

HB0231S01 compared with HB0231

~~{deleted text}~~ shows text that was in HB0231 but was deleted in HB0231S01.

inserted text shows text that was not in HB0231 but was inserted into HB0231S01.

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Representative Kraig Powell proposes the following substitute bill:

GUARDIANSHIP AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill ~~{creates the Utah Protective Proceedings Act within the Probate Code}~~ makes changes to the Utah Probate Code defining developmental disabilities and regarding guardian appointments.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ ~~{creates a method within the courts for the appointment of a guardian or conservator for a minor or an incapacitated adult;~~
- eliminates a local school board's ability to designate guardians for students within its district;
- eliminates expedited guardianship proceedings for residents of the Utah State

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~~Developmental Center~~ requires a specialized care professional to be certified by the Center for Guardianship Certification;

- ▶ requires guardians to file a management plan within 90 days of appointment; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect January 1, 2013.

Utah Code Sections Affected:

AMENDS:

~~{53A-2-202}~~ 7-5-1, as last amended by Laws of Utah ~~{1998}~~ 2011, Chapter ~~{263}~~ 289
~~{53A-2-203.5}~~ 48-2c-708 (Repealed 07/01/12), as ~~{enacted}~~ repealed by Laws of Utah
~~{1998}~~ 2011, Chapter ~~{124}~~ 353

75-1-201, as last amended by Laws of Utah 2010, Chapter 93

~~{75-5-501}~~ 75-3-303, as last amended by Laws of Utah ~~{2011}~~ Chapter 366

~~75-5b-102~~, as enacted by Laws of Utah 2008, Chapter 253

~~75-5b-302~~, as enacted ~~{1998}~~ 1998, Chapter 39

75-3-308, as last amended by Laws of Utah ~~{2008}~~ 1998, Chapter ~~{253}~~

~~78B-5-804~~, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

~~75-5c-101~~, Utah Code Annotated 1953

~~75-5c-102~~, Utah Code Annotated 1953

~~75-5c-103~~, Utah Code Annotated 1953

~~75-5c-104~~, Utah Code Annotated 1953

~~75-5c-105~~, Utah Code Annotated 1953

~~75-5c-106~~, Utah Code Annotated 1953

~~75-5c-107~~, Utah Code Annotated 1953

~~75-5c-108~~, Utah Code Annotated 1953

~~75-5c-109~~, Utah Code Annotated 1953

~~75-5c-110~~, Utah Code Annotated 1953

~~75-5c-111~~, Utah Code Annotated 1953

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~~75-5c-112, Utah Code Annotated 1953~~
~~75-5c-113, Utah Code Annotated 1953~~
~~75-5c-114, Utah Code Annotated 1953~~
~~75-5c-115, Utah Code Annotated 1953~~
~~75-5c-116, Utah Code Annotated 1953~~
~~75-5c-117, Utah Code Annotated 1953~~
~~75-5c-118, Utah Code Annotated 1953~~
~~75-5c-119, Utah Code Annotated 1953~~
~~75-5c-120, Utah Code Annotated 1953~~
~~75-5c-121, Utah Code Annotated 1953~~
~~75-5c-122, Utah Code Annotated 1953~~
~~75-5c-123, Utah Code Annotated 1953~~
~~75-5c-124, Utah Code Annotated 1953~~
~~75-5c-201, Utah Code Annotated 1953~~
~~75-5c-202, Utah Code Annotated 1953~~
~~75-5c-203, Utah Code Annotated 1953~~
~~75-5c-204, Utah Code Annotated 1953~~
~~75-5c-301, Utah Code Annotated 1953~~
~~75-5c-302, Utah Code Annotated 1953~~
~~75-5c-303, Utah Code Annotated 1953~~
~~75-5c-304, Utah Code Annotated 1953~~
~~75-5c-305, Utah Code Annotated 1953~~
~~75-5c-306, Utah Code Annotated 1953~~
~~75-5c-307, Utah Code Annotated 1953~~
~~75-5c-308, Utah Code Annotated 1953~~
~~75-5c-401, Utah Code Annotated 1953~~
~~75-5c-402, Utah Code Annotated 1953~~
~~75-5c-403, Utah Code Annotated 1953~~
~~75-5c-404, Utah Code Annotated 1953~~
~~75-5c-405, Utah Code Annotated 1953~~
~~75-5c-406, Utah Code Annotated 1953~~

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~~75-5c-407, Utah Code Annotated 1953~~
~~75-5c-408, Utah Code Annotated 1953~~
~~75-5c-409, Utah Code Annotated 1953~~
~~75-5c-410, Utah Code Annotated 1953~~
~~75-5c-411, Utah Code Annotated 1953~~
~~75-5c-412, Utah Code Annotated 1953~~
~~75-5c-413, Utah Code Annotated 1953~~
~~75-5c-414, Utah Code Annotated 1953~~
~~75-5c-415, Utah Code Annotated 1953~~
~~75-5c-416, Utah Code Annotated 1953~~
~~75-5c-417, Utah Code Annotated 1953~~
~~75-5c-418, Utah Code Annotated 1953~~
~~75-5c-419, Utah Code Annotated 1953~~
~~75-5c-420, Utah Code Annotated 1953~~
~~75-5c-421, Utah Code Annotated 1953~~

RENUMBERS AND AMENDS:

~~75-5c-309, (Renumbered from 75-5-314, as enacted by Laws of Utah 1975, Chapter 150)~~
~~75-5c-310, (Renumbered from 75-5-315, as enacted by Laws of Utah 1975, Chapter 150)~~

REPEALS:

~~75-5-101, as enacted by Laws of Utah 1975, Chapter 150~~
~~75-5-102, as last amended by Laws of Utah 2004, Chapter 198~~
~~75-5-103, as enacted by Laws of Utah 1975, Chapter 150~~
~~75-5-104, as enacted by Laws of Utah 1975, Chapter 150~~
~~75-5-105, as enacted by Laws of Utah 1975, Chapter 150~~
~~75-5-201, as last amended by Laws of Utah 1998, Chapter 124~~
~~75-5-202, as last amended by Laws of Utah 1985, Chapter 41~~
~~75-5-202.5, as enacted by Laws of Utah 1985, Chapter 41~~
~~75-5-203, as last amended by Laws of Utah 1985, Chapter 41~~
~~75-5-204, as last amended by Laws of Utah 1985, Chapter 41~~

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- ~~75-5-205~~, as enacted by Laws of Utah 1975, Chapter 150
- ~~75-5-206~~, as last amended by Laws of Utah 2010, Chapter 392
- ~~75-5-207~~, as last amended by Laws of Utah 1995, Chapter 156
- ~~75-5-208~~, as last amended by Laws of Utah 1985, Chapter 41
- ~~75-5-209~~, as last amended by Laws of Utah 2008, Chapter 3
- ~~75-5-210~~, as enacted by Laws of Utah 1975, Chapter 150
- ~~75-5-211~~, as last amended by Laws of Utah 1985, Chapter 41
- ~~75-5-212~~, as enacted by Laws of Utah 1975, Chapter 150
- ~~75-5-301~~, as last amended by Laws of Utah 1985, Chapter 41
- ~~75-5-302~~, as enacted by Laws of Utah 1975, Chapter 150
- ~~75-5-303~~, as last amended by Laws of Utah 2011, Chapter 366
- ~~75-5-304~~, as last amended by Laws of Utah 1988, Chapter 104
- ~~75-5-305~~, as last amended by Laws of Utah 1977, Chapter 194
- ~~75-5-306~~, as last amended by Laws of Utah 1977, Chapter 194
- ~~75-5-307~~, as last amended by Laws of Utah 1988, Chapter 104
- ~~75-5-308~~, as enacted by Laws of Utah 1975, Chapter 150
- ~~75-5-309~~, as last amended by Laws of Utah 1988, Chapter 104
- ~~75-5-310~~, as last amended by Laws of Utah 1979, Chapter 244
- ~~75-5-311~~, as last amended by Laws of Utah 1998, Chapter 288
- ~~75-5-312~~, as last amended by Laws of Utah 1992, Chapter 290
- ~~75-5-313~~, as last amended by Laws of Utah 1985, Chapter 41
- ~~75-5-316~~, as last amended by Laws of Utah 2011, Chapter 366
- ~~75-5-401~~, as last amended by Laws of Utah 2001, Chapter 375
- ~~75-5-402~~, as last amended by Laws of Utah 1992, Chapter 30
- ~~75-5-403~~, as last amended by Laws of Utah 1992, Chapter 30
- ~~75-5-404~~, as enacted by Laws of Utah 1975, Chapter 150
- ~~75-5-405~~, as enacted by Laws of Utah 1975, Chapter 150
- ~~75-5-406~~, as enacted by Laws of Utah 1975, Chapter 150
- ~~75-5-407~~, as enacted by Laws of Utah 1975, Chapter 150
- ~~75-5-408~~, as last amended by Laws of Utah 2011, Chapter 366

~~75-5-303~~

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~~75-5-409~~, as last amended by Laws of Utah 1977, Chapter 194
~~75-5-410~~, as last amended by Laws of Utah 2010, Chapter 324
~~75-5-411~~, as last amended by Laws of Utah 1977, Chapter 194
~~75-5-412~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-413~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-414~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-415~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-416~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-417~~, as last amended by Laws of Utah 2004, Chapter 89
~~75-5-418~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-419~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-420~~, as last amended by Laws of Utah 1977, Chapter 194
~~75-5-421~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-422~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-423~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-424~~, as last amended by Laws of Utah 1977, Chapter 194
~~75-5-425~~, as last amended by Laws of Utah 2011, Chapter 366
~~75-5-426~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-427~~, as last amended by Laws of Utah 1977, Chapter 194
~~75-5-428~~, as last amended by Laws of Utah 2007, Chapter 306
~~75-5-429~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-430~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-431~~, as enacted by Laws of Utah 1975, Chapter 150
~~75-5-432~~, as last amended by Laws of Utah 1977, Chapter 194
~~75-5-433~~, as last amended by Laws of Utah 1977, Chapter 194

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

Section 1. Section 7-5-1 is amended to read:

7-5-1. Definitions -- Allowable trust companies -- Exceptions.

(1) As used in this chapter:

(a) "Business trust" means an entity engaged in a trade or business that is created by a

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declaration of trust that transfers property to trustees, to be held and managed by them for the benefit of persons holding certificates representing the beneficial interest in the trust estate and assets.

