

ENROLLED HOUSE
BILL NO. 1039

BY: HAMILTON (James), MAXEY,
SETTLE and HEFNER of the
HOUSE

and

DICKERSON and WEEDN of
the SENATE

AN ACT RELATING TO GUARDIAN AND WARD; AMENDING SECTION 22, CHAPTER 329, O.S.L. 1988, AS LAST AMENDED BY SECTION 79, CHAPTER 323, O.S.L. 1990, 58 O.S. 1981, SECTION 776, AS RENUMBERED BY SECTION 134, CHAPTER 329, O.S.L. 1988 AND AMENDED BY SECTION 56, CHAPTER 323, O.S.L. 1990 AND SECTION 86, CHAPTER 329, O.S.L. 1988, AS AMENDED BY SECTION 62, CHAPTER 323, O.S.L. 1990 (30 O.S. SUPP. 1990, SECTIONS 1-122, 4-201 AND 4-307), WHICH RELATE TO THE OKLAHOMA GUARDIANSHIP AND CONSERVATORSHIP ACT; MODIFYING PERSONS RECEIVING COPIES OF ANNUAL REPORT; ADDING TO LIST OF AUTHORIZED PERSONS ABLE TO RECEIVE CONFIDENTIAL INFORMATION; REQUIRING BONDS FOR CERTAIN CASES; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 86, Chapter 329, O.S.L. 1988, as amended by Section 62, Chapter 323, O.S.L. 1990 (30 O.S. Supp. 1990, Section 4-307), is amended to read as follows:

Section 4-307. A. 1. Upon the filing of an annual report the court shall immediately cause a copy of the report to be mailed by first-class mail to:

- a. the persons entitled to notice pursuant to Section 2-101 of this title for minors, or ~~to~~
- b. those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 3-110 of this title, ~~Section 3-110 of this title~~ for adults, and ~~to~~
- c. the attorney of the ward, if any.

2. Attached to the copy of the report shall be a statement notifying the person receiving copies of said reports that any objection to the report must be filed within thirty (30) days after the date of the filing of the annual report with the court.

~~2.~~ 3. Any person entitled to receive a copy of the annual report may file an objection to said report within thirty (30) days after the filing of the annual report with the court.

B. 1. After notice, the court may on its own motion hold a hearing on an annual report and shall hold a hearing:

- a. upon the filing of an objection to the annual report;
or

b. when the court is considering issuing an order other than an order accepting the report and granting the relief requested.

2. Notice for a hearing on an annual report shall be given, by mail, to the persons entitled to notice pursuant to Section 2-101 of this title for minors or Section 3-110 of this title for adults at least ten (10) days prior to the date set for the hearing. Notice shall be in such form as the court may direct and shall be sent by regular first-class mail.

C. The court may enter an order granting the relief requested in the report without notice if the court determines that such relief should be granted immediately. In that event, the court shall grant such relief on a temporary basis pending a hearing on the report or the expiration of the thirty (30) days within which an objection to the report may be filed.

D. When no objection to an annual report is filed and no hearing on the annual report is held as otherwise provided by this section, the court shall issue an order accepting the annual report and granting the relief requested.

E. The compensation for the guardian, the guardian's attorney, and any other person entitled to compensation from the property of the ward shall be determined by the court in the manner required by the provisions of the Oklahoma Guardianship and Conservatorship Act. Such order, whether issued at the expiration of the thirty (30) days within which an objection to the annual report may be filed or after a hearing on the report, shall be final with respect to all persons given copies of the annual report or notice of such hearing, except with regard to any such person who may be determined to have been subject to a legal disability at the time such notice was given. Such order also shall be final with respect to the guardian except with respect to challenge by the ward upon the removal of the ward's legal disability.

F. With regard to an annual report of a guardian of the property of a ward, the court shall examine the changes, if any, to the property of the ward as set forth in the report. If the guardian was required to submit a bond, and if the total value of the ward's property which is subject to the proceeding differs significantly from the total value of the ward's property as last disclosed to the court:

1. The court shall direct such guardian to obtain a new bond of a lesser or greater penal amount as will adequately protect the ward's property which is subject to the proceeding;

2. Such new bond shall be filed with the district court clerk within thirty (30) days following the date of the order; and

3. If the court requires a new bond of a greater penal amount than the bond previously submitted, failure of the guardian to submit such new bond within the thirty-day period set forth in this subsection shall constitute grounds for removal of such guardian or limited guardian.

