



**PA 18-45**—sSB 247  
*Judiciary Committee*

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

**SUMMARY:** This act makes changes in various unrelated laws that govern probate court operations.

Specifically, the act:

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 on late estate tax return filings if the probate fee is based on damages recovered from wrongful death actions (§ 3);
4. exempts, from probate fees, hearings to remove a fiduciary that are held on the court's own motion (§ 4);
5. 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);
6. allows the court to accept a fiduciary's resignation before he or she has submitted a final financial report, but requires him or her to file the report within 60 days of the resignation (§ 7);
7. 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);
8. 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);
9. amends the notice requirement in certain probate court proceedings (§§ 9, 11 & 15);
10. 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
11. eliminates the requirement for a temporary conservator to file a written report when the conservatorship terminates (§ 14).

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

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

Under existing law, a grandparent or other relative caregiver who is a court-

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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 act 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 act imposes a \$150 fee for this filing.

### § 3 — INTEREST ON PROBATE ESTATE SETTLEMENT FEES

By law, a decedent's estate tax return (or in some cases a copy of the return) must be filed with the probate court within six months after the decedent's death, unless the revenue services commissioner grants a filing extension for reasonable cause.

Under prior law, if an estate tax return or copy was not filed by the due date or extension date, any unpaid portion of the probate estate settlement fee accrued interest of 0.5% per month starting 30 days after the filing was due. Under the act, 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 act exempts from probate fees hearings to remove a fiduciary for failure to file required documents that the court holds on its own motion.

#### *Fiduciary's Resignation (§ 7)*

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

Under prior law, the court could not accept the resignation until the fiduciary submitted a final financial report to the court. The act instead allows the court to accept the resignation without the final report, but requires the fiduciary to submit it to the court within 60 days after the court accepts the resignation.

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

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### *Transfer of Case (§ 8)*

The act 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 existing 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 act allows the probate court for the district in which the child is domiciled or located to do the same.

Existing law, unchanged by the act, 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 act 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, when a parent seeks to be reinstated as a minor's guardian, the court must hold a hearing on the reinstatement after notifying the guardian, parent, and the minor, if he or she is over age 12. The act requires the court to give the notice by first class mail at least 10 days before the hearing date, instead of in person in accordance with the existing notice requirements for removal of a parent or guardian.

### *Permanent Guardianship (§ 11)*

Existing law allows the probate court to establish a permanent guardianship after removing a parent as guardian if the court gives notice to each parent. The act requires the court to give such notice in-person in accordance with the existing notice requirements for the 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 the minor, parent, or guardian resides for a determination that the minor be emancipated. If the minor is the petitioner, the act requires the court to send notice of the emancipation petition by first class mail, rather than in person, to an out-of-state parent.

## §§ 13 & 14 — CONSERVATORSHIP

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### *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 act shortens the window for them to file this petition from 180 to 45 days before the child turns age 18.

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

The act 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 act 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.