

LFC Requester:

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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: 1/27/25

Check all that apply:

Bill Number: HB 125

Original Correction
Amendment Substitute

Sponsor: Rep. Marian Matthews

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing Analysis: Assistant Solicitor General Taylor Bui

Short Title: Liability Waivers for 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:

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.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

None.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

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

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

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.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.