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SENATE BILL NO. 302

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 64.2-2001 of the Code of Virginia, relating to natural guardianship of permanently incapacitated persons.

Patron—Deeds

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:**1. That § 64.2-2001 of the Code of Virginia is 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 respondent's eighteenth birthday. Such order shall specify whether it takes effect immediately upon entry or on the respondent's eighteenth birthday. Where the petition is brought by any other person and there is a living parent or guardian of a respondent who is under the age of 18, the petition may be filed no earlier than the respondent's eighteenth birthday.

If an incapacitated person is deemed permanently incapacitated by a licensed physician prior to his eighteenth birthday, the parents of such person are jointly and severally his natural guardians and conservators, unless determined to be unfit by a court of competent jurisdiction, and no petition for the appointment of a guardian or conservator need be filed. They shall have equal powers and duties with respect to the person and neither shall have any right superior to that of the other concerning the person's custody or control or any other matter affecting the person, provided that if either parent dies or abandons the family or is incapable for any reason to act as guardian or conservator, or both, the guardianship or conservatorship, or both, devolves upon the other parent, and that when the parents live apart, the court may award the guardianship or conservatorship to either of them.

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

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

INTRODUCED

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