

House Bill 917 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 44th, Benfield of the 67th and Martin of the 47th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to guardians of minors, so as to add a category of guardian; to enact the "Standby Guardianship Act"; to provide a short title; to define terms; to provide for the court approval of standby guardianship; to provide for who may designate a standby guardian; to provide a suggested form to designate a standby guardian; to provide for court order approving standby guardianship; to provide for written designation of a standby guardian by a parent; to provide for further proceedings to determine permanent guardianship; to provide for revocation, confirmation, and termination of standby guardianship; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to guardians of minors, is amended in Code Section 29-4-1, relating to kinds of guardians of minors, by striking the "and" at the end of paragraph (5), striking the period at the end of paragraph (6) and inserting "; and", and adding a new paragraph (7) to read as follows:

"(7) Standby guardians."

SECTION 2.

Said chapter is further amended by designating the existing provisions of said chapter as Article 1.

SECTION 3

Said chapter is further amended by adding after Code Section 29-4-17, relating to disposition of property, a new article to read as follows:

"ARTICLE 2

29-4-50.

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

29-4-51.

As used in this article, the term:

(1) 'Designating individual' means a parent or legal guardian who appoints a standby guardian. A 'designating individual' may only be:

(A) A parent of a minor; provided that he or she has physical custody of the minor and his or her parental rights are not terminated; and provided, further, that the other parent of the minor is deceased, has his or her parental rights terminated, cannot be found after a diligent search has been made, or has consented to the designation of and service by the standby guardian; or

(B) A permanent guardian or legal custodian of the minor who is duly appointed and serving pursuant to court order.

(2) 'Health care professional' means a person licensed to practice medicine under Chapter 34 of Title 43, or a person licensed as a registered professional nurse under Chapter 26 of Title 43 and authorized by the Board of Nursing to practice as a nurse practitioner.

(3) 'Health determination' means the dated, written determination by a health care professional that a designating individual is unable to care for a minor due to the designating individual's physical or mental condition or health including a condition created by medical treatment.

(4) 'Minor' means a minor child or children of the designating individual to whom the standby guardianship applies.

(5) 'Standby guardian' means a person who has reached the age of majority and who is named by a designating individual to serve as guardian of the person of a minor.

29-4-52.

(a) A designating individual may designate a person to serve as standby guardian of a minor upon the health determination being made.

(b) Upon the health determination being made and without the necessity of any judicial intervention, the standby guardian shall assume all the rights, duties, and responsibilities of guardianship of the person of the minor. Consistent with the designating individual's physical or mental condition or health, the designating individual may confer with the standby guardian in decision making concerning the care and welfare of the minor.

(c) Upon the health determination being made, the standby guardian shall file with the probate court of the county of residence of the minor a notice of the standby guardianship with a copy of the standby guardianship designation and the health determination attached thereto.

(d) No bond shall be required of a standby guardian.

(e) No proceedings under this article shall relieve any parent, custodial or noncustodial, of a duty to support the minor under the provisions of Chapter 6 of Title 19.

29-4-53.

(a) A designation of a standby guardian shall be in writing and shall be signed by the designating individual or by some other individual in the designating person's presence and at the designating individual's express direction. The designation shall be attested to and subscribed by two or more competent witnesses. Neither the witness nor an individual signing on behalf of the designating individual may be named the standby guardian.

(b) A standby guardian designation shall set forth the name, address, and county of residence of the designating individual and of the standby guardian, and the name, address, county of domicile, and date of birth of the minor, and shall set forth the circumstances which define the parent or guardian as a designating individual. With regard to a parent of the minor who is not the designating individual, the designation shall state, to the extent known, that parent's name and address and if that parent is deceased, has his or her parental rights terminated, and whether that parent cannot be located. The designation shall include a statement of consent, signed by the standby guardian, to serve in such capacity.

(c) A standby guardian designation shall be in substantially the following form and contain the following information:

DESIGNATION OF STANDBY GUARDIAN

(1) IDENTIFICATION OF DESIGNATING INDIVIDUAL: I, _____
 _____ (insert name of person designating the standby guardian), whose address is
 _____ (insert address) and whose county and state of residence
 is _____ (insert name of county and state), am:

(Check and complete the ones which apply)

(A) _____ The parent with physical custody of the minor child or children listed below and my parental rights are not terminated; and the other parent, whose name is _____ (insert name of other parent) and whose address is _____ (insert address of other parent), of the minor child or children listed below:

_____ (A-1) Is deceased;

_____ (A-2) Has his or her parental rights to minor or minors terminated;

_____ (A-3) Cannot be found after a diligent search has been made; or

_____ (A-4) Has consented to the designation of and service by the standby guardian as set forth below; or

(B) _____ The permanent guardian or legal custodian of the minor child or children listed below, who is duly appointed and serving pursuant to court order.

(2) IDENTIFICATION OF MINOR(S): The minor or minors for whom I am designating a standby guardian are:

NAME	ADDRESS (include county of domicile)	DATE OF BIRTH
_____	_____	_____
_____	_____	_____

(3) DESIGNATION AND IDENTIFICATION OF STANDBY GUARDIAN: Pursuant to Article 2 of Chapter 4 of Title 29 of the Official Code of Georgia Annotated, I hereby designate _____ (insert name of standby guardian), whose address is _____ (insert address) and whose county and state of residence is _____ (insert name of county and state), to serve as the standby guardian of the minor(s) whom I have identified above.

