

# New Arizona Probate Bills

## April 2011

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1. **SB 1499: Probate's a Disease...This Bill is the Cure**
  - a. Effective 12/31/2011 (everything else on this list begins July 20, 2011)
  - b. 14-1101 (added)
    - i. Requires Supreme Court prescribed training for any probate judicial officer
  - c. 14-1104 (added): **Management of Costs**
    - i. Fiduciary must prudently manage costs and preserve assets, and *protect against any costs that exceed probable benefits to the ward/beneficiaries, etc.*
    - ii. GAL, fiduciary, fiduciary's attorney, and court appointed attorney must avoid excessive or unproductive activities, and affirmatively assess financial cost of pursuing any action and compare to reasonably expected benefit.
    - iii. Market rates are proper "consideration" for court and fiduciary during initial appointment. (I THINK this means the court should take into account fees and costs during appointment-CHW).
  - d. 14-1105 (added): **Remedies for Unreasonable Action**
    - i. If a party/their attorney, engages in Unreasonable Conduct, they OR THEIR ATTORNEY, may be ordered to pay some or all of the fees or expenses.
  - e. 14-1108 **ADR**, court may require it.
  - f. 14-1109 **Repetitive Filings**
    - i. If you file a similar pleading within 12 months, without justification for a change, court can automatically deny it without hearing, objection.

- g. 14-1201 (Added definitions),
  - i. Basis for Compensation is hourly rate, fixed fee, or contingency fee.
  - ii. Guardian Ad Litem now includes 1408 representative, which was exactly what it sounded like.
- h. 14-5109 **Full Disclosure-It's not just for discovery**
  - i. When any fiduciary, GAL, or attorney appears in a proceeding who expects to get paid from estate in a G or C, ***they must give written notice of the basis of compensation and give notice to all parties interested.*** If the basis of compensation changes, they must give notice at least thirty days before that change begins. All compensation must be reasonable and necessary, and consider best interests. This statute gives a list of factors, including whether services provided any benefit or attempted to advance best interest of the ward. The party charging has BURDEN of providing reasonableness of compensation.
- i. 14-5110 (added): If you seek to be paid from estate, your claim must be submitted to the fiduciary in writing within four months of the later of the service or the appointment.
- j. 14-5303 (small addition), codifies that the court may appoint the existing physician, RN or psychologist of putative protectee, which is already the practice.
- k. 14-5307 (amended), begins introducing the concept of "Substitution" of a G, and clarifies that a G can be substituted without showing they did anything wrong, if in the best interest of the ward. Also limits the ability to be compensated for defending against such a substitution. Prohibits any third party from filing that the ward is no longer incapacitated or substituting G within one year without affidavits. 14-5415 does the same thing for a C.
- l. 14-5308 (amended): The court appointed investigator or related party can't be appointed as attorney, fiduciary, or other professional.
- m. 14-5311 (amended): puts qualification on priority for guardian of person nominated under POA, also puts in cost of a professional fiduciary as reason to pass them over, requires court making finding why someone with higher priority was passed over. 14-5410 makes this same change for a C.
- n. 14-5418 (amended), requires Conservator to attach to inventory the protected party's credit report.
  - i. Anyone entitled to see annual account may request the following once every thirty: view or receive copies of billing reports, financial records, attorney's billing records, and copies of receipts and disbursements.

- o. 14-5651 (amended), requires any licensed fiduciary to give written information ward and any parties entitled to notice that they are licensed by supreme court and subject to code of conduct. Format TBD by AZ Supreme Court.
- p. 14-5652 (amended), clarifies that 14-1104 prudent management of costs trumps our anti-Fogleman statute.
- q. 14-10706 (amended), adds to Trustee removal provisions the same concept of substitution, and limitation against a defense thereto.

2. **SB 1081: Proactive G's & C's: Planning ahead**

- a. 14-5301 (replaced)
  - i. Provides for testamentary appointment for incapacitated adult child or spouse, as in prior version, but adds pre-emptive appointment, adds ability to do by non-testamentary instrument.
- b. 14-5301.01 (added)
  - i. Provides parent/spouse's appointment is effective at appointer's death, OR incapacity,
- c. 14-5301.02 (added)
  - i. Guardianship continues until terminated, without regard to termination
- d. 14-5301.03 (added)
  - i. Perhaps the *raison d'être* for much of this bill, allows G proceedings for anyone over 17 to be initiated and effective upon turning age 18.
- e. 14-5301.04 (added)
  - i. Same as .03, for C.
- f. 14-5401 (revised)
  - i. Allows court to continue Minor C past age 18, starting at age 17.

3. **HB 2402: Driving and Title 36**

- a. 14-5304.01 (added): This statute clarifies the right of a ward to drive when there is a guardian. The court may suspend the right to drive, but it can also decide it is not necessary upon medical evidence that the basis of the guardianship doesn't impact the ability to safely drive. If there is a temporary G, it has to specifically determine it's unsafe to drive to suspend driving, but it says the court can order the ward not to drive as an alternative.
- b. 14-5312.01 (amended): This statute helpfully deals with the "extended" guardianship power to give the guardian the ability to consent to inpatient mental health treatment in a level one facility. Where the current statute requires that

such treatment be “currently” necessary, this requires it be likely to be necessary.

- c. 36-540 (amended): This statute allows the court in a Title 36 proceeding to appoint a temporary guardian or conservator

4. **HB 2121: Guardians’ Extended Mental Health Care Powers**

- a. This statute provides some guidance and assistance for a Guardian who has specifically received the “extra” powers to consent to the ward’s mental health care treatment in a level one facility, as well as for an Agent under a mental health care power of attorney authorizing similar treatment.

5. **HB 2403: Technical Corrections/Clean up of ATC**

- a. 14-10202: Allows Arizona law to apply to a Trust if the Trustee declares it to be.
- b. 14-10505:
  - i. Provides that ANY lapse or waiver of a power of withdrawal does not make you a Settlor. Previously limited to the 5 x 5 power.
  - ii. Simplifies the spousal asset protection trust.
- c. 14-10819: Specifically says that a Decanting Power can be exercised mechanically through a Restatement.
- d. 33-1126: Specifically answers the question of whether an INHERITED IRA or other retirement plan is exempt from creditors. It is now.

6. **HB 2424: Probate Advisory Panel**

- a. Creates the Probate Advisory Panel, 2 public members who are guardians of adult children, 2 public members who are conservators of parents, one public fiduciary from a small county, one licensed fiduciary from a small county, 1 attorney, 1 judge, 1 Superior Court Clerk.
- b. Will hold a public hearing, make a report of finding and recommendations each year.

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

# 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           ~~C.~~ 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.

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

# 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)

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

2 Section 1. Repeal

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

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

6 14-5301. Appointment of guardian by will or other writing;  
7 objections; notice

8 A. A PARENT, BY WILL OR OTHER SIGNED WRITING, MAY APPOINT A GUARDIAN  
9 FOR AN UNMARRIED CHILD WHO THE PARENT BELIEVES IS AN INCAPACITATED PERSON,  
10 SPECIFY DESIRED LIMITATIONS ON THE POWERS TO BE GIVEN TO THE GUARDIAN AND  
11 REVOKE OR AMEND THE APPOINTMENT BEFORE CONFIRMATION BY THE COURT.  
12 APPOINTMENTS BECOME EFFECTIVE ONLY AS PRESCRIBED PURSUANT TO SECTION  
13 14-5301.01, SUBSECTION A.

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

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

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

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

43 14-5301.01. Appointment of guardian by will or other writing;  
44 effectiveness; acceptance; confirmation

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

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

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

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

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

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

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

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

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

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

41 14-5301.02. Appointment and status of guardian

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



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

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

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

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. The investigator and the person conducting the examination shall  
20 submit their reports in writing to the court. In addition to information  
21 required under subsection D, the court may direct that either report include  
22 other information the court deems appropriate. The investigator also shall  
23 interview the person seeking appointment as guardian, visit the present place  
24 of abode of the alleged incapacitated person and the place where it is  
25 proposed that the person will be detained or reside if the requested  
26 appointment is made and submit a report in writing to the court. The alleged  
27 incapacitated person is entitled to be present at the hearing and to see or  
28 hear all evidence bearing on that person's condition. The alleged  
29 incapacitated person is entitled to be represented by counsel, to present  
30 evidence, to cross-examine witnesses, including the court-appointed examiner  
31 and investigator, and to trial by jury. The court may determine the issue at  
32 a closed hearing if the alleged incapacitated person or that person's counsel  
33 so requests.

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

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

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

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

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

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

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

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

11 14-5401. Protective proceedings

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

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

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

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

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

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

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

43 14-5405. Notice in conservatorship proceedings

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

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

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

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

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

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

15 B. At least fourteen days before the hearing notice shall be served  
16 personally on the protected person or the person allegedly in need of  
17 protection and that person's spouse and parents if they can be found within  
18 the state. Notice to the spouse and parents, if they cannot be found within  
19 the state, and to all other persons except the protected person or the person  
20 allegedly in need of protection shall be given in accordance with section  
21 14-1401. Waiver of notice by the protected person or the person allegedly in  
22 need of protection is not effective unless the protected person or the person  
23 allegedly in need of protection attends the hearing.

24 Sec. 7. Section 14-5407, Arizona Revised Statutes, is amended to read:  
25 14-5407. Procedure concerning hearing and order on original  
26 petition

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

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

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

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

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

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

18 Sec. 8. Section 14-5416, Arizona Revised Statutes, is amended to read:  
19 14-5416. Petitions for orders subsequent to appointment

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

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

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

27 3. Directing distribution.

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

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

32 ~~5-~~ 6. Granting other appropriate relief.

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

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

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

42 Sec. 9. Section 14-5430, Arizona Revised Statutes, is amended to read:  
43 14-5430. Termination of proceeding

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

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

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

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

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

# HOUSE BILL 2402

AN ACT

AMENDING TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5304.01; AMENDING SECTIONS 14-5312.01, 36-509 AND 36-540, ARIZONA REVISED STATUTES; RELATING TO GUARDIANS OF INCAPACITATED PERSONS.

(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 5, article 3, Arizona Revised Statutes,  
3 is amended by adding section 14-5304.01, to read:

4 14-5304.01. Effect of appointment of guardian on privilege to  
5 operate a motor vehicle

6 A. ON THE APPOINTMENT OF A GUARDIAN, THE COURT MAY DETERMINE THAT THE  
7 WARD'S PRIVILEGE TO OBTAIN OR RETAIN A DRIVER LICENSE SHOULD BE SUSPENDED AND  
8 ISSUE AN ORDER SUSPENDING THE PRIVILEGE.

9 B. IF THE COURT IS PRESENTED WITH SUFFICIENT MEDICAL OR OTHER  
10 EVIDENCE TO ESTABLISH THAT THE WARD'S INCAPACITY DOES NOT PREVENT THE WARD  
11 FROM SAFELY OPERATING A MOTOR VEHICLE, IT MAY DECLINE TO SUSPEND THE WARD'S  
12 PRIVILEGE TO OBTAIN OR RETAIN A DRIVER LICENSE AND ISSUE AN ORDER ALLOWING  
13 THE WARD TO OBTAIN OR RETAIN A DRIVER LICENSE.

14 C. THE FINDING OF INTERIM INCAPACITY PURSUANT TO SECTION 14-5310 DOES  
15 NOT CAUSE THE SUSPENSION OF THE WARD'S PRIVILEGE TO OBTAIN OR RETAIN A DRIVER  
16 LICENSE OR TO OPERATE A MOTOR VEHICLE PURSUANT TO SECTION 28-3153 UNLESS THE  
17 COURT ALSO FINDS THAT THE INTERIM INCAPACITY AFFECTS THE WARD'S ABILITY TO  
18 SAFELY OPERATE A MOTOR VEHICLE AND THAT THE PRIVILEGE SHOULD BE IMMEDIATELY  
19 SUSPENDED. IN LIEU OF ORDERING THE WARD'S DRIVER LICENSE SUSPENDED, THE  
20 COURT MAY ORDER THE WARD NOT TO DRIVE A MOTOR VEHICLE UNTIL THE WARD PRESENTS  
21 SUFFICIENT MEDICAL OR OTHER EVIDENCE TO ESTABLISH THAT THE WARD'S INTERIM  
22 INCAPACITY DOES NOT AFFECT THE WARD'S ABILITY TO SAFELY OPERATE A MOTOR  
23 VEHICLE. THE WARD MAY PRESENT THE MEDICAL OR OTHER EVIDENCE BY MOTION TO THE  
24 COURT. THE COURT MAY RULE ON THE MOTION WITHOUT HEARING IF THERE ARE NO  
25 OBJECTIONS TO THE MOTION.

