

Senate Bill 436

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

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, relating to construction
13 of statutes generally, so as to conform a cross-reference; to provide for related matters; to
14 repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **PART I**
17 **SECTION 1-1.**

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

21 "15-9-1.1.

22 ~~(a) Any person who is or was elected, appointed, or made a judge of the probate court by~~
23 ~~operation of law on or prior to January 1, 1990, shall satisfactorily complete the required~~
24 ~~initial training course in the performance of his or her duties conducted by the Institute of~~
25 ~~Continuing Judicial Education of Georgia and shall file a certificate of such training issued~~
26 ~~by such institute with the Probate Judges Training Council on or before December 31,~~

27 ~~1990, in order to become a certified judge of the probate court. The time and place of such~~
 28 ~~training course and number of hours shall be determined by the Probate Judges Training~~
 29 ~~Council and the Institute of Continuing Judicial Education of Georgia.~~

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

40 ~~(c)(1)(b)~~ Each judge of the probate court shall be required to complete additional training
 41 prescribed by the Probate Judges Training Council and the Institute of Continuing Judicial
 42 Education of Georgia during each year he or she serves as a judge of the probate court ~~after~~
 43 ~~the initial year of training and shall file a certificate of such additional~~ and complete an
 44 attendance record of such training issued by the Institute of Continuing Judicial Education
 45 of Georgia and file it with the Probate Judges Training Council.

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

51 ~~(d)(c)~~ Any judge who fails to ~~become a certified judge within one year after taking office~~
 52 ~~as a judge of the probate court~~ complete the new judge orientation training course as
 53 required by subsection (a) of this Code section or to earn the required cumulative annual
 54 minimal credit hours of training during any one-year period after the ~~initial year of~~ new
 55 judge orientation training may be given a six-month administrative extension by the
 56 Probate Judges Training Council during which to fulfill this requirement. Individual
 57 requests for extensions beyond the initial six-month extension for reasons of disability,
 58 hardship, or extenuating circumstance may be approved on a case-by-case basis by the
 59 Probate Judges Training Council. Upon failure to earn the required hours within the
 60 six-month extension period or additional extension period or periods granted, the Probate
 61 Judges Training Council shall promptly notify the Judicial Qualifications Commission
 62 which shall recommend to the Supreme Court removal of the probate judge from office

63 unless the Judicial Qualifications Commission finds that the failure was caused by facts
64 circumstances beyond the control of the probate judge.

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

72 SECTION 1-2.

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

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

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

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

82 (C) Is a registered voter;

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

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

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

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

96 (b) The judge of the probate court ~~cannot~~ shall not, during his or her term of office, be
97 executor, administrator, or guardian, or other agent of a fiduciary nature required to
98 account to his or her court. When any ~~person~~ individual holding such trust is elected judge

99 of the probate court, his or her letters and powers immediately abate upon his or her
 100 qualification. However, a judge of the probate court may be an administrator, guardian,
 101 or executor in a case where the jurisdiction belongs to another county or in a special case
 102 ~~where~~ when he or she is allowed by law and required to account to the judge of the probate
 103 court of another county."

104 **SECTION 1-3.**

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

108 "15-9-2.1.

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

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

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

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

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

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

131 (b) **Authority.** Both full-time and part-time associate judges of the probate court shall be
 132 vested with all of the authority of the judge of the probate court of the county or counties
 133 for which the associate judge of the probate court is appointed. In all proceedings before

134 the court, the judgment of ~~the~~ an associate judge of the probate court shall be the final
135 judgment of the court for appeal purposes.

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

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

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

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

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

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

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

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

162 (1) ~~It shall be unlawful for any full-time associate judge of the probate court to engage~~
163 ~~in any practice of law outside his or her role as an associate judge of the probate court;~~
164 ~~provided, however, that such prohibition shall not apply when he or she is serving as a~~
165 ~~judge advocate general or in any other military role in a reserve component of the United~~
166 ~~States Army, United States Navy, United States Marine Corps, United States Coast~~
167 ~~Guard, United States Air Force, United States National Guard, Georgia National Guard,~~
168 ~~Georgia Air National Guard, Georgia Naval Militia, or the State Defense Force. It shall~~
169 be unlawful for any ~~part-time~~ associate judge of the probate court to engage directly or
170 indirectly in the practice of law in his or her own name or in the name of another as a

