

Filed for intro on 02/02/95  
House Bill \_\_\_\_\_  
By  
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Senate No. SB0442  
By Henry

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AN ACT to amend Tennessee Code Annotated, Title 34 and Title 37, relative to standby guardianship.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 34, Chapter 12, is amended by adding the following as a new section to be appropriately designated:

Section \_\_.

(a) For the purpose of this section:

(1) "Standby guardian" means :

(A) a person judicially appointed pursuant to subsection (c) of this section as standby guardian of the person and/or property of an infant whose authority becomes effective upon the

incapacity or death of the infant's parent or upon the consent of the parent and

(B) a person designated pursuant to subsection (d) of this section as standby guardian whose authority becomes effective upon the incapacity of the infant's parent, or upon the debilitation and consent of the parent.

(2) "Attending physician" means the physician who has primary responsibility for the treatment and care of the petitioner. Where more than one physician shares such responsibility, or where a physician is acting on the attending physician's behalf, any such physician may act as the attending physician pursuant to this section. Where no physician has such responsibility, any physician who is familiar with the petitioner's medical condition may act as the attending physician pursuant to this section.

(3) "Debilitation" means a chronic and substantial inability, as a result of physically debilitating illness, disease or injury, to care for one's dependent infant. "Debilitated" means the state of having a debilitation.

(4) "Incapacity" means a chronic and substantial inability, as a result of mental impairment, to understand the nature and consequences of decisions concerning the care of one's dependent infant, and a consequent inability to care for such infant. "Incapacitated" means the state of having an incapacity.

(b) The provisions of this chapter relating to guardians shall apply to standby guardians, except insofar as this section provides otherwise.

(c)

(1) A petition for the judicial appointment of a standby guardian of the person and/or property of an infant pursuant to this section may be made only by a parent or a legal guardian of the infant.

(2) A petition for the judicial appointment of a standby guardian of an infant shall, in addition to meeting the requirements of this chapter:

(A) State whether the authority of the standby guardian is to become effective upon the petitioner's incapacity, upon the petitioner's death, or upon whichever occurs first; and

(B) State that the petitioner suffers from

(i) a progressively chronic illness or

(ii) an irreversibly fatal illness and the basis for such statement, such as the date and source of a medical diagnosis, without requiring the identification of the illness in question.

(3) The petitioner's appearance in court shall not be required if the petitioner is medically unable to appear, except upon motion and for good cause shown.

(4)

(A) If the court finds that the petitioner suffers from a progressively chronic illness or an irreversibly fatal illness and that the interests of the infant will be promoted by the appointment of a standby guardian of the person and/or property it must make a decree accordingly.

(B) Such decree shall specify whether the authority of the standby guardian is effective upon the receipt of a determination of the petitioner's incapacity, upon the receipt of the certificate of the petitioner's death, or upon whichever occurs first, and shall

also provide that the authority of the standby guardian may earlier become effective upon written consent of the parent pursuant to subparagraph (C) of subdivision (5) of this subsection. Such decree shall also indicate that the authority of the standby guardian is effective upon the petitioner's consent.

(C) If at any time prior to the commencement of the authority of the standby guardian the court finds that the requirements of subparagraph (A) of this subdivision are no longer satisfied, it may rescind such decree.

(5)

(A) Where the decree provides that the authority of the standby guardian is effective upon receipt of a determination of the petitioner's incapacity, the standby guardian's authority shall commence upon the standby guardian's receipt of a copy of a determination of incapacity made pursuant to subsection (f) of this section. The standby guardian shall file a copy of the determination of incapacity with the court that issued the decree within ninety (90) days of the date of receipt of such determination or the standby guardian's authority may be rescinded by the court.

(B) Where the decree provides that the authority of the standby guardian is effective upon receipt of a certificate of the petitioner's death, the standby guardian's authority shall commence upon the standby guardian's receipt of a certificate of death. The standby guardian shall file the certificate of death with the court that issued the decree within ninety (90) days of the date

of the petitioner's death or the standby guardian's authority may be rescinded by the court.

