

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S2/16/09
A Bill

SENATE BILL 352

5 By: Senator J. Key
6 By: Representative J. Dickinson
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9 **For An Act To Be Entitled**

10 AN ACT TO CLARIFY THE JURISDICTION OF MATTERS
11 INVOLVING JUVENILES AND THE QUALIFICATIONS FOR
12 GUARDIANS OF MINORS; AND FOR OTHER PURPOSES.
13

14 **Subtitle**

15 TO CLARIFY THE JURISDICTION OF MATTERS
16 INVOLVING JUVENILES AND THE
17 QUALIFICATIONS FOR GUARDIANS OF MINORS.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code § 28-65-107(c), regarding the jurisdiction of
23 courts for juvenile matters, is amended to read as follows:

24 (c)(1) If a juvenile is the subject matter of an open case filed under
25 the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the guardianship
26 petition shall be filed in that case if the juvenile resides in Arkansas.

27 (2) If the juvenile resides out of state through the Interstate
28 Compact on the Placement of Children, § 9-29-201 et seq., the guardianship
29 petition may be filed in Arkansas or it may be filed in the state in which
30 the juvenile resides, subject to approval by the receiving state.
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32 SECTION 2. Arkansas Code § 28-65-203 is amended to read as follows:
33 28-65-203. Qualifications of guardian.

34 (a) A natural person who is a resident of this state, eighteen (18) or
35 more years of age, of sound mind, not a convicted and unpardoned felon, is
36 qualified to be appointed guardian of the person and of the estate of an



1 incapacitated person.

2 (b) ~~The Department of Human Services or any~~ Any charitable
3 organization or humane society incorporated under the laws of this state is
4 qualified for appointment as guardian of the person and estate of a minor:

5 (1) When the major portion of the support of the minor is being
6 supplied or administered by the ~~department or~~ organization;

7 (2) When the court finds that:

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

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

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

13 (c)(1) A parent under eighteen (18) years of age is qualified for
14 appointment as guardian of the person of his or her child.

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

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

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

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

31 (f) No person whom the court finds to be unsuitable to perform the
32 duties incident to the appointment shall be appointed guardian of the person
33 or estate of an incapacitated person.

34 (g) No sheriff, probate clerk of a circuit court, or deputy of either,
35 nor a circuit judge, shall be appointed guardian of the person or estate of
36 an incapacitated person unless the incapacitated person shall be related to

1 him or her within the third degree of consanguinity.

2 (h)(1) Except as provided in ~~subsection (b)~~ subdivision (h)(4) of this
3 section, no public agency or employee of any public agency acting in his or
4 her official capacity shall be appointed as guardian for any incapacitated
5 person.

6 (2) No employee of a public agency that provides direct services
7 to the incapacitated person shall be appointed guardian of the person or
8 estate of the incapacitated person.

9 (3) No employee of a public agency that provides direct services
10 to the incapacitated person shall be appointed as a temporary guardian.

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

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

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

19 (i) A person may be appointed temporary guardian of an incapacitated
20 person notwithstanding the provisions of subsection (h) of this section if he
21 or she is related to the incapacitated person within the third degree of
22 consanguinity and the court determines that any potential conflict of
23 interest is unsubstantial and that the appointment is in the best interest of
24 the ward.

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26 /s/ J. Key
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