

House Engrossed Senate Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
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First Regular Session
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CHAPTER 354

SENATE BILL 1499

AN ACT

AMENDING TITLE 14, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-1101, 14-1104, 14-1105, 14-1108 AND 14-1109; AMENDING SECTIONS 14-1201 AND 14-5108, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-5109 AND 14-5110; AMENDING SECTIONS 14-5303, 14-5304, 14-5306, 14-5307, 14-5308, 14-5309, 14-5310, 14-5311, 14-5313, 14-5315, 14-5401, 14-5401.01, 14-5404, 14-5405, 14-5407 AND 14-5410, ARIZONA REVISED STATUTES; REPEALING SECTION 14-5415, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 14-5415; AMENDING SECTIONS 14-5418, 14-5419, 14-5651, 14-5652 AND 14-10706, ARIZONA REVISED STATUTES; RELATING TO PROBATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 14, chapter 1, article 1, Arizona Revised Statutes,
3 is amended by adding sections 14-1101, 14-1104, 14-1105, 14-1108 and 14-1109,
4 to read:

5 14-1101. Training

6 A JUDICIAL OFFICER PRESIDING OVER PROCEEDINGS BROUGHT PURSUANT TO THIS
7 TITLE MUST PARTICIPATE IN TRAINING AS PRESCRIBED BY THE SUPREME COURT.

8 14-1104. Prudent management of costs

9 IN A PROCEEDING BROUGHT PURSUANT TO THIS TITLE:

10 1. THE FIDUCIARY MUST PRUDENTLY MANAGE COSTS, PRESERVE THE ASSETS OF
11 THE WARD OR PROTECTED PERSON FOR THE BENEFIT OF THE WARD OR PROTECTED PERSON
12 AND PROTECT AGAINST INCURRING ANY COSTS THAT EXCEED PROBABLE BENEFITS TO THE
13 WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST, EXCEPT AS OTHERWISE
14 DIRECTED BY A GOVERNING INSTRUMENT OR COURT ORDER.

15 2. A GUARDIAN AD LITEM, FIDUCIARY, FIDUCIARY'S ATTORNEY AND ATTORNEY
16 FOR THE WARD OR PROTECTED PERSON HAVE A DUTY TO:

17 (a) ACT IN THE BEST INTEREST OF THE WARD OR PROTECTED PERSON.

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

19 (c) AFFIRMATIVELY ASSESS THE FINANCIAL COST OF PURSUING ANY ACTION
20 COMPARED TO THE REASONABLY EXPECTED BENEFIT TO THE WARD OR PROTECTED PERSON.

21 3. MARKET RATES FOR GOODS AND SERVICES ARE A PROPER, ONGOING
22 CONSIDERATION FOR THE FIDUCIARY AND THE COURT DURING THE INITIAL COURT
23 APPOINTMENT OF A FIDUCIARY OR ATTORNEY AND RELATING TO A REQUEST TO
24 SUBSTITUTE A COURT-APPOINTED FIDUCIARY OR ATTORNEY.

25 14-1105. Remedies for unreasonable or abusive conduct;
26 definitions

27 A. IF THE COURT FINDS THAT A DECEDENT'S ESTATE OR TRUST HAS INCURRED
28 PROFESSIONAL FEES OR EXPENSES AS A RESULT OF UNREASONABLE CONDUCT, THE COURT
29 MAY ORDER THE PERSON WHO ENGAGED IN THE CONDUCT OR THE PERSON'S ATTORNEY, OR
30 BOTH, TO PAY THE DECEDENT'S ESTATE OR TRUST FOR SOME OR ALL OF THE FEES AND
31 EXPENSES AS THE COURT DEEMS JUST UNDER THE CIRCUMSTANCES.

32 B. IN A GUARDIANSHIP OR CONSERVATORSHIP CASE, IF THE COURT FINDS THAT
33 A WARD OR PROTECTED PERSON HAS INCURRED PROFESSIONAL FEES OR EXPENSES AS A
34 RESULT OF UNREASONABLE CONDUCT, THE COURT MAY ORDER THE PERSON WHO ENGAGED IN
35 THE CONDUCT OR THE PERSON'S ATTORNEY, OR BOTH, TO PAY THE WARD OR PROTECTED
36 PERSON FOR SOME OR ALL OF THE FEES AND EXPENSES AS THE COURT DEEMS JUST UNDER
37 THE CIRCUMSTANCES.

38 C. THE REMEDIES PERMITTED PURSUANT TO THIS SECTION ARE IN ADDITION TO
39 ANY OTHER CIVIL REMEDY OR ANY OTHER PROVISION OF LAW. THE REMEDIES PERMITTED
40 PURSUANT TO THIS SECTION MAY BE INVOKED TO MITIGATE THE FINANCIAL BURDEN ON A
41 WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST INCURRED AS A RESULT OF
42 UNJUSTIFIED COURT PROCEEDINGS OR UNREASONABLE OR EXCESSIVE DEMANDS MADE ON A
43 FIDUCIARY, FIDUCIARY'S ATTORNEY, COURT-APPOINTED ATTORNEY OR REPRESENTATIVE.

1 D. FOR THE PURPOSES OF THIS SECTION:

2 1. "COURT-APPOINTED ATTORNEY" MEANS AN ATTORNEY APPOINTED PURSUANT TO
3 SECTION 14-5303, SUBSECTION C, SECTION 14-5310, SUBSECTION C, SECTION
4 14-5401.01, SUBSECTION C OR SECTION 14-5407, SUBSECTION B.

5 2. "FIDUCIARY" MEANS AN AGENT UNDER A DURABLE POWER OF ATTORNEY, AN
6 AGENT UNDER A HEALTH CARE POWER OF ATTORNEY, A GUARDIAN, A CONSERVATOR, A
7 PERSONAL REPRESENTATIVE, A TRUSTEE OR A GUARDIAN AD LITEM.

8 3. "PERSON WHO ENGAGED IN THE CONDUCT" INCLUDES A FIDUCIARY, AN
9 ATTORNEY OR A GUARDIAN AD LITEM.

10 4. "PROFESSIONAL" MEANS AN ACCOUNTANT, AN ATTORNEY, A FIDUCIARY, A
11 PHYSICIAN, A PSYCHOLOGIST, A REGISTERED NURSE, A GUARDIAN AD LITEM OR AN
12 EXPERT WITNESS.

13 5. "PROFESSIONAL FEES OR EXPENSES" INCLUDES THE FIDUCIARY'S FEES AND
14 EXPENSES AND THE FIDUCIARY'S ATTORNEY FEES AND EXPENSES, AS WELL AS THE FEES
15 AND EXPENSES OF ANY OTHER PROFESSIONALS HIRED BY THE FIDUCIARY OR THE
16 FIDUCIARY'S ATTORNEY.

17 14-1108. Arbitration of disputes; alternative dispute
18 resolution

19 IN A PROCEEDING BROUGHT PURSUANT TO THIS TITLE, AFTER THE INITIAL
20 APPOINTMENT OF A FIDUCIARY, THE COURT MAY REQUIRE ARBITRATION OF A DISPUTE
21 PURSUANT TO THE REQUIREMENTS OF SECTION 12-133, SUBSECTIONS B THROUGH K, OR
22 ORDER ALTERNATIVE DISPUTE RESOLUTION.

23 14-1109. Repetitive filings; summary denial

24 IF AN INTERESTED PERSON FILES A MOTION OR PETITION THAT REQUESTS THE
25 SAME OR SUBSTANTIALLY SIMILAR RELIEF TO THE RELIEF REQUESTED IN ANOTHER
26 MOTION OR PETITION FILED BY THE SAME INTERESTED PERSON WITHIN THE PRECEDING
27 TWELVE MONTHS AND IF THE LATER FILED MOTION OR PETITION DOES NOT DESCRIBE IN
28 DETAIL A CHANGE IN FACT OR CIRCUMSTANCE THAT SUPPORTS THE REQUESTED RELIEF,
29 THE COURT MAY SUMMARILY DENY THE MOTION OR PETITION WITHOUT A RESPONSE OR
30 OBJECTION BEING FILED AND WITHOUT A HEARING OR ORAL ARGUMENT BEING SET.

31 Sec. 2. Section 14-1201, Arizona Revised Statutes, is amended to read:

32 14-1201. Definitions

33 In this title, unless the context otherwise requires:

34 1. "Agent" includes an attorney-in-fact under a durable or nondurable
35 power of attorney, a person who is authorized to make decisions concerning
36 another person's health care and a person who is authorized to make decisions
37 for another person under a natural death act.

38 2. "Application" means a written request to the registrar for an order
39 of informal probate or appointment under chapter 3, article 3 of this title.

40 3. "BASIS FOR COMPENSATION" MEANS HOURLY RATE, A FIXED FEE OR A
41 CONTINGENCY FEE AGREEMENT AND REIMBURSABLE COSTS.

