

Chamberlain

94 LSO - 0122

HOUSE BILL

0133

TH

HB0133

AN ACT to create W.S. 3-2-301 through 3-2-308; and to repeal W.S. 3-2-108 relating to guardians; providing procedure for judicial appointment of standby guardians for cases in which a parent or guardian may become incapacitated; providing procedure for designation of standby guardian by parent; specifying when appointment or designation is effective; providing form for designation; specifying required finding of incapacity or debilitation; specifying rights and duties of standby guardian; providing definitions; and providing for an effective date.

HOUSE BILL 0133

Introduced by:

W. Chamberlain

HOUSE ACTION ON HOUSE BILL

- ☒ Introduced
Aye ___ No ___ Ex ___ Ab ___
- ☐ Read First Time and Ref. to Committee No. ___
- ☐ Failed Introduction
Aye ___ No ___ Ex ___ Ab ___
- ☐ Returned from Committee No. ___
with Recommendation:
☐ Do Pass; ☐ Amend & Do Pass; ☐ Do Not Pass;
☐ W/O Recomm; ☐ Re-Refer to Committee No. ___
- ☐ Re-referred to Committee No. ___
- ☐ Returned from Committee No. ___
with Recommendation:
☐ Do Pass; ☐ Amend & Do Pass; ☐ Do Not Pass;
☐ W/O Recomm; ☐ Re-Refer to Committee No. ___
- ☐ Considered in Comm. of Whole
☐ Amended
☐ Recommended Do Pass
☐ Failed Comm. of Whole
☐ Indefinitely Postponed
☐ Other: ___
- ☐ Read Second Time
☐ Amended
☐ Do Pass
☐ Do Not Pass
☐ Accelerated to 3rd Rdg.
- ☐ Read Third Time
☐ Amended
☐ Passed ☐ Failed
Aye ___ No ___ Ex ___ Ab ___
☐ Held for Reconsideration
Motion to Reconsider
☐ Passed ☐ Failed
Aye ___ No ___ Ex ___ Ab ___
☐ Third Reading Vote
(On Reconsideration)
☐ Passed ☐ Failed
Aye ___ No ___ Ex ___ Ab ___
- ☐ Sent to Senate (No Amendments)
- ☐ Sent to LSO for Engrossing
ENGROSSED
Sent to Senate

SENATE ACTION ON HOUSE BILL

- ☐ Received. Read First Time.
Referred to Committee No. ___
- ☐ Returned from Committee No. ___
with Recommendation:
☐ Do Pass; ☐ Amend & Do Pass; ☐ Do Not Pass;
☐ W/O Recomm; ☐ Re-Refer to Committee No. ___
- ☐ Re-referred to Committee No. ___
- ☐ Returned from Committee No. ___
with Recommendation:
☐ Do Pass; ☐ Amend & Do Pass; ☐ Do Not Pass;
☐ W/O Recomm; ☐ Re-Refer to Committee No. ___
- ☐ Considered in Comm. of Whole
☐ Amended
☐ Recommended Do Pass
☐ Failed Comm. of Whole
☐ Indefinitely Postponed
☐ Other: ___
- ☐ Read Second Time
☐ Amended
☐ Do Pass
☐ Do Not Pass
☐ Accelerated to 3rd Rdg.
- ☐ Read Third Time
☐ Amended
☐ Passed ☐ Failed
Aye ___ No ___ Ex ___ Ab ___
☐ Held for Reconsideration
Motion to Reconsider
☐ Passed ☐ Failed
Aye ___ No ___ Ex ___ Ab ___
☐ Third Reading Vote
(On Reconsideration)
☐ Passed ☐ Failed
Aye ___ No ___ Ex ___ Ab ___
- ☐ Sent to House
- ☐ Sent for Enrolling
HEA No. ___
- ☐ Signed by Speaker
- ☐ Signed by President
- ☐ Approved by Governor
Chapter No. ___

CONCURRENCES/JOINT CONFERENCE COMMITTEES

/ / Received from House with
 Request to Concur in Amendments.
 / / [] Senate Concurred in House
 Amendments.
 [] Senate Did not Concur in House
 Amendments.
 Aye No Ex Ab

/ / JCC# 1 / / JCC# 1
 Senate Members House Members
 Ch. Ch.

