

SENATE FLOOR AMENDMENT

Third Reading

BY SENATOR Gardner

1 Amend engrossed bill, page 3, strike lines 25 through 27.

2 Page 4, strike lines 1 through 6 and substitute:

3 "(7) "DELEGATEE" MEANS ANY PERSON, INCLUDING A
4 PROFESSIONAL SERVICE PROVIDER, TO WHOM A GUARDIAN OR
5 CONSERVATOR HAS DELEGATED ONE OR MORE OF THE POWERS DETAILED
6 IN SECTIONS 15-14.7-210, 15-14.7-314, 15-14.7-414, OR 15-14.7-421 AND
7 IS SUBJECT TO THE DUTIES AND LIMITATIONS OF THE GUARDIAN OR
8 CONSERVATOR UNDER THIS ACT."

9 Page 12, strike lines 6 through 27.

10 Page 13, strike lines 1 through 14 and substitute:

11 **"15-14.7-108. Letters of office.** (1) THE COURT SHALL ISSUE
12 LETTERS OF OFFICE TO A GUARDIAN ON FILING BY THE GUARDIAN OF AN
13 ACKNOWLEDGMENT OF RESPONSIBILITIES THAT INCLUDES A STATEMENT
14 THAT THE NOMINEE ACKNOWLEDGES AND UNDERSTANDS THAT IF THE
15 NOMINEE FAILS TO FILE REQUIRED REPORTS WITH THE COURT OR FAILS TO
16 RESPOND TO AN ORDER OF THE COURT TO SHOW CAUSE WHY THE NOMINEE
17 SHOULD NOT BE HELD IN CONTEMPT OF COURT, THE LAWS OF THIS STATE
18 AUTHORIZE THE COURT TO ACCESS DATA AND RECORDS OF STATE
19 AGENCIES IN ORDER TO OBTAIN CONTACT INFORMATION FOR THE NOMINEE.

20 (2) THE COURT SHALL ISSUE LETTERS OF OFFICE TO A
21 CONSERVATOR ON FILING BY THE CONSERVATOR OF AN
22 ACKNOWLEDGMENT OF RESPONSIBILITIES THAT INCLUDES:

23 (a) A STATEMENT THAT THE NOMINEE ACKNOWLEDGES AND
24 UNDERSTANDS THAT IF THE NOMINEE FAILS TO FILE REQUIRED REPORTS
25 WITH THE COURT OR FAILS TO RESPOND TO AN ORDER OF THE COURT TO
26 SHOW CAUSE WHY THE NOMINEE SHOULD NOT BE HELD IN CONTEMPT OF
27 COURT, THE LAWS OF THIS STATE AUTHORIZE THE COURT TO ACCESS DATA
28 AND RECORDS OF STATE AGENCIES IN ORDER TO OBTAIN CONTACT
29 INFORMATION FOR THE NOMINEE; AND

30 (b) FILING OF ANY REQUIRED BOND OR COMPLIANCE WITH ANY
31 OTHER ASSET PROTECTION ARRANGEMENT REQUIRED BY THE COURT."

32 Page 13, line 15, strike "ON" and substitute "UPON THE FILING OF AN".

33 Page 17, line 7, strike "APPROVES" and substitute "RECEIVES".

1 Page 17, line 8, strike "APPROVAL" and substitute "RECEIPT".

2 Page 17, line 10, after "RESPONDENT" insert "AND THE RESPONDENT'S
3 ATTORNEY" and strike "APPOINTED." and substitute "APPOINTED, AND ANY
4 OTHER PERSON THE COURT DETERMINES.".

5 Page 17, after line 10 insert:

6 "(4) IF THE COURT DOES NOT RECEIVE AN OBJECTION TO THE
7 REQUEST FOR NOTICE WITHIN FOURTEEN DAYS AFTER THE REQUEST IS
8 FILED, THE COURT MAY APPROVE OR DENY THE REQUEST FOR GOOD CAUSE.
9 IF THE COURT RECEIVES AN OBJECTION TO THE REQUEST FOR NOTICE
10 WITHIN FOURTEEN DAYS AFTER THE REQUEST IS FILED THE COURT MUST
11 HOLD A HEARING BEFORE GRANTING APPROVAL OR DENIAL OF THE
12 REQUEST.".

