
Judiciary Committee

SB 5692

Title: An act relating to standby guardians and limited guardians.

Brief Description: Concerning standby guardians and limited guardians.

Sponsors: Senators King, Harper, Conway, Eide and Tom.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Provides for standby guardians to serve as guardians during planned absences of regularly appointed guardians.
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Hearing Date: 3/14/13

Staff: Cece Clynch (786-7195).

Background:

Guardianship Generally.

A guardianship action is a legal process in which a guardian is appointed and empowered, by the court, to make decisions for the person or the estate, or both, of an incapacitated person. A person may be deemed incapacitated as to person when the court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. Incapacity as to the person's estate means the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

In recognition that liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for health or safety, or to adequately manage financial affairs, "limited" guardians may be appointed for incapacitated persons who have need for some protections and assistance but who are capable of managing other personal and financial affairs. (For ease of reference, references herein to "guardian" include both guardians and limited guardians.)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Guardians may be:

- Lay guardians. Such guardians must be at least 18 years of age, be of sound mind, not be convicted of an offense involving moral turpitude and, absent a court waiver, must complete any standardized training video or web cast for lay guardians made available by the Administrative Office of the Courts (AOC). Lay guardians are often the spouse, parent, or child of an incapacitated person.
- Certified professional guardians. By definition, these guardians are persons who are not members of the incapacitated person's family, who charge fees for carrying out guardianship duties of three or more incapacitated persons, and who meet the certification requirements established by the AOC.
- Financial institutions subject to the jurisdiction of the Department of Financial Institutions and authorized to exercise trust powers, and federally chartered financial institutions when authorized to do so.

Standby Guardians.

A guardian must, within 90 days of appointment, file a written notice with the court designating a standby guardian to serve at the death or legal incapacity of guardian. This written notice must also be given to the standby guardian, the incapacitated person and his or her spouse or domestic partner and adult children, and any facility in which the incapacitated person resides.

An oath and a bond are required of standby guardians. Letters of guardianship are issued to a standby guardian, who has all of the powers, duties, and obligations of the regularly appointed guardian.

Within 30 days of the death or incapacity of the regularly appointed guardian, the standby guardian must file with the court a petition for appointment of a substitute guardian. Upon the court's appointment of a new, substitute guardian, the standby guardian must make an accounting and report to be approved by the court. Upon court approval, the standby guardian is released from all duties and obligation arising from the guardianship.

A standby guardian also has the authority to provide timely informed consent to necessary medical procedures if the regularly appointed guardian cannot be located within four hours after the need for consent arises.

Summary of Bill:

The circumstances under which standby guardians are authorized to act is expanded. A standby guardian is authorized to serve as guardian during the planned absence of a regularly appointed guardian. If the regularly appointed guardian is out of state, or is otherwise unavailable to fulfill guardianship duties, the standby guardian has all the powers, duties, and obligations of the regularly appointed guardian.

The regularly appointed guardian may delegate decision making authority to the standby guardian in advance of a planned absence. The standby guardian must receive notice of all guardianship proceedings. The regular guardian must report to the standby guardian quarterly, or when there is a substantial change in circumstances, in order to keep the standby guardian adequately informed. Such reporting may be by phone or other reasonable means.

If the standby guardian is required to act due to the death, incapacity, or absence of the regularly appointed guardian, then the standby guardian may apply to the court to be paid for fees and costs.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on May 1, 2014.