

FIFTY-FOURTH LEGISLATURE
FIRST SESSION, 2019

SB 395/a

February 21, 2019

Mr. President:

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

SENATE BILL 395

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

1. On page 15, line 20, before "SUBSTITUTION", insert "DEATH,".

2. On page 46, strike lines 10 through 12 in their entirety and insert in lieu thereof the following new paragraph:

"(2) a person, as far as known or as can be reasonably ascertained, previously nominated or designated in a writing signed by the incapacitated person prior to incapacity that has not been revoked by the incapacitated person or terminated by a court. This includes writings executed under the Uniform Health-Care Decisions Act, the Mental Health Care Treatment Decisions Act, the Uniform Power of Attorney Act, the Uniform Probate Code and the Uniform Trust Code;".

3. On page 46, strike lines 13 through 17 in their entirety.

4. Renumber the succeeding paragraphs accordingly.

5. On page 47, line 6, strike "(4), (5), (6) or (7)" and insert in lieu thereof "(3), (4), (5) or (6)".

6. On page 48, line 6, after the comma, strike the remainder of the line and strike line 7 in its entirety and insert in lieu thereof "SUBSTITUTION, REVIEW AND TERMINATION OF CONSERVATORSHIP.--".

7. On page 49, line 6, strike the closing quotation mark.

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8. On page 49, between lines 6 and 7, insert the following new subsections:

"E. In a proceeding that increases the conservator's authority or reduces the autonomy of the incapacitated person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a conservator, as set forth in Section 45-5-407 NMSA 1978.

F. Following receipt of a request for review, the court shall hold a status hearing, which may be informal, to determine the appropriate order to be entered. If the court finds the incapacitated person is capable of more autonomy than at the time of the original order, the court may enter an order removing the conservator, terminating the conservatorship or reducing the powers previously granted to the conservator. The court has the option to follow all or part of the procedures that apply for the appointment of a conservator, as set forth in Section 45-5-407 NMSA 1978.

G. At any time following the appointment of a conservator, but not later than ten years after the initial appointment of a conservator for an incapacitated person and every ten years thereafter, the court shall:

(1) hold a status hearing, after notice to the conservator, the incapacitated person and appropriate interested persons, to review the status of the incapacitated person's capacity and the continued need for a conservator; or

(2) appoint a court investigator to assess the incapacitated person's capacity. The court investigator shall prepare a detailed report to the court regarding the status of the incapacitated person's capacity and the continued need for a conservator. Any report shall be made available to the conservator, the incapacitated person and interested persons identified by the court.

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H. If the court is unable to contact either the conservator or the incapacitated person and neither appears for the status hearing held pursuant to Paragraph (1) of Subsection G of this section, the court shall appoint a guardian ad litem to investigate and report to the court as to the status of the incapacitated person and the conservator. Any report shall be made available to the conservator, the incapacitated person and appropriate interested persons, if known to the court.

I. Following the status hearing or the court's report from the court investigator or guardian ad litem on the status of the incapacitated person and the conservator as provided in Subsection H of this section, the court may enter an appropriate order; provided that, in entering an order that increases the conservator's authority or reduces the autonomy of the incapacitated person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a conservator, as set forth in Section 45-5-407 NMSA 1978."",

and thence referred to the **JUDICIARY COMMITTEE.**

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Respectfully submitted,

Gerald Ortiz y Pino, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against
Yes: 5
No: 0
Excused: Brandt, Ingle
Absent: None

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