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SENATE BILL NO. 1184

Offered January 13, 2021

Prefiled January 11, 2021

A BILL to amend and reenact §§ 16.1-351, 16.1-352, and 16.1-353 of the Code of Virginia, relating to standby guardianship; triggering event.

Patrons—Deeds; Delegate: Hudson

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-351, 16.1-352, and 16.1-353 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-351. Court order approving standby guardianship; authority; when effective.

Upon consideration of the factors set out in § 20-124.3 and finding that (i) the child's parent is a qualified parent and (ii) appointment of a standby guardian is in the best interest of the child, the court shall appoint a proper and suitable person as standby guardian and, if requested, a proper and suitable person as alternate standby guardian. However, when a petition is filed by a person other than a parent having custody of the child, the standby guardian shall be appointed only with the consent of the qualified parent unless the court finds that such consent cannot be given for medical reasons.

The order shall specify the triggering event and shall provide that the authority of the standby guardian is effective ~~(i)~~ (a) upon receipt by the standby guardian of (1) a determination of incompetence of the parent ~~or~~, (2) a certificate of death of the parent, (3) evidence of the detention, incarceration, or deportation of the parent, or (4) the earlier of either (1), (2), or (3) or ~~(ii)~~ (b) if so requested in the petition, upon receipt by the standby guardian of a written consent of the qualified parent and filing of the consent with the court. The written consent shall be executed after the entry of the court order and signed by the qualified parent, or by another in his presence and on his behalf.

As soon as practicable after entry of the order, a copy shall be served on the standby guardian.

A standby guardian shall have the powers and duties of a guardian of the person and a guardian of the property of a minor, unless otherwise specified in the order.

The standby guardian shall file with the court, as soon as practicable but in no event later than ~~thirty~~ 30 days following a parent's death, determination of incompetence, *detention, incarceration, or deportation*, or consent, a copy of the certificate of death, determination of incompetence, *evidence of detention, incarceration, or deportation*, or consent of the qualified parent upon which his authority is based. Failure to file within the time specified shall be grounds for the court to rescind the authority of the standby guardian sua sponte or upon petition of any person but all acts undertaken by the standby guardian on behalf of and in the interests of the child shall be valid and enforceable.

§ 16.1-352. Written designation of a standby guardian by a parent; commencement of authority; court approval required.

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;
2. The triggering event; and
3. The name and address of the person designated as standby guardian or alternate.

The written designation shall be signed by the parent. Another adult may sign the written designation on behalf of the parent if the parent is physically unable to do so, provided the designation is signed at the express request of the parent and in the presence of 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 specified triggering event and receipt by him of (i) a determination of incompetence, (ii) a certificate of death of the parent, ~~or~~ (iii) *evidence of the detention, incarceration, or deportation of the parent*, or (iv) a determination of debilitation and the qualified parent's written consent to such commencement, signed by the parent or another on his behalf and at his direction as provided in subsection A for the designation.

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.

D. 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

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59 event later than ~~thirty~~ 30 days after the date of the commencement of his authority. The authority of the
60 standby guardian shall cease upon his failure to so file, but shall recommence upon such filing. The
61 petition shall be accompanied by a copy of the designation and any determinations of incapacity or
62 debilitation or a certificate of death.

63 The provisions of *subsection C of § 16.1-350* ~~€~~ shall apply to a petition filed pursuant to this
64 section. The court shall enter an order approving the designated guardian as standby guardian upon
65 finding that:

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

68 2. A determination of incompetence was made; a determination of debilitation was made and the
69 parent consented to commencement of the standby ~~guardians~~ *guardian's* authority; ~~or the parent has died~~
70 *as evidenced by a death certificate; or the parent has been detained, incarcerated, or deported;*

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

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

74 **§ 16.1-353. Further proceedings to determine permanent guardianship, custody.**

75 A. If the triggering event was death of the qualified parent, within ~~ninety~~ 90 days following the
76 occurrence of the triggering event or, if later, commencement of the standby guardian's authority, the
77 standby guardian shall (i) petition for appointment of a guardian for the child as otherwise provided by
78 law or (ii) initiate other proceedings to determine custody of the child pursuant to Chapter 6.1
79 (§ 20-124.1 et seq.) of Title 20, or both.

80 B. In all other cases a standby guardian shall promptly after occurrence of the triggering event
81 initiate such proceedings to determine permanent custody, absent objection by the qualified parent.

82 The petition shall be accompanied by:

83 1. The court order approving or written designation of a standby guardian; and

84 2. The attending physician's written determination of incompetence or debilitation ~~or~~; a verification
85 of death; *or evidence of the parent's detention, incarceration, or deportation.*