

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL SB902

By: Anderson

AS INTRODUCED

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; updating statutory language; 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 person who is not a citizen or legal resident of the United States of America shall be appointed guardian of the property or person of a minor or an incapacitated or partially incapacitated person by the courts of this state. No person who has not been a resident, in good faith, of ~~the State of Oklahoma~~ this state for one (1) year past shall be appointed guardian of the property or person of a minor or an incapacitated or partially incapacitated person by the ~~state~~ courts of ~~the State of Oklahoma~~ this state, and no foreign trust company or institution shall be

1 appointed guardian of the property or person of any minor or an
2 incapacitated or partially incapacitated person by the ~~state~~ courts
3 of ~~the State of Oklahoma~~ this state. Provided that this shall not
4 prevent ~~one~~ a person from being appointed guardian of his or her own
5 spouse, child, children, grandchild, grandchildren, parent,
6 grandparent, brother, sister, aunt, uncle, niece or nephew even
7 though he ~~be~~ or she is a nonresident of this state. No domestic
8 corporation or trust company shall be appointed or qualify as
9 guardian of a minor or incapacitated or partially incapacitated
10 person unless such company is at the time a resident of and
11 maintains its usual place of business in the county of the residence
12 of such minor or incapacitated or partially incapacitated person.
13 No such company shall be appointed or act as such guardian unless
14 its principal place of business is located in the county where such
15 proceedings are filed and conducted. Such a domestic corporation or
16 a natural person not a resident of ~~the State of Oklahoma~~ this state
17 may be appointed as such guardian upon the written request in a will
18 or otherwise of a person eligible to make such nomination pursuant
19 to the provisions of the Oklahoma Guardianship and Conservatorship
20 Act.

21 SECTION 2. AMENDATORY 30 O.S. 2011, Section 4-105, is
22 amended to read as follows:
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1 Section 4-105. A. In conducting an inquiry to determine
2 whether a person is suitable to serve as a guardian, the court shall
3 determine if:

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

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

9 When requested by the court, the petitioner shall present to the
10 court an Oklahoma State Bureau of Investigation (OSBI) criminal
11 background check for the proposed guardian and any adult household
12 member evidencing no record of a criminal conviction in the OSBI
13 criminal history repository based on the search criteria provided.
14 The petitioner shall disclose the case name and status of any civil
15 or criminal matter in state or federal court involving the proposed
16 guardian or any adult household member of the proposed guardian;

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

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

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

3 B. No minor or incapacitated person shall be appointed guardian
4 of an incapacitated or partially incapacitated person.

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

16 D. If the person proposed to serve as guardian or limited
17 guardian of the property of an incapacitated or partially
18 incapacitated person is insolvent or has declared bankruptcy within
19 five (5) years prior to the filing of the pleading proposing that
20 such person serve, the court shall appoint such person only after
21 giving due consideration to the nature and extent of the property of
22 the ward and the anticipated actions necessary to manage the estate
23 of the ward, and only upon a determination that such appointment is
24 in the best interest of the ward. Insolvency or bankruptcy shall

1 have no effect on the qualification of a person proposed to serve as
2 guardian or limited guardian of the person of an incapacitated or
3 partially incapacitated person.

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

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

21 G. A person who is not a citizen or legal resident of the
22 United States of America shall not be appointed guardian of the
23 property or person of a minor or an incapacitated or partially
24 incapacitated person by the courts of this state.

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

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