(b) "Trust business" means, except as provided in Subsection (1)(c), a business in which one acts in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under appointment as trustee for any purpose permitted by law, including the definition of "trust" set forth in ~~Subsection~~ Section 75-1-201~~(55)~~.

(c) "Trust business" does not include the following means of holding money, assets, or other property:

(i) money held in a client trust account by an attorney authorized to practice law in this state;

(ii) money held in connection with the purchase or sale of real estate by a person licensed as a principal broker in accordance with Title 61, Chapter 2f, Real Estate Licensing and Practices Act;

(iii) money or other assets held in escrow by a person authorized by the department in accordance with Chapter 22, Regulation of Independent Escrow Agents, or by the Utah Insurance Department to act as an escrow agent in this state;

(iv) money held by a homeowners' association or similar organization to pay maintenance and other related costs for commonly owned property;

(v) money held in connection with the collection of debts or payments on loans by a person acting solely as the agent or representative or otherwise at the sole direction of the person to which the debt or payment is owed, including money held by an escrow agent for payment of taxes or insurance;

(vi) money and other assets held in trust on an occasional or isolated basis by a person who does not represent that the person is engaged in the trust business in Utah;

(vii) money or other assets found by a court to be held in an implied, resulting, or constructive trust;

(viii) money or other assets held by a court appointed conservator, guardian, receiver, trustee, or other fiduciary if:

(A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to the

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court in the same manner as a personal representative under Title 75, Chapter 3, Part 5, Supervised Administration, or as a receiver under Rule 66, Utah Rules of Civil Procedure;

(B) the conservator, trustee, or other fiduciary is a certified public accountant or has qualified for and received a designation as a certified financial planner, chartered financial consultant, certified financial analyst, or similar designation suitable to the court, that evidences the conservator's, trustee's, or other fiduciary's professional competence to manage financial matters;

(C) no trust company is willing or eligible to serve as conservator, guardian, trustee, or receiver after notice has been given pursuant to Section 75-1-401 to all trust companies doing business in this state, including a statement of the value of the assets to be managed, that notice need not be provided, however, if a trust company has been employed by the fiduciary to manage the assets; and

(D) in the event guardianship services are needed, the person seeking appointment as a guardian under this Subsection (1) is a specialized care professional, as that term is defined in Section 75-5-311, or a business or state agency that employs the services of one of those professionals for the purpose of caring for the incapacitated person, so long as the specialized care professional, business, or state agency does not:

(I) profit financially or otherwise from, or receive compensation for acting in that capacity, except for the direct costs of providing guardianship or conservatorship services; or

(II) otherwise have a conflict of interest in providing those services;

(ix) money or other assets held by a credit services organization operating in compliance with Title 13, Chapter 21, Credit Services Organizations Act;

(x) money, securities, or other assets held in a customer account in connection with the purchase or sale of securities by a regulated securities broker, dealer, or transfer agent; or

(xi) money, assets, and other property held in a business trust for the benefit of holders of certificates of beneficial interest if the fiduciary activities of the business trust are merely incidental to conducting business in the business trust form.

(d) "Trust company" means an institution authorized to engage in the trust business under this chapter. Only the following may be a trust company:

(i) a Utah depository institution or its wholly owned subsidiary;

(ii) an out-of-state depository institution authorized to engage in business as a

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depository institution in Utah or its wholly owned subsidiary;

(iii) a corporation, including a credit union service organization, owned entirely by one or more federally insured depository institutions as defined in Subsection 7-1-103(8);

(iv) a direct or indirect subsidiary of a depository institution holding company that also has a direct or indirect subsidiary authorized to engage in business as a depository institution in Utah; and

(v) any other corporation continuously and lawfully engaged in the trust business in this state since before July 1, 1981.

(2) Only a trust company may engage in the trust business in this state.

(3) The requirements of this chapter do not apply to:

(a) an institution authorized to engage in a trust business in another state that is engaged in trust activities in this state solely to fulfill its duties as a trustee of a trust created and administered in another state;

(b) a national bank, federal savings bank, federal savings and loan association, or federal credit union authorized to engage in business as a depository institution in Utah, or any wholly owned subsidiary of any of these, to the extent the institution is authorized by its primary federal regulator to engage in the trust business in this state; or

(c) a state agency that is otherwise authorized by statute to act as a conservator, receiver, guardian, trustee, or in any other fiduciary capacity.

Section ~~{1}~~2. Section ~~{53A-2-202}~~48-2c-708 (Repealed 07/01/12) is amended to read:

~~{53A-2-202. Guardianship for residency purposes by responsible adult --~~

~~Procedure to obtain -- Termination.~~

~~—— (1) For purposes of this part, "responsible adult" means a person 21 years of age or older who is a resident of this state and is willing and able to provide reasonably adequate food, clothing, shelter, and supervision for a minor child.~~

~~—— (2) A local board of education may adopt a policy permitting it to designate a responsible adult residing in the school district as legal guardian of a child whose custodial parent or legal guardian does not reside within the state upon compliance with the following requirements:~~

~~—— (a) submission to the school district of a signed and notarized affidavit by the child's custodial parent or legal guardian stating that:~~

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- ~~—— (i) the child's presence in the district is not for the primary purpose of attending the public schools;~~
- ~~—— (ii) the child's physical, mental, moral, or emotional health would best be served by a transfer of guardianship to the Utah resident;~~
- ~~—— (iii) the affiant is aware that designation of a guardian under this section is equivalent to a court-ordered guardianship under [Section 75-5-206] Title 75, Chapter 5c, Utah Protective Proceedings Act, and will suspend or terminate any existing parental or guardianship rights in the same manner as would occur under a court-ordered guardianship;~~
- ~~—— (iv) the affiant consents and submits to any such suspension or termination of parental or guardianship rights;~~
- ~~—— (v) the affiant consents and submits to the jurisdiction of the state district court in which the school district is located in any action relating to the guardianship or custody of the child in question;~~
- ~~—— (vi) the affiant designates a named responsible adult as agent, authorized to accept service on behalf of the affiant of any process, notice, or demand required or permitted to be served in connection with any action under Subsection (2)(a)(v); and~~
- ~~—— (vii) it is the affiant's intent that the child become a permanent resident of the state and reside with and be under the supervision of the named responsible adult;~~
- ~~—— (b) submission to the school district of a signed and notarized affidavit by the responsible adult stating that:~~
 - ~~—— (i) the affiant is a resident of the school district and desires to become the guardian of the child;~~
 - ~~—— (ii) the affiant consents and submits to the jurisdiction of the state district court in which the school district is located in any action relating to the guardianship or custody of the child in question;~~
 - ~~—— (iii) the affiant will accept the responsibilities of guardianship for the duration, including the responsibility to provide adequate supervision, discipline, food, shelter, educational and emotional support, and medical care for the child if designated as the child's guardian; and~~
 - ~~—— (iv) the affiant accepts the designation as agent under Subsection (2)(a)(vi);~~

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~~—— (c) submission to the school district of a signed and notarized affidavit by the child stating that:~~

~~—— (i) the child desires to become a permanent resident of Utah and reside with and be responsible to the named responsible adult; and~~

~~—— (ii) the child will abide by all applicable rules of any public school which the child may attend after guardianship is awarded; and~~

~~—— (d) if the child's custodial parent or legal guardian cannot be found in order to execute the statement required under Subsection (2)(a), the responsible adult must submit an affidavit to that effect to the district. The district shall also submit a copy of the statement to the Criminal Investigations and Technical Services Division of the Department of Public Safety, established in Section 53-10-103.~~

~~—— (3) The district may require the responsible adult, in addition to the documents set forth in Subsection (2), to also submit any other documents which are relevant to~~ **48-2c-708 (Repealed 07/01/12). Cessation of membership.**

(1) A person who is a member of a company ceases to be a member of the company and the person or the person's successor in interest attains the status of an assignee as set forth in Section 48-2c-1102, upon the occurrence of one or more of the following events:

(a) the death of the member, except that the member's personal representative, executor, or administrator may exercise all of the member's rights for the purpose of settling the member's estate, including any power of an assignee and any power the member had under the articles of organization or operating agreement;

(b) the incapacity of the member, as defined in [Subsection] Section 75-1-201[(22)], except that the member's guardian or conservator or other legal representative may exercise all of the member's rights for the purpose of administering the member's property, including any power of an assignee and any power the member had under the articles of organization or operating agreement;

(c) the member withdraws by voluntary act from the company as provided in Section 48-2c-709;

(d) upon the assignment of the member's entire interest in the company;

(e) the member is expelled as a member pursuant to Section 48-2c-710; or

(f) unless otherwise provided in the operating agreement, or with the written consent of

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all other members:

(i) at the time the member:

(A) makes a general assignment for the benefit of creditors:

(B) files a voluntary petition in bankruptcy:

(C) becomes the subject of an order for relief in bankruptcy proceedings:

(D) files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation:

(E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of the nature described in Subsections (1)(f)(i)(A) through (D); or

(F) seeks, consents to, or acquiesces in the appointment of a ~~guardian of a minor or which the district reasonably believes to be necessary in connection with a given application to substantiate any claim or assertion made in connection with the application for guardianship.~~

~~—— (4) Upon receipt of the information and documentation required under Subsections (2) and (3), and a determination by the board that the information is accurate, that the requirements of this section have been met, and that the interests of the child would best be served by granting the requested guardianship, the school board or its authorized representative may designate the applicant as guardian of the child by issuing a designation of guardianship letter to the applicant.~~

~~—— (5) (a) If a local school board has adopted a policy permitting the board to designate a guardian under this section, a denial of an application for appointment of a guardian may be appealed to the district court in which the school district is located.~~

~~—— (b) The court shall uphold the decision of the board unless it finds, by clear and convincing evidence, that the board's decision was arbitrary and capricious.~~

~~—— (c) An applicant may, rather than appealing the board's decision under Subsection (5)(b), file an original Petition for Appointment of Guardian with the district court, which action shall proceed as if no decision had been made by the school board.~~

~~—— (6) A responsible adult obtaining guardianship under this section has the same rights, authority, and responsibilities as a guardian appointed under [Section 75-5-201] Title 75, Chapter 5c, Utah Protective Proceedings Act.~~

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~~—— (7) (a) The school district shall deliver the original documents filed with the school district, together with a copy of the designation of guardianship issued by the district, in person or by any form of mail requiring a signed receipt, to the clerk of the state district court in which the school district is located.~~

~~—— (b) The court may not charge the school district a fee for filing guardianship papers under this section.~~

