

FIFTY-THIRD LEGISLATURE  
SECOND SESSION, 2018

SB 19/a

January 25, 2018

Mr. President:

Your **PUBLIC AFFAIRS COMMITTEE**, to whom has been referred

**SENATE BILL 19**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 2, between lines 9 and 10, insert the following new subsections:

"D. "affiliated" or "affiliate", with reference to a guardian or conservator, means:

(1) a person that, directly or indirectly, through one or more intermediaries, is controlled by the guardian or conservator, controls the guardian or conservator or is under common control with the guardian or conservator; or

(2) an individual who is related to the guardian or conservator by blood, marriage or adoption as a spouse, parent, grandparent, child, grandchild, cousin, niece, nephew or household member;

E. "affirmation" means a written, dated and signed affirmation under penalty of perjury pursuant to the laws of the state of New Mexico that a statement or other record is true and correct;".

2. Reletter the succeeding subsections accordingly.

3. On page 2, between lines 20 and 21, insert the following new subsection:

"I. "domestic partner" means an individual in a long-term relationship of indefinite duration with the respondent or other person in which the individual has demonstrated an actual commitment

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to the respondent or other person similar to the commitment of a spouse and in which the individual and the respondent or other person consider themselves to be responsible for each other's well-being;".

4. Reletter the succeeding subsections accordingly.

5. On page 5, line 18, strike "includes" and insert in lieu thereof "means".

6. On page 5, line 20, after "Act", insert "or a similar act".

7. On page 5, line 21, strike "includes" and insert in lieu thereof "means".

8. On page 5, line 23, strike "and".

9. On page 5, line 25, after the semicolon, insert "and".

10. On page 5, after line 25, insert the following new paragraph:

"(3) a record signed pursuant to an act similar to the Uniform Health-Care Decisions Act or the Mental Health Care Treatment Decisions Act;".

11. On page 7, between lines 2 and 3, insert the following new subsection:

"JJ. "spouse" does not include an individual from whom the respondent or other person is legally separated or from whom there is a pending petition for annulment, divorce, dissolution of marriage or legal separation and includes a domestic partner;".

12. Reletter the succeeding subsections accordingly.

13. On page 16, line 18, strike "OF" and insert in lieu

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thereof "AND".

14. On page 17, between lines 12 and 13, insert the following new subsections:

"D. Except as otherwise provided in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, a court shall not issue an order or grant authorization, approval or other relief pursuant to that act without notice and a hearing. This provision shall not affect the court's authority to issue temporary relief to prevent immediate and irreparable injury, loss or damage pursuant to the Rules of Civil Procedure for the District Courts or similar rules.

E. Except as otherwise provided in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, a hearing pursuant to that act shall be held in open court like other hearings are held, subject to the control of the court. The supreme court may adopt more specific rules for the conduct of hearings."

15. On page 21, between lines 5 and 6, insert the following new subsection:

"E. Unless otherwise compensated or reimbursed and except as otherwise provided in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, a court-ordered visitor, a person appointed to conduct a court-ordered professional evaluation, a guardian ad litem appointed by the court for a respondent, an individual subject to guardianship, an individual subject to conservatorship or an individual subject to a protective arrangement pursuant to Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the individual."

16. On page 32, lines 1 and 2, strike "Unless otherwise

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provided by law, a" and insert in lieu thereof "A".

17. On page 32, between lines 6 and 7, insert the following new section:

**"SECTION 129. [NEW MATERIAL] SEPARATE ACCOUNTS AND RECORDS.--**

A. A guardian or conservator shall not commingle the guardian's or conservator's funds or investments with those held by the guardian or conservator as a fiduciary for a minor or an adult. Funds and any investments held by the guardian or conservator as a fiduciary for the minor or the adult shall be held in accounts that are separate from those of the guardian or conservator. If a guardian or conservator serves as fiduciary for one or more individuals subject to guardianship or conservatorship, the guardian or conservator shall hold the funds and any investments held as a fiduciary in a separate account for each individual subject to guardianship or conservatorship. Except as otherwise provided in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, and to the extent that is reasonable and customary, any other property held by the guardian or conservator as a fiduciary for one or more individuals subject to guardianship or conservatorship shall be titled separately:

(1) from the guardian's or conservator's property;

and

(2) for each individual subject to guardianship or conservatorship.

B. A court at any time may require a guardian to bring a proceeding for a conservatorship, or a protective arrangement instead of conservatorship, if necessary or advisable to:

(1) protect property of a minor or an adult, including any property held by the guardian as a fiduciary for the minor or the adult;

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(2) conserve funds of the minor not expended pursuant to Paragraph (3) of Subsection B of Section 209 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for the minor's future needs; or

(3) conserve funds of the adult not expended pursuant to Paragraph (2) of Subsection C of Section 313 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for the adult's future needs.

