

SMITH D SUBSTITUTE FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2424

I move the following SUBSTITUTE Floor Amendment to the Judiciary Committee Amendment to

HOUSE BILL 2424 (Reference to printed bill)

1 Page 1, line 3, strike "and 14-1104" insert ", 14-1104 and 14-1105"

2 Strike lines 5 and 6; line 7, strike "PROBATE JURISPRUDENCE" insert "A JUDICIAL
3 OFFICER PRESIDING OVER PROCEEDINGS BROUGHT PURSUANT TO THIS TITLE MUST
4 PARTICIPATE IN TRAINING"

5 Line 8, strike "advocacy" insert "advisory"; after "panel" insert "; delayed
6 repeal"

7 Line 9, strike "ADVOCACY" insert "ADVISORY"

8 Strike lines 11 through 16, insert:

9 "1. TWO PUBLIC MEMBERS WHO ARE GUARDIANS OF AN ADULT CHILD OR A
10 SIBLING WHO IS A WARD OF THE COURT. THE PRESIDENT OF THE SENATE AND THE
11 SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL EACH APPOINT ONE MEMBER.

12 2. TWO PUBLIC MEMBERS WHO ARE CONSERVATORS OF A PARENT WHO HAS BEEN
13 DEEMED A PROTECTED PERSON. THE PRESIDENT OF THE SENATE AND THE SPEAKER OF
14 THE HOUSE OF REPRESENTATIVES SHALL EACH APPOINT ONE MEMBER.

15 3. ONE PUBLIC OR PRIVATE FIDUCIARY FROM A COUNTY WITH A POPULATION OF
16 LESS THAN FIVE HUNDRED THOUSAND PERSONS. THE SPEAKER OF THE HOUSE OF
17 REPRESENTATIVES SHALL APPOINT THIS MEMBER.

18 4. ONE ATTORNEY IN PRIVATE PRACTICE WHO SPECIALIZES IN PROBATE
19 MATTERS, WHO ACTS AS A COURT-APPOINTED ATTORNEY FOR WARDS AND PROTECTED
20 PERSONS AND WHO IS FROM A COUNTY WITH A POPULATION OF MORE THAN FIVE HUNDRED
21 THOUSAND PERSONS. THE PRESIDENT OF THE SENATE SHALL APPOINT THIS MEMBER.

22 5. ONE ATTORNEY IN PRIVATE PRACTICE WHO SPECIALIZES IN MENTAL HEALTH
23 MATTERS. THE GOVERNOR SHALL APPOINT THIS MEMBER.

24 6. ONE JUDGE WHO HAS EXPERTISE IN PROBATE MATTERS AND WHO IS FROM A
25 COUNTY WITH A POPULATION OF MORE THAN FIVE HUNDRED THOUSAND PERSONS. THE
26 GOVERNOR SHALL APPOINT THIS MEMBER."

27 Line 17, strike "ADVOCACY"

1 Page 1, strike lines 18 through 23, insert:

2 "1. SELECT A CHAIRPERSON AT ITS FIRST ANNUAL MEETING.

3 2. HOLD A PUBLIC HEARING AT LEAST ONCE EACH YEAR OR AT THE CALL OF THE
4 CHAIRPERSON, ON HOW TO IMPROVE THE PROBATE SYSTEM THROUGH STATUTORY CHANGES."

5 Renumber to conform

6 Line 24, strike ", INCLUDING"; strike line 25; line 26, strike "SYSTEM"

7 Line 30, strike "COMMITTEE" insert "PANEL"

8 Between lines 31 and 32, insert:

9 "D. THE LEGISLATURE SHALL PROVIDE STAFF SUPPORT FOR THE PANEL.

10 E. THIS SECTION IS REPEALED FROM AND AFTER JUNE 30, 2016.

11 14-1105. Prudent management of costs

12 A. IN A PROCEEDING BROUGHT PURSUANT TO THIS TITLE:

13 1. THE FIDUCIARY MUST PRUDENTLY MANAGE COSTS AND PROTECT AGAINST
14 INCURRING ANY COSTS THAT EXCEED PROBABLE BENEFITS TO THE WARD PROTECTED
15 PERSON, INSTRUMENT OR COURT ORDER. A FIDUCIARY, FIDUCIARY'S ATTORNEY,
16 ATTORNEY FOR THE WARD OR PROTECTED PERSON AND GUARDIAN AD LITEM HAVE A DUTY
17 TO:

18 (a) ACT IN THE BEST INTEREST OF THE WARD, MINOR WARD, INCAPACITATED
19 PERSON OR PROTECTED PERSON AND THE PERSON'S ESTATE.

20 (b) AVOID ENGAGING IN EXCESSIVE OR UNPRODUCTIVE ACTIVITIES.

