

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12-0190.01 Debbie Haskins x2045

HOUSE BILL 12-1074

HOUSE SPONSORSHIP

Kerr J., Miklosi

SENATE SPONSORSHIP

King S., Tochtrop

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ACCESS TO DATA TO ASSIST THE COURTS IN OVERSEEING**
102 **PERSONS APPOINTED TO MANAGE THE AFFAIRS OF PERSONS**
103 **UNDER DISABILITY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Legislative Audit Committee. The bill authorizes the court with jurisdiction over a guardianship of an incapacitated person or over a conservatorship of a protected person to have access to data maintained by other state agencies in order to conduct an investigation when a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

guardian or conservator has failed to file required reports with the court or has failed to respond to court orders. The court will also have access to this data with respect to the incapacitated person or protected person. The bill specifies which types of data may be accessed. The court may access the data only to obtain contact information for the guardian, conservator, incapacitated person, or protected person.

The bill requires the court to preserve the confidentiality of the data obtained from state agencies and use the data only for the purposes of conducting the investigation of the guardian, conservator, incapacitated person, or protected person. Notwithstanding the provisions of the open records law, documents and information obtained by the court pursuant to an investigation are not public records and shall be open to public inspection only upon an order of the court based on a finding of good cause.

The judicial department and other state agencies may enter into agreements for the sharing of this data with the applicable court.

Under current law, prior to appointment as a guardian or conservator, a nominee signs an acceptance of office. The bill amends the acceptance of office to include an acknowledgment that the nominee understands that Colorado law allows the court to access personal contact information held by state agencies if the nominee fails to file required reports or fails to respond to a court order.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 15-14-317 as
3 follows:

4 **15-14-317. Reports - monitoring of guardianship - court access**
5 **to records.** (1) Within sixty days after appointment or as otherwise
6 directed by the court, a guardian shall report to the court in writing on the
7 condition of the ward, the guardian's personal care plan for the ward, and
8 account for money and other assets in the guardian's possession or subject
9 to the guardian's control. A guardian shall report at least annually
10 thereafter and whenever ordered by the court. The annual report must
11 state or contain:

12 (a) The current mental, physical, and social condition of the ward;

13 (b) The living arrangements for all addresses of the ward during

1 the reporting period;

2 (c) The medical, educational, vocational, and other services
3 provided to the ward and the guardian's opinion as to the adequacy of the
4 ward's care;

5 (d) A summary of the guardian's visits with the ward and activities
6 on the ward's behalf and the extent to which the ward has participated in
7 decision-making;

8 (e) Whether the guardian considers the current plan for care,
9 treatment, or habilitation to be in the ward's best interest;

10 (f) Plans for future care; and

11 (g) A recommendation as to the need for continued guardianship
12 and any recommended changes in the scope of the guardianship.

13 (2) The court may appoint a visitor OR OTHER SUITABLE PERSON
14 to review a report, interview the ward or guardian, and make any other
15 investigation the court directs.

16 (3) The court shall establish a system for monitoring
17 guardianships, including the filing and review of annual reports.

18 (4) (a) WHENEVER A GUARDIAN FAILS TO FILE A REPORT OR FAILS
19 TO RESPOND TO AN ORDER OF THE COURT TO SHOW CAUSE WHY THE
20 GUARDIAN SHOULD NOT BE HELD IN CONTEMPT OF COURT, THE CLERK OF
21 THE COURT OR HIS OR HER DESIGNEE MAY RESEARCH THE WHEREABOUTS
22 AND CONTACT INFORMATION OF THE GUARDIAN AND THE WARD. TO
23 FACILITATE THIS RESEARCH, THE CLERK OF THE COURT OR HIS OR HER
24 DESIGNEE SHALL HAVE ACCESS TO DATA MAINTAINED BY OTHER STATE
25 AGENCIES, INCLUDING BUT NOT LIMITED TO VITAL STATISTICS
26 INFORMATION MAINTAINED BY THE DEPARTMENT OF PUBLIC HEALTH AND
27 ENVIRONMENT, WAGE AND EMPLOYMENT DATA MAINTAINED BY THE

1 DEPARTMENT OF LABOR AND EMPLOYMENT, LISTS OF LICENSED DRIVERS
2 AND INCOME TAX DATA MAINTAINED BY THE DEPARTMENT OF REVENUE,
3 AND VOTER REGISTRATION INFORMATION OBTAINED ANNUALLY BY THE
4 STATE COURT ADMINISTRATOR PURSUANT TO SECTION 13-71-107, C.R.S.
5 THE COURT MAY ACCESS THE DATA ONLY TO OBTAIN CONTACT
6 INFORMATION FOR THE GUARDIAN OR THE WARD. NOTWITHSTANDING ANY
7 PROVISION OF LAW TO THE CONTRARY, THE JUDICIAL DEPARTMENT AND
8 THE OTHER STATE AGENCIES LISTED IN THIS PARAGRAPH (a) MAY ENTER
9 INTO AGREEMENTS FOR THE SHARING OF THIS DATA. THE JUDICIAL
10 DEPARTMENT AND THE COURTS SHALL NOT ACCESS DATA MAINTAINED
11 PURSUANT TO THE "ADDRESS CONFIDENTIALITY PROGRAM ACT", PART 21
12 OF ARTICLE 30 OF TITLE 24, C.R.S.