(4) POWERS OF STANDBY GUARDIAN: The standby guardian whom I designated above shall have all the rights, duties, and responsibilities under Georgia law of a guardian of the person of a minor who has been appointed by a court.

(5) DURATION OF STANDBY GUARDIANSHIP: I understand that upon a physician or an advanced practice nurse determining in writing that, due to my physical or mental condition or health, I am not able to care for the minor(s) identified above, this standby guardianship shall become effective and the person whom I have designated above shall become the standby guardian of the person of the minor(s).

I understand that I can revoke this standby guardianship by destroying this document, obliterating it, or by revoking it in writing with proper witnesses. I understand that I must communicate a revocation of the designation to the standby guardian in order for it to be effective.

Finally, I understand that this standby guardianship will automatically end four months after the physician or advanced practice nurse makes the determination that I am unable to care for the minor(s), unless the standby guardian has filed a petition for guardianship of the person of the minor. If the standby guardian files such a petition, the standby guardianship will remain in effect, unless otherwise revoked, until the judge rules on the petition. In considering such a petition for guardianship, I understand that the judge will give preference for the appointment to the person whom I name as the standby guardian in this document.

(6) SIGNATURE: I certify that the statements contained herein are true and correct, this
_____ day of _____, _____.

(Designating individual signs here)
(Print name of designating individual)

We, the undersigned witnesses, are at least 18 years of age, are not designated as the
standby guardian, and state that the designating individual signed this designation in our
presence.

(Signature of witness) (Print witness's address)

(Signature of witness) (Print witness's address)

(7) CONSENT OF PARENT (To be completed only if line A-4 in paragraph (1) above
has been checked):

I, _____ (insert name of parent other than the one designating the
standby guardian), whose address is _____ (insert address), am
the parent of the above named minor(s). I understand that by this form, an individual is
being designated to serve as a standby guardian of my child (or children). I understand
that this standby guardian will have all the rights, duties, and responsibilities under
Georgia law of a guardian of the person of a minor who has been appointed by a court.
I further understand that I may object to this designation. Knowing this, I consent to the
designation of _____ (insert name of standby guardian).

This _____ day of _____, _____.

(Other parent signs here)
(Print name of other parent)

We, the undersigned witnesses, are at least 18 years of age, are not designated as the
standby guardian in this document, and state that the above-named parent signed this
consent in our presence.

(Signature of witness) (Print witness's address)

(Signature of witness) (Print witness's address)

(8) ACCEPTANCE OF DESIGNATION BY STANDBY GUARDIAN:

I, _____ (insert name of designated standby guardian), am the individual designated as the standby guardian in this document. I hereby accept this designation with full knowledge that upon a physician or advanced practice nurse making a written determination that the parent of the minor(s) is not able to care for the minor(s) due to his or her physical or mental health or condition, I automatically take on this guardianship.

Further, I understand that I must file a notice of my becoming a standby guardian and a copy of the medical determination with the probate court as soon as the medical determination has been made. I understand that within four months of the medical determination being made I must petition the probate court to name me as guardian of the person of the minor(s).

This _____ day of _____, _____.

(Standby guardian signs here)

(Print name of standby guardian)

We, the undersigned witnesses, are at least 18 years of age, are not designated as the standby guardian in this document, and state that the standby guardian signed this document in our presence.

(Witness signs here)

(Print witness's address)

(Witness signs here)

(Print witness's address)

29-4-54.

A standby guardianship may be revoked at any time by destruction or obliteration of the designation done by the designating individual with an intent to revoke, or by a written revocation signed by the designating individual or by some other individual in the designating person's presence and at the designating individual's express direction, and attested to and subscribed by two or more competent witnesses. In order to be effective, a revocation must be communicated to the standby guardian.

29-4-55.

(a) Within four months of the health determination being made, the standby guardian shall file with the probate court in the county of domicile of the minor a petition seeking guardianship of the person of the minor in accordance with Code Sections 29-4-4 and

29-4-10, and other provisions of law. Notwithstanding Code Section 29-4-8, the appointment of the individual serving as standby guardian of the minor shall be preferred.

(b) Except as otherwise provided, a standby guardianship shall automatically terminate four months after the making of the health determination unless the standby guardian has filed a petition for guardianship of the person of the minor in accordance with Code Section 29-4-5, in which case the standby guardianship shall remain in effect, unless otherwise revoked, until the petition is ruled upon.

(c) If the designating individual dies prior to the entering of an order on a petition for guardianship of the person of the minor, as contemplated by subsection (a) of this Code section, the standby guardianship shall be terminated. If the designating individual dies subsequent to the entering of an order on such a petition, the guardianship created pursuant to that order shall terminate in favor of any testamentary designation of a guardian of the person of the minor or, if there is no testamentary designation, to a petition for guardianship brought thereafter and subject to Code Section 29-4-8."

SECTION 3.

This Act shall become effective on July 1, 2002.

SECTION 4.

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