

STATEMENT OF PURPOSE

RS22513

In 2011, in the case of Rogers vs. Household Life Insurance Company, the Idaho Supreme Court held that a person for whom a full guardianship had been granted had no contractual capacity. In a 2012 case, In re Conway, the Idaho Supreme Court upheld a Will done by a person for whom a limited guardianship and conservatorship had been granted, looking only to the standard tests for capacity for making a Will. These two cases have raised numerous questions in the practicing bar about what actions can and cannot be taken by a person under guardianship or conservatorship. The Idaho Probate Code has had a long-standing provision, in section 15-5-408(b)(5), that the granting of a conservatorship has no effect on the capacity of the protected person. However, the Code was silent as to the effect of the granting of a guardianship on such capacity. Great confusion has resulted.

This bill eliminates the confusion by providing that:

- (1) In Sections 4, 5, and 6, a general guardianship or conservatorship removes contractual capacity, as the Idaho Supreme Court held in Rogers, but does not automatically remove testamentary capacity.
- (2) In Section 1, that the granting of a temporary or permanent guardianship or conservatorship does not have any effect on the testamentary capacity of the person, and defines what testamentary capacity covers. The bill also clarifies that all of the standard claims, challenges, or defenses regarding the validity or effectiveness of the exercise of testamentary capacity remain valid. Therefore, lack of capacity, undue influence, and similar grounds will still be available to challenge the validity of a testamentary document. This bill merely states that the granting of a conservatorship and/or guardianship does not automatically remove testamentary capacity.

This bill memorializes what has been the general practice in Idaho.

FISCAL NOTE

This bill will have no fiscal impact.

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