

COMMITTEE ON JUDICIARY

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2424

(Reference to printed bill)

- 1 Page 1, line 4, strike "judge" insert "judicial officer"
- 2 Line 5, strike "PROBATE"; after "COURT" insert "PURSUANT TO THIS TITLE"; strike
- 3 "JUDGE" insert "JUDICIAL OFFICER"
- 4 Line 8, strike "Probate advocacy" insert "Legislative advisory probate"
- 5 Line 9, after the first "THE" insert "LEGISLATIVE ADVISORY"; strike "ADVOCACY"
- 6 Line 11, strike "ATTORNEYS" insert "PERSONS"; after "WHO" strike remainder of
- 7 line; line 12, strike "WHO PRACTICED" insert "HAVE EXPERIENCE IN THE PRACTICE
- 8 OF"
- 9 Line 14, strike "TWO" insert "FOUR"; after "PROBATE" insert "LAW"
- 10 Line 17, strike "ADVOCACY"
- 11 Line 18, strike "PROBATE"; after "STATE" insert "RELATING TO PROBATE ISSUES"
- 12 Line 20, strike "PROBATE" in both places; after "COURTS" insert "RELATING TO
- 13 PROBATE ISSUES"
- 14 Strike lines 21, 22 and 23
- 15 Renumber to conform
- 16 Strike lines 35, 36 and 37
- 17 Line 38, strike "CONVINCING EVIDENCE," insert "A."
- 18 Line 39, after "ATTORNEY" insert "IF AN ACTION FILED TO ESTABLISH INCOMPETENCY
- 19 IS BASED ON HEARSAY EVIDENCE"
- 20 Strike lines 40 and 41
- 21 Reletter to conform
- 22 Line 42, after the period strike remainder of line; strike lines 43 and 44
- 23 Page 2, line 2, after "CRIME" insert "AGAINST THE WARD OR PUTS THE WARD IN DANGER
- 24 OR AT RISK"
- 25 Line 5, strike "TO SEE" insert "VISITATION WITH"
- 26 Line 6, strike "SEE" insert "HAVE VISITATION WITH"
- 27 Line 8, after "PHYSICIAN" insert "OR OTHER HEALTH CARE PROFESSIONAL"
- 28 Line 10, after "PHYSICIAN" insert "OR HEALTH CARE PROFESSIONAL"
- 29 Between lines 10 and 11, insert:
- 30 "F. THE WARD HAS A RIGHT TO ALL MEDICAL RECORDS, REPORTS AND
- 31 EVALUATIONS ORDERED BY THE COURT."
- 32 Strike lines 14 through 28, insert:

1 "Sec. 3. Section 14-5307, Arizona Revised Statutes, is amended to
2 read:

3 14-5307. Removal or resignation of guardian; termination of
4 incapacity

5 A. On petition of the ward or any person interested in ~~his~~ THE WARD'S
6 welfare, the court may remove a guardian and appoint a successor if it is in
7 the best interests of the ward. On petition of the guardian, the court may
8 accept a resignation and make any other order ~~which~~ THAT may be appropriate.

9 B. An order adjudicating incapacity may specify a minimum period, not
10 exceeding one year, during which no petition for an adjudication that the
11 ward is no longer incapacitated may be filed without special leave. Subject
12 to this restriction, the ward or any person interested in ~~his~~ THE WARD'S
13 welfare may petition the court for an order that the ward is no longer
14 incapacitated and for the removal or resignation of the guardian. A request
15 for this order may be made by informal letter to the court or judge. Any
16 person who knowingly interferes with the transmission of this request may be
17 found in contempt of court.

18 C. Before removing a guardian, accepting the resignation of a guardian
19 or ordering that a ward's incapacity has terminated, the court, following the
20 same procedures to safeguard the rights of the ward as apply to a petition
21 for appointment of a guardian, may send an investigator to the residence of
22 the present guardian and to the place where the ward resides or is detained
23 to observe conditions and report in writing to the court.

