

PROPOSED  
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 B. The court for good cause shown may provide for a different method  
2 or time of giving notice for any hearing.

3 C. Proof of the giving of notice shall be made at or before the  
4 hearing and filed in the proceeding.

5 Sec. 2. Title 14, chapter 5, article 1, Arizona Revised Statutes, is  
6 amended by adding section 14-5111, to read:

7 14-5111. Powers and duties of counsel: alleged incapacitated  
8 persons

9 A. AN ALLEGED INCAPACITATED PERSON'S ATTORNEY SHALL FULFILL THE  
10 FOLLOWING MINIMAL DUTIES:

11 1. WITHIN TWENTY-FOUR HOURS AFTER APPOINTMENT, INTERVIEW THE ALLEGED  
12 INCAPACITATED PERSON.

13 2. PROVIDE IN WRITING TO THE ALLEGED INCAPACITATED PERSON, THE  
14 ALLEGED INCAPACITATED PERSON'S KNOWN FAMILY MEMBERS AND ANY PERSONS WHO  
15 HAVE FILED A DEMAND FOR NOTICE THEIR RIGHTS AND THE PROCESS TO TERMINATE  
16 THE CONSERVATORSHIP OR GUARDIANSHIP, INCLUDING ALL OF THE FOLLOWING  
17 INFORMATION:

18 (a) THE RIGHT TO A JURY TRIAL PURSUANT TO SECTION 14-1306.

19 (b) THE RIGHT TO SELECT AN ATTORNEY OF THE PERSON'S CHOOSING.

20 (c) THE RIGHT OF THE ALLEGED INCAPACITATED PERSON TO APPEAR IN COURT  
21 DURING PROCEEDINGS THAT WILL AFFECT THE ALLEGED INCAPACITATED PERSON'S  
22 ESTATE.

23 (d) A REVIEW OF THE COURT PROCESS, TIMELINES AND EXPECTED FUTURE  
24 PROCEEDINGS.

25 (e) A DETAILED LIST AND EXPLANATION OF THE DUTIES THE GUARDIAN OR  
26 CONSERVATOR WILL ASSUME FOR THE ALLEGED INCAPACITATED PERSON.

27 (f) THE RIGHT OF FAMILY MEMBERS AND PERSONS WITH A SIGNIFICANT  
28 RELATIONSHIP WITH THE ALLEGED INCAPACITATED PERSON TO HAVE REASONABLE  
29 ACCESS TO THE ALLEGED INCAPACITATED PERSON UNLESS THE GUARDIAN DEMONSTRATES  
30 WITH VERIFIABLE EVIDENCE PURSUANT TO SECTION 14-5316 THAT CONTACT WILL BE  
31 DETRIMENTAL TO THE ALLEGED INCAPACITATED PERSON'S HEALTH, SAFETY OR  
32 WELFARE.

1           B. WITHIN FIVE BUSINESS DAYS AFTER APPOINTMENT, THE ALLEGED  
2 INCAPACITATED PERSON'S ATTORNEY SHALL PROVIDE EVIDENCE OF HAVING FULFILLED  
3 THE REQUIREMENTS PRESCRIBED IN SUBSECTION A OF THIS SECTION.

4           C. THE COURT MAY FIND AN ATTORNEY WHO FAILS TO FULFILL THE DUTIES  
5 PRESCRIBED IN SUBSECTION A OF THIS SECTION IN CONTEMPT OF COURT.

6           Sec. 3. Section 14-5303, Arizona Revised Statutes, is amended to  
7 read:

8           14-5303. Procedure for court appointment of a guardian of an  
9                           alleged incapacitated person

10           A. The alleged incapacitated person or any person interested in that  
11 person's affairs or welfare may petition for the appointment of a guardian  
12 or for any other appropriate protective order.

13           B. The petition shall contain a statement that the authority granted  
14 to the guardian may include the authority to withhold or withdraw life  
15 sustaining treatment, including artificial food and fluid, and shall state,  
16 at a minimum and to the extent known, all of the following:

- 17           1. The interest of the petitioner.
- 18           2. The name, age, residence and address of the alleged incapacitated  
19 person.
- 20           3. The name, address and priority for appointment of the person  
21 whose appointment is sought.
- 22           4. The name and address of the conservator, if any, of the alleged  
23 incapacitated person.
- 24           5. The name and address of the nearest relative of the alleged  
25 incapacitated person known to the petitioner.
- 26           6. A general statement of the property of the alleged incapacitated  
27 person, with an estimate of its value and including any compensation,  
28 insurance, pension or allowance to which the person is entitled.
- 29           7. The reason why appointment of a guardian or any other protective  
30 order is necessary.

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

JOHN KAVANAGH

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02/15/2023  
11:34 AM  
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