

1 SENATE BILL 35

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

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5 Linda M. Lopez  
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10 AN ACT

11 RELATING TO PROTECTIVE ARRANGEMENTS; REVISING PROCEDURES FOR  
12 THE APPOINTMENT OF TEMPORARY GUARDIANS AND TEMPORARY  
13 CONSERVATORS FOR ALLEGEDLY INCAPACITATED PERSONS; CLARIFYING  
14 REPORTING REQUIREMENTS.  
15

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

17 SECTION 1. Section 45-5-310 NMSA 1978 (being Laws 1975,  
18 Chapter 257, Section 5-310, as amended) is amended to read:

19 "45-5-310. TEMPORARY GUARDIANS.--

20 A. When a petition for guardianship has been filed,  
21 but adherence to the procedures set out in [~~this section~~]  
22 Section 45-5-303 NMSA 1978 would cause serious, immediate and  
23 irreparable harm to the alleged incapacitated person's  
24 [~~physical~~] health, safety or welfare, the court may appoint a  
25 temporary guardian prior to the final hearing and decision on

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1 the petition, subject to the requirements of this section.

2 B. Upon separate motion [~~of~~] by the petitioner, the  
3 court shall schedule and hold a hearing on the appointment of a  
4 temporary guardian [~~for the earliest possible date~~] no later  
5 than ten business days from the date the motion is filed and  
6 appoint [~~counsel~~] a guardian ad litem for the alleged  
7 incapacitated person. [~~and give notice as provided~~] Notice of  
8 the hearing shall be as set out in Section 45-5-309 NMSA 1978.

9 C. Upon a finding that serious, immediate and  
10 irreparable harm to the alleged incapacitated person's health,  
11 safety or welfare would result during the pendency of petition,  
12 the court shall appoint a temporary guardian and shall specify  
13 the temporary guardian's powers in order to prevent serious,  
14 immediate and irreparable harm to the alleged incapacitated  
15 person. The duration of the temporary guardianship shall not  
16 exceed [~~sixty~~] thirty days [~~except that upon order of the~~  
17 ~~court, the temporary guardianship may be extended for not more~~  
18 ~~than thirty days~~]. However, if after a hearing in which there  
19 is a showing of good cause, the court may extend the temporary  
20 guardianship for no more than an additional sixty days.

21 [~~G.~~] D. A temporary guardian may be appointed  
22 without notice to the alleged incapacitated person and [~~his~~] to  
23 the alleged incapacitated person's attorney only if it clearly  
24 appears from specific facts shown by affidavit or sworn  
25 testimony that serious, immediate and irreparable harm will

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1 result to the alleged incapacitated ~~[person]~~ person's health,  
2 safety or welfare before a ten-day hearing on the appointment  
3 of a temporary guardian can be held. ~~[The alleged~~  
4 ~~incapacitated person shall be notified within twenty-four hours~~  
5 ~~of the appointment of a temporary guardian by the petitioner as~~  
6 ~~provided in Subsection C of Section 45-5-309 NMSA 1978. On two~~  
7 ~~days' notice to the party who obtained the appointment of a~~  
8 ~~temporary guardian without notice, or on such shorter notice to~~  
9 ~~that party as the court may prescribe]~~ If a temporary guardian  
10 is appointed without notice to the alleged incapacitated person  
11 and the alleged incapacitated person's attorney, the court  
12 shall schedule and hold a hearing no later than ten business  
13 days from the date the temporary guardian is appointed to  
14 determine whether the temporary guardianship should continue  
15 and, if so, to address the continued authority of the temporary  
16 guardian. The petitioner shall have the alleged incapacitated  
17 person and the alleged incapacitated person's attorney served  
18 personally within twenty-four hours of the appointment of a  
19 temporary guardian as provided in Subsection B of Section  
20 45-5-309 NMSA 1978. The alleged incapacitated person, [or his]  
21 the alleged incapacitated person's counsel or any interested  
22 person may appear and move dissolution or modification of the  
23 court's order, and, in that event, the court shall proceed to  
24 hear and determine such motion ~~[as expeditiously as the ends of~~  
25 ~~justice require]~~ at the initial ten-day hearing or no later

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1 than ten business days from the date the motion is made,  
2 whichever comes first.

3 ~~[D.]~~ E. A temporary guardian is entitled to the  
4 care and custody of the alleged incapacitated person, ~~[and the~~  
5 ~~authority of any permanent guardian previously appointed by the~~  
6 ~~court is suspended as to those specific matters granted to the~~  
7 ~~temporary guardian by the court]~~ but a temporary guardian may  
8 not sell or dispose of any property belonging to the alleged  
9 incapacitated person without specific authorization from the  
10 court. A temporary guardian may be removed by the court at any  
11 time. A temporary guardian shall ~~[make any report the court~~  
12 ~~requires]~~ file an initial written report with the court within  
13 fifteen days of appointment by completing the guardian's  
14 report, as approved by the supreme court. A temporary guardian  
15 shall file a final written report with the court by completing  
16 the guardian's report, as approved by the supreme court, within  
17 fifteen days of the termination of the temporary guardianship  
18 or as otherwise ordered by the court. In all other respects,  
19 the provisions of the Uniform Probate Code concerning guardians  
20 apply to temporary guardians.

21 ~~[E.]~~ F. Appointment of a temporary guardian shall  
22 have the temporary effect of limiting the legal rights of the  
23 ~~[individual]~~ alleged incapacitated person as specified in the  
24 court order. Appointment of a temporary guardian shall not be  
25 evidence of incapacity."

