

CHAPTER 95

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 00-1139

BY REPRESENTATIVES Mace, Tapia, S. Williams, Alexander, Chavez, Coleman, Gagliardi, Gordon, Keller, Larson, Miller, Tochtrop, Vigil, and Zimmerman;
also SENATOR Feeley.

AN ACT

CONCERNING THE APPOINTMENT OF GUARDIANS FOR MINORS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 15-14-201, Colorado Revised Statutes, is amended to read:

15-14-201. Status of guardian of minor - general. A person becomes a guardian of a minor by acceptance of a ~~parental~~ TESTAMENTARY appointment, by acceptance of an appointment by written instrument, or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor.

SECTION 2. 15-14-202, Colorado Revised Statutes, is amended to read:

15-14-202. Appointment of guardian of minor - testamentary or other writing. (1) The parent OR GUARDIAN of an unmarried minor may appoint by will a guardian for the minor. Subject to the right of the minor under section 15-14-203, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if, before acceptance, both parents are dead or incapacitated or the surviving parent has no parental rights or has been adjudged incapacitated OR THE GUARDIANSHIP OF THE CHILD HAS PREVIOUSLY BEEN GRANTED TO A THIRD PARTY AND SUCH GUARDIAN IS DEAD OR INCAPACITATED. A GUARDIAN MAY NOT APPOINT A SURVIVING PARENT WHO HAS NO PARENTAL RIGHTS TO BE A SUCCESSOR GUARDIAN. A testamentary appointment under a will probated in another state which is the testator's domicile may be effected by filing the guardian's acceptance in this state.

(2) The parent OR GUARDIAN of an unmarried minor may appoint a guardian for

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

the minor by written instrument designating the guardian signed by the parent OR GUARDIAN and at least two witnesses. An appointment by written instrument becomes effective when:

(a) The written instrument is filed in the court having probate jurisdiction in the county of residence of the last parent to die, if death occurred in the state of Colorado; EXCEPT THAT, IF THE CHILD HAS BEEN IN THE CUSTODY OF A GUARDIAN, THE WRITTEN INSTRUMENT IS FILED IN THE COURT HAVING PROBATE JURISDICTION IN THE COUNTY OF RESIDENCE OF THE DECEASED GUARDIAN, IF DEATH OCCURRED IN THE STATE OF COLORADO, and otherwise in the court having probate jurisdiction in the county in which the minor resides in Colorado; and

(b) The person appointed as guardian files in the court having jurisdiction an affidavit of acceptance ~~which~~ THAT states:

(I) The name, address, and age, or birthday if known, of the minor;

(II) The name, address, and telephone number of the appointee-guardian;

(III) The names of the parents of the minor and that both are dead or that any surviving parent has no parental rights or has been adjudged incapacitated OR IF GUARDIANSHIP OF THE CHILD HAS PREVIOUSLY BEEN GRANTED TO A THIRD PARTY, THE NAME OF THE GUARDIAN OF THE MINOR AND THAT THE GUARDIAN IS DEAD OR HAS BEEN ADJUDGED INCAPACITATED;

(IV) The name of the parent who was last to die and the county where that parent resided at the date of his death;

(IV.5) THE NAMES, LOCATION OF THE APPLICABLE COURT, AND CASE NUMBER OF ANY CASE IN WHICH GUARDIANSHIP OF THE CHILD HAS PREVIOUSLY BEEN GRANTED TO A THIRD PARTY;

(IV.6) THAT THE GUARDIANSHIP IS IN THE BEST INTERESTS OF THE CHILD AND, IF THE CHILD IS TWELVE YEARS OF AGE OR OLDER, THAT THE CHILD HAS CONSENTED IN WRITING TO THE APPOINTMENT OF THE GUARDIAN;

(V) That the appointee-guardian knows of no other appointment of a guardian; ~~which supersedes the appointment by written instrument and that no other guardian has been appointed;~~

(VI) That the appointee-guardian accepts the appointment; and

(VII) (A) That the registrar has determined that the requirements of this section have been met.

(B) The registrar may decline the appointment of a guardian because of his OR HER failure to meet the requirements of this section or for any other reason. A declination of appointment by the registrar is not an adjudication and does not preclude appointment by the court under section 15-14-204.

