

# SENATE BILL No. 251

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 29-3-3-7.

**Synopsis:** Standby guardians. Provides that a parent or guardian may designate a standby guardian if the parent or guardian is subject to an adverse immigration action. Requires that the office of judicial administration: (1) create standardized forms for declaring a standby guardian and petitioning the court for the judicial appointment of a standby guardian; (2) make the forms available in additional languages; and (3) provide education concerning standby guardians to schools and community service organizations.

**Effective:** July 1, 2020.

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## Ford J.D.

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January 9, 2020, read first time and referred to Committee on Judiciary.

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Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

## SENATE BILL No. 251

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 29-3-3-7, AS AMENDED BY P.L.149-2012,
- 2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2020]: Sec. 7. (a) **For purposes of this section, "adverse**
- 4 **immigration action" includes the following:**
- 5 (1) **Arrest or apprehension by a law enforcement officer for**
- 6 **an alleged violation of federal immigration law.**
- 7 (2) **Detention or custody by the United States Department of**
- 8 **Homeland Security or a federal, state, or local agency**
- 9 **authorized by or acting on behalf of the United States**
- 10 **Department of Homeland Security.**
- 11 (3) **Departure from the United States under an order of**
- 12 **removal, deportation, exclusion, voluntary departure, or**
- 13 **expedited removal or stipulation of voluntary departure.**
- 14 (4) **Denial, revocation, or delay of the issuance of a visa or**
- 15 **transportation letter by the United States Department of**
- 16 **State.**
- 17 (5) **Denial, revocation, or delay of the issuance of a parole**



1 **document or reentry permit by the United States Department**  
 2 **of Homeland Security.**

3 **(6) Denial of admission or entry into the United States by the**  
 4 **United States Department of Homeland Security.**

5 ~~(a)~~ **(b)** Subject to subsection ~~(e)~~; **(g)**, a parent of a minor or the  
 6 guardian of a protected person may designate a standby guardian by  
 7 making a written declaration naming the individual designated to serve  
 8 as a standby guardian. A declarant may name an alternate to the  
 9 designated standby guardian if the designated standby guardian is  
 10 unable to serve, refuses to serve, renounces the appointment, dies, or  
 11 becomes incapacitated after the death of the declarant.

12 ~~(b)~~ **(c)** A declaration under this section must contain the following  
 13 information:

14 (1) The names of the declarant, the designated standby guardian,  
 15 and the alternate standby guardian, if any.

16 (2) The following information concerning each minor child or  
 17 protected person for whom a standby guardian is designated by  
 18 the declaration:

19 (A) The person's full name as it appears on the birth certificate  
 20 or as ordered by a court.

21 (B) The person's date of birth.

22 (3) A statement that the declaration becomes effective upon:

23 **(A) the death or incapacity of the declarant; or**

24 **(B) an adverse immigration action against the declarant.**

25 (4) A statement that the declaration terminates ninety (90) days  
 26 after becoming effective unless the standby guardian files a  
 27 petition for a guardianship of the minor or protected person  
 28 during that ninety (90) day period.

29 ~~(e)~~ **(d)** A declaration executed under this section **due to death or**  
 30 **incapacity of the declarant** must be signed by the declarant in the  
 31 presence of a notary public.

32 **(e) A declaration executed under this section due to an adverse**  
 33 **immigration action against the declarant must be signed by the**  
 34 **declarant in the presence of two (2) witnesses who are:**

35 **(1) not less than eighteen (18) years of age; and**

36 **(2) not being selected as the standby guardian.**

37 ~~(f)~~ **(f)** A declaration executed under this section becomes effective:

38 **(1) upon the death or incapacity (as defined in IC 29-3-1-7.5) of**  
 39 **the parent or guardian; or**

40 **(2) on the date of the adverse immigration action against the**  
 41 **parent or guardian;**

42 and terminates ninety (90) days after the declaration becomes effective.



1 However, if the designated standby guardian files a petition for a  
 2 guardianship of the minor or protected person during that ninety (90)  
 3 day period, the declaration remains in effect until the court rules on the  
 4 petition.

5 ~~(e)~~ (g) A declaration executed under this section must be considered  
 6 by, but is not binding upon, the department of child services, a  
 7 probation department, or a juvenile court for purposes of determining  
 8 the placement of a child who is the subject of:

- 9 (1) an allegation of child abuse or neglect under IC 31-33;
- 10 (2) an open child in need of services case under IC 31-34; or
- 11 (3) an open delinquency case under IC 31-37.

12 ~~(f)~~ (h) A standby guardian shall have all the powers granted to a  
 13 guardian under this article.

14 **(i) The office of judicial administration shall:**

15 **(1) create standardized forms for:**

- 16 **(A) designating and consenting to a standby guardianship;**
- 17 **and**
- 18 **(B) petitioning the court for judicial appointment of a**
- 19 **standby guardian;**

20 **(2) make the standardized forms available:**

- 21 **(A) on the Internet web site of the office of judicial**
- 22 **administration; and**
- 23 **(B) in English, Spanish, and any additional languages**
- 24 **determined by the office of judicial administration; and**

25 **(3) provide education to:**

- 26 **(A) school corporations;**
- 27 **(B) charter schools;**
- 28 **(C) nonpublic schools; and**
- 29 **(D) community service organizations;**

30 **concerning the availability of standby guardianships and the**  
 31 **process for obtaining a standby guardianship.**

