Senate Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

CHAPTER 225

SENATE BILL 1081

AN ACT

REPEALING SECTION 14-5301, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 14-5301; AMENDING TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-5301.01, 14-5301.02, 14-5301.03 AND 14-5301.04; AMENDING SECTIONS 14-5303, 14-5401, 14-5405, 14-5407, 14-5416 AND 14-5430, ARIZONA REVISED STATUTES; RELATING TO TRUSTS, ESTATES AND PROTECTIVE PROCEEDINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Repeal

Section 14-5301, Arizona Revised Statutes, is repealed.

Sec. 2. Title 14, chapter 5, article 3, Arizona Revised Statutes, is amended by adding a new section 14-5301, to read:

14-5301. Appointment of guardian by will or other writing; objections; notice

A. A PARENT, BY WILL OR OTHER SIGNED WRITING, MAY APPOINT A GUARDIAN FOR AN UNMARRIED CHILD WHO THE PARENT BELIEVES IS AN INCAPACITATED PERSON, SPECIFY DESIRED LIMITATIONS ON THE POWERS TO BE GIVEN TO THE GUARDIAN AND REVOKE OR AMEND THE APPOINTMENT BEFORE CONFIRMATION BY THE COURT. APPOINTMENTS BECOME EFFECTIVE ONLY AS PRESCRIBED PURSUANT TO SECTION 14-5301.01, SUBSECTION A.

B. AN INDIVIDUAL, BY WILL OR OTHER SIGNED WRITING, MAY APPOINT A GUARDIAN FOR THE INDIVIDUAL'S SPOUSE WHO THE APPOINTING SPOUSE BELIEVES IS AN INCAPACITATED PERSON, SPECIFY DESIRED LIMITATIONS ON THE POWERS TO BE GIVEN TO THE GUARDIAN AND REVOKE OR AMEND THE APPOINTMENT BEFORE CONFIRMATION BY THE COURT. AN APPOINTMENT PURSUANT TO THIS SUBSECTION BECOMES EFFECTIVE ONLY AS PRESCRIBED PURSUANT TO SECTION 14-5301.01, SUBSECTION A.

C. UNLESS THE COURT HAS CONFIRMED THE APPOINTMENT PURSUANT TO SUBSECTION D OF THIS SECTION, THE INCAPACITATED PERSON, THE PERSON HAVING CARE OR CUSTODY OF THE INCAPACITATED PERSON IF OTHER THAN THE APPOINTING PARENT OR SPOUSE OR THE ADULT NEAREST IN KINSHIP TO THE INCAPACITATED PERSON MAY FILE A WRITTEN OBJECTION TO AN APPOINTMENT. THE FILING OF THE WRITTEN OBJECTION TERMINATES THE APPOINTMENT. AN OBJECTION MAY BE WITHDRAWN AND, IF WITHDRAWN, HAS NO EFFECT. THE OBJECTION DOES NOT PRECLUDE JUDICIAL APPOINTMENT OF THE PERSON SELECTED BY THE APPOINTING PARENT OR SPOUSE. NOTICE OF THE OBJECTION MUST BE GIVEN TO THE GUARDIAN AND ANY OTHER PERSON ENTITLED TO NOTICE OF THE ACCEPTANCE OF THE APPOINTMENT. THE COURT MAY TREAT THE FILING OF AN OBJECTION AS A PETITION FOR THE APPOINTMENT OF A TEMPORARY GUARDIAN PURSUANT TO SECTION 14-5310 OR FOR THE APPOINTMENT OF A LIMITED OR GENERAL GUARDIAN PURSUANT TO SECTION 14-5303 AND PROCEED ACCORDINGLY.

D. ON PETITION OF THE APPOINTING PARENT OR SPOUSE AND A FINDING THAT THE APPOINTING PARENT OR SPOUSE WILL LIKELY BECOME UNABLE TO CARE FOR THE INCAPACITATED PERSON WITHIN TWO YEARS, BEFORE THE APPOINTMENT BECOMES EFFECTIVE, THE COURT MAY CONFIRM THE APPOINTING PARENT'S OR SPOUSE'S SELECTION OF A GUARDIAN AND TERMINATE THE RIGHTS OF OTHERS TO OBJECT. NOTICE MUST BE GIVEN TO THE GUARDIAN AND ANY OTHER PERSON ENTITLED TO NOTICE OF THE ACCEPTANCE OF THE APPOINTMENT.

