

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1297

By: Miller

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to veteran guardianships; creating
10 the Veterans Volunteer Guardianship Act; requiring
11 certain existing veteran guardianships comply with
12 certain guardianship laws; directing district court
13 to review certain existing guardianships; authorizing
14 guardianship of veteran appointments; specifying type
15 of guardian; providing guardianship petition and
16 order content requirements; making certain
17 guardianship duties, requirements and protections
18 applicable to guardianships established under this
19 act; requiring guardian maintain regular contact with
20 certain entities and individuals; providing ward and
21 guardian eligibility requirements; construing
22 provisions of this act; requiring bond; authorizing
23 waiver or reduction of bond under certain
24 circumstances; directing bond to be provided or
 reimbursed by the Oklahoma Department of Veterans
 Affairs under certain conditions; requiring certain
 federal fiduciary accountings be included in certain
 annual accountings to the district court; authorizing
 a guardian to work in consultation with certain
 federally appointed institutional fiduciary; amending
 30 O.S. 2011, Sections 3-104 and 3-110, as amended by
 Section 2, Chapter 320, O.S.L. 2016 (30 O.S. Supp.
 2018, Section 3-110), which relate to adult
 guardianships; expanding list of priorities for court
 selection of guardians; requiring certain notice to
 the Secretary of the United States Department of
 Veterans Affairs; amending 30 O.S. 2011, Section 4-
 201, which relates to guardian's bond; updating
 reference; amending 30 O.S. 2011, Section 4-303,

1 which relates to settlement and allowance accounts;
2 updating reference; amending 56 O.S. 2011, Section
3 192, which relates to exemption from costs in
4 guardianship cases; exempting guardianships of
5 persons receiving veteran disability compensation or
6 pension from certain guardianship costs; repealing 72
7 O.S. 2011, Sections 126.1, 126.2, 126.3, 126.4,
8 126.5, 126.6, 126.7, 126.8, 126.9, 126.10, 126.11,
9 126.12, 126.13, 126.14, 126.15, 126.16, 126.17,
10 126.19, 126.20, 126.22 and 126.23, which relate to
11 the Revised Uniform Veterans' Guardianship Act;
12 recodifying 72 O.S. 2011, Section 126.18, which
13 relates to proceedings to commitment; providing for
14 codification; and providing an effective date.

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 191 of Title 72, unless there is
18 created a duplication in numbering, reads as follows:

19 This act shall be known and may be cited as the "Veterans
20 Volunteer Guardianship Act".

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 192 of Title 72, unless there is
23 created a duplication in numbering, reads as follows:

24 A. 1. Any guardianship established under the authority of the
Revised Uniform Veterans' Guardianship Act and in existence on
November 1, 2019, shall comply with the provisions of Title 30 of
the Oklahoma Statutes for guardianships for an incapacitated person

1 or partially incapacitated adult person and shall remain in full
2 force and effect unless modified or terminated.

3 2. All guardians shall retain the powers assigned to them,
4 unless otherwise modified or terminated by the court.

5 B. The chief judge of each district court shall establish a
6 schedule by court rule which shall provide for a court review by
7 November 1, 2020, of each guardianship case in which a guardian was
8 appointed pursuant to the Revised Uniform Veterans' Guardianship Act
9 prior to November 1, 2019.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 193 of Title 72, unless there is
12 created a duplication in numbering, reads as follows:

13 A. A guardian or limited guardian may be appointed for an
14 incapacitated or partially incapacitated adult veteran by the court
15 in accordance with the procedures and requirements in Section 3-101
16 of Title 30 of the Oklahoma Statutes.

17 B. A guardian shall be appointed as a general or limited
18 guardian as defined by Section 1-109 of Title 30 of the Oklahoma
19 Statutes.

20 C. The petition and orders for guardianship shall cite the
21 Veterans Volunteer Guardianship Act if the guardianship is intended
22 to be governed by and availed of the benefits of the Veterans
23 Volunteer Guardianship Act.

