



S.B. 157

127th General Assembly
(As Introduced)

Sens. Buehrer, Carey, Faber

BILL SUMMARY

- Authorizes a person to nominate by a durable power of attorney or a writing a guardian for a person's incompetent adult child.
- Removes the requirement that a guardian, other than a guardian named in a will by a parent of a minor, selected by a minor over the age of 14, or nominated in or pursuant to a durable power of attorney or a writing must be removed on proof that the guardian is no longer a resident of this state and instead provides that the guardian may be removed.
- States that a person nominated as a guardian of an incompetent adult child pursuant to a durable power of attorney or a writing has preference in appointment over a person applying to be guardian if the person nominated is competent, suitable, and willing to accept the appointment, and if the incompetent adult child does not have a spouse or an adult child and has not designated a guardian prior to the court finding the adult child incompetent.

CONTENT AND OPERATION

Guardianship

Background--durable power of attorney

Existing law provides that whenever a principal designates another as attorney in fact by a written power of attorney and the writing contains the words "This power of attorney shall not be affected by disability of the principal," "this power of attorney shall not be affected by disability of the principal or lapse of time," or words of similar import, the authority of the attorney in fact is exercisable by the attorney in fact as provided in the written instrument notwithstanding the later disability, incapacity, or adjudged incompetency of the

principal and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument (R.C. 1337.09(A)).

Existing law also provides that whenever a principal designates another the principal's attorney in fact by a power of attorney in writing and the writing expressly states that the power of attorney becomes effective at a later time or upon the occurrence of a specified event, including, but not limited to, the disability, incapacity, or adjudged incompetency of the principal, the attorney in fact may exercise the authority provided to the attorney in fact in the written instrument at the later time or upon the occurrence of the specified event notwithstanding the later disability, incapacity, or adjudged incompetency of the principal and, unless the instrument states a time of termination, notwithstanding the lapse of time since its execution (R.C. 1337.09(B)).

Nomination--in durable power of attorney or writing

Under existing law, in a durable power of attorney described above or in a writing, both of the following apply:

(1) A principal may nominate the attorney in fact or any other person or a nominator may nominate another person to be the guardian of the principal's person, estate, or both.

(2) A principal may nominate the attorney in fact or any other person and the nominator may nominate another person to be the guardian of the person, the estate, or both of one or more of the principal's or nominator's *minor children*, whether born at the time of the execution of the durable power of attorney or writing or afterward.

The nomination is for consideration by a court if proceedings for the appointment of a guardian of the person, the estate, or both of one or more of the principal's or nominator's *minor children* are commenced at a later time. Nomination of a person as a guardian or successor guardian of the person, the estate, or both of one or more of the principal's or nominator's minor children, and any subsequent appointment of the guardian or successor guardian as guardian under R.C. 2111.02, does not vacate the jurisdiction of any other court that previously may have exercised jurisdiction over the person of the minor. The durable power of attorney described above or the writing that contains the nomination of a person to be the guardian of the person, the estate, or both of one more of the principal's or nominator's minor children may be filed with the probate court for safekeeping, and the probate court must designate the nomination as the nomination of a standby guardian.

The bill allows a principal in a durable power of attorney described above to nominate an attorney in fact or any other person, and allows a nominator in a writing to nominate another person, to be the guardian of the person, the estate, or both of one or more of the principal's or nominator's *incompetent adult children*, whether born at the time of the execution of the durable power of attorney or writing or afterward, and makes the appropriate references to the principal's or nominator's *incompetent adult children*. (R.C. 1337.09(D) and 2111.121.)

Residency of guardian

Existing law provides that a guardian, other than a guardian named in a will by a parent of a minor, selected by a minor over the age of 14, or nominated in or pursuant to a durable power of attorney or writing, may be removed on proof that the guardian is no longer a resident of the county in which the guardian resided at the time of the guardian's appointment, *and must be removed on proof that the guardian is no longer a resident of this state*. The bill removes the requirement that the guardian must be removed on proof that the guardian is no longer a resident of this state and instead provides that the guardian may be removed in that situation. (R.C. 2109.21(C).)

Preference in appointment

The bill provides that a person nominated as a guardian of an incompetent adult pursuant to a durable power of attorney or a writing has preference in appointment over a person applying to be guardian if the person nominated is competent, suitable, and willing to accept the appointment, and if the incompetent adult child does not have a spouse or an adult child and has not designated a guardian prior to the court finding the adult child incompetent (R.C. 2111.02(D)(2)).

HISTORY

ACTION	DATE
Introduced	05-01-07

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