Sec. 3. Title 14, chapter 5, article 3, Arizona Revised Statutes, is amended by adding sections 14-5301.01, 14-5301.02, 14-5301.03 and 14-5301.04, to read:

14-5301.01. Appointment of guardian by will or other writing; effectiveness; acceptance; confirmation

A. THE APPOINTMENT OF A GUARDIAN PURSUANT TO SECTION 14-5301 IS EFFECTIVE ON THE DEATH OF THE APPOINTING PARENT OR SPOUSE, THE ADJUDICATION

OF INCAPACITY OF THE APPOINTING PARENT OR SPOUSE OR A WRITTEN DETERMINATION BY A PHYSICIAN WHO HAS EXAMINED THE APPOINTING PARENT OR SPOUSE THAT THE APPOINTING PARENT OR SPOUSE IS NO LONGER ABLE TO CARE FOR THE INCAPACITATED PERSON, WHICHEVER FIRST OCCURS.

B. A GUARDIAN APPOINTED PURSUANT TO SECTION 14-5301 IS ELIGIBLE TO ACT ON THE FILING OF AN ACCEPTANCE OF APPOINTMENT, WHICH MUST BE FILED WITHIN THIRTY DAYS AFTER THE GUARDIAN'S APPOINTMENT BECOMES EFFECTIVE. THE GUARDIAN MUST:

1. FILE THE NOTICE OF ACCEPTANCE OF APPOINTMENT AND A COPY OF THE WILL WITH THE COURT IN THE COUNTY IN WHICH THE WILL WAS OR COULD BE PROBATED OR, IN THE CASE OF A SIGNED WRITING CREATED PURSUANT TO SECTION 14-5301, FILE THE ACCEPTANCE OF APPOINTMENT AND THE SIGNED WRITING WITH THE COURT IN THE COUNTY IN WHICH THE INCAPACITATED PERSON RESIDES OR IS PRESENT.

2. GIVE WRITTEN NOTICE OF THE ACCEPTANCE OF APPOINTMENT TO THE APPOINTING PARENT OR SPOUSE, IF LIVING, THE INCAPACITATED PERSON, A PERSON HAVING CARE OR CUSTODY OF THE INCAPACITATED PERSON OTHER THAN THE APPOINTING PARENT OR SPOUSE, AND THE ADULT NEAREST IN KINSHIP. UNLESS THE APPOINTMENT WAS PREVIOUSLY CONFIRMED BY THE COURT, THE NOTICE GIVEN PURSUANT TO THIS PARAGRAPH MUST INCLUDE A STATEMENT OF THE RIGHT OF THOSE NOTIFIED TO TERMINATE THE APPOINTMENT BY FILING A WRITTEN OBJECTION AS PROVIDED IN SECTION 14-5301.

C. AN APPOINTMENT EFFECTED BY FILING THE GUARDIAN'S ACCEPTANCE UNDER A WILL PROBATED IN THE STATE OF THE TESTATOR'S DOMICILE IS EFFECTIVE IN THIS STATE.

D. UNLESS THE APPOINTMENT WAS PREVIOUSLY CONFIRMED BY THE COURT, WITHIN THIRTY DAYS AFTER FILING THE NOTICE AND THE WILL OR SIGNED WRITING, A GUARDIAN APPOINTED PURSUANT TO SECTION 14-5301 MUST FILE A PETITION IN THE COURT FOR CONFIRMATION OF THE APPOINTMENT. NOTICE OF THE FILING MUST BE GIVEN IN THE MANNER AS PRESCRIBED IN SECTION 14-5309.

E. THE AUTHORITY OF A GUARDIAN APPOINTED UNDER SECTION 14-5301 TERMINATES ON THE APPOINTMENT OF A GUARDIAN BY THE COURT OR THE GIVING OF WRITTEN NOTICE TO THE GUARDIAN OF THE FILING OF AN OBJECTION PURSUANT TO SECTION 14-5301, WHICHEVER FIRST OCCURS.