42 ~~3-~~ 4. "Beneficiary", as it relates to a trust beneficiary, includes a
43 person who has any present or future interest, vested or contingent, and also
44 includes the owner of an interest by assignment or other transfer. As it
45 relates to a charitable trust, beneficiary includes any person entitled to

1 enforce the trust. As it relates to a beneficiary of a beneficiary
2 designation, beneficiary refers to a beneficiary of an insurance or annuity
3 policy, an account with pay on death designation, a security registered in
4 beneficiary form or a pension, profit sharing, retirement or similar benefit
5 plan, or any other nonprobate transfer at death. As it relates to a
6 beneficiary designated in a governing instrument, beneficiary includes a
7 grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a
8 beneficiary designation, a donee, appointee or taker in default of a power of
9 appointment and a person in whose favor a power of attorney or a power held
10 in any person, fiduciary or representative capacity is exercised.

11 ~~4.~~ 5. "Beneficiary designation" refers to a governing instrument
12 naming a beneficiary of an insurance or annuity policy, of an account with
13 pay on death designation, of a security registered in beneficiary form or of
14 a pension, profit sharing, retirement or similar benefit plan, or any other
15 nonprobate transfer at death.

16 ~~5.~~ 6. "Child" includes a person who is entitled to take as a child
17 under this title by intestate succession from the parent whose relationship
18 is involved. Child excludes a person who is only a stepchild, a foster
19 child, a grandchild or a more remote descendant.

20 ~~6.~~ 7. "Claims", in respect to estates of decedents and protected
21 persons, includes liabilities of the decedent or the protected person,
22 whether arising in contract, in tort or otherwise, and liabilities of the
23 estate that arise at or after the death of the decedent or after the
24 appointment of a conservator, including funeral expenses and expenses of
25 administration. Claims do not include estate or inheritance taxes or demands
26 or disputes regarding title of a decedent or a protected person to specific
27 assets alleged to be included in the estate.

28 ~~7.~~ 8. "Community property" means that property of a husband and wife
29 that is acquired during the marriage and that is community property as
30 prescribed in section 25-211.

31 ~~8.~~ 9. "Conservator" means a person who is appointed by a court to
32 manage the estate of a protected person.

33 ~~9.~~ 10. "Court" means the superior court.

34 ~~10.~~ 11. "Dependent child" means a minor child ~~who~~ WHOM the decedent
35 was obligated to support or an adult child who was in fact being supported by
36 the decedent at the time of the decedent's death.

37 ~~11.~~ 12. "Descendant" means all of the decedent's descendants of all
38 generations, with the relationship of parent and child at each generation.

39 ~~12.~~ 13. "Devise", when used as a noun, means a testamentary
40 disposition of real or personal property and, when used as a verb, means to
41 dispose of real or personal property by will.

42 ~~13.~~ 14. "Devisee" means a person designated in a will to receive a
43 devise. For the purposes of chapter 3 of this title, in the case of a devise
44 to an existing trust or trustee, or to a trustee on trust described by will,
45 the trust or trustee is the devisee and the beneficiaries are not devisees.

1 ~~14-~~ 15. "Disability" means cause for a protective order as described
2 in section 14-5401.

3 ~~15-~~ 16. "Distributee" means any person who has received property of a
4 decedent from that person's personal representative other than as a creditor
5 or purchaser. Distributee includes a testamentary trustee only to the extent
6 of distributed assets or increment that remains in that person's hands. A
7 beneficiary of a testamentary trust to whom the trustee has distributed
8 property received from a personal representative is a distributee of the
9 personal representative. For the purposes of this paragraph, "testamentary
10 trustee" includes a trustee to whom assets are transferred by will, to the
11 extent of the devised assets.

12 ~~16-~~ 17. "Estate" includes the property of the decedent, trust or other
13 person whose affairs are subject to this title as originally constituted and
14 as it exists from time to time during administration. As it relates to a
15 spouse, the estate includes only the separate property and the share of the
16 community property belonging to the decedent or person whose affairs are
17 subject to this title.

18 ~~17-~~ 18. "Exempt property" means that property of a decedent's estate
19 that is described in section 14-2403.

20 ~~18-~~ 19. "Fiduciary" includes a personal representative, guardian,
21 conservator and trustee.

22 ~~19-~~ 20. "Foreign personal representative" means a personal
23 representative appointed by another jurisdiction.

24 ~~20-~~ 21. "Formal proceedings" means proceedings conducted before a
25 judge with notice to interested persons.

26 ~~21-~~ 22. "Governing instrument" means a deed, will, trust, insurance or
27 annuity policy, account with pay on death designation, security registered in
28 beneficiary form, pension, profit sharing, retirement or similar benefit
29 plan, instrument creating or exercising a power of appointment or a power of
30 attorney or a dispositive, appointive or nominative instrument of any similar
31 type.

32 ~~22-~~ 23. "Guardian" means a person who has qualified as a guardian of a
33 minor or incapacitated person pursuant to testamentary or court appointment
34 but excludes a person who is merely a guardian ad litem.

35 24. "GUARDIAN AD LITEM" INCLUDES A PERSON WHO IS APPOINTED PURSUANT TO
36 SECTION 14-1408.

37 ~~23-~~ 25. "Heirs", except as controlled by section 14-2711, means
38 persons, including the surviving spouse and the state, who are entitled under
39 the statutes of intestate succession to the property of a decedent.

40 ~~24-~~ 26. "Incapacitated person" has the same meaning prescribed in
41 section 14-5101.

42 ~~25-~~ 27. "Informal proceedings" means those proceedings conducted
43 without notice to interested persons by an officer of the court acting as a
44 registrar for probate of a will or appointment of a personal representative.

1 ~~26.~~ 28. "Interested person" includes any trustee, heir, devisee,
2 child, spouse, creditor, beneficiary, person holding a power of appointment
3 and other person who has a property right in or claim against a trust estate
4 or the estate of a decedent, ward or protected person. Interested person
5 also includes a person who has priority for appointment as personal
6 representative and other fiduciaries representing interested persons.
7 Interested person, as the term relates to particular persons, may vary from
8 time to time and must be determined according to the particular purposes of,
9 and matter involved in, any proceeding.

10 ~~27.~~ 29. "Issue" of a person means descendant as defined in this
11 section.

12 ~~28.~~ 30. "Joint tenants with the right of survivorship" and "community
13 property with the right of survivorship" includes co-owners of property held
14 under circumstances that entitle one or more to the whole of the property on
15 the death of the other or others but excludes forms of co-ownership
16 registration in which the underlying ownership of each party is in proportion
17 to that party's contribution.

18 ~~29.~~ 31. "Lease" includes any oil, gas or other mineral lease.

19 ~~30.~~ 32. "Letters" includes letters testamentary, letters of
20 guardianship, letters of administration and letters of conservatorship.

21 ~~31.~~ 33. "Minor" means a person who is under eighteen years of age.

22 ~~32.~~ 34. "Mortgage" means any conveyance, agreement or arrangement in
23 which property is encumbered or used as security. Mortgage does not include
24 leases or easements.

25 ~~33.~~ 35. "Nonresident decedent" means a decedent who was domiciled in
26 another jurisdiction at the time of the decedent's death.

27 ~~34.~~ 36. "Organization" means a corporation, limited liability company,
28 business trust, estate, trust, partnership, joint venture, association,
29 government or governmental subdivision or agency or any other legal or
30 commercial entity.

31 ~~35.~~ 37. "Parent" includes any person entitled to take, or who would be
32 entitled to take if the child died without a will, as a parent under this
33 title by intestate succession from the child whose relationship is in
34 question and excludes any person who is only a stepparent, foster parent or
35 grandparent.

36 ~~36.~~ 38. "Payor" means a trustee, insurer, business entity, employer,
37 government, governmental agency or subdivision or any other person who is
38 authorized or obligated by law or a governing instrument to make payments.

39 ~~37.~~ 39. "Person" means an individual or an organization.

40 ~~38.~~ 40. "Personal representative" includes executor, administrator,
41 successor personal representative, special administrator and persons who
42 perform substantially the same function under the law governing their status.
43 A general personal representative excludes a special administrator.

44 ~~39.~~ 41. "Petition" means a written request to the court for an order
45 after notice.

