposed ward and the proposed ward's legal counsel and, ~~if any, the guardian ad litem~~  
89 if appointed.
- 90 (5) The report shall be signed under oath by the ~~physician, psychologist, or licensed~~  
91 ~~clinical social worker~~ evaluator and shall:
- 92 (A) State the circumstances and duration of the evaluation, including a summary of  
93 questions or tests utilized, and the elements of the evaluation;
- 94 (B) List all persons and other sources of information consulted in evaluating the  
95 proposed ward;

- 96 (C) Describe the proposed ward's mental and physical state and condition, including  
 97 all observed facts considered by the ~~physician or psychologist or licensed clinical social~~  
 98 ~~worker~~ evaluator;
- 99 (D) Describe the overall social condition of the proposed ward, including support, care,  
 100 education, and well-being; and
- 101 (E) Describe the needs of the proposed ward and their foreseeable duration.
- 102 (6) The proposed ward's legal counsel may file a written response to the evaluation,  
 103 provided the response is filed no later than the date of the commencement of the hearing  
 104 on the petition for guardianship. The response may include, but is not limited to,  
 105 independent evaluations, affidavits of individuals with personal knowledge of the  
 106 proposed ward, and a statement of applicable law."

#### 107 SECTION 4.

108 Said title is further amended in Code Section 29-4-14, relating to petition for appointment  
 109 of emergency guardian of an adult and requirements of petition, by revising paragraph (1)  
 110 of subsection (d) as follows:

111 "(d)(1) The petition shall be sworn to by two or more petitioners or shall be supported  
 112 by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43,  
 113 a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant  
 114 licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in  
 115 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage  
 116 and family therapist or professional counselor licensed under Chapter 10A of Title 43,  
 117 or a licensed clinical social worker, or, if the proposed ward is a patient in any federal  
 118 medical facility in which such a physician, psychologist, ~~or~~ physician assistant, nurse  
 119 practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family  
 120 therapist, professional counselor, or licensed clinical social worker is not available, a  
 121 physician, psychologist, ~~or~~ physician assistant, nurse practitioner, clinical nurse specialist

122 in psychiatric/mental health, marriage and family therapist, professional counselor, or  
123 licensed clinical social worker authorized to practice in that such federal facility."

124 **SECTION 5.**

125 Said title is further amended in Code Section 29-4-15, relating to prerequisite findings prior  
126 to appointment of emergency guardian, evaluation, notice, and hearing, by revising  
127 subsection (c) as follows:

128 "(c) If the court determines that there is probable cause to believe that the proposed ward  
129 is in need of an emergency guardian, the court shall:

130 (1) Immediately appoint legal counsel to represent the proposed ward at the emergency  
131 hearing, which counsel may be the same counsel who is appointed to represent the  
132 proposed ward in the hearing on the petition for guardianship or conservatorship, if any  
133 such petition has been filed, and shall inform counsel of the appointment;

134 (2) Order an emergency hearing to be conducted not sooner than three days nor later than  
135 five days after the filing of the petition;

136 (3) Order an evaluation of the proposed ward by ~~a physician~~ an evaluator who shall be  
137 a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist  
138 licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under  
139 Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in  
140 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage  
141 and family therapist or professional counselor licensed under Chapter 10A of Title 43,  
142 or a licensed clinical social worker, other than the physician, psychologist, or physician  
143 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,  
144 marriage and family therapist, professional counselor, or licensed clinical social worker  
145 who completed the affidavit attached to the petition pursuant to paragraph (1) of  
146 subsection (d) of Code Section 29-4-10. The evaluation shall be conducted within 72  
147 hours of the time the order was issued and a written report shall be furnished to the court

148 and made available to the parties within this time frame, which evaluation and report  
149 shall be governed by the provisions of subsection (d) of Code Section 29-4-11;

150 (4) Immediately notify the proposed ward of the proceedings by service of all pleadings  
151 on the proposed ward, which notice shall:

152 (A) Be served personally on the proposed ward by an officer of the court and shall not  
153 be served by mail;

154 (B) Inform the proposed ward that a petition has been filed to have an emergency  
155 guardian appointed for the proposed ward, that the proposed ward has the right to attend  
156 any hearing that is held, and that, if an emergency guardian is appointed, the proposed  
157 ward may lose important rights to control the management of the proposed ward's  
158 person;

