

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SENATE BILL 1296

AN ACT

AMENDING SECTIONS 14-5101, 14-5303, 14-5306, 14-5309 AND 14-5311, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-5316 AND 14-5317; RELATING TO GUARDIANSHIP.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 14-5101, Arizona Revised Statutes, is amended to
3 read:
4 14-5101. Definitions
5 In this title, unless the context otherwise requires:
6 1. "CONTACT" INCLUDES IN-PERSON CONTACT, WRITTEN COMMUNICATION AND ALL
7 FORMS OF ELECTRONIC COMMUNICATIONS.
8 2. "CONTACT ORDER" MEANS AN ORDER ALLOWING CONTACT BETWEEN A WARD AND
9 A PERSON WITH A SIGNIFICANT RELATIONSHIP TO THE WARD.
10 ~~1.~~ 3. "Incapacitated person" means any person who is impaired by
11 reason of mental illness, mental deficiency, mental disorder, physical
12 illness or disability, chronic use of drugs, chronic intoxication or other
13 cause, except minority, to the extent that he lacks sufficient understanding
14 or capacity to make or communicate responsible decisions concerning his
15 person. In cases of limited guardianship only, a person is not deemed an
16 incapacitated person for purposes of voting if the person files a petition,
17 ~~AND~~ has a hearing and the judge determines by clear and convincing evidence
18 that the person retains sufficient understanding to exercise the right to
19 vote pursuant to section 14-5304.02.
20 ~~2.~~ 4. "Investigator" means a person who is appointed by the court
21 under section 14-5308.
22 5. "JOINT LEGAL DECISION-MAKING" HAS THE SAME MEANING PRESCRIBED IN
23 SECTION 25-401.
24 6. "LEGAL DECISION-MAKING" HAS THE SAME MEANING PRESCRIBED IN SECTION
25 25-401.
26 7. "PARENTING TIME" HAS THE SAME MEANING PRESCRIBED IN SECTION 25-401.
27 ~~3.~~ 8. "Physician" means a person licensed pursuant to title 32,
28 chapter 13 or 17.
29 ~~4.~~ 9. "Protected person" means a minor or any other person for whom a
30 conservator has been appointed or any other protective order has been made.
31 ~~5.~~ 10. "Protective proceeding" means a proceeding under ~~the~~
32 ~~provisions of~~ section 14-5401 to determine that a person cannot effectively
33 manage or apply his estate to necessary ends, either because he lacks the
34 ability or is otherwise inconvenienced, or because he is a minor, and to
35 secure administration of his estate by a conservator or other appropriate
36 relief.
37 ~~6.~~ 11. "Psychologist" means a person licensed pursuant to title 32,
38 chapter 19.1.
39 ~~7.~~ 12. "Registered nurse" has the same meaning as prescribed in
40 section 32-1601.
41 13. "SIGNIFICANT RELATIONSHIP" MEANS THE PERSON EITHER IS RELATED TO
42 THE WARD BY BLOOD OR MARRIAGE OR IS A CLOSE FRIEND OF THE WARD AS ESTABLISHED
43 BY A HISTORY OF PATTERN AND PRACTICE.
44 14. "VISITATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 25-401.

1 ~~8-~~ 15. "Ward" means a person for whom a guardian has been appointed.
2 "Minor ward" means a minor for whom a guardian has been appointed solely
3 because of minority.

4 Sec. 2. Section 14-5303, Arizona Revised Statutes, is amended to read:
5 14-5303. Procedure for court appointment of a guardian of an
6 alleged incapacitated person

7 A. The alleged incapacitated person or any person interested in that
8 person's affairs or welfare may petition for the appointment of a guardian or
9 for any other appropriate protective order.

10 B. The petition shall contain a statement that the authority granted
11 to the guardian may include the authority to withhold or withdraw life
12 sustaining treatment, including artificial food and fluid, and shall state,
13 at a minimum and to the extent known, all of the following:

14 1. The interest of the petitioner.

15 2. The name, age, residence and address of the alleged incapacitated
16 person.