24 D. A WARD MAY PETITION THE COURT FOR REMOVAL OF A GUARDIAN FOR ANY OR
25 NO CAUSE AND FOR APPOINTMENT OF A SUCCESSOR GUARDIAN. THE COURT SHALL GRANT
26 THIS REQUEST IF THE WARD HAS NOT MADE AND BEEN GRANTED THE SAME REQUEST
27 WITHIN THE PRECEDING TWELVE MONTHS AND A SUITABLE SUCCESSOR GUARDIAN IS
28 AVAILABLE TO SERVE.

29 Sec. 4. Section 14-5310, Arizona Revised Statutes, is amended to read:

30 14-5310. Temporary guardians; appointment; notice; court
31 appointed attorney hearings; duties

32 A. If an alleged incapacitated person has no guardian and an emergency
33 exists or if an appointed guardian is not effectively performing the duties
34 of a guardian and the welfare of the ward is found to require immediate
35 action, the alleged incapacitated person, the ward or any person interested
36 in the welfare of the alleged incapacitated person or the ward may petition
37 for a finding of interim incapacity and for the appointment of a temporary

1 guardian. No finding and appointment may be made without notice, pursuant to
2 section 14-5309, except as provided in subsection B of this section.

3 B. The court may enter a finding of interim incapacity and may appoint
4 a temporary guardian without notice to the proposed ward or the proposed
5 ward's attorney only if all of the following conditions are met:

6 1. It clearly appears from specific facts shown by an affidavit or by
7 the verified petition that immediate and irreparable injury, loss or damage
8 will result before the proposed ward or the proposed ward's attorney can be
9 heard in opposition.

10 2. The petitioner or the petitioner's attorney certifies to the court
11 in writing any efforts that the petitioner or the petitioner's attorney has
12 made to give the notice or the reasons supporting the claim that notice
13 should not be required.

14 3. The petitioner files with the court a request for a hearing on the
15 petition for the appointment of a temporary guardian.

16 4. The petitioner or the petitioner's attorney certifies that that
17 person will give notice of the petition, the order and all filed reports and
18 affidavits to the proposed ward by personal service within the time period
19 the court directs but not in excess of seventy-two hours following entry of
20 the order of appointment.

21 5. The petitioner files a report from a physician, a registered nurse
22 practitioner or a psychologist detailing the need for a guardian and the
23 basis for the emergency unless the report is waived by the court on a showing
24 of good cause by a party to the action.

25 C. Unless the proposed ward is represented by independent counsel, the
26 court shall appoint an attorney to represent the proposed ward in the
27 proceeding on receipt of the petition for temporary appointment. The
28 attorney shall visit the proposed ward as soon as practicable and shall be
29 prepared to represent the interest of the proposed ward at any hearing on the
30 petition.

31 D. Every order finding interim incapacity and appointing a temporary
32 guardian granted without notice expires as prescribed by the court but within
33 a period of not more than thirty days unless within that time the court
34 extends it for good cause shown for the same period or unless the attorney
35 for the ward consents that it may be extended for a longer period. The court
36 shall enter the reasons for the extension on the record.

1 E. The court shall schedule a hearing on the petition for a finding of
2 interim incapacity and the appointment of a temporary guardian within the
3 time specified in subsection D of this section. If the petitioner does not
4 proceed with the petition the court, on the motion of any party or on its own
5 motion, may dismiss the petition.

6 F. If the court orders the appointment of a temporary guardian without
7 notice, the ward may appear and move for its dissolution or modification on
8 two days' notice to the petitioner and to the temporary guardian or on such
9 shorter notice as the court prescribes. The court shall proceed to hear and
10 determine that motion as expeditiously as possible. **IF THE WARD OBJECTS TO
11 THE PERSON OR ENTITY WHO IS TEMPORARILY APPOINTED, THE COURT SHALL APPOINT AN
12 ALTERNATIVE IF A SUITABLE ALTERNATIVE IS AVAILABLE TO SERVE IN THAT CAPACITY.**

13 G. The hearing on a petition for the appointment of a temporary
14 guardian shall be held in the same manner as a hearing on a preliminary
15 injunction. The court may order the hearing on the petition for appointment
16 of a permanent guardian to be advanced and consolidated with the hearing of
17 the petition for temporary appointment. If the court does not order this
18 consolidation any evidence received on a petition for temporary appointment
19 that would be admissible at the hearing on a petition for a permanent
20 appointment becomes part of the record and need not be repeated at a later
21 hearing. This subsection does not limit the parties to any rights they may
22 have to trial by jury.