F. THE APPOINTMENT OF A GUARDIAN UNDER THIS SECTION IS NOT A DETERMINATION OF INCAPACITY.

G. THE POWERS OF A GUARDIAN WHO TIMELY COMPLIES WITH THE REQUIREMENTS OF SUBSECTIONS B AND D OF THIS SECTION GIVE ACTS BY THE GUARDIAN THAT ARE OF BENEFIT TO THE INCAPACITATED PERSON AND THAT OCCURRED ON OR AFTER THE DATE THE APPOINTMENT BECAME EFFECTIVE THE SAME EFFECT AS THOSE THAT OCCURRED AFTER THE FILING OF THE ACCEPTANCE OF APPOINTMENT.

14-5301.02. <u>Appointment and status of guardian</u>

A PERSON BECOMES A GUARDIAN OF AN INCAPACITATED PERSON BY A PARENTAL OR SPOUSAL APPOINTMENT OR ON APPOINTMENT BY THE COURT. THE GUARDIANSHIP CONTINUES UNTIL IT IS TERMINATED, WITHOUT REGARD TO THE LOCATION OF THE GUARDIAN OR THE WARD.

14-5301.03. Judicial appointment of guardian; special provision for incapacitated minors approaching adulthood

A. A PARTY THAT IS INTERESTED IN THE WELFARE OF A MINOR WHO IS AT LEAST SEVENTEEN YEARS SIX MONTHS OF AGE AND WHO IS ALLEGED TO BE INCAPACITATED MAY INITIATE GUARDIANSHIP PROCEEDINGS PURSUANT TO THIS ARTICLE AND REQUEST THAT ANY GUARDIANSHIP ORDER TAKE EFFECT IMMEDIATELY ON THE MINOR'S EIGHTEENTH BIRTHDAY.

B. THE PETITIONER MAY PROVIDE WITH THE PETITION A REPORT OF AN EVALUATION OF THE MINOR BY A PHYSICIAN, PSYCHOLOGIST OR REGISTERED NURSE THAT MEETS THE REQUIREMENTS OF SECTION 14-5303, SUBSECTION D. IF THE EVALUATION WAS CONDUCTED WITHIN SIX MONTHS AFTER THE DATE THE PETITION IS FILED WITH THE COURT, THE PETITIONER MAY ASK IN THE PETITION THAT THE COURT ACCEPT THIS REPORT IN LIEU OF ORDERING ANY ADDITIONAL EVALUATION PURSUANT TO SECTION 14-5303, SUBSECTION C, AND THE COURT MAY GRANT THE REQUEST.

14-5301.04. Judicial appointment of conservator or protective order; special provision for incapacitated minors approaching adulthood

A PARTY THAT IS INTERESTED IN THE WELFARE OF A MINOR WHO IS AT LEAST SEVENTEEN YEARS SIX MONTHS OF AGE AND WHO IS ALLEGED TO BE IN NEED OF PROTECTION MAY PETITION THE COURT FOR APPOINTMENT OF A CONSERVATOR OR REQUEST AN APPROPRIATE PROTECTIVE ORDER PURSUANT TO SECTION 14-5404 AND REQUEST THAT ANY CONSERVATORSHIP ORDER OR PROTECTIVE ORDER TAKE EFFECT IMMEDIATELY ON THE MINOR'S EIGHTEENTH BIRTHDAY.

Sec. 4. Section 14-5303, Arizona Revised Statutes, is amended to read:

14-5303. Procedure for court appointment of a guardian of an alleged incapacitated person

A. The alleged incapacitated person or any person interested in that person's affairs or welfare may petition for the appointment of a guardian or for any other appropriate protective order.

B. The petition shall contain a statement that the authority granted to the guardian may include the authority to withhold or withdraw life sustaining treatment, including artificial food and fluid, and shall state, to the extent known:

1. The interest of the petitioner.

2. The name, age, residence and address of the alleged incapacitated person.

3. The name, address and priority for appointment of the person whose appointment is sought.

4. The name and address of the conservator, if any, of the alleged incapacitated person.

5. The name and address of the nearest relative of the alleged incapacitated person known to the petitioner.

6. A general statement of the property of the alleged incapacitated person, with an estimate of its value and including any compensation, insurance, pension or allowance to which the person is entitled.

7. The reason why appointment of a guardian or any other protective order is necessary.

8. The type of guardianship requested. If a general guardianship is requested, the petition must state that other alternatives have been explored and why a limited guardianship is not appropriate. If a limited guardianship is requested, the petition also must state what specific powers are requested.

