

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1448

5 By: Representative Gazaway
6 By: Senator G. Stubblefield
7

For An Act To Be Entitled

9 AN ACT TO MODERNIZE PROBATE PROCEEDINGS; TO AMEND AND
10 UPDATE THE LAW CONCERNING ADOPTIONS, GUARDIANSHIPS,
11 AND THE ADMINISTRATION OF DECEDENTS' ESTATES; TO
12 ALLOW FOR A WAIVER OF A HOME STUDY OR A HEALTH
13 HISTORY AND GENETIC AND SOCIAL HISTORY OF A CHILD TO
14 BE ADOPTED WHEN THE PETITIONER HAS HAD A GUARDIANSHIP
15 OF THE PERSON OVER THE PROPOSED ADOPTEE FOR ONE OR
16 MORE YEARS IMMEDIATELY PRIOR; TO AMEND THE LAW
17 CONCERNING A BOND FOR A GUARDIANSHIP AND FOR THE
18 ADMINISTRATION OF A DECEDENT'S ESTATE; TO AMEND THE
19 LAW CONCERNING APPRAISALS BEFORE THE SALE OF REAL
20 PROPERTY BY A PERSONAL REPRESENTATIVE; TO ALLOW FOR
21 AN ORDER OF ATTORNEY'S FEES AND COSTS IN CERTAIN
22 GUARDIANSHIP CASES; AND FOR OTHER PURPOSES.
23
24

Subtitle

25 TO MODERNIZE PROBATE PROCEEDINGS; AND TO
26 AMEND AND UPDATE THE LAW CONCERNING
27 ADOPTIONS, GUARDIANSHIPS, AND THE
28 ADMINISTRATION OF DECEDENTS' ESTATES; AND
29 TO AMEND THE PROBATE CODE.
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33 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
34

35 SECTION 1. Arkansas Code § 9-9-212(c), concerning adoptions for which
36 a home study is not required, is amended to read as follows:



1 (c)~~(1)~~ Unless directed by the court, a home study is not required ~~in~~
 2 ~~eases in which the person to be adopted is an adult. The court may also waive~~
 3 ~~the requirement for a home study when a stepparent is the petitioner or the~~
 4 ~~petitioner and the minor are related to each other in the second degree if:~~

5 (1) The person to be adopted is an adult;

6 (2) The petitioner is a stepparent;

7 (3) The petitioner and the child to be adopted are related to
 8 each other within the third degree of consanguinity; or

9 (4)(A) The petitioner has had a guardianship of the person over
 10 the proposed adoptee for a period of no less than one (1) year immediately
 11 prior to the date the petition for adoption is filed.

12 (B) The one-year period in subsection (c)(1)(D)(i) of this
 13 section shall not include any time that the petitioner was a temporary
 14 guardian or emergency guardian of the person to be adopted.

15 ~~(2) The home study shall not be waived when the case is a fast-~~
 16 ~~track adoption of a Garrett's Law baby under § 9-9-702.~~

17
 18 SECTION 2. Arkansas Code § 9-9-212(g)(2), concerning adoptions for
 19 which a detailed, written health history and genetic and social history of
 20 the child to be adopted is not required, is amended to read as follows:

21 (2) Unless directed by the court, a detailed, written health
 22 history and genetic and social history of the child is not required if:

23 (A) The person to be adopted is an adult;

24 (B) The petitioner is a stepparent; ~~or~~

25 (C) The petitioner and the child to be adopted are related
 26 to each other within the ~~second~~ third degree of consanguinity; or

27 (D)(i) The petitioner has had a guardianship of the person
 28 over the proposed adoptee for a period of no less than one (1) year
 29 immediately prior to the date the petition for adoption is filed.

30 (ii) The one-year period in subsection (g)(2)(D)(i)
 31 of this section shall not include any time that the petitioner was a
 32 temporary guardian or emergency guardian of the person to be adopted.

33
 34 SECTION 3. Arkansas Code § 28-48-201 is amended to read as follows:
 35 28-48-201. Bond ~~required~~.

