

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL 902

By: Anderson of the Senate

and

Enns of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to guardianship; amending 30 O.S. 2011, Sections 4-104 and 4-105, which relate to qualifications for appointment as guardian; prohibiting certain persons from being appointed guardian; providing exception; updating reference; making language gender neutral; and providing an effective date.

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

SECTION 1. AMENDATORY 30 O.S. 2011, Section 4-104, is amended to read as follows:

Section 4-104. ~~No~~ A. Only a person who is a citizen or legal resident of or legally present in the United States of America shall be eligible to be appointed guardian of the property or person of a minor or an incapacitated or partially incapacitated person by the courts of this state, except as provided under subsection G of Section 4-105 of this title.

1        B. Only a person who has ~~not~~ been a resident, in good faith, of  
2 ~~the State of Oklahoma~~ this state for one (1) year past shall be  
3 eligible to be appointed guardian of the property or person of a  
4 minor or an incapacitated or partially incapacitated person by the  
5 ~~state courts of the State of Oklahoma~~ this state, and no foreign  
6 trust company or institution shall be appointed guardian of the  
7 property or person of any minor or an incapacitated or partially  
8 incapacitated person by the ~~state courts of the State of Oklahoma~~  
9 this state. Provided that this shall not prevent ~~one~~ a person from  
10 being appointed guardian of his or her own spouse, child, children,  
11 grandchild, grandchildren, parent, grandparent, brother, sister,  
12 aunt, uncle, niece or nephew even though he ~~be~~ or she is a  
13 nonresident of this state.

14        C. No domestic corporation or trust company shall be appointed  
15 or qualify as guardian of a minor or incapacitated or partially  
16 incapacitated person unless such company is at the time a resident  
17 of and maintains its usual place of business in the county of the  
18 residence of such minor or incapacitated or partially incapacitated  
19 person. No such company shall be appointed or act as such guardian  
20 unless its principal place of business is located in the county  
21 where such proceedings are filed and conducted. Such a domestic  
22 corporation or a natural person not a resident of ~~the State of~~  
23 ~~Oklahoma~~ this state may be appointed as such guardian upon the  
24 written request in a will or otherwise of a person eligible to make

1 such nomination pursuant to the provisions of the Oklahoma  
2 Guardianship and Conservatorship Act.

3 SECTION 2. AMENDATORY 30 O.S. 2011, Section 4-105, is  
4 amended to read as follows:

5 Section 4-105. A. In conducting an inquiry to determine  
6 whether a person is suitable to serve as a guardian, the court shall  
7 determine if:

8 1. The person proposed to serve as guardian is a minor or an  
9 incapacitated or partially incapacitated person;

10 2. The person proposed to serve as guardian and each adult  
11 member of the proposed guardian's household has a record of a  
12 criminal conviction, protective order, or pending criminal charge.

13 When requested by the court, the petitioner shall present to the  
14 court an Oklahoma State Bureau of Investigation (OSBI) criminal  
15 background check for the proposed guardian and any adult household  
16 member evidencing no record of a criminal conviction in the OSBI  
17 criminal history repository based on the search criteria provided.

18 The petitioner shall disclose the case name and status of any civil  
19 or criminal matter in state or federal court involving the proposed  
20 guardian or any adult household member of the proposed guardian;

21 3. The person proposed to serve as guardian is insolvent or has  
22 declared bankruptcy during five (5) years prior to the filing of the  
23 pleading proposing such person to serve as guardian;

1       4. The person proposed to serve as guardian is under any  
2 financial obligation to the ward; or

3       5. There exists a conflict of interest which would preclude or  
4 be substantially detrimental to the ability of the person to act in  
5 the best interest of the subject of the proceeding if such person is  
6 appointed.

7       B. No minor or incapacitated person shall be appointed guardian  
8 of an incapacitated or partially incapacitated person.

9       C. If the person proposed to serve has a criminal conviction,  
10 protective order, pending criminal charge, or other civil or  
11 criminal matter in state or federal court, the court shall make  
12 further inquiry into the nature of such conviction, order, charge or  
13 matter and the surrounding circumstances. The court shall appoint  
14 such person proposed to serve only upon determining that the facts  
15 underlying the circumstances do not give rise to a reasonable belief  
16 that the person proposed to serve will be unfaithful to or  
17 neglectful of the fiduciary and care responsibilities of the  
18 guardian, and that the appointment is in the best interest of the  
19 ward.

20       D. If the person proposed to serve as guardian or limited  
21 guardian of the property of an incapacitated or partially  
22 incapacitated person is insolvent or has declared bankruptcy within  
23 five (5) years prior to the filing of the pleading proposing that  
24 such person serve, the court shall appoint such person only after

1 giving due consideration to the nature and extent of the property of  
2 the ward and the anticipated actions necessary to manage the estate  
3 of the ward, and only upon a determination that such appointment is  
4 in the best interest of the ward. Insolvency or bankruptcy shall  
5 have no effect on the qualification of a person proposed to serve as  
6 guardian or limited guardian of the person of an incapacitated or  
7 partially incapacitated person.

8 E. If the person proposed to serve as guardian or limited  
9 guardian of the property of an incapacitated or partially  
10 incapacitated person is under any financial obligation to the ward,  
11 the court shall make further inquiry into the nature and extent of  
12 such obligation. The court shall appoint the person proposed to  
13 serve only after a determination that such obligation will not  
14 impair the ability of the person proposed to serve to discharge the  
15 person's fiduciary responsibilities, and that the appointment is in  
16 the best interest of the ward. Being under financial obligation to  
17 the ward shall have no effect on the qualification of a person  
18 proposed to serve as guardian or limited guardian of the person of  
19 an incapacitated or partially incapacitated person.

20 F. A current or potential conflict of interest which is not  
21 substantial and not likely to preclude or impair the ability of a  
22 person proposed to serve as a guardian acting in the best interest  
23 of the person's ward shall not, by itself, disqualify such person  
24 from appointment.

1       G. Only a person who is a citizen or legal resident of or  
2 legally present in the United States of America shall be eligible to  
3 be appointed guardian of the property or person of a minor or an  
4 incapacitated or partially incapacitated person by the courts of  
5 this state, unless the court determines that there are no such  
6 qualified individuals available to serve as guardian and that it is  
7 in the best interest of the minor or incapacitated or partially  
8 incapacitated person to appoint a person without such  
9 qualifications.

10       SECTION 3. This act shall become effective November 1, 2016.

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