9. IF A CUSTODIAL ORDER WAS PREVIOUSLY ENTERED REGARDING AN ALLEGED INCAPACITATED PERSON IN A CHILD CUSTODY ACTION OR SIMILAR PROCEEDING IN THIS STATE OR ANOTHER JURISDICTION AND THE PETITIONER OR PROPOSED GUARDIAN IS A PARENT OR NONPARENT CUSTODIAN OF THE ALLEGED INCAPACITATED PERSON, THE COURT AND CASE NUMBER FOR THAT ACTION OR PROCEEDING.

C. On the filing of a petition, the court shall set a hearing date on the issues of incapacity. Unless the alleged incapacitated person is represented by independent counsel, the court shall appoint an attorney to represent that person in the proceeding. The alleged incapacitated person shall be interviewed by an investigator appointed by the court and shall be examined by a physician, psychologist or registered nurse appointed by the court. The investigator and the person conducting the examination shall submit their reports in writing to the court. In addition to information required under subsection D, the court may direct that either report include other information the court deems appropriate. The investigator also shall interview the person seeking appointment as guardian, visit the present place of abode of the alleged incapacitated person and the place where it is proposed that the person will be detained or reside if the requested appointment is made and submit a report in writing to the court. The alleged incapacitated person is entitled to be present at the hearing and to see or hear all evidence bearing on that person's condition. The alleged incapacitated person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed examiner and investigator, and to trial by jury. The court may determine the issue at a closed hearing if the alleged incapacitated person or that person's counsel so requests.

D. A report filed pursuant to this section by a physician, psychologist or registered nurse acting within that person's scope of practice shall include the following information:

1. A specific description of the physical, psychiatric or psychological diagnosis of the person.

2. A comprehensive assessment listing any functional impairments of the alleged incapacitated person and an explanation of how and to what extent these functional impairments may prevent that person from receiving or evaluating information in making decisions or in communicating informed decisions regarding that person.

3. An analysis of the tasks of daily living the alleged incapacitated person is capable of performing without direction or with minimal direction.

4. A list of all medications the alleged incapacitated person is receiving, the dosage of the medications and a description of the effects each medication has on the person's behavior to the best of the declarant's knowledge.

5. A prognosis for improvement in the alleged incapacitated person's condition and a recommendation for the most appropriate rehabilitation plan or care plan.

6. Other information the physician, psychologist or registered nurse deems appropriate.

Sec. 5. Section 14-5401, Arizona Revised Statutes, is amended to read:

14-5401. Protective proceedings

A. ~~Upon~~ ON petition and after notice and a hearing ~~in accordance with the provisions of~~ PURSUANT TO this article, the court may appoint a conservator or make another protective order for cause as follows:

1. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection ~~which~~ THAT cannot otherwise be provided or has or may have affairs ~~which~~ THAT may be jeopardized or prevented by ~~his~~ minority or that funds are needed for ~~his~~ THE MINOR'S support and education and that protection is necessary or desirable to obtain or provide funds.

2. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines both of the following:

(a) The person is unable to manage the person's estate and affairs effectively for reasons such as mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance.

(b) The person has property ~~which~~ THAT will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds.

B. ON PETITION AND AFTER NOTICE AND A HEARING PURSUANT TO THIS ARTICLE, THE COURT MAY CONTINUE A CONSERVATORSHIP OR OTHER PROTECTIVE ORDER ENTERED PURSUANT TO SUBSECTION A, PARAGRAPH 1 OF THIS SECTION BEYOND THE MINOR'S EIGHTEENTH BIRTHDAY IF THE COURT DETERMINES THAT THE ORDER IS APPROPRIATE PURSUANT TO SUBSECTION A, PARAGRAPH 2 OF THIS SECTION. THE PETITION SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 14-5404, SUBSECTION B AND MUST BE FILED AFTER THE MINOR'S SEVENTEENTH BIRTHDAY AND BEFORE TERMINATION OF THE CONSERVATORSHIP BY COURT ORDER.