13 (b) THE COURT SHALL PRESERVE THE CONFIDENTIALITY OF THE
14 DATA OBTAINED FROM OTHER STATE AGENCIES AND USE THE DATA ONLY
15 FOR THE PURPOSES SET FORTH IN THIS SUBSECTION (4).
16 NOTWITHSTANDING THE PROVISIONS OF ARTICLE 72 OF TITLE 24, C.R.S.,
17 DOCUMENTS AND INFORMATION OBTAINED BY THE COURT PURSUANT TO
18 THIS SUBSECTION (4) ARE NOT PUBLIC RECORDS AND SHALL BE OPEN TO
19 PUBLIC INSPECTION ONLY UPON AN ORDER OF THE COURT BASED ON A
20 FINDING OF GOOD CAUSE, EXCEPT TO THE EXTENT THEY WOULD
21 OTHERWISE BE OPEN TO INSPECTION FROM THE PROVIDING STATE AGENCY.

22 (c) FOR PURPOSES OF THIS SUBSECTION (4), "CONTACT
23 INFORMATION" MEANS NAME, RESIDENTIAL ADDRESS, BUSINESS ADDRESS,
24 DATE OF BIRTH, DATE OF DEATH, PHONE NUMBER, E-MAIL ADDRESS, OR
25 OTHER IDENTIFYING INFORMATION AS DIRECTED BY THE COURT.

26 **SECTION 2.** In Colorado Revised Statutes, **amend** 15-14-420 as
27 follows:

1 **15-14-420. Reports - appointment of monitor - monitoring -**

2 **records - court access to records.** (1) A conservator shall report to the
3 court about the administration of the estate annually unless the court
4 otherwise directs. Upon filing a petition or motion and after notice, a
5 conservator shall be entitled to a hearing to settle all matters covered in
6 an intermediate or final report. An order, after notice and hearing,
7 allowing an intermediate report of a conservator adjudicates all of the
8 conservator's, his or her other counsel's, and his or her other agent's
9 liabilities concerning all matters adequately disclosed in the report. An
10 order, after notice and hearing, allowing a final report adjudicates all
11 previously unsettled liabilities of the conservator, his or her counsel, and
12 that of his or her agents relating to the conservatorship, the protected
13 person, or the protected person's successors.

14 (2) Unless the court orders otherwise, a report must:

15 (a) Contain a list of the assets of the estate under the conservator's
16 control and a list of the receipts, disbursements, and distributions during
17 the period for which the report is made;

18 (b) Reflect the services provided to the protected person; and

19 (c) State any recommended changes in the plan for the
20 conservatorship as well as a recommendation as to the continued need for
21 conservatorship and any recommended changes in the scope of the
22 conservatorship.

23 (3) The court may appoint a VISITOR OR OTHER suitable person to
24 review a report or plan, interview the protected person or conservator, and
25 make any other investigation the court directs. In connection with a
26 report, the court may order a conservator to submit the assets of the estate
27 to an appropriate examination to be made in a manner the court directs.

1 (4) The court shall establish a system for monitoring
2 conservatorships, including the filing and review of conservators' reports
3 and plans.

4 (5) A conservator shall keep records of the administration of the
5 estate and make them available for examination on reasonable request of
6 an interested person within thirty days unless the court otherwise directs.