17 3. The name, address and priority for appointment of the person whose
18 appointment is sought.

19 4. The name and address of the conservator, if any, of the alleged
20 incapacitated person.

21 5. The name and address of the nearest relative of the alleged
22 incapacitated person known to the petitioner.

23 6. A general statement of the property of the alleged incapacitated
24 person, with an estimate of its value and including any compensation,
25 insurance, pension or allowance to which the person is entitled.

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

28 8. The type of guardianship requested. If a general guardianship is
29 requested, the petition must state that other alternatives have been explored
30 and why a limited guardianship is not appropriate. If a limited guardianship
31 is requested, the petition also must state what specific powers are
32 requested.

33 9. If a ~~custodial~~ LEGAL DECISION-MAKING, PARENTING TIME OR VISITATION
34 order was previously entered regarding an alleged incapacitated person in a
35 ~~child custody~~ MARRIAGE DISSOLUTION, LEGAL SEPARATION OR PATERNITY action ~~or~~
36 ~~similar proceeding~~ in this state or another jurisdiction and the petitioner
37 or proposed guardian is a parent OF THE ALLEGED INCAPACITATED PERSON or A
38 nonparent ~~custodian of~~ WHO HAS BEEN AWARDED LEGAL DECISION-MAKING AS TO the
39 alleged incapacitated person, the court and case number for that action or
40 proceeding AND INCLUDE A COPY OF THE MOST RECENT COURT ORDER REGARDING LEGAL
41 DECISION-MAKING, PARENTING TIME AND VISITATION.

42 10. If the appointment of a guardian is necessary due solely to the
43 physical incapacity of the alleged incapacitated person.

44 C. On the filing of a petition, the court shall set a hearing date on
45 the issues of incapacity. Unless the alleged incapacitated person is

1 represented by independent counsel, the court shall appoint an attorney to
2 represent that person in the proceeding. The alleged incapacitated person
3 shall be interviewed by an investigator appointed by the court and shall be
4 examined by a physician, psychologist or registered nurse appointed by the
5 court. If the alleged incapacitated person has an established relationship
6 with a physician, psychologist or registered nurse who is determined by the
7 court to be qualified to evaluate the capacity of the alleged incapacitated
8 person, the court may appoint the alleged incapacitated person's physician,
9 psychologist or registered nurse pursuant to this subsection. The
10 investigator and the person conducting the examination shall submit their
11 reports in writing to the court. In addition to information required under
12 subsection D, the court may direct that either report include other
13 information the court deems appropriate. The investigator also shall
14 interview the person seeking appointment as guardian, visit the present place
15 of abode of the alleged incapacitated person and the place where it is
16 proposed that the person will be detained or reside if the requested
17 appointment is made and submit a report in writing to the court. The alleged
18 incapacitated person is entitled to be present at the hearing and to see or
19 hear all evidence bearing on that person's condition. The alleged
20 incapacitated person is entitled to be represented by counsel, to present
21 evidence, to cross-examine witnesses, including the court-appointed examiner
22 and investigator, and to trial by jury. The court may determine the issue at
23 a closed hearing if the alleged incapacitated person or that person's counsel
24 so requests.

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

28 1. A specific description of the physical, psychiatric or
29 psychological diagnosis of the person.

30 2. A comprehensive assessment listing any functional impairments of
31 the alleged incapacitated person and an explanation of how and to what extent
32 these functional impairments may prevent that person from receiving or
33 evaluating information in making decisions or in communicating informed
34 decisions regarding that person.

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

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

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

44 6. Other information the physician, psychologist or registered nurse
45 deems appropriate.

1 Sec 3. Section 14-5306, Arizona Revised Statutes, is amended to read:
2 14-5306. Termination of guardianship for incapacitated person
3 EXCEPT PURSUANT TO SECTION 14-5317, the authority and responsibility of
4 a guardian for an incapacitated person terminates on the death of the
5 guardian or ward, a determination of incapacity of the guardian, or
6 substitution or resignation as provided in section 14-5307. Testamentary
7 appointment under an informally probated will terminates if the will is later
8 denied probate in a formal proceeding. Termination does not affect the
9 guardian's liability for prior acts or the guardian's obligation to account
10 for funds and assets of the guardian's ward.

