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SENATE BILL 16-131

BY SENATOR(S) Tate, Johnston, Grantham, Jahn, Martinez Humenik, Newell, Roberts, Steadman;
also REPRESENTATIVE(S) Pabon and Willett, Kagan.

CONCERNING THE MANAGEMENT OF ASSETS FOR INDIVIDUALS, AND, IN CONNECTION THEREWITH, CLARIFYING THAT A FIDUCIARY'S AUTHORITY IS SUSPENDED AFTER A FIDUCIARY RECEIVES NOTICE THAT A PETITION FOR THE FIDUCIARY'S REMOVAL HAS BEEN FILED, PROTECTING AN ADULT WARD OR PROTECTED PERSON'S RIGHT TO AN ATTORNEY POST-ADJUDICATION, AND PREVENTING A FIDUCIARY FROM PAYING COURT COSTS OR FEES FROM OUT OF AN ESTATE AFTER RECEIVING NOTICE OF AN ACTION FOR THE FIDUCIARY'S REMOVAL.

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

SECTION 1. In Colorado Revised Statutes, 15-10-503, **amend** (1), (2) (e), (2) (f), (2) (g), and (2) (h); and **add** (3) and (4) as follows:

15-10-503. Power of a court to address the conduct of a fiduciary - emergencies - nonemergencies. (1) **Emergency situations - court action without the requirement of prior notice or hearing.** If it appears to a court that an emergency exists because a fiduciary's actions or omissions pose an imminent risk of substantial harm to a ward's or

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

protected person's health, safety, or welfare or to the financial interests of an estate, the court may, on its own motion or upon the request of an interested person, without a hearing and without following any of the procedures authorized by section 15-10-502, order the immediate restraint, restriction, or suspension of the powers of the fiduciary; direct the fiduciary to appear before the court; or take such further action as the court deems appropriate to protect the ward or protected person or the assets of the estate. If a court restrains, restricts, or suspends the powers of a fiduciary, the court shall set a hearing and direct that notice be given pursuant to section 15-10-505. The clerk of the court shall immediately note the restraint, restriction, or suspension on the fiduciary's letters, if any. Any action for the removal, surcharge, or sanction of a fiduciary shall be governed by ~~subsection (2)~~ of this section.

(2) Nonemergency situations - court action after notice and hearing. Upon petition by a person who appears to have an interest in an estate, or upon the court's own motion, and after a hearing for which notice to the fiduciary has been provided pursuant to section 15-10-505, a court may order any one or more of the following:

~~(e) The removal of the fiduciary. A court may remove a fiduciary for cause at any time, and the following provisions shall apply: THE APPOINTMENT OF A TEMPORARY OR PERMANENT SUCCESSOR FIDUCIARY;~~

~~(f) After a fiduciary receives notice of proceedings for his, her, or its removal, the fiduciary shall not act except to account, to correct maladministration, or to preserve the estate.~~

~~(H) If a court orders the removal of a fiduciary, the court shall direct by order the disposition of the assets remaining in the name of, or under the control of, the fiduciary being removed.~~

~~(HH) Cause for removal of a fiduciary exists when removal would be in the best interests of the estate or if it is shown that the fiduciary or the person seeking the fiduciary's appointment intentionally misrepresented material facts in the proceedings leading to the fiduciary's appointment, or that the fiduciary has disregarded an order of the court, has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office.~~

~~(IV) If a court orders the removal of a fiduciary, the court shall direct that the fiduciary's letters, if any, be revoked and such revocation be endorsed upon the fiduciary's letters, if any.~~

~~(f) The appointment of a temporary or permanent successor fiduciary; A REVIEW OF THE FIDUCIARY'S CONDUCT. IF A COURT ORDERS A REVIEW OF THE FIDUCIARY'S CONDUCT, THE COURT SHALL SPECIFY THE SCOPE AND DURATION OF THE REVIEW IN THE COURT'S ORDER.~~

~~(g) A review of the fiduciary's conduct. If a court orders a review of the fiduciary's conduct, the court shall specify the scope and duration of the review in the court's order. A SURCHARGE OR SANCTION OF THE FIDUCIARY PURSUANT TO SECTION 15-10-504;~~

~~(h) A surcharge or sanction of the fiduciary pursuant to section 15-10-504; or THE REMOVAL OF THE FIDUCIARY; OR~~

(3) Removal of a fiduciary - procedures. A COURT MAY REMOVE A FIDUCIARY FOR CAUSE AT ANY TIME, AND THE FOLLOWING PROVISIONS APPLY:

(a) IF A COURT ORDERS THE REMOVAL OF A FIDUCIARY, THE COURT SHALL DIRECT BY ORDER THE DISPOSITION OF THE ASSETS REMAINING IN THE NAME OF, OR UNDER THE CONTROL OF, THE FIDUCIARY BEING REMOVED.

