

SENATE BILL 35

**55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PROTECTIVE ARRANGEMENTS; REVISING PROCEDURES FOR THE APPOINTMENT OF TEMPORARY GUARDIANS AND TEMPORARY CONSERVATORS FOR ALLEGEDLY INCAPACITATED PERSONS; CLARIFYING REPORTING REQUIREMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 45-5-310 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-310, as amended) is amended to read:

"45-5-310. TEMPORARY GUARDIANS.--

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A. When a petition for guardianship has been filed, but adherence to the procedures set out in ~~[this section]~~ Section 45-5-303 NMSA 1978 would cause serious, immediate and irreparable harm to the alleged incapacitated person's ~~[physical]~~ health, safety or welfare, the court may appoint a temporary guardian prior to the final hearing and decision on the petition, subject to the requirements of this section.

B. Upon separate motion ~~[of]~~ by the petitioner, the court shall schedule and hold a hearing on the appointment of a temporary guardian ~~[for the earliest possible date]~~ no later than ten business days from the date the motion is filed and appoint ~~[counsel]~~ a guardian ad litem for the alleged incapacitated person. ~~[and give notice as provided]~~ SHPAC→The guardian ad litem shall file a report no later than two days prior to the hearing. The report shall include those items found in Paragraphs (1) through (3) and Paragraph (7) of Subsection A of Section 45-5-303.1 NMSA 1978.←SHPAC Notice of the hearing shall be as set out in Section 45-5-309 NMSA 1978.

C. Upon a finding that serious, immediate and irreparable harm to the alleged incapacitated person's health, safety or welfare would result during the pendency of petition, the court shall appoint a temporary guardian and shall specify the temporary guardian's powers in order to prevent serious, immediate and irreparable harm to the alleged incapacitated person. The duration of the temporary guardianship shall not

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exceed [~~sixty~~] thirty days [~~except that upon order of the court, the temporary guardianship may be extended for not more than thirty days~~]. However, if after a hearing in which there is a showing of good cause, the court may extend the temporary guardianship for no more than an additional sixty days.

[G.] D. A temporary guardian may be appointed without notice to the alleged incapacitated person and [~~his~~] to the alleged incapacitated person's attorney only if it clearly appears from specific facts shown by affidavit or sworn testimony that serious, immediate and irreparable harm will result to the alleged incapacitated [~~person~~] person's health, safety or welfare before a ten-day hearing on the appointment of a temporary guardian can be held. [~~The alleged incapacitated person shall be notified within twenty-four hours of the appointment of a temporary guardian by the petitioner as provided in Subsection C of Section 45-5-309 NMSA 1978. On two days' notice to the party who obtained the appointment of a temporary guardian without notice, or on such shorter notice to that party as the court may prescribe~~] If a temporary guardian is appointed without notice to the alleged incapacitated person and the alleged incapacitated person's attorney, the court shall schedule and hold a hearing no later than ten business days from the date the temporary guardian is appointed to determine whether the temporary guardianship should continue and, if so, to address the continued authority of the temporary

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guardian. The petitioner shall have the alleged incapacitated person and the alleged incapacitated person's attorney served personally within twenty-four hours of the appointment of a temporary guardian as provided in Subsection B of Section 45-5-309 NMSA 1978. The alleged incapacitated person, [~~or his~~] the alleged incapacitated person's counsel or any interested person may appear and move dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine such motion [~~as expeditiously as the ends of justice require~~] at the initial ten-day hearing or no later than ten business days from the date the motion is made, whichever comes first.

[~~D-~~] E. A temporary guardian is entitled to the care and custody of the alleged incapacitated person, [~~and the authority of any permanent guardian previously appointed by the court is suspended as to those specific matters granted to the temporary guardian by the court~~] but a temporary guardian may not sell or dispose of any property belonging to the alleged incapacitated person SHPAC→, or make a change to the housing or other placement of the alleged incapacitated person,←SHPAC without specific authorization from the court. A temporary guardian may be removed by the court at any time. A temporary guardian shall [~~make any report the court requires~~] file an initial written report with the court within fifteen days of appointment by completing the guardian's report, as approved by

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the supreme court. A temporary guardian shall file a final written report with the court by completing the guardian's report, as approved by the supreme court, within fifteen days of the termination of the temporary guardianship or as otherwise ordered by the court. In all other respects, the provisions of the Uniform Probate Code concerning guardians apply to temporary guardians.

[E-] F. Appointment of a temporary guardian shall have the temporary effect of limiting the legal rights of the [~~individual~~] alleged incapacitated person as specified in the court order. Appointment of a temporary guardian shall not be evidence of incapacity."

