

HOUSE BILL 2286

By Boyd

AN ACT to amend Tennessee Code Annotated, Title 34,
relative to guardianship.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 34-1-109(b), is amended by deleting the subsection and substituting:

(b)

(1) Before delivering the letters of guardianship or conservatorship, the clerk shall administer to a fiduciary an in-person oath for the faithful performance of the fiduciary's duties. If an in-person oath is administered by the clerk, then the clerk must notarize the oath. The clerk or court may waive the in-person requirement for the faithful performance oath if the fiduciary files with the clerk a faithful performance oath containing all of the required language in the form of a written document that:

(A) Is notarized in the presence of a notary public; or

(B) Signed and dated under penalty of perjury pursuant to Rule 72 of the Tennessee Rules of Civil Procedure.

(2) A faithful performance oath as described in subdivision (b)(1) must include the fiduciary's promise that the fiduciary has completed court-approved training as described in § 34-3-106(b) regarding the fiduciary's role as a conservator or guardian, unless the training is expressly waived by the court, § 34-3-106, or § 34-3-107.

(3) If the fiduciary is a fiduciary of a minor's or an individual with a disability's property, then the fiduciary's faithful performance oath as described in subdivision (b)(1) must include a promise to timely file each required inventory and accounting and to spend the assets of the minor or individual with a disability only as approved by the court.

SECTION 2. Tennessee Code Annotated, Section 34-3-106, is amended by deleting the section and substituting:

(a) During the course of the proceedings, the respondent has the right to:

(1) On demand by respondent or the guardian ad litem, a hearing on the issue of disability;

(2) Present evidence, including testimony or other evidence from a physician, psychologist, or senior psychological examiner of the respondent's choosing, and confront, as a cross-examiner, witnesses;

(3) Appeal the final decision on the petition with the assistance of an attorney ad litem or adversary counsel;

(4) Attend a hearing;

(5) Have an attorney ad litem appointed to advocate the interests of the respondent; and

(6) Request a protective order placing under seal the respondent's financial information and health information not otherwise protected by § 34-3-105(f).

(b)

(1) In cases where a conservator is needed, the respondent is entitled to a conservator who is competent to perform the duties and responsibilities that are necessary to protect the interests of the respondent, in addition to the other

rights outlined in this title. In an effort to further these rights, an appointed conservator shall complete court-approved training prior to a letter of guardianship or conservatorship being issued.

(2) The court-approved training as described in subdivision (b)(1) must be free and easily accessible through internet access or other online availability.

The following is a list of acceptable training that can be approved by the court:

(A) Videos or written materials prepared and updated by the Conservatorship Association of Tennessee;

(B) Videos or written materials prepared and updated by the office of conservatorship management for metropolitan Nashville & Davidson County; or

(C) Videos or written materials prepared and updated by the court or clerk for each respective county.

(3) A public guardian is exempt from the training as described in subdivision (b)(1).

SECTION 3. Tennessee Code Annotated, Section 34-3-107(a), is amended by adding the following as a new subdivision:

(6)

(A) Require the conservator or co-conservators to file a sworn statement with the court acknowledging completion of the court-approved training as described in § 34-3-106(b) or waiver of the court-approved training for one (1) of the following reasons:

(i) The appointed conservator is a professional conservator/guardian and has already completed training as described in § 34-3-106(b) or equivalent training;

(ii) The appointed conservator is a private attorney in good standing and has already completed training as described in § 34-3-106(b) or equivalent training; or

(iii) For other good cause shown and reported in the order.

(B) Pursuant to § 34-1-109(b), the sworn statement as described in this subdivision (a)(6) must be included as part of the conservator's or co-conservators' fiduciary oath, which must be signed and dated under penalty of perjury pursuant to Rule 72 of the Tennessee Rules of Civil Procedure or be notarized in the presence of a notary public or the court's clerk.

SECTION 4. Tennessee Code Annotated, Section 34-3-105(a), is amended by deleting the subsection and substituting:

(a)

(1) If the respondent has been examined by a physician or, where appropriate, a psychologist or senior psychological examiner, not more than ninety (90) days prior to the filing of the petition and the examination is pertinent, then the report of the examination must be submitted with the petition.

(2) If the respondent has not been examined within ninety (90) days of the filing of the petition, is unable to get out to be examined, or refuses to be voluntarily examined, then the court must order the respondent to submit to examination by:

(A) A physician or, where appropriate, a psychologist, or senior psychological examiner identified in the petition as the respondent's physician, psychologist, or senior psychological examiner; or

(B) If the respondent has no physician, psychologist, or senior psychological examiner, a physician, psychologist, or senior psychological examiner selected by the court.

(3) The physician, psychologist, or senior psychological examiner, upon completing the examination, shall send a sworn written report to the court with copies to the petitioner and the guardian ad litem. The report must be made a part of the court record. The report must be notarized in the presence of a notary public, or signed and dated under penalty of perjury pursuant to Rule 72 of the Tennessee Rules of Civil Procedure.

SECTION 5. This act takes effect upon becoming a law, the public welfare requiring it.