

House Bill 917

By: Representatives Willard of the 44<sup>th</sup>, Stuckey of the 67<sup>th</sup> and Martin of the 47<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to  
2 guardians of minors, so as to enact the "Standby Guardianship Act"; to provide a short title;  
3 to define terms; to provide for the court approval of standby guardianship; to provide for  
4 court order approving standby guardianship; to provide for written designation of a standby  
5 guardian by a parent; to provide for further proceedings to determine permanent  
6 guardianship; to provide for revocation, refusal, and termination of standby guardianship; to  
7 provide for review of standby guardianship; to provide for related matters; to provide an  
8 effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to guardians of  
12 minors, is amended by designating the existing Code sections as Article 1.

13 style="text-align:center">**SECTION 2.**

14 Said chapter is further amended by adding after Code Section 29-4-17 a new article to read  
15 as follows:

16 style="text-align:center">"ARTICLE 2

17 29-4-50.

18 This article shall be known and may be cited as the 'Standby Guardianship Act.'

19 29-4-51.

20 As used in this article, the term:

- 1 (1) 'Alternate' means a person with all the rights, responsibilities, and qualifications of  
2 a standby guardian who shall become a standby guardian only in the event that the  
3 currently designated standby guardian is unable or refuses to fulfill his or her obligation.
- 4 (2) 'Attending physician' means a physician who has primary responsibility for the  
5 treatment and care of the designator. If physicians share responsibility or another  
6 physician is acting on the attending physician's behalf or no physician has primary  
7 responsibility, any physician who is familiar with the designator's medical condition may  
8 act as an attending physician under this article.
- 9 (3) 'Coguardian' means a person who, along with a parent, shares physical or legal  
10 custody, or both, of a child.
- 11 (4) 'Consent' means a written authorization signed by the designator in the presence of  
12 two witnesses who shall also sign the writing. The witnesses must be at least 18 years  
13 of age and not be named in the designation.
- 14 (5) 'Court' means the probate court.
- 15 (6) 'Debilitation' means a person's chronic and substantial inability, as a result of a  
16 physically incapacitating disease or injury, to care for a dependent minor.
- 17 (7) 'Designation' means a written document naming the standby guardian. A parent may  
18 designate an alternate standby guardian in the same writing.
- 19 (8) 'Designator' means a parent or a legal guardian who appoints a standby guardian.
- 20 (9) 'Determination of debilitation' means a written finding made by an attending  
21 physician which states that the designator suffers from a physically incapacitating disease  
22 or injury. No identification of the illness in question is required.
- 23 (10) 'Determination of incapacity' means a written finding made by an attending  
24 physician which states the nature, extent, and probable duration of the designator's  
25 mental or organic incapacity.
- 26 (11) 'Incapacity' means a chronic and substantial inability, resulting from a mental or  
27 organic impairment, to understand the nature and consequences of decisions concerning  
28 the care of the designator's dependent minor and a consequent inability to care for the  
29 minor.
- 30 (12) 'Standby guardian' means a person named by the designator to assume the duties of  
31 coguardian or guardian of the person and property of a minor and whose authority  
32 becomes effective upon the incapacity, debilitation and consent, or death of the minor's  
33 parent.
- 34 (13) 'Triggering event' means a specified occurrence stated in the designation which  
35 empowers a standby guardian to assume the powers, duties, and responsibilities of  
36 guardian or coguardian.

1 29-4-52.

2 The provisions of Article 1 of this chapter, Chapter 9 of Title 19, and Title 53 shall apply  
3 to standby guardians, coguardians, guardians, and any alternates unless otherwise specified  
4 in this article. Nothing in this article shall be construed to deprive any parent, custodial or  
5 noncustodial, of legal parental rights. Nothing in this article shall be construed to relieve  
6 any parent, custodial or noncustodial, of a duty to support a child under the provisions of  
7 Chapter 6 of Title 19.

8 29-4-53.

9 (a) A custodial parent or legal guardian may designate a standby guardian by means of a  
10 written designation unless the minor has another parent or adoptive parent:

11 (1) Whose parental rights have not been terminated or relinquished;

12 (2) Whose whereabouts are known; and

13 (3) Who is willing and able to make and carry out the day-to-day child care decisions  
14 concerning the minor.

