

DISABLED ADULT CHILD GUARDIANSHIP

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Fred C. Cox

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides that, under certain circumstances, counsel is not required for a disabled adult when the petitioner for guardianship is the disabled adult's parent.

Highlighted Provisions:

This bill:

- reduces the filing fee for guardianships when the petitioner is the biological or adoptive parent of the prospective ward; and
- provides that counsel is not required for the prospective ward under certain circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

75-5-303, as last amended by Laws of Utah 2013, Chapter 364

78A-2-301, as last amended by Laws of Utah 2014, Chapters 189 and 263

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

Section 1. Section **75-5-303** is amended to read:



28 **75-5-303. Procedure for court appointment of a guardian of an incapacitated**
29 **person.**

30 (1) The incapacitated person or any person interested in the incapacitated person's
31 welfare may petition for a finding of incapacity and appointment of a guardian.

32 (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of
33 incapacity. Unless the allegedly incapacitated person has counsel of the person's own choice,
34 the court shall appoint an attorney to represent the person in the proceeding the cost of which
35 shall be paid by the person alleged to be incapacitated. If the court determines that the petition
36 is without merit, the attorney fees and court costs shall be paid by the person filing the petition.
37 If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated
38 person, regardless of whether the nominee is specified in the moving petition or nominated
39 during the proceedings, the petitioner shall be entitled to receive from the incapacitated person
40 reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the
41 petition.

42 (3) The legal representation of the incapacitated person by an attorney shall terminate
43 upon the appointment of a guardian, unless:

44 (a) there are separate conservatorship proceedings still pending before the court
45 subsequent to the appointment of a guardian;

46 (b) there is a timely filed appeal of the appointment of the guardian or the
47 determination of incapacity; or

48 (c) upon an express finding of good cause, the court orders otherwise.

49 (4) The person alleged to be incapacitated may be examined by a physician appointed
50 by the court who shall submit a report in writing to the court and may be interviewed by a
51 visitor sent by the court. The visitor also may interview the person seeking appointment as
52 guardian, visit the present place of abode of the person alleged to be incapacitated and the place
53 it is proposed that the person will be detained or reside if the requested appointment is made,
54 conduct other investigations or observations as directed by the court, and submit a report in
55 writing to the court.

56 (5) (a) The person alleged to be incapacitated shall be present at the hearing in person
57 and see or hear all evidence bearing upon the person's condition. If the person seeking the
58 guardianship requests a waiver of presence of the person alleged to be incapacitated, the court

59 shall order an investigation by a court visitor, the costs of which shall be paid by the person
60 seeking the guardianship.

61 (b) The investigation by a court visitor is not required if there is clear and convincing
62 evidence from a physician that the person alleged to be incapacitated has:

63 (i) fourth stage Alzheimer's Disease;

64 (ii) extended comatosis; or

65 (iii) (A) an intellectual disability; and

66 (B) an intelligence quotient score under 20 to 25.

67 (c) The person alleged to be incapacitated is entitled to be represented by counsel, to
68 present evidence, to cross-examine witnesses, including the court-appointed physician and the
69 visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if
70 the person alleged to be incapacitated or the person's counsel so requests.

71 (d) Counsel for the person alleged to be incapacitated is not required if:

72 (i) the person is the biological or adopted child of the petitioner;

73 (ii) the person has an intellectual disability and an intelligence quotient score under 50;

74 and

75 (iii) the person has no assets.

76 Section 2. Section **78A-2-301** is amended to read:

77 **78A-2-301. Civil fees of the courts of record -- Courts complex design.**

78 (1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a
79 court of record not governed by another subsection is \$360.

80 (b) The fee for filing a complaint or petition is:

81 (i) \$75 if the claim for damages or amount in interpleader exclusive of court costs,
82 interest, and attorney fees is \$2,000 or less;

83 (ii) \$185 if the claim for damages or amount in interpleader exclusive of court costs,
84 interest, and attorney fees is greater than \$2,000 and less than \$10,000;

85 (iii) \$360 if the claim for damages or amount in interpleader is \$10,000 or more;

86 (iv) \$310 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter
87 4, Separate Maintenance;

88 (v) \$35 for a motion for temporary separation order filed under Section [30-3-4.5](#); ~~and~~

89 (vi) \$125 if the petition is for removal from the Sex Offender and Kidnap Offender

90 Registry under Section [77-41-112](#)~~[-]~~; and

91 (vii) \$35 if the petition is for guardianship of a person who is the biological or adoptive
92 child of the petitioner.