1 ~~40.~~ 42. "Proceeding" includes action at law and suit in equity.
2 ~~41.~~ 43. "Property" has the same meaning prescribed in section
3 14-10103.
4 ~~42.~~ 44. "Protected person" has the same meaning prescribed in section
5 14-5101.
6 ~~43.~~ 45. "Protective proceeding" has the same meaning prescribed in
7 section 14-5101.
8 ~~44.~~ 46. "Registrar" means the official of the court designated to
9 perform the functions of registrar as provided in section 14-1307.
10 ~~45.~~ 47. "Security" includes any note, stock, treasury stock, bond,
11 debenture, evidence of indebtedness, certificate of interest or participation
12 in an oil, gas or mining title or lease or in payments out of production
13 under that title or lease, collateral trust certificate, transferable share
14 or voting trust certificate and, in general, includes any interest or
15 instrument commonly known as a security, or any certificate of interest or
16 participation, any temporary or interim certificate, receipt or certificate
17 of deposit for, or any warrant or right to subscribe to or purchase, any of
18 these securities.
19 ~~46.~~ 48. "Separate property" means that property of a husband or wife
20 that is the spouse's separate property as defined in section 25-213.
21 ~~47.~~ 49. "Settlement", in reference to a decedent's estate, includes
22 the full process of administration, distribution and closing.
23 ~~48.~~ 50. "Special administrator" means a personal representative as
24 described by sections 14-3614 through 14-3618.
25 ~~49.~~ 51. "State" has the same meaning prescribed in section 14-10103.
26 ~~50.~~ 52. "Successor personal representative" means a personal
27 representative, other than a special administrator, who is appointed to
28 succeed a previously appointed personal representative.
29 ~~51.~~ 53. "Successors" means persons, other than creditors, who are
30 entitled to property of a decedent under a will or this title.
31 ~~52.~~ 54. "Supervised administration" refers to the proceedings
32 described in chapter 3, article 5 of this title.
33 ~~53.~~ 55. "Survive" means that a person has neither predeceased an
34 event, including the death of another person, nor is deemed to have
35 predeceased an event under section 14-2104 or 14-2702.
36 ~~54.~~ 56. "Testacy proceeding" means a proceeding to establish a will or
37 determine intestacy.
38 ~~55.~~ 57. "Testator" includes a person of either sex.
39 ~~56.~~ 58. "Trust" includes an express trust, private or charitable, with
40 any additions, wherever and however created. Trust also includes a trust
41 created or determined by judgment or decree under which the trust is to be
42 administered in the manner of an express trust. Trust excludes other
43 constructive trusts and excludes resulting trusts, conservatorship, personal
44 representatives, trust accounts, custodial arrangements pursuant to chapter
45 7, article 7 of this title, business trusts providing for certificates to be

1 issued to beneficiaries, common trust funds, voting trusts, security
2 arrangements, liquidation trusts and trusts for the primary purpose of paying
3 debts, dividends, interest, salaries, wages, profits, pensions or employee
4 benefits of any kind, trusts created by a city or town for the payment of
5 medical insurance, health care benefits or expenses, long-term or short-term
6 disability, self insurance reserves and similar programs administered by a
7 city or town, legal defense trusts and any arrangement under which a person
8 is nominee or escrowee for another.

9 ~~57.~~ 59. "Trustee" includes an original, additional or successor
10 trustee, whether or not appointed or confirmed by THE court.

11 ~~58.~~ 60. "Ward" has the same meaning prescribed in section 14-5101.

12 ~~59.~~ 61. "Will" includes a codicil and any testamentary instrument that
13 merely appoints an executor, revokes or revises another will, nominates a
14 guardian or expressly excludes or limits the right of an individual or class
15 to succeed to property of the decedent passing by intestate succession.

16 Sec. 3. Section 14-5108, Arizona Revised Statutes, is amended to read:

17 14-5108. Guardianship of foreign citizens

18 The court may appoint ~~an adult as the~~ A guardian of ~~a~~ AN ADULT foreign
19 citizen if all of the following are true:

20 1. The foreign citizen is under twenty-one years of age.

21 2. The foreign citizen has a temporary visa issued by the United
22 States or is a legal permanent resident.

23 Sec. 4. Title 14, chapter 5, article 1, Arizona Revised Statutes, is
24 amended by adding sections 14-5109 and 14-5110, to read:

25 14-5109. Disclosure of compensation; determining reasonableness
26 and necessity

27 A. WHEN A GUARDIAN, A CONSERVATOR, AN ATTORNEY OR A GUARDIAN AD LITEM
28 WHO INTENDS TO SEEK COMPENSATION FROM THE ESTATE OF A WARD OR PROTECTED
29 PERSON FIRST APPEARS IN THE PROCEEDING, THAT PERSON MUST GIVE WRITTEN NOTICE
30 OF THE BASIS OF THE COMPENSATION BY FILING A STATEMENT WITH THE COURT AND
31 PROVIDING A COPY OF THE STATEMENT TO ALL PERSONS ENTITLED TO NOTICE PURSUANT
32 TO SECTIONS 14-5309 AND 14-5405. THE STATEMENT MUST PROVIDE A GENERAL
33 EXPLANATION OF THE COMPENSATION ARRANGEMENT AND HOW THE COMPENSATION WILL BE
34 COMPUTED.

35 B. IF DURING THE PENDENCY OF THE ACTION THE BASIS FOR COMPENSATION
36 CHANGES, THE GUARDIAN, CONSERVATOR, ATTORNEY OR GUARDIAN AD LITEM MUST
37 PROVIDE NOTICE OF THE CHANGE TO ALL PERSONS ENTITLED TO NOTICE PURSUANT TO
38 THIS SUBSECTION NOT LESS THAN THIRTY DAYS BEFORE THE CHANGE BECOMES
39 EFFECTIVE.

40 C. COMPENSATION PAID FROM AN ESTATE TO A GUARDIAN, CONSERVATOR,
41 ATTORNEY OR GUARDIAN AD LITEM MUST BE REASONABLE AND NECESSARY. TO DETERMINE
42 THE REASONABLENESS AND NECESSITY OF COMPENSATION, THE COURT MUST CONSIDER THE
43 BEST INTEREST OF THE WARD OR PROTECTED PERSON. THE FOLLOWING FACTORS MAY BE
44 CONSIDERED TO THE EXTENT APPLICABLE:

1 1. WHETHER THE SERVICES PROVIDED ANY BENEFIT OR ATTEMPTED TO ADVANCE
2 THE BEST INTEREST OF THE WARD OR PROTECTED PERSON.

3 2. THE USUAL AND CUSTOMARY FEES CHARGED IN THE RELEVANT PROFESSIONAL
4 COMMUNITY FOR THE SERVICES.

5 3. THE SIZE AND COMPOSITION OF THE ESTATE.

6 4. THE EXTENT THAT THE SERVICES WERE PROVIDED IN A REASONABLE,
7 EFFICIENT AND COST-EFFECTIVE MANNER.

8 5. WHETHER THERE WAS APPROPRIATE AND PRUDENT DELEGATION TO OTHERS.

9 6. ANY OTHER FACTORS BEARING ON THE REASONABLENESS OF FEES.

10 D. THE PERSON SEEKING COMPENSATION HAS THE BURDEN OF PROVING THE
11 REASONABLENESS AND NECESSITY OF COMPENSATION AND EXPENSES SOUGHT.

12 14-5110. Claim deadline for compensation; definitions

13 A. IN A GUARDIANSHIP, CONSERVATORSHIP OR PROTECTIVE PROCEEDING, UNLESS
14 A LATER CLAIM DEADLINE IS ESTABLISHED IN ADVANCE BY THE COURT, A CLAIM FOR
15 COMPENSATION BY ATTORNEYS OR GUARDIANS AD LITEM WHO INTEND TO BE PAID BY THE
16 WARD OR PROTECTED PERSON'S ESTATE IS WAIVED IF NOT SUBMITTED TO THE FIDUCIARY
17 IN WRITING WITHIN FOUR MONTHS AFTER EITHER RENDERING THE SERVICE, INCURRING
18 THE COST, INITIAL APPOINTMENT OF THE FIDUCIARY OR THE EFFECTIVE DATE OF THIS
19 SECTION, WHICHEVER IS LATER. A CLAIM IS DEEMED SUBMITTED ON DELIVERY,
20 MAILING OR ELECTRONIC TRANSMISSION TO THE FIDUCIARY. A SUBSEQUENT
21 APPOINTMENT OF A SUBSTITUTE FIDUCIARY DOES NOT RENEW THE CLAIM PERIOD.

22 B. THIS SECTION DOES NOT APPLY TO AN ATTORNEY SEEKING COMPENSATION
23 BASED ON A CONTINGENCY FEE AGREEMENT.

24 C. FOR THE PURPOSES OF THIS SECTION:

25 1. "COMPENSATION" INCLUDES FEES, COSTS AND REIMBURSABLE EXPENSES.

26 2. "ESTATE" INCLUDES ANY ESTATE ESTABLISHED PURSUANT TO THIS TITLE
27 EXCEPT A TRUST UNLESS THE TRUST IS SUPERVISED BY THE COURT AND THE WARD OR
28 PROTECTED PERSON IS A BENEFICIARY.

29 Sec. 5. Section 14-5303, Arizona Revised Statutes, is amended to read:

30 14-5303. Procedure for court appointment of a guardian of an
31 alleged incapacitated person

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

35 B. The petition shall contain a statement that the authority granted
36 to the guardian may include the authority to withhold or withdraw life
37 sustaining treatment, including artificial food and fluid, and shall state,
38 AT A MINIMUM AND to the extent known, ALL OF THE FOLLOWING:

39 1. The interest of the petitioner.

