

# HOUSE BILL REPORT

## SB 5692

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**As Reported by House Committee On:**  
Judiciary

**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.

**Brief History:**

**Committee Activity:**

Judiciary: 3/14/13, 4/2/13 [DPA].

**Brief Summary of Bill**  
**(As Amended by Committee)**

- Provides for standby guardians to serve as guardians during planned absences of regularly appointed guardians.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 12 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

**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.

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*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.*

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.)

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 webcast 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; or
- 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.

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#### **Summary of Amended Bill:**

New provisions allow for the appointment of a standby guardian or standby limited guardian (standby) in the event of the planned absence of a guardian or limited guardian. Prior to the commencement of a planned absence, and prior to the assumption of any duties by the standby, the guardian or limited guardian must file a petition in court stating the following:

- the dates of the planned absence; and
- the duties, responsibilities, and powers the standby should assume.

The guardian must give notice of the petition to the standby, the incapacitated person and his or her spouse, domestic partner, and adult children, any facility in which the incapacitated person resides, and any person who has requested special notice pursuant to statute.

Following the hearing on the petition, and a determination that the standby meets the requirements, the court must issue an order specifying:

- the amount of the bond;
- the duties, responsibilities, and powers the standby will assume;
- the duration that the standby will be acting; and
- the expiration of the letters of guardianship.

Letters of guardianship consistent with the court's order are to be issued once the standby has filed the oath and bond. The standby must give notice of his or her appointment to all of the same persons to whom notice of the petition for appointment was given.

The provision with respect to informed consent for necessary medical procedures is amended to also reference standbys.

#### **Amended Bill Compared to Original Bill:**

Provisions that would require notice to all standbys of all proceedings, require quarterly reporting to standbys, and specifically provide for fees and costs are stricken. The bill is restructured to include a new, self-contained subsection allowing for standbys in the event of a guardian's planned absence and specifying the procedures that must be followed. The notice provisions, both existing with respect to standbys in the event of death or incapacity, as well as standbys in planned absences, are restated in the active voice, providing that the standby must give notice in various instances, rather than stating that notice must be given. References are standardized and corrected. The effective date of May 1, 2014, is stricken.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill will allow a standby guardian to be available and prepared to step in for a regularly appointed guardian who wants to go on a hike or a vacation. A standby should be appointed by the court and such an amendment is welcome.

(With concerns) There are two types of guardians: (1) family/lay guardians; and (2) professional guardians/professional guardian firms. This bill applies to all guardians, whether lay or professional and is unnecessary insofar as it applies to professional guardian firms that can already arrange for someone in the firm to cover in the event of absence. Four concerns are raised by the bill: (1) it is not necessary because it is already possible to notify the court of an absence and ask for court vetting; (2) some of the language is confusing and should be amended; (3) the delegation of authority is concerning; and (4) costs, as there is not something in existing law that would authorize payment. The law already includes provisions that allow for medical care in the event that the regular guardian is not available within a four-hour time frame. There is support for greater notice for standbys because a standby does need to have knowledge of the situation if he or she needs to step in. There is a need for letters of guardianship and a bond. Furthermore, there is the issue of whether a standby will be required to go through training. Two states do have workable statutes for planned absences, Kansas and Wisconsin. The problem that this bill tries to solve is a problem only for the family/lay guardian. The Kansas statute might work well for this. The four-hour hike example is a red herring. It is not known what financial institutions would do with respect to a standby that was designated under this bill. The bill needs a lot of work. Standbys should not be given more authority in this way. Current law works well.

(Opposed) None.

**Persons Testifying:** (In support) Senator King, prime sponsor.

(With concerns) Steve Lindstrom, Washington Association of Professional Guardians; Robert Nettleton, Washington State Bar Association; and David Lord, Disability Rights of Washington.

**Persons Signed In To Testify But Not Testifying:** None.