11 Sec. 4. Section 14-5309, Arizona Revised Statutes, is amended to read:
12 14-5309. Notices in guardianship proceedings

13 A. In a proceeding for A CONTACT ORDER OR MODIFICATION OF A CONTACT
14 ORDER PURSUANT TO SECTION 14-5316 OR FOR the appointment or substitution of a
15 guardian of a ward or an alleged incapacitated person other than the
16 appointment of a temporary guardian or temporary suspension of a guardian,
17 notice of a hearing shall be given to each of the following:

18 1. The ward or the alleged incapacitated person and that person's
19 spouse, parents and adult children.

20 2. Any person who is serving as guardian or conservator or who has the
21 care and custody of the ward or the alleged incapacitated person.

22 3. In case no other person is notified under paragraph 1 of this
23 subsection, at least one of that person's closest adult relatives, if any can
24 be found.

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

26 B. At least fourteen days before the hearing notice shall be served
27 personally on the ward or the alleged incapacitated person, ~~and~~ and that
28 person's spouse and parents if they can be found within the state. Notice to
29 the spouse and parents, if they cannot be found within the state, and to all
30 other persons except the ward or the alleged incapacitated person shall be
31 given as provided in section 14-1401. Waiver of notice by the ward or the
32 alleged incapacitated person is not effective unless that person attends the
33 hearing.

34 Sec. 5. Section 14-5311, Arizona Revised Statutes, is amended to read:
35 14-5311. Who may be guardian; priorities

36 A. Any qualified person may be appointed guardian of an incapacitated
37 person, subject to the requirements of section 14-5106.

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

40 1. A guardian or conservator of the person or a fiduciary appointed or
41 recognized by the appropriate court of any jurisdiction in which the
42 incapacitated person resides.

43 2. An individual or corporation nominated by the incapacitated person
44 if the person has, in the opinion of the court, sufficient mental capacity to
45 make an intelligent choice.

1 3. The person nominated to serve as guardian in the incapacitated
2 person's most recent durable power of attorney or health care power of
3 attorney.

4 4. The spouse of the incapacitated person.

5 5. An adult child of the incapacitated person.

6 6. A parent of the incapacitated person, including a person nominated
7 by will or other writing signed by a deceased parent.

8 7. Any relative of the incapacitated person with whom the
9 incapacitated person has resided for more than six months before the filing
10 of the petition.

11 8. The nominee of a person who is caring for or paying benefits to the
12 incapacitated person.

13 9. If the incapacitated person is a veteran, the spouse of a veteran
14 or the minor child of a veteran, the department of veterans' services.

15 10. A fiduciary who is licensed pursuant to section 14-5651, other
16 than a public fiduciary.

17 11. A public fiduciary who is licensed pursuant to section 14-5651.

18 C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 of this
19 section may nominate in writing a person to serve in that person's place.
20 With respect to persons who have equal priority, the court shall select the
21 one the court determines is best qualified to serve.

22 D. NOTWITHSTANDING THE PRIORITIES SET FORTH IN SUBSECTION B OF THIS
23 SECTION, IF THE PETITION FOR APPOINTMENT OF A GUARDIAN FOR THE INCAPACITATED
24 PERSON IS FILED PURSUANT TO SECTION 14-5301.03 OR WITHIN TWO YEARS AFTER THE
25 INCAPACITATED PERSON'S EIGHTEENTH BIRTHDAY, UNLESS THE COURT FINDS THE
26 APPOINTMENT TO BE CONTRARY TO THE INCAPACITATED PERSON'S BEST INTEREST:

27 1. THE COURT SHALL APPOINT AS THE INCAPACITATED PERSON'S GUARDIAN ANY
28 PERSON WHO, BY COURT ORDER, HAD SOLE LEGAL DECISION-MAKING OF THE
29 INCAPACITATED PERSON WHEN THE INCAPACITATED PERSON ATTAINED EIGHTEEN YEARS OF
30 AGE.