21 (c) PRESERVE THE ASSETS OF THE WARD, MINOR WARD, INCAPACITATED PERSON
22 OR PROTECTED PERSON AND THE PERSON'S ESTATE.

23 (d) AFFIRMATIVELY ASSESS THE FINANCIAL COST OF PURSUING ANY ACTION
24 COMPARED TO THE REASONABLY EXPECTED BENEFIT TO THE WARD, MINOR WARD,
25 INCAPACITATED PERSON OR PROTECTED PERSON AND THE PERSON'S ESTATE.

26 2. MARKET RATES FOR GOODS AND SERVICES ARE A PROPER, ONGOING
27 CONSIDERATION FOR THE FIDUCIARY AND THE COURT DURING THE INITIAL COURT
28 APPOINTMENT OF A FIDUCIARY OR ATTORNEY AND RELATING TO A REQUEST TO
29 SUBSTITUTE A COURT-APPOINTED FIDUCIARY OR ATTORNEY."

30 Line 35, after the "A." strike remainder of line; strike lines 36 through 44

31 Page 2, strike lines 1 through 11, insert "A PROPOSED WARD'S WRITTEN DIRECTIVES OR
32 OTHER SIGNED WRITINGS SHALL BE HONORED BY THE COURT UNLESS THE COURT MAKES A

1 GOOD CAUSE DETERMINATION PURSUANT TO SECTION 14-5311, SUBSECTION D OR
2 OTHERWISE DETERMINES THE WARD LACKED SUFFICIENT MENTAL CAPACITY TO MAKE AN
3 INTELLIGENT CHOICE.

4 B. THE WARD'S FIDUCIARY SHALL ALLOW THE WARD TO SEE THE WARD'S FAMILY
5 MEMBERS AND FRIENDS UNLESS THE FIDUCIARY BELIEVES THAT DOING SO WILL RESULT
6 IN SUBSTANTIAL HARM TO THE WARD.

7 C. A WARD HAS THE RIGHT TO ACCESS ANY PERTINENT MEDICAL INFORMATION
8 RELATED TO THE WARD'S CONDITION UNLESS THE FIDUCIARY IS REASONABLY CERTAIN
9 SUBSTANTIAL HARM WILL RESULT FROM PROVIDING THIS INFORMATION.

10 D. IF THE PROPOSED WARD HAS AN ESTABLISHED RELATIONSHIP WITH A
11 PHYSICIAN, PSYCHOLOGIST OR REGISTERED NURSE WHO IS DETERMINED BY THE COURT TO
12 BE QUALIFIED TO EVALUATE THE PROPOSED WARD, THE COURT MAY APPOINT THE
13 PROPOSED WARD'S PHYSICIAN, PSYCHOLOGIST OR REGISTERED NURSE PURSUANT TO
14 SECTION 14-5303, SUBSECTION C OR SECTION 36-3206, SUBSECTION F.

15 E. A PERSON WHO KNOWINGLY PROVIDES THE COURT WITH FALSE OR MISLEADING
16 INFORMATION"

17 Line 13, after "LIABILITY" insert "AND DAMAGES TO BE DETERMINED BY THE COURT"

18 Strike lines 14 through 28, insert:

19 "F. A WARD MAY PETITION THE COURT FOR AN ORDER THAT THE WARD IS NO
20 LONGER INCAPACITATED OR PETITION FOR SUBSTITUTION OF THE GUARDIAN AT ANY TIME
21 PURSUANT TO SECTION 14-5307.

22 G. A PERSON WHO IS ENTITLED TO NOTICE OF THE CONSERVATOR'S ANNUAL
23 ACCOUNT PURSUANT TO SECTION 14-5419, SUBSECTION C MAY REQUEST IN WRITING THAT
24 THE CONSERVATOR:

25 1. ALLOW THE PERSON TO VIEW THE PROTECTED PERSON'S FINANCIAL RECORDS,
26 THE CONSERVATOR'S BILLING STATEMENTS, THE BILLING STATEMENTS OF THE
27 CONSERVATOR'S ATTORNEY OR OTHER RECORDS UNDER THE CONSERVATOR'S CONTROL
28 RELATED TO THE PROTECTED PERSON.

29 2. PROVIDE THE REQUESTING PERSON WITH COPIES OF THE PROTECTED PERSON'S
30 FINANCIAL RECORDS, THE CONSERVATOR'S BILLING STATEMENTS, THE BILLING
31 STATEMENTS OF THE CONSERVATOR'S ATTORNEY OR OTHER RECORDS RELATED TO THE
32 PROTECTED PERSON UNDER THE CONSERVATOR'S CONTROL. UNLESS OTHERWISE ORDERED

1 BY THE COURT, THE CONSERVATOR SHALL ALLOW THE PERSON TO VIEW OR PROVIDE
2 COPIES OF THE REQUESTED DOCUMENTS TO THE PERSON AS SOON AS PRACTICABLE BUT NO
3 LATER THAN THIRTY DAYS AFTER RECEIVING THE REQUEST. THE REQUESTING PARTY
4 MUST PAY REASONABLE COPYING COSTS.

