

SENATE BILL NO. 302

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Deeds)

A BILL to amend and reenact §§ 64.2-2001 and 64.2-2002 of the Code of Virginia, relating to authorization of health care for persons incapable of making an informed decision; petitions for guardianship.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 64.2-2001 and 64.2-2002 of the Code of Virginia are amended and reenacted as follows:**

**§ 64.2-2001. Filing of petition; jurisdiction; instructions to be provided.**

A. A petition for the appointment of a guardian or conservator shall be filed with the circuit court of the county or city in which the respondent is a resident or is located or in which the respondent resided immediately prior to becoming a patient, voluntarily or involuntarily, in a hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, or a resident in a nursing facility or nursing home, convalescent home, assisted living facility as defined in § 63.2-100, or any other similar institution or, if the petition is for the appointment of a conservator for a nonresident with property in the state, in the city or county in which the respondent's property is located.

B. Article 2 (§ 64.2-2105 et seq.) of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act provides the exclusive jurisdictional basis for a court of the Commonwealth to appoint a guardian or conservator for an adult.

C. Where the petition is brought by a parent or guardian of a respondent who is under the age of 18, or by any other person and there is no living parent or guardian of a respondent who is under the age of 18, the petition may be filed no earlier than six months prior to the respondent's eighteenth birthday. Where such a petition is brought, a court may enter an order appointing the parent or guardian of the respondent, or other person if there is no living parent or guardian, as guardian or conservator prior to the

27 respondent's eighteenth birthday. Such order shall specify whether it takes effect immediately upon entry  
28 or on the respondent's eighteenth birthday. Where the petition is brought by any other person and there is  
29 a living parent or guardian of a respondent who is under the age of 18, the petition may be filed no earlier  
30 than the respondent's eighteenth birthday.

31 D. Instructions regarding the duties, powers, and liabilities of guardians and conservators shall be  
32 provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court, and the  
33 clerk shall provide such information to each guardian and conservator upon notice of appointment.

34 E. The circuit court in which the proceeding is first commenced may order a transfer of venue if it  
35 would be in the best interest of the respondent.

36 F. No order of appointment for a guardian is required to obtain health care for an adult who is  
37 determined to be incapable of making an informed decision, as defined in § 54.1-2982, provided that the  
38 person authorizing the health care provider to provide, continue, withhold, or withdraw health care is a  
39 relative listed in subsection A of § 54.1-2986 and the health care provider has complied with the provisions  
40 of § 54.1-2986.

41 **§ 64.2-2002. Who may file petition; contents.**

42 A. Any person, including a community services board and other local or state governmental  
43 agency, may file a petition for the appointment of a guardian, a conservator, or both.

44 B. A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's  
45 name, place of residence, post office address, and relationship, if any, to the respondent and, to the extent  
46 known as of the date of filing, shall include the following:

47 1. The respondent's name, date of birth, place of residence or location, post office address, and the  
48 sealed filing of the social security number;

49 2. The basis for the court's jurisdiction under the provisions of Article 2 (§ 64.2-2105 et seq.) of  
50 Chapter 21;

51 3. The names and post office addresses of the respondent's spouse, adult children, parents, and  
52 adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of  
53 the respondent, including stepchildren. If a total of three such persons cannot be identified and located,

54 the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final  
55 order;

56 4. The name, place of residence or location, and post office address of the individual or facility, if  
57 any, that is responsible for or has assumed responsibility for the respondent's care or custody;

58 5. The name, place of residence or location, and post office address of any agent designated under  
59 a durable power of attorney or an advance directive of which the respondent is the principal, and any  
60 guardian, committee, or conservator currently acting, whether in this state or elsewhere, and the petitioner  
61 shall attach a copy of any such durable power of attorney, advance directive, or order appointing the  
62 guardian, committee, or conservator, if available;

63 6. The type of guardianship or conservatorship requested and a brief description of the nature and  
64 extent of the respondent's alleged incapacity;

65 7. When the petition requests appointment of a guardian, a brief description of the services  
66 currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate,  
67 a recommendation as to living arrangements and treatment plan;

68 8. If the appointment of a limited guardian is requested, the specific areas of protection and  
69 assistance to be included in the order of appointment and, if the appointment of a limited conservator is  
70 requested, the specific areas of management and assistance to be included in the order of appointment;

71 9. The name and post office address of any proposed guardian or conservator or any guardian or  
72 conservator nominated by the respondent and that person's relationship to the respondent;

73 10. The native language of the respondent and any necessary alternative mode of communication;

74 11. A statement of the financial resources of the respondent that shall, to the extent known, list the  
75 approximate value of the respondent's property and the respondent's anticipated annual gross income,  
76 other receipts, and debts;

77 12. A statement of whether the petitioner believes that the respondent's attendance at the hearing  
78 would be detrimental to the respondent's health, care, or safety; and

79 13. A request for appointment of a guardian ad litem.

80 2. That the Joint Legislative Audit and Review Commission shall convene a work group to consider  
81 issues related to (i) the care of adults with permanent disabilities that render them incapable of  
82 making informed decisions about their own care and (ii) potential changes to guardianship  
83 requirements to make it easier for parents to care for their adult children with such disabilities. The  
84 work group shall include representatives from the Department of Behavioral Health and  
85 Developmental Services, the Department for Aging and Rehabilitative Services, the Department of  
86 Social Services, the Department of Medical Assistance Services, the Office of the Executive  
87 Secretary of the Supreme Court of Virginia, the Virginia Poverty Law Center, the Virginia  
88 Disability Law Center, the Virginia Academy of Elder Law Attorneys, the Virginia Board for People  
89 with Disabilities, and the Arc of Virginia. The work group shall make recommendations for  
90 legislative changes to address these issues by November 1, 2022, to the Chairmen of the Senate  
91 Committee on the Judiciary and the House Committee for Courts of Justice.

92

#