

1 HB323
2 189559-1
3 By Representative Lee
4 RFD: Judiciary
5 First Read: 30-JAN-18

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8 SYNOPSIS: Under existing law, a kinship guardian may
9 only be appointed by the juvenile court if a parent
10 whose parental rights have not been terminated or a
11 legal guardian or legal custodian of the child is
12 living and has consented in writing to the
13 appointment and the consent has not been withdrawn.
14 A successor guardian may also only be appointed by
15 the juvenile court if a parent, legal guardian, or
16 legal custodian of the child has consented in
17 writing to the appointment of the successor
18 guardian, unless all parental rights have been
19 terminated or restricted by a prior court order.

20 This bill would eliminate the requirement
21 that a kinship guardian may be appointed by the
22 juvenile court only if a parent, legal guardian, or
23 legal custodian of the child is living and has
24 consented in writing to the appointment of the
25 guardian and not withdrawn the consent; and to
26 eliminate the requirement that a parent, legal
27 guardian, or legal custodian of a child must

1 consent in writing before a successor guardian may
2 be appointed.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 Relating to kinship guardianship; to amend Section
9 12-15-314 of the Code of Alabama 1975; to eliminate the
10 requirement that a kinship guardian may be appointed by the
11 juvenile court only if a parent, legal guardian, or legal
12 custodian of the child is living and has consented in writing
13 to the appointment of the guardian and not withdrawn the
14 consent; and to eliminate the requirement that a parent, legal
15 guardian, or legal custodian of a child must consent in
16 writing before a successor guardian may be appointed.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Section 12-15-314, Code of Alabama 1975,
19 is amended to read as follows:

20 "§12-15-314.

21 "(a) If a child is found to be dependent, the
22 juvenile court may make any of the following orders of
23 disposition to protect the welfare of the child:

24 "(1) Permit the child to remain with the parent,
25 legal guardian, or other legal custodian of the child, subject
26 to conditions and limitations as the juvenile court may
27 prescribe.

1 "(2) Place the child under protective supervision
2 under the Department of Human Resources.

3 "(3) Transfer legal custody to any of the following:

4 "a. The Department of Human Resources.

5 "b. A local public or private agency, organization,
6 or facility willing and able to assume the education, care,
7 and maintenance of the child and which is licensed by the
8 Department of Human Resources or otherwise authorized by law
9 to receive and provide care for the child.

10 "c. A relative or other individual who, after study
11 by the Department of Human Resources, is found by the juvenile
12 court to be qualified to receive and care for the child.

13 Unless the juvenile court finds it not in the best interests
14 of the child, a willing, fit, and able relative shall have
15 priority for placement or custody over a non-relative.

16 "(4) Make any other order as the juvenile court in
17 its discretion shall deem to be for the welfare and best
18 interests of the child.

19 "(5) In appropriate cases, award permanent custody
20 to the Department of Human Resources or to a licensed
21 child-placing agency after termination of parental rights and
22 authorization to place for adoption, without appointing a
23 legal guardian, or award temporary custody to the department
24 or a licensed child-placing agency without appointing a legal
25 custodian or legal guardian.

26 "(b) Unless a child found dependent shall also be
27 found to be delinquent, the child shall not be confined in an

1 institution established for the care and rehabilitation of
2 delinquent children or in a juvenile detention facility.
3 Nothing in this subsection shall be construed to prohibit the
4 placement of dependent children in any other residential
5 facility as defined in subdivision (22) of Section 12-15-102.

6 "(c) There shall be a rebuttable presumption that
7 children cannot be removed from the custody of their parents
8 solely because of a need for emergency housing.

9 "(d) In providing shelter or other care for children
10 referred to or coming under the jurisdiction of the juvenile
11 court, the juvenile court and the Department of Human
12 Resources shall utilize only those facilities as have been
13 established, licensed, or approved by law, or by agencies
14 pursuant to law, for those purposes.

15 "(e) When a child is placed in the legal custody of
16 the Department of Human Resources or any other department,
17 agency, organization, entity, or person pursuant to this
18 section and when the parent, legal guardian, or legal
19 custodian of the child has resources for child support, the
20 juvenile court shall order child support in conformity with
21 the child support guidelines as set out in Rule 32, Alabama
22 Rules of Judicial Administration. The child support shall be
23 paid to the Department of Human Resources or department,
24 agency, any other organization, entity, or person in whose
25 legal custody the child is placed and may be expended for
26 those matters that are necessary for the welfare and
27 well-being of those children placed in the Department of Human

1 Resources or any other departments, agencies, organizations,
2 entities, or person. In these cases, the juvenile court shall
3 issue income withholding orders subject to state law. Any
4 petition alleging dependency of a child filed by the
5 Department of Human Resources shall contain a request for
6 child support.

