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House Engrossed

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
Second Regular Session  
2004

# HOUSE BILL 2584

AN ACT

AMENDING SECTIONS 14-3203, 14-5311, 14-5410, 14-5414, 14-5414.01, 14-5601, 41-603 AND 41-606, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF VETERANS' SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1

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

2 Section 1. Section 14-3203, Arizona Revised Statutes, is amended to  
3 read:

4 14-3203. Priority among persons seeking appointment as personal  
5 representative

6 A. Whether the proceedings are formal or informal, persons who are not  
7 disqualified have priority for appointment in the following order:

8 1. The person with priority as determined by a probated will including  
9 a person nominated by a power conferred in a will.

10 2. The surviving spouse of the decedent who is a devisee of the  
11 decedent.

12 3. Other devisees of the decedent.

13 4. The surviving spouse of the decedent.

14 5. Other heirs of the decedent.

15 6. If the decedent was a veteran or the spouse or child of a veteran,  
16 the department of veterans' services, **EXCEPT THAT THE DEPARTMENT OF VETERANS'**  
17 **SERVICES MAY ACCEPT OR DECLINE APPOINTMENT PURSUANT TO SECTION 41-603,**  
18 **SUBSECTION A.**

19 7. Forty-five days after the death of the decedent, any creditor.

20 8. The public fiduciary.

21 B. An objection to an appointment can be made only in formal  
22 proceedings. In case of objection the priorities stated in subsection A of  
23 this section apply, except that:

24 1. If the estate appears to be more than adequate to meet exemptions  
25 and costs of administration but inadequate to discharge anticipated unsecured  
26 claims, the court, on petition of creditors, may appoint any qualified  
27 person.

28 2. In case of objection to appointment of a surviving spouse, other  
29 than one whose priority is determined by will, by an heir or devisee  
30 appearing to have a substantial interest in the estate, and the surviving  
31 spouse is found by the court to be unsuitable, the court may appoint a person  
32 who is acceptable to heirs and devisees, whose interests in the estate appear  
33 to be worth in total more than half of the probable distributable value or,  
34 in default of this accord, any suitable person.

35 3. In case of objection to appointment of a person who is not a  
36 surviving spouse, other than one whose priority is determined by will, by an  
37 heir or devisee appearing to have a substantial interest in the estate, the  
38 court may appoint a person who is acceptable to heirs and devisees whose  
39 interests in the estate appear to be worth in total more than half of the  
40 probable distributable value, or, in default of this accord, any suitable  
41 person.

42 C. A person entitled to letters under subsection A, paragraphs 2  
43 through 5 of this section and a person age fourteen and over who would be  
44 entitled to letters but for the person's age may nominate a qualified person  
45 to act as personal representative. Any person age eighteen and over may

1 renounce the person's right to nominate or to an appointment by appropriate  
2 writing filed with the court. If two or more persons share a priority, those  
3 of them who do not renounce must concur in nominating another to act for  
4 them, or in applying for appointment.

5 D. Conservators of the estates of protected persons, or if there is no  
6 conservator, any guardian except a guardian ad litem of a minor or  
7 incapacitated person, may exercise the same right to nominate, to object to  
8 another's appointment, or to participate in determining the preference of a  
9 majority in interest of the heirs and devisees that the protected person or  
10 ward would have if qualified for appointment.

11 E. Formal proceedings are required to appoint a personal  
12 representative in any of the following situations:

13 1. If there is a person with a higher order of priority who has not  
14 renounced or waived the person's right by appropriate writing filed with the  
15 court.

16 2. If a priority is shared by two or more persons, as devisees under  
17 subsection A, paragraph 3 of this section, or as heirs under subsection A,  
18 paragraph 5 of this section, and one or more of them has not renounced or  
19 concurred in nominating the person whose appointment is applied for.

20 3. If appointment is sought for a person who does not have any  
21 priority under this section, under this paragraph the court shall determine  
22 that those having priority do not object to the appointment, and that  
23 administration is necessary.

24 F. A person is not qualified to serve as a personal representative who  
25 is:

26 1. Under the age of majority as defined in section 1-215.

27 2. A person whom the court finds unsuitable in formal proceedings.

28 3. A foreign corporation.

29 G. A personal representative appointed by a court of the decedent's  
30 domicile has priority over all other persons except if the decedent's will  
31 nominates different persons to be personal representative in this state and  
32 in the state of domicile. The domiciliary personal representative may  
33 nominate another, who shall have the same priority as the domiciliary  
34 personal representative.

35 H. This section governs priority for appointment of a successor  
36 personal representative but does not apply to the selection of a special  
37 administrator.

38 Sec. 2. Section 14-5311, Arizona Revised Statutes, is amended to read:  
39 14-5311. Who may be guardian; priorities

40 A. Any qualified person may be appointed guardian of an incapacitated  
41 person, subject to the requirements of section 14-5106 AND SECTION 41-603,  
42 SUBSECTION A.

