

**ADULT JOINT SUPPORT DECLARATION**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jennifer M. Seelig**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill creates the Adult Joint Support Act and provides situations where it may be applied.

**Highlighted Provisions:**

This bill:

- ▶ creates the Adult Joint Support Act;
- ▶ provides guidelines for the creation of a Declaration of Joint Support;
- ▶ requires that the Declaration of Joint Support be notarized;
- ▶ allows the parties in a Declaration of Joint Support to have it recorded in the county recorder office;
- ▶ provides for the termination of a Declaration of Joint Support;
- ▶ makes provision for a party to a Declaration of Joint Support to inherit from the other party; and
- ▶ provides one party with the ability to make health-related decisions if the other party is incapacitated.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 75-2-103, as repealed and reenacted by Laws of Utah 1998, Chapter 39

30 75-2a-108, as last amended by Laws of Utah 2008, Chapter 107

31 ENACTS:

32 17-51-101, Utah Code Annotated 1953

33 17-51-102, Utah Code Annotated 1953

34 17-51-103, Utah Code Annotated 1953

35 17-51-104, Utah Code Annotated 1953

36 75-2-102.5, Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section 17-51-101 is enacted to read:

40 **CHAPTER 51. ADULT JOINT SUPPORT ACT**

41 **17-51-101. Title.**

42 This chapter is known as the "Adult Joint Support Act."

43 Section 2. Section 17-51-102 is enacted to read:

44 **17-51-102. Declaration of joint support.**

45 (1) Two persons 18 years of age or older may make a Declaration of Joint Support in  
46 the form set out in Section 17-51-103 and present it to the county recorder in the county in  
47 which they reside for recording, after paying the fee required by Section 17-21-18.5.

48 (2) The declaration shall state:

49 (a) that each individual is 18 years of age or older, and not incapacitated as defined in  
50 Section 75-1-201;

51 (b) that neither person is married or a party to an existing Declaration of Joint Support;

52 (c) that the individuals share a common residence;

53 (d) that the individuals have commingled assets and shared liabilities; and

54 (e) if applicable, that one or both are adult designees under the provisions of Section  
55 10-8-1.5 or 17-50-325.

56 Section 3. Section 17-51-103 is enacted to read:

57 **17-51-103. Form of declaration.**

58 (1) A Declaration of Joint Support shall be presented as described in Subsection



90 (1) Upon the death of a person named in a Declaration of Joint Support which has not  
91 been terminated, the surviving person shall be entitled to:

- 92 (a) the decedent's entire estate if no descendant of the decedent survives the decedent;
- 93 (b) one-half of the decedent's estate if there are descendants of the decedent.

94 (2) If there are descendants of the decedent, the provisions of Section 75-2-103 apply.

95 Section 6. Section **75-2-103** is amended to read:

96 **75-2-103. Share of heirs other than surviving spouse.**

97 (1) Any part of the intestate estate not passing to the decedent's surviving spouse under  
98 Section 75-2-102, to another person under Section 75-2-102.5, or the entire intestate estate if  
99 there is no surviving spouse and Section 75-2-102.5 does not apply, passes in the following  
100 order to the individuals designated below who survive the decedent:

101 (a) to the decedent's descendants per capita at each generation as defined in Subsection  
102 75-2-106(2);

103 (b) if there is no surviving descendant, to the decedent's parents equally if both survive,  
104 or to the surviving parent;

105 (c) if there is no surviving descendant or parent, to the descendants of the decedent's  
106 parents or either of them per capita at each generation as defined in Subsection 75-2-106(3);

107 (d) if there is no surviving descendant, parent, or descendant of a parent, but the  
108 decedent is survived by one or more grandparents or descendants of grandparents, half of the  
109 estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving  
110 paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of  
111 them if both are deceased, the descendants taking per capita at each generation as defined in  
112 Subsection 75-2-106(3); and the other half passes to the decedent's maternal relatives in the  
113 same manner; but if there is no surviving grandparent or descendant of a grandparent on either  
114 the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other  
115 side in the same manner as the half.

