

1 **MUTUAL DEPENDENCE BENEFITS CONTRACT**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Gregory S. Bell**

5

LONG TITLE

6 **General Description:**

7
8 This bill provides for the creation of mutual dependence benefits contracts, which allow
9 two adults, not eligible for marriage, to share certain rights and responsibilities
10 regarding property ownership or health-related matters.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ provides for the creation of mutual dependence benefits contracts;
- 15 ▶ establishes eligibility requirements for mutual dependence benefits contracts;
- 16 ▶ allows parties to a mutual dependence benefits contract to select the following
17 groups of rights and responsibilities to be shared:
- 18 • health-related rights and responsibilities; and
 - 19 • property-related rights and responsibilities;
- 20 ▶ makes amendments related to the exercise of rights and responsibilities selected by
21 the parties;
- 22 ▶ requires the Department of Health to administer the creation of mutual dependence
23 benefits contracts;
- 24 ▶ requires the Department of Health to maintain a database of mutual dependence
25 benefits contracts;
- 26 ▶ allows the Department of Health to collect fees for the recording and copying of
27 related forms;



- 28 ▶ allows the Department of Health to retain, as a dedicated credit to offset its costs,
- 29 fees collected for the recording and copying of mutual dependence benefits contract
- 30 forms;
- 31 ▶ provides for the termination of mutual dependence benefits contracts;
- 32 ▶ requires notification to a party to a mutual dependence benefits contract of certain
- 33 guardianship proceedings instituted in the interest of the other party to a mutual
- 34 dependence benefits contract; and
- 35 ▶ makes technical changes.

36 **Monies Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42 **26-28-4**, as last amended by Chapter 343, Laws of Utah 1995
- 43 **57-1-5**, as last amended by Chapter 89, Laws of Utah 2002
- 44 **58-9-602**, as enacted by Chapter 49, Laws of Utah 2003
- 45 **75-5-309**, as last amended by Chapter 104, Laws of Utah 1988
- 46 **78-14-5**, as last amended by Chapter 9, Laws of Utah 2001

47 ENACTS:

- 48 **26-48-101**, Utah Code Annotated 1953
- 49 **26-48-102**, Utah Code Annotated 1953
- 50 **26-48-201**, Utah Code Annotated 1953
- 51 **26-48-202**, Utah Code Annotated 1953
- 52 **26-48-203**, Utah Code Annotated 1953
- 53 **26-48-204**, Utah Code Annotated 1953



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

56 Section 1. Section **26-28-4** is amended to read:

57 **26-28-4. Anatomical gifts by others -- Donations or revocations.**

58 (1) Unless a person made an unrevoked refusal to make an anatomical gift, in

59 accordance with Subsection 26-28-3(12), any of the following persons, in order of priority
60 listed, may make an anatomical gift of all or a part of a decedent's body in accordance with this
61 chapter:

62 (a) the decedent's spouse;

63 (b) a person who is a party to a mutual dependence benefits contract with the decedent
64 in which the parties have elected to share health-related rights and responsibilities under
65 Subsection 26-48-202(2);

66 [~~(b)~~] (c) the decedent's adult son or daughter;

67 [~~(c)~~] (d) either of the decedent's parents;

68 [~~(d)~~] (e) the decedent's brother or sister who is 18 years of age or older;

69 [~~(e)~~] (f) the decedent's grandparent; or

70 [~~(f)~~] (g) the decedent's court appointed guardian at the time of the decedent's death.

71 (2) A person listed in Subsection (1) may not make an anatomical gift if:

72 (a) a person in a prior class is available at the time of death to determine whether to
73 make an anatomical gift;

74 (b) [~~he~~] the person knows of a refusal or contrary indications made by the decedent; or

75 (c) [~~he~~] the person knows of an objection to making an anatomical gift by a member of
76 the person's class or a prior class.

77 (3) A person authorized in accordance with this section may make an anatomical gift
78 only by:

79 (a) signing a document of gift;

80 (b) making a telegraphic, facsimile, recorded telephonic, or other recorded message; or

81 (c) making any other form of communication directed to and received simultaneously
82 by two individuals[;] if:

83 (i) one of [~~whom~~] the individuals immediately reduces the communication to
84 writing[;]; and

85 (ii) both individuals sign [~~it~~] the written communication.

86 (4) A person of the same or prior class may revoke an anatomical gift made by a person
87 authorized in accordance with Subsection (1) if the procurement entity knows of the revocation
88 before a designee or employee of the entity has begun to physically remove the part.

89 (5) A failure to make an anatomical gift under this section is not an objection to or

90 refusal to the making of an anatomical gift.