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

- 1           1. A guardian or conservator of the person or a fiduciary appointed or  
2 recognized by the appropriate court of any jurisdiction in which the  
3 incapacitated person resides.
- 4           2. An individual or corporation nominated by the incapacitated person  
5 if the person has, in the opinion of the court, sufficient mental capacity to  
6 make an intelligent choice.
- 7           3. The person nominated in the incapacitated person's most recent  
8 durable power of attorney.
- 9           4. The spouse of the incapacitated person.
- 10          5. An adult child of the incapacitated person.
- 11          6. A parent of the incapacitated person, including a person nominated  
12 by will or other writing signed by a deceased parent.
- 13          7. Any relative of the incapacitated person with whom the  
14 incapacitated person has resided for more than six months before the filing  
15 of the petition.
- 16          8. The nominee of a person who is caring for or paying benefits to the  
17 incapacitated person.
- 18          9. If the incapacitated person is a veteran, the spouse of a veteran  
19 or the minor child of a veteran, the department of veterans' services.
- 20          10. A fiduciary, guardian or conservator.
- 21          C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 OF THIS  
22 SECTION may nominate in writing a person to serve in that person's place.  
23 With respect to persons who have equal priority, the court shall select the  
24 one the court determines is best qualified to serve.
- 25          D. For good cause the court may pass over a person who has priority  
26 and appoint a person who has a lower priority or no priority. IF THE  
27 DEPARTMENT OF VETERANS' SERVICES DECLINES TO ACT AS GUARDIAN PURSUANT TO  
28 SECTION 41-603, SUBSECTION A, THE COURT SHALL NOT APPOINT THE DEPARTMENT OF  
29 VETERANS' SERVICES AS GUARDIAN.
- 30          Sec. 3. Section 14-5410, Arizona Revised Statutes, is amended to read:  
31          14-5410. Who may be appointed conservator; priorities  
32          A. The court may appoint an individual or a corporation, with general  
33 power to serve as trustee, as conservator of the estate of a protected person  
34 subject to the requirements of section 14-5106 AND SECTION 41-603,  
35 SUBSECTION A. The following are entitled to consideration for appointment in  
36 the order listed:  
37           1. A conservator, guardian of property or other like fiduciary  
38 appointed or recognized by the appropriate court of any other jurisdiction in  
39 which the protected person resides.  
40           2. An individual or corporation nominated by the protected person if  
41 the protected person is at least fourteen years of age and has, in the  
42 opinion of the court, sufficient mental capacity to make an intelligent  
43 choice.  
44           3. The person nominated in the protected person's most recent durable  
45 power of attorney.

- 1           4. The spouse of the protected person.
- 2           5. An adult child of the protected person.
- 3           6. A parent of the protected person, or a person nominated by the will
- 4 of a deceased parent.
- 5           7. Any relative of the protected person with whom the protected person
- 6 has resided for more than six months before the filing of the petition.
- 7           8. The nominee of a person who is caring for or paying benefits to the
- 8 protected person.
- 9           9. If the protected person is a veteran, the spouse of a veteran or
- 10 the minor child of a veteran, the department of veterans' services.
- 11          10. A fiduciary, guardian or conservator.

12           B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this  
13 section may nominate in writing a person to serve in that person's place.  
14 With respect to persons having equal priority, the court shall select the one  
15 it determines is best qualified to serve. The court, for good cause, may  
16 pass over a person having priority and appoint a person having a lower  
17 priority or no priority. **IF THE DEPARTMENT OF VETERANS' SERVICES DECLINES TO**  
18 **ACT AS CONSERVATOR PURSUANT TO SECTION 41-603, SUBSECTION A, THE COURT SHALL**  
19 **NOT APPOINT THE DEPARTMENT OF VETERANS' SERVICES AS CONSERVATOR.**

20          Sec. 4. Section 14-5414, Arizona Revised Statutes, is amended to read:  
21 **14-5414. Compensation and expenses**

22           A. If not otherwise compensated for services rendered, any  
23 investigator, accountant, lawyer, physician, conservator or special  
24 conservator appointed in a protective proceeding is entitled to reasonable  
25 compensation from the estate. If the court pays for any of these services it  
26 may charge the estate for reasonable compensation. The clerk shall deposit  
27 monies it collects in the probate fund pursuant to section 14-5433.

