

ASSEMBLY BILL

No. 2567

Introduced by Assembly Member Daly

February 21, 2014

An act to amend Sections 8482 and 10453 of, to add Section 8480.5 to, and to repeal and add Section 8481 of, the Probate Code, relating to decedents.

LEGISLATIVE COUNSEL'S DIGEST

AB 2567, as introduced, Daly. Decedents' estates: personal representative: bond.

(1) Existing law requires every person appointed as a personal representative of a decedent's estate to give a bond conditioned on the faithful execution of the duties of the office. Existing law authorizes a waiver of this bond in certain circumstances and also authorizes the court to fix the amount of the bond not to exceed a specified sum.

The bill would, with respect to the above-described bond, require a court to make a good faith determination that the beneficiaries and creditors of the estate will not suffer harm as a result of the waiver of a bond or reduction of the bond amount before authorizing this waiver or reduction. This bill would also require a person appointed as a personal representative to give a cost bond approved by the court to be used to satisfy the remainder of an amount awarded to a contestant of an account, as specified.

The bill would require, when a personal representative has actual or constructive knowledge of facts indicating that the amount of a bond given is less than the amount fixed, the personal representative and, if any, the attorney, to make an ex parte application for an order to increase the bond, as specified. The bill would also require, if an additional

amount is required for the bond, an order approving an account to be conditioned on the filing of the additional bond amount.

(2) The Independent Administration of Estates Act governs the independent administration of a decedent’s estate and requires, if a personal representative is otherwise required to file a bond, a court, in its discretion, to fix the amount of this bond.

This bill would remove the discretion of the court to fix the bond amount.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8480.5 is added to the Probate Code, to
2 read:

3 8480.5. (a) In addition to the bond required pursuant to Section
4 8480, a person appointed as a personal representative shall give a
5 cost bond approved by the court to be used to satisfy the remainder
6 of an amount that may be awarded to a contestant of an account
7 pursuant to subdivision (b) of Section 11003 after a final
8 determination that the opposition to the contest was without
9 reasonable cause and in bad faith. The amount of this cost bond
10 shall be no less than twelve thousand dollars (\$12,000) nor greater
11 than fifty thousand dollars (\$50,000) and shall be based upon all
12 of the following:

- 13 (1) The size of the estate.
- 14 (2) The nature and number of the assets.
- 15 (3) The anticipated complexity of the accounting.

16 (b) When a personal representative has actual or constructive
17 knowledge of facts indicating that the amount of the bond given
18 is less than the amount fixed pursuant to subdivision (a), the
19 personal representative and, if any, the attorney, shall make an ex
20 parte application for an order to increase the bond pursuant to
21 subdivision (a). If an additional amount is required, an order
22 approving an account shall be conditioned on the filing of the
23 additional bond amount.

24 SEC. 2. Section 8481 of the Probate Code is repealed.
25 ~~8481. (a) A bond is not required in either of the following~~
26 ~~cases:~~
27 ~~(1) The will waives the requirement of a bond.~~

1 ~~(2) All beneficiaries waive in writing the requirement of a bond~~
2 ~~and the written waivers are attached to the petition for appointment~~
3 ~~of a personal representative. This paragraph does not apply if the~~
4 ~~will requires a bond.~~

5 (b) ~~Notwithstanding the waiver of a bond by a will or by all the~~
6 ~~beneficiaries, on petition of any interested person or on its own~~
7 ~~motion, the court may for good cause require that a bond be given,~~
8 ~~either before or after issuance of letters.~~

9 SEC. 3. Section 8481 is added to the Probate Code, to read:

10 8481. (a) The court may waive the filing of a bond described
11 in Section 8480 or, notwithstanding Section 8482, reduce the
12 amount of this bond only if both of the following conditions are
13 met:

14 (1) The will waives the requirement of a bond or, unless the
15 will requires a bond, all beneficiaries waive in writing the
16 requirement of a bond and the written waivers are attached to the
17 petition for appointment of a personal representative.

18 (2) The court makes a good cause determination that the
19 beneficiaries and creditors of the estate will not suffer harm as a
20 result of the waiver or reduction of the bond amount. For purposes
21 of this subdivision, the filing of a bond in another or a prior
22 proceeding by the personal representative shall not, by itself,
23 establish a basis for good cause.

24 (b) Notwithstanding subdivision (a), the court may reduce the
25 amount of a bond if the decedent had sufficient capacity to waive
26 the filing of a bond and waived it for a trustee or named successor
27 trustee.

28 SEC. 4. Section 8482 of the Probate Code is amended to read:

29 8482. (a) ~~The court in its discretion may shall~~ fix the amount
30 of the bond, ~~but the amount of the bond shall be required pursuant~~
31 ~~to Section 8480 at~~ not more than the sum of:

32 (1) The estimated value of the personal property.

33 (2) The probable annual gross income of the estate.

34 (3) If independent administration is granted as to real property,
35 the estimated value of the decedent's interest in the real property.

36 (b) Notwithstanding subdivision (a), if the bond is given by an
37 admitted surety insurer, the court may establish a fixed minimum
38 amount for the bond, based on the minimum premium required by
39 the admitted surety insurer.

1 (c) If the bond is given by personal sureties, the amount of the
2 bond shall be twice the amount fixed by the court under subdivision
3 (a).

4 (d) Before confirming a sale of real property the court shall
5 require such additional bond as may be proper, not exceeding the
6 maximum requirements of this section, treating the expected
7 proceeds of the sale as personal property.

8 (e) *When a personal representative has actual or constructive*
9 *knowledge of facts indicating that the amount of the bond given*
10 *is less than the amount fixed pursuant to subdivision (a), the*
11 *personal representative and, if any, the attorney, shall make an*
12 *ex parte application for an order to increase the bond pursuant*
13 *to subdivision (a). If an additional amount is required, an order*
14 *approving an account shall be conditioned on the filing of the*
15 *additional bond amount.*

16 SEC. 5. Section 10453 of the Probate Code is amended to read:

17 10453. (a) If the personal representative is otherwise required
18 to file a bond and has full authority, ~~the court, in its discretion,~~
19 *court* shall fix the amount of the bond at not more than the
20 estimated value of the personal property, the estimated value of
21 the decedent’s interest in the real property authorized to be sold
22 under this part, and the probable annual gross income of the estate,
23 or, if the bond is to be given by personal sureties, at not less than
24 twice that amount.

25 (b) If the personal representative is otherwise required to file a
26 bond and has limited authority, ~~the court, in its discretion,~~ *court*
27 shall fix the amount of the bond at not more than the estimated
28 value of the personal property and the probable annual gross
29 income of the estate, or, if the bond is to be given by personal
30 sureties, at not less than twice that amount.