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

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

188 ~~(f) **Assumption of duties upon vacancy in the office of judge of probate court.**~~
 189 ~~Notwithstanding the provisions of subsection (c) of Code Section 15-9-2 or Code Sections~~
 190 ~~15-9-10, 15-9-11, and 15-9-11.1, the senior full-time associate judge of the probate court~~
 191 ~~shall be the first in line to serve as judge of the probate court in the event of a vacancy in~~
 192 ~~the office of the judge of probate court and shall dispense with any and all unfinished~~
 193 ~~proceedings pursuant to Code Section 15-9-12. The associate judge of the probate court~~
 194 ~~shall be eligible to fill a vacancy in the office of probate judge for the remainder of the~~
 195 ~~unexpired term without regard to whether such associate probate judge meets any residency~~
 196 ~~requirements otherwise imposed by law; however, the associate probate judge shall become~~
 197 ~~a resident of the county before qualifying for election to the office of probate judge. Any~~
 198 ~~associate probate judge taking office as authorized by this subsection shall thereafter be~~
 199 ~~eligible to succeed himself or herself as long as he or she remains a resident of the county.~~

200 ~~(g)~~(f) **Proceedings when an associate judge of the probate court is disqualified.**
 201 Whenever the judge of the probate court is ~~disqualified~~ unable to act in any case pursuant
 202 ~~to Code Section 15-9-13, the~~ because of a conflict of interest, an unlawful act or the
 203 accusation of an unlawful act by such judge, or other disqualification of such judge, any
 204 associate judge of the probate court shall also be disqualified."

205 **SECTION 1-4.**

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

208 "15-9-3.

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

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

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

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

219 **SECTION 1-5.**

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

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

224 **SECTION 1-6.**

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

227 "15-9-5.

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

231 **SECTION 1-7.**

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

234 "15-9-7.

235 The judges of the probate courts ~~must~~ shall give bond or surety in the sum of ~~\$25,000.00~~
236 \$100,000.00, which amount may be increased in any county by local Act, for the faithful
237 discharge of their duties as clerks of the judges of the probate courts. The county
238 governing authority shall pay such bond."

239 **SECTION 1-8.**

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

242 "15-9-8.

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

252 **SECTION 1-9.**

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

255 "15-9-9.

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

262 **SECTION 1-10.**

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

265 "15-9-10.

266 (a) ~~Until a vacancy in the office of judge of the probate court is filled, the chief judge of~~
267 ~~the city or state court, as the case may be, shall serve as the judge and shall be vested with~~
268 ~~all the powers of the judge. If there is no such chief judge or if for some reason the chief~~
269 ~~judge cannot serve as judge, the clerk of the superior court of the county shall serve as~~
270 ~~judge and shall be vested with all the powers of the judge. In the event that the clerk of the~~
271 ~~superior court, for some reason, cannot serve as judge, the chief judge of the superior court~~
272 ~~of the county shall appoint a person to serve as judge; such person shall be vested with all~~
273 ~~the powers of the judge. If at any time there is a vacancy in the office of judge of the~~

274 probate court, such vacancy shall be filled as set forth in Code Section 15-9-11. Any
 275 individual serving during such vacancy shall be vested with all the powers of the judge of
 276 the probate court.

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

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

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

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

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

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

305 ~~(b) Reserved."~~

306 **SECTION 1-11.**

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

309 "15-9-11.

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

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

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

323 **SECTION 1-12.**

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

327 "~~15-9-11.1.~~

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

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

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

339 ~~(2) If the next succeeding general election is not one at which county officers are elected~~
 340 ~~and is more than 60 days after the occurrence of the vacancy, a duly qualified person~~
 341 ~~shall be elected judge of the probate court at a special election held at the same time as~~
 342 ~~the general election. The person so elected shall take office on the first day of January~~
 343 ~~following such election and shall serve for the remainder of the unexpired term of office.~~

344 ~~(c) The chief clerk performing the duties as judge of the probate court shall receive the~~
 345 ~~same compensation, less any longevity raises received by the prior judge, and shall be paid~~
 346 ~~in the same manner, as such judge of the probate court would have received."~~

347 **SECTION 1-13.**

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

350 "15-9-13.