26 D. A WARD WHOSE PRIVILEGE TO OBTAIN OR RETAIN A DRIVER LICENSE HAS  
27 BEEN SUSPENDED OR REVOKED BY COURT ORDER MAY FILE A REQUEST TO TERMINATE THE  
28 SUSPENSION OR REVOCATION AND REINSTATE THE PRIVILEGE. IN REACHING ITS  
29 DECISION THE COURT SHALL CONSIDER MEDICAL EVIDENCE THAT THE WARD'S INCAPACITY  
30 DOES NOT PREVENT THE WARD FROM SAFELY OPERATING A MOTOR VEHICLE AND MAY  
31 CONSIDER OTHER EVIDENCE, INCLUDING A CERTIFICATE OF GRADUATION FROM AN  
32 ACCREDITED DRIVING SCHOOL WITH A RECOMMENDATION THAT THE WARD SHOULD BE  
33 EXTENDED DRIVING PRIVILEGES. IF THE COURT GRANTS THE ORDER TERMINATING THE  
34 SUSPENSION OR REVOCATION AND REINSTATING THE PRIVILEGE, THE WARD MAY APPLY TO  
35 THE DEPARTMENT OF TRANSPORTATION FOR THE ISSUANCE OR REINSTATEMENT OF A  
36 DRIVER LICENSE AND MUST COMPLY WITH ALL APPLICABLE DEPARTMENT RULES.

37 E. AN ORDER TERMINATING A TEMPORARY OR PERMANENT GUARDIANSHIP IS AN  
38 ORDER TERMINATING ANY INCAPACITY PREVIOUSLY ADJUDICATED AND VACATES ANY  
39 PREVIOUS ORDERS SUSPENDING OR REVOKING THE PERSON'S PRIVILEGE TO OBTAIN OR  
40 RETAIN A DRIVER LICENSE. THE PERSON MAY APPLY TO THE DEPARTMENT OF  
41 TRANSPORTATION FOR THE ISSUANCE OR REINSTATEMENT OF A DRIVER LICENSE AND MUST  
42 COMPLY WITH ALL APPLICABLE DEPARTMENT RULES.



1 G. Within twenty-four hours after the facility receives any writing in  
2 which the ward requests release from the facility, any change in placement or  
3 a change in the type or duration of treatment, the facility shall forward  
4 this information to the ward's attorney.

5 H. All health care providers, treatment facilities and regional  
6 behavioral health authorities shall allow the ward's attorney access to all  
7 of the ward's medical, psychiatric, psychological and other treatment  
8 records.

9 I. The ward's guardian shall place the ward in a least restrictive  
10 treatment alternative within ten days after the guardian is notified by the  
11 medical director of the inpatient facility that the ward no longer needs  
12 inpatient care. The ward, a representative of the inpatient treatment  
13 facility, the ward's attorney, the ward's physician or any other interested  
14 person may petition the court to order the facility to discharge the ward to  
15 a least restrictive treatment alternative if the guardian does not act  
16 promptly to do so.

17 J. If the ward is in a behavioral health treatment facility at the  
18 time of the initial hearing on the petition for appointment of a guardian,  
19 the court investigator and the ward's attorney shall advise the court of the  
20 appropriateness of the placement.

21 K. An attorney appointed pursuant to section 14-5303, subsection C  
22 remains the attorney of record until the attorney is discharged by the court.  
23 The court shall ensure that a ward whose guardian has been granted mental  
24 health treatment authority is represented by an attorney at all times the  
25 guardian has that authority. Unless the court finds that the ward has  
26 insufficient assets to meet the ward's reasonable and necessary care and  
27 living expenses, the ward shall pay the attorney's reasonable fees.

28 L. If deemed necessary to adequately assess a request for mental  
29 health treatment authority or to review the ward's placement in a behavioral  
30 health treatment facility, the court may order an independent evaluation by  
31 either a physician who is licensed pursuant to title 32, chapter 13 or 17 and  
32 who is a specialist in psychiatry or a psychologist who is licensed pursuant  
33 to title 32, chapter 19.1. If the ward has insufficient funds to pay the  
34 total cost of this evaluation, the court may deem all or any part of the  
35 evaluator's fee to be a county expense after determining the reasonableness  
36 of that fee.

37 M. Instead of ordering an independent evaluation pursuant to  
38 subsection L of this section, the court may accept a report conducted on  
39 behalf of the behavioral health treatment facility if the court finds that  
40 the report meets the requirements of an independent evaluation.

41 N. The court may decide that the ward's right to retain or obtain a  
42 driver license and any other civil right that may be suspended by operation  
43 of law is not affected by the appointment of a guardian.

1           O. If the court grants the guardian the authority to consent to  
2 inpatient mental health care and treatment pursuant to this section, the  
3 medical director of a level one behavioral health facility licensed by the  
4 department of health services may admit the ward at the guardian's request.

5           P. A guardian who is authorized by the court to consent to inpatient  
6 mental health care and treatment pursuant to this section shall file with the  
7 annual report of the guardian required pursuant to section 14-5315 an  
8 evaluation report by a physician or a psychologist who meets the requirements  
9 of subsection B of this section. The evaluation report shall indicate if the  
10 ward ~~currently-needs~~ WILL LIKELY NEED inpatient mental health care and  
11 treatment WITHIN THE PERIOD OF THE AUTHORITY GRANTED PURSUANT TO THIS  
12 SECTION. If the guardian does not file the evaluation report or if the  
13 report indicates that the ward ~~does~~ WILL not LIKELY need inpatient mental  
14 health care and treatment, the guardian's authority to consent to this  
15 treatment ceases ON THE EXPIRATION OF THE PERIOD SPECIFIED IN THE PRIOR COURT  
16 ORDER. If the report ~~indicates that the ward currently-needs this~~ SUPPORTS  
17 THE CONTINUATION OF THE GUARDIAN'S AUTHORITY TO CONSENT TO INPATIENT  
18 treatment, THE COURT MAY ORDER THAT the guardian's authority to consent to  
19 this treatment continues. If the report supports the continuation of the  
20 guardian's authority to consent to this treatment, the ward's attorney shall  
21 review the report with the ward. The ward may contest the continuation of  
22 the guardian's authority by filing a request for a court hearing within ten  
23 business days after the report is filed. The court shall hold this hearing  
24 within thirty calendar days after it receives the request. The guardian's  
25 authority continues pending the court's ruling on the issue. At the hearing  
26 the guardian has the burden of proving by clear and convincing evidence that  
27 the ward is ~~currently~~ LIKELY TO BE in need of inpatient mental health care  
28 and treatment WITHIN THE PERIOD OF THE AUTHORITY GRANTED PURSUANT TO THIS  
29 SECTION.

30           Q. The court may discharge an attorney who was appointed pursuant to  
31 section 14-5303, subsection C subsequent to the appointment of a guardian if  
32 it clearly appears from specific facts presented by affidavit or verified  
33 petition that continued representation of the ward is no longer necessary or  
34 desirable. The factual basis must include, at a minimum, consideration of  
35 the following:

- 36           1. The nature and history of the ward's illness.
- 37           2. The ward's history of hospitalization.
- 38           3. The ward's current and anticipated living arrangements.
- 39           4. Whether the ward's inpatient treatment is anticipated to be a  
40 one-time hospitalization for the purpose of stabilizing the ward's condition  
41 and further hospitalizations are not likely to be necessary.
- 42           5. Whether the ward's current and anticipated living arrangements are  
43 the least restrictive alternatives possible.

1           Sec. 3. Section 36-509, Arizona Revised Statutes, is amended to read:  
2           36-509. Confidential records

3           A. A health care entity must keep records and information contained in  
4 records confidential and not as public records, except as provided in this  
5 section. Records and information contained in records may only be disclosed  
6 to:

7           1. Physicians and providers of health, mental health or social and  
8 welfare services involved in caring for, treating or rehabilitating the  
9 patient.

10           2. Individuals to whom the patient or the patient's health care  
11 decision maker has given authorization to have information disclosed.

12           3. Persons authorized by a court order.

13           4. Persons doing research only if the activity is conducted pursuant  
14 to applicable federal or state laws and regulations governing research.

15           5. The state department of corrections in cases in which prisoners  
16 confined to the state prison are patients in the state hospital on authorized  
17 transfers either by voluntary admission or by order of the court.

18           6. Governmental or law enforcement agencies if necessary to:

19           (a) Secure the return of a patient who is on unauthorized absence from  
20 any agency where the patient was undergoing evaluation and treatment.

21           (b) Report a crime on the premises.

22           (c) Avert a serious and imminent threat to an individual or the  
23 public.

24           7. Persons, including family members, actively participating in the  
25 patient's care, treatment or supervision. A health care provider may only  
26 release information relating to the patient's diagnosis, prognosis, need for  
27 hospitalization, anticipated length of stay, discharge plan, medication,  
28 medication side effects and short-term and long-term treatment goals. A  
29 health care provider may make this release only after the treating  
30 professional or that person's designee interviews the patient or the  
31 patient's health care decision maker and the patient or the patient's health  
32 care decision maker does not object, unless federal or state law permits the  
33 disclosure. If the patient does not have the opportunity to object to the  
34 disclosure because of incapacity or an emergency circumstance and the  
35 patient's health care decision maker is not available to object to the  
36 release, the health care provider in the exercise of professional judgment  
37 may determine if the disclosure is in the best interests of the patient and,  
38 if so, may release the information authorized pursuant to this paragraph. A  
39 decision to release or withhold information is subject to review pursuant to  
40 section 36-517.01. The health care provider must record the name of any  
41 person to whom any information is given under this paragraph.

42           8. A state agency that licenses health professionals pursuant to title  
43 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records in the  
44 course of investigating complaints of professional negligence, incompetence  
45 or lack of clinical judgment.

- 1           9. A state or federal agency that licenses health care providers.
- 2           10. A governmental agency or a competent professional, as defined in
- 3 section 36-3701, in order to comply with chapter 37 of this title.
- 4           11. Human rights committees established pursuant to title 41, chapter
- 5 35. Any information released pursuant to this paragraph shall comply with
- 6 the requirements of section 41-3804 and applicable federal law and shall be
- 7 released without personally identifiable information unless the personally
- 8 identifiable information is required for the official purposes of the human
- 9 rights committee. Case information received by a human rights committee
- 10 shall be maintained as confidential. For the purposes of this paragraph,
- 11 "personally identifiable information" includes a person's name, address, date
- 12 of birth, social security number, tribal enrollment number, telephone or
- 13 telefacsimile number, driver license number, places of employment, school
- 14 identification number and military identification number or any other
- 15 distinguishing characteristic that tends to identify a particular person.
- 16           12. A patient or the patient's health care decision maker pursuant to
- 17 section 36-507.
- 18           13. The department of public safety by the court to comply with the
- 19 requirements of section 36-540, subsection ~~N~~ 0.
- 20           14. A third party payor or the payor's contractor to obtain
- 21 reimbursement for health care, mental health care or behavioral health care
- 22 provided to the patient.
- 23           15. A private entity that accredits the health care provider and with
- 24 whom the health care provider has an agreement requiring the agency to
- 25 protect the confidentiality of patient information.
- 26           16. The legal representative of a health care entity in possession of
- 27 the record for the purpose of securing legal advice.
- 28           17. A person or entity as otherwise required by state or federal law.
- 29           18. A person or entity as permitted by the federal regulations on
- 30 alcohol and drug abuse treatment (42 Code of Federal Regulations part 2).
- 31           19. A person or entity to conduct utilization review, peer review and
- 32 quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.
- 33           20. A person maintaining health statistics for public health purposes
- 34 as authorized by law.
- 35           21. A grand jury as directed by subpoena.
- 36           B. Information and records obtained in the course of evaluation,
- 37 examination or treatment and submitted in any court proceeding pursuant to
- 38 this chapter or title 14, chapter 5 are confidential and are not public
- 39 records unless the hearing requirements of this chapter or title 14, chapter
- 40 5 require a different procedure. Information and records that are obtained
- 41 pursuant to this section and submitted in a court proceeding pursuant to
- 42 title 14, chapter 5 and that are not clearly identified by the parties as
- 43 confidential and segregated from nonconfidential information and records are
- 44 considered public records.

1 C. Notwithstanding subsections A and B of this section, the legal  
2 representative of a patient who is the subject of a proceeding conducted  
3 pursuant to this chapter and title 14, chapter 5 has access to the patient's  
4 information and records in the possession of a health care entity or filed  
5 with the court.