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

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

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

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

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

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

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

13 C. On the filing of a petition, the court shall set a hearing date on
14 the issues of incapacity. Unless the alleged incapacitated person is
15 represented by independent counsel, the court shall appoint an attorney to
16 represent that person in the proceeding. The alleged incapacitated person
17 shall be interviewed by an investigator appointed by the court and shall be
18 examined by a physician, psychologist or registered nurse appointed by the
19 court. IF THE ALLEGED INCAPACITATED PERSON HAS AN ESTABLISHED RELATIONSHIP
20 WITH A PHYSICIAN, PSYCHOLOGIST OR REGISTERED NURSE WHO IS DETERMINED BY THE
21 COURT TO BE QUALIFIED TO EVALUATE THE CAPACITY OF THE ALLEGED INCAPACITATED
22 PERSON, THE COURT MAY APPOINT THE ALLEGED INCAPACITATED PERSON'S PHYSICIAN,
23 PSYCHOLOGIST OR REGISTERED NURSE PURSUANT TO THIS SUBSECTION. The
24 investigator and the person conducting the examination shall submit their
25 reports in writing to the court. In addition to information required under
26 subsection D, the court may direct that either report include other
27 information the court deems appropriate. The investigator also shall
28 interview the person seeking appointment as guardian, visit the present place
29 of abode of the alleged incapacitated person and the place where it is
30 proposed that the person will be detained or reside if the requested
31 appointment is made and submit a report in writing to the court. The alleged
32 incapacitated person is entitled to be present at the hearing and to see or
33 hear all evidence bearing on that person's condition. The alleged
34 incapacitated person is entitled to be represented by counsel, to present
35 evidence, to cross-examine witnesses, including the court-appointed examiner
36 and investigator, and to trial by jury. The court may determine the issue at
37 a closed hearing if the alleged incapacitated person or that person's counsel
38 so requests.

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

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

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

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

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

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

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

17 Sec. 6. Section 14-5304, Arizona Revised Statutes, is amended to read:
18 14-5304. Findings; order of appointment; limitations; filing

19 A. In exercising its appointment authority pursuant to this chapter,
20 the court shall encourage the development of maximum self-reliance and
21 independence of the incapacitated person.

22 B. The court may appoint a general or limited guardian as requested if
23 ~~it is satisfied~~ THE COURT FINDS by clear and convincing evidence that:

24 1. The person for whom a guardian is sought is incapacitated.

25 2. The appointment is necessary to provide for the demonstrated needs
26 of the incapacitated person.

27 3. The person's needs cannot be met by less restrictive means,
28 including the use of appropriate technological assistance.

29 C. In conformity with the evidence regarding the extent of the ward's
30 incapacity, the court may appoint a limited guardian and specify time limits
31 on the guardianship and limitations on the guardian's powers.

32 D. The guardian shall file an acceptance of appointment with the
33 appointing court.

34 Sec. 7. Section 14-5306, Arizona Revised Statutes, is amended to read:
35 14-5306. Termination of guardianship for incapacitated person

36 The authority and responsibility of a guardian for an incapacitated
37 person terminates ~~upon~~ ON the death of the guardian or ward, a determination
38 of incapacity of the guardian, or ~~upon removal~~ SUBSTITUTION or resignation as
39 provided in section 14-5307. Testamentary appointment under an informally
40 probated will terminates if the will is later denied probate in a formal
41 proceeding. Termination does not affect ~~his~~ THE GUARDIAN'S liability for
42 prior acts ~~nor his~~ OR THE GUARDIAN'S obligation to account for funds and
43 assets of ~~his~~ THE GUARDIAN'S ward.

1 Sec. 8. Section 14-5307, Arizona Revised Statutes, is amended to read:
2 14-5307. Substitution or resignation of guardian; termination
3 of incapacity

4 A. On petition of the ward or any person interested in his THE WARD'S
5 welfare, OR ON THE COURT'S OWN INITIATIVE, the court ~~may remove~~ SHALL
6 SUBSTITUTE a guardian and appoint a successor if it is in the best ~~interests~~
7 INTEREST of the ward. THE COURT DOES NOT NEED TO FIND THAT THE GUARDIAN
8 ACTED INAPPROPRIATELY TO FIND THAT THE SUBSTITUTION IS IN THE WARD'S BEST
9 INTEREST. THE GUARDIAN AND THE GUARDIAN'S ATTORNEY MAY BE COMPENSATED FROM
10 THE WARD'S ESTATE FOR DEFENDING AGAINST A PETITION FOR SUBSTITUTION ONLY FOR
11 THE AMOUNT ORDERED BY THE COURT AND ON PETITION BY THE GUARDIAN OR THE
12 GUARDIAN'S ATTORNEY. WHEN SUBSTITUTING A GUARDIAN AND APPOINTING A
13 SUCCESSOR, THE COURT MAY APPOINT AN INDIVIDUAL NOMINATED BY THE WARD IF THE
14 WARD IS AT LEAST FOURTEEN YEARS OF AGE AND HAS, IN THE OPINION OF THE COURT,
15 SUFFICIENT MENTAL CAPACITY TO MAKE AN INTELLIGENT CHOICE. On petition of the
16 guardian, the court may accept a resignation and make any other order which
17 THAT may be appropriate.

18 ~~B. An order adjudicating incapacity may specify a minimum period, not~~
19 ~~exceeding one year, during which no petition for an adjudication that the~~
20 ~~ward is no longer incapacitated may be filed without special leave. Subject~~
21 ~~to this restriction, the ward or any person interested in his welfare may~~
22 ~~petition the court for an order that the ward is no longer incapacitated and~~
23 ~~for the removal or resignation of the guardian. A request for this order may~~
24 ~~be made by informal letter to the court or judge. Any person who knowingly~~
25 ~~interferes with the transmission of this request may be found in contempt of~~
26 ~~court.~~

27 B. THE WARD MAY PETITION THE COURT FOR AN ORDER THAT THE WARD IS NO
28 LONGER INCAPACITATED OR PETITION FOR SUBSTITUTION OF THE GUARDIAN AT ANY
29 TIME. A REQUEST FOR THIS ORDER MAY BE MADE BY INFORMAL LETTER TO THE COURT
30 OR JUDGE. A PERSON WHO KNOWINGLY INTERFERES WITH THE TRANSMISSION OF THIS
31 REQUEST MAY BE FOUND IN CONTEMPT OF COURT.

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

37 D. AN INTERESTED PERSON, OTHER THAN THE GUARDIAN OR WARD, SHALL NOT
38 FILE A PETITION TO SUBSTITUTE A GUARDIAN EARLIER THAN ONE YEAR AFTER THE
39 ORDER ADJUDICATING INCAPACITY WAS ENTERED UNLESS THE COURT PERMITS IT TO BE
40 MADE ON THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO BELIEVE THAT THE
41 CURRENT GUARDIAN WILL ENDANGER THE WARD'S PHYSICAL, MENTAL OR EMOTIONAL
42 HEALTH IF NOT SUBSTITUTED.

43 ~~E.~~ E. Before ~~removing~~ SUBSTITUTING a guardian, accepting the
44 resignation of a guardian or ordering that a ward's incapacity has
45 terminated, the court, following the same procedures to safeguard the rights

1 of the ward as apply to a petition for appointment of a guardian, may send an
2 investigator to the residence of the present guardian and to the place where
3 the ward resides or is detained to observe conditions and report in writing
4 to the court.

5 Sec. 9. Section 14-5308, Arizona Revised Statutes, is amended to read:
6 14-5308. Court appointed investigators; qualifications; duties

7 A. An investigator appointed by the court under sections 14-5303 and
8 14-5407 shall have a background in law, nursing or social work and shall have
9 no personal interest in the proceedings.

10 B. The investigator shall conduct an investigation before the court
11 appoints a guardian or a conservator to allow the court to determine the
12 appropriateness of that appointment. As directed by the court, the
13 investigator shall conduct additional investigations to determine if it is
14 necessary to continue the appointment.

15 C. In conducting investigations the investigator shall:

16 1. Interview the alleged incapacitated person or the protected person
17 and the proposed guardian or conservator.

18 2. Visit the alleged incapacitated person's or the protected person's
19 current or proposed place of residence.

20 3. Interview nursing home or care home care givers and the home's
21 manager or administrator.

22 4. Transport the alleged incapacitated person or the protected person
23 as directed by the court.

24 D. In conducting interviews under this section the investigator may
25 examine any court record, medical record or financial record that relates to
26 the investigation.

27 E. As a condition of appointment as an investigator the court shall
28 require the applicant to furnish a full set of fingerprints to enable the
29 court to conduct a criminal background investigation to determine the
30 applicant's suitability. The court shall submit the completed fingerprint
31 card to the department of public safety. The department shall provide the
32 applicant's criminal history record information to the court pursuant to
33 section 41-1750. The department of public safety shall conduct criminal
34 history records checks pursuant to section 41-1750 and applicable federal
35 law. The department of public safety is authorized to submit fingerprint
36 card information to the federal bureau of investigation for a national
37 criminal history records check.

38 F. AN INVESTIGATOR APPOINTED BY THE COURT PURSUANT TO SECTIONS 14-5303
39 AND 14-5407, AND ANY PERSON OR ENTITY CLOSELY RELATED TO THE INVESTIGATOR,
40 SHALL NOT BE APPOINTED AS A FIDUCIARY, ATTORNEY OR PROFESSIONAL IN THE SAME
41 CASE OR FOR THE SAME PERSON WHO WAS THE SUBJECT OF THE PRIOR INVESTIGATION
42 UNLESS OTHERWISE ORDERED BY THE COURT FOR GOOD CAUSE. FOR THE PURPOSES OF
43 THIS SUBSECTION, "CLOSELY RELATED" INCLUDES A SPOUSE, CHILD, PARENT, SIBLING,
44 GRANDPARENT, AUNT, UNCLE OR COUSIN OF THE INVESTIGATOR AND ANY BUSINESS,
45 PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, TRUST OR OTHER ENTITY

1 THAT THE INVESTIGATOR OR A CLOSELY RELATED PERSON HAS A FINANCIAL INTEREST
2 IN, IS EMPLOYED BY OR RECEIVES COMPENSATION OR FINANCIAL BENEFIT FROM.

