

1 State of Arkansas
2 88th General Assembly
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4

As Engrossed: H3/10/11 S3/28/11

A Bill

HOUSE BILL 1628

5 By: Representative Leding
6

For An Act To Be Entitled

8 AN ACT TO CLARIFY THE LAW CONCERNING GUARDIANSHIPS;
9 TO EXPAND THE RANGE OF PERSONS ELIGIBLE TO BE
10 GUARDIANS; AND FOR OTHER PURPOSES.
11

Subtitle

12 AN ACT TO CLARIFY THE LAW CONCERNING
13 GUARDIANSHIPS AND TO EXPAND THE RANGE OF
14 PERSONS ELIGIBLE TO BE GUARDIANS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 *SECTION 1. Arkansas Code § 28-65-101 is amended to read as follows:*
22 18-65-101. Definitions.

23 As used in this chapter:

24 (1) "Essential requirements for health or safety" means the
25 health care, food, shelter, clothing, and protection without which serious
26 illness or serious physical injury will occur;

27 (2) "Evaluation" means a professional assessment of the
28 abilities of the respondent and the impact of any impairments on the
29 individual's capability to meet the essential requirements for his or her
30 health or safety or to manage his or her estate;

31 (3) "Guardian" ~~is~~ means one appointed by a court to have the
32 care and custody of the person or of the estate, or of both, of an
33 incapacitated person;

34 (4) "Guardian ad litem" ~~is~~ means one appointed by a court in
35 which a particular proceeding is pending to represent a ward or an unborn
36 person in that proceeding;



1 (5)(A) "Incapacitated person" means a person who is impaired by
2 reason of a disability such as mental illness, mental deficiency, physical
3 illness, chronic use of drugs, or chronic intoxication, to the extent of
4 lacking sufficient understanding or capacity to make or communicate decisions
5 to meet the essential requirements for his or her health or safety or to
6 manage his or her estate.

7 (B) "Incapacitated person" includes an endangered or
8 impaired adult as defined in the Adult Maltreatment Custody Act, ~~§ 9-20-~~
9 ~~103(8)(A)~~ § 9-20-103, who is in the custody of the Department of Human
10 Services.

11 (C) Nothing in this chapter shall be construed to mean a
12 person is incapacitated for the sole reason he or she relies consistently on
13 treatment by spiritual means through prayer alone for healing in accordance
14 with his or her religious tradition and is being furnished such treatment;

15 (6) "Least restrictive alternative" means the form of assistance
16 that least interferes with the legal capacity of the respondent to act in his
17 or her own behalf;

18 (7) "Limited guardian" ~~is~~ means one whose powers and authority
19 have been limited to the specific powers, authorities, and duties set forth
20 in the order of appointment;

21 (8) "Professional" means a physician, licensed psychologist, or
22 licensed certified social worker with training, experience, and knowledge of
23 the particular alleged disability of the respondent;

24 (9) "Temporary guardian" means a guardian appointed pursuant to
25 § 28-65-218; and

26 (10) "Ward" ~~is~~ means an incapacitated person for whom a guardian
27 has been appointed.

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29 *SECTION 2.* Arkansas Code § 28-65-203 is amended to read as follows:

30 28-65-203. Qualifications of guardian.

31 (a) A natural person who is a resident of this state, eighteen (18) or
32 more years of age, of sound mind, not a convicted and unparoled felon, is
33 qualified to be appointed guardian of the person and of the estate of an
34 incapacitated person.

35 (b) However, notwithstanding the provisions in subdivision (a), a
36 natural person who is a resident of this state, eighteen (18) years of age or

1 older, of sound mind, and a convicted and unpardoned felon is qualified to be
2 a guardian of the person or estate of a minor in the custody of the
3 Department of Human Services if under § 9-28-409 the person:

4 (1) That person's home has been opened as a foster home; or

5 (2) That person's home has been opened as an adoptive home.