31 2. IF TWO PERSONS HAD JOINT LEGAL DECISION-MAKING OF THE INCAPACITATED
32 PERSON WHEN THE INCAPACITATED PERSON ATTAINED EIGHTEEN YEARS OF AGE, THE
33 COURT SHALL APPOINT BOTH PERSONS AS THE INCAPACITATED PERSON'S CO-GUARDIANS.

34 E. THE COURT MAY APPOINT MORE THAN ONE PERSON AS THE INCAPACITATED
35 PERSON'S CO-GUARDIANS IF THE APPOINTMENT IS REQUIRED BY SUBSECTION D OF THIS
36 SECTION OR THE COURT FINDS THAT THE APPOINTMENT IS IN THE INCAPACITATED
37 PERSON'S BEST INTEREST. IF THE COURT APPOINTS CO-GUARDIANS, THE CO-GUARDIANS
38 SHALL SHARE DECISION-MAKING FOR THE INCAPACITATED PERSON AND NEITHER
39 CO-GUARDIAN'S RIGHTS OR RESPONSIBILITIES ARE SUPERIOR EXCEPT AS OTHERWISE
40 ORDERED BY THE COURT.

41 ~~D.~~ F. For good cause the court may pass over a person who has
42 priority and appoint a person who has a lower priority or no priority. For
43 the purposes of this subsection, "good cause" includes a determination that:

44 1. The incapacitated person's durable power of attorney or health care
45 power of attorney is invalid.

1 2. THE WISHES OF THE WARD IF THE WARD HAS SUFFICIENT MENTAL CAPACITY
2 TO MAKE AN INTELLIGENT CHOICE.

3 3. THE MENTAL AND PHYSICAL HEALTH OF THE WARD AND THE PERSON WITH WHOM
4 THE CONTACT IS REQUESTED.

5 4. WHETHER THE PERSON WITH WHOM THE CONTACT IS REQUESTED HAS COMMITTED
6 ANY ACT INVOLVING DOMESTIC VIOLENCE AS DEFINED IN SECTION 13-3601, CHILD
7 ABUSE OR ABUSE, NEGLECT OR EXPLOITATION OF A VULNERABLE ADULT.

8 5. WHETHER THE PERSON WITH WHOM THE CONTACT IS REQUESTED HAS ABUSED
9 DRUGS OR ALCOHOL OR HAS BEEN CONVICTED OF ANY DRUG OFFENSE LISTED IN TITLE
10 13, CHAPTER 34 OR A VIOLATION OF TITLE 28, CHAPTER 4, ARTICLE 3.

11 6. WHETHER THE PERSON WITH WHOM THE CONTACT IS REQUESTED IS LISTED IN
12 THE ELDER ABUSE CENTRAL REGISTRY PURSUANT TO SECTION 46-457 OR IS REQUIRED TO
13 REGISTER PURSUANT TO SECTION 13-3821.

14 7. WHETHER THE PERSON WITH WHOM THE CONTACT IS REQUESTED HAS BEEN
15 CONVICTED OF A VIOLATION OF SECTION 13-2907.02 OR 13-2907.04.

16 G. IF THE PETITION FOR CONTACT IS FILED PURSUANT TO SECTION 14-5301.03
17 OR WITHIN TWO YEARS AFTER THE WARD'S EIGHTEENTH BIRTHDAY, ANY CONTACT WITH
18 THE WARD AUTHORIZED IN THE MOST RECENT PARENTING TIME OR VISITATION ORDER
19 SHALL BE PRESUMED TO BE IN THE WARD'S BEST INTERESTS, BUT THE PRESUMPTION MAY
20 BE REBUTTED BY EVIDENCE SHOWING THAT THE CONTACT AUTHORIZED IN THE MOST
21 RECENT PARENTING TIME OR VISITATION ORDER IS NO LONGER IN THE WARD'S BEST
22 INTERESTS.

