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February 18, 2020

SENATE BILL NO. 1711

By: Brooks of the Senate

and

Dunnington of the House

An Act relating to guardianship; creating the Oklahoma Standby Guardianship Act; providing short title; defining terms; authorizing written designation; providing inclusions; requiring certain conditions; conferring certain authority; providing certain notice; mandating findings; authorizing appointment of guardian ad litem; specifying petition inclusions; allowing for revocation of guardianship; permitting refusal; rescinding guardianship; permitting review; providing for codification; and providing an effective date.

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 7-101 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 Standby Guardianship Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-102 of Title 30, unless there is created a duplication in numbering, reads as follows:

1 As used in this act:

2 1. "Deported" means an alien or noncitizen having been
3 involuntarily removed from the United States and sent back to their
4 country of origin;

5 2. "Deportation proceeding" means any proceeding by which an
6 alien or noncitizen may be expelled from the United States for
7 violations of immigration law;

8 3. "Designation" means a writing which is voluntarily executed
9 in conformance with the requirements of Section 3 of this act and
10 signed by a parent and names a person to act as standby guardian;

11 4. "Parent" means a genetic or adoptive parent or parent
12 determined in accordance with the standards set forth in Section
13 7700-201 of Title 10 of the Oklahoma Statutes, and includes a
14 person, other than a parent, who has physical custody of a child and
15 who has either been awarded custody by a court or claims a right to
16 custody;

17 5. "Qualified parent" means a parent who has been deported or
18 is currently the subject of a deportation proceeding, as evidenced
19 in writing, by a court of appropriate jurisdiction or by a state or
20 the federal government;

21 6. "Standby guardian" means a person who, in accordance with
22 this act, is designated in writing or approved by the court to
23 temporarily assume the duties of guardian of the person or guardian
24 of the property, or both, of a minor child on behalf of or in

1 conjunction with a qualified parent upon the occurrence of a
2 triggering event; and

3 7. "Triggering event" means the event upon the occurrence of
4 which the standby guardian may be authorized to act. The triggering
5 event shall be specified in the court order or written designation
6 and shall be the earlier of either the commencement of a deportation
7 proceeding or the deportation of the qualified parent.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 7-103 of Title 30, unless there
10 is created a duplication in numbering, reads as follows:

11 A. A parent may execute a written designation of a standby
12 guardian at any time. The written designation shall state:

- 13 1. The name, address and birthdate of the child affected;
14 2. The triggering event; and
15 3. The name and address of the person designated as standby
16 guardian or alternate.

17 The written designation shall be signed by the parent. The
18 designated standby guardian or alternate may not sign on behalf of
19 the parent. The signed designation shall be delivered to the
20 standby guardian and any alternate named as soon as practicable.

21 B. Following such delivery of the designation, the authority of
22 a standby guardian to act for a qualified parent shall commence upon
23 the occurrence of the specified triggering event, receipt of
24 documentation supporting the occurrence of the triggering event and

1 the qualified parent's written consent to such commencement signed
2 by the parent.

3 C. A standby guardian under a designation shall have the
4 authority of a guardian of the person and a guardian of the property
5 of the child, unless otherwise specified in the designation.

6 D. A designated standby guardian or alternate shall file a
7 petition for approval as standby guardian. The petition shall be
8 filed as soon as practicable after the occurrence of the triggering
9 event but in no event later than thirty (30) days after the date of
10 the commencement of his or her authority. The authority of the
11 standby guardian shall cease upon his or her failure to so file but
12 shall recommence upon such filing. The petition shall be
13 accompanied by a copy of the designation and any documentation
14 supporting the occurrence of the triggering event.

15 E. Upon the filing of a petition, notice of the filing shall
16 promptly be given to each parent of the child whose identity and
17 whereabouts are known to the petitioner. The court shall direct the
18 issuance of summonses to the child, if the child is twelve (12)
19 years of age or older and the proposed standby guardian and
20 alternate, if any, and such other persons as appear to the court to
21 be proper or necessary parties to the proceedings including the
22 child's parents, guardian, legal custodian or other person standing
23 in loco parentis, if the identity and whereabouts of such persons
24 are known.

1 F. The court shall enter an order approving the designated
2 guardian as standby guardian upon finding that:

3 1. The person was duly designated as standby guardian pursuant
4 to this section and the designation has not been revoked;

5 2. A specified triggering event occurred, and the parent
6 consented to commencement of the standby guardians authority;

7 3. The best interests of the child will be served by approval
8 of the standby guardian; and

9 4. If the petition is by an alternate, that the designated
10 standby guardian is unwilling or unable to serve.

11 G. An order approving the standby guardian shall not be entered
12 without a hearing if there is another known parent, stepparents,
13 adult siblings, or other adult related to the child by blood,
14 marriage, or adoption who requests a hearing within ten (10) days of
15 the date that notice of the filing was sent or if there is other
16 litigation pending regarding custody of the child.

17 H. Prior to any hearing on the petition, the court may appoint
18 a discreet and competent attorney at law as guardian ad litem to
19 represent the child. The qualified parent shall not be required to
20 appear in court if the parent is detained and unable to appear, or
21 upon motion for any other good cause shown.

22 SECTION 4. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 7-104 of Title 30, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Upon petition of any person, the district court of the
2 jurisdiction in which a child resides may approve a person as
3 standby guardian for a child of a qualified parent upon the
4 occurrence of a specified triggering event. If requested in the
5 petition, the court may also approve an alternate standby guardian
6 identified by the petitioner, to act in the event that at any time
7 after approval pursuant to this section the standby guardian is
8 unable or unwilling to assume the responsibilities of the standby
9 guardianship.

10 B. The petition shall state:

11 1. The name and address of the petitioner and his relationship
12 to the child and the name and address of the child's qualified
13 parent, and the name and address of any other parent of the child
14 whose identity and whereabouts are known to the petitioner or can
15 reasonably be ascertained;

16 2. The name, address and birthdate of the child;

17 3. The nature of the proposed triggering event, including when
18 a qualified parent's consent would be effective in those cases where
19 such consent is chosen as the triggering event;

20 4. Whether the parent has been deported or the deportation
21 process has commenced and, if so, when and by whom;

22 5. The name and address of the person proposed as standby
23 guardian and any alternate and whether the petition requests that
24

1 such person be given authority as a guardian of the person or
2 guardian of the property of the minor, or both;

3 6. A statement of any known reasons as to why the child's other
4 parent is not assuming or should not assume the responsibilities of
5 a standby guardian; and

6 7. Whether there is any prior judicial history regarding
7 custody of the child or any pending litigation regarding custody of
8 the child.

9 SECTION 5. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 7-105 of Title 30, unless there
11 is created a duplication in numbering, reads as follows:

12 A. The authority of a standby guardian approved by the court
13 may be revoked by the qualified parent by filing a notice of
14 revocation with the court. The notice of revocation shall identify
15 the standby guardian or alternate standby guardian to which the
16 revocation will apply. A copy of the revocation shall also be
17 delivered to the standby guardian whose authority is revoked and any
18 alternate standby guardian who may then be authorized to act.

19 B. At any time following his or her approval by the court, a
20 standby guardian approved by the court may decline to serve by
21 filing a written statement of refusal with the court and having the
22 statement personally served on the qualified parent and any
23 alternate standby guardian who may then be authorized to act.

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1 C. When a written designation has been executed, but is not yet
2 effective because the triggering event has not yet occurred, the
3 parent may revoke or the prospective standby guardian may refuse the
4 designation by notifying the other party in writing. A written
5 designation may also be revoked by the execution of a subsequent
6 inconsistent designation.

7 D. When a standby guardian's authority becomes effective upon
8 the occurrence of a triggering event of the qualified parent, the
9 standby guardian's authority to act on behalf of the qualified
10 parent continues even though the qualified parent is not deported or
11 the deportation proceeding is dismissed, unless the qualified parent
12 notifies the standby guardian and the court, in writing, that the
13 standby guardian's authority is revoked due to the triggering event
14 expiring.

15 E. If at any time the court finds that the parent no longer
16 meets the definition of "qualified parent," the court shall rescind
17 its approval of the standby guardian.

18 SECTION 6. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 7-106 of Title 30, unless there
20 is created a duplication in numbering, reads as follows:

21 A child's parent, stepparent, adult sibling or any adult related
22 to the child by blood, marriage or adoption may petition the court
23 which approved the standby guardian at any time following such
24 approval and prior to any termination of the standby guardianship

1 for review of whether continuation of the standby guardianship is in
2 the best interests of the child. Notice of the filing of a petition
3 shall promptly be given to the standby guardian, the child, if the
4 child is twelve (12) years of age or older, and each parent of the
5 child whose identity and whereabouts are known or could reasonably
6 be ascertained.

7 SECTION 7. This act shall become effective November 1, 2020.

8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
9 February 18, 2020 - DO PASS
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