5 Sec. 3. Section 14-5307, Arizona Revised Statutes, is amended to read:
6 14-5307. Removal or resignation of guardian; termination of
7 incapacity

8 A. On petition of the ward or any person interested in ~~his~~ THE WARD'S
9 welfare, OR ON THE COURT'S OWN INITIATIVE, the court ~~may remove~~ , WITH OR
10 WITHOUT A HEARING, SHALL SUBSTITUTE a guardian and appoint a successor if it
11 is in the best ~~interests~~ INTEREST of the ward. THE COURT DOES NOT NEED TO
12 FIND THAT THE GUARDIAN ACTED INAPPROPRIATELY TO FIND THAT THE SUBSTITUTION IS
13 IN THE WARD'S BEST INTEREST. THE GUARDIAN AND THE GUARDIAN'S ATTORNEY MAY BE
14 COMPENSATED FROM THE WARD'S ESTATE FOR DEFENDING AGAINST A PETITION FOR
15 SUBSTITUTION ONLY FOR THE AMOUNT ORDERED BY THE COURT AND ON APPLICATION BY
16 THE GUARDIAN. WHEN SUBSTITUTING A GUARDIAN AND APPOINTING A SUCCESSOR, THE
17 COURT SHALL CONSIDER AN INDIVIDUAL NOMINATED BY THE WARD IF WARD IS AT LEAST
18 FOURTEEN YEARS OF AGE AND HAS, IN THE OPINION OF THE COURT, SUFFICIENT MENTAL
19 CAPACITY TO MAKE AN INTELLIGENT CHOICE. On petition of the guardian, the
20 court may accept a resignation and make any other order ~~which~~ THAT may be
21 appropriate.

22 B. ~~An order adjudicating incapacity may specify a minimum period, not~~
23 ~~exceeding one year, during which no petition for an adjudication that the~~
24 ~~ward is no longer incapacitated may be filed without special leave. Subject~~
25 ~~to this restriction, the ward or any person interested in his welfare may~~
26 ~~petition the court for an order that the ward is no longer incapacitated and~~
27 ~~for the removal or resignation of the guardian. A request for this order may~~
28 ~~be made by informal letter to the court or judge. Any person who knowingly~~
29 ~~interferes with the transmission of this request may be found in contempt of~~
30 ~~court.~~ ON ENTERING AN ORDER ADJUDICATING INCAPACITY AND AFTER CONSIDERING THE
31 REASONABLENESS OF THE POSITIONS TAKEN BY THE LITIGANTS, THE STRENGTH OF THE
32 EVIDENCE PRESENTED, INCLUDING THE PROBABILITY THAT THE WARD'S INCAPACITY MAY

1 BE REMOVED IN THE FUTURE, THE BENEFITS TO THE WARD, THE BEST INTEREST OF THE
2 WARD, THE EXPECTED COST TO THE WARD'S ESTATE AND OTHER RELEVANT FACTORS, THE
3 COURT MAY SPECIFY A MINIMUM PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH A
4 PETITION FOR AN ADJUDICATION THAT THE WARD IS NO LONGER INCAPACITATED OR
5 SUBSTITUTION OF A GUARDIAN MAY NOT BE FILED BY ANY PERSON OTHER THAN THE WARD
6 WITHOUT SPECIAL LEAVE OF THE COURT. THE WARD MAY PETITION THE COURT FOR AN
7 ORDER THAT THE WARD IS NO LONGER INCAPACITATED OR PETITION FOR SUBSTITUTION
8 OF THE GUARDIAN AT ANY TIME. A REQUEST FOR THIS ORDER MAY BE MADE BY
9 INFORMAL LETTER TO THE COURT OR JUDGE. A PERSON WHO KNOWINGLY INTERFERES
10 WITH THE TRANSMISSION OF THIS REQUEST MAY BE FOUND IN CONTEMPT OF COURT.

11 C. AN INTERESTED PERSON, OTHER THAN THE GUARDIAN OR WARD, SHALL NOT
12 FILE A PETITION FOR ADJUDICATION THAT THE WARD IS NO LONGER INCAPACITATED
13 EARLIER THAN ONE YEAR AFTER THE ORDER ADJUDICATING INCAPACITY WAS ENTERED
14 UNLESS THE COURT PERMITS IT TO BE MADE ON THE BASIS OF AFFIDAVITS THAT THERE
15 IS REASON TO BELIEVE THAT THE WARD IS NO LONGER INCAPACITATED.