159 (C) Inform the proposed ward of the place and time at which the proposed ward shall  
160 submit to the evaluation provided for by paragraph (3) of this subsection;

161 (D) Inform the proposed ward of the appointment of legal counsel; and

162 (E) Inform the proposed ward of the date and time of the hearing on the emergency  
163 guardianship; and

164 (5) Appoint an emergency guardian to serve until the emergency hearing, with or without  
165 prior notice to the proposed ward, if the threatened risk is so immediate and the potential  
166 harm so irreparable that any delay is unreasonable and the existence of the threatened risk  
167 and potential for irreparable harm is certified by the affidavit of a physician licensed to  
168 practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under  
169 Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43, a  
170 nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or  
171 registered under Chapter 26 of Title 43, a marriage and family therapist or professional  
172 counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker.  
173 Appointment of an emergency guardian under this paragraph is not a final determination  
174 of the proposed ward's need for a nonemergency guardian. Any emergency guardian

175 appointed under this paragraph shall have only those powers and duties specifically  
176 enumerated in the letters of emergency guardianship, and the powers and duties shall not  
177 exceed those absolutely necessary to respond to the immediate threatened risk to the  
178 ward."

179 **SECTION 6.**

180 Said title is further amended in Code Section 29-4-41, relating to modification of  
181 guardianship, by revising subsection (b) as follows:

182 "(b) If the petition for modification alleges a significant change in the capacity of the ward,  
183 it must be supported either by the affidavits of two persons who have knowledge of the  
184 ward, one of whom may be the petitioner, or of a physician licensed to practice medicine  
185 under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title  
186 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or  
187 clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter  
188 26 of Title 43, a marriage and family therapist or professional counselor licensed under  
189 Chapter 10A of Title 43, or a licensed clinical social worker, setting forth the supporting  
190 facts and determinations. If, after reviewing the petition and the affidavits, the court  
191 determines that there is no probable cause to believe that there has been a significant  
192 change in the capacity of the ward, the court shall dismiss the petition. If the petition is not  
193 dismissed, the court shall order that an evaluation be conducted, in accordance with the  
194 provisions of subsection (d) of Code Section 29-4-11. If, after reviewing the evaluation  
195 report, the court finds that there is no probable cause to believe that there has been a  
196 significant change in the capacity of the ward, the court shall dismiss the petition. If the  
197 petition is not dismissed, the court shall schedule a hearing, with notice as the court deems  
198 appropriate."



199

**SECTION 7.**

200 Said title is further amended in Code Section 29-4-42, relating to termination of  
201 guardianship, required evidence, burden of proof, and return of property, by revising  
202 subsection (b) as follows:

203 "(b) A petition for termination must be supported either by the affidavits of two persons  
204 who have knowledge of the ward, one of whom may be the petitioner, or of a physician  
205 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to  
206 practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of  
207 Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health  
208 licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or  
209 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social  
210 worker, setting forth the supporting facts and determinations. If, after reviewing the  
211 petition and the affidavits, the court determines that there is no probable cause to believe  
212 that the guardianship should be terminated, the court shall dismiss the petition. If the  
213 petition is not dismissed, the court shall order that an evaluation be conducted, in  
214 accordance with the provisions of subsection (d) of Code Section 29-4-11. If, after  
215 reviewing the evaluation report, the court finds that there is no probable cause to believe  
216 that the guardianship should be terminated, the court shall dismiss the petition. If the  
217 petition is not dismissed, the court shall schedule a hearing, with such notice as the court  
218 deems appropriate."

219

**SECTION 8.**

220 Said title is further amended in Code Section 29-4-70, relating to right of ward to appeal,  
221 procedure, and appointment of emergency guardian, by revising subsection (d) as follows:

222 "(d) Pending any appeal, the superior court or a probate court that is described in  
223 paragraph (2) of Code Section 15-9-120 may appoint an emergency guardian with such  
224 powers and duties as are described in Code Section 29-4-16; provided, however, that an

225 emergency guardian may be appointed only upon the filing of an affidavit of a physician  
 226 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to  
 227 practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of  
 228 Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health  
 229 licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or  
 230 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social  
 231 worker, setting forth the existence of the emergency circumstances described in subsection  
 232 (d) of Code Section 29-4-14 and after a hearing at which other evidence may be presented.  
 233 The appointment of an emergency guardian is not appealable."

