

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 20-0003.01 Jerry Barry x4341

SENATE BILL 20-129

SENATE SPONSORSHIP

Holbert and Ginal,

HOUSE SPONSORSHIP

Froelich and Ransom,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROTECTION OF INDIVIDUALS SUBJECT TO A**
102 **FIDUCIARY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

For petitions for wards or conservators, the bill requires a petitioner to conduct a prehearing conference with the minor or potentially incapacitated person and persons who may assist the minor or potentially incapacitated person. The petitioner must include a report of the prehearing conference with the petition and mail the petition and report to any person who participated in the prehearing conference.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
February 24, 2020

Current law allows a court on its own motion or at the request of an interested person to conduct an emergency review of a fiduciary's actions. The bill requires the judge to rule on the motion or request within 14 days.

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

2 **SECTION 1. In Colorado Revised Statutes, 15-14-102, add (7.5)**
3 **and (13.5) as follows:**

4 **15-14-102. Definitions. In parts 1 to 4 of this article 14:**

5 **(7.5) "MEMBER OF THE SUPPORTIVE COMMUNITY" MEANS A**
6 **PERSON WHOM THE RESPONDENT, WARD, OR PROTECTED PERSON HAS**
7 **TRUSTED FOR THE ONE-YEAR PERIOD IMMEDIATELY PRECEDING THE FILING**
8 **OF A PETITION PURSUANT TO SECTION 15-14-304 OR 15-14-403 TO ENGAGE**
9 **IN SUPPORTED DECISION-MAKING AND WHO MAY HAVE RELEVANT**
10 **INFORMATION ABOUT THE RESPONDENT'S, WARD'S, OR PROTECTED**
11 **PERSON'S DESIRES AND PERSONAL VALUES.**

12 **(13.5) "SUPPORTED DECISION-MAKING" MEANS THE WAY AN**
13 **ADULT WITH A DISABILITY OR DIMINISHED CAPACITY HAS MADE OR IS**
14 **MAKING HIS OR HER OWN DECISIONS BY USING FRIENDS, FAMILY MEMBERS,**
15 **PROFESSIONALS, AND OTHER PEOPLE HE OR SHE TRUSTS TO:**

16 **(a) HELP UNDERSTAND THE ISSUES AND CHOICES;**

17 **(b) ASK QUESTIONS;**

18 **(c) RECEIVE EXPLANATIONS IN LANGUAGE HE OR SHE**
19 **UNDERSTANDS;**

20 **(d) COMMUNICATE HIS OR HER DECISIONS TO OTHERS IF**
21 **NECESSARY; OR**

22 **(e) FACILITATE THE EXERCISE OF DECISIONS REGARDING HIS OR**
23 **HER DAY-TO-DAY HEALTH, SAFETY, WELFARE, OR FINANCIAL AFFAIRS.**

1 **SECTION 2.** In Colorado Revised Statutes, **add 15-14-113.5** as
2 follows:

3 **15-14-113.5. Appointments without notice - investigation -**
4 **report - procedures.** (1) A VISITOR APPOINTED PURSUANT TO SECTION
5 15-14-312 (5) OR 15-14-412 (3)(b) MUST BE A PERSON WHO HAS SUCH
6 TRAINING AS THE COURT DEEMS APPROPRIATE.

7 (2) A VISITOR APPOINTED PURSUANT TO SECTION 15-14-312 (5) OR
8 15-14-412 (3)(b) SHALL INTERVIEW THE RESPONDENT IN PERSON AND, TO
9 THE EXTENT THAT THE RESPONDENT IS ABLE TO UNDERSTAND:

10 (a) EXPLAIN TO THE RESPONDENT THE SUBSTANCE OF THE
11 PETITION; THE NATURE, PURPOSE, AND EFFECT OF THE PROCEEDING; THE
12 RESPONDENT'S RIGHT TO A HEARING PURSUANT TO SECTION 15-14-312 (2),
13 IF APPLICABLE; AND THE POWERS AND DUTIES OF THE EMERGENCY
14 GUARDIAN OR SPECIAL CONSERVATOR;

15 (b) IDENTIFY AND DETERMINE THE RESPONDENT'S VIEW ON ANY
16 MEMBER OF THE SUPPORTIVE COMMUNITY, AS DEFINED IN SECTION
17 15-14-102 (7.5), WHOSE PARTICIPATION IN THE PROCEEDINGS MAY SERVE
18 THE RESPONDENT'S BEST INTERESTS;

19 (c) INFORM THE RESPONDENT OF THE NAME, CONTACT
20 INFORMATION, AND APPOINTMENT OF HIS OR HER COURT-APPOINTED
21 COUNSEL OR HIS OR HER RIGHT TO EMPLOY AND CONSULT WITH A LAWYER
22 AT THE RESPONDENT'S OWN EXPENSE; AND

23 (d) INFORM THE RESPONDENT THAT ALL COSTS AND EXPENSES OF
24 THE PROCEEDING, INCLUDING THE RESPONDENT'S ATTORNEY FEES, WILL BE
25 PAID FROM THE RESPONDENT'S ESTATE UNLESS THE COURT DIRECTS
26 OTHERWISE.