13 Page 17, strike lines 12 and 13 and substitute: "(1) A PETITION FOR
14 APPOINTMENT OF A GUARDIAN OR CONSERVATOR MUST BE FILED WITH AN
15 ACCEPTANCE OF APPOINTMENT SIGNED BY THE PERSON NOMINATED FOR
16 APPOINTMENT AS A GUARDIAN OR CONSERVATOR THAT DISCLOSES TO THE
17 COURT WHETHER THE PERSON:".

18 Page 80, after line 15 insert:

19 "(8) THE FOLLOWING PROVISIONS APPLY IN A CONTESTED
20 TERMINATION PROCEEDING:

21 (a) THE GUARDIAN MAY FILE A WRITTEN REPORT TO THE COURT
22 REGARDING ANY MATTER RELEVANT TO THE TERMINATION PROCEEDING,
23 AND THE GUARDIAN MAY FILE A MOTION FOR INSTRUCTIONS REGARDING
24 ANY RELEVANT MATTER, INCLUDING, BUT NOT LIMITED TO:

25 (I) WHETHER AN ATTORNEY, GUARDIAN AD LITEM, OR VISITOR
26 MUST BE APPOINTED FOR THE ADULT SUBJECT TO GUARDIANSHIP;

27 (II) WHETHER ANY FURTHER INVESTIGATION OR PROFESSIONAL
28 EVALUATION OF THE ADULT SUBJECT TO GUARDIANSHIP MUST BE
29 CONDUCTED, THE SCOPE OF THE INVESTIGATION OR PROFESSIONAL
30 EVALUATION, AND WHEN THE INVESTIGATION OR PROFESSIONAL
31 EVALUATION MUST BE COMPLETED; AND

32 (III) WHETHER THE GUARDIAN MUST BE INVOLVED IN THE
33 TERMINATION PROCEEDINGS AND, IF SO, TO WHAT EXTENT;

34 (b) IF THE GUARDIAN ELECTS TO FILE A WRITTEN REPORT OR A
35 MOTION FOR INSTRUCTIONS, THE GUARDIAN MUST FILE INITIAL PLEADINGS
36 WITHIN TWENTY-ONE DAYS AFTER THE PETITION TO TERMINATE IS FILED.
37 ANY PERSON INTERESTED IN THE WELFARE OF THE ADULT SUBJECT TO
38 GUARDIANSHIP HAS FOURTEEN DAYS AFTER THE INITIAL PLEADINGS ARE
39 FILED TO FILE A RESPONSE. IF A RESPONSE IS FILED, THE GUARDIAN HAS

1 SEVEN DAYS AFTER THE RESPONSE IS FILED TO FILE A REPLY. IF A MOTION
2 FOR INSTRUCTIONS IS FILED BY THE GUARDIAN AS THE GUARDIAN'S INITIAL
3 PLEADING, THE COURT MUST RULE ON THE MOTION BEFORE THE PETITION
4 FOR TERMINATION OF THE GUARDIANSHIP IS SET FOR HEARING. UNLESS A
5 HEARING ON THE MOTION FOR INSTRUCTIONS IS REQUESTED BY THE
6 COURT, THE COURT MAY RULE ON THE PLEADINGS WITHOUT A HEARING
7 AFTER THE TIME PERIOD FOR THE FILING OF THE LAST RESPONSIVE
8 PLEADING HAS EXPIRED. AFTER THE FILING OF THE GUARDIAN'S INITIAL
9 MOTION FOR INSTRUCTIONS, THE GUARDIAN MAY FILE SUBSEQUENT
10 MOTIONS FOR INSTRUCTION, AS APPROPRIATE.