(b) IF A COURT ORDERS THE REMOVAL OF A FIDUCIARY, THE COURT SHALL DIRECT THAT THE FIDUCIARY'S LETTERS, IF ANY, BE REVOKED AND THAT SUCH REVOCATION BE ENDORSED UPON THE FIDUCIARY'S LETTERS, IF ANY.

(c) CAUSE FOR REMOVAL OF A FIDUCIARY EXISTS WHEN:

(I) REMOVAL WOULD BE IN THE BEST INTERESTS OF THE ESTATE;

(II) IT IS SHOWN THAT THE FIDUCIARY OR THE PERSON SEEKING THE FIDUCIARY'S APPOINTMENT INTENTIONALLY MISREPRESENTED MATERIAL FACTS IN THE PROCEEDINGS LEADING TO THE FIDUCIARY'S APPOINTMENT; OR

(III) THE FIDUCIARY HAS DISREGARDED AN ORDER OF THE COURT, HAS BECOME INCAPABLE OF DISCHARGING THE DUTIES OF THE OFFICE, OR

HAS MISMANAGED THE ESTATE OR FAILED TO PERFORM ANY DUTY PERTAINING TO THE OFFICE.

(4) Petition for removal - temporary restraints on fiduciary powers. AFTER A FIDUCIARY RECEIVES NOTICE OF THE FILING OF A PETITION FOR HIS, HER, OR ITS REMOVAL, THE FIDUCIARY SHALL NOT ACT EXCEPT TO ACCOUNT, TO CORRECT MALADMINISTRATION, OR TO PRESERVE THE ESTATE.

SECTION 2. In Colorado Revised Statutes, 15-14-102, **add** (10.5) as follows:

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

(10.5) "POST-ADJUDICATION" MEANS AFTER APPOINTMENT OF A PERMANENT GUARDIAN OR SPECIAL OR PERMANENT CONSERVATOR AFTER A HEARING FOR WHICH A RESPONDENT WAS PROVIDED NOTICE PURSUANT TO SECTION 15-14-309 OR SECTION 15-14-404, OR BOTH, AND AT WHICH THE RESPONDENT HAD AN OPPORTUNITY TO PRESENT EVIDENCE AND BE HEARD.

SECTION 3. In Colorado Revised Statutes, **add** 15-14-319 as follows:

15-14-319. Right to a lawyer post-adjudication. (1) AN ADULT WARD HAS THE RIGHT POST-ADJUDICATION TO BE REPRESENTED BY A LAWYER OF THE WARD'S CHOOSING AT THE EXPENSE OF THE WARD'S ESTATE UNLESS THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE WARD LACKS SUFFICIENT CAPACITY TO PROVIDE INFORMED CONSENT FOR REPRESENTATION BY A LAWYER. UPON SUCH A FINDING, THE COURT SHALL APPOINT A GUARDIAN AD LITEM, AND THE ADULT WARD RETAINS THE RIGHT TO A LAWYER OF THE ADULT WARD'S CHOOSING FOR THE LIMITED PURPOSE OF INTERLOCUTORY APPEAL OF THE COURT'S DECISION AS TO THE RIGHT TO A LAWYER.

(2) THE RIGHT TO A LAWYER DESCRIBED IN SUBSECTION (1) OF THIS SECTION APPLIES TO A WARD PARTICIPATING IN PROCEEDINGS OR SEEKING ANY REMEDY UNDER PARTS 1 TO 4 OF THIS ARTICLE, INCLUDING CHANGE OR TERMINATION OF A GUARDIANSHIP, JUDICIAL REVIEW OF FIDUCIARY CONDUCT, APPELLATE RELIEF, AND ANY OTHER PETITION FOR RELIEF FROM THE COURT.

(3) SUBJECT TO SUBSECTION (1) OF THIS SECTION, THE COURT SHALL APPOINT A LAWYER TO REPRESENT ANY ADULT WARD IN ANY PROCEEDINGS PURSUANT TO PARTS 1 TO 4 OF THIS ARTICLE IF THE WARD IS NOT REPRESENTED BY A LAWYER AND THE COURT DETERMINES THE WARD NEEDS SUCH REPRESENTATION.

(4) A LAWYER FOR THE WARD, ON PRESENTATION OF PROOF OF REPRESENTATION, MUST BE GIVEN ACCESS TO ALL INFORMATION PERTINENT TO PROCEEDINGS UNDER THIS TITLE, INCLUDING IMMEDIATE ACCESS TO MEDICAL RECORDS AND INFORMATION.