36 (a) Prior to the issuance of letters of administration ~~and except as~~

1 ~~provided in § 28-48-206 or at any time during the pendency of the matter, the~~
 2 ~~court or the clerk, subject to approval or rejection by the court, shall take~~
 3 ~~may require~~ a bond from the personal representative with ~~two (2) or more~~
 4 ~~sufficient sureties who are residents of this state, or a corporate surety~~
 5 ~~authorized to do business in this state, for the benefit of the interested~~
 6 ~~parties, or such other bond that the court deems appropriate. The bond shall~~
 7 ~~be in an amount fixed by the court not less than double the amount or, if the~~
 8 ~~surety is corporate, then not less than the amount, of the estimated value of~~
 9 ~~the property which may reasonably be expected to pass through the hands of~~
 10 ~~the personal representative.~~

11 (b)(1) If a person or entity asserting a claim against the estate or
 12 having or claiming any interest in the estate files a written demand, the
 13 court shall:

14 (A) Immediately direct that a bond be secured or
 15 increased; or

16 (B) Hold a hearing at the earliest reasonable date to
 17 consider whether a bond shall be secured or increased and, if a bond will be
 18 secured or increased, the amount of the bond or increase of bond.

19 (2) In the event that a bond is ordered or increased by the
 20 court upon written demand under subsection (b)(1)(A) of this section, the
 21 personal representative may request an immediate hearing for reconsideration
 22 of the bond.

23 (c) When two (2) or more persons are appointed personal
 24 representatives of the same estate and are required by the provisions of the
 25 Probate Code to give a bond, the court may require either a separate bond
 26 from each or one (1) bond from all of them.

27 ~~(e) No personal representative shall be deemed a surety for another~~
 28 ~~personal representative unless the terms of the bond so provide.~~

30 SECTION 4. Arkansas Code § 28-48-203 is repealed.

31 ~~28-48-203. Sureties.~~

32 ~~(a) Unless authorized by special order of the court, no sheriff, clerk~~
 33 ~~of any court, the deputy of either, the judge of any court, or attorney at~~
 34 ~~law shall be taken as surety on the bond of a personal representative.~~

35 ~~(b)(1) A surety upon the bond of a personal representative desiring to~~
 36 ~~be released from subsequent liability shall serve upon the personal~~

1 ~~representative a notice that, on and after a date fixed in the notice, which~~
 2 ~~date shall be not less than twenty (20) days from the date of service, the~~
 3 ~~surety will withdraw as surety upon the bond. A copy of the notice of~~
 4 ~~withdrawal shall be filed in the court immediately.~~

5 ~~(2) On and after 12 noon of the termination date fixed in the~~
 6 ~~notice, the surety shall be released from liability on the bond for~~
 7 ~~subsequent acts or defaults of the personal representative, and, unless~~
 8 ~~before noon of the termination date a new bond with sufficient surety shall~~
 9 ~~be filed and approved, the personal representative shall ipso facto be~~
 10 ~~removed, and a successor shall be appointed.~~

11 ~~(3) However, the surety shall not be released from liability~~
 12 ~~until the personal representative shall have furnished a new bond with surety~~
 13 ~~approved by the court, or until his or her successor has been appointed, has~~
 14 ~~qualified, and has taken over the assets of the estate, or until a final~~
 15 ~~settlement of his or her principal has been approved.~~

16 ~~(c)(1) The original sureties shall be liable for all breaches of the~~
 17 ~~obligation of the bond up to the time of filing of the new bond and approval~~
 18 ~~of the bond by the court, but they shall not be liable for acts and omissions~~
 19 ~~of the personal representative thereafter.~~

20 ~~(2) The new bond shall bind the sureties thereon with respect to~~
 21 ~~acts and omissions of the personal representative from the time when the~~
 22 ~~sureties on the original bond are no longer liable therefor or from such~~
 23 ~~prior time as the court directs.~~

24
 25 SECTION 5. Arkansas Code § 28-48-206 is amended to read as follows:

26 28-48-206. Increase or reduction in amount – Dispensing with bond.

