

**GUARDIAN AD LITEM AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

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

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**LONG TITLE**

**General Description:**

This bill modifies provisions of Title 78A, Chapter 2, Judicial Administration, Title ~~H→~~ [78A] 78B ~~←H~~, Chapter 7, ~~H→~~ [Justice Court] Protective Orders ~~←H~~, and Title 78B, Chapter 15, Utah Uniform Parentage Act, by amending the procedures for appointing a guardian ad litem to represent a minor.

**Highlighted Provisions:**

This bill:

- ▶ repeals provisions relating to the appointment of a guardian ad litem from the Office of Guardian ad Litem in a district court case;
- ▶ states the public policy in favor of a guardian ad litem balancing parental rights with the best interest of a child;
- ▶ describes the procedure for the appointment of a private attorney guardian ad litem to district court cases;
- ▶ requires the court to limit a private attorney guardian ad litem's representation to specific issues within a case, to the extent possible;
- ▶ provides a procedure for terminating a private attorney guardian ad litem's appointment;
- ▶ describes the duties of a private attorney guardian ad litem;
- ▶ authorizes the Office of Guardian ad Litem to establish, by rule, the system for appointing and paying a private attorney guardian ad litem;
- ▶ states that, if it appears from a petition for a protective order that domestic violence

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245 recommendation regarding the best interest of the minor, the court shall require the private  
 246 attorney guardian ad litem to disclose the factors that form the basis of the recommendation.

247 ~~[(5)]~~ (15) An attorney guardian ad litem appointed under this section is immune from  
 248 any civil liability that might result by reason of acts performed within the scope of duties of the  
 249 attorney guardian ad litem.

250 (16) The Office of Guardian ad Litem and the Guardian Ad Litem Oversight  
 251 Committee shall compile a list of attorneys willing to accept an appointment as a private  
 252 attorney guardian ad litem.

253 ~~[(6)(a)]~~ (17) Upon the advice of the director of the Office of Guardian ad Litem and  
 254 the Guardian Ad Litem Oversight Committee, the Judicial Council shall establish by rule  
 255 ~~[establish]:~~

256 (a) the minimum qualifications and requirements for appointment by the court as an  
 257 attorney guardian ad litem[-];

258 ~~[(b) An attorney guardian ad litem may be required to appear pro bono in one case for~~  
 259 ~~every five cases in which the attorney is appointed with compensation.]~~

260 (b) the standard fee rate and retainer amount for a private attorney guardian ad litem;

261 (c) the percentage of cases a private attorney guardian ad litem may be expected to take  
 262 on pro bono;

263 (d) a system to:

264 (i) select a private attorney guardian ad litem for a given appointment; and

265 (ii) determine when a private attorney guardian ad litem shall be expected to accept an  
 266 appointment pro bono; and

267 (e) the process for handling a complaint relating to the eligibility status of a private  
 268 attorney guardian ad litem.

268a **Ĥ→ (18) Any savings that result from assigning a private attorney guardian ad litem in a**  
 268b **district court case, instead of a guardian ad litem from the Office of Guardian ad Litem, shall**  
 268c **be applied to the Office of Guardian ad Litem to reduce caseloads and improve current**  
 268d **practices. ←Ĥ**

269 Section 5. Section **78B-3-102** is amended to read:

270 **78B-3-102. Injury of a child -- Suit by parent or guardian.**

271 (1) Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, a parent  
 272 or guardian may bring an action for the injury of a minor child when the injury is caused by the  
 273 wrongful act or neglect of another.

274 (2) A civil action may be maintained against the person causing the injury or, if the  
 275 person is employed by another person who is responsible for that person's conduct, also against

400 information system of the division to find any petitions, orders, or investigations related to the  
 401 child or the parties to the case;

402 (b) request the records of any law enforcement agency identified by the petitioner as  
 403 having investigated abuse of the child; and

404 (c) identify and obtain any other background information that may be of assistance to  
 405 the court.

406 (3) Upon the filing of a petition, the court shall immediately determine, based on the  
 407 evidence and information presented, whether the minor is being abused or is in imminent  
 408 danger of being abused. If so, the court shall enter an ex parte child protective order.

409 (4) The court may appoint ~~[an]~~ a private attorney guardian ad litem

409a ~~Ĥ~~→ [, as provided in] under ←~~Ĥ~~

410 Section 78A-2-228 ~~Ĥ~~→ [;] for district court cases, or the Office of Guardian ad Litem for

410a juvenile court cases under Section 78A-6-902, ←~~Ĥ~~ for the child who is the subject of the petition.

411 Section 8. Section **78B-15-612** is amended to read:

412 **78B-15-612. Minor as party -- Representation.**

413 (1) A minor ~~[child]~~ is a permissible party, but is not a necessary party to a proceeding  
 414 under this part.

415 (2) The tribunal may appoint a private guardian ad litem for district court cases under  
 416 Section 78A-2-228 or the Office of Guardian ad Litem for juvenile court cases under Section  
 417 78A-6-902 to represent a minor or incapacitated child if the child is a party or the tribunal finds  
 418 that the interests of the child are not adequately represented.

419 Section 9. **Repealer.**

420 This bill repeals:

421 Section **78A-2-227, Appointment of attorney guardian ad litem in child abuse and**  
 422 **neglect proceedings.**

423 Section 10. **Effective date.**

424 (1) Except as provided in Subsection (2), this bill takes effect on May 8, 2012.

425 (2) The following sections take effect on July 1, 2013:

426 (a) Section 30-3-5.2;

427 (b) Section 51-9-408;

428 (c) Section 78A-2-227;

429 (d) Section 78A-2-228;

430 (e) Section 78B-3-102;