91 Section 2. Section 26-48-101 is enacted to read:

92 **CHAPTER 48. MUTUAL DEPENDENCE BENEFITS CONTRACT ACT**

93 **Part 1. General Provisions**

94 **26-48-101. Title.**

95 This chapter is known as the "Mutual Dependence Benefits Contract Act."

96 Section 3. Section 26-48-102 is enacted to read:

97 **26-48-102. Definitions.**

98 As used in this chapter:

99 (1) "Contract" means a mutual dependence benefits contract made pursuant to this
100 chapter.

101 (2) "Health care facility" means:

102 (a) a general acute hospital;

103 (b) a specialty hospital;

104 (c) a home health agency;

105 (d) a hospice;

106 (e) a nursing care facility;

107 (f) a residential-assisted living facility;

108 (g) a birthing center;

109 (h) an ambulatory surgical facility;

110 (i) a small health care facility;

111 (j) an abortion clinic;

112 (k) a facility owned or operated by a health maintenance organization; and

113 (l) an end stage renal disease facility.

114 (3) "Incapacity" means impairment to the extent of lacking sufficient understanding or
115 capacity to make or communicate responsible decisions by reason of:

116 (a) mental illness;

117 (b) mental deficiency;

118 (c) physical illness or disability;

119 (d) chronic use of drugs;

120 (e) chronic intoxication; or

121 (f) other cause.
122 (4) "Party" means a person who has entered into a mutual dependence benefits contract
123 pursuant to this chapter.

124 Section 4. Section **26-48-201** is enacted to read:

125 **26-48-201. Formation of a mutual dependence benefits contract.**

126 (1) Two individuals may create a mutual dependence benefits contract by satisfying the
127 requirements of this section.

128 (2) To form a mutual dependence benefits contract under this chapter:

129 (a) both individuals must be at least 18 years of age;

130 (b) neither individual may be married;

131 (c) neither individual may be a party to any other mutual dependence benefits contract;

132 (d) the individuals must not be eligible for marriage to one another under the laws of

133 Utah;

134 (e) each individual shall sign a mutual dependence benefits contract form provided by
135 the department;

136 (f) each individual's signature required by Subsection (2)(e) shall be acknowledged by
137 a notary pursuant to Title 46, Chapter 1, Notaries Public Reform Act;

138 (g) the mutual dependence benefits contract form shall be filed with the department
139 pursuant to Section 26-48-203; and

140 (h) on the mutual dependence benefits contract form the individuals shall make the
141 election provided for by Subsection 26-48-202(1).

142 Section 5. Section **26-48-202** is enacted to read:

143 **26-48-202. Mutual dependence benefits contract.**

144 (1) A mutual dependence benefits contract, at the election of the parties, may provide
145 for:

146 (a) health-related rights and responsibilities, pursuant to Subsection (2);

147 (b) property-related rights and responsibilities, pursuant to Subsection (3); or

148 (c) both health-related and property-related rights and responsibilities.

149 (2) Health-related rights and responsibilities provided by a mutual dependence benefits
150 contract are limited to:

151 (a) the right to make decisions concerning the medical care of the other party to the

152 contract under Subsection 78-14-5(4) in the event of incapacity;

153 (b) the right to visit the other party to the contract in a health care facility under the
154 same terms as an immediate family member would be allowed visitation by the health care
155 facility;

156 (c) in the event of the death of the other party to the contract, the right to make an
157 anatomical gift on behalf of the other party to the contract under Subsection 26-28-4(1); and

158 (d) the right and responsibility, upon the death of the other party to the contract, to
159 control the disposition of remains of the deceased under Section 58-9-602.

160 (3) Property-related rights and responsibilities provided by a mutual dependence
161 benefits contract are limited to a presumption that real property acquired by the parties during
162 the pendency of the contract is held in joint tenancy with rights of survivorship under
163 Subsection 57-1-5(1)(b).

164 Section 6. Section **26-48-203** is enacted to read:

165 **26-48-203. Administration of mutual dependence benefits contract.**

166 (1) The department shall:

167 (a) create a mutual dependence benefits contract form that complies with the
168 provisions of this chapter;

169 (b) distribute copies of the mutual dependence benefits contract form:

170 (i) online;

171 (ii) at the department's offices; and

172 (iii) to county clerks;

173 (c) record completed mutual dependence benefits contracts in the department's records;

174 (d) record documents terminating mutual dependence benefits contracts in the
175 department's records;

176 (e) provide a certified copy of a mutual dependence benefits contract to each of the
177 parties to the contract:

178 (i) at time of recording; and

179 (ii) upon request by either of the parties to the mutual dependence benefits contract;

180 and

181 (f) maintain a database of mutual dependence benefits contracts and terminations.