234 **SECTION 9.**

235 Said title is further amended in Code Section 29-5-10, relating to petition for appointment  
 236 of conservator and requirements of petition, by revising paragraph (1) of subsection (c) as  
 237 follows:

238 "(c)(1) The petition shall be sworn to by two or more petitioners or shall be supported  
 239 by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43,  
 240 a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant  
 241 licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in  
 242 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage  
 243 and family therapist or professional counselor licensed under Chapter 10A of Title 43,  
 244 or a licensed clinical social worker, or, if the proposed ward is a patient in any federal  
 245 medical facility in which such a physician, psychologist, ~~or physician assistant, nurse~~  
 246 ~~practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family~~  
 247 ~~therapist, professional counselor, or licensed clinical social worker~~ is not available, a  
 248 physician, psychologist, ~~or physician assistant, nurse practitioner, clinical nurse specialist~~  
 249 ~~in psychiatric/mental health, marriage and family therapist, professional counselor, or~~  
 250 licensed clinical social worker authorized to practice in ~~that~~ such federal facility."

251 **SECTION 10.**

252 Said title is further amended in Code Section 29-5-11, relating to prerequisite finding prior  
253 to appointment of conservator, notice, evaluation, and written report, by revising  
254 subsection (d) as follows:

255 "(d)(1) If the petition is not dismissed pursuant to subsection (b) of this Code section, the  
256 court shall appoint an ~~evaluating physician~~ evaluator who shall be a physician licensed  
257 to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice  
258 under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43,  
259 a nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or  
260 registered under Chapter 26 of Title 43, a marriage and family therapist or professional  
261 counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker, or,  
262 if the proposed ward is a patient in any federal medical facility in which such a physician,  
263 psychologist, ~~or physician assistant, nurse practitioner, clinical nurse specialist in~~  
264 psychiatric/mental health, marriage and family therapist, professional counselor, or  
265 licensed clinical social worker is not available, a physician, psychologist, ~~or physician~~  
266 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,  
267 marriage and family therapist, professional counselor, or licensed clinical social worker  
268 authorized to practice in ~~that~~ such federal facility other than the physician, psychologist,  
269 ~~or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental~~  
270 health, marriage and family therapist, professional counselor, or licensed clinical social  
271 worker who completed the affidavit attached to the petition pursuant to subsection (c) of  
272 Code Section 29-5-10.

273 (2) When evaluating the proposed ward, the physician, psychologist, ~~or physician~~  
274 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,  
275 marriage and family therapist, professional counselor, or licensed clinical social worker  
276 shall explain the purpose of the evaluation to the proposed ward. The proposed ward may  
277 remain silent. Any statements made by the proposed ward during the evaluation shall be

278 privileged and shall be inadmissible as evidence in any proceeding other than a  
279 proceeding under this chapter. The proposed ward's legal counsel shall have the right to  
280 be present but shall not participate in the evaluation.

281 (3) The evaluation shall be conducted with as little interference with the proposed ward's  
282 activities as possible. The evaluation shall take place at the place and time set in the  
283 notice to the proposed ward and to his or her legal counsel and the time set shall not be  
284 sooner than the fifth day after the service of notice on the proposed ward. The court,  
285 however, shall have the exclusive power to change the place and time of the examination  
286 at any time upon reasonable notice being given to the proposed ward and to his or her  
287 legal counsel. If the proposed ward fails to appear, the court may order that the proposed  
288 ward be taken directly to and from a medical facility, office of a physician, psychologist,  
289 or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental  
290 health, marriage and family therapist, professional counselor, or licensed clinical social  
291 worker for purposes of evaluation only. The evaluation shall be conducted during the  
292 normal business hours of the facility or office, and the proposed ward shall not be  
293 detained in the facility or office overnight. The evaluation may include, but not be  
294 limited to:

- 295 (A) A self-report from the proposed ward, if possible;
- 296 (B) Questions and observations of the proposed ward to assess the functional abilities  
297 of the proposed ward;
- 298 (C) A review of the records for the proposed ward, including, but not limited to,  
299 medical records, medication charts, and other available records;
- 300 (D) An assessment of cultural factors and language barriers that may impact the  
301 proposed ward's abilities and living environment; and
- 302 (E) All other factors the evaluator determines to be appropriate to the evaluation.