C. By accepting appointment by a court as guardian or conservator, the guardian or conservator consents to review and examination at any time by the court or its designee of all:

(1) accounts with financial institutions and other third parties holding funds or investments held by the guardian or conservator as a fiduciary for persons under guardianship or conservatorship;

(2) other property held by the guardian or conservator as a fiduciary for persons under guardianship or conservatorship; and

(3) books and records in the possession, custody or control of the guardian or conservator relating to those accounts and that other property.

D. The guardian or conservator shall cooperate fully to facilitate the review and examination of accounts, property, books and records as set forth in Subsection C of this section.

E. The guardian or conservator shall maintain those books and records described in Paragraph (3) of Subsection C of this section for no less than seven years, or for such other period as may be provided by the supreme court."

18. On page 33, line 1, strike the comma.

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19. On page 33, line 2, strike "including the minor,".

20. On page 39, between lines 11 and 12, insert the following new subsection:

"E. A hearing pursuant to Section 203 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall be closed at the request of the minor or the minor's attorney and a showing of good cause.".

21. On page 46, line 19, strike "sixty" and insert in lieu thereof "thirty".

22. On page 47, line 20, strike "five" and insert in lieu thereof "fourteen".

23. On page 54, line 3, strike the comma.

24. On page 54, strike line 4 through the comma.

25. On page 76, line 11, strike "sixty" and insert in lieu thereof "thirty".

26. On page 77, line 12, strike "five" and insert in lieu thereof "fourteen" and after the period, insert "On two days' notice to the party who obtained the appointment of an emergency guardian without notice, or on such shorter notice to that party as the court may prescribe, the respondent or the respondent's attorney may appear and move dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.".

27. On page 89, line 6, after the subsection designation "D.", strike the remainder of the line and strike line 7 through the period.

28. On page 89, line 8, strike "the" and insert in lieu

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thereof "a".

29. On page 89, line 11, strike the second occurrence of "the" and insert in lieu thereof "a".

30. On page 89, line 14, after "The", insert "court shall not approve the plan until thirty days after its filing. The court may then approve the plan or require a new plan with or without holding a hearing as the court determines is appropriate unless a hearing is requested as provided in this subsection. If the guardian, the adult subject to guardianship or any person entitled to notice pursuant to Subsection B of this section requests a hearing in connection with the plan, the".

31. On page 92, line 21, strike "may" and insert in lieu thereof "shall".

32. On page 92, line 22, strike "may" and insert in lieu thereof "shall".

33. On page 92, line 23, strike "any time" and insert in lieu thereof "least annually".

34. On page 93, line 9, strike "and" and insert in lieu thereof a comma.

35. On page 93, line 10, strike "any other" and insert in lieu thereof "a".

36. On page 93, line 12, after "order", insert "and any other person the court determines".

37. On page 94, line 7, after "section", strike the remainder of the line and insert in lieu thereof a period.

38. On page 94, strike lines 8 and 9 in their entirety.

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39. On page 94, strike line 10 through the period and after "The", insert "guardian shall send a copy of the petition to the adult subject to guardianship and to a person entitled to notice pursuant to Subsection G of this section and shall file proof of the sending of the petition with the court. The court shall not approve the report until the later of thirty days after its filing and fourteen days after the petition was sent to the persons entitled to notice. The court may then approve the report with or without a hearing as the court determines is appropriate unless a hearing is requested as provided in this subsection. If the guardian, the person subject to guardianship or a person entitled to notice pursuant to Subsection G of this section requests a hearing in connection with the report, the".

40. On page 96, line 9, strike "and" and insert in lieu thereof a comma.

41. On page 96, line 12, after "order", insert "and any other person the court determines".

42. On page 101, strike lines 11 and 12 in their entirety.

43. Renumber the succeeding paragraphs accordingly.

44. On page 115, line 18, strike "under" and insert in lieu thereof "pursuant to Subsection E of".

45. On page 123, line 24, strike "sixty" and insert in lieu thereof "thirty".

46. On page 124, line 22, strike "five" and insert in lieu thereof "fourteen".

47. On page 124, line 24, after the period, insert "On two days' notice to the party who obtained the appointment of an emergency conservator without notice or on such shorter notice to that party as the court may prescribe, the respondent or the

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respondent's attorney may appear and move dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require."

48. On page 125, line 10, after "court", insert "for good cause".

49. On page 137, line 3, after the subsection designation "D.", strike the remainder of the line and strike line 4 in its entirety.

