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SHORT TITLE: Guardianship of minors; creating the Oklahoma  
Springing Guardianship Act; codification; emergency.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 625

By: Horner

AS INTRODUCED

An Act relating to guardianship of minors; amending 30 O.S. 1991, Section 1-108, which relates to types of guardians; creating the Oklahoma Springing Guardianship Act and providing short title; defining terms; providing for appointment of springing guardian for minor child; providing for appointment of alternate springing guardian; stating contents of petition for appointment of springing guardian; clarifying that petitioner is not required to appear; requiring appointment under certain circumstances; requiring decree to contain specification of certain event; requiring notice; requiring certain preference; construing certain provisions; providing for empowering of appointed or designated springing guardian; requiring certain physician to provide certain documentation to appointed or designated guardian; requiring appointed guardian to petition court under certain circumstances; requiring court confirmation of guardian; providing for deadline for certain appointment; clarifying authority of appointed or designated guardian; providing for revocation of springing guardianship; providing for designation of springing guardian by noncustodial parent or legal custodian; providing form; declaring certain designation to constitute rebuttable presumption;

requiring certain notice to minor child; providing for filing of appointment or designation of springing guardian; requiring notice of appointment or designation to certain persons; providing for springing guardian; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-201 of Title 30, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Springing Guardianship Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-202 of Title 30, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Appointed springing guardian" means a person appointed pursuant to Section 3 of this act to assume the duties of guardian over the person and, when applicable, the property of a minor child upon a determination of incapacity or debilitation and with the consent of the parent or legal custodian;

2. "Attending physician" means the physician who has primary responsibility for the treatment and care of the petitioning parent or legal custodian. When more than one physician shares this responsibility, or when a physician is acting on the primary physician's behalf, any such physician may act as the attending physician pursuant to this act. When no physician has this responsibility, a physician who is familiar with the petitioner's

medical condition may act as the attending physician pursuant to this act;

3. "Consent" means written consent signed by the parent or legal custodian in the presence of two witnesses who shall also sign the document. The written consent shall include the terms for the commencement of the duties of the springing guardian;

4. "Debilitation" means a chronic and substantial inability, as a result of a physically debilitating illness, disease, or injury, to care for one's minor child;

5. "Designated springing guardian" means a person designated pursuant to Section 5 of this act to assume temporarily the duties of guardianship over the person and, when applicable, the property of a minor child upon a determination of incapacity or debilitation, and with the consent, of the parent or legal custodian;

6. "Designation" means a written document voluntarily executed by the designator pursuant to this act;

7. "Designator" means a competent parent or legal custodian of a minor child who makes a designation pursuant to this act;

8. "Determination of debilitation" means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the parent's or legal custodian's debilitation;

9. "Determination of incapacity" means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the parent's or legal custodian's incapacity;

10. "Incapacity" means a chronic and substantial inability, as a result of mental or organic impairment, to understand the nature and consequences of decisions concerning the care of one's minor child, and consequent inability to make these decisions;

11. "Minor child" means a child under eighteen (18) years of age or a child over eighteen (18) years of age who has been declared legally incompetent, but excludes a child residing in a placement funded or approved by the Children, Youth, and Family Services Division of the Department of Human Services pursuant to either a voluntary placement agreement or court order; and

12. "Triggering event" means an event stated in the designation, petition, or decree which empowers the springing guardian to assume the duties of the office, which event shall be incapacity or debilitation with the consent of the custodial parent or legal custodian, whichever occurs first.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-203 of Title 30, unless there is created a duplication in numbering, reads as follows:

A. Upon petition of the parent, legal custodian, or designated springing guardian, the court may appoint a springing guardian of a minor child. The court may also appoint an alternate springing guardian, if identified by the petitioner, to act if the appointed springing guardian becomes incapacitated, or otherwise refuses or is unable to assume the duties of the springing guardian after incapacity or debilitation of the parent or legal custodian of the minor child.