7 (6) (a) WHENEVER A CONSERVATOR FAILS TO FILE A REPORT OR
8 FAILS TO RESPOND TO AN ORDER OF THE COURT TO SHOW CAUSE WHY THE
9 CONSERVATOR SHOULD NOT BE HELD IN CONTEMPT OF COURT, THE CLERK
10 OF THE COURT OR HIS OR HER DESIGNEE MAY RESEARCH THE
11 WHEREABOUTS AND CONTACT INFORMATION OF THE CONSERVATOR AND
12 THE PROTECTED PERSON. TO FACILITATE THIS RESEARCH, THE CLERK OF
13 THE COURT OR HIS OR HER DESIGNEE SHALL HAVE ACCESS TO DATA
14 MAINTAINED BY OTHER STATE AGENCIES, INCLUDING BUT NOT LIMITED TO
15 VITAL STATISTICS INFORMATION MAINTAINED BY THE DEPARTMENT OF
16 PUBLIC HEALTH AND ENVIRONMENT, WAGE AND EMPLOYMENT DATA
17 MAINTAINED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT, LISTS OF
18 LICENSED DRIVERS AND INCOME TAX DATA MAINTAINED BY THE
19 DEPARTMENT OF REVENUE, AND VOTER REGISTRATION INFORMATION
20 OBTAINED ANNUALLY BY THE STATE COURT ADMINISTRATOR PURSUANT
21 TO SECTION 13-71-107, C.R.S. THE COURT MAY ACCESS THE DATA ONLY
22 TO OBTAIN CONTACT INFORMATION FOR THE CONSERVATOR OR THE WARD.
23 NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE
24 JUDICIAL DEPARTMENT AND THE OTHER STATE AGENCIES LISTED IN THIS
25 PARAGRAPH (a) MAY ENTER INTO AGREEMENTS FOR THE SHARING OF THIS
26 DATA. THE JUDICIAL DEPARTMENT AND THE COURTS SHALL NOT ACCESS
27 DATA MAINTAINED PURSUANT TO THE "ADDRESS CONFIDENTIALITY

1 PROGRAM ACT", PART 21 OF ARTICLE 30 OF TITLE 24, C.R.S.

2 (b) THE COURT SHALL PRESERVE THE CONFIDENTIALITY OF THE
3 DATA OBTAINED FROM THE OTHER STATE AGENCIES AND USE THE DATA
4 ONLY FOR THE PURPOSES SET FORTH IN THIS SUBSECTION (6).
5 NOTWITHSTANDING THE PROVISIONS OF ARTICLE 72 OF TITLE 24, C.R.S.,
6 DOCUMENTS AND INFORMATION OBTAINED BY THE COURT PURSUANT TO
7 THIS SUBSECTION (6) ARE NOT PUBLIC RECORDS AND SHALL BE OPEN TO
8 PUBLIC INSPECTION ONLY UPON AN ORDER OF THE COURT BASED ON A
9 FINDING OF GOOD CAUSE, EXCEPT TO THE EXTENT THEY WOULD
10 OTHERWISE BE OPEN TO INSPECTION FROM THE PROVIDING STATE AGENCY.

11 (c) FOR PURPOSES OF THIS SUBSECTION (6), "CONTACT
12 INFORMATION" MEANS NAME, RESIDENTIAL ADDRESS, BUSINESS ADDRESS,
13 DATE OF BIRTH, DATE OF DEATH, PHONE NUMBER, E-MAIL ADDRESS, OR
14 OTHER IDENTIFYING INFORMATION AS DIRECTED BY THE COURT.

15 **SECTION 3.** In Colorado Revised Statutes, 15-14-110 , **amend**
16 (1) as follows:

17 **15-14-110. Letters of office.** (1) A nominee for guardian,
18 emergency guardian, conservator, or special conservator shall file an
19 acceptance of office with the court. The acceptance of office shall be
20 signed by the nominee and, except as otherwise provided in this section,
21 shall include a statement by the nominee informing the court of the
22 following:

23 (a) Whether the nominee has been convicted of, pled nolo
24 contendere to, or received a deferred sentence for a felony or
25 misdemeanor, and, if so, the name of the state and court issuing the order;

26 (b) Whether a temporary civil protection or restraining order or a
27 permanent civil protection or restraining order has been issued against the

1 nominee in the state of Colorado or another state at any time;

2 (c) Whether a civil judgment has been entered against the
3 nominee, and, if so, the name of the state and court granting the
4 judgment; and

5 (d) Whether the nominee has been relieved of any court-appointed
6 responsibilities, and, if so, the name of the court relieving the nominee;
7 AND

8 (e) THAT THE NOMINEE ACKNOWLEDGES AND UNDERSTANDS THAT
9 IF THE NOMINEE FAILS TO FILE REQUIRED REPORTS WITH THE COURT OR
10 FAILS TO RESPOND TO AN ORDER OF THE COURT TO SHOW CAUSE WHY THE
11 NOMINEE SHOULD NOT BE HELD IN CONTEMPT OF COURT, COLORADO LAW
12 AUTHORIZES THE COURT TO ACCESS DATA AND RECORDS OF STATE
13 AGENCIES IN ORDER TO OBTAIN CONTACT INFORMATION, AS DEFINED IN
14 SECTIONS 15-14-317 (4) (c) AND 15-14-420 (6) (c).

15 **SECTION 4. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.