SECTION 4. In Colorado Revised Statutes, **add** 15-14-434 as follows:

15-14-434. Right to a lawyer post-adjudication. (1) AN ADULT PROTECTED PERSON HAS THE RIGHT POST-ADJUDICATION TO BE REPRESENTED BY A LAWYER OF THE PROTECTED PERSON'S CHOOSING AT THE EXPENSE OF THE PROTECTED PERSON'S ESTATE UNLESS THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE PROTECTED PERSON LACKS SUFFICIENT CAPACITY TO PROVIDE INFORMED CONSENT FOR REPRESENTATION BY A LAWYER. UPON SUCH A FINDING, THE COURT SHALL APPOINT A GUARDIAN AD LITEM, AND THE ADULT PROTECTED PERSON RETAINS THE RIGHT TO A LAWYER OF THE ADULT PROTECTED PERSON'S CHOOSING FOR THE LIMITED PURPOSE OF INTERLOCUTORY APPEAL OF THE COURT'S DECISION AS TO THE RIGHT TO A LAWYER.

(2) THE RIGHT TO A LAWYER DESCRIBED IN SUBSECTION (1) OF THIS SECTION APPLIES TO A PROTECTED PERSON PARTICIPATING IN PROCEEDINGS OR SEEKING ANY REMEDY UNDER PARTS 1 TO 4 OF THIS ARTICLE, INCLUDING CHANGE OR TERMINATION OF A GUARDIANSHIP, JUDICIAL REVIEW OF FIDUCIARY CONDUCT, APPELLATE RELIEF, AND ANY OTHER PETITION FOR RELIEF FROM THE COURT.

(3) SUBJECT TO SUBSECTION (1) OF THIS SECTION, THE COURT SHALL APPOINT A LAWYER TO REPRESENT ANY ADULT PROTECTED PERSON IN ANY PROCEEDINGS PURSUANT TO PARTS 1 TO 4 OF THIS ARTICLE IF THE PROTECTED PERSON IS NOT REPRESENTED BY A LAWYER AND THE COURT DETERMINES THE PROTECTED PERSON NEEDS SUCH REPRESENTATION.

(4) A LAWYER FOR THE PROTECTED PERSON, ON PRESENTATION OF

PROOF OF REPRESENTATION, MUST BE GIVEN ACCESS TO ALL INFORMATION PERTINENT TO PROCEEDINGS UNDER THIS TITLE, INCLUDING IMMEDIATE ACCESS TO MEDICAL RECORDS AND INFORMATION.

SECTION 5. In Colorado Revised Statutes, 15-10-602, **amend** (5), (6), and (7) (b) (I) as follows:

15-10-602. Recovery of reasonable compensation and costs.

(5) Except as limited or otherwise restricted by a court order, compensation and costs that may be recovered pursuant to this section may be paid directly or reimbursed without a court order. AFTER A FIDUCIARY RECEIVES NOTICE OF PROCEEDINGS FOR HIS, HER, OR ITS REMOVAL, THE FIDUCIARY SHALL NOT PAY COMPENSATION OR ATTORNEY FEES AND COSTS FROM THE ESTATE WITHOUT AN ORDER OF THE COURT. A court shall order a person who receives excessive compensation or payment for inappropriate costs to make appropriate refunds.

(6) Except as provided in sections 15-10-605 (2), (3), AND (4); 15-14-318 (4); and 15-14-431 (5), if any fiduciary or person with priority for appointment as personal representative, conservator, guardian, agent, custodian, or trustee defends or prosecutes a proceeding in good faith, whether successful or not, the fiduciary or person is entitled to receive from the estate reimbursement for ~~necessary~~ REASONABLE costs and disbursements, including but not limited to reasonable attorney fees.

(7) (b) If a lawyer or another person not appointed by the court provides services that result in an order beneficial to the estate, respondent, ward, or protected person, the lawyer or other person not appointed by the court may receive costs and reasonable compensation from the estate as provided below:

(I) The lawyer or other person shall file a request for compensation for services or costs alleged to have resulted in the order within ~~fourteen~~ THIRTY-FIVE days after the entry of the order or within a greater or lesser time as the court may direct. Any objection thereto ~~shall~~ MUST be filed within ~~fourteen~~ TWENTY-ONE days after the filing of the request for compensation or costs. ANY REPLY TO THE OBJECTION MUST BE FILED WITHIN SEVEN DAYS AFTER THE FILING OF THE OBJECTION.

SECTION 6. Inclusion of official comments. The revisor of

statutes shall include in the publication of sections 15-14-319 and 15-14-434, C.R.S., as enacted by sections 3 and 4 of this act, as nonstatutory matter, following each such section, the full text of the official comments to these sections contained in the official volume containing the "Uniform Guardianship and Protected Proceedings Act" issued by the Uniform Law Commission, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The revisor shall prepare the comments for approval by the committee on legal services.

SECTION 7. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Bill L. Cadman
PRESIDENT OF
THE SENATE

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO