

1 HB95
2 173171-1
3 By Representative Pringle
4 RFD: Judiciary
5 First Read: 03-FEB-16

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8 SYNOPSIS: Under existing law, fees in probate court
9 are payable at the termination of suit.

10 This bill, at the discretion of the probate
11 court, would provide for the payment of court costs
12 at the time that a petition, motion, and other
13 pleading is filed. The bill would allow the court
14 to order the payment of a security deposit to cover
15 expected costs.

16 Under existing law, a judge of probate is
17 liable for any neglect or an omission in taking a
18 bond or for taking an insufficient bond from a
19 conservator or from a personal representative of an
20 estate.

21 This bill would provide that the judge of
22 probate would not be liable for actions related to
23 taking a bond from a conservator or from a personal
24 representative of an estate unless the action of
25 the judge of probate was wanton, fraudulent, or
26 intentional.

1 A BILL
2 TO BE ENTITLED
3 AN ACT
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5 Relating to the probate court; to amend Sections
6 12-19-43, 26-3-13, and 43-2-82, Code of Alabama 1975; to
7 provide for the payment of court costs at the discretion of
8 the court at the time that petitions, motions, and other
9 pleadings are filed and to provide for the payment of security
10 deposits as ordered by the court to cover expected costs; and
11 to further provide for the liability of the judge of probate
12 for not taking a bond or for taking an insufficient bond from
13 a conservator or from a personal representative of an estate.
14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 12-19-43, 26-3-13, and 43-2-82,
16 Code of Alabama 1975, are amended to read as follows:

17 "§12-19-43.

18 "(a) ~~Except as otherwise provided by local act or~~
19 ~~general act with local application, fees~~ Fees allowed by law
20 ~~for services~~ in connection with proceedings before probate
21 judges ~~shall be due only,~~ at the discretion of the court, may
22 be collected at the time a pleading is filed in probate court
23 or at the termination of the suit, ~~except that fees.~~ Fees for
24 transcripts of papers filed in the case, ~~other than copies of~~
25 ~~cost or fee bills,~~ to which parties are entitled as of course,
26 shall be due when the service is performed, ~~and no fee, except~~

1 ~~for final record, shall be demanded or received in any case~~
2 ~~unless the service has been performed.~~

3 "(b) In cases where appropriate, the court may order
4 that security deposits be deposited into the probate court to
5 cover expected court costs. Any unused security deposits shall
6 be returned to the person who made the deposit.

7 "§26-3-13.

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

19 "§43-2-82.

20 ~~The~~ When a party is required to give a bond and is
21 not otherwise exempt from giving a bond, the judge of probate
22 is liable for any ~~neglect or omission in~~ wanton, fraudulent,
23 or intentional misconduct for not taking requiring a bond or
24 for taking an insufficient bond from any ~~executor or~~
25 ~~administrator; and any~~ personal representative, fiduciary, or
26 someone serving in a similar capacity. Any person injured
27 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.