6 ~~(b)~~(c) Any charitable organization or humane society incorporated
7 under the laws of this state is qualified for appointment as guardian of the
8 person and estate of a minor:

9 (1) When the major portion of the support of the minor is being
10 supplied or administered by the organization;

11 (2) When the court finds that:

12 (A) The minor has been abandoned by his or her parents; or

13 (B) The minor's parents are incapacitated or unfit for the
14 duties of guardianship; or

15 (3) If no other suitable person can be found who is able and
16 willing to assume the duties of guardianship.

17 ~~(e)~~~~(1)~~(d)(1) A parent under eighteen (18) years of age is qualified
18 for appointment as guardian of the person of his or her child.

19 (2) If the Department of Human Services consents, the department
20 is qualified for appointment as guardian of the estate of a minor when the
21 minor is in the custody of the department.

22 ~~(d)~~~~(1)~~(e)(1) A corporation authorized to do business in this state and
23 properly empowered by its charter to become guardian is qualified to serve as
24 guardian of the estate of an incapacitated person.

25 (2) A bank or similar institution with trust powers may be
26 appointed guardian of the estate of an incapacitated person.

27 ~~(e)~~(f)(1) A nonresident natural person possessing the qualifications
28 enumerated in this section, except as to residence, who has appointed a
29 resident agent to accept service of process in any action or suit with
30 respect to the guardianship and has caused the appointment to be filed with
31 the court, whether or not he or she has been nominated by the will of the
32 last surviving parent of a minor resident of this state to be appointed as
33 guardian of the minor, is qualified for the appointment.

34 (2) However, unless nominated by will, bond may not be dispensed
35 with.

36 ~~(f)~~(g) ~~No~~ A person whom the court finds to be unsuitable to perform

1 the duties incident to the appointment shall not be appointed guardian of the
2 person or estate of an incapacitated person.

3 ~~(g)~~(h) ~~No~~ A sheriff, probate clerk of a circuit court, or deputy of
4 either, ~~nor~~ or a circuit judge, shall not be appointed guardian of the person
5 or estate of an incapacitated person unless the incapacitated person ~~shall be~~
6 is related to him or her within the third degree of consanguinity.

7 ~~(h)~~(i)(1) Except as provided in subdivision (h)(4) of this section,
8 ~~no~~ a public agency or employee of any public agency acting in his or her
9 official capacity shall not be appointed as guardian for any incapacitated
10 person.

11 (2) ~~No~~ An employee of a public agency that provides direct
12 services to the incapacitated person shall not be appointed guardian of the
13 person or estate of the incapacitated person.

14 (3) ~~No~~ An employee of a public agency that provides direct
15 services to the incapacitated person shall not be appointed as a temporary
16 guardian.

17 (4) [Effective if contingency in Acts 2007, No. 862, § 5 is
18 met.] Notwithstanding any other provision of law, the Public Guardian for
19 Adults may serve as guardian of the person or the estate, or both, of an
20 incapacitated person receiving services from any public agency.

21 (5) [Effective until contingency in Acts 2007, No. 862, § 5 is
22 met.] The department shall issue regulations to implement this provision.

23 (5) [Effective if contingency in Acts 2007, No. 862, § 5 is
24 met.] The department shall promulgate rules to implement this provision.

25 ~~(i)~~(j) A person may be appointed temporary guardian of an
26 incapacitated person notwithstanding the provisions of *subsection (h) or (k)*
27 of this section if he or she is related to the incapacitated person within
28 the third degree of consanguinity and the court determines that any potential
29 conflict of interest is unsubstantial and that the appointment is in the best
30 interest of the ward.

31 (k) A circuit court of this state shall not appoint a person or
32 institution as the permanent custodian or permanent guardian of the person or
33 estate of an adult in the custody of the department unless:

34 (1) The department has evaluated the prospective guardian under
35 the department's authority under § 9-20-122 and promulgated department
36 policy; or

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(2) The department has evaluated the prospective custodian under the department's authority under § 9-20-122 and promulgated department policy.

/s/Leding