

1 SENATE BILL 183

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Stuart Ingle

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10 AN ACT

11 RELATING TO CONSERVATORSHIPS; PROVIDING FOR A WAIVER OF
12 LIABILITY OF A CONSERVATOR IF A PROTECTED PERSON OR A PERSON
13 INTERESTED IN A CONSERVATORSHIP ESTATE IS REPRESENTED BY
14 INDEPENDENT LEGAL COUNSEL.

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

17 SECTION 1. Section 45-5-429 NMSA 1978 (being Laws 1975,
18 Chapter 257, Section 5-429, as amended) is amended to read:

19 "45-5-429. INDIVIDUAL LIABILITY OF CONSERVATOR.--

20 A. Unless otherwise provided in the contract, a
21 conservator is not individually liable on a contract properly
22 entered into in the conservator's fiduciary capacity in the
23 course of administration of the estate unless the conservator
24 fails to reveal the conservator's representative capacity and
25 identify the estate in the contract.

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1 B. The conservator is individually liable for
2 obligations arising from ownership or control of property of
3 the estate or for torts committed in the course of
4 administration of the estate only if the conservator is
5 personally at fault.

6 C. Claims based on contracts entered into by a
7 conservator in the conservator's fiduciary capacity on
8 obligations arising from ownership or control of the estate or
9 on torts committed in the course of administration of the
10 estate may be asserted against the estate by proceeding against
11 the conservator in the conservator's fiduciary capacity,
12 whether or not the conservator is individually liable for those
13 claims.

14 D. Any question of liability between the estate and
15 the conservator individually may be determined in a proceeding
16 for accounting, surcharge or indemnification or other
17 appropriate proceeding or action.

18 E. Unless the protected person or a person
19 interested in the conservatorship estate is represented by
20 independent counsel, no person shall request, procure or
21 receive a release or waiver of liability, however denominated,
22 of a conservator, an agent, an affiliate or a designee of a
23 conservator or any other third party acting on behalf of a
24 conservator.

25 F. A release or waiver of liability that is

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1 requested, procured or received contrary to the provisions of
2 this section is void."

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