6 Sec. 4. Section 36-540, Arizona Revised Statutes, is amended to read:  
7 36-540. Court options

8 A. If the court finds by clear and convincing evidence that the  
9 proposed patient, as a result of mental disorder, is a danger to self, is a  
10 danger to others, is persistently or acutely disabled or is gravely disabled  
11 and in need of treatment, and is either unwilling or unable to accept  
12 voluntary treatment, the court shall order the patient to undergo one of the  
13 following:

14 1. Treatment in a program of outpatient treatment.

15 2. Treatment in a program consisting of combined inpatient and  
16 outpatient treatment.

17 3. Inpatient treatment in a mental health treatment agency, in a  
18 veterans administration hospital pursuant to article 9 of this chapter, in  
19 the state hospital or in a private hospital, if the private hospital agrees,  
20 subject to the limitations of section 36-541.

21 B. The court shall consider all available and appropriate alternatives  
22 for the treatment and care of the patient. The court shall order the least  
23 restrictive treatment alternative available.

24 C. The court may order the proposed patient to undergo outpatient or  
25 combined inpatient and outpatient treatment pursuant to subsection A,  
26 paragraph 1 or 2 of this section if the court:

27 1. Determines that all of the following apply:

28 (a) The patient does not require continuous inpatient hospitalization.

29 (b) The patient will be more appropriately treated in an outpatient  
30 treatment program or in a combined inpatient and outpatient treatment  
31 program.

32 (c) The patient will follow a prescribed outpatient treatment plan.

33 (d) The patient will not likely become dangerous or suffer more  
34 serious physical harm or serious illness or further deterioration if the  
35 patient follows a prescribed outpatient treatment plan.

36 2. Is presented with and approves a written treatment plan that  
37 conforms with the requirements of section 36-540.01, subsection B. If the  
38 treatment plan presented to the court pursuant to this subsection provides  
39 for supervision of the patient under court order by a mental health agency  
40 that is other than the mental health agency that petitioned or requested the  
41 county attorney to petition the court for treatment pursuant to section  
42 36-531, the treatment plan must be approved by the medical director of the  
43 mental health agency that will supervise the treatment pursuant to subsection  
44 E of this section.

1           D. An order to receive treatment pursuant to subsection A, paragraph 1  
2 or 2 of this section shall not exceed three hundred sixty-five days. The  
3 period of inpatient treatment under a combined treatment order pursuant to  
4 subsection A, paragraph 2 of this section shall not exceed the maximum period  
5 allowed for an order for inpatient treatment pursuant to subsection F of this  
6 section.

7           E. If the court enters an order for treatment pursuant to subsection  
8 A, paragraph 1 or 2 of this section, all of the following apply:

9           1. The court shall designate the medical director of the mental health  
10 treatment agency that will supervise and administer the patient's treatment  
11 program.

12           2. The medical director shall not use the services of any person,  
13 agency or organization to supervise a patient's outpatient treatment program  
14 unless the person, agency or organization has agreed to provide these  
15 services in the individual patient's case and unless the department has  
16 determined that the person, agency or organization is capable and competent  
17 to do so.

18           3. The person, agency or organization assigned to supervise an  
19 outpatient treatment program or the outpatient portion of a combined  
20 treatment program shall be notified at least three days before a referral.  
21 The medical director making the referral and the person, agency or  
22 organization assigned to supervise the treatment program shall share relevant  
23 information about the patient to provide continuity of treatment.

24           4. During any period of outpatient treatment under subsection A,  
25 paragraph 2 of this section, if the court, on motion by the medical director  
26 of the patient's outpatient mental health treatment facility, determines that  
27 the patient is not complying with the terms of the order or that the  
28 outpatient treatment plan is no longer appropriate and the patient needs  
29 inpatient treatment, the court, without a hearing and based on the court  
30 record, the patient's medical record, the affidavits and recommendations of  
31 the medical director, and the advice of staff and physicians or the  
32 psychiatric and mental health nurse practitioner familiar with the treatment  
33 of the patient, may enter an order amending its original order. The amended  
34 order may alter the outpatient treatment plan or order the patient to  
35 inpatient treatment pursuant to subsection A, paragraph 3 of this section.  
36 The amended order shall not increase the total period of commitment  
37 originally ordered by the court or, when added to the period of inpatient  
38 treatment provided by the original order and any other amended orders, exceed  
39 the maximum period allowed for an order for inpatient treatment pursuant to  
40 subsection F of this section. If the patient refuses to comply with an  
41 amended order for inpatient treatment, the court may authorize and direct a  
42 peace officer, on the request of the medical director, to take the patient  
43 into protective custody and transport the patient to the agency for inpatient  
44 treatment. When reporting to or being returned to a treatment agency for  
45 inpatient treatment pursuant to an amended order, the patient shall be

1 informed of the patient's right to judicial review and the patient's right to  
2 consult with counsel pursuant to section 36-546.

3 5. During any period of outpatient treatment under subsection A,  
4 paragraph 2 of this section, if the medical director of the outpatient  
5 treatment facility in charge of the patient's care determines, in concert  
6 with the medical director of an inpatient mental health treatment facility  
7 who has agreed to accept the patient, that the patient is in need of  
8 immediate acute inpatient psychiatric care because of behavior that is  
9 dangerous to self or to others, the medical director of the outpatient  
10 treatment facility may order a peace officer to apprehend and transport the  
11 patient to the inpatient treatment facility pending a court determination on  
12 an amended order under paragraph 4 of this subsection. The patient may be  
13 detained and treated at the inpatient treatment facility for a period of no  
14 more than forty-eight hours, exclusive of weekends and holidays, from the  
15 time that the patient is taken to the inpatient treatment facility. The  
16 medical director of the outpatient treatment facility shall file the motion  
17 for an amended court order requesting inpatient treatment no later than the  
18 next working day following the patient being taken to the inpatient treatment  
19 facility. Any period of detention within the inpatient treatment facility  
20 pending issuance of an amended order shall not increase the total period of  
21 commitment originally ordered by the court or, when added to the period of  
22 inpatient treatment provided by the original order and any other amended  
23 orders, exceed the maximum period allowed for an order for inpatient  
24 treatment pursuant to subsection F of this section. If a patient is ordered  
25 to undergo inpatient treatment pursuant to an amended order, the medical  
26 director of the outpatient treatment facility shall inform the patient of the  
27 patient's right to judicial review and to consult with an attorney pursuant  
28 to section 36-546.

29 F. The maximum periods of inpatient treatment that the court may  
30 order, subject to the limitations of section 36-541, are as follows:

- 31 1. Ninety days for a person found to be a danger to self.
- 32 2. One hundred eighty days for a person found to be a danger to  
33 others.
- 34 3. One hundred eighty days for a person found to be persistently or  
35 acutely disabled.
- 36 4. Three hundred sixty-five days for a person found to be gravely  
37 disabled.

38 G. If, on finding that the patient ~~is gravely disabled~~ MEETS THE  
39 CRITERIA FOR COURT-ORDERED TREATMENT PURSUANT TO SUBSECTION A OF THIS  
40 SECTION, the court also finds that ~~the evidence indicates~~ THERE IS REASONABLE  
41 CAUSE TO BELIEVE THAT THE PATIENT IS AN INCAPACITATED PERSON AS DEFINED IN  
42 SECTION 14-5101 OR IS A PERSON IN NEED OF PROTECTION PURSUANT TO SECTION  
43 14-5401 AND that the patient is or may be in need of guardianship or  
44 conservatorship, or both, the court ~~shall~~ MAY order an investigation  
45 concerning the need for a guardian or conservator, or both, and ~~shall~~ MAY

1 appoint a suitable person or agency to conduct the investigation. The  
2 appointee may include ~~the mental health treatment agency that is providing~~  
3 ~~inpatient or outpatient treatment, a court appointed visitor~~ A COURT  
4 APPOINTED GUARDIAN AD LITEM, AN INVESTIGATOR APPOINTED PURSUANT TO SECTION  
5 14-5308 or the public fiduciary if there is no person willing and qualified  
6 to act in that capacity. The court shall give notice of the appointment to  
7 the appointee within three days of the appointment. The appointee shall  
8 submit the report of the investigation to the court within twenty-one days.  
9 The report shall include recommendations as to who should be guardian or who  
10 should be conservator, or both, and a report of the findings and reasons for  
11 the recommendation. If the investigation and report so indicate, the court  
12 shall order the appropriate person to submit a petition to become the  
13 guardian or conservator, or both, of the patient.

14 ~~H. If, on finding that a patient is gravely disabled, the court also~~  
15 ~~finds that the patient is in need of immediate guardianship for the purpose~~  
16 ~~of protection of the patient or for the purpose of carrying out alternatives~~  
17 ~~to court-ordered treatment, the court may appoint as a temporary guardian a~~  
18 ~~suitable person or the public fiduciary, if there is no person qualified and~~  
19 ~~willing to act in that capacity.~~

20 H. IN ANY PROCEEDING FOR COURT-ORDERED TREATMENT IN WHICH THE PETITION  
21 ALLEGES THAT THE PATIENT IS IN NEED OF A GUARDIAN OR CONSERVATOR AND STATES  
22 THE GROUNDS FOR THAT ALLEGATION, THE COURT MAY APPOINT AN EMERGENCY TEMPORARY  
23 GUARDIAN OR CONSERVATOR, OR BOTH, FOR A SPECIFIC PURPOSE OR PURPOSES  
24 IDENTIFIED IN ITS ORDER AND FOR A SPECIFIC PERIOD OF TIME NOT TO EXCEED  
25 THIRTY DAYS IF THE COURT FINDS THAT ALL OF THE FOLLOWING ARE TRUE:

26 1. THE PATIENT MEETS THE CRITERIA FOR COURT-ORDERED TREATMENT PURSUANT  
27 TO SUBSECTION A OF THIS SECTION.

28 2. THERE IS REASONABLE CAUSE TO BELIEVE THAT THE PATIENT IS AN  
29 INCAPACITATED PERSON AS DEFINED IN SECTION 14-5101 OR IS IN NEED OF  
30 PROTECTION PURSUANT TO SECTION 14-5401, PARAGRAPH 2.

31 3. THE PATIENT DOES NOT HAVE A GUARDIAN OR CONSERVATOR AND THE WELFARE  
32 OF THE PATIENT REQUIRES IMMEDIATE ACTION TO PROTECT THE PATIENT OR THE WARD'S  
33 PROPERTY.

34 4. THE CONDITIONS PRESCRIBED PURSUANT TO SECTION 14-5310, SUBSECTION B  
35 OR SECTION 14-5401.01, SUBSECTION B HAVE BEEN MET.

36 I. THE COURT MAY APPOINT AS A TEMPORARY GUARDIAN OR CONSERVATOR  
37 PURSUANT TO SUBSECTION H OF THIS SECTION A SUITABLE PERSON OR THE PUBLIC  
38 FIDUCIARY IF THERE IS NO PERSON QUALIFIED AND WILLING TO ACT IN THAT  
39 CAPACITY. THE COURT SHALL ISSUE AN ORDER FOR AN INVESTIGATION AS PRESCRIBED  
40 PURSUANT TO SUBSECTION G OF THIS SECTION AND, UNLESS THE PATIENT IS  
41 REPRESENTED BY INDEPENDENT COUNSEL, THE COURT SHALL APPOINT AN ATTORNEY TO  
42 REPRESENT THE PATIENT IN FURTHER PROCEEDINGS REGARDING THE APPOINTMENT OF A  
43 GUARDIAN OR CONSERVATOR. THE COURT SHALL SCHEDULE A FURTHER HEARING WITHIN  
44 FOURTEEN DAYS ON THE APPROPRIATE COURT CALENDAR OF A COURT THAT HAS AUTHORITY  
45 OVER GUARDIANSHIP OR CONSERVATORSHIP MATTERS PURSUANT TO THIS TITLE TO

1 CONSIDER THE CONTINUED NEED FOR AN EMERGENCY TEMPORARY GUARDIAN OR  
2 CONSERVATOR AND THE APPROPRIATENESS OF THE TEMPORARY GUARDIAN OR CONSERVATOR  
3 APPOINTED, AND SHALL ORDER THE APPOINTED GUARDIAN OR CONSERVATOR TO GIVE  
4 NOTICE TO PERSONS ENTITLED TO NOTICE PURSUANT TO SECTION 14-5309, SUBSECTION  
5 A OR SECTION 14-5405, SUBSECTION A. THE COURT SHALL AUTHORIZE CERTIFIED  
6 LETTERS OF TEMPORARY EMERGENCY GUARDIANSHIP OR CONSERVATORSHIP TO BE ISSUED  
7 ON PRESENTATION OF A COPY OF THE COURT'S ORDER. IF A TEMPORARY EMERGENCY  
8 CONSERVATOR OTHER THAN THE PUBLIC FIDUCIARY IS APPOINTED PURSUANT TO THIS  
9 SUBSECTION, THE COURT SHALL ORDER THAT THE USE OF THE MONEY AND PROPERTY OF  
10 THE PATIENT BY THE CONSERVATOR IS RESTRICTED AND NOT TO BE SOLD, USED,  
11 TRANSFERRED OR ENCUMBERED, EXCEPT THAT THE COURT MAY AUTHORIZE THE  
12 CONSERVATOR TO USE MONEY OR PROPERTY OF THE PATIENT SPECIFICALLY IDENTIFIED  
13 AS NEEDED TO PAY AN EXPENSE TO PROVIDE FOR THE CARE, TREATMENT OR WELFARE OF  
14 THE PATIENT PENDING FURTHER HEARING. THIS SUBSECTION AND SUBSECTION H OF  
15 THIS SECTION DO NOT:

16 1. PREVENT THE EVALUATION OR TREATMENT AGENCY FROM SEEKING  
17 GUARDIANSHIP AND CONSERVATORSHIP IN ANY OTHER MANNER ALLOWED BY LAW AT ANY  
18 TIME DURING THE PERIOD OF COURT-ORDERED EVALUATION AND TREATMENT.