- 303 (4) A written report shall be filed with the court no later than seven days after the  
 304 evaluation, and the court shall serve a copy of the report by first-class mail upon the  
 305 proposed ward and the proposed ward's legal counsel and guardian ad litem, if appointed.  
 306 (5) The report shall be signed under oath by the ~~physician, psychologist, or licensed~~  
 307 ~~clinical social worker~~ evaluator and shall:
- 308 (A) State the circumstances and duration of the evaluation, including a summary of
  - 309 questions or tests utilized, and the elements of the evaluation;
  - 310 (B) List all persons and other sources of information consulted in evaluating the
  - 311 proposed ward;
  - 312 (C) Describe the proposed ward's mental and physical state and condition, including
  - 313 all observed facts considered by the ~~physician, psychologist, or licensed clinical social~~
  - 314 ~~worker~~ evaluator;
  - 315 (D) Describe the overall social condition of the proposed ward, including support, care,
  - 316 education, and well-being; and
  - 317 (E) Describe the needs of the proposed ward and their foreseeable duration.
- 318 (6) The proposed ward's legal counsel may file a written response to the evaluation,  
 319 provided the response is filed no later than the date of the commencement of the hearing  
 320 on the petition for conservatorship. The response may include, but is not limited to,  
 321 independent evaluations, affidavits of individuals with personal knowledge of the  
 322 proposed ward, and a statement of applicable law."

323 **SECTION 11.**

324 Said title is further amended in Code Section 29-5-14, relating to appointment of emergency  
 325 conservator and requirements of petition, by revising paragraph (1) of subsection (d) as  
 326 follows:

327 "(d)(1) The petition shall be sworn to by two or more petitioners or shall be supported  
 328 by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43,

329 a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant  
 330 licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in  
 331 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage  
 332 and family therapist or professional counselor licensed under Chapter 10A of Title 43,  
 333 or a licensed clinical social worker, or, if the proposed ward is a patient in any federal  
 334 medical facility in which such a physician, psychologist, ~~or physician assistant, nurse~~  
 335 practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family  
 336 therapist, professional counselor, or licensed clinical social worker is not available, a  
 337 physician, psychologist, ~~or physician assistant, nurse practitioner, clinical nurse specialist~~  
 338 in psychiatric/mental health, marriage and family therapist, professional counselor, or  
 339 licensed clinical social worker authorized to practice in ~~that~~ such federal facility."

340

#### SECTION 12.

341 Said title is further amended in Code Section 29-5-15, relating to review of petition,  
 342 dismissal, and requirements of court upon finding need for emergency conservator, by  
 343 revising subsection (c) as follows:

344 "(c) If the court determines that there is probable cause to believe that the proposed ward  
 345 is in need of an emergency conservator, the court shall:

346 (1) Immediately appoint legal counsel to represent the proposed ward at the emergency  
 347 hearing, which counsel may be the same counsel who is appointed to represent the  
 348 proposed ward in the hearing on the petition for guardianship or conservatorship, if any  
 349 such petition has been filed, and shall inform counsel of the appointment;

350 (2) Order an emergency hearing to be conducted not sooner than three days nor later than  
 351 five days after the filing of the petition;

352 (3) Order an evaluation of the proposed ward by ~~a physician~~ an evaluator who shall be  
 353 a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist  
 354 licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under

355 Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in  
356 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage  
357 and family therapist or professional counselor licensed under Chapter 10A of Title 43,  
358 or a licensed clinical social worker, other than the physician, psychologist, or physician  
359 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,  
360 marriage and family therapist, professional counselor, or licensed clinical social worker  
361 who completed the affidavit attached to the petition pursuant to paragraph (1) of  
362 subsection (d) of Code Section 29-5-10, to. Such evaluation shall be conducted within  
363 72 hours of the time such order was issued, and a written report to shall be furnished to  
364 the court and made available to the parties within ~~72 hours~~ such time, which evaluation  
365 and report shall be governed by the provisions of subsection (d) of Code Section  
366 ~~29-5-14~~ 29-5-11;