23 H. A COURT-APPOINTED FIDUCIARY FOR THE WARD OR A PERSON WHO HAS A
24 SIGNIFICANT RELATIONSHIP TO THE WARD MAY PETITION THE COURT TO MODIFY A
25 CONTACT ORDER, IF A MATERIAL CHANGE IN CIRCUMSTANCES AFFECTING THE WARD'S
26 HEALTH, SAFETY OR WELFARE HAS OCCURRED SINCE THE LAST CONTACT ORDER WAS MADE.
27 THE PETITION SHALL BE SUPPORTED BY AN AFFIDAVIT ALLEGING THE CHANGE OF
28 CIRCUMSTANCES THAT HAS OCCURRED SINCE THE ENTRY OF THE LAST CONTACT ORDER.
29 THE COURT SHALL DENY THE PETITION UNLESS THE COURT FINDS THAT THE PETITION
30 ESTABLISHES GOOD CAUSE FOR HEARING, IN WHICH CASE THE COURT SHALL SET A
31 HEARING ON THE PETITION. THE PETITION AND NOTICE OF THE HEARING ON THE
32 PETITION SHALL BE SERVED ON ALL PERSONS TO WHOM NOTICE IS REQUIRED PURSUANT
33 TO SECTION 14-5309 AND ON ANY COURT-APPOINTED FIDUCIARY FOR THE WARD.

34 I. A COURT-APPOINTED FIDUCIARY FOR THE WARD OR A PERSON WHO HAS A
35 SIGNIFICANT RELATIONSHIP TO THE WARD MAY FILE A MOTION ASKING THE COURT TO
36 TEMPORARILY MODIFY OR SUSPEND A CONTACT ORDER, IF A MATERIAL CHANGE IN
37 CIRCUMSTANCES AFFECTING THE WARD'S HEALTH, SAFETY OR WELFARE HAS OCCURRED
38 SINCE THE LAST CONTACT ORDER WAS MADE. THE MOTION SHALL BE SUPPORTED BY AN
39 AFFIDAVIT ALLEGING THE CHANGE OF CIRCUMSTANCES THAT HAS OCCURRED SINCE THE
40 ENTRY OF THE LAST CONTACT ORDER. THE MOTION SHALL BE FILED CONTEMPORANEOUSLY
41 WITH OR AFTER THE FILING OF A PETITION TO MODIFY THE PRIOR CONTACT ORDER.
42 THE MOTION SHALL STATE WHETHER THE PETITIONER REQUESTS THAT THE PRIOR CONTACT
43 ORDER BE MODIFIED OR SUSPENDED WITH OR WITHOUT NOTICE TO AFFECTED PERSONS.

44 J. THE COURT MAY TEMPORARILY MODIFY OR SUSPEND A CONTACT ORDER WITHOUT
45 NOTICE ONLY IF BOTH OF THE FOLLOWING CONDITIONS ARE MET:

1 1. IT CLEARLY APPEARS FROM SPECIFIC FACTS SHOWN IN THE MOTION OR
2 AFFIDAVIT THAT IMMEDIATE AND IRREPARABLE INJURY, LOSS OR DAMAGE LIKELY WILL
3 RESULT IF THE ORDER IS NOT ISSUED BEFORE THE AFFECTED PERSONS CAN BE HEARD IN
4 OPPOSITION.

5 2. THE MOVING PARTY OR THE PARTY'S ATTORNEY CERTIFIES TO THE COURT IN
6 WRITING THE EFFORTS, IF ANY, THAT THE MOVING PARTY OR THE PARTY'S ATTORNEY
7 HAS MADE TO GIVE THE NOTICE OR THE REASONS SUPPORTING THE CLAIM THAT NOTICE
8 SHOULD NOT BE REQUIRED.

9 K. IF THE COURT GRANTS A MOTION TO TEMPORARILY MODIFY OR SUSPEND A
10 CONTACT ORDER WITHOUT NOTICE, THE COURT SHALL SET A HEARING ON THE MOTION.