~~—— (8) (a) The authority and responsibility of a custodial parent or legal guardian submitting an affidavit under this section may be restored by the district, and the guardianship obtained under this section terminated by the district:~~

~~—— (i) upon submission to the school district in which the guardianship was obtained of a signed and notarized statement by the person who consented to guardianship under Subsection (2)(a) requesting termination of the guardianship; or~~

~~—— (ii) by the person accepting guardianship under Subsection (2)(b) requesting the termination of the guardianship.~~

~~—— (b) If the school district determines that it would not be in the best interests of the child to terminate the guardianship, the district may refer the request for termination to the state district court in which the documents were filed under Subsection (5) for further action consistent with the interests of the child.~~

~~—— (9) The school district shall retain copies of all documents required by this section until the child in question has reached the age of 18 unless directed to surrender the documents by a court of competent jurisdiction.~~

~~—— (10) (a) Intentional submission to a school district of fraudulent or misleading information under this part is punishable under Section 76-8-504.~~

~~—— (b) A school district which has reason to believe that a party has intentionally submitted false or misleading information under this part may, after notice and opportunity for the party to respond to the allegation:~~

~~—— (i) void any guardianship, authorization, or action which was based upon the false or misleading information; and~~

~~—— (ii) recover, from the party submitting the information, the full cost of any benefits received by the child on the basis of the false or misleading information, including tuition, fees, and other unpaid school charges, together with any related costs of recovery.~~

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~~— (c) A student whose guardianship or enrollment has been terminated under this section may, upon payment of all applicable tuition and fees, continue in enrollment until the end of the school year unless excluded from attendance for cause.~~

~~— Section 2. Section 53A-2-203.5 is amended to read:~~

~~— 53A-2-203.5. Recognition of guardianship:~~

~~— (1) A document issued by other than a court of law which purports to award guardianship to a person who is not a legal resident of the jurisdiction in which the guardianship is awarded is not valid in [the] this state [of Utah] until reviewed and approved by a [Utah] court in this state.~~

~~— (2) The procedure for obtaining approval under Subsection (1) is the procedure required under Title 75, Chapter [5] 5c, Part 2, [for obtaining a court appointment of a guardian] Appointment of a Guardian for a Minor.~~

~~}; trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties:~~

~~(ii) 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any stay, the appointment is not vacated;~~

~~(iii) in the case of a member that is another limited liability company, the filing of articles of dissolution or the equivalent for that company or the judicial dissolution of that company or the administrative dissolution of that company and the lapse of any period allowed for reinstatement;~~

~~(iv) in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period allowed for reinstatement; or~~

~~(v) in the case of a member that is a limited partnership, the dissolution and commencement of winding up of the limited partnership.~~

~~(2) The articles of organization or operating agreement may provide for other events~~

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the occurrence of which result in a person's ceasing to be a member of the company.

Section 3. Section 75-1-201 is amended to read:

75-1-201. General definitions.

Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in this code:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under ~~§§~~Title 75, ~~§§~~Chapter 3, Part 3, Informal Probate and Appointment Proceedings.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.

(5) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) "Claims," in respect to estates of decedents and protected persons, includes

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liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

"Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Conservator" means a person ~~who is~~ appointed by a court to manage the estate of a protected person.

(8) "Court" means any of the courts of record in this state having jurisdiction in matters relating to the affairs of decedents.

(9) "Descendant" of an individual means all of his descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.

(10) "Developmental disability" means a severe, chronic disability of an individual five years of age or older that:

(a) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) is manifested before the individual attains age 22;

(c) is likely to continue indefinitely;

(d) results in substantial functional limitations in three or more of the following areas of major life activity;

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency; and

(e) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated, except that the term, when applied to infants and young children means individuals from birth to age five, inclusive, who

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have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

~~[(10)]~~ [(11)] "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

~~[(11)]~~ [(12)] "Devisee" means any person designated in a will to receive a devise. For the purposes of ~~[(11)]~~ Title 75, ~~[(11)]~~ Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the beneficiaries are not devisees.

~~[(12)]~~ [(13)] "Disability" means cause for a protective order as described by Section 75-5-401. ~~[(11)]~~

~~[(13)]~~ ~~[(12)]~~ [(14)] "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

~~[(14)]~~ ~~[(13)]~~ [(15)] "Estate" includes the [property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.

~~[(15)]~~ ~~[(14)]~~ [(16)] "Exempt property" means that property of a decedent's estate which is described in Section 75-2-403.

~~[(16)]~~ ~~[(15)]~~ [(17)] "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

~~[(17)]~~ ~~[(16)]~~ [(18)] "Foreign personal representative" means a personal representative of another jurisdiction.

~~[(18)]~~ ~~[(17)]~~ [(19)] "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

~~[(19)]~~ ~~[(18)]~~ [(20)] "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension,

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profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

[(20)] ~~(19)~~21) "Guardian" means a person who has ~~{}~~qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument as provided in Section 75-5-202.5 ~~{}~~accepted an appointment as guardian, but excludes one who is ~~{}~~merely~~{}~~ a guardian ad litem.

[(21)] ~~(20)~~22) "Heirs," except as controlled by Section 75-2-711, means persons, including the surviving spouse and state, who are entitled under the statutes of intestate succession to the property of a decedent.

~~[(22) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.]~~

~~(21)~~23) "Incapacity" is measured by functional limitations and means a judicial determination after proof by clear and convincing evidence that an adult's ability to do any of the following is impaired to such an extent that the individual lacks the ability to meet essential requirements for financial protection or physical health, safety, or self-care:

- (a) receive and evaluate information;
- (b) make and communicate decisions;
- (c) provide for necessities such as food, shelter, clothing, health care, or safety; or
- (d) manage property.

[(23)] ~~(22)~~24) "Informal proceedings" mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

[(24)] ~~(23)~~25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent~~{}~~, ward, ~~{}~~ or protected person. It also includes persons having priority for appointment as personal representative, other fiduciaries representing interested persons, a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but incapacitated. The meaning as it relates to particular persons may vary from time to

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time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

~~[(25)]~~ ~~(24;26)~~ "Issue" of a person means descendant as defined in Subsection (9).

~~[(26)]~~ ~~(25;27)~~ "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

~~[(27)]~~ ~~(26;28)~~ "Lease" includes an oil, gas, or other mineral lease.

~~[(28)]~~ ~~(27;29)~~ "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

~~[(29)]~~ ~~(28;30)~~ "Minor" means a person who is under 18 years of age.

~~[(30)]~~ ~~(29;31)~~ "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

~~[(31)]~~ ~~(30;32)~~ "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

~~[(32)]~~ ~~(31;33)~~ "Organization" includes a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

~~[(33)]~~ ~~(32;34)~~ "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

~~[(34)]~~ ~~(33;35)~~ "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

~~[(35)]~~ ~~(34;36)~~ "Person" means an individual or an organization.

~~[(36)]~~ ~~(35;37)~~ (a) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(b) "General personal representative" excludes special administrator.

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[(37)] ~~(36)~~38 "Petition" means a written request to the court for an order after notice.

[(38)] ~~(37)~~39 "Proceeding" includes action at law and suit in equity.

[(39)] ~~(38)~~40 "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

[(40)] ~~(39)~~41 "Protected person" means a person ~~{, including a minor,}~~ for whom a ~~{}~~ conservator has been appointed. A "minor protected person" means a minor for whom ~~{}~~ ~~guardian or~~ a conservator has been appointed ~~{}~~ because of minority ~~{}~~ ~~or a protective order entered~~.

[(41)] ~~(40)~~42 "Protective proceeding" means a proceeding ~~{}~~ described in Section 75-5-401 ~~{}~~ ~~under Chapter 5c, Utah Protective Proceedings Act~~.

[(42)] ~~(41)~~43 "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[(43)] ~~(42)~~44 "Registrar" refers to the official of the court designated to perform the functions of registrar as provided in Section 75-1-307.

[(44)] ~~(43)~~45 "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, and, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

[(45)] ~~(44)~~46 "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

[(46)] ~~(45)~~47 "Sign" means, with present intent to authenticate or adopt a record other than a will:

- (a) to execute or adopt a tangible symbol; or
- (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

[(47)] ~~(46)~~48 "Special administrator" means a personal representative as described in Sections 75-3-614 through 75-3-618.

[(48)] ~~(47)~~49 "State" means a state of the United States, the District of Columbia, the

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Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States, or a Native American tribe or band recognized by federal law or formally acknowledged by a state.

~~[(49)]~~ ~~(~~48~~50)~~ "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~[(50)]~~ ~~(~~49~~51)~~ "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.

~~[(51)]~~ ~~(~~50~~52)~~ "Supervised administration" refers to the proceedings described in ~~§§~~Title 75, ~~§§~~ Chapter 3, Part 5, Supervised Administration.

~~[(52)]~~ ~~(~~51~~53)~~ "Survive," except for purposes of Part 3 of Article VI, Uniform ~~§§~~TOD ~~§~~ Transfer on Death (TOD) Security Registration Act, means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under Section 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived," "survivor," and "surviving."

~~[(53)]~~ ~~(~~52~~54)~~ "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~[(54)]~~ ~~(~~53~~55)~~ "Testator" includes an individual of either sex.

~~[(55)]~~ ~~(~~54~~56)~~ "Trust" includes a health savings account, as defined in Section 223, Internal Revenue Code, any express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in ~~§§~~Title 75, ~~§§~~ Chapter 6, Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

~~[(56)]~~ ~~(~~55~~57)~~ "Trustee" includes an original, additional, and successor trustee, and

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cotrustee, whether or not appointed or confirmed by the court.

~~[(57)]~~ (58) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority. ~~{}~~

~~[(58)]~~ ~~(~~56~~59)~~ "Will" includes codicil and any testamentary instrument which merely appoints an executor, revokes or revises another will, nominates a guardian ~~{ or conservator }~~, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Section 4. Section ~~{75-5-501}~~ 75-3-303 is amended to read:

~~{75-5-501}~~ 75-3-303. ~~{Power of attorney not affected by disability or lapse of time -- Agent responsibilities.~~

~~—— (1) Whenever a principal designates another as the principal's attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney-in-fact or agent is exercisable by the attorney-in-fact or agent as provided in the power on behalf of the principal notwithstanding:~~

~~—— (a) later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive; or~~

~~—— (b) the lapse of time since the execution of the instrument, unless the instrument states a time of termination.~~

~~—— (2) If an attorney-in-fact or agent determines that the principal has become incapacitated or has acquired a disability and the power of attorney by its terms remains in effect or becomes effective as a result of a principal's incapacity or disability, the attorney-in-fact or agent shall:~~

~~—— (a) notify all;~~ Informal probate -- Proof and findings required.

