

REFERENCE TITLE: minors; protective proceedings

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

# SB 1081

Introduced by  
Senators Gray: Shooter

## AN ACT

REPEALING SECTION 14-5301, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 14-5301; AMENDING TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-5301.01, 14-5301.02, 14-5301.03 AND 14-5301.04; RELATING TO TRUSTS, ESTATES AND PROTECTIVE PROCEEDINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Repeal

3 Section 14-5301, Arizona Revised Statutes, is repealed.

4 Sec. 2. Title 14, chapter 5, article 3, Arizona Revised Statutes, is  
5 amended by adding a new section 14-5301, to read:

6 14-5301. Appointment of guardian by will or other writing;  
7 objections; notice

8 A. A PARENT, BY WILL OR OTHER SIGNED WRITING, MAY APPOINT A GUARDIAN  
9 FOR AN UNMARRIED CHILD WHO THE PARENT BELIEVES IS AN INCAPACITATED PERSON,  
10 SPECIFY DESIRED LIMITATIONS ON THE POWERS TO BE GIVEN TO THE GUARDIAN AND  
11 REVOKE OR AMEND THE APPOINTMENT BEFORE CONFIRMATION BY THE COURT.  
12 APPOINTMENTS BECOME EFFECTIVE ONLY AS PRESCRIBED PURSUANT TO SECTION  
13 14-5301.01, SUBSECTION A.

14 B. AN INDIVIDUAL, BY WILL OR OTHER SIGNED WRITING, MAY APPOINT A  
15 GUARDIAN FOR THE INDIVIDUAL'S SPOUSE WHO THE APPOINTING SPOUSE BELIEVES IS AN  
16 INCAPACITATED PERSON, SPECIFY DESIRED LIMITATIONS ON THE POWERS TO BE GIVEN  
17 TO THE GUARDIAN AND REVOKE OR AMEND THE APPOINTMENT BEFORE CONFIRMATION BY  
18 THE COURT. AN APPOINTMENT PURSUANT TO THIS SUBSECTION BECOMES EFFECTIVE ONLY  
19 AS PRESCRIBED PURSUANT TO SECTION 14-5301.01, SUBSECTION A.

20 C. UNLESS THE COURT HAS CONFIRMED THE APPOINTMENT PURSUANT TO  
21 SUBSECTION D OF THIS SECTION, THE INCAPACITATED PERSON, THE PERSON HAVING  
22 CARE OR CUSTODY OF THE INCAPACITATED PERSON IF OTHER THAN THE APPOINTING  
23 PARENT OR SPOUSE OR THE ADULT NEAREST IN KINSHIP TO THE INCAPACITATED PERSON  
24 MAY FILE A WRITTEN OBJECTION TO AN APPOINTMENT. THE FILING OF THE WRITTEN  
25 OBJECTION TERMINATES THE APPOINTMENT. AN OBJECTION MAY BE WITHDRAWN AND, IF  
26 WITHDRAWN, HAS NO EFFECT. THE OBJECTION DOES NOT PRECLUDE JUDICIAL  
27 APPOINTMENT OF THE PERSON SELECTED BY THE APPOINTING PARENT OR SPOUSE.  
28 NOTICE OF THE OBJECTION MUST BE GIVEN TO THE GUARDIAN AND ANY OTHER PERSON  
29 ENTITLED TO NOTICE OF THE ACCEPTANCE OF THE APPOINTMENT. THE COURT MAY TREAT  
30 THE FILING OF AN OBJECTION AS A PETITION FOR THE APPOINTMENT OF A TEMPORARY  
31 GUARDIAN PURSUANT TO SECTION 14-5310 OR FOR THE APPOINTMENT OF A LIMITED OR  
32 GENERAL GUARDIAN PURSUANT TO SECTION 14-5303 AND PROCEED ACCORDINGLY.

33 D. ON PETITION OF THE APPOINTING PARENT OR SPOUSE AND A FINDING THAT  
34 THE APPOINTING PARENT OR SPOUSE WILL LIKELY BECOME UNABLE TO CARE FOR THE  
35 INCAPACITATED PERSON WITHIN TWO YEARS, BEFORE THE APPOINTMENT BECOMES  
36 EFFECTIVE, THE COURT MAY CONFIRM THE APPOINTING PARENT'S OR SPOUSE'S  
37 SELECTION OF A GUARDIAN AND TERMINATE THE RIGHTS OF OTHERS TO OBJECT. NOTICE  
38 MUST BE GIVEN TO THE GUARDIAN AND ANY OTHER PERSON ENTITLED TO NOTICE OF THE  
39 ACCEPTANCE OF THE APPOINTMENT.