11 L. AN ORDER TEMPORARILY MODIFYING OR SUSPENDING A CONTACT ORDER THAT
12 IS GRANTED WITHOUT NOTICE SHALL STATE THE INJURY, LOSS OR DAMAGE THAT WOULD
13 HAVE BEEN LIKELY TO OCCUR IF THE ORDER WERE NOT ISSUED BEFORE GIVING THE
14 AFFECTED PERSONS THE OPPORTUNITY TO BE HEARD IN OPPOSITION. THE TEMPORARY
15 ORDER SHALL EXPIRE AT THE DATE AND TIME SET FOR THE HEARING ON THE MOTION
16 UNLESS THE TEMPORARY ORDER IS EXTENDED BY THE COURT FOR GOOD CAUSE.

17 M. THE MOVING PARTY SHALL PERSONALLY SERVE THE PERSON WHOSE CONTACT
18 WITH THE WARD HAS BEEN MODIFIED OR SUSPENDED WITH A COPY OF THE ORDER AND
19 NOTICE OF THE HEARING. THE MOVING PARTY SHALL HAVE SERVED A COPY OF THE
20 ORDER ON ANY COURT-APPOINTED FIDUCIARY FOR THE WARD AND ALL PERSONS AFFECTED
21 BY THE ORDER AS SOON AS PRACTICABLE AFTER ISSUANCE OF THE ORDER IN THE MANNER
22 PRESCRIBED IN SECTION 14-5309 OR AS OTHERWISE ORDERED BY THE COURT.

23 N. FOR THE PURPOSES OF THIS SECTION:

24 1. "ABUSE" IN RELATION TO A VULNERABLE ADULT HAS THE SAME MEANING
25 PRESCRIBED IN SECTION 46-451.

26 2. "CHILD ABUSE" MEANS ABUSE AS DEFINED IN SECTION 8-201 OF AN
27 INDIVIDUAL WHO IS UNDER EIGHTEEN YEARS OF AGE.

28 3. "EXPLOITATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 46-451.

29 4. "NEGLECT" HAS THE SAME MEANING PRESCRIBED IN SECTION 46-451.

30 5. "VULNERABLE ADULT" HAS THE SAME MEANING PRESCRIBED IN SECTION
31 46-451.

32 14-5317. Notice to family members of adult ward's
33 hospitalization or death; definition

34 A. A GUARDIAN SHALL NOTIFY THE FAMILY MEMBERS OF AN ADULT WARD IF
35 EITHER OF THE FOLLOWING OCCURS:

36 1. THE ADULT WARD IS ADMITTED TO A HOSPITAL FOR A PERIOD OF NOT MORE
37 THAN THREE DAYS.

38 2. THE ADULT WARD DIES. THIS NOTIFICATION SHALL INCLUDE INFORMATION
39 ABOUT ANY KNOWN FUNERAL ARRANGEMENTS AND THE PLACE OF BURIAL.

40 B. FOR PURPOSES OF THIS SECTION, "FAMILY MEMBERS" MEANS:

41 1. THE FOLLOWING INDIVIDUALS WHO ARE INTERESTED PARTIES OF THE COURT
42 RECORD:

43 (a) THE ADULT WARD'S SPOUSE.

44 (b) THE ADULT WARD'S PARENTS.

45 (c) THE WARD'S ADULT SIBLINGS.

1 (d) ALL THE ADULT CHILDREN OF THE ADULT WARD.
2 (e) IF NO PERSON LISTED UNDER SUBDIVISION (a), (b), (c) OR (d) OF THIS
3 PARAGRAPH CAN BE NOTIFIED, AT LEAST ONE OF THE ADULT WARD'S CLOSEST ADULT
4 RELATIVES, IF SUCH AN ADULT RELATIVE CAN BE FOUND, OR A PERSON WITH A
5 SIGNIFICANT RELATIONSHIP TO THE WARD.
6 2. ANY PERSON WHO HAS FILED A DEMAND FOR NOTICE.
7 Sec. 7. Effective date
8 This act is effective from and after December 31, 2016.