1 D. Unless otherwise provided in the Veterans Volunteer
2 Guardianship Act, a guardian appointed to a guardianship established
3 pursuant to this act shall be subject to all the duties,
4 requirements and protections provided to a guardian to an
5 incapacitated person or partially incapacitated person under Title
6 30 of the Oklahoma Statutes. In addition, the guardian shall
7 maintain:

8 1. Regular contact with the subject of the proceeding for
9 purposes of assessing the person's capabilities, limitations, needs
10 and opportunities; and

11 2. If applicable, regular contact with the social workers,
12 health care providers or institutions that provide services to the
13 subject of the proceeding.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 194 of Title 72, unless there is
16 created a duplication in numbering, reads as follows:

17 A. The subject of the proceeding in a guardianship established
18 pursuant to the Veterans Volunteer Guardianship Act shall:

19 1. Meet the requirements of "veteran" pursuant to Section 2 of
20 Title 72 of the Oklahoma Statutes;

21 2. Be a resident of this state; and

22 3. Be in receipt of a veteran's disability compensation or
23 pension from the United States Department of Veterans Affairs
24 pursuant to Title 38 of the Code of Federal Regulations or in

1 receipt of benefits under the Supplemental Nutrition Assistance
2 Program.

3 B. The current or prospective guardian in a guardianship
4 established pursuant to the Veterans Volunteer Guardianship Act
5 shall:

6 1. Be an individual;

7 2. Be a resident of this state;

8 3. Not be related by blood, adoption or marriage to the subject
9 of the proceeding within the third degree of affinity or
10 consanguinity;

11 4. Not be considered ineligible or barred from serving as a
12 fiduciary for a veterans affairs beneficiary under Section 13.130 of
13 Title 38 of the Code of Federal Regulations; provided, that any
14 guardian appointed under the Veterans Volunteer Guardianship Act
15 that is subsequently denied appointment as a fiduciary shall provide
16 notification to the court within thirty (30) days of receipt of
17 notice of the denial;

18 5. Serve on a volunteer basis and waive compensation for
19 services as a guardian; provided, the guardian may receive
20 reimbursement of expenses incurred on behalf of the subject of the
21 proceeding that are authorized by court order and subject to the
22 limitations imposed by the court; and

23 6. Be availed of any benefits and subject to any additional
24 requirements promulgated by rules or policy of the Oklahoma

1 Department of Veterans Affairs, as the Department deems beneficial
2 to the recruitment of community volunteer guardians and protection
3 of the interest of the wards, including but not limited to
4 background checks.

5 C. Nothing in this section shall be construed to prevent a
6 guardian or prospective guardian from receiving compensation for
7 services as a fiduciary appointed by the United States Department of
8 Veterans Affairs or as a court-ordered guardian that is otherwise
9 authorized under Title 30 of the Oklahoma Statutes and does not cite
10 authority or request benefits from the provisions of the Veterans
11 Volunteer Guardianship Act.

12 D. Nothing in this section shall entitle a guardian of the
13 property of a veteran to payments on behalf of the subject of the
14 proceeding for veteran's benefits unless the guardian has made
15 application to the United States Department of Veterans Affairs for
16 appointment as a fiduciary as required by federal law.

17 SECTION 5. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 195 of Title 72, unless there is
19 created a duplication in numbering, reads as follows:

20 A. Before the entry of an order appointing a person as the
21 guardian or limited guardian of the property of an incapacitated or
22 partially incapacitated veteran pursuant to the Veterans Volunteer
23 Guardianship Act is submitted and before the letters of guardianship
24 issue, the court shall require the person to be appointed to provide

1 a bond, in an amount of the value of intangible personal property as
2 alleged in the petition or otherwise determined by the court at the
3 hearing on the petition, plus projected annual income of the subject
4 of the proceeding from all sources, rounded to the nearest One
5 Hundred Dollars (\$100.00).

6 B. The court may waive or reduce the amount of the bond
7 required in subsection A of this section when the guardian's
8 authority does not include management of the property of the subject
9 of the proceeding.