/ / [] Request for New Committee.
 / / [] Senate Adopted JCC#
 / / [] Senate Did Not Adopt JCC#
 Aye No Ex Ab
 [] House Adopted
 [] House Did Not Adopt
 Aye No Ex Ab

/ / JCC# 2 / / JCC# 2
 Senate Members House Members
 Ch. Ch.

/ / [] Request for New Committee.
 / / [] Senate Adopted JCC#
 / / [] Senate Did Not Adopt JCC#
 Aye No Ex Ab
 [] House Adopted
 [] House Did Not Adopt
 Aye No Ex Ab

/ / JCC# 3 / / JCC# 3
 Senate Members House Members
 Ch. Ch.

/ / [] Request for New Committee.
 / / [] Senate Adopted JCC#
 / / [] Senate Did Not Adopt JCC#
 Aye No Ex Ab
 [] House Adopted
 [] House Did Not Adopt
 Aye No Ex Ab

NOTES: ADDITIONAL SENATE/HOUSE ACTION

3/17 Withdrawn by Sponsor

House of Intro
To Com. No. _____
Stand Report Do Amd Not _____
Com Whole Do Amd Not _____
2nd Reading Amd _____
3rd Reading Amd Pass Fail _____

Second House
To Com No. _____
Stand Report Do Amd Not _____
Com Whole Do Amd Not _____
2nd Reading Amd _____
3rd Reading Amd Pass Fail _____

1994

STATE OF WYOMING

94LSO-0077.01

HOUSE BILL NO. 0133

Standby guardians.

Sponsored by: Representative(s) CHAMBERLAIN

A BILL

for

1 AN ACT to create W.S. 3-2-301 through 3-2-308; and to
2 repeal W.S. 3-2-108 relating to guardians; providing pro-
3 cedure for judicial appointment of standby guardians for
4 cases in which a parent or guardian may become incapaci-
5 tated; providing procedure for designation of standby
6 guardian by parent; specifying when appointment or desig-
7 nation is effective; providing form for designation; spec-
8 ifying required finding of incapacity or debilitation;
9 specifying rights and duties of standby guardian; provid-
10 ing definitions; and providing for an effective date.

11 Be It Enacted by the Legislature of the State of Wyoming:

12 Section 1. W.S. 3-2-301 through 3-2-308 are created

1 to read:

2 ARTICLE 3

3 STANDBY GUARDIANS

4 3-2-301. Definitions.

5 (a) As used in this article:

6 (i) "Attending physician" means the physician
7 who has primary responsibility for the treatment and care
8 of the petitioner. If more than one (1) physician shares
9 the responsibility, or if a physician is acting on the
10 attending physician's behalf, any such physician may act
11 as the attending physician pursuant to this article.
12 Where no physician has the responsibility, any physician
13 who is familiar with the petitioner's medical condition
14 may act as the attending physician pursuant to this arti-
15 cle;

16 (ii) "Debilitation" means a chronic and substan-
17 tial inability, as a result of physically debilitating
18 illness, disease or injury, to care for one's dependent
19 minor;

20 (iii) "Incapacity" means a chronic and substan-

1 tial inability, as a result of mental impairment, to
2 understand the nature and consequences of decisions con-
3 cerning the care of one's dependent minor, and a conse-
4 quent inability to care for the minor;

5 (iv) "Standby guardian" means:

6 (A) A person judicially appointed pursuant
7 to W.S. 3-2-303 as standby guardian of the person or prop-
8 erty of a minor whose authority becomes effective upon the
9 incapacity or death of the minor's parent or upon the con-
10 sent of the parent; and

11 (B) A person designated pursuant to W.S.
12 3-2-304 as standby guardian whose authority becomes effec-
13 tive upon the incapacity of the minor's parent, or upon
14 the debilitation and consent of the parent.

15 3-2-302. Applicability of other laws. The provisions
16 of this title relating to guardians shall apply to standby
17 guardians, except insofar as this article provides other-
18 wise.

