

1 SB218
2 150229-3
3 By Senators Scofield, Dial, Holley, Fielding and Bussman
4 RFD: Judiciary
5 First Read: 21-JAN-14

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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.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
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 only for any
12 ~~neglect or omission~~ wanton, fraudulent, or intentional
13 misconduct 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~~ wanton,
16 fraudulent, or intentional misconduct in not requiring 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~~ When a party is required to give a bond and is
23 not otherwise exempt from giving a bond, the judge of probate
24 is liable only for any ~~neglect or omission in~~ wanton,
25 fraudulent, or intentional misconduct for not ~~taking~~ requiring
26 a bond or for taking an insufficient bond from any executor,
27 ~~or administrator; and any,~~ fiduciary, or someone serving in a

1 similar capacity. Any person injured thereby may maintain an
2 action against ~~such~~ the judge and his or her sureties and
3 recover ~~according to~~ for 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.