182 (2) The department is not required to verify that the parties to a mutual dependence

183 benefits contract:

184 (a) are at least 18 years of age;

185 (b) are not married; or

186 (c) are not eligible for marriage to one another under the laws of Utah.

187 (3) (a) The department may establish and collect reasonable fees for the recording or
188 copying of a mutual dependence benefits contract or termination of a contract.

189 (b) Funds generated under Subsection (3)(a) may be used by the department as a
190 dedicated credit to cover the reasonable costs of administering this chapter, including the cost
191 of:

192 (i) providing contract forms;

193 (ii) recording contracts and terminations;

194 (iii) providing certified copies of contracts; and

195 (iv) maintaining a database of contracts and terminations.

196 Section 7. Section **26-48-204** is enacted to read:

197 **26-48-204. Termination of mutual dependence benefits contract.**

198 (1) Any party to a mutual dependence benefits contract may unilaterally terminate the
199 contract by recording a writing with the department that:

200 (a) is signed by the party seeking termination;

201 (b) immediately rescinds all rights and responsibilities under the contract; and

202 (c) is acknowledged by a notary pursuant to Title 46, Chapter 1, Notaries Public

203 Reform Act.

204 (2) A mutual dependence benefits contract is automatically terminated on the day on
205 which a party to the contract marries.

206 (3) The termination of a mutual dependence benefits contract has no impact on:

207 (a) existing property rights, including ownership rights in property acquired during the
208 existence of the mutual dependence benefits contract; or

209 (b) rights and responsibilities existing independent of the mutual dependence benefits
210 contract.

211 Section 8. Section **57-1-5** is amended to read:

212 **57-1-5. Creation of joint tenancy presumed -- Tenancy in common -- Severance of**
213 **joint tenancy.**

214 (1) (a) Beginning on May 5, 1997, every ownership interest in real estate granted to
215 two persons in their own right who are designated as husband and wife in the granting
216 documents is presumed to be a joint tenancy interest with rights of survivorship, unless
217 severed, converted, or expressly declared in the grant to be otherwise.

218 (b) Every ownership interest in real estate granted to two persons in their own right
219 who are designated in the granting documents as parties to a mutual dependence benefits
220 contract who have elected to share property-related rights and responsibilities under Subsection
221 26-48-202(3), is presumed to be a joint tenancy interest with rights of survivorship, unless
222 severed, converted, or expressly declared in the grant to be otherwise.

223 [~~(b)~~] (c) Every ownership interest in real estate [~~which~~] that does not qualify for the
224 joint tenancy presumption as provided in this Subsection (1)[~~(a)~~] is presumed to be a tenancy in
225 common interest unless expressly declared in the grant to be otherwise.

226 (2) (a) Use of words "joint tenancy" or "with rights of survivorship" or "and to the
227 survivor of them" or words of similar import means a joint tenancy.

228 (b) Use of words "tenancy in common" or "with no rights of survivorship" or
229 "undivided interest" or words of similar import shall declare a tenancy in common.

230 (3) A sole owner of real property shall create a joint tenancy in himself and another or
231 others:

232 (a) by making a transfer to himself and another or others as joint tenants by use of the
233 words as provided in Subsection (2)(a); or

234 (b) by conveying to another person or persons an interest in land in which an interest is
235 retained by the grantor and by declaring the creation of a joint tenancy by use of the words as
236 provided in Subsection (2)(a).

237 (4) In all cases, the interest of joint tenants shall be equal and undivided.

238 (5) A "joint tenancy" is severed and is converted into a "tenancy in common" by a joint
239 tenant by making a bona fide conveyance of the joint tenant's interest in the property to himself
240 or to another.

241 (6) The amendments to this section in Chapter 124, Laws of Utah 1997 have no
242 retrospective operation and shall govern instruments executed and recorded on or after May 5,
243 1997.

244 Section 9. Section **58-9-602** is amended to read:

245 **58-9-602. Determination of control of disposition.**

246 The right and duty to control the disposition of a deceased person, including the
 247 location and conditions of the disposition, vest in the following degrees of relationship in the
 248 order named:

249 (1) a person designated in a written instrument, excluding a power of attorney that
 250 terminates at death under Sections 75-5-501 and 75-5-502, if the written instrument contains:

251 (a) the name and address of the decedent;

252 (b) the name and address of the person designated under this Subsection (1);

253 (c) the signature of the decedent;

254 (d) the signatures of at least two unrelated individuals who are not the person
 255 designated under this Subsection (1), each of whom signed within a reasonable time after
 256 witnessing the signing of the form by the decedent; and