3 Sec. 10. Section 14-5309, Arizona Revised Statutes, is amended to
4 read:

5 14-5309. Notices in guardianship proceedings

6 A. In a proceeding for the appointment or ~~removal~~ SUBSTITUTION of a
7 guardian of a ward or an alleged incapacitated person other than the
8 appointment of a temporary guardian or temporary suspension of a guardian,
9 notice of a hearing shall be given to each of the following:

10 1. The ward or the alleged incapacitated person and that person's
11 spouse, parents and adult children.

12 2. Any person who is serving as guardian or conservator or who has the
13 care and custody of the ward or the alleged incapacitated person.

14 3. In case no other person is notified under paragraph 1 of this
15 subsection, at least one of that person's closest adult relatives, if any can
16 be found.

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

18 B. At least fourteen days before the hearing notice shall be served
19 personally on the ward or the alleged incapacitated person, and that person's
20 spouse and parents if they can be found within the state. Notice to the
21 spouse and parents, if they cannot be found within the state, and to all
22 other persons except the ward or the alleged incapacitated person shall be
23 given as provided in section 14-1401. Waiver of notice by the ward or the
24 alleged incapacitated person is not effective unless that person attends the
25 hearing.

26 Sec. 11. Section 14-5310, Arizona Revised Statutes, is amended to
27 read:

28 14-5310. Temporary guardians; appointment; notice; court
29 appointed attorney hearings; duties

30 A. If an alleged incapacitated person has no guardian and an emergency
31 exists or if an appointed guardian is not effectively performing the duties
32 of a guardian and the welfare of the ward is found to require immediate
33 action, the alleged incapacitated person, the ward or any person interested
34 in the welfare of the alleged incapacitated person or the ward may petition
35 for a finding of interim incapacity and for the appointment of a temporary
36 guardian. No finding and appointment may be made without notice, pursuant to
37 section 14-5309, except as provided in subsection B of this section.

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

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

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

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

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

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

16 C. Unless the proposed ward is represented by independent counsel, the
17 court shall appoint an attorney to represent the proposed ward in the
18 proceeding on receipt of the petition for temporary appointment. The
19 attorney shall visit the proposed ward as soon as practicable and shall be
20 prepared to represent the interest of the proposed ward at any hearing on the
21 petition.

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

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

33 F. If the court orders the appointment of a temporary guardian without
34 notice, the ward may appear and move for its dissolution or modification on
35 two days' notice to the petitioner and to the temporary guardian or on such
36 shorter notice as the court prescribes. The court shall proceed to hear and
37 determine that motion as expeditiously as possible.

38 G. IF THE WARD OBJECTS TO THE PERSON WHO IS TEMPORARILY APPOINTED, THE
39 COURT MAY APPOINT AN INDIVIDUAL NOMINATED BY THE PROPOSED WARD IF THE WARD IS
40 AT LEAST FOURTEEN YEARS OF AGE AND HAS, IN THE OPINION OF THE COURT,
41 SUFFICIENT MENTAL CAPACITY TO MAKE AN INTELLIGENT CHOICE. THE COURT SHALL
42 APPOINT AN ALTERNATIVE GUARDIAN IF AVAILABLE AND AFTER FINDING THAT THE
43 APPOINTMENT IS IN THE BEST INTEREST OF THE WARD.

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

23 Sec. 12. Section 14-5311, Arizona Revised Statutes, is amended to
24 read:

25 14-5311. Who may be guardian; priorities

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

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

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

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

36 3. The person nominated TO SERVE AS GUARDIAN in the incapacitated
37 person's most recent durable power of attorney OR HEALTH CARE POWER OF
38 ATTORNEY.

39 4. The spouse of the incapacitated person.

40 5. An adult child of the incapacitated person.

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

43 7. Any relative of the incapacitated person with whom the
44 incapacitated person has resided for more than six months before the filing
45 of the petition.

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

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

5 10. A fiduciary, ~~WHO IS LICENSED PURSUANT TO SECTION 14-5651 guardian~~
6 ~~or conservator~~, OTHER THAN A PUBLIC FIDUCIARY.

7 11. A PUBLIC FIDUCIARY WHO IS LICENSED PURSUANT TO SECTION 14-5651.

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

12 D. For good cause the court may pass over a person who has priority
13 and appoint a person who has a lower priority or no priority. FOR THE
14 PURPOSES OF THIS SUBSECTION, "GOOD CAUSE" INCLUDES A DETERMINATION THAT:

15 1. THE INCAPACITATED PERSON'S DURABLE POWER OF ATTORNEY OR HEALTH CARE
16 POWER OF ATTORNEY IS INVALID.

17 2. HONORING THE INCAPACITATED PERSON'S DURABLE POWER OF ATTORNEY OR
18 HEALTH CARE POWER OF ATTORNEY WOULD NOT BE IN THE PHYSICAL, EMOTIONAL OR
19 FINANCIAL BEST INTEREST OF THE INCAPACITATED PERSON.

20 3. THE ESTIMATED COST OF THE FIDUCIARY AND ASSOCIATED PROFESSIONAL
21 FEES WOULD ADVERSELY AFFECT THE ABILITY OF THE INCAPACITATED PERSON'S ESTATE
22 TO PROVIDE FOR THE INCAPACITATED PERSON'S REASONABLE AND NECESSARY LIVING
23 EXPENSES.

24 E. ON A REQUEST BY A PERSON WHO WAS PASSED OVER BY THE COURT PURSUANT
25 TO SUBSECTION D OF THIS SECTION, THE COURT SHALL MAKE A SPECIFIC FINDING
26 REGARDING THE COURT'S DETERMINATION OF GOOD CAUSE AND WHY THE PERSON WAS NOT
27 APPOINTED. THE REQUEST MUST BE MADE WITHIN TEN DAYS AFTER THE ENTRY OF THE
28 ORDER.

29 Sec. 13. Section 14-5313, Arizona Revised Statutes, is amended to
30 read:

31 14-5313. Proceedings subsequent to appointment; venue

32 A. The court at the place where the ward resides has concurrent
33 jurisdiction with the court that appointed the guardian or in which
34 acceptance of a parental or spousal appointment was filed, over resignation,
35 ~~removal~~ SUBSTITUTION, accounting and other proceedings relating to the
36 guardianship including proceedings to limit the authority previously
37 conferred on a guardian or to remove limitations previously imposed.

38 B. If the court located at the place where the ward resides is not the
39 court in which acceptance of appointment is filed, the court in which
40 proceedings subsequent to appointment are commenced shall in all appropriate
41 cases notify the other court, in this or another state, and after
42 consultation with that court shall determine whether to retain jurisdiction
43 or transfer the proceedings to the other court, whichever may be in the best
44 interests of the ward. A copy of any order accepting a resignation, ~~removing~~

1 SUBSTITUTING a guardian or altering authority shall be sent to the court in
2 which acceptance of appointment is filed.

3 Sec. 14. Section 14-5315, Arizona Revised Statutes, is amended to
4 read:

5 14-5315. Guardian reports; contents

6 A. A guardian shall submit a written report to the court on each
7 anniversary date of qualification as guardian, on resignation or ~~removal~~
8 SUBSTITUTION as guardian and on termination of the ward's disability.

9 B. The guardian shall mail a copy of the report to:

10 1. The ward.

11 2. The ward's conservator.

12 3. The ward's spouse or the ward's parents if the ward is not married.

13 4. A court appointed attorney for the ward.

14 5. Any other interested person who has filed a demand for notice with
15 the court.

16 C. The report shall include the following:

17 1. The type, name and address of the home or facility where the ward
18 lives and the name of the person in charge of the home.

19 2. The number of times the guardian has seen the ward in the last
20 twelve months.

21 3. The date the guardian last saw the ward.

22 4. The name and address of the ward's physician or registered nurse
23 practitioner.

24 5. The date the ward was last seen by a physician or a registered
25 nurse practitioner.

26 6. A copy of the ward's physician's or registered nurse practitioner's
27 report to the guardian or, if none exists, a summary of the physician's or
28 the registered nurse practitioner's observations on the ward's physical and
29 mental condition.

30 7. Major changes in the ward's physical or mental condition observed
31 by the guardian in the last year.

32 8. The guardian's opinion as to whether the guardianship should be
33 continued.

34 9. A summary of the services provided to the ward by a governmental
35 agency and the name of the individual responsible for the ward's affairs with
36 that agency.

37 Sec. 15. Section 14-5401, Arizona Revised Statutes, is amended to
38 read:

39 14-5401. Protective proceedings

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

43 1. Appointment of a conservator or other protective order may be made
44 in relation to the estate and affairs of a minor if the court determines that
45 a minor owns money or property that requires management or protection ~~which~~

1 THAT cannot otherwise be provided or has or may have affairs which THAT may
2 be jeopardized or prevented by his minority or that funds are needed for his
3 THE MINOR'S support and education and that protection is necessary or
4 desirable to obtain or provide funds.