367 (4) Immediately notify the proposed ward of the proceedings by service of all pleadings  
368 on the proposed ward, which notice shall:

369 (A) Be served personally on the proposed ward by an officer of the court and shall not  
370 be served by mail;

371 (B) Inform the proposed ward that a petition has been filed to have an emergency  
372 conservator appointed for the proposed ward, that the proposed ward has the right to  
373 attend any hearing that is held, and that, if an emergency conservator is appointed, the  
374 proposed ward may lose important rights to control the management of the proposed  
375 ward's property;

376 (C) Inform the proposed ward of the place and time at which the proposed ward shall  
377 submit to the evaluation provided for by paragraph (3) of this subsection;

378 (D) Inform the proposed ward of the appointment of legal counsel; and

379 (E) Inform the proposed ward of the date and time of the hearing on the emergency  
380 conservatorship; and

381 (5) Appoint an emergency conservator to serve until the emergency hearing, with or  
382 without prior notice to the proposed ward, if the threatened risk is so immediate and the  
383 potential harm so irreparable that any delay is unreasonable and the existence of the  
384 threatened risk and potential for irreparable harm is certified by the affidavit of a  
385 physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist  
386 licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under  
387 Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in  
388 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage  
389 and family therapist or professional counselor licensed under Chapter 10A of Title 43,  
390 or a licensed clinical social worker; provided, however, that, pending the emergency  
391 hearing, the court shall order that no withdrawals may be made from any account on the  
392 authority of the proposed ward's signature without the court's prior approval and that the  
393 emergency conservator shall not expend any funds of the proposed ward without prior  
394 court approval. Appointment of an emergency conservator under this paragraph is not  
395 a final determination of the proposed ward's need for a nonemergency conservator. Any  
396 emergency conservator appointed under this paragraph shall have only those powers and  
397 duties specifically enumerated in the letters of emergency conservatorship; such powers  
398 and duties shall not exceed those absolutely necessary to respond to the immediate  
399 threatened risk to the ward; and such powers and duties shall be subject to the limitations  
400 provided in this paragraph regarding the expenditures of funds of the ward."

401 **SECTION 13.**

402 Said title is further amended in Code Section 29-5-23, relating to authority of conservator  
403 and cooperation with guardian or other interested parties, by revising paragraph (13) of  
404 subsection (a) and paragraph (5) of subsection (c) as follows:

405 "(13) Compromise any contested or doubtful claim for or against the ward if the  
406 proposed gross settlement ~~as defined in Code Section 29-3-3~~ is in the amount



407 of \$25,000.00 or less, provided that, for purposes of this paragraph, the term 'gross  
 408 settlement' means the present value of all amounts paid or to be paid in settlement of the  
 409 claim, including cash, medical expenses, expenses of litigation, attorney's fees, and any  
 410 amounts allocated to a structured settlement or other similar financial arrangement; and"  
 411 "(5) To compromise a contested or doubtful claim for or against the ward if the proposed  
 412 gross settlement as defined in Code Section 29-3-3 is more than \$25,000.00, provided  
 413 that, for purposes of this paragraph, the term 'gross settlement' means the present value  
 414 of all amounts paid or to be paid in settlement of the claim, including cash, medical  
 415 expenses, expenses of litigation, attorney's fees, and any amounts allocated to a structured  
 416 settlement or other similar financial arrangement;"

417

#### SECTION 14.

418 Said title is further amended in Code Section 29-5-71, relating to modification of  
 419 conservatorship, contents of petition for modification, and burden of proof, by revising  
 420 subsection (b) as follows:

421 "(b) If the petition for modification alleges a significant change in the capacity of the ward,  
 422 it must be supported either by the affidavits of two persons who have knowledge of the  
 423 ward, one of whom may be the petitioner, or of a physician licensed to practice medicine  
 424 under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title  
 425 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or  
 426 clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter  
 427 26 of Title 43, a marriage and family therapist or professional counselor licensed under  
 428 Chapter 10A of Title 43, or a licensed clinical social worker, setting forth the supporting  
 429 facts and determinations. If, after reviewing the petition and the affidavits, the court  
 430 determines that there is no probable cause to believe that there has been a significant  
 431 change in the capacity of the ward, the court shall dismiss the petition. If the petition is not  
 432 dismissed, the court shall order that an evaluation be conducted, in accordance with the

433 provisions of subsection (d) of Code Section 29-5-11. If, after reviewing the evaluation  
434 report, the court finds that there is no probable cause to believe that there has been a  
435 significant change in the capacity of the ward, the court shall dismiss the petition. If the  
436 petition is not dismissed, the court shall schedule a hearing, with such notice as the court  
437 deems appropriate."