7 "(f) (1) After a child has been placed in the legal
8 custody of the Department of Human Resources, the department
9 may file with the juvenile court a written request for
10 appointment of a kinship guardian in cases where the juvenile
11 court has entered an order under Section 12-15-315 affirming
12 kinship guardianship as the permanent plan for the child.

13 "(2) If the kinship guardian dies or becomes
14 incapacitated, the department or the named prospective
15 successor guardian in the kinship guardian subsidy agreement
16 may file a written request for appointment of the successor
17 guardian. The department or the prospective successor guardian
18 may file for an ex parte order of temporary guardianship
19 pending a hearing on the written request for appointment of a
20 successor guardian.

21 "(3) A written request for appointment of a kinship
22 guardian or successor guardian shall be verified and allege
23 the following with respect to the child:

24 "a. Facts that if proved will meet the requirements
25 for a kinship guardianship or successor guardianship.

26 "b. The date and place of birth of the child, if
27 known, and if not known, the reason for the lack of knowledge.

1 "c. The legal residence of the child and the place
2 where he or she resides, if different from the legal
3 residence.

4 "d. The marital status of the child, if applicable.

5 "e. The name and home and business addresses of an
6 individual caregiver sought to be appointed as a kinship
7 guardian or successor guardian and all residents of that
8 individual's household.

9 "f. The relationship between the individual
10 caregiver sought to be appointed as a kinship guardian or
11 successor guardian and the child.

12 "g. The names and home and business addresses of the
13 parents of the child, if known.

14 "h. The names and home and business addresses of
15 legal guardians or legal custodians.

16 "i. The existence of any pending matters involving
17 the custody of the child.

18 "j. A signed statement from the individual caregiver
19 sought to be appointed as a kinship guardian or successor
20 guardian that the individual agrees to accept the duties and
21 responsibilities of being a kinship guardian or successor
22 guardian.

23 "k. The existence of any other matters pending in
24 the juvenile court involving the child and, if they exist, a
25 statement that departments, agencies, individuals, or entities
26 authorized or involved in the proceedings, by law or court
27 order, consent to the relief requested.

1 "l. The results of a criminal history record
2 background check of the individual caregiver seeking to be
3 appointed as a kinship guardian or successor guardian and all
4 adult residents of the household of the individual caregiver.
5 In addition, the results of a child abuse record check of the
6 individual caregiver seeking to be appointed as a kinship
7 guardian or successor guardian and all residents 14 years or
8 older of the household of the individual caregiver.

9 "m. Whether the child is subject to provisions of
10 the federal Indian Child Welfare Act of 1978, 25 U.S.C. §1901,
11 and, if so:

12 "1. The tribal affiliations of the parents, legal
13 guardians, or legal custodians of the child; and

14 "2. The specific actions taken to notify the tribes
15 of the parents, legal guardians, or legal custodians and the
16 results of the contacts.

17 "n. Other relevant facts in support of the written
18 request to be appointed as a kinship guardian or successor
19 guardian.

20 "(4) After the juvenile court finds that an
21 individual caregiver qualifies to be appointed as a kinship
22 guardian, the requirements of subdivision (5) or (6) have been
23 proved, and the best interests of the child will be served by
24 the requested appointment, it may make the appointment. After
25 a kinship guardianship appointment, the juvenile court may
26 make any other disposition of the matter that will serve the
27 best interests of the child.

1 "(5) A kinship guardian may be appointed by the
2 juvenile court only if:

3 ~~"a.1. A parent, legal guardian, or legal custodian
4 of the child is living and has consented in writing to the
5 appointment of a kinship guardian and the consent has not been
6 withdrawn; or~~

7 ~~"2. a.~~ A parent of the child is living but all
8 parental rights in regard to the child have been terminated or
9 restricted by a prior court order, provided that for this
10 purpose only, the blood relationship with the child will
11 continue to be recognized in defining relative caregiver; and

12 **"b.1.** The child has resided with the individual
13 caregiver seeking to be appointed as a kinship guardian
14 without the parent, legal guardian, or legal custodian for a
15 period of six months or more immediately preceding the date
16 the written request is filed, and a parent, legal guardian, or
17 legal custodian having legal custody of the child is currently
18 unwilling or unable to provide adequate care, maintenance, and
19 supervision for the child or there are extraordinary
20 circumstances; and

21 **"2.** No legal guardian of the child is currently
22 appointed pursuant to the Alabama Uniform Guardianship and
23 Protective Proceedings Act, Chapter 2A of Title 26.