(3) The latest document appointing a guardian, whether will or written instrument,

which is executed by the last parent to die has priority OR, IF A THIRD PARTY HAS PREVIOUSLY BEEN APPOINTED AS A GUARDIAN, THE LATEST DOCUMENT APPOINTING A GUARDIAN, WHETHER WILL OR WRITTEN INSTRUMENT, WHICH IS EXECUTED BY THE GUARDIAN HAS PRIORITY.

(4) Upon acceptance of an appointment, written notice of such acceptance must be given by the guardian to the minor if ~~he~~ THE MINOR is ~~thirteen~~ TWELVE years of age or older and to the person having ~~his~~ THE MINOR'S care or to ~~his~~ THE MINOR'S nearest adult relation. IN ADDITION, A MINOR WHO IS TWELVE YEARS OF AGE OR OLDER SHALL ALSO BE GIVEN WRITTEN NOTICE OF THE RIGHT TO CONSENT OR THE RIGHT TO REFUSE TO CONSENT TO THE APPOINTMENT OF THE GUARDIAN PURSUANT TO SECTION 15-14-203 AND THAT SUCH RIGHT, IF EXERCISED, MUST BE EXERCISED EITHER BEFORE THE GUARDIAN ACCEPTS THE APPOINTMENT OR WITHIN THIRTY DAYS AFTER NOTICE OF THE ACCEPTANCE OF THE APPOINTMENT BY THE GUARDIAN.

(5) The clerk of the court shall issue letters of guardianship to any guardian effectively appointed under this section.

SECTION 3. 15-14-203, Colorado Revised Statutes, is amended to read:

15-14-203. Consent by minor of twelve years of age or older to appointment of guardian. A minor of ~~fourteen~~ TWELVE years of age or older ~~may prevent~~ HAS THE RIGHT TO CONSENT OR REFUSE TO CONSENT TO an appointment of ~~his~~ A guardian. ~~from becoming effective or may cause a previously accepted appointment to terminate by filing~~ If THE MINOR CONSENTS TO THE APPOINTMENT OF THE GUARDIAN, THE MINOR SHALL FILE with the court in which the will is probated or the written instrument is filed a written ~~objection~~ CONSENT to the appointment before it is accepted or within thirty days after notice of its acceptance. ~~An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the person appointed by will or written instrument or any other suitable person.~~ IF THE MINOR DOES NOT CONSENT TO THE APPOINTMENT OF THE GUARDIAN, THEN THE COURT SHALL APPOINT A GUARDIAN PURSUANT TO SECTION 15-14-206.

SECTION 4. 15-14-204, Colorado Revised Statutes, is amended to read:

15-14-204. Court appointment of guardian of minor - conditions for appointment. (1) The court, if it finds it will be in the best interests of the minor, may appoint a guardian for an unmarried minor:

- (a) If the parent-child legal relationship has been terminated; or
- (b) If legal custody of or decision-making responsibility for such minor has been suspended by prior court order; or
- (c) If the minor is found to have been abandoned by the parents or custodial person or person with decision-making responsibility; or
- (d) If the parents OR GUARDIAN or custodial person or person with decision-making responsibility requests the court to appoint OR CONSENTS TO THE APPOINTMENT OF a guardian for such minor; OR

(e) IF GUARDIANSHIP OF A CHILD HAS PREVIOUSLY BEEN GRANTED TO A THIRD PARTY AND THE THIRD PARTY HAS SUBSEQUENTLY DIED OR BECOME INCAPACITATED AND THE GUARDIAN HAS NOT MADE A TESTAMENTARY APPOINTMENT OF A GUARDIAN EITHER BY WILL OR WRITTEN INSTRUMENT; HOWEVER, THE COURT SHALL NOT PRESUME IT IS IN THE BEST INTERESTS OF A CHILD TO BE IN THE CARE OF A PARENT IN CIRCUMSTANCES WHERE A COURT HAS PREVIOUSLY GRANTED CUSTODY OF A CHILD TO A THIRD PARTY.

~~(2) A guardian appointed by will or written instrument as provided in section 15-14-202 whose appointment has not been prevented or nullified under section 15-14-203 has priority over any guardian who may be appointed by the court, unless the court finds that the removal of the guardian pursuant to section 15-14-212 would be in the best interests of the minor.~~ THE ORDER OF PRIORITY FOR APPOINTMENT OF A GUARDIAN SHALL BE AS STATED IN SECTION 15-14-206. The court also may proceed with an appointment of a guardian upon a finding that the guardian appointed by will or by any written instrument known to the court has failed to accept the appointment within thirty days after notice of the guardianship proceeding.