438 **SECTION 15.**

439 Said title is further amended in Code Section 29-5-72, relating to termination of  
440 conservatorship, required evidence to support, burden of proof, and death of ward, by  
441 revising subsection (b) as follows:

442 "(b) A petition for termination must be supported either by the affidavits of two persons  
443 who have knowledge of the ward, one of whom may be the petitioner, or of a physician  
444 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to  
445 practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of  
446 Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health  
447 licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or  
448 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social  
449 worker, setting forth the supporting facts and determinations. If, after reviewing the  
450 petition and the affidavits, the court determines that there is no probable cause to believe  
451 that the conservatorship should be terminated, the court shall dismiss the petition. If the  
452 petition is not dismissed, the court shall order that an evaluation be conducted in  
453 accordance with the provisions of subsection (d) of Code Section 29-5-11. If, after  
454 reviewing the evaluation report, the court finds that there is no probable cause to believe  
455 that the conservatorship should be terminated, the court shall dismiss the petition. If the  
456 petition is not dismissed, the court shall schedule a hearing with such notice as the court  
457 deems appropriate."

458

**SECTION 16.**

459 Said title is further amended in Code Section 29-5-110, relating to proceedings for appeal,  
460 appointment of guardians ad litem, bond and security prior to removal, liability of surety of  
461 predecessor conservator, and jurisdiction, by revising subsection (d) as follows:

462 "(d) Pending any appeal, the superior court or a probate court that is described in  
463 paragraph (2) of Code Section 15-9-120 may appoint an emergency conservator with  
464 powers and duties as are described in Code Section 29-5-16; provided, however, that such  
465 emergency conservator may be appointed only upon the filing of an affidavit of a physician  
466 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to  
467 practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of  
468 Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health  
469 licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or  
470 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social  
471 worker, setting forth the existence of the emergency circumstances described in subsection  
472 (d) of Code Section 29-5-14 and after a hearing at which other evidence may be presented.  
473 The appointment of an emergency conservator is not appealable."

474

**SECTION 17.**

475 Said title is further amended by revising Code Section 29-9-16, relating to compensation to  
476 physicians, psychologists, or licensed clinical social workers, as follows:

477 "29-9-16.

478 (a) For the evaluation or examination required by subsection (d) of Code Section 29-4-11,  
479 subsection (c) of Code Section 29-4-15, subsection (b) of Code Section 29-4-42,  
480 subsection (d) of Code Section 29-5-11, subsection (c) of Code Section 29-5-15, or  
481 subsection (b) of Code Section 29-5-71, the evaluating physician, psychologist, ~~or~~  
482 physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,

483 marriage and family therapist, professional counselor, or licensed clinical social worker  
484 shall receive a reasonable fee commensurate with the task performed, plus actual expenses.

485 (b) In the event the attendance of the evaluating physician, psychologist, or physician  
486 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health, marriage  
487 and family therapist, professional counselor, or licensed clinical social worker shall be  
488 required by the court for a hearing under subsection (d) of Code Section 29-4-12,  
489 subsection (a) of Code Section 29-4-16, subsection (b) of Code Section 29-4-42, subsection  
490 (d) of Code Section 29-5-12, subsection (a) of Code Section 29-5-16, or subsection (b) of  
491 Code Section 29-5-71, other than pursuant to a subpoena requested by a party to the  
492 proceeding, the evaluating physician, psychologist, or physician assistant, nurse  
493 practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family  
494 therapist, professional counselor, or licensed clinical social worker shall receive a  
495 reasonable fee commensurate with the task performed, plus actual expenses.

496 (c) All fees and expenses payable under subsection (a) or (b) of this Code section shall be  
497 assessed by the court and paid in accordance with the provisions of Code Section 29-9-3."

498 **SECTION 18.**

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