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

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

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

371 ~~(d)~~(c) Except as otherwise provided in paragraph (4) of subsection (a) of Code Section
 372 15-9-2.1, the The compensation of the person individual serving as provided in this Code
 373 section shall be fixed by the board of county commissioners or, in those counties which
 374 have no county commissioners, by the chief judge of the superior court. The compensation
 375 shall be paid from the general funds of the county. All fees collected during ~~the~~ such
 376 service by an individual who is not an associate judge of the probate court shall be paid into
 377 the general funds of the county."

378 **SECTION 1-14.**

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

382 "15-9-14.

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

387 **SECTION 1-15.**

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

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

396 **SECTION 1-16.**

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

399 "15-9-16.

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

404 **SECTION 1-17.**

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

407 "15-9-17.

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

411 (1) Mailing by the probate court of a copy of the document to be served to the minor or
 412 incapacitated adult by certified mail or statutory overnight delivery; and
 413 (2) Serving the legal guardian or guardian ad litem of such minor or incapacitated adult
 414 if such legal guardian or guardian ad litem:
 415 (A) Acknowledges receipt of such service; and
 416 (B) Certifies that he or she has delivered a copy of the document so served to the minor
 417 or incapacitated adult.
 418 (b) The acknowledgment and certification of the legal guardian or guardian ad litem and
 419 the certificate of the mailing to the minor or incapacitated adult shall be filed with the court
 420 as proof of such service."

421 **SECTION 1-18.**

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

424 "15-9-18.

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

431 **SECTION 1-19.**

432 Said chapter is further amended by revising paragraph (9) of subsection (b) of Code Section
 433 15-9-30, relating to probate court jurisdiction and additional powers, as follows:

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

436 **SECTION 1-20.**

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

439 "(b) The appointed clerks, including the chief clerk of the probate judge, may do all acts
 440 the judges of the probate courts could do which are not judicial in their nature ~~and may act~~
 441 ~~for judges of the probate courts in those cases in which they are authorized to act for the~~
 442 ~~judge by Code Section 15-9-13.~~ The chief clerk of the probate judge shall also have the
 443 authority prescribed in Code Section ~~15-9-11.1~~ 15-9-10."

444 **SECTION 1-21.**

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

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

457 **SECTION 1-22.**

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

460 "15-9-40.

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

465 **SECTION 1-23.**

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

468 "15-9-42.

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

473 (b) Nothing in this Code section shall restrict or otherwise prohibit a clerk or a probate
 474 judge acting as such from electing to store for computer retrieval any or all books, records,
 475 dockets, files, or indices; nor shall a clerk or a probate judge acting as such be prohibited
 476 from combining or consolidating any books, records, dockets, files, or indices in
 477 connection with the filing for record of papers of the kind specified in this Code section or
 478 in any other law; provided, however, that any automated or computerized record-keeping

479 method or system shall provide for the systematic and safe preservation and retrieval of all
 480 books, records, dockets, files, or indices. When the clerk or a probate judge acting as such
 481 elects to store for computer retrieval any or all books, records, dockets, files, or indices, the
 482 same data elements used in a manual system shall be used, and the same integrity and
 483 security shall be maintained."

484 **SECTION 1-24.**

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

487 "15-9-44.

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

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

499 **SECTION 1-25.**

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

502 "15-9-45.

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

510 **SECTION 1-26.**

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

513 "15-9-65.
 514 The amounts provided in paragraph (1) of subsection (a) of Code Section 15-9-63 and
 515 Code Section 15-9-64, as increased by paragraph (2) of subsection (a) of Code Section
 516 15-9-63, shall be increased by multiplying said amounts by the percentage which equals
 517 5 percent times the number of completed four-year terms of office served by any judge of
 518 a probate court after December 31, 1976, effective the first day of January following the
 519 completion of each such period of service. This Code section shall not be construed to
 520 affect any local legislation except ~~where~~ when the local legislation provides for a salary
 521 lower than the salary provided in Code Sections 15-9-63, 15-9-64, 15-9-66, and this Code
 522 section, ~~and Code Sections 15-9-66 and 15-9-67~~, in which event Code Sections 15-9-63,
 523 15-9-64, 15-9-66, and this Code section, ~~and Code Sections 15-9-66 and 15-9-67~~ shall
 524 prevail."