27 ~~(a) The court may at any time increase or~~ decrease, or dispense with
 28 ~~the amount of the bond required of a personal representative when good cause~~
 29 ~~appears upon a review of the court file, or upon the request of any~~
 30 interested party.

31 ~~(b) At its discretion and subject to subsequent revocation, the court~~
 32 ~~may dispense with the requirement of a bond when, by the terms of the will,~~
 33 ~~the testator directed or requested that no bond be required of the personal~~
 34 ~~representative.~~

35 ~~(c)(1) Except with respect to a nonresident administrator, the court,~~
 36 ~~at its discretion and subject to subsequent revocation, may reduce the amount~~

1 of bond which would otherwise be required or dispense with the requirement of
 2 a bond;

3 (A) If the personal representative is a bank or a trust
 4 company whose deposits are insured by the Federal Deposit Insurance
 5 Corporation or a trust company chartered and regulated by an appropriate
 6 state authority; or

7 (B) When all distributees are competent and have filed
 8 their written waiver of the requirement of bond, and the petition shall
 9 recite that there are no known unsecured claims.

10 (2) However, if any person asserting a claim against the estate
 11 or having or claiming any interest in the estate files a written demand, the
 12 personal representative shall give bond as required in § 28-48-201 or in such
 13 other amount as the court shall direct after considering the amount of the
 14 alleged claim or asserted interest, but, if it is shown to the court that the
 15 alleged claim is invalid or has been paid or that the person alleging the
 16 interest in the estate has, in fact, no interest therein, then bond shall not
 17 be required.

18
 19 SECTION 6. Arkansas Code § 28-51-302 is amended to read as follows:
 20 28-51-302. Appraisal.

21 (a)~~(1)~~ Before a personal representative shall sell real property, he
 22 or she shall have it appraised by three ~~(3)~~ disinterested persons, selected
 23 by him or her, unless appointed by the court, who are well informed
 24 concerning the value of real property in the vicinity valued by a certified
 25 appraiser, a licensed real estate agent or broker, or another real estate
 26 professional.

27 ~~(2) However, unless there is an objection by an heir or~~
 28 ~~beneficiary of the estate, the court may approve the appointment of one ~~(1)~~~~
 29 ~~appraiser to appraise the real property.~~

30 (b) The ~~appraisers~~ evaluator shall ~~appraise value~~ the real property at
 31 its full and fair value and immediately deliver the ~~appraisal~~ valuation
 32 certified by them under oath to the personal representative.

33 (c) The ~~appraisal~~ valuation shall be filed with the clerk prior to or
 34 contemporaneously with ~~the rendition of~~ the order authorizing the sale.

35 (d) In connection with ~~the~~ a hearing on the petition for the order of
 36 sale, or prior to the hearing upon proper notice, the court, upon evidence

1 heard, may approve, modify, or reject the ~~appraisal~~ valuation.

2
3 SECTION 7. Arkansas Code § 28-51-303 is amended to read as follows:

4 28-51-303. Order for sale, mortgage, or lease.

5 (a) The order for sale, mortgage, or lease shall describe the property
6 to be sold, mortgaged, or leased and may designate the sequence in which the
7 several parcels shall be sold, mortgaged, or leased.

8 (b)(1) The order shall contain appropriate provisions with respect to
9 the bond of the personal representative and shall direct whether the property
10 shall be sold at private sale or public auction, and if the latter, the place
11 or places of sale.

12 (2)(A) If the sale is to be at public auction, the property
13 shall be sold for not less than three-fourths ($\frac{3}{4}$) of its appraised value.

14 (B) A private sale shall be for not less than ninety
15 percent (90%) of the ~~appraised~~ estimated value thereof, except upon a finding
16 by the court of good cause shown after a hearing for which all interested
17 parties have had reasonable notice.

18 (3) The order shall direct whether the sale shall be for cash or
19 for cash and deferred payments and the terms on which such deferred payments
20 are to be made.