(C) Notwithstanding subparagraphs (A) and (B) of this subdivision, a standby guardian's authority shall commence upon the standby guardian's receipt of the petitioner's written consent to such commencement, signed by the petitioner in the presence of two (2) witnesses at least eighteen (18) years of age, other than the standby guardian, who shall also sign the writing. Another person may sign the written consent on the petitioner's behalf and at the petitioner's direction if the petitioner is physically unable to do so, provided such consent is signed in the presence of the petitioner and the witnesses. The standby guardian shall file the written consent with the court that issued the decree within ninety (90) days of the date of receipt of such written consent or the standby guardian's authority may be rescinded by the court.

(6) The petitioner may revoke a standby guardianship created under this subdivision by executing a written revocation, filing it with the court that issued the decree, and promptly notifying the standby guardian of the revocation.

(7) A person judicially appointed standby guardian pursuant to this subdivision may at any time before the commencement of his or her authority renounce the appointment by executing a written renunciation and filing it with the court that issued the decree, and promptly notifying the petitioner of the revocation.

(d)

(1) A parent or legal guardian may designate a standby guardian by means of a written designation, signed by the parent or legal guardian in the presence of two (2) witnesses at least eighteen (18) years of age, other than the standby guardian, who shall also sign the writing. Another person may sign the written designation on the parent's or the legal guardian's behalf and at the parent's or legal guardian's direction if the parent is physically unable to do so, provided the designation is signed in the presence of the parent or legal guardian and the witnesses.

(2)

(A) A designation of a standby guardian shall identify the parent or legal guardian, the infant and the person designated to be the standby guardian, and shall indicate that the parent or legal guardian intends for the standby guardian to become the infant's guardian in the event the parent or legal guardian either:

(i) becomes incapacitated;

(ii) becomes debilitated and consents to the commencement of the standby guardian's authority; or

(iii) died prior to the commencement of a judicial proceeding to appoint a guardian of the person and/or property of an infant.

(B) A parent or legal guardian may designate an alternate standby guardian in the same writing, and by the same manner, as the designation of a standby guardian.

(C) A designation may, but need not, be in the following form:

#### Designation of Standby Guardian

I (name of parent) hereby designate (name, home address and telephone number of standby guardian) as standby guardian of the person and property of my child(ren) (name of child(ren)).

(You may, if you wish, provide that the standby guardian's authority shall extend only to the person, or only to the property, of your child, by crossing out "person" or "property", whichever is inapplicable, above.)

The standby guardian's authority shall take effect if and when either: (1) my doctor concludes I am mentally incapacitated, and thus unable to care for my child(ren); or (2) my doctor concludes that I am physically debilitated, and thus unable to care for my child(ren) and I consent in writing, before two witnesses, to the standby guardian's authority taking effect.

In the event the person I designate above is unable or unwilling to act as guardian for my child(ren), I hereby designate (name, home address and telephone number of alternate standby guardian), as standby guardian of my child(ren).

I also understand that my standby guardian's authority will cease sixty days after commencing unless by such date he or she petitions the court for appointment as guardian.

I understand that I retain full parental rights even after the commencement of the standby guardian's authority, and may revoke the standby guardianship at any time.

Signature: \_\_\_\_\_.

Address: \_\_\_\_\_.

Date: \_\_\_\_\_.

I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign and asked another to sign this document, who did so in my presence. I further declare that I am at least eighteen years old and am not the person designated as standby guardian.

Witness' Signature: \_\_\_\_\_.

Address: \_\_\_\_\_.

Date: \_\_\_\_\_.

Witness' Signature: \_\_\_\_\_.

Address: \_\_\_\_\_.

Date: \_\_\_\_\_.