257 (e) the date or dates the written instrument was prepared and signed;

258 (2) the surviving, legally recognized spouse of the decedent;

259 (3) a person who is a party to a mutual dependence benefits contract with the decedent
 260 in which the parties have elected to share health-related rights and responsibilities under
 261 Subsection 26-48-202(2);

262 [~~(3)~~] (4) the surviving child or the majority of the surviving children of the decedent
 263 over the age of 18;

264 [~~(4)~~] (5) the unanimous consent of the surviving parent, parents, or lawful custodian of
 265 the decedent;

266 [~~(5)~~] (6) the person or persons in the next degree of succession under Title 75, Chapter
 267 2, Intestate Succession and Wills;

268 [~~(6)~~] (7) any public official charged with arranging the disposition of deceased persons;

269 [~~(7)~~] (8) a person or persons whom the funeral service director reasonably believes is
 270 entitled to control the disposition; and

271 [~~(8)~~] (9) in the absence of any person under Subsections (1) through [~~(7)~~] (8), any
 272 person willing to assume the right and duty to control the disposition.

273 Section 10. Section **75-5-309** is amended to read:

274 **75-5-309. Notices in guardianship proceedings.**

275 (1) In a proceeding for the appointment or removal of a guardian of an incapacitated

276 person other than the appointment of a temporary guardian or temporary suspension of a
277 guardian, notice of hearing shall be given to each of the following:

278 (a) the ward or the person alleged to be incapacitated and spouse, parents, and adult
279 children of the ward or person;

280 (b) a person who is a party to a mutual dependence benefits contract with the ward or
281 person alleged to be incapacitated in which the parties have elected to share health-related
282 rights and responsibilities under Subsection 26-48-202(2);

283 [~~(b)~~] (c) any person who is serving as guardian or conservator or who has care and
284 custody of the ward or person;

285 [~~(c)~~] (d) in case no other person is notified under Subsection (1)(a), at least one of the
286 closest adult relatives, if any can be found; and

287 [~~(d)~~] (e) any guardian appointed by the will of the:

288 (i) parent who died later; or

289 (ii) spouse of the incapacitated person.

290 (2) (a) The notice shall be in plain language and large type and the form shall have the
291 final approval of the Judicial Council.

292 (b) The notice shall indicate the time and place of the hearing, the possible adverse
293 consequences to the person receiving notice of rights, a list of rights, including the person's
294 own or a court appointed counsel, and a copy of the petition.

295 (3) (a) Notice shall be served personally on the alleged incapacitated person and the
296 person's spouse and parents if they can be found within the state.

297 (b) Notice to the spouse and parents, if they cannot be found within the state, and to all
298 other persons except the alleged incapacitated person shall be given as provided in Section
299 75-1-401.

300 (c) Waiver of notice by the person alleged to be incapacitated is not effective unless:

301 (i) the person attends the hearing; or

302 (ii) the person's waiver of notice is confirmed in an interview with the visitor appointed
303 pursuant to Section 75-5-303.

304 Section 11. Section **78-14-5** is amended to read:

305 **78-14-5. Failure to obtain informed consent -- Proof required of patient --**
306 **Defenses -- Consent to health care.**

307 (1) (a) When a person submits to health care rendered by a health care provider, it shall
308 be presumed that what the health care provider did was either expressly or impliedly authorized
309 to be done. For a patient to recover damages from a health care provider in an action based
310 upon the provider's failure to obtain informed consent, the patient must prove the following:

311 ~~[(a)]~~ (i) that a provider-patient relationship existed between the patient and health care
312 provider;

313 ~~[(b)]~~ (ii) the health care provider rendered health care to the patient;

314 ~~[(c)]~~ (iii) the patient suffered personal injuries arising out of the health care rendered;

315 ~~[(d)]~~ (iv) the health care rendered carried with it a substantial and significant risk of
316 causing the patient serious harm;

317 ~~[(e)]~~ (v) the patient was not informed of the substantial and significant risk;

318 ~~[(f)]~~ (vi) a reasonable, prudent person in the patient's position would not have
319 consented to the health care rendered after having been fully informed as to all facts relevant to
320 the decision to give consent~~[- In determining what a reasonable, prudent person in the patient's
321 position would do under the circumstances, the finder of fact shall use the viewpoint of the
322 patient before health care was provided and before the occurrence of any personal injuries
323 alleged to have arisen from said health care]; and~~

324 ~~[(g)]~~ (vii) the unauthorized part of the health care rendered was the proximate cause of
325 personal injuries suffered by the patient.