11 (c) EXCEPT FOR THE ACTIONS AUTHORIZED IN SUBSECTIONS (8)(a),
12 (8)(b), OR (8)(e) OF THIS SECTION, OR AS OTHERWISE ORDERED BY THE
13 COURT, THE GUARDIAN SHALL NOT TAKE ANY ACTION TO OPPOSE OR
14 INTERFERE IN THE TERMINATION PROCEEDING. THE FILING OF THE INITIAL
15 OR SUBSEQUENT MOTION FOR INSTRUCTIONS BY THE GUARDIAN MUST NOT
16 ALONE BE DEEMED OPPOSITION OR INTERFERENCE.

17 (d) UNLESS ORDERED BY THE COURT, THE GUARDIAN DOES NOT
18 HAVE A DUTY TO PARTICIPATE IN THE TERMINATION PROCEEDING, AND THE
19 GUARDIAN DOES NOT INCUR LIABILITY FOR FILING THE REPORT OR MOTION
20 FOR INSTRUCTION OR FOR FAILING TO PARTICIPATE IN THE PROCEEDING;

21 (e) NOTHING IN THIS SUBSECTION (8) PREVENTS:

22 (I) THE COURT, ON ITS OWN MOTION, AND REGARDLESS OF
23 WHETHER THE GUARDIAN HAS FILED A REPORT OR MOTION FOR
24 INSTRUCTIONS, FROM ORDERING THE GUARDIAN TO TAKE ANY ACTION
25 THAT THE COURT DEEMS APPROPRIATE OR FROM APPOINTING AN
26 ATTORNEY, GUARDIAN AD LITEM, VISITOR, OR PROFESSIONAL EVALUATOR;

27 (II) THE COURT FROM ORDERING THE GUARDIAN TO APPEAR AT THE
28 TERMINATION PROCEEDING AND GIVE TESTIMONY; OR

29 (III) ANY PERSON INTERESTED IN THE WELFARE OF THE ADULT
30 SUBJECT TO GUARDIANSHIP FROM CALLING THE GUARDIAN AS A WITNESS
31 IN THE TERMINATION PROCEEDING; AND

32 (f) ANY INDIVIDUAL WHO HAS BEEN APPOINTED AS A GUARDIAN,
33 AND IS ALSO A PERSON INTERESTED IN THE WELFARE OF THE ADULT
34 SUBJECT TO GUARDIANSHIP, AND WHO WANTS TO PARTICIPATE IN THE
35 TERMINATION PROCEEDING IN THE INDIVIDUAL'S INDIVIDUAL CAPACITY
36 AND NOT IN THE INDIVIDUAL'S FIDUCIARY CAPACITY MAY DO SO WITHOUT
37 RESTRICTION OR LIMITATION. THE PAYMENT OF ANY FEES AND COSTS TO
38 THAT INDIVIDUAL RELATED TO THE INDIVIDUAL'S DECISION TO
39 PARTICIPATE IN THE TERMINATION PROCEEDING IS GOVERNED BY SECTION
40 15-10-602 (7) AND NOT BY SECTION 15-10-602 (1).".