(1) In an informal proceeding for original probate of a will, the registrar shall determine whether:

(a) the application is complete;

(b) the applicant has made oath or affirmation that the statements contained in the

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application are true to the best of his knowledge and belief;

(c) the applicant appears from the application to be an interested ~~persons of the attorney-in-fact's or agent's status as the power of attorney holder within 30 days of the principal's incapacitation, and provide them with the attorney-in-fact's or agent's name and address;~~

~~— (b) provide to any interested persons upon written request, a copy of the power of attorney;~~

~~— (c) provide to any interested persons upon written request, an annual accounting of the assets to which the power of attorney applies, unless the power of attorney specifically directs that the attorney-in-fact or agent is not required to do so; and~~

~~— (d) notify all interested persons upon the death of the principal;~~

~~— (3) All interested persons shall be notified within 10 days if the attorney-in-fact or agent changes. The notification~~ person as defined in [Subsection] Section 75-1-201[(24)];

(d) on the basis of the statements in the application, venue is proper;

(e) an original, duly executed and apparently unrevoked will is in the registrar's possession;

(f) any notice required by Section 75-3-204 has been given and that the application is not within Section 75-3-304; and

(g) it appears from the application that the time limit for original probate has not expired.

(2) The application shall be ~~made by the new attorney-in-fact or agent who shall then be accountable to the interested persons in accordance with Subsection (2):~~

~~— (4) All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's heirs, devisees, and~~ denied if it indicates that a personal representative ~~(as if the principal were alive, competent, and did not have a disability, except as provided in Section 75-5-503:~~

~~— (5) A conservator may be appointed for a principal even though the principal has a valid power of attorney in place. If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator, pursuant to court order {}~~ has been

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appointed in another county of this state or except as provided in Subsection ~~{75-5-408(1)(d)}~~, has the same power the principal would have had, if the principal did not have a disability or was not incompetent, to revoke, suspend, or terminate all or any part of the power of attorney or agency:

~~—— (6) For the purposes of this section, "~~(4), if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under Section 75-2-502, 75-2-503, or 75-2-506 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(4) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person{" means any person entitled to a part of the principal's estate from the principal's will or through the intestacy laws, whichever is applicable}, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(5) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under Subsection (1) above may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

Section 5. Section ~~{75-5b-102}~~75-3-308 is amended to read:

~~{75-5b-102. Definitions:~~

~~—— In this chapter:~~

~~—— (1) "Adult" means an individual who has attained 18 years of age.~~

~~—— [(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors.]~~

~~—— [(3)] (2) "Emergency" means circumstances that likely will result in substantial harm to a respondent's health, safety, estate, or welfare, and in which 75-3-308. Informal~~

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appointment proceedings -- Proof and findings required.

(1) In informal appointment proceedings, the registrar shall determine whether:

(a) the application for informal appointment of a personal representative is complete;

(b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(c) the applicant appears from the application to be an interested person as defined in [Subsection] Section 75-1-201[(24)];

(d) on the basis of the statements in the application, venue is proper;

(e) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a ~~{guardian or conservator~~ is necessary because no other person has authority to and is willing to act on the respondent's behalf.

~~—— [(4) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons.]~~

~~—— [(5)] (3) "Guardianship order" means an order appointing a guardian.~~

~~—— [(6)] (4) "Guardianship proceeding" means a proceeding in which an order for {~~special administrator;

(f) any notice required by Section 75-3-204 has been given; and

(g) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment~~{ of a guardian is sought or has been issued}.~~

~~{[(7)] (5) "Home state" means the state in which the respondent was physically present for at least six consecutive months immediately before the filing of a petition for the appointment of a guardian or protective order. A period of temporary absence counts as part of the six-month period.~~

~~—— [(8) "Incapacitated person" means an adult for whom a guardian}{(2) Unless Section 75-3-612 controls, the application shall be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in Subsection 75-3-610(3) has been appointed{.}~~

~~—— [(9)] (6) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.~~

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— [(10)] (7) "Person," except in the terms "incapacitated person" or "protected person," means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

— [(11)] "Protected person" means an adult for whom a protective order has been made.]

— [(12)] (8) "Protective order" means an order appointing a conservator or another court order related to management of an adult's property.

— [(13)] "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.]

— [(14)] (9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

— [(15)] (10) "Respondent" means an adult for whom a protective order or the appointment of a guardian or conservator is sought.

— [(16)] (11) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

— [(17)] (12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States; in this or another county of this state, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state, and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

Section 6. Section ~~{75-5b-302}~~ 75-5-303 is amended to read:

~~{75-5b-302. Accepting guardianship or conservatorship transferred from another state.~~

— (1) ~~To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 75-5b-301, the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.~~

— (2) ~~Notice of a petition under Subsection (1) shall be given by the petitioner to those~~

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~~persons who would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice shall be given in the same manner as notice is given in this state.~~

~~—— (3) On the court's own motion or on request of the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to Subsection (1).~~

~~—— (4) The court shall issue an order provisionally granting a petition filed under Subsection (1) unless:~~

~~—— (a) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or~~

~~—— (b) the guardian or conservator is ineligible for appointment in this state.~~

~~—— (5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 75-5b-301 transferring the proceeding to this state.~~

~~—— (6) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.~~

~~—— (7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.~~

~~—— (8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under [Title 75,] Chapter [5] 5c, [Part 3, Guardians of Incapacitated Persons] Utah Protective Proceedings Act, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.~~

~~—— Section 7. Section 75-5c-101 is enacted to read:~~

~~CHAPTER 5c. UTAH PROTECTIVE PROCEEDINGS ACT~~

~~Part 1. General Provisions~~

~~—— 75-5c-101. Title:~~

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~~This chapter is known as the "Utah Protective Proceedings Act."~~

~~Section 8. Section 75-5c-102 is enacted to read:~~

~~**75-5c-102. Definitions.**~~

~~As used in this chapter:~~

~~(1) "Best interest decision making standard" means the guardian or conservator makes the decision that the protected person would have made when competent. If:~~

~~(a) following the protected person's wishes would cause the person harm;~~

~~(b) the guardian or conservator cannot determine the protected person's wishes; or~~

~~(c) the protected person has never had capacity, then the guardian or conservator, after considering the protected person's expressed wishes, makes the decision that is the least intrusive, least restrictive, and most normalizing course of action to accommodate the protected person's particular functional limitations;~~

~~(2) "Court" means the district court.~~

~~(3) "Developmental disability" means a severe, chronic disability of an individual five years of age or older that:~~

~~(a) is attributable to a mental or physical impairment or combination of mental and physical impairments;~~

~~(b) is manifested before the individual attains age 22;~~

~~(c) is likely to continue indefinitely;~~

~~(d) results in substantial functional limitations in three or more of the following areas of major life activity:~~

~~(i) self-care;~~

~~(ii) receptive and expressive language;~~

~~(iii) learning;~~

~~(iv) mobility;~~

~~(v) self-direction;~~

~~(vi) capacity for independent living; and~~

~~(vii) economic self-sufficiency; and~~

~~(e) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated, except that the term, when~~

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~~applied to infants and young children, means individuals from birth to age five, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.~~

~~—— (4) "Health care" and "health care decisions" mean the same as in Section 75-2a-103.~~

~~—— (5) "Legal representative" includes a guardian or conservator acting for a protected person in this state or elsewhere, a trustee or custodian of a trust or custodianship of which the protected person is a beneficiary, an attorney, a guardian ad litem, a representative payee, and an agent designated under a power of attorney in which the protected person is the principal.~~

~~—— (6) "Professional conservator" means a trust company permitted by the commissioner of financial institutions under Subsection 7-5-2(1) to accept an appointment to act in an agency or fiduciary capacity.~~

~~—— (7) "Professional guardian" means a person who has been certified as a National Certified Guardian or National Master Guardian by the Center for Guardianship Certification.~~

~~—— (8) "Respondent" means an individual for whom a guardian, conservator, or protective order is sought.~~

~~—— Section 9. Section 75-5c-103 is enacted to read:~~

~~—— **75-5c-103. Incapacity -- Findings -- Factors.**~~

~~—— In deciding whether the respondent is incapacitated, the court shall enter findings in which the court identifies the functional limitations that cause the respondent to be incapacitated. The court should consider and weigh, as appropriate:~~

~~—— (1) whether the respondent's condition, limitations, and level of functioning leave the respondent at risk of:~~

~~—— (a) their property being dissipated;~~

~~—— (b) being unable to provide for their support, or for the support of individuals entitled to the respondent's support;~~

~~—— (c) being financially exploited;~~

~~—— (d) being abused or neglected, including self-injurious behavior or self-neglect; or~~

~~—— (e) having their rights violated;~~

~~—— (2) whether the respondent has a physical or mental illness, disability, condition, or syndrome and the prognosis;~~

~~—— (3) whether the respondent is able to evaluate the consequences of alternative~~

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decisions:

~~—— (4) whether the respondent can manage the activities of daily living through training, education, support services, mental and physical health care, medication, therapy, assistants, assistive devices, or other means;~~

~~—— (5) the nature and extent of the demands placed on the respondent by the need for care;~~

~~—— (6) the nature and extent of the demands placed on the respondent by their property;~~

~~—— (7) the consistency of the respondent's behavior with their long-standing values, preferences, and patterns of behavior; and~~

~~—— (8) other relevant factors;~~

~~—— Section 10. Section ~~75-5c-104~~ is enacted to read:~~

~~—— **75-5c-104. Transfer of property to or on behalf of a minor.**~~

~~—— (1) Unless the person knows that a conservator has been appointed for a minor or that a proceeding to appoint a conservator is pending, a person required to transfer money or personal property to a minor may transfer up to \$50,000 per year to:~~

~~—— (a) the minor, if the minor is married or emancipated or if payment to the minor is authorized by statute;~~

~~—— (b) the minor's guardian;~~

~~—— (c) the minor's custodian under Chapter 5a, Uniform Transfers to Minors Act;~~

~~—— (d) a person responsible for the minor's care and custody with whom the minor resides;~~

~~or~~

~~—— (e) a financial institution for deposit in an interest-bearing account or certificate in the minor's sole name and giving notice of the deposit to the minor;~~

