1   HB238

2   150229-3

3   By Representatives Standridge, Jones, Newton, Wallace, Beech,

4   Morrow, Shedd and Wood

5   RFD: Judiciary

6   First Read: 15-JAN-14

1   150229-3:n:12/19/2013:FC/th LRS2013-1233R1

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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 an executor or administrator of

12   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. The bill would also

19   specify that the judge of probate would have the

20   same immunity as a circuit judge.

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22   A BILL

23   TO BE ENTITLED

24   AN ACT

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26   Relating to the judge of probate; to amend Sections

27   26-3-13 and 43-2-82 of the Code of Alabama 1975, to further

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

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

3   conservator or from an executor or administrator of an estate;

4   and to specify that the judge of probate would have the same

5   immunity as a circuit judge.

6   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

8   of Alabama 1975, are amended to read as follows:

9   "§26-3-13.

10   "The judge of probate and the sureties on his or her

11   official bond are liable to any person injured <u>only</u> for any

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

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

14   good and sufficient bond or for taking thereon insufficient

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

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

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

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

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

20   or additional bond should be required.

21   "§43-2-82.

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

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

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

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

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

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

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

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

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

4   Section 2. A judge of probate shall have immunity in

5   the same manner and to the same extent as a circuit judge in

6   the State of Alabama, except as otherwise provided in Sections

7   26-3-13 and 43-2-82, Code of Alabama 1975.

8   Section 3. This act shall become effective

9   immediately following its passage and approval by the

10 Governor, or its otherwise becoming law.