

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
94th General Assembly  
Regular Session, 2023

# A Bill

HOUSE BILL 1448

By: Representative Gazaway  
By: Senator G. Stubblefield

## For An Act To Be Entitled

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

## Subtitle

TO MODERNIZE PROBATE PROCEEDINGS; AND TO AMEND AND UPDATE THE LAW CONCERNING ADOPTIONS, GUARDIANSHIPS, AND THE ADMINISTRATION OF DECEDENTS' ESTATES; AND TO AMEND THE PROBATE CODE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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



2/14/2023 3:22:58 PM LHR124

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

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

(2) The petitioner is a stepparent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28-65-503. Ward receiving public assistance.

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

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

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

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

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

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

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