~~—— (2) A person who transfers money or property in compliance with this section is not responsible for its proper application;~~

~~—— (3) A custodian, guardian, or a person responsible for the minor's care and custody who receives money or property for a minor shall apply it to the minor's support, care, education, health, and welfare and may not derive a personal financial benefit, except for reimbursement for necessary expenses. Any excess shall be preserved for the minor's future support, care, education, health, and welfare. Any balance shall be transferred to the minor upon emancipation or majority;~~

~~—— (4) A person receiving money under this section on behalf of a minor has the power to~~

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~~settle and release in whole or in part the claims belonging to the minor giving rise to the duty to pay money to the minor.~~

~~Section 11. Section 75-5c-105 is enacted to read:~~

~~**75-5c-105. Delegation of authority by parent or guardian.**~~

~~A parent or guardian of a minor or protected person may delegate to another person any authority regarding care, custody, or property of the minor or protected person except the authority to consent to marriage or adoption. The delegation shall be by a properly executed power of attorney and may not exceed six months.~~

~~Section 12. Section 75-5c-106 is enacted to read:~~

~~**75-5c-106. Venue -- Transfer of venue.**~~

~~(1) Venue for a proceeding under this chapter is:~~

~~(a) in the county in which the respondent resides or is present at the time the proceeding is commenced;~~

~~(b) in the county in which the respondent's will is or could be probated, if the guardian or conservator is nominated by such will;~~

~~(c) in the county of the court that committed the respondent under Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability; or under Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities;~~
~~or~~

~~(d) in the county in which property of the respondent is located, if the petition is to appoint a conservator or for a protective order and the respondent does not reside in this state.~~

~~(2) If a proceeding is brought in more than one county, the court of the county in which the proceeding is first brought has the exclusive right to proceed unless that court determines that venue is proper in another county and that the interests of justice require that the proceeding be transferred.~~

~~(3) The court that appoints a guardian or conservator or enters a protective order retains venue for proceedings after the appointment or order unless that court determines that venue is proper in another county and that the interests of justice require that the proceeding be transferred.~~

~~Section 13. Section 75-5c-107 is enacted to read:~~

~~**75-5c-107. Appointment and status of guardian or conservator.**~~

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~~—— (1) A person becomes a guardian or conservator upon acceptance of a court appointment.~~

~~—— (2) A guardianship, conservatorship, or entry of a protective order continues until terminated by court order.~~

~~—— (3) Acceptance of a testamentary appointment as guardian or conservator under a will probated in the state of the testator's domicile is effective in this state.~~

~~—— Section 14. Section 75-5c-108 is enacted to read:~~

~~—— **75-5c-108. Acceptance of appointment.**~~

~~—— (1) The guardian or conservator has authority to act upon filing an acceptance of appointment. A guardian or conservator shall file an acceptance of appointment within 30 days after the later of:~~

~~—— (a) entry of the order of appointment; or~~

~~—— (b) the occurrence of a future event designated in the appointment order.~~

~~—— (2) By accepting appointment, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.~~

~~—— (3) If a person nominated by will or signed writing timely complies with Section 75-5c-201, 75-5c-301, or 75-5c-401, the nominee's acts before acceptance of the appointment that are beneficial to the respondent have the same effect as those that occur after acceptance.~~

~~—— Section 15. Section 75-5c-109 is enacted to read:~~

~~—— **75-5c-109. Letters of office.**~~

~~—— (1) After acceptance, the court shall issue appropriate letters of office to the guardian or conservator. The letters shall state the authority of the guardian or conservator and, if the guardian's or conservator's authority is for less than the entire estate, the property subject to the guardian's or conservator's possession, ownership, or control.~~

~~—— (2) Letters of office are evidence of title to the protected person's property and may be filed or recorded to give notice of title.~~

~~—— Section 16. Section 75-5c-110 is enacted to read:~~

~~—— **75-5c-110. Nominating a guardian or conservator.**~~

~~—— (1) A person 14 years of age or older may nominate a person to be appointed as guardian or conservator for oneself or for one's child whom the parent has or may have in the future by will, durable power of attorney, or other signed writing that identifies the nominee~~

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~~and the office for which the nominee is nominated.~~

~~—— (2) The respondent may nominate someone orally at the hearing if the respondent is 14 years of age or older and has sufficient capacity to express a preference.~~

~~—— (3) The nomination may specify desired limitations on the authority to be given to the guardian or conservator.~~

~~—— (4) The person may revoke or amend the nomination before it is confirmed by the court.~~

~~—— Section 17. Section **75-5c-111** is enacted to read:~~

~~—— **75-5c-111. Petition to confirm nomination -- Notice -- Authority to act.**~~

~~—— (1) A person who nominates someone to be appointed as guardian or conservator may petition to confirm the nomination if the nominator will likely become incapacitated or unable to care for the respondent within two years.~~

~~—— (2) If no objection is filed within the time permitted or if an objection is filed and withdrawn, the court shall confirm the nomination and cut off the right of others to object if it finds that the nomination is in the respondent's best interest and the nominator will likely become incapacitated or unable to care for the respondent within two years.~~

~~—— (3) If an objection is filed, the court shall conduct proceedings to hear and determine the priority of appointment under Section 75-5c-114. An objection does not preclude confirmation of the nominee.~~

~~—— (4) An order under this section appoints a contingent guardian or conservator but does not determine the respondent's incapacity.~~

~~—— Section 18. Section **75-5c-112** is enacted to read:~~

~~—— **75-5c-112. Who may be guardian or conservator -- Priority.**~~

~~—— (1) The court may appoint as guardian or conservator any person whose appointment would be in the respondent's best interest.~~

~~—— (2) In appointing a guardian or conservator, the court shall consider qualified persons in the following order of priority, unless the court finds the appointment would be contrary to the respondent's best interest:~~

~~—— (a) a guardian or conservator, other than a substitute or special guardian or conservator, currently acting for the respondent in this state or elsewhere or a person nominated by that person;~~

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~~—— (b) the respondent's nominee, if the respondent is 14 years of age or older and at the time of the nomination the respondent had sufficient capacity to express a preference;~~

~~—— (c) the respondent's agent appointed under Chapter 2a, Advance Health Care Directive Act, or Chapter 5, Part 5, Powers of Attorney;~~

~~—— (d) the respondent's spouse;~~

~~—— (e) the respondent's adult child or a person nominated by a deceased adult child;~~

~~—— (f) the respondent's parent or a person nominated by a deceased parent;~~

~~—— (g) an adult with whom the respondent has resided for more than six months;~~

~~—— (h) an adult who has shown special care and concern for the respondent; and~~

~~—— (i) a professional guardian or conservator;~~

~~—— (3) If a person nominates more than one guardian or conservator, the most recent nomination controls;~~

~~—— (4) If two or more people who have equal priority to nominate a guardian or conservator are dead or incapacitated, the most recent nomination by the last person to die or to be adjudicated incapacitated has priority;~~

~~—— (5) If two or more people have equal priority, the court may select the one most qualified. In the best interest of the respondent, the court may decline to appoint a person having a higher priority and appoint a person having a lower priority or no priority;~~

~~—— (6) An owner, operator, or employee of a long-term care institution at which the respondent is receiving care may not be appointed guardian or conservator unless related to the respondent by blood, marriage, or adoption;~~

~~—— (7) The nomination of a guardian or conservator by a parent does not supersede the parental rights of either parent;~~

~~—— Section 19. Section ~~75-5c-113~~ is enacted to read:~~

~~—— ~~75-5c-113. Successor, additional or contingent guardian or conservator.~~~~

~~—— The court may appoint more than one guardian or conservator. The court may appoint a guardian or conservator to serve immediately or upon the occurrence of some future designated event. The court may appoint a successor guardian or conservator to serve in the event of a vacancy. Unless otherwise stated, a successor succeeds to the predecessor's duties, authority, and title to property. After acceptance under Section ~~75-5c-108~~, the court shall issue appropriate letters of office;~~

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~~Section 20. Section 75-5c-114 is enacted to read:~~

~~**75-5c-114. Termination, resignation, or removal.**~~

~~(1) A guardianship or conservatorship terminates upon court order.~~

~~(2) The court may accept the resignation or order the removal of the guardian or conservator upon finding that resignation or removal would be in the protected person's best interest.~~

~~(3) The court may terminate the guardianship, conservatorship, or protective order upon sufficient evidence that:~~

~~(a) the protected person has died;~~

~~(b) the minor protected person has been adopted, is emancipated, or has attained majority; or~~

~~(c) the protected person no longer needs the assistance or protection of a guardian, conservator, or protective order.~~

~~(4) Upon presentation of evidence establishing a prima facie case for termination, the court shall order termination, unless it is proven by clear and convincing evidence that continuation of the guardianship or conservatorship is in the protected person's best interest.~~

~~(5) Termination of the guardianship or conservatorship or death, incapacity, resignation, or removal of the guardian or conservator does not affect the liability of a guardian or conservator for previous acts or the obligation to account for the protected person's property.~~

~~(6) Upon termination of the guardianship or conservatorship, title to the protected person's property passes to the person or to the person's successors. An order terminating the guardianship or conservatorship may be filed or recorded to give notice of title to the property. The order terminating the guardianship or conservatorship shall provide for expenses of administration and direct the guardian or conservator to execute appropriate instruments to evidence transfer of title, to confirm a distribution previously made, and to file a final report.~~

~~(7) The court shall enter a final discharge order upon the approval of the final report and satisfaction of any other conditions ordered by the court.~~

~~Section 21. Section 75-5c-115 is enacted to read:~~

~~**75-5c-115. Special appointment.**~~

~~(1) The court may appoint a special guardian or conservator if the court finds that:~~

~~(a) following the procedures of this chapter would likely result in substantial harm to~~

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~~the respondent's health, safety, or welfare:~~

~~—— (b) no other person appears to have authority to act;~~

~~—— (c) the welfare of the respondent requires immediate action; and~~

~~—— (d) the appointment would be in the respondent's best interest.~~

~~—— (2) The court may appoint a special guardian or conservator ex parte if it finds that the respondent or the respondent's estate will be substantially harmed before a hearing can be held. Unless the respondent is represented by an attorney, the court shall appoint an attorney at the earliest possible time to represent the respondent.~~

~~—— (3) The petition and notice of the hearing shall be served using the method most likely to give prompt actual notice. If a special guardian or conservator is appointed without notice and hearing, notice of the appointment shall be served within two days after the appointment and a hearing on the appropriateness of the appointment shall be held within five days after the appointment.~~