16 D. AN INTERESTED PERSON, OTHER THAN THE GUARDIAN OR WARD, SHALL NOT
17 FILE A PETITION TO SUBSTITUTE A GUARDIAN EARLIER THAN ONE YEAR AFTER THE
18 ORDER ADJUDICATING INCAPACITY WAS ENTERED UNLESS THE COURT PERMITS IT TO BE
19 MADE ON THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO BELIEVE THAT THE
20 CURRENT GUARDIAN WILL ENDANGER THE WARD'S PHYSICAL, MENTAL OR EMOTIONAL
21 HEALTH IF NOT REMOVED.

22 E. TO MODIFY ANY TYPE OF GUARDIANSHIP ORDER, AN INTERESTED PERSON MUST
23 SUBMIT AN AFFIDAVIT OR VERIFIED PETITION SETTING FORTH DETAILED FACTS
24 SUPPORTING THE REQUESTED MODIFICATION AND SHALL GIVE NOTICE AND A COPY OF THE
25 AFFIDAVIT OR VERIFIED PETITION TO OTHER PARTIES TO THE PROCEEDING. OTHER
26 PARTIES MAY FILE OPPOSING AFFIDAVITS.

27 ~~G.~~ F. Before ~~removing~~ SUBSTITUTING a guardian, accepting the
28 resignation of a guardian or ordering that a ward's incapacity has
29 terminated, the court, following the same procedures to safeguard the rights
30 of the ward as apply to a petition for appointment of a guardian, may send an
31 investigator to the residence of the present guardian and to the place where

1 the ward resides or is detained to observe conditions and report in writing
2 to the court.

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

4 14-5310. Temporary guardians; appointment; notice; court
5 appointed attorney hearings; duties

6 A. If an alleged incapacitated person has no guardian and an emergency
7 exists or if an appointed guardian is not effectively performing the duties
8 of a guardian and the welfare of the ward is found to require immediate
9 action, the alleged incapacitated person, the ward or any person interested
10 in the welfare of the alleged incapacitated person or the ward may petition
11 for a finding of interim incapacity and for the appointment of a temporary
12 guardian. No finding and appointment may be made without notice, pursuant to
13 section 14-5309, except as provided in subsection B of this section.

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

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

21 2. The petitioner or the petitioner's attorney certifies to the court
22 in writing any efforts that the petitioner or the petitioner's attorney has
23 made to give the notice or the reasons supporting the claim that notice
24 should not be required.

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

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

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

5 C. Unless the proposed ward is represented by independent counsel, the
6 court shall appoint an attorney to represent the proposed ward in the
7 proceeding on receipt of the petition for temporary appointment. The
8 attorney shall visit the proposed ward as soon as practicable and shall be
9 prepared to represent the interest of the proposed ward at any hearing on the
10 petition.

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

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

22 F. If the court orders the appointment of a temporary guardian without
23 notice, the ward may appear and move for its dissolution or modification on
24 two days' notice to the petitioner and to the temporary guardian or on such
25 shorter notice as the court prescribes. The court shall proceed to hear and
26 determine that motion as expeditiously as possible. IF THE WARD OBJECTS TO
27 THE PERSON WHO IS TEMPORARILY APPOINTED, THE COURT SHALL CONSIDER AN
28 INDIVIDUAL NOMINATED BY THE PROPOSED WARD IF THE WARD IS AT LEAST FOURTEEN
29 YEARS OF AGE AND HAS, IN THE OPINION OF THE COURT, SUFFICIENT MENTAL CAPACITY
30 TO MAKE AN INTELLIGENT CHOICE. THE COURT SHALL APPOINT AN ALTERNATIVE
31 GUARDIAN IF AVAILABLE AND AFTER FINDING THAT THE APPOINTMENT IS IN THE BEST
32 INTERESTS OF THE WARD.

1 G. The hearing on a petition for the appointment of a temporary
2 guardian shall be held in the same manner as a hearing on a preliminary
3 injunction. The court may order the hearing on the petition for appointment
4 of a permanent guardian to be advanced and consolidated with the hearing of
5 the petition for temporary appointment. If the court does not order this
6 consolidation any evidence received on a petition for temporary appointment
7 that would be admissible at the hearing on a petition for a permanent
8 appointment becomes part of the record and need not be repeated at a later
9 hearing. This subsection does not limit the parties to any rights they may
10 have to trial by jury.

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

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

22 Sec. 5. Section 14-5311, Arizona Revised Statutes, is amended to read:

23 14-5311. Who may be guardian; priorities

24 A. Any qualified person may be appointed guardian of an incapacitated
25 person, subject to the requirements of section 14-5106.

26 B. The court may consider the following persons for appointment as
27 guardian in the following order:

28 1. A guardian or conservator of the person or a fiduciary appointed or
29 recognized by the appropriate court of any jurisdiction in which the
30 incapacitated person resides.

