1   HB591

2   129784-1

3   By Representative Wood

4   RFD: Judiciary

5   First Read: 03-MAY-11

1   129784-1:n:04/19/2011:FC/ll LRS2011-2298

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8   SYNOPSIS: Under existing law, the 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 the executor or administrator

12   of an 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 an

16   executor or administrator of an estate unless the

17   action of the judge of probate was wanton,

18   fraudulent, or intentional.

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20   A BILL

21   TO BE ENTITLED

22   AN ACT

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24   Relating to the judge of probate; to amend Sections

25   26-3-13 and 43-2-82 of the Code of Alabama 1975, to further

26   provide for the liability of the judge of probate for not

1   taking a bond or for taking an insufficient bond from a

2   conservator or from an executor or administrator of an estate.

3   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4   Section 1. Sections 26-3-13 and 43-2-82 of the Code

5   of 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 <u>only</u> for any

9   ~~neglect or omission~~ <u>wanton, fraudulent, or intentional</u>

10 <u>misconduct</u> of the judge in not taking from a conservator a

11 good and sufficient bond or for taking thereon insufficient

12 surety or for ~~the neglect or omission to require~~ <u>wanton,</u>

13 <u>fraudulent, or intentional misconduct in not requiring</u> the

14 execution of a new or ~~of an~~ additional bond in the cases in

15 which such bond is required by law, if he or she knows or has

16 good cause to believe that the case exists in which such new

17 or additional bond should be required.

18   "§43-2-82.

19   "~~The~~ <u>When a party is required to give a bond and is</u>

20 <u>not otherwise exempt from giving a bond, the</u> judge of probate

21 is liable <u>only</u> for any ~~neglect or omission in~~ <u>wanton,</u>

22 <u>fraudulent, or intentional misconduct for</u> not ~~taking~~ <u>requiring</u>

23 <u>a</u> bond or for taking an insufficient bond from any executor<u>,</u>

24 ~~or~~ administrator~~, and any~~<u>, fiduciary, or someone serving in a</u>

25 <u>similar capacity. Any</u> person injured thereby may maintain an

26 action against ~~such~~ <u>the</u> judge and his <u>or her</u> sureties and

27 recover ~~according to~~ <u>for</u> the injury proved."

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1   Section 2. This act shall become effective

2   immediately following its passage and approval by the

3   Governor, or its otherwise becoming law.