

1 HB25  
2 180159-1  
3 By Representative Hill  
4 RFD: Judiciary  
5 First Read: 07-FEB-17  
6 PFD: 12/01/2016

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Under existing law, a judge of probate is  
9 liable for any neglect or an omission in taking a  
10 bond or for taking an insufficient bond from a  
11 conservator or from a personal representative of an  
12 estate.

13 This bill would provide that the judge of  
14 probate would not be liable for actions related to  
15 taking a bond from a conservator or from a personal  
16 representative of an estate unless the action of  
17 the judge of probate was wanton, fraudulent, or  
18 intentional.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT

23  
24 Relating to the probate court; to amend Sections  
25 26-3-13 and 43-2-82, Code of Alabama 1975; to further provide  
26 for the liability of the judge of probate for not taking a

1 bond or for taking an insufficient bond from a conservator or  
2 from a personal representative of an estate.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 26-3-13 and 43-2-82, Code of  
5 Alabama 1975, are amended to read as follows:

6 "§26-3-13.

7 "The judge of probate and the sureties on his or her  
8 official bond are liable to any person injured for any ~~neglect~~  
9 ~~or omission~~ wanton, fraudulent, or intentional misconduct of  
10 the judge in not taking from a conservator a good and  
11 sufficient bond or for taking thereon insufficient surety or  
12 for ~~the neglect or omission to require~~ wanton, fraudulent, or  
13 intentional misconduct in not requiring the execution of a new  
14 or ~~of an~~ additional bond in the cases in which such bond is  
15 required by law, if he or she knows or has good cause to  
16 believe that the case exists in which such new or additional  
17 bond should be required.

18 "§43-2-82.

19 ~~The~~ When a party is required to give a bond and is  
20 not otherwise exempt from giving a bond, the judge of probate  
21 is liable for any ~~neglect or omission in~~ wanton, fraudulent,  
22 or intentional misconduct for not taking requiring a bond or  
23 for taking an insufficient bond from any ~~executor or~~  
24 ~~administrator; and any~~ personal representative, fiduciary, or  
25 someone serving in a similar capacity. Any person injured  
26 thereby may maintain an action against ~~such~~ the judge and his

1     or her sureties and recover ~~according to~~ for the injury  
2     proved."

3                     Section 2. This act shall become effective on the  
4     first day of the third month following its passage and  
5     approval by the Governor, or its otherwise becoming law.