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## **OLR Bill Analysis**

### **SB 247**

#### ***AN ACT CONCERNING PROBATE COURT OPERATIONS.***

#### **SUMMARY**

This bill makes changes to various unrelated laws that govern probate court operations.

Specifically, the bill:

1. expands eligibility for the Kinship and Respite Grant Programs to guardians who are not related to the children in their care (§ 1);
2. establishes a \$150 filing fee for a landlord seeking to remove a deceased tenant's possessions from a rental property (§ 2);
3. eliminates the interest that accrues on probate fees for failure to timely file an estate tax return, if the probate fee is based on damages recovered from wrongful death (§ 3);
4. exempts a hearing to remove a fiduciary that is held on the court's own motion from a filing fee (§ 4);
5. allows the court to accept a fiduciary's resignation but requires him or her to file a financial report within 60 days of the resignation (§ 7);
6. authorizes the probate court to transfer cases on children's matters to a probate court that already has an open case related to the same child (§ 8);
7. allows a petition to appoint a guardian, co-guardian, or temporary guardian to be made in the probate court where the child lives or is domiciled or located (§§ 10 & 12);

8. amends the notice requirement in certain probate court proceedings (§§ 9, 11 & 15);
9. shortens, from six months to 45 days, the window for parents to petition the court for involuntary conservatorship before a child turns age 18 (§ 13); and
10. eliminates the requirement for a temporary conservator to file a written report when the conservatorship terminates (§ 14).

The bill also makes minor, technical, and conforming changes, including eliminating obsolete references to trustees in insolvency and persons appointed to sell land belonging to minors (§§ 5-6 & 16-21).

EFFECTIVE DATE: October 1, 2018, except (1) the provisions on the landlord filing fee and accrued interest on probate fees are effective January 1, 2019, and (2) the provision on the court fee to remove a fiduciary is effective upon passage.

#### **§ 1 — KINSHIP AND RESPITE GRANT PROGRAMS**

Under current law, a grandparent or other relative caregiver who is a court-appointed guardian of a child and who does not receive guardianship subsidies or foster care payments from the Department of Children and Families is eligible to apply for grants under the Kinship Fund and Grandparents and Relatives Respite Fund administered by the probate court administrator. The bill expands eligibility for these grants to guardians who are not related to the children in their care.

#### **§ 2 — FILING FEE FOR LANDLORD'S REMOVAL OF DECEASED TENANT'S POSSESSIONS**

By law, when the sole tenant in a rental unit dies, and the landlord has complied with provisions in a lease that include the tenant's death as grounds for termination, the landlord may take specific actions to remove the deceased tenant's belongings and reclaim possession of the unit. Landlords that choose to follow this process must generally (1) send notice to the deceased tenant's next of kin and emergency contact, if one is designated and (2) file an affidavit with the probate court. The

bill imposes a \$150 probate court filing fee.

### **§ 3 — INTEREST ON PROBATE FEES**

By law, unless extended for reasonable cause by the Commissioner of Revenue Services, a decedent's estate tax return must be filed within six months after the decedent's death and any taxes due must be paid without assessment or notice by that date.

Under current law, any unpaid portion of the fee accrues interest at a rate of 0.5% per month starting 30 days after the due date or the extension date, whichever is later. Under the bill, no interest may accrue on any portion of the probate fee that is based on damages recovered for injuries resulting in death.

### **§§ 4 & 7 — FIDUCIARIES**

#### ***Court Fee to Remove Fiduciary (§ 4)***

The law generally allows the court to assess probate fees and expenses against one or more parties in a proportion the court finds equitable. The bill specifies that a hearing to remove a fiduciary for failure to file required documents that the court holds on its own motion is exempt from a filing fee.

#### ***Fiduciary's Resignation (§ 7)***

By law, the probate court, after notice and hearing, may accept or reject the written resignation of any fiduciary.

Under current law, the court must not accept the resignation until the fiduciary has fully and finally accounted for the administration of the fiduciary's trust to the court's acceptance. The bill, instead, allows the court to accept the resignation without the final accounting but requires the fiduciary to submit a final account to the court within sixty days of the court's acceptance of the resignation.

### **§§ 8, 10 & 12 — VENUE OF CHILDREN'S MATTERS**

#### ***Transfer of Case (§ 8)***

The bill allows the probate court, on a party's petition or on its own motion, to transfer cases concerning the guardianship of a child or

termination of parental rights to another probate court where a prior matter concerning the same child is pending or continuing. The transferring court may do so if it finds that the transfer is in the child's best interest.

***Petition for Guardian, Co-guardian, or Temporary Guardian (§§ 10 & 12)***

Under current law, if a child has no parent or guardian the probate court for the district where the child resides may, on its own motion, appoint a guardian or co-guardian for the child. The bill allows the probate court for the district in which the child is domiciled or located to also do the same.

Existing law, unchanged by the bill, allows a child's parent or guardian to apply to the probate court for the district in which the child resides for the appointment of a temporary guardian to serve for up to one year if the parent or guardian is unable to care for the child. The bill allows a parent or guardian to also make such a petition in the probate court for the district in which the child is domiciled or located.

**§§ 9, 11 & 15 — NOTICE IN CERTAIN PROCEEDINGS**

***Reinstatement of a Parent (§ 9)***

By law, a parent who has been removed as the guardian of a minor may apply to the probate court that removed him or her for reinstatement as the guardian of the minor, if in his or her opinion the factors which resulted in removal have been resolved satisfactorily.

Under current law, the court must hold a hearing on the reinstatement after notifying the guardian, parent, and, if over age 12, the minor. The bill requires the court to give notice by first class mail at least 10 days before the hearing date, instead of in person in accordance with the notice requirements under law for removal of a parent or guardian.

***Permanent Guardianship (§ 11)***

Current law, allows the probate court to establish a permanent guardianship after removing a parent as guardian if the court gives

specific notice to each parent. The bill requires the court to give such notice in-person in accordance with the notice requirements under law for removal of a parent or guardian.

***Emancipation of a Child (§ 15)***

By law, any minor who has reached age 16 and lives in the state, or his or her parent or guardian, may petition the juvenile or probate court for the district in which either the minor, parent, or guardian resides for a determination that the minor be emancipated.

Under current law, if the parent is the petitioner, the court must send notice by first class mail to the parent. Under the bill, the court must also send notice by first class mail to an out-of-state parent.

**§§ 13 & 14 — CONSERVATORSHIP**

***Involuntary Conservatorship (§ 13)***

By law, if a parent or guardian anticipates that a child will require a conservator when he or she turns age 18, the parent or guardian may apply to the probate court for involuntary representation. The bill shortens the window for parents or guardians to file this petition from 180 days before the child turns age 18 to 45 days before the child turns age 18.

***Temporary Conservator's Written Report (§ 14)***

The bill eliminates a requirement that a temporary conservator (i.e., one who serves no more than 60 days from the date of initial appointment) file a written report with the probate court when the temporary conservatorship ends. However, under the bill, as under existing law, the temporary conservator must file, if applicable, a final report as directed by the court, of his or her actions as a temporary conservator.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable  
Yea 39 Nay 0 (03/28/2018)