

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>House Consumer and Public Affairs Committee</u>	LAST UPDATED <u>03/10/2025</u>
SHORT TITLE <u>Liability Waivers for Conservators</u>	ORIGINAL DATE <u>03/06/2025</u>
	BILL NUMBER <u>CS/House Bill 125/HCPACS</u>
	ANALYST <u>Chilton</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact		

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to House Bills 124 and 149.

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)
 Developmental Disabilities Council (DDC)

SUMMARY

Synopsis of HCPAC Substitute for House Bill 125

The House Consumer and Public Affairs Committee substitute for House Bill 125 (HB124) removes provisions in law that currently prohibit conservators (representatives of protected person regarding their financial affairs) from seeking or enforcing a release or waiver of liability for their actions regarding the conservatorship.

In Sections E and F, the bill allows courts presiding over a conservatorship to enter orders to approve actions or proposed actions or conservator reports if and only if the conservator files a petition and notifies all persons specified in Section 45-5-405 NMSA 1978 (the protected person, the conservator and other persons determined by the court) and the court conducts a hearing with notice having been provided to the same parties. In the case of the death of the protected person, notice would have to be given to that person's heirs and the personal representative named in the deceased person's last will and testament.

Section G states that releases of liability for conservators signed by the protected person are invalid.

Section H allows the court to appoint a guardian ad litem to review petitions and to report to the court, with copies of the report to be made available to the conservator and all others entitled to notice, as above.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

There is no appropriation in House Bill 125. No fiscal impacts are identified.

SIGNIFICANT ISSUES

The Development Disability Council (DDC) makes note of recent New Mexico regulations that protect people using conservator services from neglect, abuse, or exploitation, but the council also mentions the departure of many financial institutions from working as conservators; DDC asserts that this is a result of these new regulations and risks. This often leaves only individuals, who may or may not have the knowledge and skills necessary to be effective conservators, as the only available conservators. DDC notes that the committee substitute creates procedures for conservators to use to get their decisions proactively approved by a court, obviating actions taken later to undo their decisions. DDC states that “this additional layer of protection for conservators may incentivize professional conservators to remain or re-enter the field.”

The New Mexico Attorney General (NMAG) states that New Mexico courts have generally found releases or waivers of liability were unenforceable unless those releases or waivers were generally and expressly agreed to and complied with the state’s public policy. The substitute removes the possibility of considering these waivers valid or enforceable.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 125 relates to House Bill 149, which would create a category of supporter that could advise an individual on life decisions but not make the decision for them. The bill may also conflict with House Bill 124; the Administrative Office of the Courts raises concerns:

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. HB124 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.

OTHER SUBSTANTIVE ISSUES

NMAG expresses concerns that releases and waivers of liability may not hold up in New Mexico 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.

TECHNICAL ISSUES

NMAG, stating that the substituted bill is unclear “what actions or proposed actions could be sought by the conservator...The Committee Sub could be amended to provide clarity on the ‘actions or proposed actions’ a conservator may petition the court to approve.”

LAC/hg/rl/SL2