21 (c) If real property is to be mortgaged, the order shall fix the
22 maximum amount of principal debt which may be secured, the maximum rate of
23 interest which the debt may bear, and the earliest and latest date of
24 maturity and shall direct the purpose for which the proceeds shall be used.

25 (d) Except in the case of an oil, gas, or other mineral lease, real
26 property of an estate may not be leased by a personal representative for a
27 term exceeding three (3) years. The order authorizing the lease shall specify
28 the maximum term thereof.

29 (e) In appropriate cases the order shall specify restrictions,
30 reservations, terms, and conditions under which the property is to be sold,
31 mortgaged, or leased.

32 (f) An order for sale, mortgage, or lease shall remain in force until
33 terminated by the court, ~~but no sale shall be made after six (6) months from~~
34 ~~the date of the order unless the real property shall have been reappraised~~
35 ~~under order of the court within thirty (30) days preceding the sale.~~

36

1 SECTION 8. Arkansas Code Title 28, Chapter 65, Subchapter 1, is
2 amended to add an additional section to read as follows:

3 28-65-111. Attorney's fees and costs.

4 (a) Except for the fees and costs accrued by the estate of the ward in
5 a court-approved guardianship, attorney's fees or costs, or both, may be
6 awarded by the court in guardianship matters only in the following instances
7 and upon reasonable notice and an opportunity to be heard:

8 (1) If it is proven by clear and convincing evidence that a
9 party has acted in bad faith or with actual malice and thereby caused another
10 party to incur attorney's fees or costs, or both, in the guardianship action;
11 or

12 (2)(A) In a guardianship matter in which the court has found a
13 party in contempt of court and the contemptuous behavior has caused another
14 party to incur attorney's fees.

15 (B) The penalty for contempt in a guardianship case is not
16 limited to fees and may include other appropriate sanctions as determined by
17 the court.

18 (b) The amount of fees or costs, or both, awarded, if any, and the
19 time and manner of payment shall be at the reasonable discretion of the
20 court.

21
22 SECTION 9. Arkansas Code § 28-65-502 is amended to read as follows:

23 28-65-502. Dispensing with guardianship in small estate.

24 When the whole estate of a minor or an incompetent does not exceed the
25 value of ~~five thousand dollars (\$5,000)~~ twenty-five thousand dollars
26 (\$25,000), the court, in its discretion, without the appointment of a
27 guardian or the giving of bond, may authorize the payment or delivery of all
28 or any part of the estate to the minor or incompetent or to some suitable
29 person, institution, or agency for him or her, to be retained, used,
30 expended, distributed, or disposed of for the benefit of the minor or
31 incompetent as the court may direct.

32
33 SECTION 10. Arkansas Code § 28-65-503 is amended to read as follows:

34 28-65-503. Ward receiving public assistance.

35 (a) The circuit court in its discretion, without the appointment of a
36 guardian or the giving of bond, may authorize the payment and delivery of any

1 moneys or other property due or that may in the future become due the minor
 2 or incompetent person to some suitable person, institution, or agency for the
 3 minor or incompetent person, to be retained, used, expended, distributed, or
 4 disposed of, for the benefit of the minor or incompetent person as the court
 5 may direct, in cases in which:

6 (1) The present total value of the personal property of a minor
 7 or an incompetent person is less than ~~one hundred dollars (\$100)~~ twenty-five
 8 thousand dollars (\$25,000);

9 (2) The minor or incompetent person owns no real property;

10 (3) The minor or incompetent person should have a guardian to
 11 care for his or her needs; and

12 (4) The minor or incompetent person is supported in whole or in
 13 part by a monthly income from the Department of Human Services, pension
 14 boards, or any other person or agency except the United States Department of
 15 Veterans Affairs.

16 (b) In the event the moneys or other property of the minor or
 17 incompetent person accumulates to a total value of ~~five hundred dollars~~
 18 ~~(\$500)~~ twenty-five thousand dollars (\$25,000) or more, the suitable person
 19 shall immediately report that fact to the circuit court.

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