19 2. RELIEVE THE EVALUATION OR TREATMENT AGENCY FROM ITS OBLIGATIONS  
20 CONCERNING THE SUSPECTED ABUSE OF A VULNERABLE ADULT PURSUANT TO TITLE 46,  
21 CHAPTER 4.

22 ~~I.~~ J. If, on finding that a patient ~~is gravely disabled~~ MEETS THE  
23 CRITERIA FOR COURT-ORDERED TREATMENT PURSUANT TO SUBSECTION A OF THIS  
24 SECTION, the court also learns that the patient has a guardian appointed  
25 under title 14, the court with notice may impose on the existing guardian  
26 additional duties pursuant to section 14-5312.01. IF THE COURT IMPOSES  
27 ADDITIONAL DUTIES ON AN EXISTING GUARDIAN AS PRESCRIBED IN THIS SUBSECTION,  
28 THE COURT MAY DETERMINE THAT THE PATIENT NEEDS TO CONTINUE TREATMENT UNDER A  
29 COURT ORDER FOR TREATMENT AND MAY ISSUE THE ORDER OR DETERMINE THAT THE  
30 PATIENT'S NEEDS CAN BE ADEQUATELY MET BY THE GUARDIAN WITH THE ADDITIONAL  
31 DUTIES PURSUANT TO SECTION 14-5312.01 AND DECLINE TO ISSUE THE COURT ORDER  
32 FOR TREATMENT. IF AT ANY TIME AFTER THE ISSUANCE OF A COURT ORDER FOR  
33 TREATMENT THE COURT FINDS THAT THE PATIENT'S NEEDS CAN BE ADEQUATELY MET BY  
34 THE GUARDIAN WITH THE ADDITIONAL DUTIES PURSUANT TO SECTION 14-5312.01 AND  
35 THAT A COURT ORDER FOR TREATMENT IS NO LONGER NECESSARY TO ASSURE COMPLIANCE  
36 WITH NECESSARY TREATMENT, THE COURT MAY TERMINATE THE COURT ORDER FOR  
37 TREATMENT. IF THERE IS A COURT ORDER FOR TREATMENT AND A GUARDIANSHIP WITH  
38 ADDITIONAL MENTAL HEALTH AUTHORITY PURSUANT TO SECTION 14-5312.01 EXISTING AT  
39 THE SAME TIME, THE TREATMENT AND PLACEMENT DECISIONS MADE BY THE TREATMENT  
40 AGENCY ASSIGNED BY THE COURT TO SUPERVISE AND ADMINISTER THE PATIENT'S  
41 TREATMENT PROGRAM PURSUANT TO THE COURT ORDER FOR TREATMENT ARE CONTROLLING  
42 UNLESS THE COURT ORDERS OTHERWISE.

43 ~~J.~~ K. The court shall file a report as part of the court record on  
44 its findings of alternatives for treatment.

1           ~~K.~~ L. Treatment shall not include psychosurgery, lobotomy or any  
2 other brain surgery without specific informed consent of the patient or the  
3 patient's legal guardian and an order of the superior court in the county in  
4 which the treatment is proposed, approving with specificity the use of the  
5 treatment.

6           ~~L.~~ M. The medical director or any person, agency or organization used  
7 by the medical director to supervise the terms of an outpatient treatment  
8 plan shall not be held civilly liable for any acts committed by a patient  
9 while on outpatient treatment if the medical director, person, agency or  
10 organization has in good faith followed the requirements of this section.

11           ~~M.~~ N. A peace officer who in good faith apprehends and transports a  
12 patient to an inpatient treatment facility on the order of the medical  
13 director of the outpatient treatment facility pursuant to subsection E,  
14 paragraph 5 of this section ~~shall~~ IS not ~~be~~ subject to civil liability.

15           ~~N.~~ O. If a person has been found, as a result of a mental disorder,  
16 to constitute a danger to self or others or to be persistently or acutely  
17 disabled or gravely disabled and the court enters an order for treatment  
18 pursuant to subsection A of this section, the court shall grant access to the  
19 person's name, date of birth, social security number and date of commitment  
20 to the department of public safety to comply with the requirements of title  
21 13, chapter 31 and title 32, chapter 26.

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

# HOUSE BILL 2211

AN ACT

AMENDING SECTION 14-5312.01, ARIZONA REVISED STATUTES; REPEALING SECTION 14-5312.02, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 14-5312.02; AMENDING SECTION 36-3284, ARIZONA REVISED STATUTES; RELATING TO INPATIENT MENTAL HEALTH CARE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 14-5312.01, Arizona Revised Statutes, is amended to  
3 read:

4 14-5312.01. Inpatient treatment; rights and duties of ward and  
5 guardian

6 A. Except as provided in subsection B of this section, a guardian of  
7 an incapacitated person may consent to psychiatric and psychological care and  
8 treatment, including the administration of psychotropic medications, if the  
9 care and treatment take place outside a level one behavioral health facility  
10 licensed by the department of health services.

11 B. On clear and convincing evidence that the ward is incapacitated as  
12 a result of a mental disorder as defined in section 36-501, and is currently  
13 in need of inpatient mental health care and treatment, the court may  
14 authorize a guardian appointed pursuant to this title to give consent for the  
15 ward to receive inpatient mental health care and treatment, including  
16 placement in a level one behavioral health facility licensed by the  
17 department of health services and medical, psychiatric and psychological  
18 treatment associated with that placement. The evidence shall be supported by  
19 the opinion of a mental health expert who is either a physician licensed  
20 pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry  
21 or a psychologist who is licensed pursuant to title 32, chapter 19.1.

22 C. In making its decision to grant authority to a guardian pursuant to  
23 subsection B of this section, the court shall consider the cause of the  
24 ward's disability and the ward's foreseeable clinical needs. The court shall  
25 limit the guardian's authority to what is reasonably necessary to obtain the  
26 care required for the ward in the least restrictive treatment alternative.  
27 The court may limit the duration of the guardian's authority to consent to  
28 inpatient mental health care and treatment and include other orders the court  
29 determines necessary to protect the ward's best interests.

30 D. Within forty-eight hours after placement of the ward pursuant to  
31 this section, the guardian shall give notice of this action to the ward's  
32 attorney. When the attorney receives this notice the attorney shall assess  
33 the appropriateness of the placement pursuant to section 36-537, subsection B  
34 and section 36-546, subsection H. If requested by the attorney, the court  
35 shall hold a hearing on the appropriateness of the placement within three  
36 days after receiving that request.

37 E. The behavioral health treatment facility shall assess the  
38 appropriateness of the ward's placement every thirty days and shall provide a  
39 copy of the assessment report to the ward's attorney. The ward's attorney  
40 may attend the ward's evaluation, staffing, treatment team and case  
41 management meetings.

42 F. When the ward is admitted to a level one behavioral health  
43 treatment facility pursuant to this section, the guardian shall provide the  
44 facility with the name, address and telephone number of the ward's attorney.  
45 The facility shall include this information in the ward's treatment record.

1 G. Within twenty-four hours after the facility receives any writing in  
2 which the ward requests release from the facility, any change in placement or  
3 a change in the type or duration of treatment, the facility shall forward  
4 this information to the ward's attorney.

5 H. All health care providers, treatment facilities and regional  
6 behavioral health authorities shall allow the ward's attorney access to all  
7 of the ward's medical, psychiatric, psychological and other treatment  
8 records.

9 I. The ward's guardian shall place the ward in a least restrictive  
10 treatment alternative within ~~ten~~ FIVE days after the guardian is notified by  
11 the medical director of the inpatient facility that the ward no longer needs  
12 inpatient care. The ward, a representative of the inpatient treatment  
13 facility, the ward's attorney, the ward's physician or any other interested  
14 person may petition the court to order the facility to discharge the ward to  
15 a least restrictive treatment alternative if the guardian does not act  
16 promptly to do so.

17 J. If the ward is in a behavioral health treatment facility at the  
18 time of the initial hearing on the petition for appointment of a guardian,  
19 the court investigator and the ward's attorney shall advise the court of the  
20 appropriateness of the placement.

21 K. An attorney appointed pursuant to section 14-5303, subsection C  
22 remains the attorney of record until the attorney is discharged by the court.  
23 The court shall ensure that a ward whose guardian has been granted mental  
24 health treatment authority is represented by an attorney at all times the  
25 guardian has that authority. Unless the court finds that the ward has  
26 insufficient assets to meet the ward's reasonable and necessary care and  
27 living expenses, the ward shall pay the attorney's reasonable fees.

28 L. If deemed necessary to adequately assess a request for mental  
29 health treatment authority or to review the ward's placement in a behavioral  
30 health treatment facility, the court may order an independent evaluation by  
31 either a physician who is licensed pursuant to title 32, chapter 13 or 17 and  
32 who is a specialist in psychiatry or a psychologist who is licensed pursuant  
33 to title 32, chapter 19.1. If the ward has insufficient funds to pay the  
34 total cost of this evaluation, the court may deem all or any part of the  
35 evaluator's fee to be a county expense after determining the reasonableness  
36 of that fee.

37 M. Instead of ordering an independent evaluation pursuant to  
38 subsection L of this section, the court may accept a report conducted on  
39 behalf of the behavioral health treatment facility if the court finds that  
40 the report meets the requirements of an independent evaluation.

41 N. The court may decide that the ward's right to retain or obtain a  
42 driver license and any other civil right that may be suspended by operation  
43 of law is not affected by the appointment of a guardian.

44 O. If the court grants the guardian the authority to consent to  
45 inpatient mental health care and treatment pursuant to this section, the

1 medical director of a level one behavioral health facility licensed by the  
2 department of health services may admit the ward at the guardian's request.

3 P. A guardian who is authorized by the court to consent to inpatient  
4 mental health care and treatment pursuant to this section shall file with the  
5 annual report of the guardian required pursuant to section 14-5315 an  
6 evaluation report by a physician or a psychologist who meets the requirements  
7 of subsection B of this section. The evaluation report shall indicate if the  
8 ward currently needs inpatient mental health care and treatment. If the  
9 guardian does not file the evaluation report or if the report indicates that  
10 the ward does not need inpatient mental health care and treatment, the  
11 guardian's authority to consent to this treatment ceases. If the report  
12 indicates that the ward currently needs this treatment, the guardian's  
13 authority to consent to this treatment continues. If the report supports the  
14 continuation of the guardian's authority to consent to this treatment, the  
15 ward's attorney shall review the report with the ward. The ward may contest  
16 the continuation of the guardian's authority by filing a request for a court  
17 hearing within ten business days after the report is filed. The court shall  
18 hold this hearing within thirty calendar days after it receives the request.  
19 The guardian's authority continues pending the court's ruling on the issue.  
20 At the hearing the guardian has the burden of proving by clear and convincing  
21 evidence that the ward is currently in need of inpatient mental health care  
22 and treatment.