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1           SECTION 2. Section 45-5-408 NMSA 1978 (being Laws 1989,  
2 Chapter 252, Section 21, as amended) is amended to read:

3           "45-5-408. TEMPORARY CONSERVATORS.--

4           A. When a petition for ~~[appointment of a~~  
5 ~~conservator]~~ conservatorship has been filed, but adherence to  
6 the procedures set out in ~~[this section]~~ Section 45-5-407 NMSA  
7 1978 would cause serious, immediate and irreparable harm to the  
8 alleged incapacitated person's estate or financial interests,  
9 or both, ~~[of the person to be protected]~~ the court may appoint  
10 a temporary conservator prior to the final hearing and decision  
11 on the petition, subject to the requirements of this section.

12           B. Upon separate motion ~~[of]~~ by the petitioner, the  
13 court shall schedule and hold a hearing on the appointment of a  
14 temporary conservator ~~[for the earliest possible date, appoint~~  
15 ~~counsel for the person to be protected and give notice as~~  
16 ~~provided in Section 45-5-405 NMSA 1978]~~ no later than ten  
17 business days from the date the motion is filed and appoint a  
18 guardian ad litem for the alleged incapacitated person. Notice  
19 of the hearing shall be provided as set out in Section 45-5-405  
20 NMSA 1978.

21           C. Upon a finding that serious, immediate and  
22 irreparable harm to the alleged incapacitated person's estate  
23 and financial interests ~~[of the person to be protected]~~ would  
24 result during the pendency of petition, the court shall appoint  
25 a temporary conservator and shall specify the temporary

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1 conservator's powers in order to prevent serious, immediate and  
2 irreparable harm to the alleged incapacitated person's property  
3 ~~[of the person to be protected]~~. The duration of the temporary  
4 conservatorship shall not exceed ~~[sixty days, except that upon~~  
5 ~~order of the court, the temporary conservatorship may be~~  
6 ~~extended for no more than]~~ thirty days. However, if after a  
7 hearing in which there is a showing of good cause, the court  
8 may extend the temporary conservatorship for no more than an  
9 additional sixty days.

10 ~~[G.]~~ D. A temporary conservator may be appointed  
11 without notice to the alleged incapacitated person ~~[to be~~  
12 ~~protected]~~ and to the alleged incapacitated person's attorney  
13 only if it clearly appears from specific facts shown by  
14 affidavit or sworn testimony that serious, immediate and  
15 irreparable harm will result to the alleged incapacitated  
16 person's estate or financial interests ~~[of the person to be~~  
17 ~~protected]~~ before a ten-day hearing on the appointment of a  
18 temporary conservator can be held. ~~[The person to be protected~~  
19 ~~shall be notified in a writing by the petitioner within twenty-~~  
20 ~~four hours of the appointment of a temporary conservator in~~  
21 ~~substantial accordance with the provisions of Subsection B of~~  
22 ~~Section 45-5-405 NMSA 1978. On two days' notice to the party~~  
23 ~~who obtained the appointment of a temporary conservator without~~  
24 ~~notice or on such shorter notice to that party as the court may~~  
25 ~~prescribe, the person to be protected may appear and move for~~

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1 ~~dissolution or modification of the court's order, and, in that~~  
2 ~~event, the court shall proceed to hear and determine such~~  
3 ~~motion as expeditiously as the ends of justice require.] If a  
4 temporary conservator is appointed without notice to the  
5 alleged incapacitated person and the alleged incapacitated  
6 person's attorney, the court shall schedule and hold a hearing  
7 no later than ten business days from the date the temporary  
8 conservator is appointed to determine whether the temporary  
9 conservatorship should continue and, if so, to address the  
10 continued authority of the temporary conservator. The  
11 petitioner shall have the alleged incapacitated person and the  
12 alleged incapacitated person's attorney served personally  
13 within twenty-four hours of the appointment of a temporary  
14 conservator as provided in Subsection B of Section 45-5-405  
15 NMSA 1978. The alleged incapacitated person, the alleged  
16 incapacitated person's counsel or any interested person may  
17 appear and move dissolution or modification of the court's  
18 order, and, in that event, the court shall proceed to hear and  
19 determine such motion at the initial ten-day hearing or no  
20 later than ten business days from the date the motion is made,  
21 whichever comes first.~~

22 E. A temporary conservator is entitled to the care  
23 and custody of the alleged incapacitated person's estate and  
24 financial interests, but a temporary conservator may not sell  
25 or dispose of any property belonging to the alleged

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1 incapacitated person without specific authorization from the  
2 court. A temporary conservator may be removed by the court at  
3 any time. A temporary conservator shall file an initial  
4 written report with the court within fifteen days of  
5 appointment by completing the conservator's inventory, as  
6 approved by the supreme court. A temporary conservator shall  
7 file a final written report with the court by completing the  
8 conservator's report, as approved by the supreme court, within  
9 fifteen days of the termination of the temporary  
10 conservatorship or as otherwise ordered by the court. In all  
11 other respects, the provisions of the Uniform Probate Code  
12 concerning conservators apply to temporary conservators.

13 ~~[D-]~~ F. Appointment of a temporary conservator  
14 shall have the temporary effect of limiting the legal rights of  
15 the alleged incapacitated person ~~[to be protected]~~ as specified  
16 in the court order. Appointment of a temporary conservator  
17 shall not be evidence of incapacity."

18 **SECTION 3. EFFECTIVE DATE.**--The effective date of the  
19 provisions of this act is July 1, 2022.