1 2. An individual or corporation nominated by the incapacitated person
2 if the person has, in the opinion of the court, sufficient mental capacity to
3 make an intelligent choice.

4 3. The person nominated in the incapacitated person's most recent
5 durable power of attorney.

6 4. The spouse of the incapacitated person.

7 5. An adult child of the incapacitated person.

8 6. A parent of the incapacitated person, including a person nominated
9 by will or other writing signed by a deceased parent.

10 7. Any relative of the incapacitated person with whom the
11 incapacitated person has resided for more than six months before the filing
12 of the petition.

13 8. The nominee of a person who is caring for or paying benefits to the
14 incapacitated person.

15 9. If the incapacitated person is a veteran, the spouse of a veteran
16 or the minor child of a veteran, the department of veterans' services.

17 10. A fiduciary, ~~guardian or conservator~~ WHO IS LICENSED PURSUANT TO
18 SECTION 14-5651 OR OTHER APPROPRIATE PERSON.

19 11. A PUBLIC FIDUCIARY.

20 C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 OF THIS
21 SECTION, may nominate in writing a person to serve in that person's
22 place. With respect to persons who have equal priority, the court shall
23 select the one the court determines is best qualified to serve.

24 D. For good cause the court may pass over a person who has priority
25 and appoint a person who has a lower priority or no priority. FOR THE
26 PURPOSES OF THIS SUBSECTION, "GOOD CAUSE" INCLUDES, BUT IS NOT LIMITED TO,
27 THE ESTIMATED COST OF THE FIDUCIARY'S FEE, THE FIDUCIARY'S ATTORNEY FEE AND
28 THE ABILITY OF THE WARD TO PAY THESE FEES WITHOUT ADVERSELY AFFECTING THE
29 WARD'S FINANCIAL ABILITY TO PROVIDE FOR THE WARD'S REASONABLE AND NECESSARY
30 LIVING EXPENSES. ON REQUEST BY A PERSON WHO WAS PASSED OVER BY THE COURT
31 PURSUANT TO THIS SUBSECTION, THE COURT SHALL MAKE A SPECIFIC FINDING

1 are found to require immediate action, the person in need of protection, the
2 protected person or any person interested in that person's estate or affairs
3 may petition for a finding of a need for interim protection and for the
4 appointment of a temporary conservator. No finding and appointment may be
5 made without notice, pursuant to section 14-5405, except as provided in
6 subsection B of this section.

7 B. The court may enter a finding of a need for interim protection and
8 may appoint a temporary conservator without notice to the proposed protected
9 person or the proposed protected person's attorney if all of the following
10 conditions are met:

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

15 2. The petitioner or the petitioner's attorney certifies to the court
16 in writing any efforts that the petitioner or the attorney has made to give
17 the notice or the reasons supporting the claim that notice should not be
18 required.

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

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

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

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

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

13 F. If the court orders the appointment of a temporary conservator
14 without notice, the proposed protected person may appear and move for its
15 dissolution or modification on two days' notice to the petitioner and to the
16 temporary conservator, or on such shorter notice as the court prescribes.
17 The court shall proceed to hear and determine that motion as expeditiously as
18 possible. IF THE PROPOSED PROTECTED PERSON OBJECTS TO THE PERSON WHO IS
19 TEMPORARILY APPOINTED, THE COURT SHALL CONSIDER AN INDIVIDUAL NOMINATED BY
20 THE PROPOSED PROTECTED PERSON IF THE PROPOSED PROTECTED PERSON IS AT LEAST
21 FOURTEEN YEARS OF AGE AND HAS, IN THE OPINION OF THE COURT, SUFFICIENT MENTAL
22 CAPACITY TO MAKE AN INTELLIGENT CHOICE. THE COURT SHALL APPOINT AN
23 ALTERNATIVE CONSERVATOR IF AVAILABLE AND AFTER FINDING THAT THE APPOINTMENT
24 IS IN THE BEST INTERESTS OF THE WARD.

25 G. The hearing on a petition for the appointment of a temporary
26 conservator shall be held in the same manner as a hearing on a preliminary
27 injunction. The court may order the hearing on the petition for appointment
28 of a permanent conservator to be advanced and consolidated with the hearing
29 ~~of~~ ON the petition for temporary appointment. If the court does not order
30 this consolidation any evidence received on a petition for temporary
31 appointment that would be admissible at the hearing on a petition for a
32 permanent appointment becomes part of the record and need not be repeated at

1 a later hearing. This subsection does not limit the parties to any rights
2 they may have to trial by jury.