525 **SECTION 1-27.**

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

529 "15-9-66.
 530 Code Sections 15-9-63 through 15-9-65; and this Code section, ~~and Code Section 15-9-67~~
 531 shall not be construed to reduce the salary of any judge of a probate court in office on
 532 July 1, 1991; provided, however, that successors to such judges of the probate courts in
 533 office on July 1, 1991, shall be governed by the provisions of said Code sections. The
 534 minimum salaries provided for in Code Sections 15-9-63 through 15-9-65; and this Code
 535 section, ~~and Code Section 15-9-67~~ shall be considered as salary only. Expenses for deputy
 536 clerks, equipment, supplies, copying equipment, and other necessary and reasonable
 537 expenses for the operation of a probate court shall come from funds other than the funds
 538 specified as salary in Code Sections 15-9-63 through 15-9-65; and this Code section, ~~and~~
 539 ~~Code Section 15-9-67.~~"

540 **SECTION 1-28.**

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

543 "15-9-67.
 544 ~~Code Sections 15-9-63 through 15-9-66 and this Code section shall not be construed so as~~
 545 ~~to place any judge of the probate court who is on the fee system of compensation on a~~
 546 ~~salary system of compensation. Any judge of a probate court who is compensated under~~
 547 ~~the fee system of compensation on July 1, 1978, shall continue to receive compensation~~

548 ~~under the fee system of compensation until local legislation is enacted by the General~~
 549 ~~Assembly placing such judge of the probate court on an annual salary equal to the salary~~
 550 ~~provided for in Code Sections 15-9-63 through 15-9-66 and this Code section Reserved.~~"

551 **SECTION 1-29.**

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

554 "15-9-83.

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

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

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

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

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

569 **SECTION 1-30.**

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

572 "15-9-86.

573 Every application made to the judge of the probate court for the granting of any order shall
 574 be by verified petition in writing, stating the ground of such application and the order
 575 sought. Unless otherwise provided by law, if notice of the application, other than by
 576 published citation, is necessary under the law or in the judgment of the judge of the probate
 577 court, the judge shall cause a copy of the application, together with a notice of the time of
 578 hearing, to be served by the sheriff or some lawful officer upon each party who resides in
 579 this state and to be mailed by registered or certified mail or statutory overnight delivery to
 580 each party who resides outside this state at a known address, at least ten days, plus three
 581 days if mailed, before the hearing. An entry of such service shall be made on the original.
 582 In extraordinary cases, where it is necessary to act before such notice can be given, the

583 judge of the probate court shall so direct the proceedings as to make no final order until
584 notice has been given."

585 **SECTION 1-31.**

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

588 "15-9-88.

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

591 **SECTION 1-32.**

592 Said chapter is further amended by revising subsection 15-9-101, relating to powers, bond
593 of personnel, and audits, as follows:

594 "15-9-101.

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

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

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

610 ~~(c)~~(d) The training council shall establish such auditing procedures as may be required in
611 connection with the handling of public funds. The state auditor is authorized and directed
612 to make an annual audit of the acts and doings of the training council and to make a
613 complete report of the same to the General Assembly. The state auditor shall not be
614 required to distribute copies of the audit to the members of the General Assembly but shall
615 notify the members of the availability of the audit in the manner which he or she deems to
616 be most effective and efficient. The report shall disclose all moneys received by the
617 training council and all expenditures made by the training council, including administrative

618 expense. He or she shall also make an audit of the affairs of the training council at any
619 time required by a majority of the training council or the Governor of the state."

620 **SECTION 1-33.**

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

624 "15-9-102.

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

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

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

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

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

646 (c) In the event a vacancy occurs in the membership of the training council as a result of
647 a death, resignation, removal, or failure of reelection as a probate judge, the members of
648 the district in which such vacancy has occurred shall elect a qualified person from the
649 district to serve for the remainder of the unexpired term of the member whose seat is
650 vacant. The person elected to fill such vacancy shall take office immediately upon
651 election."

652 **SECTION 1-34.**

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

655 "15-9-103.

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

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

666 **SECTION 1-35.**

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

669 "15-9-104.

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

673 **PART II**

674 **SECTION 2-1.**

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

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

678 **PART III**

679 **SECTION 3-1.**

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