

1 **SENATE FLOOR VERSION**

2 April 2, 2019

3 ENGROSSED HOUSE  
4 BILL NO. 2605

By: Conley, Echols, Munson,  
Lawson and Hasenbeck of the  
House

5 and

6  
7 McCortney and Standridge of  
the Senate

8  
9  
10 An Act relating to guardian and ward; amending 30  
11 O.S. 2011, Section 3-113, which relates to court  
order appointing guardian; including court  
12 determination for capacity of ward to receive hospice  
program services; amending 30 O.S. 2011, Section 3-  
13 119, which relates to limitations on guardian powers;  
updating act name; modifying exception for power of  
14 guardian to consent to certain procedures; and  
providing an effective date.

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

18 SECTION 1. AMENDATORY 30 O.S. 2011, Section 3-113, is  
19 amended to read as follows:

20 Section 3-113. A. The order appointing a guardian, based upon  
21 evidence adduced, shall set forth:

- 22 1. The determinations made by the court at the hearing;  
23 2. The name and address of the individual, if any, appointed to  
24 serve as the limited guardian or guardian;

1           3. The specific limitations imposed upon the ward, if the ward  
2 is a partially incapacitated person;

3           4. Any authority granted a guardian of the person of the ward  
4 to change the place of abode of the ward outside of the state or  
5 county without the prior permission of the court; and

6           5. Whenever the court determines a review hearing is necessary  
7 or desirable, the date of the review hearing.

8           B. In establishing the specific limitations on the legal  
9 activities of a ward for whom a limited guardian of the person is  
10 appointed, the court shall make specific determinations regarding  
11 the capacity of the subject of the proceeding, including but not  
12 limited to determining whether the ward retains sufficient capacity:

13           1. To vote;

14           2. To serve as a juror;

15           3. To operate a motor vehicle;

16           4. To be licensed or continue to practice any profession of the  
17 ward; and

18           5. To make personal medical decisions including but not limited  
19 to decisions to withhold or withdraw life-sustaining procedures, to  
20 receive hospice services through a home or inpatient hospice  
21 program, to donate organs, to undergo elective surgery, or to  
22 consent to routine or necessary medical or other professional care,  
23 treatment or advice.

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1 C. In establishing the specific limitations on the legal  
2 abilities of a ward for whom a limited guardian of the property is  
3 appointed, the court shall make specific determinations regarding  
4 the capacity of the subject of the proceeding, including but not  
5 limited to determining whether the ward retains sufficient capacity  
6 to:

- 7 1. Appoint an agent to act on his behalf;
- 8 2. Enter into contracts;
- 9 3. Grant conveyances; or
- 10 4. Make gifts of property.

11 D. If not submitted with the petition or at the hearing, the  
12 guardian or limited guardian shall submit a guardianship plan as  
13 required by Section 3-120 or 3-122 of this title, or both, as  
14 appropriate and a copy of said plan shall be mailed to those persons  
15 entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of  
16 subsection A of Section 3-110 of this title. The guardianship plan  
17 as approved by the court shall be made a part of the order of the  
18 court. Said plan may be modified as provided by this act.

19 E. The court may, in its discretion, make such further orders  
20 as the court deems necessary for the best interest of the ward for  
21 care of the ward and maintenance or management of the ward's  
22 property, including but not limited to:

- 23 1. Order the guardian of the property of the ward to provide  
24 the ward from such property with specified amounts of money,

1 monthly, or from time to time, which the ward may dispose of as the  
2 ward shall determine and for which, other than a showing of the  
3 amounts paid to the ward, the guardian will not be required to  
4 account. Such order may be modified upon application of the  
5 guardian or any interested person, and a hearing conducted thereon,  
6 with notice of the hearing on such application to be given to those  
7 persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of  
8 subsection A of Section 3-110 of this title and shall be given as  
9 provided in Section 3-110 of this title; and

10 2. The amount of the bond as required by Section 4-201 of this  
11 title.

12 SECTION 2. AMENDATORY 30 O.S. 2011, Section 3-119, is  
13 amended to read as follows:

14 Section 3-119. A guardian shall have no powers except as  
15 provided by the Oklahoma Statutes or given to such guardian in the  
16 orders in the guardianship proceeding. This limitation of powers  
17 includes but is not limited to the following:

18 1. No guardian shall have the power to consent on behalf of the  
19 ward to the withholding or withdrawal of life-sustaining procedures  
20 as ~~defined by~~ provided in the Oklahoma Rights of the Terminally Ill  
21 ~~or Persistently Unconscious~~ Advance Directive Act from the ward,  
22 except:

23 a. with specific authorization of the court having  
24 jurisdiction over the guardianship proceedings. ~~Such~~

1 ~~authorization must be granted in a separate order and~~  
2 ~~only at such time when the ward is in need of life-~~  
3 ~~sustaining treatment,~~

4 b. as authorized by an advance directive executed  
5 pursuant to the Oklahoma ~~Rights of the Terminally Ill~~  
6 ~~or Persistently Unconscious~~ Advance Directive Act, or

7 c. as authorized by a consent not to resuscitate made  
8 pursuant to the Oklahoma Do-Not-Resuscitate Act, or

9 d. to receive hospice services as authorized by a  
10 licensed physician who determines the ward is  
11 terminally ill, as defined in Section 1-860.2 of Title  
12 63 of the Oklahoma Statutes;

13 2. No guardian or court having jurisdiction of the guardianship  
14 proceeding shall have the power to consent on behalf of the ward or  
15 order the consent on behalf of the ward to the termination or  
16 relinquishment of parental rights of the ward;

17 3. Except in an emergency and only as necessary to preserve the  
18 life of the ward, no guardian shall have the power to consent on  
19 behalf of the ward to an abortion, psychosurgery, removal of a  
20 bodily organ, performance of any experimental biomedical or  
21 behavioral procedure, or participation in any biomedical or  
22 behavioral experiment, except with specific authorization of the  
23 court having jurisdiction of the guardianship proceeding;

1 4. No guardian shall have the power to prohibit the marriage or  
2 divorce of a ward except with specific authorization of the court  
3 having jurisdiction of the guardianship proceeding; and

4 5. No guardian shall have the power to consent on behalf of the  
5 ward to placement of the ward in a facility or institution to which  
6 a person without a guardian would have to be committed pursuant to  
7 the laws of this state absent formal commitment proceedings in which  
8 the ward has independent counsel.

9 SECTION 3. This act shall become effective November 1, 2019.

10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
11 April 2, 2019 - DO PASS

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