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

8 Sec. 8. Section 14-5407, Arizona Revised Statutes, is amended to read:
9 14-5407. Procedure concerning hearing and order on original
10 petition

11 A. On the filing of a petition for appointment of a conservator or any
12 other protective order because of minority, the court shall set a hearing
13 date on the matters alleged in the petition. If, at any time in the
14 proceeding, the court determines that the interests of the minor are or may
15 be inadequately represented, it shall appoint an attorney to represent the
16 minor. If the minor is at least fourteen years of age the court shall
17 consider the choice of the minor.

18 B. On the filing of a petition for appointment of a conservator or any
19 other protective order for reasons other than minority, the court shall set a
20 hearing date. Unless the person to be protected has counsel of ~~his~~ **THAT**
21 **PERSON'S** own choice, the court shall appoint an attorney to represent ~~him~~
22 **THAT PERSON**. If the alleged disability is mental illness, mental deficiency,
23 mental disorder, physical illness or disability, chronic use of drugs, or
24 chronic intoxication, the court shall appoint an investigator to interview
25 the person to be protected. On petition by an interested person or on the
26 court's own motion, the court may direct that an appropriate medical or
27 psychological evaluation of the person be conducted. The investigator and
28 the person conducting the medical or psychological evaluation shall submit
29 written reports to the court before the hearing date.

30 C. In any case where the veterans administration is or may be an
31 interested party, a certificate of an authorized official of the veterans
32 administration that the person allegedly in need of protection has been found

1 incapable of handling the benefits payable, on examination in accordance with
2 the laws and regulations governing the veterans administration, is prima
3 facie evidence of the necessity for appointment of a conservator.

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

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

13 Sec. 9. Section 14-5410, Arizona Revised Statutes, is amended to read:

14 14-5410. Who may be appointed conservator; priorities

15 A. The court may appoint an individual or a corporation, with general
16 power to serve as trustee, as conservator of the estate of a protected person
17 subject to the requirements of section 14-5106. The following are entitled
18 to consideration for appointment in the order listed:

19 1. A conservator, guardian of property or other like fiduciary
20 appointed or recognized by the appropriate court of any other jurisdiction in
21 which the protected person resides.

22 2. An individual or corporation nominated by the protected person if
23 the protected person is at least fourteen years of age and has, in the
24 opinion of the court, sufficient mental capacity to make an intelligent
25 choice.

26 3. The person nominated in the protected person's most recent durable
27 power of attorney.

28 4. The spouse of the protected person.

29 5. An adult child of the protected person.

30 6. A parent of the protected person, or a person nominated by the will
31 of a deceased parent.

1 7. Any relative of the protected person with whom the protected person
2 has resided for more than six months before the filing of the petition.

3 8. The nominee of a person who is caring for or paying benefits to the
4 protected person.

5 9. If the protected person is a veteran, the spouse of a veteran or
6 the minor child of a veteran, the department of veterans' services.

7 10. A fiduciary, ~~guardian or conservator~~ WHO IS LICENSED PURSUANT TO
8 SECTION 14-5651 OR OTHER APPROPRIATE PERSON.

9 11. A PUBLIC FIDUCIARY.

10 B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this
11 section may nominate in writing a person to serve in that person's place.
12 With respect to persons having equal priority, the court shall select the one
13 it determines is best qualified to serve. The court, for good cause, may
14 pass over a person having priority and appoint a person having a lower
15 priority or no priority. FOR THE PURPOSES OF THIS SUBSECTION, GOOD CAUSE
16 INCLUDES THE ESTIMATED COST OF THE FIDUCIARY AND OTHER PROFESSIONAL FEES AND
17 THE ABILITY OF THE PROTECTED PERSON TO PAY THE FEE WITHOUT ADVERSELY
18 AFFECTING THE PROTECTED PERSON'S FINANCIAL ABILITY TO PROVIDE FOR THE
19 PROTECTED PERSON'S REASONABLE AND NECESSARY LIVING EXPENSES. ON THE REQUEST
20 OF A PERSON WHO WAS PASSED OVER BY THE COURT PURSUANT TO THIS SUBSECTION, THE
21 COURT SHALL MAKE A SPECIFIC FINDING REGARDING THE COURT'S DETERMINATION OF
22 GOOD CAUSE AND WHY THE PERSON WAS NOT APPOINTED.

