

LFC Requester:

Lance Chilton

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 3/6/2025

Check all that apply:

Bill Number: HB 125

Original ☐

Correction ☐

Amendment ☐

Substitute ☒

Sponsor: Rep. Marian Matthews

Agency Name and 305 – New Mexico

Code Number: Department of Justice

Person Writing Assistant Solicitor General

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Short Liability Waivers for

Title: Conservators

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis of original bill:

HB 125 amends NMSA 1978, Section 45-5-429, to remove subsections (E) and (F). Subsections (E) and (F) currently limit the ability of anyone to request, procure, or receive a release or waiver for liability of a conservator and otherwise voids release or waivers of liability for conservators. By removing those subsections, HB 125 would permit conservators, their agent, affiliates, or designees, or other third parties acting on behalf of the conservator to seek and include release or waivers of liability.

Synopsis of House Consumer and Public Affairs Committee Substitute:

HCPAC Committee Sub for HB 125 amends NMSA 1978, Section 45-5-429, to remove subsections (E) and (F), and creates a process for a conservator to file a petition with the presiding judge over a conservatorship to “approv[e] an action, a proposed action, or a report of a conservator” following a hearing, with notice provided to entitled parties. The Committee Sub would also permit a conservator, upon termination of the conservatorship, to file a petition with the presiding court to approve the final report and “discharg[e] the conservator from further claim or demand of any interested person related to the management of the protected person’s estate[,]” after a hearing and notice to entitled parties including, in the event of the death of the protected person, known heirs or personal representatives. The Committee Sub would also make any release of liability signed by a protected person not valid or enforceable. Lastly, the Committee Sub empowers the presiding court to appoint a guardian ad litem or investigator to review a petition.

Individuals entitled to notice in a conservatorship proceeding as outlined in NMSA 1978, Section 45-5-405(D) include the protected person, the conservator, and any other person the court determines at the time of granting the petition of conservatorship.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

On the Committee Sub:

- Subsection (E) permits conservators to file a petition with the court to seek an order “approving an action, a proposed action or report of conservator.” However, as written, it is unclear what actions or proposed actions could be sought by the conservator. Given the prior subsections, it is unclear whether the actions or proposed actions would be limited to the conservatorship itself, or within the claims permitted in Section 45-5-429, Subsections (A) to (D).

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

- HB 124 amends numerous provisions of the Uniform Probate Code related to protected persons and conservators.

TECHNICAL ISSUES

On the Committee Sub:

- The Committee Sub could be amended to provide clarity on the “actions or proposed actions” a conservator may petition the court to approve.

OTHER SUBSTANTIVE ISSUES

On the original bill:

Even if HB 125 were passed, depending on the circumstances of a particular case, release or waivers of liability may be considered unenforceable in the courts.

In general, New Mexico courts have held that release or waivers of liability may be unenforceable in New Mexico if the release or waiver of liability was 1) not expressly and clearly agreed to and 2) contrary to the state’s public policy. *See Berlangieri v Running Elk Corp.*, 2003-NMSC-024, ¶ 18, 134 NM 341, 76 P.3d 1098; *see also Peck as next friend for A.Z v. G-Force Gymnastics Acad., LLC*, 2024-NMCA-067, ¶ 9, 556 P.3d 575. First the Court determines whether the specific language of the release or waiver of liability “is sufficiently clear and unambiguous that it would inform the person signing it of its meaning[.]” *Berlangieri*, 2003-NMSC-024, ¶ 29, including whether the release or waiver is “clear and unequivocal, such that they can be understood by someone who has no legal training.” *Peck*, 2024-NMCA-067, ¶ 10. If found to be sufficiently clear and unambiguous, then the Court determines whether public policy would render any release or waiver unenforceable, examining the following factors: 1) whether the release or waiver concerns a business of a type that is generally thought suitable for public regulation; 2) whether the party seeking the waiver or release is performing a service of great importance to the public; 3) whether the party seeking the waiver is holding themselves out as willing to perform this service for any member of the public; 4) whether as a result of the essential nature of the service, the party seeking the waiver possesses a decisive advantage of bargaining in strength against any member of the

public seeking their service; 5) whether, in exercising a superior bargaining power, the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay reasonable fees and obtain protection against negligence; and 6) whether, as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or [their] agents. *Id.* ¶ 11.

While the courts have not applied this analysis in the context of a conservator and a protected person, these factors may be implicated in this context that could render problematic waivers or releases unenforceable.

On the Committee Sub:

- Subsection (F) permits the court, upon conservator's petition, notice, and hearing, to "approv[e] the conservator's final report and discharge[e] the conservator from further claim or demand of any interested person related to the management of the protected person's estate." However, it is unclear whether Subsection (F) would discharge of *all possible* claims or demands permitted in Section 45-5-429, Subsections (A) to (D), including claims or demands that are not known at the time of termination but become known after the termination.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.