

An Act

ENROLLED SENATE
BILL NO. 1701

By: Brooks of the Senate

and

Kannady, Swope, and Menz of
the House

An Act relating to guardianship; creating the Oklahoma Standby Guardianship Act; providing short title; defining terms; authorizing written designation for certain purposes; specifying required contents of certain designation; providing for commencement of certain authority upon specified event; requiring filing of certain petition; requiring certain notice; requiring certain order upon specified findings; requiring hearing under certain circumstances; authorizing appointment of guardian ad litem; authorizing appointment of standby guardian or alternate; specifying information to be included in certain petition; allowing for revocation of guardianship; permitting certain refusal; providing for dismissal of guardianship under certain circumstances; providing for review of standby guardianship; providing for codification; and providing an effective date.

SUBJECT: Guardianship of a minor

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:

As used in this act:

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

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

3. "Qualified parent" means a parent who has become unavailable due to a military deployment, court proceeding, incapacity, or other matter, as evidenced in writing, by a court of appropriate jurisdiction or by a state or the federal government;

4. "Standby guardian" means a person who, in accordance with this act, is designated in writing or approved by the court to temporarily assume the duties of guardian of the person or guardian of the property, or both, of a minor child on behalf of or in conjunction with a qualified parent upon the occurrence of a triggering event; and

5. "Triggering event" means the event upon the occurrence of which the standby guardian may be authorized to act.

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

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

1. The name, address and birthdate of the child affected; and
2. The name and address of the person designated as standby guardian or alternate.

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

B. Following such delivery of the designation, the authority of a standby guardian to act for a qualified parent shall commence upon the occurrence of the triggering event, receipt of documentation, if any, supporting the occurrence of the triggering event and the qualified parent's written consent to such commencement signed by the parent.

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

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

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

B. Upon the filing of a petition, notice of the filing shall promptly be given to each parent of the child whose identity and whereabouts are known to the petitioner. The court shall direct the issuance of summonses to the child, if the child is twelve (12) years of age or older and the proposed standby guardian and alternate, if any, and such other persons as appear to the court to be necessary parties to the proceedings including the child's

parents, stepparents, grandparents, adult siblings, guardian, legal custodian or other person standing in loco parentis, if the identity and whereabouts of such persons are known.

C. The court shall enter an order approving the standby guardian upon finding that:

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

2. A triggering event occurred, and the parent consented to commencement of the standby guardian's authority;

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

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

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

E. Prior to any hearing on the petition, the court may appoint a guardian ad litem to represent the child. The qualified parent shall not be required to appear in court if the parent is detained and unable to appear, or upon motion for any other good cause shown.

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

A. If no designation for a standby guardian has been completed by a qualified parent, upon petition of any person, the district court of the jurisdiction in which a child resides may approve a person as standby guardian for a child of a qualified parent upon the occurrence of a triggering event. If requested in the petition, the court may also approve an alternate standby guardian identified by the petitioner, to act in the event that at any time after

approval pursuant to this section the standby guardian is unable or unwilling to assume the responsibilities of the standby guardianship.

B. The petition shall state:

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

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

3. The triggering event;

4. The name and address of the person proposed as standby guardian and any alternate and whether the petition requests that such person be given authority as a guardian of the person or guardian of the property of the minor, or both;

5. A statement of any known reasons as to why the child's other parent is not assuming or should not assume responsibility for the child; and

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

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

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

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

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

D. When a standby guardian's authority becomes effective upon the occurrence of a triggering event of the qualified parent, the standby guardian's authority to act on behalf of the qualified parent continues even though the qualified parent is no longer unavailable, unless the qualified parent notifies the standby guardian and the court, in writing, that the standby guardian's authority is revoked due to the expiration of the triggering event.

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

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-107 of Title 30, unless there is created a duplication in numbering, reads as follows:

A child's parent, stepparent, adult sibling or any adult related to the child by blood, marriage or adoption may petition the court which approved the standby guardian at any time following such approval and prior to any termination of the standby guardianship for review of whether continuation of the standby guardianship is in the best interests of the child. Notice of the filing of a petition shall promptly be given to the standby guardian, the child, if the child is twelve (12) years of age or older, and each parent of the child whose identity and whereabouts are known or could reasonably be ascertained.

SECTION 8. This act shall become effective November 1, 2024.

Passed the Senate the 12th day of March, 2024.

Presiding Officer of the Senate

Passed the House of Representatives the 16th day of April, 2024.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____