Sec. 6. Section 14-5405, Arizona Revised Statutes, is amended to read:

14-5405. Notice in conservatorship proceedings

A. In a proceeding for the appointment or removal of a conservator of a protected person or person allegedly in need of protection, other than the appointment of a temporary conservator or temporary suspension of a

conservator, AND IN A PROCEEDING TO CONTINUE A CONSERVATORSHIP OR OTHER PROTECTIVE ORDER PURSUANT TO SECTION 14-5401, SUBSECTION B, notice of the hearing shall be given to each of the following:

1. The protected person or the person allegedly in need of protection if that person is fourteen years of age or older.

2. The spouse, parents and adult children of the protected person or person allegedly in need of protection, or if no spouse, parents or adult children can be located, at least one adult relative of the protected person or the person allegedly in need of protection, if such a relative can be found.

3. Any person who is serving as guardian or conservator or who has the care and custody of the protected person or person allegedly in need of protection.

4. Any person who has filed a demand for notice.

B. At least fourteen days before the hearing notice shall be served personally on the protected person or the person allegedly in need of protection and that person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the protected person or the person allegedly in need of protection shall be given in accordance with section 14-1401. Waiver of notice by the protected person or the person allegedly in need of protection is not effective unless the protected person or the person allegedly in need of protection attends the hearing.

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

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

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

B. On the filing of a petition for appointment of a conservator or any other protective order for reasons other than minority, OR ON THE FILING OF A PETITION FOR CONTINUATION OF A CONSERVATORSHIP OR OTHER PROTECTIVE ORDER PURSUANT TO SECTION 14-5401, SUBSECTION B, the court shall set a hearing date. Unless the person to be protected has counsel of ~~his~~ THAT PERSON'S own choice, the court shall appoint an attorney to represent ~~him~~ THAT PERSON. If the alleged disability is mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, or chronic intoxication, the court shall appoint an investigator to interview the person to be protected. On petition by an interested person or on the court's own motion, the court may direct that an appropriate medical or psychological evaluation of the person be conducted. The investigator and the person

conducting the medical or psychological evaluation shall submit written reports to the court before the hearing date.

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

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

E. After the hearing, ~~upon~~ ON a finding that a basis for the appointment of a conservator or any other protective order has been established, the court shall make an appointment or other appropriate protective order.

Sec. 8. Section 14-5416, Arizona Revised Statutes, is amended to read:

14-5416. Petitions for orders subsequent to appointment

A. Any person interested in the estate or affairs of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

1. Requiring bond or security or additional bond or security, or reducing bond.

2. Requiring an accounting for the administration of the estate of the protected person.

3. Directing distribution.

4. Removing the conservator and appointing a temporary or successor conservator.

5. CONTINUING THE CONSERVATORSHIP PURSUANT TO SECTION 14-5401, SUBSECTION B.

~~5.~~ 6. Granting other appropriate relief.

B. A conservator may petition the appointing court for instructions concerning the fiduciary's responsibility.

C. ~~Upon~~ ON notice and a hearing the court may give appropriate instructions or make any appropriate order.

D. When a surety of a conservator desires to be released from responsibility for future acts, the surety may apply to the court for a release. The court shall proceed in the same manner as in a proceeding under section 14-3604, subsection B. Notice shall be given to the conservator as provided in section 14-5413.

Sec. 9. Section 14-5430, Arizona Revised Statutes, is amended to read:

14-5430. Termination of proceeding

A. The protected person, the conservator or any other interested person may petition the court to terminate the conservatorship. A protected

person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order.

B. The court, ~~upon~~ ON determining after notice and a hearing that the minority or disability of the protected person has ceased, shall terminate the conservatorship UNLESS THE COURT HAS CONTINUED THE CONSERVATORSHIP OR OTHER PROTECTIVE ORDER PURSUANT TO SECTION 14-5401, SUBSECTION B.

C. ~~Upon~~ ON termination, title to assets of the estate passes to the formerly protected person or to the person's successors. The order of termination shall provide for expenses of administration and shall direct the conservator to execute appropriate instruments to evidence the transfer.

APPROVED BY THE GOVERNOR APRIL 25, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2011.

Passed the House April 14, 2011,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate March 1, 2011,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

18 day of April, 2011,

at 4:30 o'clock P. M.

Nicole Bendle

Secretary to the Governor

Approved this 25th day of

April, 2011,

at 11:09 o'clock A. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25th day of April, 2011,

at 2:45 o'clock P M.

Ken Bennett

Secretary of State

S.B. 1081