10 C. The bond shall be provided or reimbursed by the Oklahoma
11 Department of Veterans Affairs, subject to availability of funds,
12 provided the guardian and subject of the proceeding meet the
13 requirements in subsections A and B of Section 4 of this act.

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 196 of Title 72, unless there is
16 created a duplication in numbering, reads as follows:

17 A. If the guardian is appointed as a fiduciary by the United
18 States Department of Veterans Affairs pursuant to regulations
19 adopted by the Department in any applicable part of Title 38 of the
20 Code of Federal Regulations, the fiduciary accounting provided to
21 the Department pursuant to Section 13.280 of Title 38 of the Code of
22 Federal Regulations shall be included in the annual accounting filed
23 with the district court as part of the annual accounting of a
24

1 guardian of the property as required by Section 4-303 of Title 30 of
2 the Oklahoma Statutes.

3 B. A guardian may work in consultation with an institutional
4 fiduciary appointed by the Department pursuant to Title 38 of the
5 Code of Federal Regulations and include information provided by the
6 institutional fiduciary in the annual accounting of a guardian of
7 the property as required by Section 4-303 of Title 30 of the
8 Oklahoma Statutes.

9 SECTION 7. AMENDATORY 30 O.S. 2011, Section 3-104, is
10 amended to read as follows:

11 Section 3-104. A. The following priorities shall guide the
12 selection by the court of a guardian or limited guardian of an
13 incapacitated or partially incapacitated person from among those
14 eligible:

15 1. The individual or individuals nominated by the subject of
16 the proceeding pursuant to Section 3-102 of this title;

17 2. The current guardian or limited guardian appointed or
18 recognized by the appropriate court of any other jurisdiction in
19 which the incapacitated or partially incapacitated person resides;

20 3. An individual nominated by the will or by other writing of a
21 deceased parent, spouse, or an adult child who was serving as the
22 guardian or limited guardian of the subject of the proceeding;

23 4. The spouse of the subject of the proceeding;

24 5. An adult child of the subject of the proceeding;

1 6. A parent of the subject of the proceeding;

2 7. A sibling of the subject of the proceeding; ~~or~~

3 8. Any individual approved by the court with whom the subject
4 of the proceeding has been living for more than six (6) months prior
5 to the filing of the petition. Provided that any owner, operator,
6 administrator or employee of a facility subject to the provisions of
7 the Nursing Home Care Act, the Residential Home Care Act or the
8 Group Homes for the Developmentally Disabled or Physically
9 Handicapped Persons Act shall not be appointed guardian or limited
10 guardian of a resident of such facility unless said owner, operator,
11 administrator or employee is the spouse of said resident, or a
12 relative of said resident within the second degree of consanguinity
13 and is otherwise eligible for appointment; or

14 9. If applicable, an individual volunteer qualified for
15 appointment as a guardian of a veteran pursuant to the Veterans
16 Volunteer Guardianship Act.

17 B. When the guardian or limited guardian of an incapacitated or
18 partially incapacitated person is the guardian of property only, the
19 court may appoint an organization which is eligible to manage the
20 financial resources of an individual and has fiduciary powers, or
21 its successor in interest, when:

22 1. Such organization is nominated by the subject of the
23 proceeding pursuant to Section 3-102 of this title; ~~or~~

1 2. Such organization is nominated by a person eligible to make
2 such nomination pursuant to Section 3-103 of this title; or

3 3. The appointment of such organization is in the best interest
4 of the subject of the proceeding.

5 C. The court shall make reasonable inquiry to determine whether
6 the person or organization proposed to serve as the guardian or
7 limited guardian of an incapacitated or partially incapacitated
8 person is suitable and will exercise the powers and carry out the
9 duties and responsibilities of guardian or limited guardian in the
10 best interest of the ward. The court shall also inquire of the
11 proposed guardian of the person of the ward as to how the guardian
12 proposes to provide for the care of the ward, and of the proposed
13 guardian of the estate of the ward as to how the guardian proposes
14 to manage the property of the ward and to provide for the ward's
15 financial care. The court shall make such orders with respect
16 thereto as the court deems to be for the best interest of the ward.

