

LFC Requester:	Rachel Mercer-Garcia
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

[AgencyAnalysis.nmlegis.gov](https://www.legis.state.nm.us/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: January 27, 2025 *Check all that apply:*
Bill Number: House Bill 125 Original Correction
 Amendment Substitute

Sponsor: Rep. Marian Matthews **Agency Name and Code:** AOC 218
Short Title: Liability Waivers for Conservators **Person Writing:** Patricia M. Galindo
Phone: 505-670-2656 **Email:** aocpmg@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	None	None	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	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **House Bill 124**
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 125 amends the Probate Code dealing with Conservatorships. This legislation deletes Subsection E of Section 45-5-429 NMSA that prohibits any person from requesting, procuring or receiving a release or waiver of liability from a conservator, an agent, an affiliate or a designee of a conservator or any other third party acting on behalf of a conservator.

HB 125 does not contain an effective date and would be effective on June 20, 2025, 90 days following adjournment of the Legislature, if signed into law.

FISCAL IMPLICATIONS – none identified.

SIGNIFICANT ISSUES

Section 45-5-429 NMSA 1978 was amended in 2019 to address an issue brought up by multiple families that had been persuaded to sign a waiver of liability by a professional conservator in order to obtain the proceeds from the estate of a deceased family member. Professional conservators are often appointed for individuals with large estates and/or when there is disagreement between family members. Death of the person under conservatorship is the most common reason for a conservatorship to end and another common scenario is a successor conservator being appointed. Section 45-5-417 NMSA 1978 defines the duties of a conservator, “A conservator shall act as a fiduciary and shall observe the standards of care applicable to trustees as described in Sections 46A-8-801 through 46A-8-807 NMSA 1978.”

HB 125 removes the prohibition of requesting, procuring or receiving a release or waiver of liability for conservators, and if any such release or waiver of liability is obtained it is void. Attorneys representing professional conservators indicated that the statutory changes that took effect on July 1, 2019 would leave the issue of liability for professional conservators open, with no ability to obtain final closure, and would discourage professional conservators from continuing to take these types of cases.

This legislation appears to conflict with House Bill 124, introduced by Rep. Joanne Ferrary, and endorsed by the Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) this year. HB 124 provides for a mandatory hearing upon the death of the protected person. After holding a hearing, the judge “shall issue an order terminating the conservatorship and conservator’s authority upon the court’s satisfaction that all matters are resolved. Termination does not affect the conservator’s liability for prior acts nor the conservator’s obligation to account for funds and assets of the conservator’s protected person.”

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed

ADMINISTRATIVE IMPLICATIONS - none identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP - none identified.

TECHNICAL ISSUES – none.

OTHER SUBSTANTIVE ISSUES - none identified.

ALTERNATIVES - none.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL – none.

AMENDMENTS – none.