

1 ENGROSSED SENATE
2 BILL NO. 902

By: Anderson of the Senate

3 and

4 Enns of the House

5
6 [guardianship - appointment - effective date]
7

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

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

11 Section 4-104. No person who is not a citizen or legal resident
12 of the United States of America shall be appointed guardian of the
13 property or person of a minor or an incapacitated or partially
14 incapacitated person by the courts of this state. No person who has
15 not been a resident, in good faith, of ~~the State of Oklahoma~~ this
16 state for one (1) year past shall be appointed guardian of the
17 property or person of a minor or an incapacitated or partially
18 incapacitated person by the ~~state~~ courts of ~~the State of Oklahoma~~
19 this state, and no foreign trust company or institution shall be
20 appointed guardian of the property or person of any minor or an
21 incapacitated or partially incapacitated person by the ~~state~~ courts
22 of ~~the State of Oklahoma~~ this state. Provided that this shall not
23 prevent ~~one~~ a person from being appointed guardian of his or her own
24 spouse, child, children, grandchild, grandchildren, parent,

1 grandparent, brother, sister, aunt, uncle, niece or nephew even
2 though he ~~be~~ or she is a nonresident of this state. No domestic
3 corporation or trust company shall be appointed or qualify as
4 guardian of a minor or incapacitated or partially incapacitated
5 person unless such company is at the time a resident of and
6 maintains its usual place of business in the county of the residence
7 of such minor or incapacitated or partially incapacitated person.
8 No such company shall be appointed or act as such guardian unless
9 its principal place of business is located in the county where such
10 proceedings are filed and conducted. Such a domestic corporation or
11 a natural person not a resident of ~~the State of Oklahoma~~ this state
12 may be appointed as such guardian upon the written request in a will
13 or otherwise of a person eligible to make such nomination pursuant
14 to the provisions of the Oklahoma Guardianship and Conservatorship
15 Act.

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

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

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

23 2. The person proposed to serve as guardian and each adult
24 member of the proposed guardian's household has a record of a

1 criminal conviction, protective order, or pending criminal charge.

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

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

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

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

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

19 B. No minor or incapacitated person shall be appointed guardian
20 of an incapacitated or partially incapacitated person.

21 C. If the person proposed to serve has a criminal conviction,
22 protective order, pending criminal charge, or other civil or
23 criminal matter in state or federal court, the court shall make
24 further inquiry into the nature of such conviction, order, charge or

1 matter and the surrounding circumstances. The court shall appoint
2 such person proposed to serve only upon determining that the facts
3 underlying the circumstances do not give rise to a reasonable belief
4 that the person proposed to serve will be unfaithful to or
5 neglectful of the fiduciary and care responsibilities of the
6 guardian, and that the appointment is in the best interest of the
7 ward.

8 D. If the person proposed to serve as guardian or limited
9 guardian of the property of an incapacitated or partially
10 incapacitated person is insolvent or has declared bankruptcy within
11 five (5) years prior to the filing of the pleading proposing that
12 such person serve, the court shall appoint such person only after
13 giving due consideration to the nature and extent of the property of
14 the ward and the anticipated actions necessary to manage the estate
15 of the ward, and only upon a determination that such appointment is
16 in the best interest of the ward. Insolvency or bankruptcy shall
17 have no effect on the qualification of a person proposed to serve as
18 guardian or limited guardian of the person of an incapacitated or
19 partially incapacitated person.

20 E. If the person proposed to serve as guardian or limited
21 guardian of the property of an incapacitated or partially
22 incapacitated person is under any financial obligation to the ward,
23 the court shall make further inquiry into the nature and extent of
24 such obligation. The court shall appoint the person proposed to

1 serve only after a determination that such obligation will not
2 impair the ability of the person proposed to serve to discharge the
3 person's fiduciary responsibilities, and that the appointment is in
4 the best interest of the ward. Being under financial obligation to
5 the ward shall have no effect on the qualification of a person
6 proposed to serve as guardian or limited guardian of the person of
7 an incapacitated or partially incapacitated person.

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

13 G. A person who is not a citizen or legal resident of the
14 United States of America shall not be appointed guardian of the
15 property or person of a minor or an incapacitated or partially
16 incapacitated person by the courts of this state.

17 SECTION 3. This act shall become effective November 1, 2016.
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1 Passed the Senate the 29th day of February, 2016.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2016.

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8 _____
9 Presiding Officer of the House
10 of Representatives