5 2. Appointment of a conservator or other protective order may be made
6 in relation to the estate and affairs of a person if the court determines
7 SPECIFICALLY FINDS ON THE RECORD both of the following:

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

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

17 Sec. 16. Section 14-5401.01, Arizona Revised Statutes, is amended to
18 read:

19 14-5401.01. Temporary conservators; appointment; notice;
20 hearings

21 A. If a person ALLEGEDLY in need of protection has no conservator and
22 an emergency exists or if an appointed conservator is not effectively
23 performing the duties of a conservator and the estate or affairs of the
24 protected person are found to require immediate action, the person ALLEGEDLY
25 in need of protection, the protected person or any person interested in that
26 person's estate or affairs may petition for a finding of a need for interim
27 protection and for the appointment of a temporary conservator. No A finding
28 and appointment may NOT be made without notice, pursuant to section 14-5405,
29 except as provided in subsection B of this section.

30 B. The court may enter a finding of a need for interim protection and
31 may appoint a temporary conservator without notice to the ~~proposed-protected~~
32 person ALLEGEDLY IN NEED OF PROTECTION or the ~~proposed-protected~~ THAT
33 person's attorney if all of the following conditions are met:

34 1. It clearly appears from specific facts shown by affidavit or by the
35 verified petition that immediate and irreparable injury, loss or damage will
36 result before the ~~proposed-protected~~ person ALLEGEDLY IN NEED OF PROTECTION
37 or that person's attorney can be heard in opposition.

38 2. The petitioner or the petitioner's attorney certifies to the court
39 in writing any efforts that the petitioner or the attorney has made to give
40 the notice or the reasons supporting the claim that notice should not be
41 required.

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

1 4. The petitioner or the petitioner's attorney certifies that notice
2 of the petition, order and all filed reports and affidavits will be given to
3 the ~~proposed-protected~~ person ALLEGEDLY IN NEED OF PROTECTION by personal
4 service within the time period the court directs but not more than
5 seventy-two hours after entry of the order of appointment.

6 C. Unless the ~~proposed-protected~~ person ALLEGEDLY IN NEED OF
7 PROTECTION is represented by independent counsel, the court shall appoint an
8 attorney to represent that person in the proceeding on receipt of the
9 petition for temporary appointment. The attorney shall visit the ~~proposed~~
10 ~~protected~~ person ALLEGEDLY IN NEED OF PROTECTION as soon as practicable and
11 shall be prepared to represent that person's interests at any hearing on the
12 petition.

13 D. Every order finding a need for interim protection and appointing a
14 temporary conservator granted without notice expires as prescribed by the
15 court but within a period of not more than thirty days unless within that
16 time the court extends it for good cause shown for the same period or unless
17 the attorney for the ~~proposed-protected~~ person ALLEGEDLY IN NEED OF
18 PROTECTION consents that it may be extended for a longer period. The court
19 shall enter the reasons for the extension on the record.

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

25 F. If the court orders the appointment of a temporary conservator
26 without notice, the ~~proposed-protected~~ person ALLEGEDLY IN NEED OF PROTECTION
27 may appear and move for its dissolution or modification on two days' notice
28 to the petitioner and to the temporary conservator, or on such shorter notice
29 as the court prescribes. The court shall proceed to hear and determine that
30 motion as expeditiously as possible. IF THE PERSON ALLEGEDLY IN NEED OF
31 PROTECTION OBJECTS TO THE PERSON WHO IS TEMPORARILY APPOINTED, THE COURT MAY
32 APPOINT AN INDIVIDUAL NOMINATED BY THE PERSON ALLEGEDLY IN NEED OF PROTECTION
33 IF THE PERSON ALLEGEDLY IN NEED OF PROTECTION IS AT LEAST FOURTEEN YEARS OF
34 AGE AND HAS, IN THE OPINION OF THE COURT, SUFFICIENT MENTAL CAPACITY TO MAKE
35 AN INTELLIGENT CHOICE. THE COURT SHALL APPOINT AN ALTERNATIVE CONSERVATOR IF
36 AVAILABLE AND AFTER FINDING THAT THE APPOINTMENT IS IN THE BEST INTEREST OF
37 THE PERSON ALLEGEDLY IN NEED OF PROTECTION.

38 G. The hearing on a petition for the appointment of a temporary
39 conservator shall be held in the same manner as a hearing on a preliminary
40 injunction. The court may order the hearing on the petition for appointment
41 of a permanent conservator to be advanced and consolidated with the hearing
42 ~~of~~ ON the petition for temporary appointment. If the court does not order
43 this consolidation any evidence received on a petition for temporary
44 appointment that would be admissible at the hearing on a petition for a
45 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. 17. Section 14-5404, Arizona Revised Statutes, is amended to
9 read:

10 14-5404. Original petition for appointment or protective order

11 A. The person allegedly in need of protection, any person who is
12 interested in that person's estate or affairs, including that person's
13 parent, guardian or custodian, or any person who would be adversely affected
14 by lack of effective management of that person's estate and affairs may
15 petition for the appointment of a conservator or for any other appropriate
16 protective order.

17 B. The petition shall set forth, AT A MINIMUM AND to the extent known,
18 ALL OF THE FOLLOWING :

19 1. The interest of the petitioner.

20 2. The name, age, residence and address of the person allegedly in
21 need of protection.

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

24 4. The name and address of the guardian, if any, of the person
25 allegedly in need of protection.

26 5. The name and address of the nearest relative of the person
27 allegedly in need of protection known to the petitioner.

28 6. A general statement of the estate of the person allegedly in need
29 of protection with an estimate of its value, including any compensation,
30 insurance, pension or allowance to which the person is entitled.

31 7. The reason why appointment of a conservator or any other protective
32 order is necessary.

33 Sec. 18. Section 14-5405, Arizona Revised Statutes, is amended to
34 read:

35 14-5405. Notice in conservatorship proceedings

36 A. In a proceeding for the appointment or ~~removal~~ SUBSTITUTION of a
37 conservator of a protected person or person allegedly in need of protection,
38 other than the appointment of a temporary conservator or temporary suspension
39 of a conservator, notice of the hearing shall be given to each of the
40 following:

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

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

1 or the person allegedly in need of protection, if such a relative can be
2 found.

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

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

7 B. At least fourteen days before the hearing notice shall be served
8 personally on the protected person or the person allegedly in need of
9 protection and that person's spouse and parents if they can be found within
10 the state. Notice to the spouse and parents, if they cannot be found within
11 the state, and to all other persons except the protected person or the person
12 allegedly in need of protection shall be given in accordance with section
13 14-1401. Waiver of notice by the protected person or the person allegedly in
14 need of protection is not effective unless the protected person or the person
15 allegedly in need of protection attends the hearing.

16 Sec. 19. Section 14-5407, Arizona Revised Statutes, is amended to
17 read:

18 14-5407. Procedure concerning hearing and order on original
19 petition

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

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

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

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

6 E. After the hearing, ~~upon a finding~~ AND AFTER MAKING SPECIFIC
7 FINDINGS ON THE RECORD that a basis for the appointment of a conservator or
8 any other protective order has been established, the court shall make an
9 appointment or other appropriate protective order.

10 Sec. 20. Section 14-5410, Arizona Revised Statutes, is amended to
11 read:

12 14-5410. Who may be appointed conservator; priorities

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

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

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

24 3. The person nominated TO SERVE AS CONSERVATOR in the protected
25 person's most recent durable power of attorney.

26 4. The spouse of the protected person.

27 5. An adult child of the protected person.

28 6. A parent of the protected person, or a person nominated by the will
29 of a deceased parent.

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

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

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

36 10. A fiduciary, ~~WHO IS LICENSED PURSUANT TO SECTION 14-5651 guardian,~~
37 ~~or conservator,~~ OTHER THAN A PUBLIC FIDUCIARY.

38 11. A PUBLIC FIDUCIARY WHO IS LICENSED PURSUANT TO SECTION 14-5651.

39 B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this
40 section may nominate in writing a person to serve in that person's place.
41 With respect to persons having equal priority, the court shall select the one
42 it determines is best qualified to serve. The court, for good cause, may
43 pass over a person having priority and appoint a person having a lower
44 priority or no priority. FOR THE PURPOSES OF THIS SUBSECTION, "GOOD CAUSE"
45 INCLUDES A DETERMINATION THAT:

1 1. THE PROTECTED PERSON'S DURABLE POWER OF ATTORNEY IS INVALID.
2 2. HONORING THE PROTECTED PERSON'S DURABLE POWER OF ATTORNEY WOULD NOT
3 BE IN THE PHYSICAL, EMOTIONAL OR FINANCIAL BEST INTEREST OF THE PROTECTED
4 PERSON.

5 3. THE ESTIMATED COST OF THE FIDUCIARY AND ASSOCIATED PROFESSIONAL
6 FEES WOULD ADVERSELY AFFECT THE ABILITY OF THE PERSON'S ESTATE TO PROVIDE FOR
7 THE PROTECTED PERSON'S REASONABLE AND NECESSARY LIVING EXPENSES.