23 Q. The court may discharge an attorney who was appointed pursuant to  
24 section 14-5303, subsection C subsequent to the appointment of a guardian if  
25 it clearly appears from specific facts presented by affidavit or verified  
26 petition that continued representation of the ward is no longer necessary or  
27 desirable. The factual basis must include, at a minimum, consideration of  
28 the following:

- 29 1. The nature and history of the ward's illness.
- 30 2. The ward's history of hospitalization.
- 31 3. The ward's current and anticipated living arrangements.
- 32 4. Whether the ward's inpatient treatment is anticipated to be a  
33 one-time hospitalization for the purpose of stabilizing the ward's condition  
34 and further hospitalizations are not likely to be necessary.
- 35 5. Whether the ward's current and anticipated living arrangements are  
36 the least restrictive alternatives possible.

37 Sec. 2. Repeal

38 Section 14-5312.02, Arizona Revised Statutes, is repealed.

39 Sec. 3. Title 14, chapter 5, article 3, Arizona Revised Statutes, is  
40 amended by adding a new section 14-5312.02, to read:

41 14-5312.02. Admission for evaluation or treatment by guardian;  
42 duties of physician or mental health care  
43 provider

44 A. NOTWITHSTANDING THE PROCEDURES AND REQUIREMENTS PRESCRIBED IN TITLE  
45 36, CHAPTER 5, ARTICLES 4 AND 5 RELATING TO INVOLUNTARY COURT-ORDERED

1 EVALUATION OR TREATMENT, IF THE GUARDIAN WHO IS GRANTED THE AUTHORITY TO  
2 CONSENT TO INPATIENT MENTAL HEALTH CARE OR TREATMENT PURSUANT TO SECTION  
3 14-5312.01 HAS REASONABLE CAUSE TO BELIEVE THAT THE WARD IS IN NEED OF  
4 EVALUATION OR TREATMENT, THE GUARDIAN MAY APPLY FOR ADMISSION OF THE WARD FOR  
5 EVALUATION OR TREATMENT AT ANY LEVEL ONE BEHAVIORAL HEALTH FACILITY. THE  
6 GUARDIAN MUST PRESENT THE FACILITY WITH A CERTIFIED COPY, OR A PHOTOCOPY OF  
7 THE CERTIFIED COPY, OF THE GUARDIAN'S LETTERS OF GUARDIANSHIP AND WITH A  
8 SWORN STATEMENT UNDER PENALTY OF PERJURY THAT THE GUARDIAN HAS PRESENTED TO  
9 THE FACILITY A CERTIFIED COPY, OR A TRUE AND CORRECT COPY OF A CERTIFIED  
10 COPY, OF LETTERS OF GUARDIANSHIP WITH MENTAL HEALTH AUTHORITY THAT AUTHORIZE  
11 THE GUARDIAN TO ADMIT THE WARD TO A LEVEL ONE BEHAVIORAL HEALTH FACILITY  
12 ISSUED PURSUANT TO 14-5312.01, SUBSECTION B AND THAT THE LETTERS OF  
13 GUARDIANSHIP ARE CURRENTLY EFFECTIVE AND HAVE NOT BEEN REVOKED, TERMINATED OR  
14 RESCINDED.

15 B. IF THE GUARDIAN REQUESTS ADMISSION, THE FACILITY TO WHICH THE  
16 GUARDIAN APPLIES MAY ADMIT THE PERSON IF PRIOR TO ADMISSION A PHYSICIAN WHO  
17 IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17 DOES ALL OF THE FOLLOWING:

18 1. CONDUCTS AN INVESTIGATION THAT CAREFULLY PROBES THE WARD'S  
19 PSYCHIATRIC AND PSYCHOLOGICAL HISTORY, DIAGNOSIS AND TREATMENT NEEDS.

20 2. CONDUCTS A THOROUGH INTERVIEW WITH THE WARD AND THE GUARDIAN.

21 3. OBTAINS THE GUARDIAN'S INFORMED CONSENT. FOR THE PURPOSES OF THIS  
22 PARAGRAPH, "INFORMED CONSENT" HAS THE SAME MEANING PRESCRIBED IN SECTION  
23 36-501.

24 4. MAKES A WRITTEN DETERMINATION THAT THE WARD NEEDS AN EVALUATION OR  
25 WILL BENEFIT FROM INPATIENT CARE AND TREATMENT OF A MENTAL DISORDER OR OTHER  
26 PERSONALITY DISORDER OR EMOTIONAL CONDITION AND THAT THE EVALUATION OR  
27 TREATMENT CANNOT BE ACCOMPLISHED IN A LESS RESTRICTIVE SETTING.

28 5. DOCUMENTS IN THE WARD'S MEDICAL CHART A SUMMARY OF THE DOCTOR'S  
29 FINDINGS AND RECOMMENDATIONS FOR TREATMENT.

30 C. AFTER ADMISSION, IF THE WARD REFUSES TREATMENT OR REQUESTS  
31 DISCHARGE AND THE TREATING PHYSICIAN BELIEVES THAT FURTHER INPATIENT  
32 TREATMENT IS NECESSARY OR ADVISABLE, THE FACILITY MAY RELY ON THE CONSENT OF  
33 THE GUARDIAN FOR TREATMENT, RELEASE AND DISCHARGE DECISIONS PURSUANT TO THE  
34 GUARDIAN'S AUTHORITY UNDER THE GUARDIANSHIP.

35 Sec. 4. Section 36-3284, Arizona Revised Statutes, is amended to read:  
36 36-3284. Operation of mental health care power of attorney; admission  
37 for evaluation and treatment by agent; duties of physician  
38 or mental health care provider

39 A. A mental health care power of attorney is effective when it is  
40 executed and remains in effect until it is revoked by the principal pursuant  
41 to section 36-3285 or by court order.

42 B. NOTWITHSTANDING THE PROCEDURES AND REQUIREMENTS PRESCRIBED IN  
43 CHAPTER 5, ARTICLES 4 AND 5 OF THIS TITLE RELATING TO INVOLUNTARY  
44 COURT-ORDERED EVALUATION OR TREATMENT, if the mental health care power of  
45 attorney specifically authorizes the agent to admit the principal to a level

1 one behavioral health facility, ~~a principal shall not be admitted to a level~~  
2 ~~one behavioral health facility licensed by the department of health services~~  
3 ~~unless~~ AND THE AGENT HAS REASONABLE CAUSE TO BELIEVE THAT THE PRINCIPAL IS IN  
4 NEED OF AN EVALUATION OR TREATMENT, THE AGENT MAY APPLY FOR ADMISSION OF THE  
5 PRINCIPAL FOR EVALUATION OR TREATMENT AT A LEVEL ONE BEHAVIORAL HEALTH  
6 FACILITY. THE AGENT MUST PRESENT THE FACILITY WITH A COPY OF THE POWER OF  
7 ATTORNEY THAT SPECIFICALLY AUTHORIZES THE AGENT TO ADMIT THE PRINCIPAL TO A  
8 LEVEL ONE BEHAVIORAL HEALTH FACILITY AND EXECUTE A SWORN STATEMENT UNDER  
9 PENALTY OF PERJURY THAT THE AGENT HAS PRESENTED TO THE FACILITY A TRUE AND  
10 CORRECT COPY OF A CURRENT POWER OF ATTORNEY THAT SPECIFICALLY AUTHORIZES THE  
11 AGENT TO ADMIT THE PRINCIPAL TO A LEVEL ONE BEHAVIORAL HEALTH FACILITY  
12 PURSUANT TO THIS SECTION AND THAT THE POWER OF ATTORNEY IS CURRENTLY  
13 EFFECTIVE AND HAS NOT BEEN REVOKED, TERMINATED OR RESCINDED. IF ADMISSION IS  
14 REQUESTED BY THE AGENT, THE FACILITY TO WHICH THE AGENT APPLIES MAY ADMIT THE  
15 PRINCIPAL IF PRIOR TO ADMISSION a physician who is licensed pursuant to title  
16 32, chapter 13 or 17 ~~and who is a specialist in psychiatry or a psychologist~~  
17 ~~who is licensed pursuant to title 32, chapter 19.1~~ does all of the following:  
18 1. Conducts an investigation that carefully probes the principal's  
19 psychiatric and psychological history, diagnosis and treatment needs.  
20 2. Conducts a thorough interview with the principal and the agent.  
21 3. Obtains the agent's informed consent, as defined in section 36-501.  
22 4. Makes a written determination that the principal needs an ~~inpatient~~  
23 evaluation or will benefit from **INPATIENT** care and treatment of a mental  
24 disorder or other personality disorder or emotional condition ~~in the program~~  
25 and that the evaluation or treatment cannot be accomplished in a less  
26 restrictive setting.  
27 5. Documents in the principal's medical chart a summary of the  
28 doctor's findings and recommendations for treatment.  
29 **C. AFTER ADMISSION, IF THE PATIENT REFUSES TREATMENT OR REQUESTS**  
30 **DISCHARGE AND THE TREATING PHYSICIAN BELIEVES THAT FURTHER INPATIENT**  
31 **TREATMENT IS NECESSARY OR ADVISABLE, THE FACILITY MAY RELY ON THE CONSENT OF**  
32 **THE AGENT FOR TREATMENT, RELEASE AND DISCHARGE DECISIONS PURSUANT TO THE**  
33 **AGENT'S AUTHORITY UNDER THE POWER OF ATTORNEY.**  
34 ~~C.~~ **D.** The level one behavioral health facility licensed by the  
35 department of health services shall conduct a review of the principal's  
36 condition and need for admission into the facility and assess the  
37 appropriateness of the principal's placement at least once every thirty days.  
38 The agent may participate in each review. If possible the agent shall  
39 participate in person.

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

# HOUSE BILL 2403

AN ACT

AMENDING SECTIONS 14-2712, 14-10202, 14-10504, 14-10505, 14-10819, 14-11014, 25-213, 28-2055 AND 33-1126, 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. Section 14-2712, Arizona Revised Statutes, is amended to  
3 read:

4 14-2712. Burdens relating to validity of governing instruments

5 A. A proponent of a governing instrument has the burden of  
6 establishing prima facie proof of due execution in all cases.

7 B. It is a rebuttable presumption that a person who executes a  
8 governing instrument is presumed to have capacity to execute the governing  
9 instrument and to have done so free from undue influence and duress.

10 C. If the validity of a governing instrument is challenged on the  
11 grounds of revocation by a later governing instrument, the validity of the  
12 later governing instrument must be determined first.

13 D. Except as prescribed pursuant to subsections E and F of this  
14 section, a party that challenges the validity of a governing instrument has  
15 the burden of establishing the invalidity of that governing instrument by a  
16 preponderance of the evidence.

17 E. A governing instrument is presumed to be the product of undue  
18 influence ~~and is invalid~~ if either:

19 1. A person who had a confidential relationship to the creator of the  
20 governing instrument was active in procuring its creation and execution and  
21 is a principal beneficiary of the governing instrument.

22 2. The preparer of the governing instrument or the preparer's spouse  
23 or parents or the issue of the preparer's spouse or parents is a principal  
24 beneficiary of the governing instrument. This paragraph does not apply if  
25 the governing instrument was prepared for a person who is a grandparent of  
26 the preparer, the issue of a grandparent of the preparer or the respective  
27 spouses or former spouses of persons related to the preparer.

28 F. The beneficiary of the governing instrument may overcome a  
29 presumption of undue influence by a preponderance of the evidence.

30 G. For the purposes of this section, determining if a person is a  
31 principal beneficiary of a governing instrument or the preparer of a  
32 governing instrument is a question of fact to be determined by the totality  
33 of the circumstances.

34 H. This section does not apply to the following:

35 1. Proceedings to determine the validity of a durable power of  
36 attorney pursuant to section 14-5506, subsection B.

37 2. Proceedings to determine ownership of multiple party accounts  
38 pursuant to section 14-6211.

39 Sec. 2. Section 14-10202, Arizona Revised Statutes, is amended to  
40 read:

41 14-10202. Jurisdiction over trustee and beneficiary

42 A. By accepting the trusteeship of a trust having its principal place  
43 of administration in this state or by moving the principal place of  
44 administration to this state, **OR UNTIL OTHERWISE DECLARED BY THE TRUSTEE IF A**  
45 **PROCEEDING REGARDING A MATTER INVOLVING THE TRUST IS NOT PENDING IN A COURT**

1 OF THIS STATE, BY DECLARING THAT THE TRUST IS SUBJECT TO THE JURISDICTION OF  
2 THE COURTS OF THIS STATE, the trustee submits personally to the jurisdiction  
3 of the courts of this state regarding any matter involving the trust.

4 B. With respect to their interests in the trust, the beneficiaries of  
5 a trust having its principal place of administration in this state are  
6 subject to the jurisdiction of the courts of this state regarding any matter  
7 involving the trust. By accepting a distribution from such a trust, the  
8 recipient submits personally to the jurisdiction of the courts of this state  
9 regarding any matter involving the trust.

10 C. This section does not preclude other methods of obtaining  
11 jurisdiction over a trustee, beneficiary or other person receiving property  
12 from the trust.

13 Sec. 3. Section 14-10504, Arizona Revised Statutes, is amended to  
14 read:

15 14-10504. Discretionary trusts; effect of standard; definition

16 A. Except as provided in subsection B of this section, whether or not  
17 a trust contains a spendthrift provision, a creditor of a beneficiary may not  
18 compel a distribution that is subject to the trustee's discretion, even if  
19 either:

20 1. The discretion is expressed in the form of a standard of  
21 distribution.

22 2. The trustee has not complied with the applicable standard of  
23 distribution or has abused the discretion regarding distributions.

24 B. To the extent a trustee has not complied with the applicable  
25 standard of distribution or has abused the discretion regarding  
26 distributions:

27 1. Except as provided in section 14-10503, a distribution may be  
28 ordered by the court to satisfy a judgment or court order against the  
29 beneficiary for support or maintenance of the beneficiary's child.

30 2. The court shall direct the trustee to pay to the child an amount as  
31 is equitable under the circumstances but not more than the amount the trustee  
32 would have been required to distribute to or for the benefit of the  
33 beneficiary had the trustee complied with the standard or not abused the  
34 discretion.

35 C. This section does not limit the right of a beneficiary to maintain  
36 a judicial proceeding against a trustee for an abuse of discretion or failure  
37 to comply with a standard for distribution, provided that this right may not  
38 be exercised by a creditor of the beneficiary OR TO THE EXTENT THAT ANY  
39 CREDITOR OF THE BENEFICIARY TAKES THROUGH THE NAME OR RIGHTS OF THE  
40 BENEFICIARY.

41 D. Whether or not a trust contains a spendthrift provision:

42 1. A creditor of a trust beneficiary may not compel a distribution  
43 from insurance proceeds payable to the trustee as beneficiary to the extent  
44 state law exempts such insurance proceeds from creditors' claims if it had  
45 been paid directly to the trust beneficiary.

1           2. To the extent that under Arizona law life insurance proceeds,  
2 policy cash surrender values or other distributions or payments are exempt  
3 from attachment or garnishment by, execution on or otherwise the reach of  
4 creditors, if the death benefit is payable to an individual beneficiary, the  
5 life insurance proceeds, policy cash surrender values or other distributions  
6 or payments are also exempt from attachment or garnishment by, execution on  
7 or otherwise the reach of creditors if payable to a trust of which a  
8 beneficiary is that individual.

9           E. A creditor of a beneficiary, whether or not the beneficiary is also  
10 a trustee or cotrustee, may not reach the beneficiary's beneficial interest  
11 or otherwise compel a distribution if either the trustee's discretion to make  
12 distributions for the trustee's own benefit is purely discretionary or is  
13 limited by an ascertainable standard, including a standard relating to the  
14 beneficiary's health, education, support or maintenance or similar language  
15 within the meaning of section 2041(b)(1)(a) of the internal revenue code.

16           F. For the purposes of this section, "child" includes any person for  
17 whom an order or judgment for child support has been entered in this or  
18 another state.

19           Sec. 4. Section 14-10505, Arizona Revised Statutes, is amended to  
20 read:

21           14-10505. Creditor's claim against settlor

22           A. Whether or not the terms of a trust contain a spendthrift  
23 provision, the following rules apply:

24           1. During the lifetime of the settlor, the property of a revocable  
25 trust is subject to claims of the settlor's creditors. If a trust has more  
26 than one settlor or contributor, the amount the creditor or assignee of a  
27 particular settlor may reach may not exceed the settlor's interest in the  
28 portion of the trust attributable to that settlor's contribution. This  
29 paragraph does not abrogate otherwise applicable laws relating to community  
30 property.

31           2. Subject to the requirements of this section, with respect to an  
32 irrevocable trust, a creditor or assignee of the settlor may reach the  
33 maximum amount that can be distributed to or for the settlor's benefit. If a  
34 trust has more than one settlor, the amount the creditor or assignee of a  
35 particular settlor may reach may not exceed the settlor's interest in the  
36 portion of the trust attributable to that settlor's contribution. This  
37 paragraph does not apply to any trust from which any distribution to the  
38 settlor can be made pursuant to the exercise of a power of appointment held  
39 by a third party or abrogate otherwise applicable laws relating to community  
40 property. A creditor of a settlor:

41           (a) Shall not reach any trust property based on a trustee's, trust  
42 protector's or third party's power, whether or not discretionary, to pay or  
43 reimburse the settlor for any income tax on trust income or trust principal  
44 that is payable by the settlor under the law imposing the tax or to pay the  
45 tax directly to any taxing authority.

1 (b) Is not entitled to any payment or reimbursement that is to be made  
2 directly to any taxing authority.

3 (c) Shall not reach or compel distributions to or for the benefit of  
4 the beneficiary of a special needs trust.

5 3. After the death of a settlor, and subject to the settlor's right to  
6 direct the source from which liabilities will be paid, the property of a  
7 trust that was revocable at the settlor's death is subject to claims of the  
8 settlor's creditors, costs of administration of the settlor's estate, the  
9 expenses of the settlor's funeral and disposal of remains and statutory  
10 allowances to a surviving spouse and children to the extent the settlor's  
11 probate estate is inadequate to satisfy those claims, costs, expenses and  
12 allowances, except to the extent that state or federal law exempts any  
13 property of the trust from these claims, costs, expenses or allowances. IF A  
14 TRUST HAS MORE THAN ONE SETTLOR OR CONTRIBUTOR, THE AMOUNT THE CREDITOR OR  
15 ASSIGNEE OF A PARTICULAR SETTLOR MAY REACH MAY NOT EXCEED THE SETTLOR'S  
16 INTEREST IN THE PORTION OF THE TRUST ATTRIBUTABLE TO THAT SETTLOR'S  
17 CONTRIBUTION. THIS PARAGRAPH DOES NOT ABROGATE OTHERWISE APPLICABLE LAWS  
18 RELATING TO COMMUNITY PROPERTY.

19 B. For the purposes of this section:

20 1. During the period the power may be exercised, the holder of a power  
21 of withdrawal is treated in the same manner as the settlor of a revocable  
22 trust to the extent of the property subject to the power.

23 2. On the lapse, release or waiver of a power of withdrawal, the  
24 holder is ~~treated as the settlor of the trust only to the extent the value of~~  
25 ~~the property affected by the lapse, release or waiver exceeds the greater of~~  
26 ~~the amount specified in section 2041(b)(2) or 2514(e) of the internal revenue~~  
27 ~~code, or section 2503(b) of the internal revenue code. On the lapse, release~~  
28 ~~or waiver of a power of withdrawal in the case of a trust created under~~  
29 ~~section 2503(c) of the internal revenue code, the holder will not be treated~~  
30 ~~as the settlor of the trust~~ NOT, BY REASON OF ANY SUCH LAPSE, RELEASE OR  
31 WAIVER, TREATED AS THE SETTLOR OF THE TRUST.

32 C. For the purposes of this section, a trust settled or established by  
33 a corporation, professional corporation, partnership, limited liability  
34 company, governmental entity, trust, foundation or other entity is not deemed  
35 to be settled or established by its directors, officers, shareholders,  
36 partners, members, managers, employees, beneficiaries or agents.

37 D. For the purposes of this section, amounts contributed to a trust by  
38 a corporation, professional corporation, partnership, limited liability  
39 company, governmental entity, trust, foundation or other entity are not  
40 deemed to have been contributed by its directors, officers, shareholders,  
41 partners, employees, beneficiaries or agents. Powers, duties or  
42 responsibilities granted to or reserved by the settlor pursuant to the trust  
43 and any actions or omissions taken pursuant to the trust are deemed to be the  
44 powers, responsibilities, duties, actions or omissions of the settlor and not

1 those of its directors, officers, shareholders, partners, members, managers,  
2 employees, beneficiaries or agents.

3 E. For the purposes of this section, amounts and property contributed  
4 to the following trusts are not deemed to have been contributed by the  
5 settlor, and a person who would otherwise be treated as a settlor or a deemed  
6 settlor of the following trusts shall not be treated as a settlor:

7 1. An irrevocable inter vivos marital trust that is treated as  
8 qualified terminable interest property under section 2523(f) of the internal  
9 revenue code if the settlor is a beneficiary of the trust after the death of  
10 the settlor's spouse.

11 2. An irrevocable inter vivos marital trust that is treated as a  
12 general power of appointment trust under section 2523(e) of the internal  
13 revenue code if the settlor is a beneficiary of the trust after the death of  
14 the settlor's spouse.

15 3. An irrevocable inter vivos trust for the settlor's spouse ~~that does~~  
16 ~~not qualify for the gift tax marital deduction~~ if the settlor is a  
17 beneficiary of the trust after the death of the settlor's spouse.

18 ~~4. An irrevocable inter vivos trust created by the settlor's spouse~~  
19 ~~for the benefit of the settlor, regardless of whether or when the settlor~~  
20 ~~also created an irrevocable inter vivos trust with respect to which such~~  
21 ~~spouse is a beneficiary.~~

22 4. AN IRREVOCABLE TRUST FOR THE BENEFIT OF A PERSON, THE SETTLOR OF  
23 WHICH IS THE PERSON'S SPOUSE, REGARDLESS OF WHETHER OR WHEN THE PERSON WAS  
24 THE SETTLOR OF AN IRREVOCABLE TRUST FOR THE BENEFIT OF THAT SPOUSE.

25 5. AN IRREVOCABLE TRUST FOR THE BENEFIT OF A PERSON TO THE EXTENT THAT  
26 THE PROPERTY OF THE TRUST WAS SUBJECT TO A GENERAL POWER OF APPOINTMENT IN  
27 ANOTHER PERSON.

28 F. For the purposes of subsection E, a person is a beneficiary whether  
29 so named under the initial trust instrument or through the exercise by that  
30 person's spouse or by another person of a limited or general power of  
31 appointment.

32 G. Subsections C and D do not apply to:

33 1. A trust that has no valid business purpose and that has as its  
34 principal purpose the evasion of the claims of the creditors of the persons  
35 or entities listed in those subsections.

36 2. A trust that would be treated as a grantor trust pursuant to  
37 sections 671 through 679 of the internal revenue code. This paragraph does  
38 not apply to a qualified subchapter S trust that is treated as a grantor  
39 trust solely by application of section 1361(d) of the internal revenue code.

40 Sec. 5. Section 14-10819, Arizona Revised Statutes, is amended to  
41 read:

42 14-10819. Trustee's special power to appoint to other trust

43 A. Unless the terms of the instrument expressly provide otherwise, a  
44 trustee who has the discretion under the terms of a testamentary instrument  
45 or irrevocable inter vivos agreement to make distributions, regardless of

1 whether a standard is provided in the instrument or agreement, for the  
2 benefit of a beneficiary of the trust may exercise without prior court  
3 approval the trustee's discretion by appointing part or all of the estate  
4 trust in favor of a trustee of a- ANOTHER trust ~~under an instrument other~~  
5 ~~than that under which the power to make distributions was created~~ if the  
6 exercise of this discretion:

7 1. Does not reduce any fixed nondiscretionary income payment to a  
8 beneficiary.

9 2. Does not alter any nondiscretionary annuity or unitrust payment to  
10 a beneficiary.

11 3. Is in favor of the beneficiaries of the trust.

12 4. Results in any ascertainable standard applicable for distributions  
13 from the trust being the same or more restrictive standard applicable for  
14 distributions from the recipient trust when the trustee exercising the power  
15 described in this subsection is a possible beneficiary under the standard.

16 5. Does not adversely affect the tax treatment of the trust, the  
17 trustee, the settlor or the beneficiaries.

18 6. Does not violate the limitations on validity under sections 14-2901  
19 and 14-2905.

20 B. This section applies to a trust governed by the laws of this state,  
21 including a trust whose governing jurisdiction is transferred to this state.

22 C. The exercise of the power to invade the principal of a trust under  
23 subsection A of this section is considered to be the exercise of a special  
24 power of appointment.

25 D. The trustee, in the trustee's sole discretion, ~~prior to~~ BEFORE or  
26 after the exercise of the trustee's discretion under this section, may  
27 request the court to approve the exercise.

28 E. THE TRUSTEE MAY EXERCISE THE DISCRETION TO APPOINT ALL OF THE TRUST  
29 ESTATE PURSUANT TO THIS SECTION BY RESTATING THE TRUST.

30 Sec. 6. Section 14-11014, Arizona Revised Statutes, is amended to  
31 read:

32 14-11014. Total return trusts; definitions

33 A. A trustee, other than an interested trustee, or if two or more  
34 persons are acting as trustee, a majority of the trustees who are not an  
35 interested trustee, in its sole discretion and without the approval of the  
36 ~~probate~~ court may:

37 1. Convert an income trust to a total return unitrust.

38 2. Reconvert a total return unitrust to an income trust.

39 3. Change the percentage used to calculate the unitrust amount or the  
40 method used to determine the fair market value of the trust, or both, if:

41 (a) The trustee adopts a written policy for the trust providing  
42 either:

43 (i) In the case of a trust being administered as an income trust,  
44 future distributions from the trust will be unitrust amounts rather than net  
45 income.

1           (ii) In the case of a trust being administered as a total return  
2 unitrust, future distributions from the trust will be net income rather than  
3 unitrust amounts.

4           (iii) That the percentage used to calculate the unitrust amount or the  
5 method used to determine the fair market value of the trust, or both, will be  
6 changed as stated in the policy.

7           (b) The trustee sends written notice of its intention to take this  
8 action, along with copies of the written policy and this section, to:

9           (i) The settlor of the trust, if living.

10           (ii) All ~~living persons who are currently receiving or eligible to~~  
11 ~~receive distributions of income~~ QUALIFIED BENEFICIARIES of the trust.

12           ~~(iii) Without regard to the exercise of any power of appointment, all~~  
13 ~~living persons who would receive principal of the trust if the trust were to~~  
14 ~~terminate at the time of the giving of the notice and all living persons who~~  
15 ~~would receive or be eligible to receive distributions of income or principal~~  
16 ~~of the trust if the interests of all of the beneficiaries currently eligible~~  
17 ~~to receive income under item (ii) of this subdivision were to terminate at~~  
18 ~~the time of the giving of the notice.~~

19           ~~(iv)~~ (iii) All persons acting as adviser or trust protector of the  
20 trust.

21           (c) At least one person receiving notice under subdivision (b), item  
22 (ii) or (iii) of this subsection is legally competent.

23           (d) No person receiving notice objects to the proposed action of the  
24 trustee by submitting a written instrument delivered to the trustee within  
25 thirty days after receipt of the notice.

26           B. If there is no trustee of the trust other than an interested  
27 trustee, the interested trustee or, if two or more persons are acting as  
28 trustee and are interested trustees, a majority of interested trustees, in  
29 its sole discretion and without the approval of the probate court may:

30           1. Convert an income trust to a total return unitrust.  
31           2. Reconvert a total return unitrust to an income trust.  
32           3. Change the percentage used to calculate the unitrust amount or the  
33 method used to determine the fair market value of the trust, or both, if:

34           (a) The trustee adopts a written policy for the trust providing  
35 either:

36           (i) In the case of a trust being administered as an income trust, that  
37 future distributions from the trust will be unitrust amounts rather than net  
38 income.

39           (ii) In the case of a trust being administered as a total return  
40 unitrust, that future distributions from the trust will be net income rather  
41 than unitrust amounts.

42           (iii) That the percentage used to calculate the unitrust amount or the  
43 method used to determine the fair market value of the trust, or both, will be  
44 changed as stated in the policy.

1 (b) The trustee appoints a disinterested person who, in its sole  
2 discretion but acting in a fiduciary capacity, determines for the trustee:  
3 (i) The percentage to be used to calculate the unitrust amount.  
4 (ii) The method to be used in determining the fair market value of the  
5 trust.  
6 (iii) Which assets, if any, are to be excluded in determining the  
7 unitrust amount.  
8 (c) The trustee sends written notice of its intention to take such  
9 action, along with copies of the written policy and this section, and the  
10 determinations of the disinterested person to:  
11 (i) The settlor of the trust, if living.  
12 (ii) All ~~living persons who are currently receiving or eligible to~~  
13 ~~receive distributions of income~~ QUALIFIED BENEFICIARIES of the trust.  
14 ~~(iii) Without regard to the exercise of any power of appointment, all~~  
15 ~~living persons who would receive principal of the trust if the trust were to~~  
16 ~~terminate at the time of the giving of the notice and all living persons who~~  
17 ~~would receive or be eligible to receive distributions of income or principal~~  
18 ~~of the trust if the interests of all of the beneficiaries currently eligible~~  
19 ~~to receive income under item (ii) of this subdivision were to terminate at~~  
20 ~~the time of the giving of the notice.~~  
21 ~~(iv)~~ (iii) All persons acting as adviser or protector of the trust.  
22 (d) At least one person receiving notice under subdivision (c), item  
23 (ii) or (iii) of this subsection is legally competent.  
24 (e) No person receiving notice objects to the proposed action or the  
25 determinations of the disinterested person by submitting a written instrument  
26 delivered to the trustee within thirty days after receipt of the notice.  
27 C. If any trustee wishes to convert an income trust to a total return  
28 unitrust, reconvert a total return unitrust to an income trust or change the  
29 percentage used to calculate the unitrust amount or the method used to  
30 determine the fair market value of the trust, or both, but does not have the  
31 ability to or elects not to do it pursuant to subsection A or B of this  
32 section, the trustee may petition the probate court for an order as the  
33 trustee deems appropriate. If there is only one trustee of such a trust and  
34 that trustee is an interested trustee or if there are two or more trustees of  
35 such a trust and a majority of them are interested trustees, the court, in  
36 its discretion or on petition of the trustee or trustees or of any person  
37 interested in the trust, may appoint a disinterested person who, acting in a  
38 fiduciary capacity, shall present information to the court necessary to  
39 enable the court to make its determinations.  
40 D. The fair market value of the trust shall be determined at least  
41 annually, using a valuation date or dates or averages of valuation dates as  
42 are deemed appropriate. Assets for which a fair market value cannot be  
43 readily ascertained shall be valued using valuation methods as are deemed  
44 reasonable and appropriate. Assets used by a trust beneficiary, such as a

1 residence property or tangible personal property, may be excluded from fair  
2 market value for computing the unitrust amount.

3 E. The percentage to be used in determining the unitrust amount shall  
4 be a reasonable current return from the trust, but not less than three per  
5 cent or more than five per cent, taking into account the intentions of the  
6 settlor of the trust as expressed in the governing instrument, the needs of  
7 the beneficiaries, general economic conditions, projected current earnings  
8 and appreciation for the trust, and projected inflation and its impact on the  
9 trust.

10 F. A trustee may act pursuant to subsection A or B of this section  
11 with respect to a trust for which both income and principal have been  
12 permanently set aside for charitable purposes under the governing instrument  
13 and for which a federal estate or gift tax deduction has been taken, provided  
14 that:

15 1. Instead of sending written notice to the persons described in  
16 subsection A, paragraph 3, subdivision (b), ~~items ITEM (ii) and (iii)~~ of this  
17 section or pursuant to subsection B, paragraph 3, subdivision (c), ~~items ITEM~~  
18 (ii) ~~and (iii)~~ of this section, as the case may be, the trustee shall send  
19 the written notice to the named charity or charities then entitled to receive  
20 income of the trust and, if no named charity or charities are entitled to  
21 receive all of that income, to the attorney general of this state.

22 2. Subsection A, paragraph 3, subdivision (c) of this section or  
23 subsection B, paragraph 3, subdivision (d) of this section, as the case may  
24 be, does not apply to that action.

25 3. In each taxable year, the trustee must distribute the greater of  
26 the unitrust amount and the amount required by section 4942 of the internal  
27 revenue code.

28 G. Following the conversion of an income trust to a total return  
29 unitrust, the trustee:

30 1. Shall consider the unitrust amount as paid from net accounting  
31 income determined as if the trust were not a unitrust.

32 2. Shall then consider the unitrust amount as paid from ordinary  
33 income not allocable to net accounting income.

34 3. After calculating the trust's capital gain net income described in  
35 section 1222(9) of the internal revenue code, may consider the unitrust  
36 amount as paid from net short-term capital gain described in section 1222(5)  
37 of the internal revenue code and then from net long-term capital gain  
38 described in section 1222(7) of the internal revenue code.

39 4. Shall then consider the unitrust amount as coming from the  
40 principal of the trust.

41 H. In administering a total return unitrust, the trustee, in its sole  
42 discretion but subject to the provisions of the governing instrument, may  
43 determine:

44 1. The effective date of the conversion.

1           2. The timing of distributions, including provisions for prorating a  
2 distribution for a short year in which a beneficiary's right to payments  
3 commences or ceases.

4           3. Whether distributions are to be made in cash or in kind or partly  
5 in cash and partly in kind.

6           4. If the trust is reconverted to an income trust, the effective date  
7 of the reconversion.

8           5. Any other administrative issues as may be necessary or appropriate  
9 to carry out the purposes of this section.

10          I. Conversion to a total return unitrust under this section does not  
11 affect any other provision of the governing instrument, if any, regarding  
12 distributions of principal.

13          J. Notwithstanding anything in this section to the contrary, in the  
14 case of a trust for which a marital deduction has been taken for federal tax  
15 purposes under section 2056 or 2523 of the internal revenue code, the spouse  
16 otherwise entitled to receive the net income of the trust has the right, by  
17 written instrument delivered to the trustee, to prohibit conversion to a  
18 total return unitrust and to compel the reconversion during that spouse's  
19 lifetime of the trust from a total return unitrust to an income trust.

20          K. This section pertains to the administration of a trust and is  
21 available to any trust that is administered in this state under Arizona law  
22 or to any trust, regardless of its place of administration, whose governing  
23 instrument provides that Arizona law governs matters of construction or  
24 administration unless:

25           1. The governing instrument reflects an intention that the current  
26 beneficiary or beneficiaries are to receive an amount other than a reasonable  
27 current return from the trust.

28           2. The trust is a pooled income fund described in section 642(c)(5) of  
29 the internal revenue code or a charitable remainder **ANNUITY** trust described  
30 in section 664(d) of the internal revenue code.

31           3. The governing instrument expressly prohibits use of this section by  
32 specific reference to this section or expressly states the settlor's intent  
33 that net income not be calculated as a unitrust amount. A provision in the  
34 governing instrument that "the provisions of Arizona Revised Statutes,  
35 section 14-11014, as amended, or any corresponding provision of future law,  
36 shall not be used in the administration of this trust" or "my trustee shall  
37 not determine the distributions to the income beneficiary as a unitrust  
38 amount" or similar words reflecting such intent shall be sufficient to  
39 preclude the use of this section.

40          L. Any trustee or disinterested person who in good faith takes or  
41 fails to take any action under this section is not liable to any person  
42 affected by that action or inaction, regardless of whether the person  
43 received written notice as prescribed in this section and regardless of  
44 whether the person was under a legal disability at the time of the delivery  
45 of the notice. The person's exclusive remedy is to obtain a court order

1 directing the trustee to convert an income trust to a total return unitrust,  
2 to reconvert from a total return unitrust to an income trust or to change the  
3 percentage used to calculate the unitrust amount.

4 M. This section is available to trusts in existence on October 1, 2008  
5 or created after that date.

6 N. For the purposes of this section:

7 1. "Disinterested person" means a person who is not a related or  
8 subordinate party pursuant to section 672(c) of the internal revenue code  
9 with respect to the person then acting as trustee of the trust and excludes  
10 the settlor of the trust and any interested trustee.

11 2. "Income trust" means a trust that is created by either an inter  
12 vivos or a testamentary instrument and that directs or permits the trustee to  
13 distribute the net income of the trust to one or more persons, either in  
14 required amounts or proportions, or in amounts or proportions determined by  
15 the trustee and regardless of whether the trust directs or permits the  
16 trustee to distribute the principal of the trust to one or more of these  
17 persons.

18 3. "Interested distributee" means a person to whom distributions of  
19 income or principal can currently be made who has the power to remove the  
20 existing trustee and designate as successor a person who may be a related or  
21 subordinate party pursuant to section 672(c) of the internal revenue code  
22 with respect to that distributee.

23 4. "Interested trustee" means:

24 (a) An individual trustee to whom the net income or principal of the  
25 trust can currently be distributed or would be distributed if the trust were  
26 then to terminate and be distributed.

27 (b) Any trustee who may be removed and replaced by an interested  
28 distributee.

29 (c) An individual trustee whose legal obligation to support a  
30 beneficiary may be satisfied by distributions of income and principal of the  
31 trust.

32 5. "Total return unitrust" means an income trust that has been  
33 converted under and meets the requirements of this section.

