

## CHAPTER 270

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**PROBATE, TRUSTS, AND FIDUCIARIES**

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## SENATE BILL 20-129

BY SENATOR(S) Holbert and Ginal, Cooke, Coram, Gardner, Hisey, Moreno, Scott, Smallwood, Tate;  
also REPRESENTATIVE(S) Froelich and Ransom, Soper, Becker.

**AN ACT****CONCERNING THE PROTECTION OF INDIVIDUALS SUBJECT TO A FIDUCIARY.**

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

**SECTION 1.** In Colorado Revised Statutes, 15-14-102, **add** (7.5) and (13.5) as follows:

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

(7.5) "MEMBER OF THE SUPPORTIVE COMMUNITY" MEANS A PERSON WHOM THE RESPONDENT, WARD, OR PROTECTED PERSON HAS TRUSTED FOR THE ONE-YEAR PERIOD IMMEDIATELY PRECEDING THE FILING OF A PETITION PURSUANT TO SECTION 15-14-304 OR 15-14-403 TO ENGAGE IN SUPPORTED DECISION-MAKING AND WHO MAY HAVE RELEVANT INFORMATION ABOUT THE RESPONDENT'S, WARD'S, OR PROTECTED PERSON'S DESIRES AND PERSONAL VALUES.

(13.5) "SUPPORTED DECISION-MAKING" MEANS THE WAY AN ADULT WITH A DISABILITY OR DIMINISHED CAPACITY HAS MADE OR IS MAKING HIS OR HER OWN DECISIONS BY USING FRIENDS, FAMILY MEMBERS, PROFESSIONALS, AND OTHER PEOPLE HE OR SHE TRUSTS TO:

- (a) HELP UNDERSTAND THE ISSUES AND CHOICES;
- (b) ASK QUESTIONS;
- (c) RECEIVE EXPLANATIONS IN LANGUAGE HE OR SHE UNDERSTANDS;
- (d) COMMUNICATE HIS OR HER DECISIONS TO OTHERS IF NECESSARY; OR

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(e) FACILITATE THE EXERCISE OF DECISIONS REGARDING HIS OR HER DAY-TO-DAY HEALTH, SAFETY, WELFARE, OR FINANCIAL AFFAIRS.

**SECTION 2.** In Colorado Revised Statutes, **add** 15-14-113.5 as follows:

**15-14-113.5. Appointments without notice - investigation - report - procedures.** (1) A VISITOR APPOINTED PURSUANT TO SECTION 15-14-312 (5) OR 15-14-412 (3)(b) MUST BE A PERSON WHO HAS SUCH TRAINING AS THE COURT DEEMS APPROPRIATE.

(2) A VISITOR APPOINTED PURSUANT TO SECTION 15-14-312 (5) OR 15-14-412 (3)(b) SHALL INTERVIEW THE RESPONDENT IN PERSON AND, TO THE EXTENT THAT THE RESPONDENT IS ABLE TO UNDERSTAND:

(a) EXPLAIN TO THE RESPONDENT THE SUBSTANCE OF THE PETITION; THE NATURE, PURPOSE, AND EFFECT OF THE PROCEEDING; THE RESPONDENT'S RIGHT TO A HEARING PURSUANT TO SECTION 15-14-312 (2), IF APPLICABLE; AND THE POWERS AND DUTIES OF THE EMERGENCY GUARDIAN OR SPECIAL CONSERVATOR;

(b) IDENTIFY AND DETERMINE THE RESPONDENT'S VIEW ON ANY MEMBER OF THE SUPPORTIVE COMMUNITY, AS DEFINED IN SECTION 15-14-102 (7.5), WHOSE PARTICIPATION IN THE PROCEEDINGS MAY SERVE THE RESPONDENT'S BEST INTERESTS;

(c) INFORM THE RESPONDENT OF THE NAME, CONTACT INFORMATION, AND APPOINTMENT OF HIS OR HER COURT-APPOINTED COUNSEL OR HIS OR HER RIGHT TO EMPLOY AND CONSULT WITH A LAWYER AT THE RESPONDENT'S OWN EXPENSE; AND

(d) INFORM THE RESPONDENT THAT ALL COSTS AND EXPENSES OF THE PROCEEDING, INCLUDING THE RESPONDENT'S ATTORNEY FEES, WILL BE PAID FROM THE RESPONDENT'S ESTATE UNLESS THE COURT DIRECTS OTHERWISE.

(3) IN ADDITION TO THE DUTIES IMPOSED BY SUBSECTION (2) OF THIS SECTION, THE VISITOR SHALL:

(a) INTERVIEW THE PERSON OR PERSONS IDENTIFIED BY THE RESPONDENT AS MEMBERS OF THE SUPPORTIVE COMMUNITY ABOUT THE MEMBER'S RELATIONSHIP, ROLE, AND PARTICIPATION IN SUPPORTED DECISION-MAKING ON BEHALF OF THE RESPONDENT; THE MEMBER'S VIEW ON THE RESPONDENT'S LIMITATIONS; AND WHETHER THE RESPONDENT'S NEEDS MAY BE MET BY LESS RESTRICTIVE MEANS; AND

(b) MAKE ANY OTHER INVESTIGATION THE COURT DIRECTS.

