

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0873.01 Richard Sweetman x4333

SENATE BILL 16-131

SENATE SPONSORSHIP

Tate, Johnston

HOUSE SPONSORSHIP

Pabon and Willett,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills/summaries>.)

The bill clarifies statutory language concerning the removal of a fiduciary to ensure that a fiduciary's authority is suspended as soon as a petition to remove the fiduciary is filed.

The bill adds a provision to the conservatorship statutes stating that an adult ward or protected person has a right to be represented by a lawyer of their choosing unless the trial court finds the person lacks sufficient capacity to provide informed consent for representation by a lawyer.

The bill states that 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.

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

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

4 **15-10-503. Power of a court to address the conduct of a**
5 **fiduciary - emergencies - nonemergencies. (1) Emergency situations**
6 **- court action without the requirement of prior notice or hearing.** If
7 it appears to a court that an emergency exists because a fiduciary's actions
8 or omissions pose an imminent risk of substantial harm to a ward's or
9 protected person's health, safety, or welfare or to the financial interests of
10 an estate, the court may, on its own motion or upon the request of an
11 interested person, without a hearing and without following any of the
12 procedures authorized by section 15-10-502, order the immediate
13 restraint, restriction, or suspension of the powers of the fiduciary; direct
14 the fiduciary to appear before the court; or take such further action as the
15 court deems appropriate to protect the ward or protected person or the
16 assets of the estate. If a court restrains, restricts, or suspends the powers
17 of a fiduciary, the court shall set a hearing and direct that notice be given

1 pursuant to section 15-10-505. The clerk of the court shall immediately
2 note the restraint, restriction, or suspension on the fiduciary's letters, if
3 any. Any action for the removal, surcharge, or sanction of a fiduciary
4 shall be governed by ~~subsection (2)~~ of this section.

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

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

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

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

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

27 (IV) ~~If a court orders the removal of a fiduciary, the court shall~~

1 ~~direct that the fiduciary's letters, if any, be revoked and such revocation~~
2 ~~be endorsed upon the fiduciary's letters, if any.~~

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

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

11 (h) ~~A surcharge or sanction of the fiduciary pursuant to section~~
12 ~~15-10-504; or~~ THE REMOVAL OF THE FIDUCIARY; OR

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

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

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

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

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

26 (II) IT IS SHOWN THAT THE FIDUCIARY OR THE PERSON SEEKING
27 THE FIDUCIARY'S APPOINTMENT INTENTIONALLY MISREPRESENTED

1 MATERIAL FACTS IN THE PROCEEDINGS LEADING TO THE FIDUCIARY'S
2 APPOINTMENT; OR

3 (III) THE FIDUCIARY HAS DISREGARDED AN ORDER OF THE COURT,
4 HAS BECOME INCAPABLE OF DISCHARGING THE DUTIES OF THE OFFICE, OR
5 HAS MISMANAGED THE ESTATE OR FAILED TO PERFORM ANY DUTY
6 PERTAINING TO THE OFFICE.

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

12 **SECTION 2.** In Colorado Revised Statutes, 15-14-102, **add**
13 (10.5) as follows:

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

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

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

23 **15-14-319. Right to a lawyer post-adjudication.** (1) AN ADULT
24 WARD HAS THE RIGHT POST-ADJUDICATION TO BE REPRESENTED BY A
25 LAWYER OF THE WARD'S CHOOSING AT THE EXPENSE OF THE WARD'S
26 ESTATE UNLESS THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE
27 THAT THE WARD LACKS SUFFICIENT CAPACITY TO PROVIDE INFORMED

1 CONSENT FOR REPRESENTATION BY A LAWYER. UPON SUCH A FINDING, THE
2 COURT SHALL APPOINT A GUARDIAN AD LITEM, AND THE ADULT WARD
3 RETAINS THE RIGHT TO A LAWYER OF THE ADULT WARD'S CHOOSING FOR
4 THE LIMITED PURPOSE OF INTERLOCUTORY APPEAL OF THE COURT'S
5 DECISION AS TO THE RIGHT TO A LAWYER.

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

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

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

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

23 **15-14-434. Right to a lawyer post-adjudication.** (1) AN ADULT
24 PROTECTED PERSON HAS THE RIGHT POST-ADJUDICATION TO BE
25 REPRESENTED BY A LAWYER OF THE PROTECTED PERSON'S CHOOSING AT
26 THE EXPENSE OF THE PROTECTED PERSON'S ESTATE UNLESS THE COURT
27 FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE PROTECTED

1 PERSON LACKS SUFFICIENT CAPACITY TO PROVIDE INFORMED CONSENT FOR
2 REPRESENTATION BY A LAWYER. UPON SUCH A FINDING, THE COURT SHALL
3 APPOINT A GUARDIAN AD LITEM, AND THE ADULT PROTECTED PERSON
4 RETAINS THE RIGHT TO A LAWYER OF THE ADULT PROTECTED PERSON'S
5 CHOOSING FOR THE LIMITED PURPOSE OF INTERLOCUTORY APPEAL OF THE
6 COURT'S DECISION AS TO THE RIGHT TO A LAWYER.

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

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

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

22 **SECTION 5.** In Colorado Revised Statutes, 15-10-602, **amend**
23 (5), (6), and (7) (b) (I) as follows:

24 **15-10-602. Recovery of reasonable compensation and costs.**

25 (5) Except as limited or otherwise restricted by a court order,
26 compensation and costs that may be recovered pursuant to this section
27 may be paid directly or reimbursed without a court order. AFTER A

1 FIDUCIARY RECEIVES NOTICE OF PROCEEDINGS FOR HIS, HER, OR ITS
2 REMOVAL, THE FIDUCIARY SHALL NOT PAY COMPENSATION OR ATTORNEY
3 FEES AND COSTS FROM THE ESTATE WITHOUT AN ORDER OF THE COURT. A
4 court shall order a person who receives excessive compensation or
5 payment for inappropriate costs to make appropriate refunds.

6 (6) Except as provided in sections 15-10-605 (2), (3), and (4);
7 15-14-318 (4); and 15-14-431 (5), if any fiduciary or person with priority
8 for appointment as personal representative, conservator, guardian, agent,
9 custodian, or trustee defends or prosecutes a proceeding in good faith,
10 whether successful or not, the fiduciary or person is entitled to receive
11 from the estate reimbursement for ~~necessary~~ REASONABLE costs and
12 disbursements, including but not limited to reasonable attorney fees.

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

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

25 **SECTION 6. Inclusion of official comments.** The revisor of
26 statutes shall include in the publication of sections 15-14-319 and
27 15-14-434, C.R.S., as enacted by sections 3 and 4 of this act, as

1 nonstatutory matter, following each such section, the full text of the
2 official comments to these sections contained in the official volume
3 containing the "Uniform Guardianship and Protected Proceedings Act"
4 issued by the Uniform Law Commission, with any changes in the official
5 comments or Colorado comments to correspond to Colorado changes in
6 the uniform act. The revisor shall prepare the comments for approval by
7 the committee on legal services.

8 **SECTION 7. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2016 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.