23 Sec. 10. Repeal

24 Section 14-5415, Arizona Revised Statutes, is repealed.

25 Sec. 11. Title 14, chapter 5, article 4, Arizona Revised Statutes, is
26 amended by adding a new section 14-5415, to read:

27 14-5415. Resignation or substitution of conservator

28 A. ON PETITION OF THE PROTECTED PERSON OR ANY PERSON INTERESTED IN THE
29 PROTECTED PERSON'S WELFARE, OR ON THE COURT'S OWN INITIATIVE, THE COURT, WITH
30 OR WITHOUT A HEARING, SHALL SUBSTITUTE A CONSERVATOR AND APPOINT A SUCCESSOR
31 IF IT IS IN THE BEST INTEREST OF THE PROTECTED PERSON. ANY PARTY MAY REQUEST
32 A HEARING ON THE PETITION. THE COURT SHALL CONDUCT A HEARING ON THE PETITION

1 IF NECESSARY TO RESOLVE THE ISSUES PRESENTED BY THE PETITION AND ANY RESPONSE
2 TO THE PETITION. THE COURT DOES NOT NEED TO FIND THAT THE CONSERVATOR ACTED
3 INAPPROPRIATELY TO FIND THAT THE SUBSTITUTION IS IN THE PROTECTED PERSON'S
4 BEST INTEREST. THE CONSERVATOR AND THE CONSERVATOR'S ATTORNEY MAY BE
5 COMPENSATED FROM THE PROTECTED PERSON'S ESTATE FOR DEFENDING AGAINST A
6 PETITION FOR SUBSTITUTION ONLY FOR THE AMOUNT ORDERED BY THE COURT AND ON
7 APPLICATION BY THE CONSERVATOR. ON PETITION OF THE CONSERVATOR, THE COURT
8 MAY ACCEPT A RESIGNATION AND MAKE ANY OTHER ORDER THAT MAY BE APPROPRIATE.

9 B. ON ENTERING A PROTECTIVE ORDER, AND AFTER CONSIDERING THE
10 REASONABLENESS OF THE POSITIONS TAKEN BY THE LITIGANTS, THE STRENGTH OF THE
11 EVIDENCE PRESENTED, INCLUDING THE PROBABILITY THAT THE NEED FOR PROTECTION OF
12 THE PROTECTED PERSON MAY BE REMOVED IN THE FUTURE, THE BENEFITS TO AND BEST
13 INTEREST OF THE PROTECTED PERSON, THE EXPECTED COST TO THE PROTECTED PERSON'S
14 ESTATE AND OTHER RELEVANT FACTORS, THE COURT MAY SPECIFY A MINIMUM PERIOD,
15 NOT EXCEEDING ONE YEAR, DURING WHICH A PETITION FOR AN ADJUDICATION THAT THE
16 PROTECTED PERSON IS NO LONGER IN NEED OF PROTECTION OR FOR SUBSTITUTION OF A
17 CONSERVATOR MAY NOT BE FILED BY ANY PERSON OTHER THAN THE PROTECTED PERSON
18 WITHOUT SPECIAL LEAVE OF THE COURT. THE PROTECTED PERSON MAY PETITION THE
19 COURT FOR AN ORDER THAT THE PROTECTED PERSON IS NO LONGER IN NEED OF
20 PROTECTION OR PETITION FOR SUBSTITUTION OF THE CONSERVATOR AT ANY TIME. A
21 REQUEST FOR THIS ORDER MAY BE MADE BY INFORMAL LETTER TO THE COURT OR
22 JUDGE. A PERSON WHO KNOWINGLY INTERFERES WITH THE TRANSMISSION OF THIS
23 REQUEST MAY BE FOUND IN CONTEMPT OF COURT.

24 C. AN INTERESTED PERSON, OTHER THAN THE CONSERVATOR OR PROTECTED
25 PERSON, SHALL NOT FILE A PETITION FOR ADJUDICATION THAT THE PROTECTED PERSON
26 IS NO LONGER IN NEED OF PROTECTION EARLIER THAN ONE YEAR AFTER THE ENTRY OF A
27 PROTECTIVE ORDER UNLESS THE COURT PERMITS THE PERSON TO FILE THE PETITION ON
28 THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO BELIEVE THAT THE PROTECTED
29 PERSON IS NO LONGER IN NEED OF PROTECTION.

30 D. AN INTERESTED PERSON, OTHER THAN THE CONSERVATOR OR PROTECTED
31 PERSON, SHALL NOT FILE A PETITION TO SUBSTITUTE A CONSERVATOR EARLIER THAN
32 ONE YEAR AFTER THE ENTRY OF A PROTECTIVE ORDER, UNLESS THE COURT PERMITS THE

1 PERSON TO FILE THE PETITION ON THE BASIS OF AFFIDAVITS THAT THERE IS REASON
2 TO BELIEVE THAT THE CURRENT CONSERVATOR WILL ENDANGER THE PROTECTED PERSON'S
3 ESTATE IF THE CONSERVATOR IS NOT SUBSTITUTED.

4 E. TO MODIFY ANY TYPE OF CONSERVATORSHIP ORDER AN INTERESTED PERSON
5 MUST SUBMIT AN AFFIDAVIT OR VERIFIED PETITION SETTING FORTH DETAILED FACTS
6 SUPPORTING THE REQUESTED MODIFICATION AND SHALL GIVE NOTICE, WITH A COPY OF
7 THE AFFIDAVIT OR VERIFIED PETITION, TO OTHER PARTIES TO THE PROCEEDING. THE
8 PARTIES MAY FILE OPPOSING AFFIDAVITS.