27 (3) IN ADDITION TO THE DUTIES IMPOSED BY SUBSECTION (2) OF

1 THIS SECTION, THE VISITOR SHALL:

2 (a) INTERVIEW THE PERSON OR PERSONS IDENTIFIED BY THE
3 RESPONDENT AS MEMBERS OF THE SUPPORTIVE COMMUNITY ABOUT THE
4 MEMBER'S RELATIONSHIP, ROLE, AND PARTICIPATION IN SUPPORTED
5 DECISION-MAKING ON BEHALF OF THE RESPONDENT; THE MEMBER'S VIEW
6 ON THE RESPONDENT'S LIMITATIONS; AND WHETHER THE RESPONDENT'S
7 NEEDS MAY BE MET BY LESS RESTRICTIVE MEANS; AND

8 (b) MAKE ANY OTHER INVESTIGATION THE COURT DIRECTS.

9 (4) THE VISITOR SHALL PROMPTLY FILE A REPORT IN WRITING WITH
10 THE COURT, WHICH MUST INCLUDE:

11 (a) THE NAME, ADDRESS, AND CONTACT INFORMATION FOR ANY
12 MEMBER OF THE SUPPORTIVE COMMUNITY;

13 (b) A SUMMARY OF THE NATURE AND TYPE OF SUPPORTED
14 DECISION-MAKING ENGAGED IN BY THE RESPONDENT WITH THE
15 ASSISTANCE OF MEMBERS OF THE SUPPORTIVE COMMUNITY;

16 (c) RECOMMENDATIONS ON WHETHER ANY MEMBER OF THE
17 SUPPORTIVE COMMUNITY SHOULD BE GRANTED PERMISSION TO
18 PARTICIPATE IN THE PROCEEDINGS PURSUANT TO SECTION 15-14-308 (2)
19 OR 15-10-201 (27);

20 (d) RECOMMENDATIONS REGARDING THE APPROPRIATENESS OF
21 EMERGENCY GUARDIANSHIP OR SPECIAL CONSERVATORSHIP, INCLUDING
22 WHETHER LESS RESTRICTIVE MEANS OF INTERVENTION WERE AVAILABLE
23 AND ARE AVAILABLE;

24 (e) RECOMMENDATIONS ON WHETHER THE POWERS OF THE
25 EMERGENCY GUARDIANSHIP OR SPECIAL CONSERVATORSHIP SHOULD BE
26 LIMITED BASED ON THE DESIRES AND PERSONAL VALUES OF THE
27 RESPONDENT AS EXPRESSED BY THE RESPONDENT AND THE MEMBERS OF

1 THE SUPPORTIVE COMMUNITY; AND
2 (f) ANY OTHER MATTERS THE COURT DIRECTS.
3 (5) WITHIN SEVEN DAYS AFTER RECEIVING THE VISITOR'S REPORT,
4 THE COURT SHALL REVIEW THE REPORT AND ENTER AN ORDER MAKING THE
5 FOLLOWING SPECIFIC FINDINGS:
6 (a) WHETHER ANY MEMBER OF THE SUPPORTIVE COMMUNITY HAS
7 PERMISSION TO PARTICIPATE IN THE PROCEEDINGS AS SUCH PARTICIPATION
8 IS FOUND TO BE IN THE RESPONDENT'S BEST INTERESTS, PENDING FURTHER
9 FINDINGS AND ORDER OF THE COURT;
10 (b) LIMITING THE POWERS OF THE EMERGENCY GUARDIAN OR
11 SPECIAL CONSERVATOR AS RECOMMENDED BY THE VISITOR, PENDING
12 FURTHER FINDINGS AND ORDER OF THE COURT; AND
13 (c) ANY OTHER MATTERS THAT THE COURT DEEMS APPROPRIATE
14 TO PRESERVE AND PROTECT THE RIGHTS OF THE RESPONDENT.
15 **SECTION 3. In Colorado Revised Statutes, 15-14-312, add (5)**
16 **as follows:**
17 **15-14-312. Emergency guardian. (5) IF THE COURT APPOINTS AN**
18 **EMERGENCY GUARDIAN WITHOUT NOTICE TO THE RESPONDENT OR ANY**
19 **OTHER PERSON ENTITLED TO NOTICE PURSUANT TO SECTION 15-14-309(2)**
20 **AND THE PERSON APPOINTED IS A PROFESSIONAL WITHOUT PRIORITY TO**
21 **SERVE PURSUANT TO SECTION 15-14-310 (1) OR PROTECTIVE SERVICES**
22 **PURSUANT TO SECTION 26-3.1-104, THE COURT SHALL, UPON ENTRY OF**
23 **THE ORDER OF APPOINTMENT OF EMERGENCY GUARDIAN,**
24 **SIMULTANEOUSLY APPOINT A VISITOR TO INVESTIGATE AND REPORT TO**
25 **THE COURT WITHIN FOURTEEN DAYS AFTER THE APPOINTMENT AS**
26 **PROVIDED IN SECTION 15-14-113.5.**
27 **SECTION 4. In Colorado Revised Statutes, 15-14-412, amend**