8 C. ON THE REQUEST OF A PERSON WHO WAS PASSED OVER BY THE COURT
9 PURSUANT TO SUBSECTION B OF THIS SECTION, THE COURT SHALL MAKE A SPECIFIC
10 FINDING REGARDING THE COURT'S DETERMINATION OF GOOD CAUSE AND WHY THE PERSON
11 WAS NOT APPOINTED. THE REQUEST MUST BE MADE WITHIN TEN DAYS AFTER THE ENTRY
12 OF THE ORDER.

13 Sec. 21. Repeal

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

15 Sec. 22. Title 14, chapter 5, article 4, Arizona Revised Statutes, is
16 amended by adding a new section 14-5415, to read:

17 14-5415. Resignation or substitution of conservator

18 A. ON PETITION OF THE PROTECTED PERSON OR ANY PERSON INTERESTED IN THE
19 PROTECTED PERSON'S WELFARE, OR ON THE COURT'S OWN INITIATIVE, THE COURT SHALL
20 SUBSTITUTE A CONSERVATOR AND APPOINT A SUCCESSOR IF THE SUBSTITUTION IS IN
21 THE BEST INTEREST OF THE PROTECTED PERSON. THE COURT DOES NOT NEED TO FIND
22 THAT THE CONSERVATOR ACTED INAPPROPRIATELY TO FIND THAT THE SUBSTITUTION IS
23 IN THE PROTECTED PERSON'S BEST INTEREST. THE CONSERVATOR AND THE
24 CONSERVATOR'S ATTORNEY MAY BE COMPENSATED FROM THE PROTECTED PERSON'S ESTATE
25 FOR DEFENDING AGAINST A PETITION FOR SUBSTITUTION ONLY FOR THE AMOUNT ORDERED
26 BY THE COURT AND ON PETITION BY THE CONSERVATOR OR THE CONSERVATOR'S
27 ATTORNEY. WHEN SUBSTITUTING A CONSERVATOR AND APPOINTING A SUCCESSOR, THE
28 COURT MAY APPOINT AN INDIVIDUAL NOMINATED BY THE PROTECTED PERSON IF THE
29 PERSON IS AT LEAST FOURTEEN YEARS OF AGE AND HAS, IN THE OPINION OF THE
30 COURT, SUFFICIENT MENTAL CAPACITY TO MAKE AN INTELLIGENT CHOICE. ON PETITION
31 OF THE CONSERVATOR, THE COURT MAY ACCEPT A RESIGNATION AND MAKE ANY OTHER
32 ORDER THAT MAY BE APPROPRIATE.

33 B. THE PROTECTED PERSON MAY PETITION THE COURT FOR AN ORDER THAT THE
34 PROTECTED PERSON IS NO LONGER IN NEED OF PROTECTION OR PETITION FOR
35 SUBSTITUTION OF THE CONSERVATOR AT ANY TIME. A REQUEST FOR THIS ORDER MAY BE
36 MADE BY INFORMAL LETTER TO THE COURT OR JUDGE. A PERSON WHO KNOWINGLY
37 INTERFERES WITH THE TRANSMISSION OF THIS REQUEST MAY BE FOUND IN CONTEMPT OF
38 COURT.

39 C. AN INTERESTED PERSON, OTHER THAN THE CONSERVATOR OR PROTECTED
40 PERSON, SHALL NOT FILE A PETITION FOR ADJUDICATION THAT THE PROTECTED PERSON
41 IS NO LONGER IN NEED OF PROTECTION EARLIER THAN ONE YEAR AFTER THE ENTRY OF A
42 PROTECTIVE ORDER UNLESS THE COURT PERMITS THE PERSON TO FILE THE PETITION ON
43 THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO BELIEVE THAT THE PROTECTED
44 PERSON IS NO LONGER IN NEED OF PROTECTION.

1 D. AN INTERESTED PERSON, OTHER THAN THE CONSERVATOR OR PROTECTED
2 PERSON, SHALL NOT FILE A PETITION TO SUBSTITUTE A CONSERVATOR EARLIER THAN
3 ONE YEAR AFTER THE ENTRY OF A PROTECTIVE ORDER, UNLESS THE COURT PERMITS THE
4 PERSON TO FILE THE PETITION ON THE BASIS OF AFFIDAVITS THAT THERE IS REASON
5 TO BELIEVE THAT THE CURRENT CONSERVATOR WILL ENDANGER THE PROTECTED PERSON'S
6 ESTATE IF THE CONSERVATOR IS NOT SUBSTITUTED.

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

14 Sec. 23. Section 14-5418, Arizona Revised Statutes, is amended to
15 read:

16 14-5418. Inventory and records

17 A. Within ninety days after appointment, a conservator shall prepare
18 and file with the court an inventory of the ~~estate owned by~~ ASSETS OF the
19 protected person on the date of the conservator's appointment, listing it
20 with reasonable detail and indicating the fair market value OF EACH ASSET as
21 of the date of appointment ~~of each item listed~~. THE CONSERVATOR SHALL ATTACH
22 TO THE INVENTORY A COPY OF THE PROTECTED PERSON'S CONSUMER CREDIT REPORT FROM
23 A CREDIT REPORTING AGENCY THAT IS DATED WITHIN NINETY DAYS BEFORE THE FILING
24 OF THE INVENTORY.

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.

31 C. UNLESS OTHERWISE ORDERED BY THE COURT, A PERSON WHO IS ENTITLED TO
32 NOTICE OF THE CONSERVATOR'S ANNUAL ACCOUNT PURSUANT TO SECTION 14-5419,
33 SUBSECTION C MAY REQUEST IN WRITING THAT THE CONSERVATOR DO ONE OF THE
34 FOLLOWING NOT MORE THAN ONCE EVERY THIRTY DAYS:

35 1. ALLOW THE PERSON TO VIEW THE PROTECTED PERSON'S FINANCIAL RECORDS,
36 THE CONSERVATOR'S BILLING STATEMENTS, THE BILLING STATEMENTS OF THE
37 CONSERVATOR'S ATTORNEY OR OTHER RECORDS RELATED TO THE PROTECTED PERSON UNDER
38 THE CONSERVATOR'S CONTROL.

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

44 3. PROVIDE A REPORT OF RECEIPTS AND DISPERSEMENTS OF THE
45 CONSERVATORSHIP.

1 Sec. 24. Section 14-5419, Arizona Revised Statutes, is amended to
2 read:

3 14-5419. Accounts; definition

4 A. Except as provided pursuant to subsection F of this section, every
5 conservator must account to the court for the administration of the estate
6 not less than annually on the anniversary date of qualifying as conservator
7 and also on resignation or ~~removal~~ SUBSTITUTION, and on termination of the
8 protected person's minority or disability, except that for good cause shown
9 on the application of an interested person, the court may relieve the
10 conservator of filing annual or other accounts by an order entered in the
11 minutes.

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

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

18 1. The protected person.

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

21 3. If no guardian has been appointed or the same person is serving as
22 both guardian and conservator, a spouse or, if the spouse is the conservator,
23 there is no spouse or the spouse is incapacitated, a parent or an adult child
24 who is not serving as a conservator.

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

28 D. An order, made on notice and a hearing, allowing an intermediate
29 account of a conservator, adjudicates as to the conservator's liabilities
30 concerning the matters considered in connection therewith. An order, made on
31 notice and a hearing, allowing a final account adjudicates as to all
32 previously unsettled liabilities of the conservator to the protected person
33 or the protected person's successors relating to the conservatorship.

34 E. In any case in which the estate consists, in whole or in part, of
35 benefits paid by the veterans administration to the conservator or the
36 conservator's predecessor for the benefit of the protected person, the
37 veterans administration office that has jurisdiction over the area is
38 entitled to a copy of any account filed under ~~chapter 5, article 4~~ of this
39 ~~title~~ ARTICLE. Each year in which an account is not filed with the court,
40 the conservator, if requested, shall submit an account to the appropriate
41 veterans administration office. If an account is not submitted as requested,
42 or if it is found unsatisfactory by the veterans administration, the court on
43 receipt of notice of the deficiency shall require the conservator to
44 immediately file an account with the court promptly.

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

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

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

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

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

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

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

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

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

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

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

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

40 I. Unless proceedings are pending against the conservator, on the
41 filing of the statement described in subsection F of this section and the
42 affidavit described in subsection H of this section, the court shall enter an
43 order terminating the conservatorship, discharging the conservator from all
44 liabilities relating to the conservatorship, exonerating and releasing any

1 bond or other security posted by the conservator and releasing any
2 restrictions previously imposed on the assets of the conservatorship.

3 J. For the purposes of this section, "protected person's successors"
4 means:

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

7 2. If the conservator and the personal representative of the protected
8 person's estate are the same person and if the protected person died
9 intestate, the protected person's heirs.

10 3. If the conservator and the personal representative of the protected
11 person's estate are the same person and if the protected person died testate,
12 the devisees under the protected person's will that has been admitted to
13 probate.