50. On page 137, line 5, strike "the" and insert in lieu thereof "a".

51. On page 137, line 9, strike "the" and insert in lieu thereof "a" and after "The", insert "court shall not approve the plan until thirty days after its filing. The court may then approve the plan or require a new plan with or without holding a hearing as the court determines is appropriate unless a hearing is requested as provided in this subsection. If the conservator, the adult subject to conservatorship or any person entitled to notice pursuant to Subsection B of this section requests a hearing in connection with the plan, the".

52. On page 147, line 20, strike "may" and insert in lieu thereof "shall".

53. On page 147, line 21, after "and", insert "shall".

54. On page 148, line 8, strike "and" and insert in lieu thereof a comma.

55. On page 148, line 11, after "order", insert "and any other person the court determines".

56. On page 149, line 7, after "section", strike the remainder

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of the line and insert in lieu thereof a period.

57. On page 149, strike lines 8 and 9 in their entirety.

58. On page 149, strike line 10 through the period and after "The", insert "conservator shall send a copy of the petition to the adult subject to conservatorship and to a person entitled to notice pursuant to Subsection D of this section and shall file proof of the sending of the petition with the court. The court shall not approve the report until the later of thirty days after its filing and fourteen days after the petition was sent to the persons entitled to notice. The court may then approve the report with or without holding a hearing as the court determines is appropriate unless a hearing is requested as provided in this subsection. If the conservator, the person subject to conservatorship or a person entitled to notice pursuant to Subsection D of this section requests a hearing in connection with the report, the".

59. On page 149, line 22, after "accounting", insert "and the hearing".

60. On page 150, between lines 2 and 3, insert the following new subsections:

"K. No person shall request, procure or receive a release or waiver of liability, however denominated, of a conservator or an agent or affiliate of a conservator:

(1) concerning any matter not adequately disclosed in a report or accounting filed pursuant to Subsection I or J of this section; or

(2) from a person who was not given, in a timely manner, a copy of the report or accounting and a notice of the hearing pursuant to Subsection I or J of this section.

L. A release or waiver of liability that is requested,

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procured or received contrary to the provisions of Subsection K of this section is void."

61. On page 151, line 3, after the first occurrence of "to", insert "the individual subject to conservatorship,".

62. On page 151, line 6, after "order", insert "and any other person the court determines".

63. On page 158, line 16, strike "and" and insert in lieu thereof a comma.

64. On page 158, line 19, after "order", insert "and any other person the court determines".

65. On page 166, line 24, strike "respondent" and insert in lieu thereof "adult" and after "finds", insert "by clear and convincing evidence that".

66. On page 166, line 25, strike "by clear and convincing evidence that".

67. On page 167, line 1, strike "respondent" and insert in lieu thereof "adult" and strike "the respondent's".

68. On page 167, strike lines 9 through 16 in their entirety and insert in lieu thereof the following new paragraph:

"(2) an order pursuant to Subsection C of this section is necessary to:

(a) avoid harm to the adult or significant dissipation of the property of the adult; or

(b) obtain or provide funds or other property needed for the support, care, education, health or welfare of the adult or an individual entitled to the adult's support; and".

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69. On page 187, between lines 14 and 15, insert the following new section:

**"SECTION 605. [NEW MATERIAL] TRANSITION PROVISIONS.--**

A. A guardian for an adult appointed before January 1, 2019 shall file a guardian's plan on or before December 31, 2019 pursuant to Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The guardian's plan shall be accompanied by a guardian's annual report and accounting pursuant to Section 317 of that act. A conservator appointed before January 1, 2019 shall file a conservator's plan on or before December 31, 2019 pursuant to Section 419 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The conservator's plan shall be accompanied by an inventory pursuant to Section 420 of that act and an annual report and accounting pursuant to Section 423 of that act. A court may provide for the orderly filing according to a schedule or plan of the plans, reports and inventories.

B. These transition provisions for guardians of adults and for conservators do not imply any decision whether a report should be required by a court from a guardian of a minor. That matter is left to the discretion of the court.

C. If a guardian was granted authority before January 1, 2019 to make financial decisions on behalf of an individual in an order of appointment or letters of guardianship issued pursuant to Paragraph (4) of Subsection B of Section 45-5-312 NMSA 1978 as that section existed on or before December 31, 2018, the guardian shall petition the court for the appointment of a conservator for the individual on or before December 31, 2019. The Uniform Guardianship, Conservatorship and Other Protective Arrangements Act does not prohibit the same person from serving as both the guardian and the conservator for the same individual, subject to the approval of the court. A court may provide for the orderly filing according to a schedule or plan of the petitions. After January 1, 2019, a court shall not grant a guardian authority to make such financial

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decisions. That authority is limited to conservators pursuant to the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act."

70. Renumber the succeeding section accordingly.,  
and thence referred to the **JUDICIARY COMMITTEE.**

Respectfully submitted,

\_\_\_\_\_  
Gerald Ortiz y Pino, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: O'Neill

Absent: None

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