116 (2) For purposes of [~~Subsections (a), (b), (c), and (d)~~] Subsection (1), any nonprobate  
117 transfer, as defined in Section 75-2-205, received by an heir is chargeable against the intestate  
118 share of such heir.

119 Section 7. Section **75-2a-108** is amended to read:

120 **75-2a-108. Default surrogates.**

121 (1) (a) Any member of the class described in Subsection (1)(b) may act as an adult's  
122 surrogate if:

- 123 (i) (A) the adult has not appointed an agent;
- 124 (B) an appointed agent is not reasonably available; or
- 125 (C) a guardian has not been appointed; and
- 126 (ii) the member of the class described in Subsection (1)(b) is:
  - 127 (A) over 18 years of age;
  - 128 (B) has health care decision making capacity;
  - 129 (C) is reasonably available; and
  - 130 (D) has not been disqualified by the adult or a court.

131 (b) Except as provided in Subsection (1)(a), and subject to Subsection (1)(c), the  
132 following classes of ~~[the adult's family]~~ persons, in descending order of priority, may act as the  
133 adult's surrogate:

- 134 (i) the adult's spouse, unless the adult is divorced or legally separated; ~~[or]~~
- 135 (ii) the other person named with the adult in a Declaration of Joint Support which has  
136 not been terminated; or

137 ~~[(ii)]~~ (iii) the following family members:

- 138 (A) a child;
- 139 (B) a parent;
- 140 (C) a sibling;
- 141 (D) a grandchild; or
- 142 (E) a grandparent.

143 (c) A person described in Subsection (1)(b), may not direct an adult's care if a person of  
144 a higher priority class is able and willing to act as a surrogate for the adult.

145 (d) A court may disqualify a person described in Subsection (1)(b) from acting as a  
146 surrogate if the court finds that the person has acted in a manner that is inconsistent with the  
147 position of trust in which a surrogate is placed.

148 (2) If the family members designated in Subsection (1)(b) are not reasonably available  
149 to act as a surrogate, a person who is 18 years of age or older, other than those designated in  
150 Subsection (1) may act as a surrogate if the person:

- 151 (a) has health care decision making capacity;

- 152 (b) has exhibited special care and concern for the patient;
- 153 (c) knows the patient and the patient's personal values; and
- 154 (d) is reasonably available to act as a surrogate.
- 155 (3) The surrogate shall communicate the surrogate's assumption of authority as
- 156 promptly as practicable to the members of a class who:
  - 157 (a) have an equal or higher priority and are not acting as surrogate; and
  - 158 (b) can be readily contacted.
- 159 (4) A health care provider shall comply with the decision of a majority of the members
- 160 of the highest priority class who have communicated their views to the provider if:
  - 161 (a) more than one member of the highest priority class assumes authority to act as
  - 162 default surrogate;
  - 163 (b) the members of the class do not agree on a health care decision; and
  - 164 (c) the health care provider is informed of the disagreement among the members of the
  - 165 class.
- 166 (5) (a) An adult may at any time disqualify a default surrogate, including a member of
- 167 the adult's family, from acting as the adult's surrogate by:
  - 168 (i) a signed writing;
  - 169 (ii) personally informing a witness of the disqualification; or
  - 170 (iii) informing the surrogate of the disqualification.
- 171 (b) Disqualification of a surrogate is effective even if the adult has been found to lack
- 172 health care decision making capacity.
- 173 (6) If reasonable doubt exists regarding the status of an adult claiming the right to act
- 174 as a default surrogate, the health care provider may:
  - 175 (a) require the person to provide a sworn statement giving facts and circumstances
  - 176 reasonably sufficient to establish the claimed authority; or
  - 177 (b) seek a ruling from the court under Section 75-2a-120.
- 178 (7) A health care provider may seek a ruling from a court pursuant to Section
- 179 75-2a-120 if the health care provider has evidence that a surrogate is making decisions that are
- 180 inconsistent with an adult patient's wishes or preferences.

**Legislative Review Note**  
as of 2-4-09 6:22 PM

**Office of Legislative Research and General Counsel**

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**H.B. 160 - Adult Joint Support Declaration**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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