93 (c) The fee for filing a small claims affidavit is:

94 (i) \$60 if the claim for damages or amount in interpleader exclusive of court costs,
95 interest, and attorney fees is \$2,000 or less;

96 (ii) \$100 if the claim for damages or amount in interpleader exclusive of court costs,
97 interest, and attorney fees is greater than \$2,000, but less than \$7,500; and

98 (iii) \$185 if the claim for damages or amount in interpleader exclusive of court costs,
99 interest, and attorney fees is \$7,500 or more.

100 (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party
101 complaint, or other claim for relief against an existing or joined party other than the original
102 complaint or petition is:

103 (i) \$55 if the claim for relief exclusive of court costs, interest, and attorney fees is
104 \$2,000 or less;

105 (ii) \$150 if the claim for relief exclusive of court costs, interest, and attorney fees is
106 greater than \$2,000 and less than \$10,000;

107 (iii) \$155 if the original petition is filed under Subsection (1)(a), the claim for relief is
108 \$10,000 or more, or the party seeks relief other than monetary damages; and

109 (iv) \$115 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30,
110 Chapter 4, Separate Maintenance.

111 (e) The fee for filing a small claims counter affidavit is:

112 (i) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is
113 \$2,000 or less;

114 (ii) \$70 if the claim for relief exclusive of court costs, interest, and attorney fees is
115 greater than \$2,000, but less than \$7,500; and

116 (iii) \$120 if the claim for relief exclusive of court costs, interest, and attorney fees is
117 \$7,500 or more.

118 (f) The fee for depositing funds under Section [57-1-29](#) when not associated with an
119 action already before the court is determined under Subsection (1)(b) based on the amount
120 deposited.

121 (g) The fee for filing a petition is:

122 (i) \$225 for trial de novo of an adjudication of the justice court or of the small claims
123 department; and

124 (ii) \$65 for an appeal of a municipal administrative determination in accordance with
125 Section [10-3-703.7](#).

126 (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or
127 petition for writ of certiorari is \$225.

128 (i) The fee for filing a petition for expungement is \$135.

129 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be
130 allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges'
131 Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges'
132 Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement
133 Act.

134 (ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be
135 allocated by the state treasurer to be deposited in the restricted account, Children's Legal
136 Defense Account, as provided in Section [51-9-408](#).

137 (iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g),
138 and (1)(s) shall be allocated to and deposited with the Dispute Resolution Account as provided
139 in Section [78B-6-209](#).

140 (iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv),
141 (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be
142 deposited in the restricted account, Court Security Account, as provided in Section [78A-2-602](#).

143 (v) Five dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and
144 (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court
145 Security Account, as provided in Section [78A-2-602](#).

146 (k) The fee for filing a judgment, order, or decree of a court of another state or of the
147 United States is \$35.

148 (l) The fee for filing a renewal of judgment in accordance with Section [78B-6-1801](#) is
149 50% of the fee for filing an original action seeking the same relief.

150 (m) The fee for filing probate or child custody documents from another state is \$35.

151 (n) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the

152 Utah State Tax Commission is \$30.

153 (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state
154 or a judgment, order, or decree of an administrative agency, commission, board, council, or
155 hearing officer of this state or of its political subdivisions other than the Utah State Tax
156 Commission, is \$50.

157 (o) The fee for filing a judgment by confession without action under Section
158 78B-5-205 is \$35.

159 (p) The fee for filing an award of arbitration for confirmation, modification, or
160 vacation under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an
161 action before the court is \$35.

162 (q) The fee for filing a petition or counter-petition to modify a domestic relations order
163 other than a protective order or stalking injunction is \$100.

164 (r) The fee for filing any accounting required by law is:

165 (i) \$15 for an estate valued at \$50,000 or less;

166 (ii) \$30 for an estate valued at \$75,000 or less but more than \$50,000;

167 (iii) \$50 for an estate valued at \$112,000 or less but more than \$75,000;

168 (iv) \$90 for an estate valued at \$168,000 or less but more than \$112,000; and

169 (v) \$175 for an estate valued at more than \$168,000.

170 (s) The fee for filing a demand for a civil jury is \$250.

171 (t) The fee for filing a notice of deposition in this state concerning an action pending in
172 another state under Utah Rule of Civil Procedure 26 is \$35.