41 Page 81, line 21, after "AVOID" insert "FINANCIAL".

42 Page 132, after line 18 insert:

1 "(13) THE FOLLOWING PROVISIONS APPLY IN A CONTESTED
2 TERMINATION PROCEEDING:
3 (a) THE CONSERVATOR MAY FILE A WRITTEN REPORT TO THE
4 COURT REGARDING ANY MATTER RELEVANT TO THE TERMINATION
5 PROCEEDING, AND THE CONSERVATOR MAY FILE A MOTION FOR
6 INSTRUCTIONS REGARDING ANY RELEVANT MATTER, INCLUDING, BUT NOT
7 LIMITED TO:
8 (I) WHETHER AN ATTORNEY, GUARDIAN AD LITEM, OR VISITOR
9 MUST BE APPOINTED FOR THE MINOR;
10 (II) WHETHER ANY FURTHER INVESTIGATION OR PROFESSIONAL
11 EVALUATION OF THE MINOR MUST BE CONDUCTED, THE SCOPE OF THE
12 INVESTIGATION OR PROFESSIONAL EVALUATION, AND WHEN THE
13 INVESTIGATION OR PROFESSIONAL EVALUATION MUST BE COMPLETED; AND
14 (III) WHETHER THE CONSERVATOR MUST BE INVOLVED IN THE
15 TERMINATION PROCEEDINGS AND, IF SO, TO WHAT EXTENT;
16 (b) IF THE CONSERVATOR ELECTS TO FILE A WRITTEN REPORT OR
17 A MOTION FOR INSTRUCTIONS, THE CONSERVATOR SHALL FILE INITIAL
18 PLEADINGS WITHIN TWENTY-ONE DAYS AFTER THE PETITION TO
19 TERMINATE IS FILED. ANY PERSON INTERESTED IN THE WELFARE OF THE
20 MINOR HAS FOURTEEN DAYS AFTER THE INITIAL PLEADINGS ARE FILED TO
21 FILE A RESPONSE. IF A RESPONSE IS FILED, THE CONSERVATOR HAS SEVEN
22 DAYS AFTER THE RESPONSE IS FILED TO FILE A REPLY. IF A MOTION FOR
23 INSTRUCTIONS IS FILED BY THE CONSERVATOR AS THE CONSERVATOR'S
24 INITIAL PLEADING, THE COURT MUST RULE ON THE MOTION BEFORE THE
25 PETITION FOR TERMINATION OF THE CONSERVATORSHIP IS SET FOR
26 HEARING. UNLESS A HEARING ON THE MOTION FOR INSTRUCTIONS IS
27 REQUESTED BY THE COURT, THE COURT MAY RULE ON THE PLEADINGS
28 WITHOUT A HEARING AFTER THE TIME PERIOD FOR THE FILING OF THE LAST
29 RESPONSIVE PLEADING HAS EXPIRED. AFTER THE FILING OF THE
30 CONSERVATOR'S INITIAL MOTION FOR INSTRUCTIONS, THE CONSERVATOR
31 MAY FILE SUBSEQUENT MOTIONS FOR INSTRUCTION, AS APPROPRIATE.
32 (c) EXCEPT FOR THE ACTIONS AUTHORIZED IN SUBSECTIONS
33 (13)(a), (13)(b), OR (13)(e) OF THIS SECTION, OR AS OTHERWISE ORDERED
34 BY THE COURT, THE CONSERVATOR SHALL NOT TAKE ANY ACTION TO
35 OPPOSE OR INTERFERE IN THE TERMINATION PROCEEDING. THE FILING OF
36 THE INITIAL OR SUBSEQUENT MOTION FOR INSTRUCTIONS BY THE
37 CONSERVATOR MUST NOT ALONE BE DEEMED OPPOSITION OR
38 INTERFERENCE.
39 (d) UNLESS ORDERED BY THE COURT, THE CONSERVATOR DOES
40 NOT HAVE A DUTY TO PARTICIPATE IN THE TERMINATION PROCEEDING,
41 AND THE CONSERVATOR DOES NOT INCUR LIABILITY FOR FILING THE
42 REPORT OR MOTION FOR INSTRUCTION OR FOR FAILING TO PARTICIPATE IN
43 THE PROCEEDING;
44 (e) NOTHING IN THIS SUBSECTION (13) PREVENTS:
45 (I) THE COURT, ON ITS OWN MOTION, AND REGARDLESS OF

1 WHETHER THE CONSERVATOR HAS FILED A REPORT OR MOTION FOR
2 INSTRUCTIONS, FROM ORDERING THE CONSERVATOR TO TAKE ANY ACTION
3 THAT THE COURT DEEMS APPROPRIATE OR FROM APPOINTING AN
4 ATTORNEY, GUARDIAN AD LITEM, VISITOR, OR PROFESSIONAL EVALUATOR;
5 (II) THE COURT FROM ORDERING THE CONSERVATOR TO APPEAR AT
6 THE TERMINATION PROCEEDING AND GIVE TESTIMONY; OR
7 (III) ANY PERSON INTERESTED IN THE WELFARE OF THE MINOR
8 FROM CALLING THE CONSERVATOR AS A WITNESS IN THE TERMINATION
9 PROCEEDING; AND
10 (f) ANY INDIVIDUAL WHO HAS BEEN APPOINTED AS A
11 CONSERVATOR, AND IS ALSO A PERSON INTERESTED IN THE WELFARE OF
12 THE MINOR, AND WHO WANTS TO PARTICIPATE IN THE TERMINATION
13 PROCEEDING IN THE INDIVIDUAL'S INDIVIDUAL CAPACITY AND NOT IN THE
14 INDIVIDUAL'S FIDUCIARY CAPACITY MAY DO SO WITHOUT RESTRICTION OR
15 LIMITATION. THE PAYMENT OF ANY FEES AND COSTS TO THAT INDIVIDUAL
16 RELATED TO THE INDIVIDUAL'S DECISION TO PARTICIPATE IN THE
17 TERMINATION PROCEEDING IS GOVERNED BY SECTION 15-10-602 (7) AND
18 NOT BY SECTION 15-10-602 (1)."