17 D. A public agency shall not be appointed to serve as guardian
18 for an adult except as provided in Section 1415 of Title 10 and
19 Section 10-108 of Title 43A of the Oklahoma Statutes.

20 SECTION 8. AMENDATORY 30 O.S. 2011, Section 3-110, as
21 amended by Section 2, Chapter 320, O.S.L. 2016 (30 O.S. Supp. 2018,
22 Section 3-110), is amended to read as follows:

23 Section 3-110. A. The court shall cause notice to be served of
24 the time and place of the hearing on the petition requesting the

1 appointment of a guardian for an incapacitated or partially
2 incapacitated person on:

3 1. The subject of the proceeding; and

4 2. The following persons, other than the petitioner, who are
5 known to the petitioner or whose existence and address can be
6 ascertained by the petitioner with reasonably diligent efforts:

7 a. the spouse, if any, of the subject of the proceeding,

8 b. the attorney, if any, of the subject of the
9 proceeding,

10 c. all adult children of the subject of the proceeding,

11 d. if there is no such adult child, the then living
12 parent or parents of the subject of the proceeding, or

13 e. if there is no such parent, all adult brothers and
14 sisters of the subject of the proceeding, and all
15 adult children of any deceased brothers or sisters of
16 the subject of the proceeding, and all adult
17 grandchildren of the subject of the proceeding;

18 3. In case no person listed in paragraph 2 of this subsection
19 is given notice, notice shall be given to at least one and not more
20 than three of the nearest adult relatives of the subject of the
21 proceeding who are known to the petitioner or whose existence and
22 address can be ascertained with reasonably diligent efforts;

23 4. If not the petitioner, any person or organization which, in
24 the petition, is proposed to serve as guardian or limited guardian

1 or, to the extent such nomination is known to the petitioner, who is
2 nominated by will or other writing to serve as guardian or limited
3 guardian;

4 5. To the extent known to the petitioner:

5 a. the person or facility having care or custody of the
6 subject of the proceeding, and

7 b. the Department of Human Services or the Department of
8 Mental Health and Substance Abuse Services, if said
9 Departments are providing services to the subject of
10 the proceeding;

11 6. As appropriate, the ~~Veterans Administration pursuant to~~
12 ~~Section 126.8 of Title 72 of the Oklahoma Statutes~~ Secretary of the
13 United States Department of Veterans Affairs if the subject of the
14 proceeding is a veteran and is reasonably believed to be eligible
15 for or in receipt of benefits or services from the Department; and

16 7. Any other person as directed by the court.

17 B. A copy of the pleading which gave rise to the notice shall
18 be attached to any notice served pursuant to this section.

19 C. Except for actions appointing a special guardian pursuant to
20 Section 3-115 of this title:

21 1. Notice shall be served personally on the individual who is
22 the subject of the proceeding at least ten (10) days before the time
23 set for hearing. Such personal service may be made by the attorney
24

1 for the petitioner, sheriff, or licensed process server. The person
2 making such services shall make proper return thereof; and

3 2. Notice to other persons entitled to notice of a hearing on
4 the original petition requesting the appointment of a guardian shall
5 be mailed by regular first-class mail at least ten (10) days before
6 the time set for the hearing. Such service by mail may be made by
7 the court clerk, deputy court clerk or attorney for the petitioner.

8 D. The notice to the subject of the proceeding shall set forth
9 the date, time, place, and purpose of the hearing to which the
10 notice refers. Such notice shall be substantially in the following
11 form:

12 NOTICE OF HEARING

13 TO: _____

14 (Name of subject of proceeding)

15 Service Address _____

16 You are hereby notified that a petition has been filed alleging that

17 you are an __ incapacitated, __ partially incapacitated person and

18 are incapable of __ caring for yourself, __ managing your property.

19 The petition requests that a __ guardian, __ limited guardian be

20 appointed by the court to make decisions for you regarding __

21 yourself, __ your property. A copy of the petition is attached.

22 The hearing on the petition will be held on

23 _____.