SECTION 2. Section 45-5-408 NMSA 1978 (being Laws 1989, Chapter 252, Section 21, as amended) is amended to read:

"45-5-408. TEMPORARY CONSERVATORS.--

A. When a petition for [~~appointment of a conservator~~] conservatorship has been filed, but adherence to the procedures set out in [~~this section~~] Section 45-5-407 NMSA 1978 would cause serious, immediate and irreparable harm to the alleged incapacitated person's SHPAC → or minor's ← SHPAC estate or financial interests, or both, [~~of the person to be protected~~] the court may appoint a temporary conservator prior to the final hearing and decision on the petition, subject to the requirements of this section.

B. Upon separate motion [~~of~~] by the petitioner, the

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court shall schedule and hold a hearing on the appointment of a temporary conservator [~~for the earliest possible date, appoint counsel for the person to be protected and give notice as provided in Section 45-5-405 NMSA 1978~~] no later than ten business days from the date the motion is filed and appoint a guardian ad litem for the alleged incapacitated person.

SHPAC→The guardian ad litem shall file a report no later than two days prior to the hearing. The report shall include those items found in Paragraphs (1), (2) and (6) of Subsection A of Section 45-5-404.1 NMSA 1978.←SHPAC Notice of the hearing shall be provided as set out in Section 45-5-405 NMSA 1978.

C. Upon a finding that serious, immediate and irreparable harm to the alleged incapacitated person's estate and financial interests [~~of the person to be protected~~] would result during the pendency of petition, the court shall appoint a temporary conservator and shall specify the temporary conservator's powers in order to prevent serious, immediate and irreparable harm to the alleged incapacitated person's property [~~of the person to be protected~~]. The duration of the temporary conservatorship shall not exceed [~~sixty days, except that upon order of the court, the temporary conservatorship may be extended for no more than~~] thirty days. However, if after a hearing in which there is a showing of good cause, the court may extend the temporary conservatorship for no more than an additional sixty days.

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[G.] D. A temporary conservator may be appointed without notice to the alleged incapacitated person [~~to be protected~~] and to the alleged incapacitated person's attorney only if it clearly appears from specific facts shown by affidavit or sworn testimony that serious, immediate and irreparable harm will result to the alleged incapacitated person's estate or financial interests [~~of the person to be protected~~] before a ten-day hearing on the appointment of a temporary conservator can be held. [~~The person to be protected shall be notified in a writing by the petitioner within twenty-four hours of the appointment of a temporary conservator in substantial accordance with the provisions of Subsection B of Section 45-5-405 NMSA 1978. On two days' notice to the party who obtained the appointment of a temporary conservator without notice or on such shorter notice to that party as the court may prescribe, the person to be protected may appear and move for dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.~~] If a temporary conservator is appointed without notice to the alleged incapacitated person and the alleged incapacitated person's attorney, the court shall schedule and hold a hearing no later than ten business days from the date the temporary conservator is appointed to determine whether the temporary conservatorship should continue and, if so, to address the

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continued authority of the temporary conservator. The petitioner shall have the alleged incapacitated person and the alleged incapacitated person's attorney served personally within twenty-four hours of the appointment of a temporary conservator as provided in Subsection B of Section 45-5-405 NMSA 1978. The alleged incapacitated person, the alleged incapacitated person's counsel or any interested person may appear and move dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine such motion at the initial ten-day hearing or no later than ten business days from the date the motion is made, whichever comes first.

E. A temporary conservator is entitled to the care and custody of the alleged incapacitated person's estate and financial interests, but a temporary conservator may not sell or dispose of any property belonging to the alleged incapacitated person SHPAC→, or make a change to the housing or other placement of the alleged incapacitated person,←SHPAC without specific authorization from the court. A temporary conservator may be removed by the court at any time. A temporary conservator shall file an initial written report with the court within fifteen days of appointment by completing the conservator's inventory, as approved by the supreme court. A temporary conservator shall file a final written report with the court by completing the conservator's report, as approved

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by the supreme court, within fifteen days of the termination of the temporary conservatorship or as otherwise ordered by the court. In all other respects, the provisions of the Uniform Probate Code concerning conservators apply to temporary conservators.

[D-] F. Appointment of a temporary conservator shall have the temporary effect of limiting the legal rights of the alleged incapacitated person [~~to be protected~~] as specified in the court order. Appointment of a temporary conservator shall not be evidence of incapacity."

**SECTION 3. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2022.