

LFC Requester:

Lance Chilton

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://agencyanalysis.nmlegis.gov) and email to billanalysis@dfa.nm.gov*****(Analysis must be uploaded as a PDF)*****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***Date Prepared:** 03/06/2025*Check all that apply:***Bill Number:** HB 125Original ☐ Correction ☐Amendment ☐ Substitute ☒**Sponsor:** Marian Mathews**Agency Name
and Code**Developmental Disabilities Council
647**Short** Waiver of Liability for**Person Writing** Joseph P. Turk**Title:** Conservators**Phone:** (505) 318-9773 **Email** Joe.Turk@ddc.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
\$0	\$0	N/A	

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
\$0	\$0	\$0	N/A	N/A

(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	\$0	\$0	\$0	\$0	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: This bill would explicitly make conservators not individually liable for contracts entered into on behalf of a Protected Person, unless the contract provides otherwise or the conservator fails to reveal their status as a conservator and identify the estate in the contract. Liability for torts committed in the course of their administration of an estate would be waived unless the conservator is personally at fault. Claims can be asserted against the estate by proceeding against the conservator in their fiduciary capacity, regardless of whether the conservator is personally liable. Questions of conservator liability can be determined in a proceeding for accounting, surcharge, or indemnification, or any other appropriate proceeding. Finally, the bill would eliminate the current prohibition against a waiver of the conservator's liability.

HCPAC Amendment: the HCPAC amendment to HB 125 adds a set of court processes for conservator's actions. First, the conservator can seek court approval of an action, a proposed action, or a conservator's report, if a petition is filed and served on all parties entitled to notice. The court must hold a hearing on the request. The Court may appoint a GAL or court investigator to review the petition and report on the conclusions of the review.

Second, upon termination of a conservatorship, the conservator can petition for an order approving the final conservator's report and discharging the conservator from future claims against the estate. If the petition is filed after the protected person dies, notice must be given to all heirs whose addresses are known, and the personal representative nominated in the protected person's will. The court may appoint a GAL or court investigator to review the petition and report on the conclusions of the review.

Finally, the amendment explicitly states that any release of liability of the conservator is invalid and unenforceable if signed by the protected person while still subject to a conservatorship or guardianship.

FISCAL IMPLICATIONS

Because NM Office of Guardianship does not provide conservatorship services, this change would have no financial impact on OOG.

SIGNIFICANT ISSUES

In the past ten years, the guardianship system has undergone close scrutiny and criticism from the public and from disability rights advocates as more and more guardianship and conservatorship abuses were uncovered. Recent reforms in New Mexico laws related to guardianship and conservatorship in the past 6-8 years have strengthened protections for individuals under guardianship from abuse, neglect, or exploitation and reinforced the protected person's right to access the least restrictive options available. These laws include holding conservators accountable for their conservatorship actions and decisions.

An unintended consequence of recent legal changes has been a mass exodus of financial institutions from the conservatorship workforce. It is beneficial for financial institutions and professionals who must practice under specific codes of conduct and ethics to serve as

conservators. Without these professionals, only private individuals, including many who do not have expertise in financial management, will be willing to serve as conservators. A proposed solution that maintains protections for the protected person and their estate could be an inclusion of a statute of limitations, beginning at the time the interested party discovers the misconduct.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

The HCPAC committee substitute to HB 125 creates procedures for conservators to follow to affirmatively obtain court approval for their actions. Instead of relying on the waiver of liability in the original version, the Amendment provides procedures whereby the conservator can affirmatively seek court approval for their actions. The practical effect of allowing the conservator to seek court approval for its actions is to shut down the possibility of other interested parties seeking to undo a conservator's act long after the action was taken. The new procedures in the amendment give the conservator the opportunity to quickly ask the court, on notice to all interested parties, to review and approve the actions taken by a conservator and to confirm the conservator's liability is extinguished when the conservatorship ends. This additional layer of protection for conservators may incentivize professional conservators to remain or re-enter the field.