28           B. Compensation payable to the department of veterans' services, when  
29 acting as a conservator of the estate of a veteran or a veteran's surviving  
30 spouse or minor child or the incapacitated spouse of a protected veteran,  
31 shall not be more than ~~five~~ **TEN** per cent of the amount of monies received  
32 during the period covered by the conservatorship. A copy of the petition and  
33 notice of hearing shall be given to the proper officer of the veterans  
34 administration in the manner provided in the case of any hearing on a  
35 guardian's account or any other pleading. ~~No A~~ **IS NOT** allowed on the monies or other assets received from a prior  
36 ~~shall be~~ **IS NOT** allowed on the monies or other assets received from a prior  
37 conservator ~~nor upon~~ **OR ON** the amount received from liquidation of loans or  
38 other investments.

39          Sec. 5. Section 14-5414.01, Arizona Revised Statutes, is amended to  
40 read:

41 **14-5414.01. State veterans' conservatorship fund**  
42           A. The state veterans' conservatorship fund is established.  
43           B. All ~~conservatorship~~ monies collected pursuant to ~~section~~ **SECTIONS**  
44 **14-3719, 14-3722, 14-5314 AND 41-606, SECTION** 14-5414, subsection B **AND**  
45 **SECTION 41-603, SUBSECTION A** shall be deposited, pursuant to sections 35-146

1 and 35-147, by the department of veterans' services in the state veterans'  
2 conservatorship fund. On notice from the department of veterans' services,  
3 the state treasurer shall invest and divest monies in the fund as provided by  
4 section 35-313, and monies earned from investment shall be credited to the  
5 fund.

6 Sec. 6. Section 14-5601, Arizona Revised Statutes, is amended to read:  
7 14-5601. Establishment of office of public fiduciary;  
8 appointments; costs; department of veterans'  
9 services

10 A. Each county board of supervisors, by resolution or ordinance, shall  
11 establish the office of and appoint a public fiduciary. The supreme court  
12 shall certify each public fiduciary pursuant to section 14-5651.

13 B. The public fiduciary, with the consent of and at salaries fixed by  
14 the board of supervisors, may appoint assistants, deputies, stenographers,  
15 clerks and other employees as necessary to conduct the affairs of the office.  
16 The appointments shall be in writing and filed in the office of the county  
17 recorder. Assistants and deputies hold office at the pleasure of the public  
18 fiduciary and the board of supervisors.

19 C. Costs incurred in conducting the office of public fiduciary shall  
20 be a charge against the county.

21 **D. THE DEPARTMENT OF VETERANS' SERVICES IS NOT A PUBLIC FIDUCIARY.**

22 Sec. 7. Section 41-603, Arizona Revised Statutes, is amended to read:  
23 41-603. Powers and duties

24 A. **NOTWITHSTANDING ANY OTHER LAW**, the department may **AGREE OR DECLINE**  
25 **TO** act as guardian of an incapacitated veteran, the incapacitated spouse of a  
26 veteran or minor children of a veteran, or as conservator of the estate of a  
27 protected veteran or of the veteran's incapacitated or surviving spouse or of  
28 the minor children of a veteran. **NOTWITHSTANDING ANY OTHER LAW**, the  
29 department may **AGREE OR DECLINE TO** act in all fiduciary matters, including as  
30 power of attorney, trustee, custodian or representative payee of a veteran,  
31 spouse of a veteran or minor child of a veteran. **NOTWITHSTANDING ANY OTHER**  
32 **LAW**, the department may **AGREE OR DECLINE TO** act as the personal  
33 representative of the estate of a deceased veteran, deceased spouse of a  
34 veteran or deceased child of a veteran.

35 B. The department shall:

36 1. Assist veterans and their families and dependents in presenting,  
37 providing and establishing claims, privileges, rights and benefits they may  
38 have under federal, state or local law.

39 2. Inform veterans and their families and dependents and military and  
40 civilian authorities about federal, state and local laws enacted to benefit  
41 veterans and their families and dependents and members of the armed forces.

42 3. Collect information relating to services and facilities available  
43 to veterans.

44 4. Cooperate with all government and private agencies receiving  
45 services for or benefits to veterans and their families and dependents.



1           B. In each case in which the department is appointed to serve as  
2 administrator, conservator, executor or guardian as authorized under this  
3 article, the court in which the estate is filed shall authorize a charge for  
4 each estate's share of the bond premium to be paid from the assets of the  
5 estate and to be deposited, pursuant to sections 35-146 and 35-147, in the  
6 state ~~general~~ VETERANS' CONSERVATORSHIP fund ESTABLISHED BY SECTION  
7 14-5414.01. The department shall determine the charge to be made against  
8 each estate.

9           Sec. 9. Requirements for enactment; two-thirds vote

10           Pursuant to article IX, section 22, Constitution of Arizona, this act  
11 is effective only on the affirmative vote of at least two-thirds of the  
12 members of each house of the legislature and is effective immediately on the  
13 signature of the governor or, if the governor vetoes this act, on the  
14 subsequent affirmative vote of at least three-fourths of the members of each  
15 house of the legislature.