15 (b) Notwithstanding subsection (a) of this Code section, a parent or legal guardian may  
16 designate a standby guardian with the consent of the other parent.

17 (c) A designation of a standby guardianship shall identify the custodial parent or legal  
18 guardian making the designation, the minor or minors, any other parent, the standby  
19 guardian, and the triggering event or events upon which a named standby guardian shall  
20 become a coguardian or guardian. If desired, different standby guardians may be  
21 designated for different triggering events. The designation shall also include the signed  
22 consent of the standby guardian and the signed consent of any other parent or an indication  
23 why the other parent's consent is not necessary.

24 (d) The designation shall be signed by the designating parent or legal guardian in the  
25 presence of two witnesses, who are at least 18 years of age and not otherwise named in the  
26 designation, who shall also sign the designation. The designation may include a  
27 self-proving attestation. If the parent or legal guardian is physically unable to sign the  
28 designation, the parent or legal guardian may direct another person not named in the  
29 designation to sign on the parent's or the legal guardian's behalf in the presence of the  
30 parent or legal guardian and the witnesses. A parent or legal guardian may also, but need  
31 not, designate an alternate in the designation.

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

33 I (insert name of designator) do hereby appoint (insert name, address, and telephone  
34 number of standby guardian) as the standby guardian of my minor child(ren) to take  
35 effect upon my death, debilitation, or incapacity.

1 I hereby revoke all former wills and codicils to the extent that there is a conflict between  
2 those formerly executed documents and this, my duly executed standby guardian  
3 designation.

4 I am the (insert designator's relationship to minor(s)) of my minor child(ren).  
5 (Insert name(s) of minor(s)'s other parent(s)) is the father/mother of (insert name(s) of  
6 minor(s)).

7 His/her address is: \_\_\_\_\_.

8 Check all that apply:

9 \_\_\_\_\_ He/she is deceased.

10 \_\_\_\_\_ His/her parental rights were terminated or relinquished.

11 \_\_\_\_\_ His/her whereabouts are unknown. I understand that all living parents whose  
12 rights have not been terminated must be given notice of this designation or a petition to  
13 approve this designation may not be granted by the court.

14 \_\_\_\_\_ He/she is unwilling and unable to make and carry out day-to-day child care  
15 decisions concerning the minor.

16 \_\_\_\_\_ He/she consents to this designation and has signed this form below.

17 By this designation I am granting (insert name of standby guardian) the authority to act  
18 for 180 days following the occurrence of my debilitation or incapacity as a coguardian  
19 with me or, in the event of my death, as guardian of my minor child(ren). I understand  
20 that I will be responsible for making financial arrangements for the care and support of  
21 my child(ren), consistent with the requirements of the child support guidelines set forth  
22 in Code Section 19-6-15, and that the court may make an appropriate order to accomplish  
23 financial support for my child(ren).

24 Optional: I hereby nominate (insert name, address, and telephone number of alternate  
25 standby guardian) as the alternate standby guardian to assume the duties of the standby  
26 guardian named above in the event the standby guardian is unable or refuses to act as a  
27 standby guardian.

28 It is my intention to retain full parental rights to the extent consistent with my condition  
29 and to retain the authority to revoke the standby guardianship if I so choose.

30 This designation is made after careful reflection, while I am of sound mind.

31 \_\_\_\_\_

32 (Date)

\_\_\_\_\_

(Designator's signature)

33 \_\_\_\_\_

34 (Witness's signature)

\_\_\_\_\_

(Witness's signature)

35 \_\_\_\_\_

36 (Number and Street)

\_\_\_\_\_

(Number and Street)

1 \_\_\_\_\_  
2 (City, State, and ZIP Code) (City, State, and ZIP Code)

3 (OPTIONAL):