24 (date, time and place of the hearing)

1 At the hearing a () guardian, () limited guardian may be
2 appointed for your () person, () property. The judge will explain
3 to you the nature, purpose and effect of the proceedings.

4 You have the right to attend the hearing. You may confront and
5 cross-examine all witnesses and present your own witnesses. You
6 have the right to request that your hearing be closed to the public.
7 You may request that an expert be appointed to examine you and if
8 the judge believes that an examination is necessary, the judge will
9 order an evaluation to be done.

10 You have the right to hire an attorney of your choice to
11 represent you. If you do not have an attorney and you wish to be
12 represented by an attorney at the hearing, the court will appoint
13 one for you. You may request the appointment of an attorney orally
14 or in writing prior to the hearing or at the hearing. If you are
15 able, you will be required to pay the cost of an attorney appointed
16 by the court.

17 SECTION 9. AMENDATORY 30 O.S. 2011, Section 4-201, is
18 amended to read as follows:

19 Section 4-201. A. Before the entry of an order appointing a
20 person or organization as a guardian of the person and before the
21 letters of guardianship issue, the court may require the person or
22 organization to be appointed to provide a bond to this state, with
23 sufficient sureties, to be approved by the court, and in such penal
24

1 sum as the court shall order, conditioned that the guardian will
2 faithfully execute the duties of the trust according to law.

3 B. 1. Before the entry of an order appointing a person or
4 organization as the guardian of a minor or as the guardian or
5 limited guardian of the property of an incapacitated or partially
6 incapacitated person takes effect, and before the letters of
7 guardianship issue, the court shall require the person or
8 organization to be appointed to provide a bond, in an amount not
9 less than the value of intangible personal property as alleged in
10 the petition or otherwise determined by the court at the hearing on
11 the petition, to this state, with sufficient sureties, to be
12 approved by the court, and in such penal sum as the court shall
13 order, conditioned that the guardian will faithfully execute the
14 duties of the trust according to law.

15 2. Except as otherwise provided by paragraph 3 of this
16 subsection, upon a finding by the court that the anticipated annual
17 income to a ward for one (1) year plus the value of the personal
18 property of the ward is less than Forty Thousand Dollars
19 (\$40,000.00), the court may order that a bond is not necessary. For
20 purposes of this paragraph, personal property shall not include
21 property owned with a joint tenant.

22 3. The provisions of this section shall not apply to cases
23 subject to the ~~Uniform Veterans Guardianship Act~~ Veterans Volunteer
24 Guardianship Act.

1 C. In the event the intangible personal property of the ward,
2 as determined by the inventory, is in a greater amount than as
3 alleged in the petition or determined by the court at the hearing on
4 the petition, the guardian shall file at the time the inventory is
5 filed a bond sufficient for the full amount of the intangible
6 personal property, which bond will be in substitution for the bond
7 originally filed on the appointment of the guardian. The amount of
8 the bond in the future may be adjusted up or down in amount based
9 upon the intangible personal property shown in future annual
10 accountings; provided, however, no bond shall be reduced except upon
11 order of the court.

12 SECTION 10. AMENDATORY 30 O.S. 2011, Section 4-303, is
13 amended to read as follows:

14 Section 4-303. A. Except as otherwise provided by subsection B
15 of this section, a guardian or limited guardian of the property
16 shall, upon the expiration of a year from the time of appointment,
17 and at least annually thereafter, present accounts to the court for
18 settlement and allowance as part of the guardianship report as
19 required by Section 4-306 of this title.

20 B. 1. In addition, a guardian or limited guardian of the
21 property shall:

22 a. present accounts whenever the court requires that such
23 report or accounts be presented, and
24

1 b. with the annual report of accounts, report any changes
2 of property listed on the inventory required by
3 Section 4-301 of this title. The report shall state
4 the compensation requested by the guardian and for the
5 attorneys.

6 2. If there has been a significant change in the physical or
7 mental condition of the ward, or the ward's financial resources, the
8 details thereof shall be set forth in the annual report required by
9 subsection A of this section.