19 3-2-303. Petition for judicial appointment of standby
20 guardian; action on petition; effective date; renuncia-
21 tion.

1 (a) A petition for the judicial appointment of a
2 standby guardian of the person or property of a minor pur-
3 suant to this section may be made only by a parent of the
4 minor.

5 (b) A petition for the judicial appointment of a
6 standby guardian of a minor shall, in addition to meeting
7 the requirements of W.S. 3-2-101:

8 (i) State whether the authority of the standby
9 guardian is to become effective upon the petitioner's
10 incapacity, upon the petitioner's death, or upon whichever
11 occurs first; and

12 (ii) State that there is a significant risk that
13 the petitioner will become incapacitated or die, as appli-
14 cable, within two (2) years of the filing of the petition
15 and the basis for the statement.

16 (c) The petitioner's appearance in court shall not be
17 required if the petitioner is medically unable to appear,
18 except upon motion and for good cause shown.

19 (d) If the court finds that there is a significant
20 risk that the petitioner will become incapacitated or die
21 within two (2) years of the filing of the petition and

1 that the interests of the minor will be promoted by the
2 appointment of a standby guardian of the person or prop-
3 erty it shall make a decree accordingly.

4 (e) The decree shall specify whether the authority of
5 the standby guardian is effective upon the receipt of a
6 determination of the petitioner's incapacity, upon the
7 receipt of the certificate of the petitioner's death, or
8 upon whichever occurs first, and shall also provide that
9 the authority of the standby guardian may earlier become
10 effective upon written consent of the petitioner pursuant
11 to subsection (g) of this section. If at any time prior to
12 the commencement of the authority of the standby guardian
13 the court finds that the requirements of subsection (d) of
14 this section are no longer satisfied, it may rescind the
15 decree.

16 (f) If the decree provides that the authority of the
17 standby guardian is effective upon:

18 (i) Receipt of a determination of the
19 petitioner's incapacity, the standby guardian's authority
20 shall commence upon the standby guardian's receipt of a
21 copy of a determination of incapacity made pursuant to
22 W.S. 3-2-306. The standby guardian shall file a copy of

1 the determination of incapacity with the court that issued
2 the decree within ninety (90) days of the date of receipt
3 of the determination or the standby guardian's authority
4 may be rescinded by the court;

5 (ii) Receipt of a certificate of the
6 petitioner's death, the standby guardian's authority shall
7 commence upon the standby guardian's receipt of a certifi-
8 cate of death. The standby guardian shall file the cer-
9 tificate of death with the court that issued the decree
10 within ninety (90) days of the date of the petitioner's
11 death or the standby guardian's authority may be rescinded
12 by the court.

13 (g) Notwithstanding subsection (f) of this section, a
14 standby guardian's authority shall commence upon the
15 standby guardian's receipt of the petitioner's written
16 consent to commencement, signed by the petitioner in the
17 presence of two (2) witnesses at least eighteen (18) years
18 of age, other than the standby guardian, who shall also
19 sign the writing. Another person may sign the written
20 consent on the petitioner's behalf and at the petitioner's
21 direction if the petitioner is physically unable to do so,
22 provided the consent is signed in the presence of the
23 petitioner and the witnesses. The standby guardian shall

1 file the written consent with the court that issued the
2 decree within ninety (90) days of the date of receipt of
3 the written consent or the standby guardian's authority
4 may be rescinded by the court.

5 (h) The petitioner may revoke a standby guardianship
6 created under this section by executing a written revoca-
7 tion, filing it with the court that issued the decree, and
8 promptly notifying the standby guardian of the revocation.

9 (j) A person judicially appointed standby guardian
10 pursuant to this section may at any time before the com-
11 mencement of his authority renounce the appointment by
12 executing a written renunciation and filing it with the
13 court that issued the decree, and promptly notifying the
14 petitioner of the renunciation.

15 3-2-304. Designation of standby guardian by parent;
16 form; effective date; appointment; revocation.

17 (a) A parent may designate a standby guardian by
18 means of a written designation, signed by the parent in
19 the presence of two (2) witnesses at least eighteen (18)
20 years of age, other than the standby guardian, who shall
21 also sign the writing. Another person may sign the writ-
22 ten designation on the parent's behalf and at the parent's

1 direction if the parent is physically unable to do so,
2 provided the designation is signed in the presence of the
3 parent and the witnesses.