24 "(6) A successor guardian may be appointed by the
25 juvenile court only if all of the following requirements have
26 been met:

1 "a. The original kinship guardian subsidy agreement
2 or amendments to such agreement names the prospective
3 successor guardian as the person to become the legal guardian
4 of the child in the event of the death or incapacitation of
5 the kinship guardian.

6 ~~"b. A parent, legal guardian, or legal custodian of
7 the child has consented in writing to the appointment of the
8 successor guardian named in the original subsidy agreement
9 unless all parental rights have been terminated or restricted
10 by a prior court order.~~

11 ~~"c.~~ b. The department has completed a criminal
12 history record check on the prospective successor guardian and
13 all adult residents of the household of the prospective
14 successor guardian. The department also has completed a child
15 abuse record check on the prospective successor guardian and
16 all residents 14 years or older of the household of the
17 individual caregiver.

18 ~~"d.~~ c. No legal guardian of the child is currently
19 appointed pursuant to the Alabama Uniform Guardianship and
20 Protective Proceedings Act, Section 26-2A-1.

21 ~~"e.~~ d. A child that is 14 years of age or older must
22 be consulted as to his or her position regarding the
23 prospective successor guardianship and if the child is 18
24 years or older, he or she has consented to the successor
25 guardianship if capable of giving effective consent.

26 "(7) The burden of proof shall be by clear and
27 convincing evidence, except that in those cases involving an

1 Indian child as defined in the federal Indian Child Welfare
2 Act of 1978, 25 U.S.C. §1901, the burden of proof shall be
3 proof beyond a reasonable doubt.

4 "(8) As part of a kinship guardianship order or
5 successor guardianship order, the juvenile court may order a
6 parent, legal guardian, or legal custodian to pay the
7 reasonable costs of support and maintenance of the child that
8 the parent, legal guardian, or legal custodian is financially
9 able to pay. The juvenile court shall use the Child Support
10 Guidelines established by rules of the Alabama Supreme Court
11 to calculate a reasonable payment.

12 "(9) The juvenile court may order visitation between
13 a parent, legal guardian, or legal custodian and the child to
14 maintain or rebuild a parent-child relationship if the
15 visitation is in the best interests of the child.

16 "(10)a. A kinship guardianship or successor
17 guardianship is intended to be permanent during the child's
18 minority similar to other permanency plan options. After the
19 kinship guardian or successor guardian has been appointed by
20 the juvenile court, a parent, other person, entity,
21 department, or agency, including the Department of Human
22 Resources, may file a petition to revoke or modify the kinship
23 guardianship or successor guardianship by proving not only
24 that a material change in circumstances has occurred since the
25 order granting the kinship guardianship or successor
26 guardianship was entered, but also that the change would
27 materially promote the child's best interest and welfare, and

1 that the positive good brought about by the change would more
2 than offset the inherently disruptive effect caused by
3 uprooting the child.

4 "b. If the juvenile court finds that a petition for
5 revocation of the kinship guardianship or successor
6 guardianship filed by the Department of Human Resources meets
7 the standard in paragraph a., it shall grant the petition, and
8 the child shall be placed in the legal custody of the
9 Department of Human Resources. If the juvenile court finds
10 that a petition for modification of the kinship guardianship
11 or successor guardianship filed by the Department of Human
12 Resources meets the standard in paragraph a., it shall grant
13 the petition, and the child shall remain with the kinship
14 guardian or successor guardian but shall be under the
15 protective supervision of the department.

16 "c. This subsection does not preclude a parent,
17 other person, entity, department, or agency, including the
18 Department of Human Resources, from filing a petition to
19 modify other terms of the order of the juvenile court granting
20 the kinship guardianship or successor guardianship, including,
21 but not limited to, visitation, which shall be decided, after
22 notice to the department, on the basis of what is in the best
23 interests of the child.