(4) THE VISITOR SHALL PROMPTLY FILE A REPORT IN WRITING WITH THE COURT, WHICH MUST INCLUDE:

(a) THE NAME, ADDRESS, AND CONTACT INFORMATION FOR ANY MEMBER OF THE SUPPORTIVE COMMUNITY;

(b) A SUMMARY OF THE NATURE AND TYPE OF SUPPORTED DECISION-MAKING

ENGAGED IN BY THE RESPONDENT WITH THE ASSISTANCE OF MEMBERS OF THE SUPPORTIVE COMMUNITY;

(c) RECOMMENDATIONS ON WHETHER ANY MEMBER OF THE SUPPORTIVE COMMUNITY SHOULD BE GRANTED PERMISSION TO PARTICIPATE IN THE PROCEEDINGS PURSUANT TO SECTION 15-14-308 (2) OR 15-10-201 (27);

(d) RECOMMENDATIONS REGARDING THE APPROPRIATENESS OF EMERGENCY GUARDIANSHIP OR SPECIAL CONSERVATORSHIP, INCLUDING WHETHER LESS RESTRICTIVE MEANS OF INTERVENTION WERE AVAILABLE AND ARE AVAILABLE;

(e) RECOMMENDATIONS ON WHETHER THE POWERS OF THE EMERGENCY GUARDIANSHIP OR SPECIAL CONSERVATORSHIP SHOULD BE LIMITED BASED ON THE DESIRES AND PERSONAL VALUES OF THE RESPONDENT AS EXPRESSED BY THE RESPONDENT AND THE MEMBERS OF THE SUPPORTIVE COMMUNITY; AND

(f) ANY OTHER MATTERS THE COURT DIRECTS.

(5) WITHIN SEVEN DAYS AFTER RECEIVING THE VISITOR'S REPORT, THE COURT SHALL REVIEW THE REPORT AND ENTER AN ORDER MAKING THE FOLLOWING SPECIFIC FINDINGS:

(a) WHETHER ANY MEMBER OF THE SUPPORTIVE COMMUNITY HAS PERMISSION TO PARTICIPATE IN THE PROCEEDINGS AS SUCH PARTICIPATION IS FOUND TO BE IN THE RESPONDENT'S BEST INTERESTS, PENDING FURTHER FINDINGS AND ORDER OF THE COURT;

(b) LIMITING THE POWERS OF THE EMERGENCY GUARDIAN OR SPECIAL CONSERVATOR AS RECOMMENDED BY THE VISITOR, PENDING FURTHER FINDINGS AND ORDER OF THE COURT; AND

(c) ANY OTHER MATTERS THAT THE COURT DEEMS APPROPRIATE TO PRESERVE AND PROTECT THE RIGHTS OF THE RESPONDENT.

**SECTION 3.** In Colorado Revised Statutes, 15-14-312, **add** (5) as follows:

**15-14-312. Emergency guardian.** (5) IF THE COURT APPOINTS AN EMERGENCY GUARDIAN WITHOUT NOTICE TO THE RESPONDENT OR ANY OTHER PERSON ENTITLED TO NOTICE PURSUANT TO SECTION 15-14-309 (2) AND THE PERSON APPOINTED IS A PROFESSIONAL WITHOUT PRIORITY TO SERVE PURSUANT TO SECTION 15-14-310 (1) OR PROTECTIVE SERVICES PURSUANT TO SECTION 26-3.1-104, THE COURT SHALL, UPON ENTRY OF THE ORDER OF APPOINTMENT OF EMERGENCY GUARDIAN, SIMULTANEOUSLY APPOINT A VISITOR TO INVESTIGATE AND REPORT TO THE COURT WITHIN FOURTEEN DAYS AFTER THE APPOINTMENT AS PROVIDED IN SECTION 15-14-113.5.

**SECTION 4.** In Colorado Revised Statutes, 15-14-412, **amend** (3) as follows:

**15-14-412. Protective arrangements and single transactions.** (3)(a) The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The special

conservator has the authority conferred by the order and shall serve until discharged by order after report to the court.

(b) IF THE COURT APPOINTS A SPECIAL CONSERVATOR WITHOUT NOTICE TO THE RESPONDENT, PROTECTED PERSON, OR ANY OTHER PERSON ENTITLED TO NOTICE PURSUANT TO SECTION 15-14-404 (2) AND THE PERSON APPOINTED IS A PROFESSIONAL WITHOUT PRIORITY TO SERVE PURSUANT TO SECTION 15-14-310 (1) OR A PUBLIC ADMINISTRATOR PURSUANT TO SECTION 15-12-622, THE COURT SHALL, UPON ENTRY OF THE ORDER OF APPOINTMENT OF SPECIAL CONSERVATOR, SIMULTANEOUSLY APPOINT A VISITOR TO INVESTIGATE AND REPORT TO THE COURT WITHIN FOURTEEN DAYS AFTER THE APPOINTMENT AS PROVIDED IN SECTION 15-14-113.5.

**SECTION 5.** In Colorado Revised Statutes, 15-10-503, **amend** (1) 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 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 this section. THE COURT SHALL RULE ON ITS MOTION OR THE INTERESTED PERSON'S REQUEST WITHIN FOURTEEN DAYS AFTER THE MOTION OR REQUEST IS MADE.

**SECTION 6. Act subject to petition - effective date - applicability.** (1) This act takes effect September 1, 2020; 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 the ninety-day period after final adjournment of the general assembly, 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 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to appointments made on or after the applicable effective date of this act.

Approved: July 10, 2020