An Act

ENROLLED SENATE
BILL NO. 902

By: Anderson of the Senate

and

Enns of the House

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.

SUBJECT: Guardianship

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.

B. Only a person who has ~~not~~ been a resident, in good faith, of ~~the State of Oklahoma~~ this state for one (1) year past shall be eligible to 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 appointed guardian of the property or person of any minor or an incapacitated or partially incapacitated person by the ~~state~~ courts of ~~the State of Oklahoma~~ this state. Provided that this shall not prevent ~~one~~ a person from being appointed guardian of his or her own spouse, child, children, grandchild, grandchildren, parent, grandparent, brother, sister, aunt, uncle, niece or nephew even though he ~~be~~ or she is a nonresident of this state.

C. No domestic corporation or trust company shall be appointed or qualify as guardian of a minor or incapacitated or partially incapacitated person unless such company is at the time a resident of and maintains its usual place of business in the county of the residence of such minor or incapacitated or partially incapacitated person. No such company shall be appointed or act as such guardian unless its principal place of business is located in the county where such proceedings are filed and conducted. Such a domestic corporation or a natural person not a resident of ~~the State of Oklahoma~~ this state may be appointed as such guardian upon the written request in a will or otherwise of a person eligible to make such nomination pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act.

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

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

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

2. The person proposed to serve as guardian and each adult member of the proposed guardian's household has a record of a criminal conviction, protective order, or pending criminal charge. When requested by the court, the petitioner shall present to the court an Oklahoma State Bureau of Investigation (OSBI) criminal background check for the proposed guardian and any adult household member evidencing no record of a criminal conviction in the OSBI criminal history repository based on the search criteria provided. The petitioner shall disclose the case name and status of any civil

or criminal matter in state or federal court involving the proposed guardian or any adult household member of the proposed guardian;

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

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

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

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

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

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

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

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

G. 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, unless the court determines that there are no such qualified individuals available to serve as guardian and that it is in the best interest of the minor or incapacitated or partially incapacitated person to appoint a person without such qualifications.

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

Passed the Senate the 23rd day of May, 2016.

Eddie Fields
Presiding Officer of the Senate

Passed the House of Representatives the 24th day of May, 2016.

Lee R. Denney
Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 24th
day of May, 2016, at 4:10 o'clock P M.
By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 6th
day of June, 2016, at 3:51 o'clock P M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 6th
day of June, 2016, at 4:53 o'clock P. M.
By: Chris Benge