40 Sec. 3. Title 14, chapter 5, article 3, Arizona Revised Statutes, is  
41 amended by adding sections 14-5301.01, 14-5301.02, 14-5301.03 and 14-5301.04,  
42 to read:

43 14-5301.01. Appointment of guardian by will or other writing;  
44 effectiveness; acceptance; confirmation

45 A. THE APPOINTMENT OF A GUARDIAN PURSUANT TO SECTION 14-5301 IS  
46 EFFECTIVE ON THE DEATH OF THE APPOINTING PARENT OR SPOUSE, THE ADJUDICATION

1 OF INCAPACITY OF THE APPOINTING PARENT OR SPOUSE OR A WRITTEN DETERMINATION  
2 BY A PHYSICIAN WHO HAS EXAMINED THE APPOINTING PARENT OR SPOUSE THAT THE  
3 APPOINTING PARENT OR SPOUSE IS NO LONGER ABLE TO CARE FOR THE INCAPACITATED  
4 PERSON, WHICHEVER FIRST OCCURS.

5 B. A GUARDIAN APPOINTED PURSUANT TO SECTION 14-5301 IS ELIGIBLE TO ACT  
6 ON THE FILING OF AN ACCEPTANCE OF APPOINTMENT, WHICH MUST BE FILED WITHIN  
7 THIRTY DAYS AFTER THE GUARDIAN'S APPOINTMENT BECOMES EFFECTIVE. THE GUARDIAN  
8 MUST:

9 1. FILE THE NOTICE OF ACCEPTANCE OF APPOINTMENT AND A COPY OF THE WILL  
10 WITH THE COURT IN THE COUNTY IN WHICH THE WILL WAS OR COULD BE PROBATED OR,  
11 IN THE CASE OF A SIGNED WRITING CREATED PURSUANT TO SECTION 14-5301, FILE THE  
12 ACCEPTANCE OF APPOINTMENT AND THE SIGNED WRITING WITH THE COURT IN THE COUNTY  
13 IN WHICH THE INCAPACITATED PERSON RESIDES OR IS PRESENT.

14 2. GIVE WRITTEN NOTICE OF THE ACCEPTANCE OF APPOINTMENT TO THE  
15 APPOINTING PARENT OR SPOUSE, IF LIVING, THE INCAPACITATED PERSON, A PERSON  
16 HAVING CARE OR CUSTODY OF THE INCAPACITATED PERSON OTHER THAN THE APPOINTING  
17 PARENT OR SPOUSE, AND THE ADULT NEAREST IN KINSHIP. UNLESS THE APPOINTMENT  
18 WAS PREVIOUSLY CONFIRMED BY THE COURT, THE NOTICE GIVEN PURSUANT TO THIS  
19 PARAGRAPH MUST INCLUDE A STATEMENT OF THE RIGHT OF THOSE NOTIFIED TO  
20 TERMINATE THE APPOINTMENT BY FILING A WRITTEN OBJECTION AS PROVIDED IN  
21 SECTION 14-5301.

22 C. AN APPOINTMENT EFFECTED BY FILING THE GUARDIAN'S ACCEPTANCE UNDER A  
23 WILL PROBATED IN THE STATE OF THE TESTATOR'S DOMICILE IS EFFECTIVE IN THIS  
24 STATE.

25 D. UNLESS THE APPOINTMENT WAS PREVIOUSLY CONFIRMED BY THE COURT,  
26 WITHIN THIRTY DAYS AFTER FILING THE NOTICE AND THE WILL OR SIGNED WRITING, A  
27 GUARDIAN APPOINTED PURSUANT TO SECTION 14-5301 MUST FILE A PETITION IN THE  
28 COURT FOR CONFIRMATION OF THE APPOINTMENT. NOTICE OF THE FILING MUST BE  
29 GIVEN IN THE MANNER AS PRESCRIBED IN SECTION 14-5309.

30 E. THE AUTHORITY OF A GUARDIAN APPOINTED UNDER SECTION 14-5301  
31 TERMINATES ON THE APPOINTMENT OF A GUARDIAN BY THE COURT OR THE GIVING OF  
32 WRITTEN NOTICE TO THE GUARDIAN OF THE FILING OF AN OBJECTION PURSUANT TO  
33 SECTION 14-5301, WHICHEVER FIRST OCCURS.

34 F. THE APPOINTMENT OF A GUARDIAN UNDER THIS SECTION IS NOT A  
35 DETERMINATION OF INCAPACITY.

36 G. THE POWERS OF A GUARDIAN WHO TIMELY COMPLIES WITH THE REQUIREMENTS  
37 OF SUBSECTIONS B AND D OF THIS SECTION GIVE ACTS BY THE GUARDIAN THAT ARE OF  
38 BENEFIT TO THE INCAPACITATED PERSON AND THAT OCCURRED ON OR AFTER THE DATE  
39 THE APPOINTMENT BECAME EFFECTIVE THE SAME EFFECT AS THOSE THAT OCCURRED AFTER  
40 THE FILING OF THE ACCEPTANCE OF APPOINTMENT.

41 14-5301.02. Appointment and status of guardian

42 A PERSON BECOMES A GUARDIAN OF AN INCAPACITATED PERSON BY A PARENTAL OR  
43 SPOUSAL APPOINTMENT OR ON APPOINTMENT BY THE COURT. THE GUARDIANSHIP  
44 CONTINUES UNTIL IT IS TERMINATED, WITHOUT REGARD TO THE LOCATION OF THE  
45 GUARDIAN OR THE WARD.