4 (b) A designation of a standby guardian shall iden-
5 tify the parent, the minor and the person designated to be
6 the standby guardian, and shall indicate that the parent
7 intends for the standby guardian to become the minor's
8 guardian in the event the parent either:

9 (i) Becomes incapacitated; or

10 (ii) Becomes debilitated and consents to the
11 commencement of the standby guardian's authority.

12 (c) A parent may designate an alternate standby
13 guardian in the same writing, and by the same manner, as
14 the designation of a standby guardian.

15 (d) A designation may, but need not, be in the fol-
16 lowing form:

17 Designation of Standby Guardian

18 I (name of parent) hereby designate (name,
19 home address and telephone number of standby guardian) as
20 standby guardian of the person and property of my

1 child(ren) (name of child(ren)).

2 (You may, if you wish, provide that the standby
3 guardian's authority shall extend only to the person, or
4 only to the property, of your child, by crossing out
5 "person" or "property", whichever is inapplicable, above.)

6 The standby guardian's authority shall take effect if
7 and when either: (1) my doctor concludes I am mentally
8 incapacitated, and thus unable to care for my child(ren);
9 or (2) my doctor concludes that I am physically debili-
10 tated, and thus unable to care for my child(ren) and I
11 consent in writing, before two (2) witnesses, to the
12 standby guardian's authority taking effect.

13 In the event the person I designate above is unable or
14 unwilling to act as guardian for my child(ren), I hereby
15 designate (name, home address and telephone number of
16 alternate standby guardian), as standby guardian of my
17 child(ren).

18 I also understand that my standby guardian's authority
19 will cease sixty (60) days after commencing unless by such
20 date he petitions the court for appointment as guardian.

21 I understand that I retain full parental rights even

1 after the commencement of the standby guardian's author-
2 ity, and may revoke the standby guardianship at any time.

3 Signature:....

4 Address:....

5 Date:....

6 I declare that the person whose name appears above
7 signed this document in my presence, or was physically
8 unable to sign and asked another to sign this document,
9 who did so in my presence. I further declare that I am at
10 least eighteen (18) years old and am not the person desig-
11 nated as standby guardian.

12 Witness' Signature:....

13 Address:....

14 Date:....

15 Witness' Signature:....

16 Address:....

17 Date:....

18 (e) The authority of the standby guardian under a
19 designation shall commence upon either:

20 (i) The standby guardian's receipt of a copy of
21 a determination of incapacity made pursuant to W.S.

1 3-2-306; or

2 (ii) The standby guardian's receipt of:

3 (A) A copy of a determination of debilita-
4 tion made pursuant to W.S. 3-2-306; and

5 (B) A copy of the parent's written consent
6 to the commencement, signed by the parent in the presence
7 of two (2) witnesses at least eighteen (18) years of age,
8 other than the standby guardian, who shall also sign the
9 writing. Another person may sign the written consent on
10 the parent's behalf and at the parent's direction if the
11 parent is physically unable to do so, provided the consent
12 is signed in the presence of the parent and the witnesses.

13 (f) The standby guardian shall file a petition pursu-
14 ant to subsection (g) of this section within sixty (60)
15 days of the date of its commencement pursuant to this
16 paragraph or the standby guardian's authority shall cease
17 after the filing date, but shall recommence upon the fil-
18 ing.

19 (g) The standby guardian may file a petition for
20 appointment as guardian after receipt of either:

21 (i) A copy of a determination of incapacity made

1 pursuant to W.S. 3-2-306; or

2 (ii) A copy of a determination of debilitation
3 made pursuant to W.S. 3-2-306 and a copy of the parent's
4 written consent, pursuant to subsection (e) of this sec-
5 tion.