(3) The authority of the standby guardian under a designation shall commence upon either:

(A) the standby guardian's receipt of a copy of a determination of incapacity made pursuant to subsection (f) of this section; or

(B) the standby guardian's receipt of

(I) a copy of a determination of debilitation made pursuant to subsection of this section and

(ii) a copy of the parent's or legal guardian's written consent to such commencement, signed by the parent or legal guardian in the presence of two (2) witnesses at least eighteen (18) years of age, other than the standby guardian, who shall also sign the writing. Another person may sign the written consent on the parent's or legal guardian's behalf and at the parent's or legal guardian's direction if the parent or legal guardian is physically unable to do so, provided such consent is signed in the presence of the parent or legal guardian and the witnesses. The standby guardian shall file a petition pursuant to subdivision (4) of this subsection within sixty (60) days of the date of its commencement pursuant to this paragraph or such standby guardian's authority shall cease after such date, but shall recommence upon such filing.

(4) The standby guardian may file a petition for appointment as guardian after receipt of either: (A) a copy of a determination of incapacity made pursuant to subsection (f) of this section; or (B) (i) a copy of a determination of debilitation made pursuant to subsection (f) of this section and (ii) a copy of the parent's or legal guardian's written consent, pursuant to subdivision (3) of this subsection. Such petition must, in addition to meeting the requirements of this chapter

(A) append the written designation of such person as standby guardian; and

(B) append a copy of either:

(i) the determination of incapacity of the parent or legal guardian; or

(ii) the determination of debilitation and the parental or guardian's consent; and

(C) if the petition is by a person designated as alternate standby guardian, state that the person designated as standby guardian is unwilling or unable to act as standby guardian, and the basis for such statement.

(5) If the court finds that the person was duly designated as standby guardian, that a determination of incapacity, a determination of debilitation and parental or guardian's consent or a document indicating that the parent or legal guardian of the infant has died, such as a copy of a death certificate or a funeral home receipt or other such document, that the interests of the infant will be promoted by the appointment of a

standby guardian of the person and/or property, and that, if the petition is by a person designated as alternate standby guardian, the person designated as standby guardian is unwilling or unable to act as standby guardian, it must make a decree accordingly.

(6) The parent or legal guardian may revoke a standby guardianship created under this subdivision:

(A) by notifying the standby guardian verbally or in writing or by any other act evidencing a specific intent to revoke the standby guardianship prior to the filing of a petition; and

(B) where the petition has already been filed, by executing a written revocation, filing it with the court where the petition was filed, and promptly notifying the standby guardian of the revocation.

(e) The standby guardian may also file a petition for appointment as guardian in any other manner permitted by this chapter on notice to the parent, and may append a designation of standby guardian to the petition for consideration by the court in the determination of such petition.

(f)

(1) A determination of incapacity or debilitation must:

(A) be made by the attending physician to a reasonable degree of medical certainty;

(B) be in writing; and

(C) contain the attending physician's opinion regarding the cause and nature of the petitioner's incapacity or debilitation as well as its extent and probable duration. The attending physician shall provide a copy of the determination of incapacity or debilitation to the standby guardian, if the standby guardian's identity is known to the physician.

(2) If requested by the standby guardian, an attending physician shall make a determination regarding the petitioner's incapacity or debilitation for purposes of this section.

(3) The standby guardian shall ensure that the petitioner is informed of the commencement of the standby guardian's authority as a result of a determination of incapacity and of the petitioner's right to revoke such authority promptly after receipt of the determination of incapacity, provided there is any indication of the petitioner's ability to comprehend such information.

(g) The commencement of the standby guardian's authority pursuant to a determination of incapacity, determination of debilitation, or consent shall not, itself, divest the petitioner of any parental or guardianship rights, but shall confer upon the standby guardian concurrent authority with respect to the infant.

(h)

(1) The clerk of any county upon being paid the fees allowed therefor by law shall receive for filing any instrument appointing or designating a standby guardian made by a domiciliary of the county, and shall give a written receipt therefor to the person delivering it. The filing of

an appointment or designation of standby guardian shall be for the sole purpose of safekeeping and shall not affect the validity of the appointment or designation.

(2) The appointment or designation shall be delivered only to:

(A) the parent or legal guardian who appointed or designated the standby guardian;

(B) the standby guardian or alternate standby guardian;

(C) the person designated as standby guardian or alternate standby guardian; or

(D) any other person directed by the court.

SECTION 2. This act shall take effect on July 1, 1995, the public welfare requiring it.

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