

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 248
SENATE BILL 1390

AN ACT

AMENDING SECTION 14-1105, ARIZONA REVISED STATUTES; PROVIDING FOR TRANSFERRING AND RENUMBERING; AMENDING TITLE 14, CHAPTER 1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 14-1408; AMENDING SECTIONS 14-5314, 14-5414 AND 14-5419, ARIZONA REVISED STATUTES; AMENDING SECTION 14-10302, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING SECTION 14-12102, ARIZONA REVISED STATUTES; RELATING TO PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 14-1105, Arizona Revised Statutes, is amended to
3 read:

4 14-1105. Remedies for unreasonable conduct; definitions

5 A. If the court finds that a decedent's estate or trust has
6 incurred professional fees or expenses as a result of unreasonable
7 conduct, the court may order the person who engaged in the conduct or the
8 person's attorney, or both, to pay the decedent's estate or trust for some
9 or all of the fees and expenses as the court deems just under the
10 circumstances.

11 B. In a guardianship or conservatorship case, if the court finds
12 that a ward or protected person has incurred professional fees or expenses
13 as a result of unreasonable conduct, the court may order the person who
14 engaged in the conduct or the person's attorney, or both, to pay the ward
15 or protected person for some or all of the fees and expenses as the court
16 deems just under the circumstances.

17 C. The remedies ~~permitted~~ **ALLOWED** pursuant to this section are in
18 addition to any other civil remedy or any other provision of law. The
19 remedies ~~permitted~~ **ALLOWED** pursuant to this section may be invoked to
20 mitigate the financial burden on a ward, protected person, decedent's
21 estate or trust incurred as a result of unjustified court proceedings or
22 unreasonable or excessive demands made on a fiduciary, fiduciary's
23 attorney, court-appointed attorney, **GUARDIAN AD LITEM** or representative.

24 D. For the purposes of this section:

25 1. "Court-appointed attorney" means an attorney appointed pursuant
26 to section 14-5303, subsection C, section 14-5310, subsection C, section
27 14-5401.01, subsection C or section 14-5407, subsection B.

28 2. "Fiduciary" means an agent under a durable power of attorney, an
29 agent under a health care power of attorney, a guardian, a conservator, a
30 personal representative, a trustee or a guardian ad litem.

31 3. "Person who engaged in the conduct" includes a fiduciary, an
32 attorney or a guardian ad litem.

33 4. "Professional" means an accountant, an attorney, a fiduciary, a
34 physician, a psychologist, a registered nurse, a guardian ad litem or an
35 expert witness.

36 5. "Professional fees or expenses" includes the fiduciary's fees
37 and expenses and the fiduciary's attorney fees and expenses, as well as
38 the fees and expenses of any other professionals hired by the fiduciary or
39 the fiduciary's attorney.

40 Sec. 2. Transfer and renumber

41 Section 14-1408, Arizona Revised Statutes, is transferred and
42 renumbered for placement in title 14, chapter 11, article 3, Arizona
43 Revised Statutes, as section 14-10302.

1 Sec. 3. Title 14, chapter 1, article 4, Arizona Revised Statutes,
2 is amended by adding a new section 14-1408, to read:

3 14-1408. Appointment of guardian ad litem

4 AT ANY POINT IN A PROCEEDING BROUGHT UNDER THIS TITLE, THE COURT MAY
5 APPOINT A GUARDIAN AD LITEM TO REPRESENT THE INTEREST OF A MINOR, AN
6 INCAPACITATED, UNBORN OR UNASCERTAINED PERSON OR A PERSON WHOSE IDENTITY
7 OR ADDRESS IS UNKNOWN, IF THE COURT DETERMINES THAT REPRESENTATION OF THE
8 INTEREST OTHERWISE WOULD BE INADEQUATE. IF NOT PRECLUDED BY CONFLICT OF
9 INTERESTS, THE COURT MAY APPOINT A GUARDIAN AD LITEM TO REPRESENT SEVERAL
10 PERSONS OR INTERESTS. IN ITS ORDER APPOINTING THE GUARDIAN AD LITEM, THE
11 COURT SHALL STATE THE BASIS FOR THE APPOINTMENT.

12 Sec. 4. Section 14-5314, Arizona Revised Statutes, is amended to
13 read:

14 14-5314. Compensation of appointees; definitions

15 A. If not otherwise compensated for services rendered, an
16 investigator, accountant, lawyer, physician, registered nurse,
17 psychologist, ~~or~~ guardian OR GUARDIAN AD LITEM who is appointed pursuant
18 to this article, including an independent lawyer representing the alleged
19 incapacitated person pursuant to section 14-5303, subsection C, is
20 entitled to reasonable compensation from the estate of the ward if the
21 petition is granted, or from the petitioner if the petition is denied.

22 B. If the petitioner withdraws the petition or if the petition is
23 dismissed because of the petitioner's failure to prosecute, the court may
24 order that the compensation of the investigator, accountant, lawyer,
25 physician, registered nurse, psychologist, ~~or~~ guardian OR GUARDIAN AD
26 LITEM appointed pursuant to this article, including an independent lawyer
27 representing the alleged incapacitated person pursuant to section 14-5303,
28 subsection C, be paid either from the ward's estate or by the petitioner,
29 depending on the facts and circumstances. In making this determination,
30 the court may consider any evidence it deems appropriate.

31 C. A lawyer who is employed by the guardian to represent the
32 guardian in the guardian's appointment or duties as guardian is entitled
33 to reasonable compensation from the ward's estate if the petition is
34 granted. If the petitioner withdraws the petition or if the court
35 dismisses the petition because of the petitioner's failure to prosecute,
36 the court may order that the compensation of the proposed guardian's
37 lawyer be paid either from the ward's estate or by the petitioner,
38 depending on the facts and circumstances. In making these determinations,
39 the court may consider any evidence it deems appropriate.

40 D. A lawyer who is employed by the petitioner to represent the
41 petitioner in seeking the appointment of a guardian is entitled to
42 reasonable compensation from the ward's estate if the petition is granted.

43 E. If the court compensates the provider of a service, the court
44 may charge the estate for the reasonable cost of the service and shall
45 deposit these monies in the probate fund pursuant to section 14-5433.

1 F. If compensation by the ward or the petitioner is not feasible
2 the court shall determine and pay reasonable compensation for services
3 rendered by an investigator, accountant, lawyer, physician, registered
4 nurse, psychologist, ~~or~~ guardian OR GUARDIAN AD LITEM appointed in a
5 guardianship proceeding.

6 G. If a county pays for any of these services from general fund
7 appropriations, the county may charge the estate for reasonable
8 compensation. The county treasurer shall deposit monies collected pursuant
9 to this subsection in the same fund from which the expenditure was made.

10 H. For the purposes of this section:

11 1. "Guardian" includes both a guardian and a temporary guardian.

12 2. "Petition" means a petition filed pursuant to section 14-5303,
13 subsection A or section 14-5310, subsection A.

14 3. "Ward" includes an alleged incapacitated person.

15 Sec. 5. Section 14-5414, Arizona Revised Statutes, is amended to
16 read:

17 14-5414. Compensation and expenses; definitions

18 A. If not otherwise compensated for services rendered, any
19 investigator, accountant, lawyer, physician, registered nurse,
20 psychologist, GUARDIAN AD LITEM or conservator who is appointed in a
21 protective proceeding, including a lawyer of the person alleged to be in
22 need of protection pursuant to section 14-5407, subsection B, is entitled
23 to reasonable compensation from the estate of the protected person if the
24 petition is granted or from the petitioner if the petition is denied.

25 B. If the petitioner withdraws the petition or if the court
26 dismisses the petition because of the petitioner's failure to prosecute,
27 the court may order that the compensation of the investigator, accountant,
28 lawyer, physician, registered nurse, psychologist, GUARDIAN AD LITEM or
29 conservator who is appointed pursuant to this article, including a lawyer
30 of the person alleged to be in need of protection pursuant to section
31 14-5407, subsection B, be paid either from the protected person's estate
32 or by the petitioner, depending on the facts and circumstances. In making
33 these determinations, the court may consider any evidence it deems
34 appropriate.

35 C. A lawyer who is employed by the conservator to represent the
36 conservator in the conservator's appointment or duties as conservator is
37 entitled to reasonable compensation from the estate if the petition is
38 granted. If the petitioner withdraws the petition or if the petition is
39 dismissed because of the petitioner's failure to prosecute, the court may
40 order that the compensation of the proposed conservator's lawyer be paid
41 either from the protected person's estate or by the petitioner, depending
42 on the facts and circumstances. In determining which party shall pay, the
43 court may consider any evidence it deems appropriate.

44 D. A lawyer who is employed by the petitioner to represent the
45 petitioner in seeking the appointment of a conservator is entitled to

1 reasonable compensation from the protected person's estate if the petition
2 is granted.

3 E. If the court pays for any of these services it may charge the
4 estate for reasonable compensation. The clerk shall deposit monies it
5 collects in the probate fund pursuant to section 14-5433.

6 F. If a county pays for any of these services from general fund
7 appropriations, the county may charge the estate for reasonable
8 compensation. The county treasurer shall deposit monies collected pursuant
9 to this subsection in the same fund from which the expenditure was made.

10 G. Compensation payable to the department of veterans' services,
11 when acting as a conservator of the estate of a veteran or a veteran's
12 surviving spouse or minor child or the incapacitated spouse of a protected
13 veteran, shall not be more than five ~~per cent~~ PERCENT of the amount of
14 monies received during the period covered by the conservatorship. A copy
15 of the petition and notice of hearing shall be given to the proper officer
16 of the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS
17 AFFAIRS in the manner provided in the case of any hearing on a guardian's
18 account or any other pleading. A commission or compensation is not
19 allowed on the monies or other assets received from a prior conservator or
20 on the amount received from liquidation of loans or other investments.

21 H. For the purposes of this section:

22 1. "Conservator" includes a conservator, temporary conservator or
23 special conservator.

24 2. "Petition" means a petition filed pursuant to section
25 14-5401.01, subsection A or section 14-5404, subsection A.

26 3. "Protected person" includes a person who is alleged to be in
27 need of protection.

28 Sec. 6. Section 14-5419, Arizona Revised Statutes, is amended to
29 read:

30 14-5419. Accounts; definition

31 A. Except as provided pursuant to subsection F of this section,
32 every conservator must account to the court for the administration of the
33 estate annually pursuant to rules adopted by the supreme court and on
34 termination of the protected person's minority or disability, except that
35 for good cause shown on the application of an interested person, the court
36 may relieve the conservator of filing annual or other accounts by an order
37 entered in the minutes.

38 B. The court may take any appropriate action on filing of annual or
39 other accounts. In connection with any account, the court may require a
40 conservator to submit to a physical check of the estate in the
41 conservator's control, to be made in any manner the court may specify.

42 C. An adjudication allowing an intermediate or final account can be
43 made only on petition, notice and a hearing. Notice must be given to:

44 1. The protected person.

1 2. A guardian of the protected person if one has been appointed,
2 unless the same person is serving as both guardian and conservator.

3 3. If no guardian has been appointed or the same person is serving
4 as both guardian and conservator, a spouse or, if the spouse is the
5 conservator, there is no spouse or the spouse is incapacitated, a parent
6 or an adult child who is not serving as a conservator.

7 4. A ~~representative~~ **GUARDIAN AD LITEM** appointed for the protected
8 person, if the court determines in accordance with section 14-1408 that
9 representation of the interest of the protected person would otherwise be
10 inadequate.

11 D. An order, made on notice and a hearing, allowing an intermediate
12 account of a conservator, adjudicates as to the conservator's liabilities
13 concerning the matters considered in connection therewith. An order, made
14 on notice and a hearing, allowing a final account adjudicates as to all
15 previously unsettled liabilities of the conservator to the protected
16 person or the protected person's successors relating to the
17 conservatorship.

18 E. In any case in which the estate consists, in whole or in part,
19 of benefits paid by the United States department of veterans affairs to
20 the conservator or the conservator's predecessor for the benefit of the
21 protected person, the United States department of veterans affairs office
22 that has jurisdiction over the area is entitled to a copy of any account
23 filed under this article. Each year in which an account is not filed with
24 the court, the conservator, if requested, shall submit an account to the
25 appropriate United States department of veterans affairs office. If an
26 account is not submitted as requested, or if it is found unsatisfactory by
27 the United States department of veterans affairs, the court on receipt of
28 notice of the deficiency shall require the conservator to immediately file
29 an account with the court promptly.

30 F. Unless prohibited by order of the court, the conservator may
31 file with the court, in lieu of a final account, a verified statement
32 stating that:

33 1. The protected person has died. The conservator shall attach a
34 certified copy of the protected person's death certificate to the
35 statement.

36 2. The protected person's successors have all waived in writing
37 their right to have the conservator submit to the court a final account of
38 the conservator's administration of the protected person's estate. The
39 conservator shall attach the originals of the written waivers to the
40 statement.

41 3. The conservator has delivered a copy of a closing statement to
42 the protected person's successors. The conservator shall attach a copy of
43 the closing statement to the statement.

44 G. The closing statement that is to be delivered to the protected
45 person's successors shall be a verified statement stating the following:

1 1. The protected person has died and the date of the person's
2 death.

3 2. The persons receiving the closing statement have a right to have
4 the conservator submit to the court a final account of the conservator's
5 administration of the protected person's estate.

6 3. If the person wishes to have the final accounting reviewed by
7 the court, the person should not sign a waiver that waives this right.

8 4. If all persons receiving the closing statement choose to waive
9 the right to have the conservator submit to the court a final account, the
10 final account will not be reviewed by the court.

11 5. A list of the property owned by the protected person, as of the
12 date of the protected person's death, is attached to the closing statement
13 and that the list states the fair market value of the property as of the
14 date of the protected person's death.

15 6. The conservator, by the closing statement, shall inform the
16 protected person's successors that if they waive court review of the
17 conservator's final account, the conservatorship will be terminated, the
18 conservator will be discharged from all liabilities relating to the
19 conservatorship, the bond or other security posted by the conservator will
20 be exonerated and any restrictions previously imposed on the assets of the
21 conservatorship will be lifted.

22 H. The conservator shall file an affidavit with the court that
23 states that the closing statement was sent or delivered to the protected
24 person's successors on a date before the date that the protected person's
25 successors signed the written waiver.

26 I. Unless proceedings are pending against the conservator, on the
27 filing of the statement described in subsection F of this section and the
28 affidavit described in subsection H of this section, the court shall enter
29 an order terminating the conservatorship, discharging the conservator from
30 all liabilities relating to the conservatorship, exonerating and releasing
31 any bond or other security posted by the conservator and releasing any
32 restrictions previously imposed on the assets of the conservatorship.

33 J. For the purposes of this section, "protected person's
34 successors" means:

35 1. The personal representative of the protected person's estate if
36 the personal representative and the conservator are not the same person.

37 2. If the conservator and the personal representative of the
38 protected person's estate are the same person and if the protected person
39 died intestate, the protected person's heirs.

40 3. If the conservator and the personal representative of the
41 protected person's estate are the same person and if the protected person
42 died testate, the devisees under the protected person's will that has been
43 admitted to probate.

1 Sec. 7. Section 14-10302, Arizona Revised Statutes, as transferred
2 and renumbered, is amended to read:

3 14-10302. Appointment of representative

4 A. If the court determines that ~~an~~ A BENEFICIARY'S interest is not
5 represented under this ~~article~~ CHAPTER or that the otherwise available
6 representation might be inadequate, the court may appoint a representative
7 to receive notice, give consent and otherwise represent, bind and act on
8 behalf of a minor, incapacitated person, unborn child or person whose
9 identity or location is unknown. The court may appoint a representative
10 for several persons or interests.

11 B. A representative APPOINTED UNDER THIS SECTION may act on behalf
12 of the person represented with respect to any matter arising under this
13 title, whether or not a judicial proceeding concerning the trust ~~or estate~~
14 is pending.

15 C. In making decisions, a representative may consider general
16 benefit accruing to the living members of the family of the person
17 represented.

18 D. THE COURT'S AUTHORITY TO APPOINT A REPRESENTATIVE UNDER THIS
19 SECTION IS IN ADDITION TO ITS AUTHORITY TO APPOINT A GUARDIAN AD LITEM
20 UNDER SECTION 14-1408.

21 Sec. 8. Section 14-12102, Arizona Revised Statutes, is amended to
22 read:

23 14-12102. Definitions

24 In this chapter, unless the context otherwise requires:

25 1. "Adult" means an individual who is at least eighteen years of
26 age.

27 2. "Conservator" means a person appointed by the court to manage
28 the estate of an adult protected person, including a person appointed
29 under chapter 5 of this title.

30 3. "Court of this state" or "court in this state" means the
31 superior court.

32 4. "Guardian" means a person who has qualified as a guardian of an
33 incapacitated person pursuant to testamentary or court appointment and
34 includes a person who is appointed under chapter 5, article 3 of this
35 title. Guardian does not include a guardian ad litem WHO IS APPOINTED
36 PURSUANT TO SECTION 14-1408 or a representative who is appointed pursuant
37 to section ~~14-1408~~ 14-10302.

38 5. "Guardianship order" means an order appointing a guardian.

39 6. "Guardianship proceeding" means a judicial proceeding in which
40 an order for the appointment of a guardian is sought or has been issued.

41 7. "Incapacitated person" means an adult for whom a guardian has
42 been appointed.

43 8. "Person", except in the term incapacitated person or protected
44 person, means an individual, corporation, business trust, estate, trust,
45 partnership, limited liability company, association, joint venture, public

- 1 corporation, government or governmental subdivision, agency or
2 instrumentality or any other legal or commercial entity.
- 3 9. "Protected person" means an adult for whom a protective order
4 has been issued.
- 5 10. "Protective order" means an order appointing a conservator or
6 other order related to management of an adult's property.
- 7 11. "Protective proceeding" means a judicial proceeding in which a
8 protective order is sought or has been issued.
- 9 12. "Record" means information that is inscribed on a tangible
10 medium or that is stored in an electronic or other medium and is
11 retrievable in perceivable form.
- 12 13. "Respondent" means an adult for whom a protective order or the
13 appointment of a guardian is sought.
- 14 14. "State" means a state of the United States, the District of
15 Columbia, Puerto Rico, the United States Virgin Islands, a federally
16 recognized Indian tribe or any territory or insular possession subject to
17 the jurisdiction of the United States.

APPROVED BY THE GOVERNOR APRIL 16, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 2021.