

1 ENGROSSED HOUSE
2 BILL NO. 3552

By: Boatman of the House

3 and

4 Daniels of the Senate

5
6 An Act relating to guardian and ward; providing for
7 the transfer or conveyance of property to protective
8 arrangements; specifying the petition process;
9 defining term; providing for notice and hearing;
10 exempting transfer or conveyance of property to
11 protective arrangements from definitions and
12 regulations of sale; providing for bonds for transfer
13 or conveyance of property to protective arrangements;
14 providing scope and purpose of protective
15 arrangements; providing for homestead liens;
16 providing for codification; and providing an
17 effective date.

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

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 4-710 of Title 30, unless there
21 is created a duplication in numbering, reads as follows:

22 A. If a ward is the owner of any real or personal property that
23 is or may be deemed an available resource by the United States
24 Social Security Administration or by the applicable Medicaid rules
promulgated by the Oklahoma Health Care Authority or other state
agency, the guardian may petition the court for permission to
transfer or convey such property to a protective arrangement in
accordance with this section.

1 1. The guardian shall file a verified petition setting forth
2 what specific property is or may be deemed a resource by the federal
3 or state authority, including an affirmative statement that such
4 resource will or may affect the ward's receipt of public benefits
5 unless such resource is transferred to a protective arrangement. As
6 used in this section, "protective arrangement" includes, but is not
7 limited to, any of the following transfers or conveyances of the
8 ward's resources:

- 9 a. to a first-party Medicaid payback trust, also known as
10 a d4A trust,
- 11 b. to a pooled trust approved by the Oklahoma Department
12 of Human Services, also known as a d4C trust,
- 13 c. as permitted by the administrative rules promulgated
14 by the Oklahoma Health Care Authority, such as to a
15 spouse or qualified disabled child of the ward,
- 16 d. to a sole benefit trust for the benefit of the spouse
17 or qualified disabled child of the ward,
- 18 e. to a sole benefit trust for any qualified disabled
19 person,
- 20 f. to a qualified disabled child or caregiving child of
21 the ward who qualifies pursuant to administrative
22 rules by providing caregiving services for the
23 required period of time, or

1 g. to a qualified Achieving a Better Life Experience
2 (ABLE) account within or without the State of
3 Oklahoma.

4 2. The court shall set the petition for a hearing not less than
5 ten (10) days nor more than thirty (30) days from the date of
6 filing.

7 a. Notice of the hearing shall be given to those persons
8 entitled to notice of the guardian's annual report. If
9 the court has previously waived the filing of the
10 guardian's annual report, then notice shall be given
11 to those persons entitled to notice pursuant to
12 Section 3-110 of Title 30 of the Oklahoma Statutes.

13 b. If all persons entitled to notice have waived such
14 notice, no notice shall be given and the court shall
15 proceed without delay to hear the petition.

16 c. At the hearing, the court shall hear testimony
17 regarding the public benefits that may be beneficial
18 to the ward or others and if and how the transfer or
19 conveyance of the ward's property to a protective
20 arrangement may allow the ward or others to receive
21 such public benefits.

22 B. If the court approves the petition and authorizes the
23 guardian to transfer or convey the ward's property that is or may be
24 deemed an available resource to a protective arrangement, such

1 transfer or conveyance shall not be considered a sale of the
2 property and shall not be subject to the provisions of Sections 4-
3 751 through 4-770 of Title 30 of the Oklahoma Statutes. Sections 380
4 through 512 of Title 58 of the Oklahoma Statutes shall not apply to
5 any transfer or conveyance of the ward's assets to a protective
6 arrangement pursuant to this section.

7 C. If a bond was previously required by the court, the court
8 may continue the bond to include assets transferred or conveyed to a
9 protective arrangement, require a new bond in a lesser amount due to
10 the transfer of some or all of the ward's resources or waive the
11 requirement of a bond on the value of the transferred assets.

12 D. For the purposes of this section, a "protective arrangement"
13 shall not create, expand, or otherwise modify any state or federally
14 authorized rules regarding exemption or transfer of assets or
15 resources for determination of Medicaid or Social Security
16 eligibility. The primary purpose of this section is to authorize a
17 guardian to pursue on behalf of his or her ward those same steps
18 that any legally competent person could pursue to apply for or
19 retain Medicaid or Social Security benefits.

20 E. This section shall not infringe upon or void an existing
21 homestead lien of record that has been filed by the Oklahoma Health
22 Care Authority pursuant to Section 5051.3 of Title 63 of the
23 Oklahoma Statutes.

24 SECTION 2. This act shall become effective November 1, 2020.

1 Passed the House of Representatives the 13th day of February,
2 2020.

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4 Presiding Officer of the House
5 of Representatives

6 Passed the Senate the ____ day of _____, 2020.

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8 Presiding Officer of the Senate