

COMMITTEE ON JUDICIARY
SENATE AMENDMENTS TO S.B. 1291
(Reference to printed bill)

1 Page 1, between lines 1 and 2, insert:

2 "Section 1. Section 14-1401, Arizona Revised Statutes, is amended to
3 read:

4 14-1401. Notice; method and time of giving

5 A. If notice of a hearing on any petition is required and except for
6 specific notice requirements as otherwise provided, the petitioner shall
7 cause notice of the time and place of hearing of any petition to be given
8 to any interested person or his attorney if he has appeared by attorney or
9 requested that notice be sent to his attorney. Notice shall be given
10 either:

11 1. By mailing a copy ~~thereof~~ OF THE NOTICE at least fourteen days
12 before the time set for the hearing by certified, ~~OR~~ registered ~~or~~
13 ~~ordinary first class~~ mail addressed to the person being notified at the
14 post office address given in his demand for notice, if any, or at his
15 office or place of residence, if known.

16 2. By delivering a copy ~~thereof~~ OF THE NOTICE to the person being
17 notified personally at least fourteen days before the time set for the
18 hearing.

19 3. If the address or identity of any person is not known and cannot
20 be ascertained with reasonable diligence, or when otherwise required under
21 this title, by publishing at least three times ~~prior to~~ BEFORE the date set
22 for the hearing a copy ~~thereof~~ OF THE NOTICE in a newspaper having general
23 circulation in the county where the hearing is to be held, the first
24 publication of which is to be at least fourteen days before the hearing.

1 8. The type of guardianship requested. If a general guardianship is
2 requested, the petition must state that other alternatives have been
3 explored and why a limited guardianship is not appropriate. If a limited
4 guardianship is requested, the petition also must state what specific
5 powers are requested.

6 9. If a legal decision-making, parenting time or visitation order
7 was previously entered regarding an alleged incapacitated person in a
8 marriage dissolution, legal separation or paternity action in this state or
9 another jurisdiction and the petitioner or proposed guardian is a parent of
10 the alleged incapacitated person or a nonparent who has been awarded legal
11 decision-making as to the alleged incapacitated person, the court and case
12 number for that action or proceeding and include a copy of the most recent
13 court order regarding legal decision-making, parenting time and visitation.

14 10. If the appointment of a guardian is necessary due solely to the
15 physical incapacity of the alleged incapacitated person.

16 11. IF THE ALLEGED INCAPACITATED PERSON HAS A CURRENT, VALIDLY
17 EXECUTED HEALTH CARE POWER OF ATTORNEY, DURABLE POWER OF ATTORNEY,
18 CERTIFICATION OF TRUST OR OTHER LEGAL DIRECTIVE, THE TYPE OF LEGAL
19 DIRECTIVE AND INCLUDE A COPY OF THE LEGAL DIRECTIVE ATTACHED TO THE
20 PETITION.

21 C. On the filing of a petition, the court shall set a hearing date
22 on the issues of incapacity. Unless the alleged incapacitated person is
23 represented by independent counsel, the court shall appoint an attorney to
24 represent that person in the proceeding. The alleged incapacitated person
25 shall be interviewed by an investigator appointed by the court and shall be
26 examined by a physician, psychologist or registered nurse appointed by the
27 court. If the alleged incapacitated person has an established relationship
28 with a physician, psychologist or registered nurse who is determined by the
29 court to be qualified to evaluate the capacity of the alleged incapacitated
30 person, the court may appoint the alleged incapacitated person's physician,
31 psychologist or registered nurse pursuant to this subsection. The
32 investigator and the person conducting the examination shall submit their

1 reports in writing to the court. In addition to information required under
2 subsection D **OF THIS SECTION**, the court may direct that either report
3 include other information the court deems appropriate. The investigator
4 also shall interview the person seeking appointment as guardian, visit the
5 present place of abode of the alleged incapacitated person and the place
6 where it is proposed that the person will be detained or reside if the
7 requested appointment is made and submit a report in writing to the
8 court. The alleged incapacitated person is entitled to be present at the
9 hearing and to see or hear all evidence bearing on that person's
10 condition. The alleged incapacitated person is entitled to be represented
11 by counsel, to present evidence, to cross-examine witnesses, including the
12 court-appointed examiner and investigator, and to trial by jury. The court
13 may determine the issue at a closed hearing if the alleged incapacitated
14 person or that person's counsel so requests.

15 D. A report filed pursuant to this section by a physician,
16 psychologist or registered nurse acting within that person's scope of
17 practice shall include the following information:

18 1. A specific description of the physical, psychiatric or
19 psychological diagnosis of the person.