10 3. Except as otherwise directed by the court or required by the
11 ~~Uniform Veteran's Guardianship Act (72 U.S.C. 126.1, et seq.)~~
12 Veterans Volunteer Guardianship Act, the provisions of this
13 subsection regarding the filing of an annual accounting and annual
14 plan shall not apply to any guardianship of the property of a ward
15 if the ward's financial resources or assets, other than a homestead,
16 are worth less than Forty Thousand Dollars (\$40,000.00) if a bond
17 has been posted, or are worth less than Ten Thousand Dollars
18 (\$10,000.00) regardless of whether or not a bond has been posted,
19 and if the guardian or limited guardian of the property is the
20 spouse or a relative of the ward within the fourth degree of
21 consanguinity.

22 C. In addition to the reports required by subsections A and B
23 of this section, a guardian or limited guardian shall submit a
24 report:

1 1. If the ward is an incapacitated or partially incapacitated
2 person, when there is a significant change in the capacity of the
3 ward to meet the essential requirements for the physical health or
4 safety of the ward or to manage the financial resources of the ward;

5 2. If the ward is a minor, any significant change in the
6 condition of the minor or in the condition of the estate of the
7 minor;

8 3. When the guardian or limited guardian resigns or is removed;
9 and

10 4. When the guardianship is terminated.

11 D. 1. Unless waived at the discretion of the court, a guardian
12 or limited guardian of the person of an incapacitated or partially
13 incapacitated person shall file a report on the guardianship of the
14 person pursuant to Section 4-305 of this title.

15 2. A guardian of the person of a minor ward shall not be
16 required to file annual reports of the guardianship of the person of
17 the ward unless ordered by the court.

18 3. A guardian or limited guardian of the property of a ward
19 shall file a report on the guardianship of the property pursuant to
20 Section 4-306 of this title.

21 E. The court shall not waive the filing of any report for a
22 period in excess of five (5) years.

1 F. If the same person or organization is required to file
2 reports as to both the person and the property of a ward, the
3 reports may be consolidated.

4 G. An accounting information submitted by a guardian or limited
5 guardian of the property of a ward shall be verified and shall be
6 rendered in the same manner as required by Title 58 of the Oklahoma
7 Statutes with respect to an information of an estate of a decedent.
8 Such information shall also set forth any charges to the property of
9 the ward which have accrued since the previous accounting or, in the
10 case of an initial accounting, since the filing of an inventory of
11 the property of the ward placed under the control of the guardian or
12 limited guardian.

13 H. In addition to other specified information any order of the
14 court approving an annual guardianship plan and report shall include
15 the date certain by which the guardian shall file the next annual
16 report.

17 SECTION 11. AMENDATORY 56 O.S. 2011, Section 192, is
18 amended to read as follows:

19 Section 192. No costs shall be charged whatsoever either by the
20 court clerk or by the county judge of the district court in cases
21 involving the guardianship of persons who are applicants for, or who
22 are receiving ~~old-age or other assistance under the Social Security~~
23 ~~Laws of this state~~ Social Security benefits or assistance or
24 veterans disability compensation or pension.

1 SECTION 12. REPEALER 72 O.S. 2011, Sections 126.1,
2 126.2, 126.3, 126.4, 126.5, 126.6, 126.7, 126.8, 126.9, 126.10,
3 126.11, 126.12, 126.13, 126.14, 126.15, 126.16, 126.17, 126.19,
4 126.20, 126.22 and 126.23, are hereby repealed.

5 SECTION 13. RECODIFICATION 72 O.S. 2011, Section 126.18,
6 shall be recodified as Section 197 of Title 72 of the Oklahoma
7 Statutes, unless there is created a duplication in numbering.

8 SECTION 14. This act shall become effective November 1, 2019.

9

10 COMMITTEE REPORT BY: COMMITTEE ON VETERANS AND MILITARY AFFAIRS,
11 dated 02/12/2019 - DO PASS, As Amended.

12

13

14

15

16

17

18

19

20

21

22

23

24