4 STATE OF GEORGIA

5 COUNTY of \_\_\_\_\_

6 Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_ ,  
7 \_\_\_\_\_ , and \_\_\_\_\_ , known to me to be the designator and the witnesses,  
8 respectively, whose names are subscribed to the annexed or foregoing instrument in their  
9 respective capacities, and all of said individuals being by me duly sworn, \_\_\_\_\_ ,  
10 designator, declared to me and to the witnesses in my presence that said instrument is the  
11 standby guardian designation of the designator and that the designator had willingly made  
12 and executed it as a free act and deed for the purposes expressed therein. The witnesses,  
13 each on oath, stated to me in the presence and hearing of the designator that the  
14 designator had declared to them that the instrument is the designator’s standby guardian  
15 designation and that the designator executed the instrument as such and wished each of  
16 them to sign it as a witness; and under oath each witness stated further that the witness  
17 had signed the same as witness in the presence of the designator and at the designator’s  
18 request; that the designator was of sound mind; and that each of the witnesses was then  
19 at least eight years of age.

20 \_\_\_\_\_  
21 Designator

22 \_\_\_\_\_  
23 Witness

24 \_\_\_\_\_  
25 Witness

26 Sworn to and subscribed before me by \_\_\_\_\_ , designator, and sworn to and  
27 subscribed before me by \_\_\_\_\_ and \_\_\_\_\_ , witnesses, this \_\_\_\_\_  
28 day of \_\_\_\_\_ , \_\_\_\_\_ .

29 (SEAL)

30 (Signed) \_\_\_\_\_

31 (Official Capacity of Officer)

32 (IF APPLICABLE: I (insert name of other parent) hereby consent to this designation.)

33 \_\_\_\_\_  
34 (Date) (Signature of other parent)

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(Address of other parent)

I, (insert name of standby guardian), hereby accept my nomination as standby guardian of (insert minor(s)´s name(s)). I understand that my rights and responsibilities toward the minor child(ren) named above will become effective upon the occurrence of the above-stated triggering event or events. I further understand that in order to continue caring for the child(ren), I must file a petition with the court within 180 days of the occurrence of the triggering event.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of standby guardian)'

(f) Prior to a petition being filed under Code Section 29-4-54, the designator may revoke a standby guardianship by simple destruction of the designation and notification of the revocation to the standby guardian.

(g) After a petition has been filed, the designator may revoke a standby guardianship by:

- (1) Executing a written revocation;
- (2) Filing the revocation with the court; and
- (3) Notifying the persons named in the designation of the revocation in writing.

(h) Regardless of whether a petition has been filed, an unwritten revocation may be considered by the court if it can be proven by clear and convincing evidence.

29-4-54.

(a) A petition for court approval of a designation under this article shall be made by filing with the court a copy of the designation. If the triggering event has occurred on or before the time of filing, the petition may be made at any time by filing with the court a copy of the designation. If the triggering event has not occurred on or before the time of filing, only the designator may file the petition. If the triggering event has occurred on or before the time of filing, the standby guardian named in the designation may file the petition, and the petition shall also contain one of the following:

- (1) A determination of the designator´s incapacity;
- (2) A determination of the designator´s debilitation and the designator´s signed and dated consent; or
- (3) A copy of the designator´s death certificate.

(b) The petitioner shall notify any person named in the designation within ten days of the filing of the petition and of any hearing thereon. If the petition alleges that a nondesignating parent cannot be located, that parent shall be notified in accordance with the notice provisions of the rules of civil procedure in custody matters. No notice is

1 necessary to a parent whose parental rights have previously been terminated by a court  
2 order or relinquished.

3 (c) For purposes of determining jurisdiction under this article, the provisions of Articles  
4 2 and 3 of Chapter 9 of Title 19 shall apply.

5 (d) In a proceeding for judicial appointment of a standby guardian, a designation shall  
6 constitute a rebuttable presumption that the designated standby guardian is capable of  
7 serving as coguardian or guardian. When the designator is the sole surviving parent, when  
8 the parental rights of any noncustodial parent have been terminated or relinquished, or  
9 when all parties consent to the designation, there shall be a rebuttable presumption that  
10 entry of the approval order is in the best interest of the child. The court may order a  
11 background investigation, including a review of the person's criminal record. In any case,  
12 if the court finds entry of the approval order to be in the best interest of the child, the court  
13 shall enter an order approving the designation petition.