23 H. After notice and a hearing, if the court finds that a temporary
24 guardian is necessary and the provisions of this section have been met, the
25 court shall make an appointment of a temporary guardian for a specific
26 purpose and for a specific period of time of not more than six months unless
27 the court extends this time period for good cause shown.

28 I. A temporary guardian is responsible to provide the care and custody
29 of the ward. The authority of a permanent guardian previously appointed by
30 the court is suspended as long as the temporary guardian has authority. A
31 temporary guardian may be removed at any time. A temporary guardian shall
32 make any report the court requires. In all other respects, the provisions of
33 this title concerning guardians apply to temporary guardians.

34 Sec. 5. Section 14-5401, Arizona Revised Statutes, is amended to read:
35 **14-5401. Protective proceedings**

1 person or the proposed protected person's attorney if all of the following
2 conditions are met:

3 1. It clearly appears from specific facts shown by affidavit or by the
4 verified petition that immediate and irreparable injury, loss or damage will
5 result before the proposed protected person or that person's attorney can be
6 heard in opposition.

7 2. The petitioner or the petitioner's attorney certifies to the court
8 in writing any efforts that the petitioner or the attorney has made to give
9 the notice or the reasons supporting the claim that notice should not be
10 required.

11 3. The petitioner files with the court a request for a hearing on the
12 petition for the appointment of a temporary conservator.

13 4. The petitioner or the petitioner's attorney certifies that notice
14 of the petition, order and all filed reports and affidavits will be given to
15 the proposed protected person by personal service within the time period the
16 court directs but not more than seventy-two hours after entry of the order of
17 appointment.

18 C. Unless the proposed protected person is represented by independent
19 counsel, the court shall appoint an attorney to represent that person in the
20 proceeding on receipt of the petition for temporary appointment. The
21 attorney shall visit the proposed protected person as soon as practicable and
22 shall be prepared to represent that person's interests at any hearing on the
23 petition.

24 D. Every order finding a need for interim protection and appointing a
25 temporary conservator granted without notice expires as prescribed by the
26 court but within a period of not more than thirty days unless within that
27 time the court extends it for good cause shown for the same period or unless
28 the attorney for the proposed protected person consents that it may be
29 extended for a longer period. The court shall enter the reasons for the
30 extension on the record.

31 E. The court shall schedule a hearing on the petition for a finding of
32 the need for interim protection and the appointment of a temporary
33 conservator within the time specified in subsection D of this section. If
34 the petitioner does not proceed with the petition the court, on the motion of
35 any party or on its own motion, may dismiss the petition.

36 F. If the court orders the appointment of a temporary conservator
37 without notice, the proposed protected person may appear and move for its

1 dissolution or modification on two days' notice to the petitioner and to the
2 temporary conservator, or on such shorter notice as the court prescribes. The
3 court shall proceed to hear and determine that motion as expeditiously as
4 possible. IF THE PROPOSED PROTECTED PERSON OBJECTS TO THE PERSON OR ENTITY
5 WHO IS TEMPORARILY APPOINTED, THE COURT SHALL APPOINT AN ALTERNATIVE IF A
6 SUITABLE ALTERNATIVE IS AVAILABLE TO SERVE IN THAT CAPACITY.

7 G. The hearing on a petition for the appointment of a temporary
8 conservator shall be held in the same manner as a hearing on a preliminary
9 injunction. The court may order the hearing on the petition for appointment
10 of a permanent conservator to be advanced and consolidated with the hearing
11 ~~of~~ ON the petition for temporary appointment. If the court does not order
12 this consolidation any evidence received on a petition for temporary
13 appointment that would be admissible at the hearing on a petition for a
14 permanent appointment becomes part of the record and need not be repeated at
15 a later hearing. This subsection does not limit the parties to any rights
16 they may have to trial by jury.

17 H. After notice and a hearing, if the court finds that a temporary
18 conservator is necessary and the provisions of this section have been met,
19 the court shall make an appointment of a temporary conservator for a
20 specified period of time of not more than six months unless the court extends
21 this time period for good cause shown.