B. A petition for the judicial appointment of a springing guardian of a minor child shall state:

1. Which triggering event or events shall cause the authority of the appointed springing guardian to become effective;

2. That there is a significant risk that the parent or legal custodian will become incapacitated or debilitated as a result of a progressive chronic condition or a fatal illness; however, a petitioner shall not be required to submit medical documentation of the parent's or legal custodian's terminal status by the attending physician; and

3. The name, address, and qualifications of the proposed springing guardian.

C. A parent or legal custodian petitioning the court pursuant to this section shall not be required to appear in court if unable to appear, except upon motion of the court or by any party and for good cause shown.

D. The court shall appoint the springing guardian if the court finds that there is a significant risk that the parent or legal custodian will become incapacitated or debilitated as a result of a progressive chronic condition or a fatal illness, and that the best interests of the minor child would be promoted by the appointment of the springing guardian.

E. The decree appointing the springing guardian shall specify the triggering event which shall activate the authority of the springing guardian.

F. Upon petition for the appointment of a springing guardian by a person as specified in subsection A of this section, notice shall be served pursuant to the provisions of Section 2004 of Title 12 of the Oklahoma Statutes on the minor child's parent or legal custodian, or the designated springing guardian, as appropriate, within thirty (30) days of the filing. The court shall give preference to maintaining custody with either the parent or legal custodian, or the designated springing guardian, during the time that the petition is pending. Nothing in this section shall be construed to deprive any parent of parental rights. No notice is necessary to a parent whose parental rights have been previously terminated by court order or consent.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-204 of Title 30, unless there is created a duplication in numbering, reads as follows:

A. Upon the occurrence of a triggering event set forth in a decree appointing a springing guardian, the springing guardian shall be empowered to assume the duties of office immediately.

B. Upon the occurrence of a triggering event, the attending physician shall provide a copy of the determination to the appointed springing guardian if the guardian's identity is known to the attending physician.

C. Within sixty (60) days following the assumption of guardianship duties, the appointed springing guardian shall petition the court for confirmation. The confirmation petition shall include a determination of incapacity or debilitation, as appropriate.

D. The court shall confirm an appointed springing guardian named in accordance with this act unless there is a judicial determination of unfitness with regard to the appointed springing guardian.

E. A springing guardian appointed pursuant to Section 3 of this act may decline appointment at any time before the assumption of the duties of the office by filing a written statement to that effect with the court, with notice to be provided to the petitioner and to the minor child if the latter is fourteen (14) years of age or older.

F. Commencement of the duties of the springing guardian shall confer upon the appointed springing guardian shared authority with the custodial parent or legal custodian of the minor child, unless the petition states otherwise.

G. A parent or legal custodian may revoke a springing guardianship by executing a written revocation, filing it with the court where the petition was filed, and promptly notifying the appointed springing guardian of the revocation. An unwritten revocation may be considered by the court if the revocation can be proved by clear and convincing evidence submitted to the court.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-205 of Title 30, unless there is created a duplication in numbering, reads as follows:

A. When the consent of a parent or legal custodian for the execution of a power of attorney delegating another person to exercise the parent's or legal custodian's powers is not appropriate, the noncustodial parent or legal custodian may execute a written statement to designate a springing guardian, as follows:

1. The parent or legal custodian may choose a springing guardian by means of a written designation that names the springing guardian in the event of the designator's incapacity or debilitation. The written designation shall reasonably identify the designator, the minor child, and the springing guardian;

2. A written designation pursuant to this section shall be signed by the designator in the presence of two witnesses who shall also sign the designation. Another person may sign the written designation on the parent's or legal custodian's behalf if the parent or legal custodian is physically unable to do so, if the designation is signed at the express request of the parent or legal custodian and in the presence of the parent or legal custodian and two witnesses;

3. The designation shall state the triggering event by which the parent or legal custodian intends the designated springing guardianship of the minor child to be activated; and

4. A parent or legal custodian may designate an alternate springing guardian in the same document, and by the same manner, as the designation of a springing guardian.

