257B.05 PETITION FOR APPROVAL.

Subdivision 1. **Generally.** A petition for approval of a designation under this chapter may be made at any time by filing with the court a copy of the designation. No filing fee is required to initiate the proceeding. A court may, however, determine the ability to pay fees in the event of a hearing on the petition. Only the designator may file a petition for confirmation of a temporary custodian. If the triggering event has not occurred on or before the time of filing, only the designator may file the petition for confirmation of a standby custodian. If the triggering event has occurred on or before the time of filing, the standby custodian named in the designation may file a petition containing one of the following:

(1) a determination of the designator's incapacity;

(2) a determination of the designator's debilitation and the designator's signed and dated consent; or

(3) a copy of the designator's death record.

Subd. 2. **Notice.** (a) The petitioner must serve any person named in the designation and any other current caregiver of the children with a copy of the petition and designation and notice of any hearing within ten days of the filing of the petition.

(b) If the petition alleges that a nondesignating parent cannot be located, that parent must be notified in accordance with section 518.11.

No notice is required to a parent whose parental rights have been terminated by a court order.

Subd. 3. **Jurisdiction.** For purposes of determining jurisdiction under this chapter, the provisions of chapter 518D apply.

Subd. 4. **Presumptions.** In a proceeding for judicial confirmation of a standby custodian or temporary custodian, a designation constitutes a presumption that the designated custodian is capable of serving as co-custodian or custodian. If the designator is the sole surviving parent, the parental rights of the other parent have been terminated, or both parents consent to the designation, there is a presumption that entry of an order confirming the designation of the standby or temporary custodian is in the best interest of the children.

Subd. 5. **Approval without hearing.** Approval of the designation without a hearing is permitted if the designator is the sole surviving parent, the parental rights of the other parent have been terminated, or both parents consent to confirmation of the standby or temporary custodian.

Subd. 6. **Hearing.** A hearing is required if there is a parent other than the designator whose parental rights have not been terminated and who has not consented to the designation. The court shall apply the factors in section 518.17 and make specific findings in determining whether to confirm the designation of the standby or temporary custodian, to appoint a different custodian, or to grant custody to the other parent. A court that finds the appointment of the standby or temporary custodian to be in the best interest of the child shall enter an order confirming the designation.

Subd. 7. **Court appearance.** A designator who is medically unable to appear in court need not appear.

History: *2000 c 404 s 6; 1Sp2001 c 9 art 15 s 32*