173 (u) The fee for filing documents that require judicial approval but are not part of an
174 action before the court is \$35.

175 (v) The fee for a petition to open a sealed record is \$35.

176 (w) The fee for a writ of replevin, attachment, execution, or garnishment is \$50 in
177 addition to any fee for a complaint or petition.

178 (x) (i) The fee for a petition for authorization for a minor to marry required by Section
179 30-1-9 is \$5.

180 (ii) The fee for a petition for emancipation of a minor provided in Title 78A, Chapter 6,
181 Part 8, Emancipation, is \$50.

182 (y) The fee for a certificate issued under Section 26-2-25 is \$8.

183 (z) The fee for a certified copy of a document is \$4 per document plus 50 cents per
184 page.

185 (aa) The fee for an exemplified copy of a document is \$6 per document plus 50 cents
186 per page.

187 (bb) The Judicial Council shall by rule establish a schedule of fees for copies of
188 documents and forms and for the search and retrieval of records under Title 63G, Chapter 2,
189 Government Records Access and Management Act. Fees under this Subsection (1)(bb) shall
190 be credited to the court as a reimbursement of expenditures.

191 (cc) There is no fee for services or the filing of documents not listed in this section or
192 otherwise provided by law.

193 (dd) Except as provided in this section, all fees collected under this section are paid to
194 the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk
195 accepts the pleading for filing or performs the requested service.

196 (ee) The filing fees under this section may not be charged to the state, its agencies, or
197 political subdivisions filing or defending any action. In judgments awarded in favor of the
198 state, its agencies, or political subdivisions, except the Office of Recovery Services, the court
199 shall order the filing fees and collection costs to be paid by the judgment debtor. The sums
200 collected under this Subsection (1)(ee) shall be applied to the fees after credit to the judgment,
201 order, fine, tax, lien, or other penalty and costs permitted by law.

202 (2) (a) (i) From March 17, 1994₂ until June 30, 1998, the administrator of the courts
203 shall transfer all revenues representing the difference between the fees in effect after May 2,
204 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of
205 Facilities Construction and Management Capital Projects Fund.

206 (ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities
207 Construction and Management shall use up to \$3,750,000 of the revenue deposited in the
208 Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to
209 initiate the development of a courts complex in Salt Lake City.

210 (B) If the Legislature approves funding for construction of a courts complex in Salt
211 Lake City in the 1995 Annual General Session, the Division of Facilities Construction and
212 Management shall use the revenue deposited in the Capital Projects Fund under this Subsection
213 (2)(a)(ii) to construct a courts complex in Salt Lake City.

214 (C) After the courts complex is completed and all bills connected with its construction
215 have been paid, the Division of Facilities Construction and Management shall use any money
216 remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal
217 District Court building.

218 (iii) The Division of Facilities Construction and Management may enter into
219 agreements and make expenditures related to this project before the receipt of revenues
220 provided for under this Subsection (2)(a)(iii).

221 (iv) The Division of Facilities Construction and Management shall:

222 (A) make those expenditures from unexpended and unencumbered building funds
223 already appropriated to the Capital Projects Fund; and

224 (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for
225 under this Subsection (2).

226 (b) After June 30, 1998, the administrator of the courts shall ensure that all revenues
227 representing the difference between the fees in effect after May 2, 1994, and the fees in effect
228 before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted
229 account.

230 (c) The Division of Finance shall deposit all revenues received from the court
231 administrator into the restricted account created by this section.

232 (d) (i) From May 1, 1995, until June 30, 1998, the administrator of the courts shall
233 transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor
234 Vehicles, in a court of record to the Division of Facilities Construction and Management
235 Capital Projects Fund. The division of money pursuant to Section 78A-5-110 shall be
236 calculated on the balance of the fine or bail forfeiture paid.

237 (ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer
238 \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in
239 a court of record to the Division of Finance for deposit in the restricted account created by this
240 section. The division of money pursuant to Section 78A-5-110 shall be calculated on the
241 balance of the fine or bail forfeiture paid.

242 (3) (a) There is created within the General Fund a restricted account known as the State
243 Courts Complex Account.

244 (b) The Legislature may appropriate money from the restricted account to the

245 administrator of the courts for the following purposes only:

246 (i) to repay costs associated with the construction of the court complex that were
247 funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

248 (ii) to cover operations and maintenance costs on the court complex.

Legislative Review Note

as of 3-3-15 8:34 AM

Office of Legislative Research and General Counsel