~~—— (4) Appointment of a special guardian or conservator is not a determination of the respondent's incapacity.~~

~~—— (5) After the hearing, the court may appoint a special guardian or conservator for a specified period not to exceed 60 days, and the court may remove a special guardian or conservator at any time. The appointment terminates on the date specified by the court.~~

~~—— (6) The court may order only the authority justified by the emergency. The special guardian or conservator may exercise only the authority specified in the order. The special guardian or conservator shall make any report the court requires. The provisions of this chapter concerning guardians or conservators apply to a special guardian or conservator.~~

~~—— Section 22. Section 75-5c-116 is enacted to read:~~

~~—— **75-5c-116. Substitute appointment.**~~

~~—— (1) The court may appoint a substitute guardian or conservator if it finds that:~~

~~—— (a) the guardian or conservator is not effectively exercising authority or performing duties;~~

~~—— (b) the protected person's welfare requires immediate action; and~~

~~—— (c) the appointment would be in the protected person's best interests.~~

~~—— (2) The court may appoint a substitute guardian or conservator ex parte if it finds that the respondent or the respondent's estate will be substantially harmed before a hearing can be~~

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~~held. Unless the respondent is represented by an attorney, the court shall appoint an attorney to represent the respondent:~~

~~—— (3) The petition and notice of the hearing shall be served using the method most likely to give prompt actual notice. If a substitute guardian or conservator is appointed without notice and a hearing, notice of the appointment shall be served within two days after the appointment and a hearing on the appropriateness of the appointment shall be held within five days after the appointment:~~

~~—— (4) After the hearing, the court may appoint a substitute guardian or conservator for a specified period not to exceed six months, and the court may remove a substitute guardian or conservator at any time:~~

~~—— (5) Except as ordered by the court, a substitute guardian or conservator has the authority and duties in the previous order of appointment. The authority of a previously appointed guardian or conservator is suspended as long as a substitute guardian or conservator has authority:~~

~~—— (6) A substitute guardian or conservator shall make any report the court requires. The provisions of this chapter concerning guardians and conservators apply to a substitute guardian or conservator:~~

~~—— Section 23. Section 75-5c-117 is enacted to read:~~

~~—— **75-5c-117. Proceedings after appointment.**~~

~~—— (1) After appointing a guardian or conservator or entering a protective order, the court may:~~

~~—— (a) require, increase, or decrease a bond or collateral;~~

~~—— (b) require a report from the guardian or conservator;~~

~~—— (c) direct distribution;~~

~~—— (d) instruct the guardian or conservator concerning a fiduciary responsibility;~~

~~—— (e) modify the authority of the guardian or conservator because authority previously granted is excessive or insufficient or because of a change in the protected person's incapacity;~~

~~—— (f) permit or deny the guardian or conservator to exercise authority requiring a court order;~~

~~—— (g) terminate the guardianship or conservatorship;~~

~~—— (h) remove a guardian or conservator;~~

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- ~~—— (i) accept the resignation of a guardian or conservator;~~
- ~~—— (j) appoint a substitute guardian or conservator;~~
- ~~—— (k) appoint a successor or additional guardian or conservator;~~
- ~~—— (l) find the guardian or conservator in contempt for:~~
 - ~~—— (i) violating a fiduciary responsibility imposed by statute, rule, or court order; or~~
 - ~~—— (ii) decisions or acts by the guardian or conservator that the court finds to be substantially contrary to the management plan;~~
- ~~—— (m) approve a management plan; or~~
- ~~—— (n) grant other appropriate relief;~~
- ~~—— (2) A protected person or person interested in the welfare of the protected person may file a petition or a motion under the Utah Rules of Civil Procedure for an order under this section.~~
- ~~—— (3) A protected person is entitled to the same rights and procedures in proceedings under this section as in an original proceeding, except that the right to an attorney applies only to a petition to limit or to terminate the appointment.~~
- ~~—— (4) Sanctions for contempt of court include removal of the guardian or conservator and imposing on the guardian or conservator personal responsibility for any financial loss caused by the guardian's or conservator's conduct that does not meet the standards of conduct in this chapter.~~
- ~~—— Section 24. Section **75-5c-118** is enacted to read:~~
- ~~—— **75-5c-118. End of representation -- Guardian ad litem:**~~
 - ~~—— (1) Unless the court otherwise directs, an attorney's representation of the respondent ends when the time to appeal the final order expires.~~
 - ~~—— (2) At any stage of a protective proceeding, a court may appoint a guardian ad litem if the court determines that representation of the interests of the respondent or protected person is inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals. The court shall state on the record the duties of the guardian ad litem and its reasons for the appointment.~~
- ~~—— Section 25. Section **75-5c-119** is enacted to read:~~
- ~~—— **75-5c-119. Bonds:**~~
 - ~~—— (1) Subject to the provisions of Title 7, Financial Institutions Act, relating to the~~

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~~bonding requirements for corporate fiduciaries, the court may require a guardian or conservator to furnish a bond with sureties as it may specify conditioned upon faithful discharge of all fiduciary responsibilities:~~

~~—— (2) Unless otherwise directed, the bond shall be in the amount of:~~

~~—— (a) the aggregate capital value of the protected person's property subject to the guardian's or conservator's possession, ownership, or control; plus~~

~~—— (b) one year's estimated income; minus~~

~~—— (c) the value of assets deposited under arrangements requiring a court order for removal and the value of any real property that the guardian or conservator, by express limitation, lacks authority to sell or convey without court authorization:~~

~~—— (3) Unless otherwise directed by the court, the cost of the bond may be assessed against the respondent's estate. The court may dispense with the bond for good cause. Instead of sureties, the court may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property:~~

~~—— (4) Unless otherwise provided by the terms of the bond, the sureties and the guardian or conservator are jointly and severally liable:~~

~~—— (5) By executing the bond, the surety consents to the jurisdiction of the court in any proceeding about the guardian's or conservator's fiduciary responsibilities in which the surety is named as a party. Notice of the proceeding and a copy of any petition, motion, or other paper shall be served on the surety under Utah Rules of Civil Procedure, Rule 5, at the address shown in the court records and at any other address known to the petitioner:~~

~~—— (6) If a proceeding against the primary obligor is not barred, a proceeding may be brought by a conservator, successor conservator, or any interested person against a surety for breach of the obligation of the bond. The bond may be proceeded against until liability under the bond is exhausted:~~

~~—— Section 26. Section ~~75-5c-120~~ is enacted to read:~~

~~—— ~~75-5c-120. Compensation for services and reimbursement of expenses:~~~~

~~—— (1) If not otherwise paid and if payment does not deprive the protected person or individuals entitled to the protected person's support of food, shelter, clothing, and other necessities, the following are entitled to reasonable payment from the estate for services and expenses:~~

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~~— (a) the respondent's or protected person's attorney, guardian ad litem, guardian, and conservator;~~

~~— (b) the petitioner's attorney, if the petition results in the appointment of a guardian or conservator, the entry of a protective order, or the entry of any other order that benefits the protected person; and~~

~~— (c) any person appointed by the court.~~

~~— (2) To qualify for payment, the petition or service shall:~~

~~— (a) benefit the respondent or protected person;~~

~~— (b) be filed or the service provided in good faith;~~

~~— (c) be reasonable and necessary; and~~

~~— (d) be conducted responsibly.~~

~~— (3) Claims for compensation and reimbursement shall be presented to the conservator if one has been appointed. If there is no conservator or if the conservator is the person to be paid, someone affiliated with the person to be paid, or someone within the third degree of relationship to the person to be paid, the compensation or reimbursement may be approved by the court. In allowing the claim, the conservator or court may consider the complexity of the service, the provider's experience, and any other relevant factor.~~

~~— (4) If the court finds the petition is without merit, the petitioner shall pay for the services and expenses in Subsection (1).~~

~~— (5) If the court determines that the payments are excessive or inappropriate, the excessive or inappropriate amount shall be repaid to the estate.~~

~~— Section 27. Section ~~75-5c-121~~ is enacted to read:~~

~~**75-5c-121. Fiduciary's personal funds:**~~

~~A guardian or conservator has no legal obligation to use the guardian's or conservator's personal funds for the protected person's expenses solely by reason of the guardianship or conservatorship.~~

~~— Section 28. Section ~~75-5c-122~~ is enacted to read:~~

~~**75-5c-122. Monitoring appointments:**~~

~~The court may establish a system for monitoring guardians and conservators, including their reports. The court may appoint a visitor to review records of or any report filed by a guardian or conservator. The court may appoint a visitor to interview the protected person, the~~

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~~guardian, or the conservator and to make any other investigation the court directs. The court may order a guardian or conservator to submit the assets subject to the guardian's or conservator's possession, ownership, or control to an examination made in a manner the court directs.~~

~~Section 29. Section 75-5c-123 is enacted to read:~~

~~**75-5c-123. Liability on reported matters:**~~

~~An order, after notice, approving an intermediate report of a guardian or conservator adjudicates liabilities concerning matters adequately disclosed in the report. An order, after notice, approving a final report adjudicates all previously unsettled liabilities relating to the guardianship or conservatorship adequately disclosed in the report.~~

~~Section 30. Section 75-5c-124 is enacted to read:~~

~~**75-5c-124. Previous orders and letters remain valid.**~~

~~Orders entered and letters issued before the effective date of this chapter remain valid after the effective date of this chapter.~~

~~Section 31. Section 75-5c-201 is enacted to read:~~

Part 2. Appointment of a Guardian for a Minor

~~**75-5c-201. Petition to appoint a guardian for a minor -- Findings -- Procedures:**~~

~~(1) A minor or a person interested in the minor's welfare may file a verified petition to appoint a guardian. If the petitioner is nominated by will or signed writing, the petitioner shall file a copy of the will or signed writing with the petition.~~

~~(2) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing on the petition.~~

~~(3) The court shall appoint a guardian for a specified time not to exceed the respondent's 18th birthday if it finds that:~~

~~(a) the appointment is in the respondent's best interests;~~

~~(b) a qualified person seeks appointment;~~

~~(c) the court has jurisdiction and venue is proper;~~

~~(d) the required notices have been given; and~~

~~(e) (i) the parents consent to the appointment;~~

~~(ii) all parental rights have been terminated; or~~

~~(iii) the parents are unwilling or unable to exercise their parental rights.~~

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~~—— (4) In other cases, the court may dismiss the petition or make any other disposition that will serve the respondent's best interests.~~