326 (b) For purposes of Subsection (1)(a)(vi), in determining what a reasonable, prudent
327 person in the patient's position would do under the circumstances, the finder of fact shall use
328 the viewpoint of the patient before health care was provided and before the occurrence of any
329 personal injuries alleged to have arisen from the health care.

330 (2) (a) It shall be a defense to any malpractice action against a health care provider
331 based upon alleged failure to obtain informed consent if:

332 ~~[(a)]~~ (i) the risk of the serious harm ~~[which]~~ that the patient actually suffered was
333 relatively minor;

334 ~~[(b)]~~ (ii) the risk of serious harm to the patient from the health care provider was
335 commonly known to the public;

336 ~~[(c)]~~ (iii) the patient stated, prior to receiving the health care complained of, that ~~[he]~~
337 the patient:

338 (A) would accept the health care involved regardless of the risk; or [~~that he~~]

339 (B) did not want to be informed of the matters to which [~~he~~] the patient would be
340 entitled to be informed;

341 [~~(d)~~] (iv) the health care provider, after considering all of the attendant facts and
342 circumstances, used reasonable discretion as to the manner and extent to which risks were
343 disclosed, if the health care provider reasonably believed that additional disclosures could be
344 expected to have a substantial and adverse effect on the patient's condition; or

345 [~~(e)~~] (v) the patient or [~~his~~] the patient's representative executed a written consent
346 which sets forth the nature and purpose of the intended health care and which contains a
347 declaration that the patient accepts the risk of substantial and serious harm, if any, in hopes of
348 obtaining desired beneficial results of health care and which acknowledges that health care
349 providers involved have explained [~~his~~] the patient's condition and the proposed health care in
350 a satisfactory manner and that all questions asked about the health care and its attendant risks
351 have been answered in a manner satisfactory to the patient or [~~his~~] the patient's representative[;
352 ~~such~~].

353 (b) The written consent described in Subsection (2)(a)(v) shall be a defense to an action
354 against a health care provider based upon failure to obtain informed consent unless the patient
355 proves that the person giving the consent lacked capacity to consent or shows by clear and
356 convincing proof that the execution of the written consent was induced by the defendant's
357 affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

358 (3) Nothing contained in this [~~act~~] chapter shall be construed to prevent any person 18
359 years of age or over from refusing to consent to health care for [~~his~~] the person's own person
360 upon personal or religious grounds.

361 (4) The following persons are authorized and empowered to consent to any health care
362 not prohibited by law:

363 (a) any parent, whether an adult or a minor, for [~~his~~] the parent's minor child;

364 (b) any married person, for a spouse;

365 (c) any person who is a party to a mutual dependence benefits contract in which the
366 parties have elected to share health-related rights and responsibilities under Subsection
367 26-48-202(2), for the other party to the contract;

368 [~~(e)~~] (d) any person temporarily standing in loco parentis, whether formally serving or

369 not, for the minor under [~~his~~] the person's care and any guardian for [~~his~~] the person's ward;
370 [~~(d)~~] (e) any person 18 years of age or over for [~~his or her~~] the person's parent who is
371 unable by reason of age, physical or mental condition, to provide such consent;
372 [~~(e)~~] (f) any patient 18 years of age or over;
373 [~~(f)~~] (g) any female regardless of age or marital status, when given in connection with
374 her pregnancy or childbirth;
375 [~~(g)~~] (h) in the absence of a parent, any adult for [~~his~~] the adult's minor brother or
376 sister; and
377 [~~(h)~~] (i) in the absence of a parent, any grandparent for [~~his~~] the grandparent's minor
378 grandchild.
379 (5) [~~No~~] A person who in good faith consents or authorizes health care treatment or
380 procedures for another as provided by this [~~act shall be~~] chapter may not be subject to civil
381 liability.

Legislative Review Note
as of 11-27-04 2:29 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

This bill establishes Mutual Dependence Benefits Contracts to be administered by the Department of Health. The costs are estimated at \$1,500 annually plus one-time start up costs of \$10,000 for programming, training, and developing and distributing forms. The bill allows the Department to collect a fee to offset the costs. With a projected \$20 fee, revenue in the first year is estimated at \$5,400 and at \$2,000 annually thereafter.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$6,100	\$0	\$0	\$0
Dedicated Credits	\$5,400	\$1,500	\$5,400	\$2,000
TOTAL	\$11,500	\$1,500	\$5,400	\$2,000

Individual and Business Impact

Individuals would be able to take advantage of a Mutual Dependence Benefits contract which could provide them with a level of financial security. They would be required to pay a fee of approximately \$20 to cover the costs of recording the contract.

Office of the Legislative Fiscal Analyst