24 "(11)a. Except as provided herein, a kinship
25 guardian or successor guardian shall have the same rights,
26 responsibilities, and authority relating to the child as a
27 parent, including, but not limited to, making decisions

1 concerning the care and well-being of the child; consenting to
2 routine, preventative, necessary, elective, cosmetic, and
3 emergency medical, dental, and mental health needs; arranging
4 and consenting to educational plans for the child; arranging
5 and consenting to athletic, sport, or other activity
6 participation; applying for financial assistance and social
7 services for which the child is eligible; applying for a
8 permit or license; applying for admission to a college or
9 university; responsibility for activities necessary to ensure
10 the safety, permanency, and well-being of the child; and
11 ensuring the maintenance and protection of the child, and
12 further provided, that the appointment of the kinship guardian
13 or successor guardian terminates the education rights of the
14 parent in favor of the kinship guardian or successor guardian
15 and the kinship guardian or successor guardian shall be deemed
16 the parent for federal IDEA and other educational purposes.

17 "b. A kinship guardian or successor guardian may not
18 consent to the adoption of the child or a name change for the
19 child. The parent of the child shall retain the authority to
20 consent to the adoption of the child or a name change for the
21 child.

22 "c. The parent, legal guardian, or legal custodian
23 from whose custody the child was removed shall retain the
24 obligation to pay child support.

25 "d. Unless otherwise ordered by the juvenile court,
26 a kinship guardian or successor guardian has the authority to

1 make all decisions regarding appropriate visitation between
2 the parent, legal guardian, or legal custodian and the child.

3 "e. The appointment of a kinship guardian or
4 successor guardian does not limit or terminate any rights or
5 benefits derived from or between the child and parent, legal
6 guardian, or legal custodian relating to inheritance or
7 insurance.

8 "f. A kinship guardianship or successor guardianship
9 terminates when the child reaches 18 years of age, or when the
10 child reaches age 21 if the child is eligible for a
11 guardianship subsidy up to age 21 regardless of whether the
12 juvenile court has continued jurisdiction, or when the kinship
13 guardianship or successor guardianship is otherwise terminated
14 or revoked by the juvenile court.

15 "g. A certified copy of the court order appointing a
16 kinship guardian or successor guardian shall be satisfactory
17 proof of the authority of the kinship guardian or successor
18 guardian, and letters of guardianship need not be issued.

19 "h. A kinship guardianship or successor guardianship
20 order is the legal authority to enroll the named child in
21 school and consent to school-related activities and medical
22 care for the child; to give permission or consent for other
23 non-school related activities, placements, and events; and to
24 enroll the child in health, homeowner, employment, motor
25 vehicle, and other insurance.

26 "i. A kinship guardianship or successor guardianship
27 order is the legal authority for the kinship guardian or

1 successor guardian to authorize or consent to medical care,
2 dental care, and mental health care for the child.

3 "j. Absent negligence, wantonness, recklessness, or
4 deliberate misconduct, no person who acts in good faith
5 reliance on a kinship guardianship or successor guardianship
6 order without actual knowledge of facts contrary to that order
7 is subject to criminal or civil liability or professional
8 disciplinary action. This good faith immunity applies even
9 though a parent, legal guardian, or legal custodian having
10 parental rights or a person having legal custody of the child
11 has contrary wishes. A person who relies upon a kinship
12 guardianship or successor guardianship order is under no duty
13 to make further inquiry or investigation.

14 "(g) (1) A caregiver shall have the authority,
15 without prior approval of the department, juvenile court, or
16 circuit court, to allow a child in his or her care that is in
17 foster care to participate in activities that are age or
18 developmentally appropriate for the child based on a
19 reasonable and prudent parent standard, provided the
20 activities are consistent with provisions of any existing
21 court order, individualized service plan, or promulgated
22 policy of the department that provides guidance to caregivers
23 concerning the reasonable and prudent parent standard. The
24 guidance shall include factors for the caregiver to consider
25 prior to allowing a child to participate in age or
26 developmentally appropriate normal childhood activities.

1 "(2) A caregiver shall be immune from liability in a
2 civil action to recover damages for injury, death, or loss to
3 person or property that results from a caregiver's decisions
4 using a reasonable and prudent parent standard. This
5 subsection shall not be construed to remove or limit any
6 existing liability protection provided by law."

7 Section 2. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.