9 F. BEFORE IT ORDERS THAT NEED FOR PROTECTION NO LONGER EXISTS,
10 SUBSTITUTING A CONSERVATOR OR ACCEPTING THE RESIGNATION OF A CONSERVATOR, THE
11 COURT, FOLLOWING THE SAME PROCEDURES TO SAFEGUARD THE RIGHTS OF THE PROTECTED
12 PERSON THAT APPLY TO A PETITION FOR APPOINTMENT OF A CONSERVATOR, MAY REQUIRE
13 APPROPRIATE ACCOUNTS AND ENTER APPROPRIATE ORDERS TO PRESERVE AND PROTECT THE
14 ASSETS OF THE ESTATE, TO REQUIRE REIMBURSEMENT OR PAYMENT AS NEEDED AND TO
15 TRANSFER ASSETS OR TITLE THERETO TO APPROPRIATE SUCCESSORS.

16 Sec. 12. Section 14-5418, Arizona Revised Statutes, is amended to
17 read:

18 14-5418. Inventory and records

19 A. Within ~~ninety~~ SIXTY days after appointment, a conservator shall
20 prepare and file with the court an inventory of the ~~estate owned by~~ ASSETS
21 AND LIABILITIES OF the protected person on the date of the conservator's
22 appointment, listing it with reasonable detail and indicating the fair market
23 value OF EACH ASSET AND THE AMOUNT OF EACH LIABILITY as of the date of
24 appointment ~~of each item listed~~.

25 B. The conservator shall provide a copy of the inventory to the
26 protected person if the protected person can be located, has attained ~~the age~~
27 ~~of~~ fourteen years OF AGE, and has sufficient mental capacity to understand
28 these matters, and to any parent or guardian with whom the protected person
29 resides. The conservator shall keep suitable records of the conservator's
30 administration and exhibit the records on request of any interested person.

1 C. UNLESS OTHERWISE ORDERED BY THE COURT, A PERSON WHO IS ENTITLED TO
2 NOTICE OF THE CONSERVATOR'S ANNUAL ACCOUNT PURSUANT TO SECTION 14-5419,
3 SUBSECTION C MAY REQUEST IN WRITING THAT THE CONSERVATOR:

4 1. ALLOW THE PERSON TO VIEW THE PROTECTED PERSON'S FINANCIAL RECORDS,
5 THE CONSERVATOR'S BILLING STATEMENTS, THE BILLING STATEMENTS OF THE
6 CONSERVATOR'S ATTORNEY OR OTHER RECORDS RELATED TO THE PROTECTED PERSON UNDER
7 THE CONSERVATOR'S CONTROL.

8 2. PROVIDE THE REQUESTING PERSON WITH COPIES OF THESE DOCUMENTS.
9 UNLESS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR SHALL ALLOW THE PERSON
10 TO VIEW OR PROVIDE COPIES OF THE REQUESTED DOCUMENTS TO THE PERSON AS SOON AS
11 PRACTICABLE BUT NO LATER THAN THIRTY DAYS AFTER RECEIVING THE REQUEST. THE
12 REQUESTING PARTY MUST PAY REASONABLE COPYING COSTS.

13 Sec. 13. Section 14-5652, Arizona Revised Statutes, is amended to
14 read:

15 14-5652. Attorneys; fiduciary duties

16 A. EXCEPT AS PRESCRIBED IN SECTION 14-1105 AND absent an express
17 agreement to the contrary, the performance by an attorney of legal services
18 for a fiduciary, settlor or testator does not by itself establish a duty in
19 contract or tort or otherwise to any third party. For the purposes of this
20 subsection, third party does not apply to the personal representative,
21 settlor or testator.

22 B. An attorney who acts as a personal representative or trustee shall
23 disclose to all adult persons who have an interest in the estate or trust the
24 names of any person who has an interest in that estate or trust to whom the
25 attorney is currently rendering or has in the past rendered legal services.
26 The attorney must make this disclosure in writing within a reasonable time
27 after learning that a client or former client has an interest in the estate
28 or trust. The representation of an interested person by that attorney is not
29 grounds for removing the attorney as the personal representative or trustee
30 unless the attorney is unable to perform the fiduciary duties as personal
31 representative or trustee without violating the attorney's ethical
32 responsibilities to the client or former client."

House Amendments to H.B. 2424

- 1 Renumber to conform
- 2 Page 2, line 31, strike "advocacy" insert "advisory"
- 3 Line 32, strike "One term" insert "Two terms"
- 4 Lines 33 and 34, strike "Two" insert "Three"
- 5 Amend title to conform

DAVID BURNELL SMITH

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