6 (h) The petition filed pursuant to subsection (f) of
7 this section shall, in addition to meeting the require-
8 ments of W.S. 3-2-101:

9 (i) Append the written designation of the person
10 as standby guardian;

11 (ii) Append a copy of either:

12 (A) The determination of incapacity of the
13 parent; or

14 (B) The determination of debilitation and
15 the parental consent; and

16 (iii) If the petition is by a person designated
17 as alternate standby guardian, state that the person des-
18 ignated as standby guardian is unwilling or unable to act
19 as standby guardian, and the basis for the statement.

20 (j) The court shall enter an appropriate decree

1 appointing the standby guardian if it finds:

2 (i) That the person was duly designated as
3 standby guardian;

4 (ii) That a determination of incapacity, or a
5 determination of debilitation and parental consent, has
6 been made pursuant to this section;

7 (iii) That the interests of the minor will be
8 promoted by the appointment of a standby guardian of the
9 person or property; and

10 (iv) That, if the petition is by a person desig-
11 nated as alternate standby guardian, the person designated
12 as standby guardian is unwilling or unable to act as
13 standby guardian.

14 (k) The parent may revoke a standby guardianship cre-
15 ated under this section:

16 (i) By notifying the standby guardian verbally
17 or in writing or by any other act evidencing a specific
18 intent to revoke the standby guardianship prior to the
19 filing of a petition; and

20 (ii) If the petition has already been filed, by

1 executing a written revocation, filing it with the court
2 where the petition was filed, and promptly notifying the
3 standby guardian of the revocation.

4 3-2-305. Petition by standby guardian for appointment
5 as guardian. The standby guardian may also file a petition
6 for appointment as guardian in any other manner permitted
7 by this title on notice to the parent, and may append a
8 designation of standby guardian to the petition for con-
9 sideration by the court in the determination of the peti-
10 tion.

11 3-2-306. Determination of incapacity or debilitation.

12 (a) The attending physician shall provide a copy of
13 the determination of incapacity or debilitation to the
14 standby guardian, if the standby guardian's identity is
15 known to the physician. A determination of incapacity or
16 debilitation shall:

17 (i) Be made by the attending physician to a rea-
18 sonable degree of medical certainty;

19 (ii) Be in writing; and

20 (iii) Contain the attending physician's opinion
21 regarding the cause and nature of the petitioner's inca-

1 pacity or debilitation as well as its extent and probable
2 duration.

3 (b) If requested by the standby guardian, an attend-
4 ing physician shall make a determination regarding the
5 petitioner's incapacity or debilitation for purposes of
6 this section.

7 (c) The standby guardian shall ensure that the peti-
8 tioner is informed of the commencement of the standby
9 guardian's authority as a result of a determination of
10 incapacity and of the petitioner's right to revoke the
11 authority promptly after receipt of the determination of
12 incapacity, provided there is any indication of the
13 petitioner's ability to comprehend the information.

14 3-2-307. Parental rights not affected. The commence-
15 ment of the standby guardian's authority pursuant to a
16 determination of incapacity, determination of debilita-
17 tion, or consent shall not, itself, divest the petitioner
18 of any parental or guardianship rights, but shall confer
19 upon the standby guardian concurrent authority with
20 respect to the minor.

21 3-2-308. Filing designation of standby guardian;
22 delivery of designation.

1 (a) The clerk of any county upon being paid the fees
2 allowed by law shall file any instrument appointing or
3 designating a standby guardian pursuant to this article
4 made by a resident of the county, and shall give a written
5 receipt to the person delivering the instrument. The fil-
6 ing of an appointment or designation of standby guardian
7 shall be for the sole purpose of safekeeping and shall not
8 affect the validity of the appointment or designation.

9 (b) The clerk shall only provide a copy of the
10 appointment or designation to:

11 (i) The parent who appointed or designated the
12 standby guardian;

13 (ii) The standby guardian or alternate standby
14 guardian;

15 (iii) The person designated as standby guardian
16 or alternate standby guardian; or

17 (iv) Any other person directed by the court.

18 Section 2. W.S. 3-2-108 is repealed.

1 Section 3. This act is effective immediately upon
2 completion of all acts necessary for a bill to become law
3 as provided by Article 4, Section 8 of the Wyoming Consti-
4 tution.

5 (END)

Standby guardians.

94LSO-0077.L1

FISCAL NOTE

No significant fiscal or personnel impact.

HB133