G. At any hearing held upon an annual report:

1. if required by the court, the guardian or limited guardian shall be present;

2. the court shall review the annual report and consider any objection made thereto, and thereupon enter such order as the court deems appropriate; and

3. the court may make any order which the court deems to be in the best interest of the ward or the estate of the ward. The court may also set for further hearing, with prior notice to be given as provided in this section, any other matter which the court deems

should be considered in the best interest of the ward or the estate of the ward.

H. At a hearing upon an annual report the court may appoint an attorney to represent the ward who is an incapacitated or partially incapacitated person, in the same manner and with the same compensation as provided in this act for appointment of an attorney for the subject of the proceeding following the filing of a petition for appointment of a guardian or limited guardian of the person or property of an alleged incapacitated or partially incapacitated person. The appointment of such attorney shall cease:

1. upon the entry by the court of an order pertaining to the matters considered at such hearing, unless the court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;

2. unless an appeal is taken from the order of the court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the ward until final disposition of the appeal or as otherwise ordered by the court; or

3. upon application of said attorney, the court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceeding.

SECTION 2. AMENDATORY Section 22, Chapter 329, O.S.L. 1988, as last amended by Section 79, Chapter 323, O.S.L. 1990 (30 O.S. Supp. 1990, Section 1-122), is amended to read as follows:

Section 1-122. Confidential information filed with or submitted to the court in conjunction with any proceeding pursuant to the Oklahoma Guardianship and Conservatorship Act shall not constitute a public record and shall be sealed by the court. Access to confidential information shall be strictly controlled. Except upon court order, no confidential information shall be disclosed to persons other than:

1. the subject of the proceeding and his attorney;

2. the guardian ad litem;

3. if the subject of the confidential information is a ward, the guardian or conservator of such ward;

4. if the subject of the confidential information is the guardian or conservator, the ward and his attorney, and the attorney of such guardian or conservator; ~~and~~

5. abstractors licensed pursuant to the Oklahoma Abstractors Law for the purpose of having access to records regarding minors and determinations of persons as incapacitated or partially incapacitated persons pursuant to the Oklahoma Guardianship Act. Said abstractor shall maintain the confidentiality of this data, except for such parts as are relevant to the land title being researched; and

6. an authorized representative of the United States Department of Veterans Affairs upon proper identification.

SECTION 3. AMENDATORY 58 O.S. 1981, Section 776, as renumbered by Section 134, Chapter 329, O.S.L. 1988 and amended by Section 56, Chapter 323, O.S.L. 1990 (30 O.S. Supp. 1990, Section 4-201), is amended to read as follows:

Section 4-201. A. Before the entry of an order appointing a person or organization as a guardian of the person and before the letters issue, the court may require the person or organization to be appointed to provide a bond to the State of Oklahoma, with sufficient sureties, to be approved by the court, and in such penal sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law.

B. 1. Before the entry of an order appointing a person or organization as the guardian of a minor or as the guardian or limited guardian of the property of an incapacitated or partially incapacitated person takes effect, and before the letters issue, the court shall require the person or organization to be appointed to provide a bond, in an amount not less than the value of intangible personal property as alleged in the petition or otherwise determined by the court at the hearing on the petition, to the State of Oklahoma, with sufficient sureties, to be approved by the court, and in such penal sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law.

2. ~~Upon~~ Except as otherwise provided by paragraph 3 of this subsection, upon a finding by the court that:

~~1.~~ a. the anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward is less than Forty Thousand Dollars (\$40,000.00); and

~~2.~~ b. the guardian of the ward is either a parent, spouse, grandparent, child or grandchild of the ward,

the court may order that a bond is not necessary.

3. A bond shall be required and maintained for cases subject to the Uniform Veterans Guardianship Act.

C. In the event the intangible personal property of the ward, as determined by the inventory, is in a greater amount than as alleged in the petition or determined by the court at the hearing on the petition, the guardian will file at the time the inventory is filed a bond to the full amount of the intangible personal property, which bond will be in substitution for the bond originally filed on the appointment of the guardian. The amount of the bond in the future may be adjusted up or down in amount based upon the intangible personal property shown in future annual accountings, provided however, no bond shall be reduced except upon order of the court.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 7th day of March, 1991.

Speaker of the House of
Representatives

Passed the Senate the 26th day of March, 1991.

President of the Senate