14 Sec. 25. Section 14-5651, Arizona Revised Statutes, is amended to
15 read:

16 14-5651. Fiduciaries; licensure; qualifications; conduct;
17 removal; exemption; definitions

18 A. Except as provided by subsection G of this section, the superior
19 court shall not appoint a fiduciary unless that person is licensed by the
20 supreme court. The supreme court shall administer the licensure program and
21 shall adopt rules and establish and collect fees necessary for its
22 implementation. The supreme court shall deposit, pursuant to sections 35-146
23 and 35-147, the monies collected pursuant to this subsection in the
24 confidential intermediary and fiduciary fund established by section
25 8-135. At a minimum the rules adopted pursuant to this subsection shall
26 include the following:

27 1. A code of conduct.

28 2. A requirement that fiduciaries post a cash deposit or surety bond
29 with the supreme court.

30 3. A REQUIREMENT THAT ON APPOINTMENT A FIDUCIARY WHO IS SERVING AS A
31 GUARDIAN OR CONSERVATOR MUST PROVIDE WRITTEN INFORMATION TO THE WARD OR
32 PROTECTED PERSON AND ALL PERSONS ENTITLED TO NOTICE PURSUANT TO SECTION
33 14-5309 OR 14-5405 THAT THE FIDUCIARY IS LICENSED BY THE SUPREME COURT AND
34 SUBJECT TO REGULATION BY THE SUPREME COURT. THE LANGUAGE OF THE WRITTEN
35 INFORMATION PROVIDED BY THE FIDUCIARY SHALL BE PRESCRIBED BY THE SUPREME
36 COURT AND SHALL INCLUDE REFERENCE TO THE CODE OF CONDUCT THAT ALL LICENSED
37 FIDUCIARIES MUST FOLLOW.

38 ~~3.~~ 4. Minimum qualifications.

39 ~~4.~~ 5. Biennial renewal of licensure.

40 B. As a condition of appointment, the supreme court shall require each
41 applicant for the position of fiduciary to submit a full set of fingerprints
42 to the supreme court for the purpose of obtaining a state and federal
43 criminal records check to determine the suitability of the applicant pursuant
44 to section 41-1750 and Public Law 92-544. The department of public safety
45 may exchange this fingerprint data with the federal bureau of investigation.

- 1 C. An applicant for licensure must:
2 1. Be at least twenty-one years of age.
3 2. Be a citizen of this country.
4 3. Not have been convicted of a felony.
5 4. Attest that the applicant has not been found civilly liable in an
6 action that involved fraud, misrepresentation, material omission,
7 misappropriation, theft or conversion.
8 5. Attend an initial session and thereafter biennial training sessions
9 prescribed by the supreme court on the duties of a fiduciary.
10 6. Consent in the application form to the jurisdiction of the courts
11 of this state for all actions arising under this article or article 6 of this
12 chapter and appoint the fiduciary program coordinator as the lawful agent for
13 the purpose of accepting service of process in any action, suit or proceeding
14 that relates to the duties of a fiduciary. The program coordinator shall
15 transmit by registered mail to the person's last known address the lawful
16 service of process accepted by the program coordinator. Notwithstanding the
17 provisions of this paragraph, service of process on a public fiduciary or the
18 department of veterans' services shall be made pursuant to the Arizona rules
19 of civil procedure.
20 D. The superior court shall, and any person may, notify the supreme
21 court if it appears that a fiduciary has violated a rule adopted under this
22 section. The supreme court shall then conduct an investigation and hearing
23 pursuant to its rules. If the supreme court determines that the fiduciary
24 committed the violation it may revoke the fiduciary's license or impose other
25 sanctions, including civil penalties, and shall notify the superior court in
26 each county of this action. The supreme court may then also require the
27 fiduciary to forfeit a cash deposit or surety bond to the extent necessary to
28 compensate the court for the expenses it incurred to conduct the
29 investigation and hearing.
30 E. A person who in good faith provides information or testimony
31 regarding a fiduciary's misconduct or lack of professionalism is not subject
32 to civil liability.
33 F. Persons appointed by the chief justice to serve in an advisory
34 capacity to the fiduciary program, staff of the fiduciary program, hearing
35 officers and employees of the administrative office of the courts who
36 participate in the fiduciary program are immune from civil liability for
37 conduct in good faith that relates to their official duties.
38 G. The requirements of this section do not apply to a financial
39 institution. This exemption does not prevent the superior court from
40 appointing a financial institution as a fiduciary. The supreme court may
41 exempt a fiduciary from the requirements of this section for good cause.
42 H. This section does not grant any fiduciary or any applicant for a
43 license as a fiduciary the right to a direct appeal to the supreme court.

1 I. The supreme court may receive and expend monies from the
2 confidential intermediary and fiduciary fund established by section 8-135 for
3 the purposes of performing the duties related to fiduciaries pursuant to this
4 section.

5 J. This section applies to any supreme court licensed fiduciary who is
6 acting as a guardian, conservator, personal representative, trustee or agent
7 under a power of attorney, whether or not that person is acting pursuant to
8 court appointment.

9 K. For the purposes of this section:

10 1. "Fiduciary" means:

11 (a) A person who for a fee serves as a court appointed guardian or
12 conservator for one or more persons who are unrelated to the fiduciary.

13 (b) A person who for a fee serves as a court appointed personal
14 representative and who is not related to the decedent, is not nominated in a
15 will or by a power conferred in a will and is not a devisee in the will.

16 (c) A public fiduciary appointed pursuant to section 14-5601.

17 (d) The department of veterans' services.

18 2. "Financial institution" means a bank that is insured by the federal
19 deposit insurance corporation and chartered under the laws of the United
20 States or any state, a trust company that is owned by a bank holding company
21 that is regulated by the federal reserve board or a trust company that is
22 chartered under the laws of the United States or this state.

23 Sec. 26. Section 14-5652, Arizona Revised Statutes, is amended to
24 read:

25 14-5652. Attorneys; fiduciary duties

26 A. EXCEPT AS PRESCRIBED PURSUANT TO SECTION 14-1104 AND absent an
27 express agreement to the contrary, the performance by an attorney of legal
28 services for a fiduciary, settlor or testator does not by itself establish a
29 duty in contract or tort or otherwise to any third party. For the purposes of
30 this subsection, third party does not apply to the personal representative,
31 settlor or testator.

32 B. An attorney who acts as a personal representative or trustee shall
33 disclose to all adult persons who have an interest in the estate or trust the
34 names of any person who has an interest in that estate or trust to whom the
35 attorney is currently rendering or has in the past rendered legal services.
36 The attorney must make this disclosure in writing within a reasonable time
37 after learning that a client or former client has an interest in the estate
38 or trust. The representation of an interested person by that attorney is not
39 grounds for removing the attorney as the personal representative or trustee
40 unless the attorney is unable to perform the fiduciary duties as personal
41 representative or trustee without violating the attorney's ethical
42 responsibilities to the client or former client.

1 Sec. 27. Section 14-10706, Arizona Revised Statutes, is amended to
2 read:

3 14-10706. Removal of trustee

4 A. The settlor, a cotrustee or a beneficiary may request the court to
5 remove a trustee or a trustee may be removed by the court on its own
6 initiative.

7 B. The court may remove a trustee if:

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

9 2. Lack of cooperation among cotrustees substantially impairs the
10 administration of the trust.

11 3. Because of unfitness, unwillingness or persistent failure of the
12 trustee to administer the trust for the benefit of the beneficiaries, the
13 court determines that removal of the trustee best serves the interests of the
14 beneficiaries.

15 4. There has been a substantial change of circumstances or removal is
16 requested by all of the qualified beneficiaries, the court finds that removal
17 of the trustee best serves the interests of all of the beneficiaries and is
18 not inconsistent with a material purpose of the trust and a suitable
19 cotrustee or successor trustee is available.

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

24 D. ON PETITION OF A BENEFICIARY WHO IS ALSO A SETTLOR OF A TRUST,
25 INCLUDING A BENEFICIARY FOR WHOM A GUARDIAN OR CONSERVATOR HAS BEEN
26 APPOINTED, THE COURT SHALL SUBSTITUTE A TRUSTEE AND APPOINT A SUCCESSOR IF
27 THE SUBSTITUTION IS IN THE BEST INTEREST OF THE BENEFICIARY. THE TRUSTEE AND
28 THE TRUSTEE'S ATTORNEY MAY BE COMPENSATED FROM THE TRUST FOR DEFENDING
29 AGAINST A PETITION FOR SUBSTITUTION ONLY FOR THE AMOUNT ORDERED BY THE COURT
30 AND ON PETITION BY THE TRUSTEE OR THE TRUSTEE'S ATTORNEY. WHEN SUBSTITUTING
31 A TRUSTEE AND APPOINTING A SUCCESSOR, THE COURT MAY APPOINT AN INDIVIDUAL
32 NOMINATED BY THE BENEFICIARY IF THE BENEFICIARY HAS, IN THE OPINION OF THE
33 COURT, SUFFICIENT MENTAL CAPACITY TO MAKE AN INTELLIGENT CHOICE.

34 Sec. 28. Effective date

35 This act is effective from and after December 31, 2011.

APPROVED BY THE GOVERNOR APRIL 29, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 29, 2011.

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 19, 20 11

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of April, 20 11

at 12:00 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 29th day of

April

at 2:25 o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 29th day of April, 20 11

at 7:30 o'clock P. M.

[Signature]
Secretary of State

S.B. 1499