1 (3) as follows:

2 **15-14-412. Protective arrangements and single transactions.**

3 (3) (a) The court may appoint a special conservator to assist in the
4 accomplishment of any protective arrangement or other transaction
5 authorized under this section. The special conservator has the authority
6 conferred by the order and shall serve until discharged by order after
7 report to the court.

8 (b) IF THE COURT APPOINTS A SPECIAL CONSERVATOR WITHOUT
9 NOTICE TO THE RESPONDENT, PROTECTED PERSON, OR ANY OTHER PERSON
10 ENTITLED TO NOTICE PURSUANT TO SECTION 15-14-404 (2) AND THE
11 PERSON APPOINTED IS A PROFESSIONAL WITHOUT PRIORITY TO SERVE
12 PURSUANT TO SECTION 15-14-310 (1) OR A PUBLIC ADMINISTRATOR
13 PURSUANT TO SECTION 15-12-622, THE COURT SHALL, UPON ENTRY OF THE
14 ORDER OF APPOINTMENT OF SPECIAL CONSERVATOR, SIMULTANEOUSLY
15 APPOINT A VISITOR TO INVESTIGATE AND REPORT TO THE COURT WITHIN
16 FOURTEEN DAYS AFTER THE APPOINTMENT AS PROVIDED IN SECTION
17 15-14-113.5.

18 **SECTION 5. In Colorado Revised Statutes, 15-10-503, amend**
19 **(1) as follows:**

20 **15-10-503. Power of a court to address the conduct of a**
21 **fiduciary - emergencies - nonemergencies. (1) Emergency situations**
22 **- court action without the requirement of prior notice or hearing. If**
23 **it appears to a court that an emergency exists because a fiduciary's actions**
24 **or omissions pose an imminent risk of substantial harm to a ward's or**
25 **protected person's health, safety, or welfare or to the financial interests of**
26 **an estate, the court may, on its own motion or upon the request of an**
27 **interested person, without a hearing and without following any of the**

1 procedures authorized by section 15-10-502, order the immediate
2 restraint, restriction, or suspension of the powers of the fiduciary; direct
3 the fiduciary to appear before the court; or take such further action as the
4 court deems appropriate to protect the ward or protected person or the
5 assets of the estate. If a court restrains, restricts, or suspends the powers
6 of a fiduciary, the court shall set a hearing and direct that notice be given
7 pursuant to section 15-10-505. The clerk of the court shall immediately
8 note the restraint, restriction, or suspension on the fiduciary's letters, if
9 any. Any action for the removal, surcharge, or sanction of a fiduciary
10 shall be governed by this section. THE COURT SHALL RULE ON ITS MOTION
11 OR THE INTERESTED PERSON'S REQUEST WITHIN FOURTEEN DAYS AFTER
12 THE MOTION OR REQUEST IS MADE.

13 **SECTION 6. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect September 1, 2020; except that,
15 if a referendum petition is filed pursuant to section 1 (3) of article V of
16 the state constitution against this act or an item, section, or part of this act
17 within the ninety-day period after final adjournment of the general
18 assembly, then the act, item, section, or part will not take effect unless
19 approved by the people at the general election to be held in November
20 2020 and, in such case, will take effect on the date of the official
21 declaration of the vote thereon by the governor.

22 (2) This act applies to appointments made on or after the
23 applicable effective date of this act.