22 Sec. 7. Section 14-5407, Arizona Revised Statutes, is amended to read:

23 14-5407. Procedure concerning hearing and order on original
24 petition

25 A. On the filing of a petition for appointment of a conservator or any
26 other protective order because of minority, the court shall set a hearing
27 date on the matters alleged in the petition. If, at any time in the
28 proceeding, the court determines that the interests of the minor are or may
29 be inadequately represented, it shall appoint an attorney to represent the
30 minor. If the minor is at least fourteen years of age the court shall
31 consider the choice of the minor.

32 B. On the filing of a petition for appointment of a conservator or any
33 other protective order for reasons other than minority, the court shall set a
34 hearing date. Unless the person to be protected has counsel of ~~his~~ THAT
35 PERSON'S own choice, the court shall appoint an attorney to represent ~~him~~
36 THAT PERSON. If the alleged disability is mental illness, mental deficiency,
37 mental disorder, physical illness or disability, chronic use of drugs, or

1 chronic intoxication, the court shall appoint an investigator to interview
2 the person to be protected. On petition by an interested person or on the
3 court's own motion, the court may direct that an appropriate medical or
4 psychological evaluation of the person be conducted. The investigator and
5 the person conducting the medical or psychological evaluation shall submit
6 written reports to the court before the hearing date.

7 C. In any case where the veterans administration is or may be an
8 interested party, a certificate of an authorized official of the veterans
9 administration that the person allegedly in need of protection has been found
10 incapable of handling the benefits payable, on examination in accordance with
11 the laws and regulations governing the veterans administration, is prima
12 facie evidence of the necessity for appointment of a conservator.

13 D. The person allegedly in need of protection is entitled to be
14 present at the hearing, to be represented by counsel, to present evidence and
15 to cross-examine witnesses, including any court appointed examiner and
16 investigator. The issue may be determined at a closed hearing if the person
17 allegedly in need of protection or that person's counsel so requests.

18 E. After the hearing, ~~upon~~ ON a finding BY CLEAR AND CONVINCING
19 EVIDENCE that a basis for the appointment of a conservator or any other
20 protective order has been established, the court shall make an appointment or
21 other appropriate protective order.

22 Sec. 8. Section 14-5415, Arizona Revised Statutes, is amended to read:

23 14-5415. Death, resignation or removal of conservator

24 A. The court may remove a conservator for good cause, ~~upon~~ ON notice
25 and hearing, or accept the resignation of a conservator. After ~~his~~ A
26 CONSERVATOR'S death, resignation or removal, the court may appoint another
27 conservator. A conservator so appointed succeeds to the title and powers of
28 ~~his~~ THE CONSERVATOR'S predecessor.

29 B. A PROTECTED PERSON MAY PETITION THE COURT FOR REMOVAL OF A
30 CONSERVATOR FOR ANY OR NO CAUSE AND FOR APPOINTMENT OF A SUCCESSOR
31 CONSERVATOR. THE COURT SHALL GRANT THIS REQUEST IF THE PROTECTED PERSON HAS
32 NOT MADE AND BEEN GRANTED THE SAME REQUEST WITHIN THE PRECEDING TWELVE MONTHS
33 AND A SUITABLE SUCCESSOR CONSERVATOR IS AVAILABLE TO SERVE.

34 Sec. 9. Section 14-5419, Arizona Revised Statutes, is amended to read:

35 14-5419. Accounts; definition

36 A. Except as provided pursuant to subsection F of this section, every
37 conservator must account to the court for the administration of the estate

1 not less than annually on the anniversary date of qualifying as conservator
2 and also on resignation or removal, and on termination of the protected
3 person's minority or disability, except that for good cause shown on the
4 application of an interested person, the court may relieve the conservator of
5 filing annual or other accounts by an order entered in the minutes.

6 B. The court may take any appropriate action on filing of annual or
7 other accounts. In connection with any account, the court may require a
8 conservator to submit to a physical check of the estate in the conservator's
9 control, to be made in any manner the court may specify.

10 C. An adjudication allowing an intermediate or final account can be
11 made only on petition, notice and a hearing. Notice must be given to:

12 1. The protected person.