20 2. A comprehensive assessment listing any functional impairments of
21 the alleged incapacitated person and an explanation of how and to what
22 extent these functional impairments may prevent that person from receiving
23 or evaluating information in making decisions or in communicating informed
24 decisions regarding that person.

25 3. An analysis of the tasks of daily living the alleged
26 incapacitated person is capable of performing without direction or with
27 minimal direction.

28 4. A list of all medications the alleged incapacitated person is
29 receiving, the dosage of the medications and a description of the effects
30 each medication has on the person's behavior to the best of the declarant's
31 knowledge.

1 5. A prognosis for improvement in the alleged incapacitated person's
2 condition and a recommendation for the most appropriate rehabilitation plan
3 or care plan.

4 6. Other information the physician, psychologist or registered nurse
5 deems appropriate."

6 Renumber to conform

7 Page 1, strike lines 34 through 36

8 Renumber to conform

9 Strike lines 43 through 45, insert:

10 "3. The person nominated to serve as guardian in the incapacitated
11 person's most recent durable power of attorney, CERTIFICATION OF TRUST or
12 health care power of attorney."

13 Page 3, line 21, after "may" insert "NOT"

14 Line 22, strike "if the"

15 Strike line 23

16 Line 24, strike "EVIDENCE" insert "WHO HAS A SIGNIFICANT RELATIONSHIP WITH THE
17 WARD WITHOUT VERIFIABLE EVIDENCE"

18 Page 6, line 6, strike "~~for cause~~ IF THE COURT FINDS BY CLEAR AND CONVINCING
19 EVIDENCE" insert "for cause"

20 Line 17, after "finds" insert "BY CLEAR AND CONVINCING EVIDENCE"

21 Page 7, between lines 2 and 3, insert:

22 "D. IF THE COURT FINDS THAT THE PETITION IS NOT SUPPORTED BY CLEAR
23 AND CONVINCING EVIDENCE OR IS VEXATIOUS, THE COURT MAY AWARD SANCTIONS AND
24 DAMAGES.

25 Sec. 8. Section 14-5404, Arizona Revised Statutes, is amended to
26 read:

27 14-5404. Original petition for appointment or protective order

28 A. The person allegedly in need of protection, any person who is
29 interested in that person's estate or affairs, including that person's
30 parent, guardian or custodian, or any person who would be adversely
31 affected by lack of effective management of that person's estate and

1 affairs may petition for the appointment of a conservator or for any other
2 appropriate protective order.

3 B. The petition shall set forth, at a minimum and to the extent
4 known, all of the following:

5 1. The interest of the petitioner.

6 2. The name, age, residence and address of the person allegedly in
7 need of protection.

8 3. The name, address and priority for appointment of the person
9 whose appointment is sought.

10 4. The name and address of the guardian, if any, of the person
11 allegedly in need of protection.

12 5. The name and address of the nearest relative of the person
13 allegedly in need of protection known to the petitioner.

14 6. A general statement of the estate of the person allegedly in need
15 of protection with an estimate of its value, including any compensation,
16 insurance, pension or allowance to which the person is entitled **AND WHETHER**
17 **THE PERSON ALLEGEDLY IN NEED OF PROTECTION IS A BENEFICIARY OF A TRUST.**

18 7. The reason why appointment of a conservator or any other
19 protective order is necessary.

20 **8. BY CLEAR AND CONVINCING EVIDENCE THAT THE PERSON ALLEGEDLY IN**
21 **NEED OF PROTECTION IS IN NEED OF A CONSERVATOR OR ANY OTHER PROTECTIVE**
22 **ORDER.**

23 **9. ANY REASON WHY THE PETITIONER SHOULD NOT BE APPOINTED.**

24 **10. IF THE PERSON ALLEGEDLY IN NEED OF PROTECTION HAS A VALIDLY**
25 **EXECUTED DURABLE POWER OF ATTORNEY, HEALTH CARE POWER OF ATTORNEY,**
26 **CERTIFICATION OF TRUST OR OTHER DIRECTIVE, THE TYPE OF LEGAL DIRECTIVE AND**
27 **INCLUDE A COPY OF THE LEGAL DIRECTIVE ATTACHED TO THE PETITION."**

28 Renumber to conform

29 Page 7, line 40, strike "are entitled to" insert "ORDER SHALL BE USED IN"; strike
30 "in the order"

31 Line 41, strike "listed"

32 Line 43, after "ATTORNEY" insert ", CERTIFICATION OF TRUST OR TRUST"

Senate Amendments to S.B. 1291

1 Page 7, after line 43, insert:

2 "2. THE SPOUSE OF THE PROTECTED PERSON."

3 Renumber to conform

4 Page 8, strike line 10

5 Line 24, strike "4" insert "2"

6 Amend title to conform

1291JUD.docx
02/15/2023
11:34 AM
C: LAT