

IN THE SENATE

SENATE BILL NO. 1250, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO PROTECTED PERSONS; AMENDING CHAPTER 5, TITLE 15, IDAHO CODE, BY
2 THE ADDITION OF A NEW SECTION 15-5-108, IDAHO CODE, TO PROVIDE THAT CER-
3 TAIN ORDERS AND APPOINTMENTS HAVE NO EFFECT ON TESTAMENTARY CAPACITY,
4 TO SPECIFY CERTAIN FACTORS INDICATIVE OF TESTAMENTARY CAPACITY AND TO
5 CLARIFY THAT SPECIFIED PROVISIONS SHALL NOT ALTER OR MODIFY ANY CLAIM,
6 CHALLENGE OR DEFENSE REGARDING THE VALIDITY OR EFFECTIVENESS OF THE
7 EXERCISE OF TESTAMENTARY CAPACITY; AMENDING SECTION 15-5-304, IDAHO
8 CODE, TO REVISE VERBIAGE RELATING TO THE APPOINTMENT OF A GUARDIAN,
9 TO PROVIDE THAT ORDERS DETERMINING THAT A BASIS FOR APPOINTMENT OF A
10 GUARDIAN OR OTHER PROTECTIVE ORDER EXISTS HAS NO EFFECT ON THE CAPACITY
11 OF THE PERSON FOR WHOM THE APPOINTMENT OR PROTECTIVE ORDER IS MADE AND
12 TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 15-5-427, IDAHO CODE,
13 TO REMOVE UNNECESSARY VERBIAGE, TO PROVIDE FOR CONSIDERATION OF GENERAL
14 POWERS OF APPOINTMENT, TO PROVIDE FOR CERTAIN LIMITATIONS OF LIABILITY
15 AND RESPONSIBILITY FOR CONSERVATORS AND TO MAKE A TECHNICAL CORRECTION;
16 AND AMENDING CHAPTER 1, TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW
17 SECTION 32-109, IDAHO CODE, TO PROVIDE THAT AN ORDER FOR THE APPOINTMENT
18 OF A GUARDIAN OR CONSERVATOR FOR A PERSON SHALL NOT IN AND OF ITSELF BE
19 THE BASIS FOR THE APPLICATION OF SPECIFIED LAW.
20

21 Be It Enacted by the Legislature of the State of Idaho:

22 SECTION 1. That Chapter 5, Title 15, Idaho Code, be, and the same is
23 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
24 ignated as Section 15-5-108, Idaho Code, and to read as follows:

25 15-5-108. TESTAMENTARY CAPACITY. An order made pursuant to title
26 15, Idaho Code, determining that a basis for appointment of a conservator,
27 guardian or other protective order exists, has no effect on the testamentary
28 capacity of the protected person. The appointment of a temporary guardian,
29 temporary conservator or other temporary order has no effect on testamentary
30 capacity of the protected person. Testamentary capacity includes, but is
31 not limited to, the capacity to do the following:

32 (1) Execute or modify a will, codicil, revocable trust or other doc-
33 ument or instrument that distributes or transfers assets of the protected
34 person upon death;

35 (2) Identify or modify a beneficiary on a life insurance contract, an-
36 nuity or retirement plan that exists on the date of appointment;

37 (3) Identify or modify a P.O.D. or T.O.D. account as set forth in chap-
38 ter 6, title 15, Idaho Code;

39 (4) Establish or modify any nontestamentary transfer set forth in sec-
40 tion 15-6-104, Idaho Code.

1 Nothing in this section shall alter or modify any claim, challenge or defense
 2 regarding the validity or effectiveness of the exercise of testamentary ca-
 3 pacity by the protected person.

4 SECTION 2. That Section 15-5-304, Idaho Code, be, and the same is hereby
 5 amended to read as follows:

6 15-5-304. FINDINGS -- ORDER OF APPOINTMENT. (a) The court shall exer-
 7 cise the authority conferred in this part so as to encourage the development
 8 of maximum self-reliance and independence of the ~~incapacitated~~ person for
 9 whom a guardian is sought and make appointive and other orders only to the ex-
 10 tent necessitated by the ~~incapacitated~~ person's actual mental and adaptive
 11 limitations or other conditions warranting the procedure.

12 (b) The court may appoint a guardian as requested if it is satisfied
 13 that ~~the person for whom a guardian is sought is incapacitated and that~~ the
 14 appointment is necessary or desirable as a means of providing continuing
 15 care and supervision of the person ~~of the incapacitated person~~ for whom a
 16 guardian is sought. The court, on appropriate findings, may:

- 17 (1) Treat the petition as one for a protective order under section 15-5-
 18 401, Idaho Code, and proceed accordingly;
 19 (2) Enter any other appropriate order; or
 20 (3) Dismiss the proceedings.

21 (c) The court may, at the time of appointment or later, on its own motion
 22 or on appropriate petition or motion of the ~~incapacitated~~ person for whom a
 23 guardian has been appointed or other interested person, limit the powers of
 24 a guardian otherwise conferred by this section and thereby create a limited
 25 guardianship. Any limitations on the statutory power of a guardian of an ~~in-~~
 26 ~~capacitated~~ person shall be endorsed on the guardian's letters, or in the
 27 case of a guardian by testamentary appointment, shall be reflected in let-
 28 ters that shall be issued at the time any limitation is imposed. Following
 29 the same procedure, a limitation may be removed and appropriate letters is-
 30 sued.

31 (d) An order made pursuant to this section determining that a basis for
 32 appointment of a guardian or other protective order exists has no effect on
 33 the capacity of the person for whom the appointment or other protective order
 34 is made.

35 SECTION 3. That Section 15-5-427, Idaho Code, be, and the same is hereby
 36 amended to read as follows:

37 15-5-427. PRESERVATION OF ESTATE PLAN. In investing the estate, and in
 38 selecting assets of the estate for distribution under subsections (a) and
 39 (b) of section 15-5-425 of this Part, in utilizing powers of revocation or
 40 withdrawal available for the support of the protected person, and exercis-
 41 able by the conservator or the court, the conservator and the court should
 42 take into account and preserve insofar as possible any known estate plan of
 43 the protected person, including his will, any revocable trust of which he is
 44 settlor, and any contract, transfer or joint ownership arrangement with pro-
 45 visions for payment or transfer of benefits or interests at his death to an-
 46 other or others which he may have originated and except as authorized in sec-
 47 tion 15-1-108, Idaho Code. The conservator may examine the will of the pro-

1 tected person. The conservator shall have no liability for or responsibil-
2 ity to monitor any exercise by the protected person of testamentary capacity
3 as authorized in section 15-5-108, Idaho Code.

4 SECTION 4. That Chapter 1, Title 32, Idaho Code, be, and the same is
5 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
6 ignated as Section 32-109, Idaho Code, and to read as follows:

7 32-109. EFFECT OF APPOINTMENT OF A CONSERVATOR OR GUARDIAN. An order
8 made pursuant to the provisions of chapter 5, title 15, Idaho Code, for the
9 appointment of a guardian or conservator for a person shall not in and of it-
10 self be the basis for the application of section 32-106, 32-107 or 32-108,
11 Idaho Code.