SECTION 5. 15-14-206, Colorado Revised Statutes, is amended to read:

15-14-206. Court appointment of guardian of minor - qualifications - priority of minor's nominee. (1) The court may appoint as guardian any person twenty-one years of age or older, resident or nonresident, whose appointment would be in the best interests of the minor. Unless the court finds the prospective appointment contrary to the best interests of the minor, qualified persons have priority for appointment in the following order:

(a) A person nominated by the minor, if the minor is ~~fourteen~~ TWELVE years of age or older;

(b) A person appointed by a will or by a written instrument of a parent of the minor OR, IN THE EVENT GUARDIANSHIP OF THE CHILD HAS PREVIOUSLY BEEN GRANTED TO A THIRD PARTY, A PERSON APPOINTED BY A WILL OR BY A WRITTEN INSTRUMENT OF THE GUARDIAN OF THE MINOR;

(c) Repealed.

(d) Any other interested person.

SECTION 6. 15-14-207, Colorado Revised Statutes, is amended to read:

15-14-207. Court appointment of guardian of minor - procedure. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 15-10-401 to:

(a) The minor, if ~~he~~ THE MINOR is ~~thirteen~~ TWELVE years of age or older;

(b) The person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition; and

(c) Any living parent OR GUARDIAN of the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 15-14-204 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.

(3) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than nine months.

(4) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney OR GUARDIAN AD LITEM to represent the minor, giving consideration to the preference of the minor if the minor is ~~fourteen~~ TWELVE years of age or older.

(5) If an appointed guardian is not effectively performing his OR HER duties and the court finds that the welfare of the minor requires immediate action, the court may, with or without notice, appoint a temporary guardian for such minor for a period of not to exceed six months. During such period the powers of the original appointee are suspended.

SECTION 7. 15-14-212, Colorado Revised Statutes, is amended to read:

15-14-212. Resignation or removal proceedings. (1) Any person interested in the welfare of a minor, or the minor, if ~~fourteen~~ TWELVE years of age or older, may petition for removal of a guardian, including a temporary guardian, on the ground that removal would be in the best interest of the minor. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(2) After notice to the guardian and to those persons entitled to notice under section 15-14-207 (1) and after hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are, or may be, inadequately represented, it may appoint an attorney OR GUARDIAN AD LITEM to represent the minor, giving consideration to the preference of the minor if the minor is ~~fourteen~~ TWELVE years of age or older.

SECTION 8. 15-14-201, Colorado Revised Statutes, as enacted by House Bill 00-1375, enacted at the Second Regular Session of the Sixty-second General Assembly, is amended to read:

15-14-201. Appointment and status of guardian. A person becomes a guardian of a minor by ~~parental~~ appointment BY A PARENT OR GUARDIAN BY WILL OR WRITTEN INSTRUMENT or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or minor ward.

SECTION 9. 15-14-202, Colorado Revised Statutes, as enacted by House Bill 00-1375, enacted at the Second Regular Session of the Sixty-second General Assembly, is amended to read:

15-14-202. Testamentary appointment of guardian - appointment by written instrument. (1) A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has or may have in the future. A GUARDIAN MAY ALSO BE APPOINTED BY WILL OR OTHER SIGNED WRITING BY A GUARDIAN OF A MINOR CHILD. THE OTHER SIGNED WRITING SHALL BE SIGNED BY THE PARENT OR GUARDIAN AND AT LEAST TWO WITNESSES AND ALL SIGNATURES SHALL BE NOTARIZED. The appointment may specify the desired limitations on the powers to be given to the guardian. A GUARDIAN MAY NOT APPOINT A SURVIVING PARENT WHO HAS NO PARENTAL RIGHTS TO BE A SUCCESSOR GUARDIAN. The appointing parent OR GUARDIAN may revoke or amend the appointment before confirmation by the court.

(2) Upon petition of an appointing parent OR GUARDIAN and a finding that the appointing parent OR GUARDIAN will likely become unable to care for the child within two years, and after notice as provided in section 15-14-205 (1), the court, before the appointment becomes effective, may confirm the ~~parent's~~ selection of a guardian BY A PARENT OR GUARDIAN and terminate the rights of others to object. IF THE MINOR HAS ATTAINED TWELVE YEARS OF AGE, THE MINOR MUST CONSENT TO THE APPOINTMENT OF A GUARDIAN PURSUANT TO SECTION 15-14-203 (2).

(3) Subject to section 15-14-203, the appointment of a guardian becomes effective upon the ~~appointing parent's~~ death OF THE APPOINTING PARENT OR GUARDIAN, an adjudication that the parent OR GUARDIAN is an incapacitated person, or a written determination by a physician who has examined the parent OR GUARDIAN that the parent OR GUARDIAN is no longer able to care for the child, whichever occurs first.

(4) The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within thirty days after the guardian's appointment becomes effective. The guardian shall:

(a) File the acceptance of appointment and a copy of the will with the court of the county in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court of the county in which the minor resides or is present; and

(b) Give written notice of the acceptance of appointment to the appointing parent OR GUARDIAN, if living, the minor, if the minor has attained twelve years of age, and a person other than the parent OR GUARDIAN having care and custody of the minor.

(5) Unless the appointment was previously confirmed by the court, the notice given under paragraph (b) of subsection (4) of this section must include a statement of the right of those notified to terminate the appointment by filing a written objection in the court as provided in section 15-14-203 (1) AND OF THE RIGHT OF A MINOR WHO HAS ATTAINED TWELVE YEARS OF AGE TO REFUSE TO CONSENT TO THE APPOINTMENT OF THE GUARDIAN AS PROVIDED IN SECTION 15-14-203 (2).

(6) Unless the appointment was previously confirmed by the court, within thirty days after filing the notice and the appointing instrument, a guardian shall petition the

court for confirmation of the appointment, giving notice in the manner provided in section 15-14-205 (1).

(7) The appointment of a guardian by a parent does not supersede the parental rights of either parent. If both parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who died or was adjudged incapacitated has priority. IF A GUARDIAN SURVIVES THE DEATH OR ADJUDICATION OF INCAPACITY OF BOTH PARENTS, AN APPOINTMENT BY THE LAST PARENT OR GUARDIAN WHO DIED OR WAS ADJUDGED INCAPACITATED HAS PRIORITY. An appointment by a parent OR GUARDIAN which is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

(8) The powers of a guardian who complies timely with the requirements of subsections (4) and (6) of this section relate back to give acts by the guardian which are of benefit to the minor and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of the appointment.

(9) The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to section 15-14-203 (1) OR OF THE REFUSAL OF A MINOR CHILD WHO HAS ATTAINED THE AGE OF TWELVE YEARS TO CONSENT PURSUANT TO SECTION 15-14-203 (2).

SECTION 10. 15-14-203, Colorado Revised Statutes, as enacted by House Bill 00-1375, enacted at the Second Regular Session of the Sixty-second General Assembly, is amended to read:

15-14-203. Objection of others to parental appointment - consent by minor of twelve years of age or older to appointment of guardian. (1) Until the court has confirmed an appointee under section 15-14-202, ~~a minor who is the subject of an appointment by a parent and who has attained twelve years of age~~, the other parent, or a person other than a parent or guardian having care or custody of the minor may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn, and if withdrawn is of no effect. The objection does not preclude judicial appointment of the person selected by the parent OR GUARDIAN. The court may treat the filing of an objection OR THE REFUSAL OF THE MINOR TO CONSENT as a petition for the appointment of an emergency or a temporary guardian under section 15-14-204, and proceed accordingly.

(2) UNTIL THE COURT HAS CONFIRMED AN APPOINTEE UNDER SECTION 15-14-202, A MINOR WHO IS THE SUBJECT OF AN APPOINTMENT BY A PARENT OR GUARDIAN AND WHO HAS ATTAINED TWELVE YEARS OF AGE HAS THE RIGHT TO CONSENT OR REFUSE TO CONSENT TO AN APPOINTMENT OF A GUARDIAN. IF THE MINOR CONSENTS TO THE APPOINTMENT OF THE GUARDIAN, THE MINOR SHALL FILE WITH THE COURT IN WHICH THE WILL IS PROBATED OR THE WRITTEN INSTRUMENT IS FILED A WRITTEN CONSENT TO THE APPOINTMENT BEFORE IT IS ACCEPTED OR WITHIN THIRTY DAYS AFTER NOTICE OF ITS ACCEPTANCE. IF THE MINOR DOES NOT CONSENT TO THE APPOINTMENT OF A

GUARDIAN, THEN THE COURT SHALL APPOINT A GUARDIAN PURSUANT TO SECTION 15-14-204.