~~—— (5) If the minor is 11 years of age or older and not a resident of Utah:~~

~~—— (a) the school district in which the guardian resides is a necessary party;~~

~~—— (b) the petitioner shall serve on the superintendent of the school district in which the minor would attend school in Utah:~~

~~—— (i) a certificate from the police authority in the jurisdiction where the minor has lived during the previous two years stating whether there have been any criminal or delinquency charges filed against the minor and whether the minor is the subject of an investigation in that jurisdiction; and~~

~~—— (ii) a release allowing the superintendent access to all criminal and juvenile records of the minor in those jurisdictions where the minor has resided during the previous two years; and~~

~~—— (c) the court may deny the appointment of a guardian if it finds that the school district has proven by a preponderance of the evidence that:~~

~~—— (i) the primary purpose for the guardianship is to avoid the payment of tuition that a school district may assess against a nonresident; or~~

~~—— (ii) the minor's behavior indicates an ongoing unwillingness to abide by applicable law or school rules.~~

~~—— (6) If a school district files an objection for reasons described in Subsection (5)(c)(i), and the court does not find in favor of the school district, the court may award the petitioner attorney fees and costs if the court finds that the school district's arguments lack a reasonable basis in law or fact.~~

~~—— (7) If the court determines that the respondent's best interests are or may be inadequately represented, it may appoint an attorney to represent the respondent, giving consideration to the respondent's choice if the respondent is 14 years of age or older.~~

~~—— Section 32. Section 75-5c-202 is enacted to read:~~

~~—— **75-5c-202. Guardian's authority.**~~

~~—— (1) Except as otherwise limited by the court, a guardian has the authority of a parent regarding the protected person's support, care, education, health, and welfare.~~

~~—— (2) A guardian may:~~

~~—— (a) take custody of the protected person and establish their dwelling place, but may~~

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~~establish or move the protected person's dwelling place outside of this state only if approved by court order;~~

~~—— (b) consent to medical or other care, treatment, or service for the protected person;~~

~~—— (c) consent to the protected person's marriage;~~

~~—— (d) if a conservator has not been appointed, apply for, start proceedings for, receive, and compel delivery of property due the protected person or benefits to which the protected person may be entitled, up to \$50,000 per year; and~~

~~—— (e) if a conservator has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the protected person or to pay money for the protected person's benefit;~~

~~—— (3) The court may expressly authorize the guardian to consent to adoption of the protected person;~~

~~—— Section 33. Section 75-5c-203 is enacted to read:~~

~~—— **75-5c-203. Guardian's duties.**~~

~~—— (1) Except as otherwise limited by the court, the guardian has the duties and responsibilities of a parent regarding the protected person's support, care, education, health, and welfare;~~

~~—— (2) The guardian shall:~~

~~—— (a) within 14 days after appointment, serve on the protected person and all other people entitled to notice of the petition, a copy of the appointment order and notice of the right to request termination or modification;~~

~~—— (b) within 90 days after appointment, file and serve a management plan, as required by court rule or court order, describing the strategies that will be used to implement the court order;~~

~~—— (c) file and serve a report on the protected person's condition to the satisfaction of the court upon resignation or removal, upon termination, and as required by court rule or court order;~~

~~—— (d) file a final report and petition to terminate the guardianship within 30 days after the protected person dies or reaches majority;~~

~~—— (e) immediately notify the court and interested persons if the protected person or guardian changes their dwelling place;~~

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- ~~—— (f) if reasonable under the circumstances, encourage the protected person to participate in decisions and act on their own behalf;~~
- ~~—— (g) become and remain personally acquainted with the protected person and maintain sufficient contact with the protected person to know of their preferences, values, capabilities, limitations, needs, opportunities, and physical and mental health;~~
- ~~—— (h) when acting on behalf of the protected person, exercise the degree of care, diligence, and good faith that an ordinarily careful person exercises in their own affairs;~~
- ~~—— (i) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;~~
- ~~—— (j) take reasonable care of the protected person's personal effects, and if necessary to protect the protected person's property, petition for the appointment of a conservator or for a protective order under Part 4, Appointment of a Conservator and Other Protective Orders;~~
- ~~—— (k) expend the protected person's money for their current needs for support, care, education, health, and welfare;~~
- ~~—— (l) conserve for the protected person's future needs any of the estate that exceeds the protected person's current needs or, if a conservator has been appointed, pay the excess to the conservator at least annually;~~
- ~~—— (m) keep the protected person's estate separate from the guardian's money and property;~~
- ~~—— (n) keep contemporaneous records and make them available for inspection as directed by the court;~~
- ~~—— (o) at termination, deliver any of the estate subject to the guardian's possession, ownership, or control and any records as directed by the court;~~
- ~~—— (p) if a conservator has been appointed, account at least annually to the conservator for the protected person's income and expenses and for any of the estate subject to the guardian's possession, ownership, or control; and~~
- ~~—— (q) if a conservator has not been appointed;~~
- ~~—— (i) file and serve within 90 days after appointment a management plan as required by court rule or court order describing the strategies that will be used to implement the court order;~~
- ~~—— (ii) file and serve within 90 days after appointment an inventory of the estate subject to the guardian's possession, ownership, or control under an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits; and~~

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~~—— (iii) file and serve a report about the administration of the protected person's estate to the satisfaction of the court upon resignation or removal, upon termination, and as required by court rule or court order.~~

~~—— (3) If a protected person's parent consents to the protected person's adoption, the guardian is entitled to:~~

~~—— (a) receive notice of and intervene in the adoption proceeding; and~~

~~—— (b) present evidence relevant to the protected person's best interests.~~

~~—— (4) A parent of a protected person retains residual parental rights and duties as defined in Section 78A-6-105.~~

~~—— Section 34. Section 75-5c-204 is enacted to read:~~

~~—— **75-5c-204. Guardian's personal liability.**~~

~~—— (1) A guardian is not liable to third persons for the protected person's acts solely by reason of the guardianship.~~

~~—— (2) If the guardian performs fiduciary responsibilities with the degree of care, diligence, and good faith that an ordinarily careful person exercises in their own affairs, the guardian is not liable for acts or omissions in performing the fiduciary responsibilities.~~

~~—— (3) If the guardian selects a third person to perform a service for the protected person with the degree of care, diligence, and good faith that an ordinarily careful person exercises in their own affairs, the guardian is not liable for injury resulting from the wrongful conduct of the third person.~~

~~—— Section 35. Section 75-5c-301 is enacted to read:~~

~~Part 3. Appointment of a Guardian for an Adult~~

~~—— **75-5c-301. Petition to appoint a guardian for an adult.**~~

~~—— The person to be protected or any person interested in the respondent's welfare may file a verified petition to appoint a guardian. If the petitioner is nominated by will or signed writing, the petitioner shall file a copy of the will or signed writing with the petition.~~

~~—— Section 36. Section 75-5c-302 is enacted to read:~~

~~—— **75-5c-302. Procedures before hearing.**~~

~~—— (1) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing on the petition.~~

~~—— (2) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to~~

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represent the respondent:

—— Section 37. Section ~~75-5c-303~~ is enacted to read:

—— ~~75-5c-303. Appointment of guardian -- Standard of evidence -- Petition for protective order:~~

—— ~~(1) The court may appoint a guardian only if the court finds, based on clear and convincing evidence, that:~~

—— ~~(a) the person to be protected has knowingly and voluntarily petitioned the court to appoint a guardian; or~~

—— ~~(b) the respondent is incapacitated and the respondent's particular functional limitations cannot be met by less restrictive means.~~

—— ~~(2) With appropriate findings, the court may treat the petition as one for a protective order and enter an appropriate protective order.~~

—— ~~(3) If the petitioner does not prove the elements of the petition, the court shall dismiss the petition.~~

—— ~~(4) Appointment of a guardian based on a petition by the person to be protected is not a determination of that person's incapacity.~~

—— Section 38. Section ~~75-5c-304~~ is enacted to read:

—— ~~75-5c-304. Least restrictive order -- Factors:~~

—— ~~The court shall enter the least restrictive order consistent with its findings to accommodate the respondent's particular functional limitations and demonstrated needs, including appointive and other orders that will encourage the respondent to develop maximum self-reliance and independence. The court should consider and weigh, as appropriate:~~

—— ~~(1) whether the protected person can manage the activities of daily living through training, education, support services, mental and physical health care, medication, therapy, assistants, and assistive devices;~~

—— ~~(2) whether the protected person has planned for health care and financial decision making, such as an advance health care directive, a power of attorney, a trust or jointly held account, and whether the less restrictive alternatives to a guardianship are meeting the respondent's needs;~~

—— ~~(3) whether the incapacity is likely to be temporary;~~

—— ~~(4) the protected person's long-standing values, preferences, and patterns of behavior;~~

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and

~~_____ (5) other relevant factors;~~

~~_____ Section 39. Section 75-5c-305 is enacted to read:~~

~~_____ **75-5c-305. Guardian's authority limited to court order.**~~

~~_____ (1) The protected person retains all rights, power, authority, and discretion not expressly granted to the guardian by statute or court order. The protected person retains the right to vote in governmental elections unless the court finds by clear and convincing evidence that the protected person is unable to communicate, with or without accommodation, the specific desire to participate in the voting process. The court may not grant to the guardian the authority to vote on the protected person's behalf.~~

~~_____ (2) The guardian has the duties specified by statute or court order. The guardian has only the authority specified by court order. The order shall limit the guardian's authority to what is necessary to accommodate the protected person's particular functional limitations. If a parent or sibling of an adult with developmental disabilities is appointed guardian, the guardian has the authority of a parent of a minor regarding the protected person's support, care, education, health, and welfare, except as otherwise limited by the court. The court order may accommodate the natural progression of the respondent's incapacity.~~

~~_____ (3) If supported by the findings, and except as provided in Section 75-5c-306, the court may grant to the guardian the authority to:~~

~~_____ (a) make health care decisions;~~

~~_____ (b) consent to admission of the protected person to a licensed health care facility for short-term placement for the purpose of assessment, rehabilitative care, or respite care;~~

~~_____ (c) admit the protected person to a licensed health care facility for long-term custodial placement;~~

~~_____ (d) make arrangements for the protected person's support, care, comfort, education, and welfare;~~

~~_____ (e) take custody of the protected person and make arrangements for a dwelling place;~~

~~_____ (f) take reasonable care of the protected person's personal effects; and~~

~~_____ (g) make other decisions and give other consents on behalf of the protected person as specified in the order and as necessary to accommodate the protected person's particular functional limitations.~~