19 Page 133, after line 20 insert:

20 **"15-14.7-433. Effect of conservator's action on third parties.**
21 A CONSERVATOR'S RATIFICATION OR INVALIDATION OF A CONTRACT,
22 TRUST, WILL, OR OTHER TRANSACTION, INCLUDING A TRANSACTION
23 RELATED TO THE PROPERTY OR BUSINESS AFFAIRS OF THE RESPONDENT
24 PURSUANT TO THIS ARTICLE 14.7, IS NOT BINDING ON AN INTERESTED
25 PERSON, AS DEFINED IN SECTION 15-10-201 (27), WITHOUT NOTICE."

26 Page 136, line 19, after "AVOID" insert "FINANCIAL".

27 Page 161, line 13, after "(26)," insert "(27),".

28 Page 161, line 21, strike "IS UNABLE TO".

29 Page 161, strike lines 22 through 26 and substitute "LACKS THE ABILITY
30 TO MEET ESSENTIAL REQUIREMENTS FOR HEALTH, SAFETY, OR WELFARE
31 BECAUSE THE INDIVIDUAL IS UNABLE TO RECEIVE AND EVALUATE
32 INFORMATION OR MAKE OR COMMUNICATE DECISIONS, EVEN WITH
33 APPROPRIATE SUPPORTIVE SERVICES, TECHNOLOGICAL ASSISTANCE, OR
34 SUPPORTED DECISION-MAKING, EXCEPT AS OTHERWISE DEFINED BY THE
35 TERMS OF A GOVERNING INSTRUMENT. A DETERMINATION BY A COURT
36 UNDER SECTIONS 15-14.7-301, 15-14.7-502, 15-14.7-503, IS NOT A
37 DETERMINATION THAT A PERSON IS OR IS NOT AN INCAPACITATED PERSON
38 FOR ANY OTHER PURPOSES UNDER THE LAWS OF THIS STATE UNLESS
39 SPECIFICALLY ORDERED BY THE COURT IN THOSE PROCEEDINGS. A

1 PROCEEDING TO DETERMINE WHETHER A PERSON IS OR IS NOT AN
2 INCAPACITATED PERSON FOR ANY OTHER PURPOSE UNDER THE LAWS OF
3 THIS STATE MAY BE BROUGHT UNDER ANY APPLICABLE PROVISIONS OR
4 PROCEDURES OF THE LAWS OF THIS STATE."

5 Page 162, after line 4 insert:

6 "(27) "Interested person" includes heirs, devisees, children,
7 spouses, creditors, beneficiaries, trust directors, and any others having a
8 property right in or claim against a trust estate or the estate of a decedent,
9 ~~ward, or protected person, which~~ PERSON SUBJECT TO GUARDIANSHIP,
10 PERSON SUBJECT TO CONSERVATORSHIP, OR PERSON SUBJECT TO A
11 PROTECTIVE ARRANGEMENT WHO may be affected by the proceeding. It
12 also includes persons having priority for an appointment as a personal
13 representative and other fiduciaries representing the interested person.
14 The meaning as it relates to particular persons may vary from time to time
15 and is determined according to the particular purposes of, and matter
16 involved in, any proceeding."

17 Page 164, strike lines 23 through 27.

18 Page 165, strike lines 1 through 7.

19 Renumber succeeding sections accordingly.

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