13 2. A guardian of the protected person if one has been appointed,
14 unless the same person is serving as both guardian and conservator.

15 3. If no guardian has been appointed or the same person is serving as
16 both guardian and conservator, a spouse or, if the spouse is the conservator,
17 there is no spouse or the spouse is incapacitated, a parent or an adult child
18 who is not serving as a conservator.

19 4. A representative appointed for the protected person, if the court
20 determines in accordance with section 14-1408 that representation of the
21 interest of the protected person would otherwise be inadequate.

22 D. An order, made on notice and a hearing, allowing an intermediate
23 account of a conservator, adjudicates as to the conservator's liabilities
24 concerning the matters considered in connection therewith. An order, made on
25 notice and a hearing, allowing a final account adjudicates as to all
26 previously unsettled liabilities of the conservator to the protected person
27 or the protected person's successors relating to the conservatorship.

28 E. In any case in which the estate consists, in whole or in part, of
29 benefits paid by the veterans administration to the conservator or the
30 conservator's predecessor for the benefit of the protected person, the
31 veterans administration office that has jurisdiction over the area is
32 entitled to a copy of any account filed under ~~chapter 5, article 4 of this~~
33 ~~title~~ ARTICLE. Each year in which an account is not filed with the court,
34 the conservator, if requested, shall submit an account to the appropriate
35 veterans administration office. If an account is not submitted as requested,
36 or if it is found unsatisfactory by the veterans administration, the court on

1 receipt of notice of the deficiency shall require the conservator to
2 immediately file an account with the court promptly.

3 F. Unless prohibited by order of the court, the conservator may file
4 with the court, in lieu of a final account, a verified statement stating
5 that:

6 1. The protected person has died. The conservator shall attach a
7 certified copy of the protected person's death certificate to the statement.

8 2. The protected person's successors have all waived in writing their
9 right to have the conservator submit to the court a final account of the
10 conservator's administration of the protected person's estate. The
11 conservator shall attach the originals of the written waivers to the
12 statement.

13 3. The conservator has delivered a copy of a closing statement to the
14 protected person's successors. The conservator shall attach a copy of the
15 closing statement to the statement.

16 G. The closing statement that is to be delivered to the protected
17 person's successors shall be a verified statement stating the following:

18 1. The protected person has died and the date of the person's death.

19 2. The persons receiving the closing statement have a right to have
20 the conservator submit to the court a final account of the conservator's
21 administration of the protected person's estate.

22 3. If the person wishes to have the final accounting reviewed by the
23 court, the person should not sign a waiver that waives this right.

24 4. If all persons receiving the closing statement choose to waive the
25 right to have the conservator submit to the court a final account, the final
26 account will not be reviewed by the court.

27 5. A list of the property owned by the protected person, as of the
28 date of the protected person's death, is attached to the closing statement
29 and that the list states the fair market value of the property as of the date
30 of the protected person's death.

31 6. The conservator, by the closing statement, shall inform the
32 protected person's successors that if they waive court review of the
33 conservator's final account, the conservatorship will be terminated, the
34 conservator will be discharged from all liabilities relating to the
35 conservatorship, the bond or other security posted by the conservator will be
36 exonerated and any restrictions previously imposed on the assets of the
37 conservatorship will be lifted.

1 H. The conservator shall file an affidavit with the court that states
2 that the closing statement was sent or delivered to the protected person's
3 successors on a date before the date that the protected person's successors
4 signed the written waiver.

5 I. Unless proceedings are pending against the conservator, on the
6 filing of the statement described in subsection F of this section and the
7 affidavit described in subsection H of this section, the court shall enter an
8 order terminating the conservatorship, discharging the conservator from all
9 liabilities relating to the conservatorship, exonerating and releasing any
10 bond or other security posted by the conservator and releasing any
11 restrictions previously imposed on the assets of the conservatorship.

12 J. ON REQUEST OF THE PROTECTED PERSON OR THAT PERSON'S ATTORNEY, A
13 CONSERVATOR MUST PROVIDE THE PROTECTED PERSON OR THE ATTORNEY WITH A MONTHLY
14 REPORT OF REVENUES AND EXPENSES RELATING TO THE ADMINISTRATION OF THE
15 CONSERVATORSHIP.