14 (e) Approval of the designation without a hearing is permitted when the designator is the  
15 sole surviving parent, when the parental rights of any noncustodial parent have been  
16 terminated or relinquished, or when all parties consent to entry of the approval order.

17 (f) In the event a hearing is required, it shall be conducted in accordance with the  
18 proceedings set forth in Chapter 9 of Title 19.

19 (g) The court may make any order it deems necessary to provide for the financial support  
20 of the child or children during the pendency of the standby guardianship.

21 (h) The designator need not appear in court if the designator is medically unable to appear.

22 29-4-55.

23 (a) The standby guardian shall have authority to act as coguardian or guardian upon the  
24 occurrence of the triggering event. The commencement of the standby guardian's authority  
25 to act as coguardian pursuant to a determination of incapacity, a determination of  
26 debilitation and consent, or the receipt of consent alone shall not itself divest the designator  
27 of any parental rights, but shall confer upon the standby guardian concurrent or shared  
28 custody of the child. The commencement of the standby guardian's authority to act as  
29 guardian pursuant to the death of the designator shall not confer upon the standby guardian  
30 more than physical and legal custody of the child. A coguardian shall assure frequent and  
31 continuing contact with and physical access to the child and shall further assure the  
32 involvement of the parent to include, to the greatest extent possible, decision making on  
33 behalf of the child.

34 (b) The designator may file a petition for approval of a designation with the court at any  
35 time. If the petition is approved by the court before the occurrence of the triggering event,  
36 the standby guardian's authority will commence automatically upon the occurrence of the

1 triggering event. No further petition or confirmation is necessary. If a designation has  
2 been made, but the petition for approval of the designation has not been filed and a  
3 triggering event has occurred, the standby guardian shall have temporary legal authority  
4 to act as a coguardian or guardian of the minor without the direction of the court for a  
5 period of 180 days. The standby guardian shall, within that period, file a petition for  
6 approval in accordance with Code Section 29-4-54. If no petition is filed within the  
7 specified 180 days, the standby guardian shall lose all authority to act as coguardian or  
8 guardian. If a petition is filed but the court does not act upon it within the 180 day period,  
9 the temporary legal authority to act as coguardian or guardian shall continue until the court  
10 orders otherwise.

11 (c) The commencement of a coguardian's or guardian's authority under this article may  
12 not, itself, divest a parent or legal guardian of any parental or guardianship rights.

13 (d) If a licensed physician determines that the designator has regained capacity, the  
14 coguardian's authority which commenced pursuant to the occurrence of a triggering event  
15 shall become inactive and the coguardian shall return to having no authority. Failure of a  
16 coguardian to comply with this provision and to immediately return the minor to the  
17 designator's care shall entitle the designator to an emergency hearing in a court of  
18 competent jurisdiction.

19 29-4-56.

20 (a) Prior to a petition being filed under Code Section 29-4-54, the designator may revoke  
21 a standby guardianship by simple destruction of the designation and notification of the  
22 revocation to the standby guardian.

23 (b) After a petition has been filed, the designator may revoke a standby guardianship by:

24 (1) Executing a written revocation;

25 (2) Filing the revocation with the court; and

26 (3) Notifying the persons named in the designation of the revocation in writing.

27 (c) Regardless of whether a petition has been filed, an unwritten revocation may be  
28 considered by the court if it can be proven by clear and convincing evidence.

29 29-4-57.

30 If a parent has appointed a testamentary guardian of the person or estate of a minor by will  
31 under Code Section 29-4-3 and there is a conflict between that will and a duly executed  
32 written standby guardian designation, the document latest in date of execution shall prevail.

1 29-4-58.

2 In no event shall a standby guardian be required to post bond prior to the occurrence of the  
3 triggering event. The court may require a bond if the standby guardian is designated the  
4 coguardian or guardian of the estate of a minor but will not require a bond for the  
5 coguardianship or guardianship of the person of a minor."

6 **SECTION 3.**

7 This Act shall become effective on July 1, 2001.

8 **SECTION 4.**

9 All laws and parts of laws in conflict with this Act are repealed.