34 6. "Trustee" means any person acting as trustee of the trust, unless  
35 expressly noted otherwise, whether acting in that person's discretion or on  
36 the direction of one or more persons acting in a fiduciary capacity.

37 7. "Unitrust amount" means an amount computed as a percentage of the  
38 fair market value of the trust.

39 Sec. 7. Section 25-213, Arizona Revised Statutes, is amended to read:

40 25-213. Separate property

41 A. A spouse's real and personal property that is owned by that spouse  
42 before marriage and that is acquired by that spouse during the marriage by  
43 gift, devise or descent, and the increase, rents, issues and profits of that  
44 property, is the separate property of that spouse.

1 B. Property that is acquired by a spouse after service of a petition  
2 for dissolution of marriage, legal separation or annulment is also the  
3 separate property of that spouse if the petition results in a decree of  
4 dissolution of marriage, legal separation or annulment.

5 C. Notwithstanding subsection B of this section and section 25-214,  
6 subsection C, a mortgage or deed of trust executed by a spouse who acquires  
7 the real property encumbered by that mortgage or deed of trust after service  
8 of a petition for dissolution of marriage, legal separation or annulment  
9 shall be enforceable against the real property if the petition does not  
10 result in a decree of dissolution of marriage, legal separation or annulment.

11 D. A contribution to an irrevocable trust that has OR WILL HAVE as its  
12 principal asset life insurance on the person making the contribution is a  
13 contribution of the insured's separate property if the spouse of the insured  
14 is the primary beneficiary of the trust.

15 Sec. 8. Section 28-2055, Arizona Revised Statutes, is amended to read:

16 28-2055. Certificate of title; content requirements; transfer  
17 on death provision; delivery

18 A. The department or an authorized third party shall print the  
19 certificate of title, and it shall contain forms for assignment of title or  
20 interest and warranty by the owner, with space for notation of liens and  
21 encumbrances on the vehicle at the time of transfer. The certificate of  
22 title shall also contain the odometer mileage disclosure statement pursuant  
23 to section 28-2058.

24 B. At the request of the owner and on payment of a fee prescribed by  
25 the department by rule, the certificate of title may contain, by attachment,  
26 a transfer on death provision where the owner may designate a beneficiary of  
27 the title. ~~The attachment shall include a notice to the owner and any~~  
28 ~~beneficiary that the monetary limitation on the transfer of personal property~~  
29 ~~in a decedent's estate prescribed in section 14-3971 may apply.~~

30 C. If a motor vehicle, trailer or semitrailer has been registered in  
31 any other state or country, the department shall retain in its records the  
32 name of the state or country in which the prior registration took place.

33 D. Except as provided in section 28-2064, the department shall deliver  
34 or mail the original certificate of title to:

35 1. The applicant if there are not any liens or encumbrances on the  
36 certificate of title.

37 2. The holder of the lien or encumbrance first in time on the date of  
38 the application if there are liens or encumbrances on the certificate of  
39 title.

40 Sec. 9. Section 33-1126, Arizona Revised Statutes, is amended to read:

41 33-1126. Money benefits or proceeds; exception

42 A. The following property of a debtor ~~shall be~~ IS exempt from  
43 execution, attachment or sale on any process issued from any court:

- 1           1. All money received by or payable to a surviving spouse or child  
2 ~~upon~~ ON the life of a deceased spouse, parent or legal guardian, not  
3 exceeding twenty thousand dollars.
- 4           2. The earnings of the minor child of a debtor or the proceeds ~~thereof~~  
5 OF THESE EARNINGS by reason of any liability of ~~such~~ THE debtor not  
6 contracted for the special benefit of ~~such~~ THE minor child.
- 7           3. All monies received by or payable to a person entitled to receive  
8 child support or spousal maintenance pursuant to a court order.
- 9           4. All money, proceeds or benefits of any kind to be paid in a lump  
10 sum or to be rendered on a periodic or installment basis to the insured or  
11 any beneficiary under any policy of health, accident or disability insurance  
12 or any similar plan or program of benefits in use by any employer, except for  
13 premiums payable on such policy or debt of the insured secured by a pledge,  
14 and except for collection of any debt or obligation for which the insured or  
15 beneficiary has been paid under the plan or policy and except for payment of  
16 amounts ordered for support of a person from proceeds and benefits furnished  
17 in lieu of earnings ~~which~~ THAT would have been subject to ~~such~~ THAT order and  
18 subject to any exemption applicable to earnings so replaced.
- 19           5. All money arising from any claim for the destruction of, or damage  
20 to, exempt property and all proceeds or benefits of any kind arising from  
21 fire or other insurance ~~upon~~ ON any property exempt under this article.
- 22           6. The cash surrender value of life insurance policies where for a  
23 continuous unexpired period of two years ~~such~~ THE policies have been owned by  
24 a debtor and have named as beneficiary the debtor's surviving spouse, child,  
25 parent, brother or sister, or any other dependent family member, in the  
26 proportion that the policy names any such beneficiary, except that, subject  
27 to the statute of limitations, the amount of any premium ~~which~~ THAT is  
28 recoverable or avoidable by a creditor pursuant to title 44, chapter 8,  
29 article 1, with interest thereon, ~~shall~~ IS not ~~be~~ exempt. The exemption  
30 provided by this paragraph does not apply to a claim for the payment of a  
31 debt of the insured or beneficiary that is secured by a pledge or assignment  
32 of the cash value of the insurance policy or the proceeds of the policy. For  
33 the purposes of this paragraph, "dependent" means a family member who is  
34 dependent on the insured debtor for not less than half support.
- 35           7. An annuity contract where for a continuous unexpired period of two  
36 years ~~such~~ THAT contract has been owned by a debtor and has named as  
37 beneficiary the debtor, THE debtor's surviving spouse, child, parent, brother  
38 or sister, or any other dependent family member, except that, subject to the  
39 statute of limitations, the amount of any premium, payment or deposit with  
40 respect to ~~such~~ THAT contract is recoverable or avoidable by a creditor  
41 pursuant to title 44, chapter 8, article 1 ~~shall~~ IS not ~~be~~ exempt. The  
42 exemption provided by this paragraph does not apply to a claim for a payment  
43 of a debt of the annuitant or beneficiary that is secured by a pledge or  
44 assignment of the contract or its proceeds. For the purposes of this

1 paragraph, "dependent" means a family member who is dependent on the debtor  
2 for not less than half support.

3 8. Any claim for damages recoverable by any person by reason of any  
4 levy ~~upon~~ ON or sale under execution of ~~his~~ THAT PERSON'S exempt personal  
5 property or by reason of the wrongful taking or detention of ~~such~~ THAT  
6 property by any person, and the judgment recovered for ~~such~~ damages.

7 9. A total of one hundred fifty dollars held in a single account in  
8 any one financial institution as defined by section 6-101. The property  
9 declared exempt by this paragraph is not exempt from normal service charges  
10 assessed against the account by the financial institution at which the  
11 account is carried.

12 B. Any money or other assets payable to a participant in or  
13 beneficiary of, or any interest of any participant or beneficiary in, a  
14 retirement plan under section 401(a), 403(a), 403(b), 408, 408A or 409 or a  
15 deferred compensation plan under section 457 of the United States internal  
16 revenue code of 1986, as amended, ~~shall be~~ WHETHER THE BENEFICIARY'S INTEREST  
17 ARISES BY INHERITANCE, DESIGNATION, APPOINTMENT OR OTHERWISE, IS exempt from  
18 ~~any and~~ all claims of creditors of the beneficiary or participant. This  
19 subsection ~~shall~~ DOES not apply to any of the following:

20 1. An alternate payee under a qualified domestic relations order, as  
21 defined in section 414(p) of the United States internal revenue code of 1986,  
22 as amended. The interest of any and all alternate payees is exempt from any  
23 and all claims of any creditor of the alternate payee.

24 2. Amounts contributed within one hundred twenty days before a debtor  
25 files for bankruptcy.

26 3. The assets of bankruptcy proceedings filed before July 1, 1987.

27 C. Any person ~~the age of~~ eighteen years OF AGE or over, married or  
28 single, who resides within this state and who does not exercise the homestead  
29 exemption under article 1 of this chapter may claim as a personal property  
30 homestead exempt from all process prepaid rent, including security deposits  
31 as provided in section 33-1321, subsection A, for the claimant's residence,  
32 not exceeding the lesser of one thousand dollars or one and one-half months'  
33 rent.

34 D. ~~Nothing in~~ This section ~~exempts~~ DOES NOT EXEMPT property from  
35 orders ~~which~~ THAT are the result of a judgment for arrearages of child  
36 support or for a child support debt.

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

# HOUSE BILL 2424

AN ACT

AMENDING TITLE 14, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-1104; PROVIDING FOR DELAYED REPEAL OF SECTION 14-1101, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT; RELATING TO PROBATE PROCEEDINGS.

(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 section 14-1104, to read:

4 14-1104. Probate advisory panel; report

5 A. THE PROBATE ADVISORY PANEL IS ESTABLISHED CONSISTING OF THE  
6 FOLLOWING MEMBERS APPOINTED TO STAGGERED THREE YEAR TERMS:

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

10 2. TWO PUBLIC MEMBERS WHO ARE CONSERVATORS OF A PARENT WHO IS A  
11 PROTECTED PERSON. THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE  
12 OF REPRESENTATIVES SHALL EACH APPOINT ONE MEMBER.

13 3. ONE PUBLIC FIDUCIARY WHO IS LICENSED PURSUANT TO SECTION 14-5651  
14 AND WHO IS FROM A COUNTY WITH A POPULATION OF LESS THAN FIVE HUNDRED THOUSAND  
15 PERSONS. THE GOVERNOR SHALL APPOINT THIS MEMBER.

16 4. ONE FIDUCIARY, OTHER THAN A PUBLIC FIDUCIARY, WHO IS LICENSED  
17 PURSUANT TO SECTION 14-5651 AND WHO IS FROM A COUNTY WITH A POPULATION OF  
18 MORE THAN FIVE HUNDRED THOUSAND PERSONS. THE GOVERNOR SHALL APPOINT THIS  
19 MEMBER.

20 5. ONE ATTORNEY WHO HAS A MINIMUM OF FOUR YEARS EXPERIENCE IN  
21 GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS. THE GOVERNOR SHALL APPOINT  
22 THIS MEMBER.

23 6. ONE JUDICIAL OFFICER WHO HAS A MINIMUM OF TWO YEARS EXPERIENCE  
24 PRESIDING OVER GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS AND WHO IS FROM A  
25 COUNTY WITH A POPULATION OF MORE THAN FIVE HUNDRED THOUSAND PERSONS. THE  
26 CHIEF JUSTICE OF THE SUPREME COURT SHALL APPOINT THIS MEMBER.

27 7. ONE CLERK OF THE SUPERIOR COURT. THE CHIEF JUSTICE OF THE SUPREME  
28 COURT SHALL APPOINT THIS MEMBER.

29 B. THE PANEL SHALL:

30 1. SELECT A CHAIRPERSON AT ITS FIRST ANNUAL MEETING.

31 2. HOLD A PUBLIC HEARING AT LEAST ONCE EACH YEAR, OR AT THE CALL OF  
32 THE CHAIRPERSON, ON HOW TO IMPROVE THE GUARDIANSHIP AND CONSERVATORSHIP LAWS  
33 THROUGH STATUTORY CHANGES.

34 3. SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDATIONS TO THE  
35 GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE PRESIDENT OF THE  
36 SENATE AND THE CHIEF JUSTICE OF THE SUPREME COURT ON OR BEFORE NOVEMBER 15 OF  
37 EACH YEAR. THE PANEL SHALL PROVIDE A COPY OF EACH REPORT TO THE SECRETARY OF  
38 STATE.

39 C. PANEL MEMBERS ARE NOT ELIGIBLE FOR COMPENSATION OR REIMBURSEMENT OF  
40 EXPENSES.

41 D. THE LEGISLATURE SHALL PROVIDE STAFF SUPPORT FOR THE PANEL.

42 Sec. 2. Initial terms of members

43 A. Notwithstanding section 14-1104, Arizona Revised Statutes, as added  
44 by this act, the initial terms of members of the probate advisory panel are:

45 1. Three terms ending January 1, 2013.

1           2. Three terms ending January 1, 2014.

2           3. Three terms ending January 1, 2015.

3           B. The governor, speaker of the house of representatives and president  
4 of the senate shall make all subsequent appointments as prescribed by  
5 statute.

6           Sec. 3. Delayed repeal

7           Section 14-1101, Arizona Revised Statutes, as added by this act, is  
8 repealed from and after June 30, 2016.