16 ~~J.~~ K. For the purposes of this section, "protected person's
17 successors" means:

18 1. The personal representative of the protected person's estate if the
19 personal representative and the conservator are not the same person.

20 2. If the conservator and the personal representative of the protected
21 person's estate are the same person and if the protected person died
22 intestate, the protected person's heirs.

23 3. If the conservator and the personal representative of the protected
24 person's estate are the same person and if the protected person died testate,
25 the devisees under the protected person's will that has been admitted to
26 probate.

27 Sec. 10. Section 14-5652, Arizona Revised Statutes, is amended to
28 read:

29 14-5652. Attorneys; fiduciary duties

30 A. Absent an express agreement to the contrary, the performance by an
31 attorney of legal services for a fiduciary, settlor or testator does not by
32 itself establish a duty in contract or tort or otherwise to any third party.
33 For the purposes of this subsection, third party does not apply to the
34 personal representative, settlor or testator. IF AN ATTORNEY PERFORMS LEGAL
35 SERVICES FOR A FIDUCIARY AND IS COMPENSATED FROM THE PROTECTED PERSON'S
36 ESTATE PURSUANT TO SECTION 14-5314 OR 14-5414, THE ATTORNEY HAS THE SAME

1 DUTIES TO THE WARD OR THE PROTECTED PERSON AS IF THAT PERSON WERE THE
2 ATTORNEY'S CLIENT.

3 B. An attorney who acts as a personal representative or trustee shall
4 disclose to all adult persons who have an interest in the estate or trust the
5 names of any person who has an interest in that estate or trust to whom the
6 attorney is currently rendering or has in the past rendered legal services.
7 The attorney must make this disclosure in writing within a reasonable time
8 after learning that a client or former client has an interest in the estate
9 or trust. The representation of an interested person by that attorney is not
10 grounds for removing the attorney as the personal representative or trustee
11 unless the attorney is unable to perform the fiduciary duties as personal
12 representative or trustee without violating the attorney's ethical
13 responsibilities to the client or former client.

14 Sec. 11. Section 14-10706, Arizona Revised Statutes, is amended to
15 read:

16 14-10706. Removal of trustee

17 A. The settlor, a cotrustee or a beneficiary may request the court to
18 remove a trustee or a trustee may be removed by the court on its own
19 initiative.

20 B. The court may remove a trustee if:

21 1. The trustee has committed a material breach of trust.

22 2. Lack of cooperation among cotrustees substantially impairs the
23 administration of the trust.

24 3. Because of unfitness, unwillingness or persistent failure of the
25 trustee to administer the trust for the benefit of the beneficiaries, the
26 court determines that removal of the trustee best serves the interests of the
27 beneficiaries.

28 4. There has been a substantial change of circumstances or removal is
29 requested by all of the qualified beneficiaries, the court finds that removal
30 of the trustee best serves the interests of all of the beneficiaries and is
31 not inconsistent with a material purpose of the trust and a suitable
32 cotrustee or successor trustee is available.

33 C. Pending a final decision on a request to remove a trustee, or in
34 lieu of or in addition to removing a trustee, the court may order appropriate
35 relief under section 14-11001, subsection B as may be necessary to protect
36 the trust property or the interests of the beneficiaries.

1 D. A BENEFICIARY MAY PETITION THE COURT FOR REMOVAL OF A TRUSTEE FOR
2 ANY OR NO CAUSE AND FOR APPOINTMENT OF A SUCCESSOR TRUSTEE. THE COURT SHALL
3 GRANT THIS REQUEST IF THE BENEFICIARY HAS NOT MADE AND BEEN GRANTED THE SAME
4 REQUEST WITHIN THE PRECEDING TWELVE MONTHS AND A SUITABLE SUCCESSOR TRUSTEE
5 IS AVAILABLE TO SERVE."

6 Renumber to conform

7 Page 2, lines 33 and 34, strike "Two" insert "Three"

8 Amend title to conform

and, as so amended, it do pass

EDWIN W. FARNSWORTH
Chairman

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