SECTION 11. 15-14-204, Colorado Revised Statutes, as enacted by House Bill 00-1375, enacted at the Second Regular Session of the Sixty-second General Assembly, is amended to read:

15-14-204. Judicial appointment of guardian - conditions for appointment.

(1) A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.

(2) The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and:

(a) The parents consent;

(b) All parental rights have been terminated; ~~or~~

(c) The parents are unwilling or unable to exercise their parental rights; OR

(d) GUARDIANSHIP OF A CHILD HAS PREVIOUSLY BEEN GRANTED TO A THIRD PARTY AND THE THIRD PARTY HAS SUBSEQUENTLY DIED OR BECOME INCAPACITATED AND THE GUARDIAN HAS NOT MADE AN APPOINTMENT OF A GUARDIAN EITHER BY WILL OR WRITTEN INSTRUMENT; HOWEVER THE COURT SHALL NOT PRESUME IT IS IN THE BEST INTERESTS OF A CHILD TO BE IN THE CARE OF A PARENT IN CIRCUMSTANCES WHERE A COURT HAS PREVIOUSLY GRANTED CUSTODY OF A CHILD TO A THIRD PARTY.

(3) If a guardian is appointed by a parent OR GUARDIAN pursuant to section 15-14-202 and the appointment has not been prevented or terminated under section 15-14-203 (1) OR THE MINOR HAS CONSENTED TO THE APPOINTMENT PURSUANT TO SECTION 15-14-203 (2), that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under section 15-14-202 has failed to accept the appointment within thirty days after notice of the guardianship proceeding.

(4) If necessary and on petition or motion and whether or not the conditions of subsection (2) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Notice in the manner provided in section 15-14-113 must be given to the parents and to a minor who has attained twelve years of age. Except as otherwise ordered by the court, the temporary guardian has the authority of an unlimited guardian, but the duration of the temporary guardianship may not exceed six months. Within five days after the appointment, the temporary guardian shall send or deliver a copy of the order to all individuals who would be entitled to notice of hearing under section 15-14-205.

(5) If the court finds that following the procedures of this part 2 will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the emergency guardian's authority may not exceed thirty days and the emergency guardian may

exercise only the powers specified in the order. Reasonable notice of the time and place of a hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained twelve years of age, to each living parent of the minor, and a person having care or custody of the minor, if other than a parent. The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the emergency guardian is appointed without notice, notice of the appointment must be given within forty-eight hours after the appointment and a hearing on the appropriateness of the appointment held within five days after the appointment.

SECTION 12. 15-14-205 (1), Colorado Revised Statutes, as enacted by House Bill 00-1375, enacted at the Second Regular Session of the Sixty-second General Assembly, is amended to read:

15-14-205. Judicial appointment of guardian - procedure. (1) After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to:

- (a) The minor, if the minor has attained twelve years of age and is not the petitioner;
- (b) Any person alleged to have had the primary care and custody of the minor during the sixty days before the filing of the petition;
- (c) Each living parent of the minor or, if there is none, the adult nearest in kinship that can be found;
- (d) Any person nominated as guardian by the minor if the minor has attained twelve years of age;
- (e) Any appointee of a parent OR GUARDIAN whose appointment has not been prevented or terminated under section 15-14-203 (1) OR WHOSE APPOINTMENT WAS CONSENTED TO UNDER SECTION 15-14-203 (2); and
- (f) Any guardian or conservator currently acting for the minor in this state or elsewhere.

SECTION 13. Effective date - applicability. (1) This section, sections 1 to 7, and section 14 of this act shall take effect July 1, 2000, and shall apply to appointments of guardians made on or after said date.

(2) Sections 8 to 12 of this act shall take effect January 1, 2001, and shall apply to appointments of guardians made on or after said date; except that sections 8 to 12 of this act shall only take effect if House Bill 00-1375 becomes law.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 31, 2000