B. A designation shall be in substantially the following form:

DESIGNATION OF SPRINGING GUARDIAN

I, (name of parent or legal custodian) hereby name (name, home address, and telephone number of springing guardian) as designated springing guardian of (name of child(ren)), my child(ren).

By this consent and designation, I am providing that the designated springing guardian's authority shall take effect if and when the following event or events occur: (choose as follows):

(1) my attending physician concludes that I am mentally incapacitated, and thus unable to care for my child(ren); or

(2) my attending physician concludes that I am physically debilitated, and thus unable to care for my child(ren), and I consent in writing before two witnesses to the designated springing guardian's authority taking effect.

In the event that the person designated above is unable or unwilling to act as guardian to my child(ren), I hereby name (name, address, and telephone number of alternate designated springing guardian), as alternate designated springing guardian of my child(ren).

I hereby authorize that the person designated springing guardian as set forth above shall be provided with a copy of the attending physician's statement.

In the event that I am incapacitated or debilitated and a designated springing guardianship is activated pursuant to this statement, I declare that it is my intention to retain full parental rights to the extent consistent with my condition and, further, that I retain the authority to revoke the designated springing guardianship consistent with my rights herein at any time.

Designator's Signature:

Witness' Signature:

Address:

Date:

Witness' Signature:

Address:

Date:

C. Nothing in this section shall be construed to involuntarily deprive any parent of parental rights.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-206 of Title 30, unless there is created a duplication in numbering, reads as follows:

A. Upon the occurrence of the triggering event stated in the written designation executed pursuant to Section 5 of this act, the designated springing guardian shall be empowered to assume the duties of office immediately.

B. Upon the occurrence of a triggering event, a copy of the attending physician's determination shall be provided to the designated springing guardian if the guardian's identity is known to the attending physician.

C. A designated springing guardian may decline the designation at any time before the assumption of the duties of the office by notifying the designator of this refusal in writing.

D. Commencement of the designated springing guardian's duties shall confer upon the designated springing guardian shared authority with the custodial parent or legal custodian of the minor child, unless the designation of the parent or legal custodian states otherwise.

E. A designator may revoke a designation of springing guardianship by notifying the designated springing guardian orally or in writing or by any other act evidencing a specific intent to revoke the designation.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-207 of Title 30, unless there is created a duplication in numbering, reads as follows:

A. In a proceeding for judicial appointment of a designated springing guardian, a designation shall constitute a rebuttable presumption that the designated springing guardian is capable of serving as guardian.

B. Except as set forth in this section, the petition for the judicial appointment of a designated springing guardian shall comply with the procedure set forth in Section 3 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-208 of Title 30, unless there is created a duplication in numbering, reads as follows:

Notice of a petition or designation filed with the court pursuant to this act shall be served upon the minor child for whom the springing guardianship is sought if the minor is fourteen (14) years of age or older. Notice to a minor child less than fourteen (14) years of age shall be served at the discretion of the court. The court may appoint a guardian ad litem or counsel to represent the child. The court shall consider the preferences of the minor child in the appointment of a springing guardian pursuant to this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-209 of Title 30, unless there is created a duplication in numbering, reads as follows:

A. The county clerk, upon being paid the fee allowed by law, shall receive for filing any instrument appointing or designating a springing guardian pursuant to this act and shall give a written receipt to the person delivering it. The filing of an appointment or designation of springing guardian shall be for the sole purpose of safekeeping and shall not affect the validity of the appointment or designation.

B. Notice of the appointment or designation shall be delivered only to: the parent or legal custodian who appointed or designated the springing guardian; or the person appointed or designated as springing guardian or alternate springing guardian; or the minor child, upon the child's request or the request of the child's legal representative, if applicable; or any other person directed by the court.

SECTION 10. AMENDATORY 30 O.S. 1991, Section 1-108, is amended to read as follows:

Section 1-108. Guardians are either:

1. General;
2. Limited; ~~or~~
3. Special; or
4. Springing.

SECTION 11. 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.

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