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~~—— (4) If the court does not appoint a conservator, and if supported by the findings, the order may grant to the guardian the authority to:~~

~~—— (a) take control of and manage a savings account or checking account;~~

~~—— (b) apply for, start proceedings for, receive, and compel delivery of property due the protected person or benefits to which the protected person may be entitled, up to \$50,000 per year;~~

~~—— (c) commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the protected person or to pay money for the protected person's benefit;~~

~~—— (d) prosecute, defend, and settle legal actions, including administrative proceedings, on behalf of the protected person;~~

~~—— (e) obtain legal advice and representation on behalf of the protected person;~~

~~—— (f) pay the protected person's debts;~~

~~—— (g) give gifts, donations, or contributions on behalf of the protected person within the limits of Section 75-5c-409;~~

~~—— (h) file tax returns on behalf of the protected person and pay taxes owed by the protected person; and~~

~~—— (i) provide for the support, care, comfort, education, and welfare of individuals entitled to the protected person's support.~~

~~—— Section 40. Section 75-5c-306 is enacted to read:~~

~~—— **75-5c-306. Restrictions on the guardian's authority.**~~

~~—— (1) The guardian may not:~~

~~—— (a) consent to commitment of the protected person to a mental retardation facility, but shall petition the court for an order under Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability;~~

~~—— (b) consent to commitment of the protected person to a local mental health authority, but shall petition the court for an order under Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities;~~

~~—— (c) consent to sterilization of the protected person, but shall petition the court for an order under Title 62A, Chapter 6, Sterilization of a Person with a Disability;~~

~~—— (d) consent to termination of the parental rights in the protected person or of the~~

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~~protected person's parental rights in another, but shall petition the juvenile court for an order to terminate parental rights under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or~~

~~—— (c) except as provided in Subsection 75-5c-305(5), exercise the duties or authority of a conservator unless appointed as a conservator;~~

~~—— (2) The court order shall address whether the guardian may:~~

~~—— (a) consent to the admission of the protected person to a psychiatric hospital or other mental health care facility;~~

~~—— (b) consent to participation in medical research, electroconvulsive therapy or other shock treatment, experimental treatment, forced medication with psychotropic drugs, abortion, psychosurgery, a procedure that restricts the protected person's rights, or to be a living organ donor;~~

~~—— (c) consent to termination of life-sustaining treatment if the protected person has never had health care decision making capacity;~~

~~—— (d) consent to name change, adoption, marriage, annulment, or divorce of the protected person;~~

~~—— (e) establish or move the protected person's dwelling place outside of this state; or~~

~~—— (f) restrict the protected person's physical liberty, communications, or social activities more than reasonably necessary to protect the protected person or others from harm;~~

~~—— (3) Any transaction affected by a substantial conflict between the guardian's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a substantial conflict between fiduciary and personal interests includes any sale, encumbrance, or other transaction involving the estate entered into by the guardian, the spouse, descendant, agent, attorney of a guardian, or a corporation or other enterprise in which the guardian has a substantial beneficial interest.~~

~~—— Section 41. Section 75-5c-307 is enacted to read:~~

~~—— **75-5c-307. Guardian's duties.**~~

~~—— The guardian shall:~~

~~—— (1) within 14 days after appointment, serve on the protected person, and all other people entitled to notice of the petition, a copy of the appointment order and notice of the right to request termination or modification;~~

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~~—— (2) within 90 days after appointment, file and serve a management plan, as required by court rule or court order, describing the strategies that will be used to implement the court order;~~

~~—— (3) file and serve a report on the protected person's condition to the satisfaction of the court upon resignation or removal, upon termination, and as required by court rule or court order;~~

~~—— (4) file a final report and petition to terminate the guardianship within 30 days after the protected person dies;~~

~~—— (5) file a petition to terminate or modify the guardianship within 30 days after the protected person becomes capable of exercising rights previously removed;~~

~~—— (6) immediately notify the court and interested persons if the protected person or guardian changes their dwelling place;~~

~~—— (7) exercise duties and authority authorized by statute and court order as necessary to accommodate the protected person's particular functional limitations;~~

~~—— (8) if reasonable under the circumstances, encourage the protected person to:~~

~~—— (a) participate in decisions;~~

~~—— (b) act on their own behalf; and~~

~~—— (c) overcome the functional limitations that resulted in the protected person's incapacity;~~

~~—— (9) make decisions using the best interest decision making standard;~~

~~—— (10) become and remain personally acquainted with the protected person and maintain sufficient contact with the protected person to know of their preferences, values, capabilities, limitations, needs, opportunities, and physical and mental health;~~

~~—— (11) when acting on behalf of the protected person, exercise the degree of care, diligence, and good faith that an ordinarily careful person exercises in their own affairs;~~

~~—— (12) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;~~

~~—— (13) if necessary to protect the protected person's property, petition for the appointment of a conservator or for a protective order under Part 4, Appointment of a Conservator and Other Protective Orders;~~

~~—— (14) expend the protected person's money for their current needs for support, care, education, health, and welfare;~~

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~~—— (15) conserve for the protected person's future needs any of the estate that exceeds the person's current needs or, if a conservator has been appointed, pay the excess to the conservator at least annually;~~

~~—— (16) keep the protected person's estate separate from the guardian's money and property;~~

~~—— (17) keep contemporaneous records and make them available for examination as directed by the court;~~

~~—— (18) at termination, deliver any of the estate subject to the guardian's possession, ownership, or control and any records as directed by law or the court;~~

~~—— (19) if a conservator has been appointed, account at least annually to the conservator for the protected person's income and expenses and for any of the estate subject to the guardian's possession, ownership, or control; and~~

~~—— (20) if a conservator has not been appointed:~~

~~—— (a) file and serve within 90 days after appointment a management plan as required by court rule or court order describing the strategies that will be used to implement the court order;~~

~~—— (b) file and serve within 90 days after appointment an inventory of the estate subject to the guardian's possession, ownership, or control under an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits; and~~

~~—— (c) file and serve a report about the administration of the protected person's estate to the satisfaction of the court upon resignation or removal, upon termination, and as required by court rule or court order.~~

~~—— Section 42. Section 75-5c-308 is enacted to read:~~

~~—— **75-5c-308. Guardian's personal liability.**~~

~~—— (1) A guardian is not liable to third persons for the protected person's acts solely by reason of the guardianship.~~

~~—— (2) If the guardian performs fiduciary responsibilities with the degree of care, diligence, and good faith that an ordinarily careful person exercises in their own affairs, the guardian is not liable for acts or omissions in performing the fiduciary responsibilities.~~

~~—— (3) If the guardian selects a third person to perform a service for the protected person with the degree of care, diligence, and good faith that an ordinarily careful person exercises in~~

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~~their own affairs, the guardian is not liable for injury resulting from the wrongful conduct of the third person:~~

~~Section 43. Section 75-5c-309, which is renumbered from Section 75-5-314 is renumbered and amended to read:~~

~~[75-5-314]. **75-5c-309. Mentally incompetent veteran -- Evidence of necessity for appointment of guardian:**~~

~~[Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a] A certificate of the administrator or [his] a duly authorized representative[,] that [such person] the respondent has been rated incompetent by the veterans administration on examination [in accordance with the laws and regulations governing such] under veterans administration laws and regulations and that the appointment of a guardian is a condition precedent to the payment of any money due [such ward] the respondent by the veterans administration[, shall be prima facie] is evidence of the necessity for [such] an appointment.~~

~~Section 44. Section 75-5c-310, which is renumbered from Section 75-5-315 is renumbered and amended to read:~~

~~[75-5-315]. **75-5c-310. Copies of public records furnished to veterans administration:**~~

~~[When] If a copy of [any] a public record is required by the veterans administration to [be used in determining] determine the eligibility of [any person] an applicant to participate in [benefits made available by the] veterans administration benefits, the [official] custodian of [such] the public record shall, without charge, provide a certified copy of the record to the applicant [for such benefits] or any person acting on behalf of the [authorized representative of the] veterans administration [with a certified copy of such record].~~

~~Section 45. Section 75-5c-401 is enacted to read:~~

~~Part 4. Appointment of a Conservator and Other Protective Orders~~

~~**75-5c-401. Petition to appoint a conservator or enter a protective order:**~~

~~(1) The following may file a verified petition to appoint a conservator or to enter a protective order:~~

~~(a) the person to be protected;~~

~~(b) an individual interested in the respondent's estate, affairs, or welfare; or~~

~~(c) a person who would be adversely affected by lack of effective management of the~~

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~~respondent's property and business affairs:~~

~~—— (2) If the petitioner is nominated by will or signed writing, the petitioner shall file a copy of the will or signed writing with the petition.~~

~~—— Section 46. Section 75-5c-402 is enacted to read:~~

~~—— **75-5c-402. Jurisdiction over business affairs of respondent.**~~

~~—— Until termination, the court in which the petition is filed has:~~

~~—— (1) exclusive jurisdiction to determine the need for a conservatorship or protective order;~~

~~—— (2) exclusive jurisdiction to determine how the respondent's estate that is subject to laws of this state will be managed, expended, or distributed to or for the use of the respondent, individuals entitled to the respondent's support, or other claimants; and~~

~~—— (3) concurrent jurisdiction to determine the validity of claims against the respondent or the respondent's estate and questions of title concerning estate assets.~~

~~—— Section 47. Section 75-5c-403 is enacted to read:~~

~~—— **75-5c-403. Petition to appoint a conservator or enter a protective order --**~~

~~**Preliminary application of property -- Appointment of counsel.**~~

~~—— (1) Upon receipt of a petition to appoint a conservator or enter a protective order, the court shall schedule a hearing on the petition.~~

~~—— (2) After preliminary hearing and without notice, the court may issue orders to preserve and apply the respondent's property as may be required for the support of the respondent or of individuals entitled to the respondent's support. The court may appoint a special conservator to assist in the task.~~

~~—— (3) Unless an adult respondent is represented by an attorney, the court shall appoint an attorney to represent the respondent.~~

~~—— (4) If the court determines that a minor respondent's best interests are inadequately represented, it may appoint an attorney to represent the respondent, giving consideration to the respondent's choice if the respondent is 14 years of age or older.~~

~~—— Section 48. Section 75-5c-404 is enacted to read:~~

~~—— **75-5c-404. Petition to appoint a conservator or enter a protective order for a minor -- Findings.**~~

~~—— (1) The court shall appoint a conservator or enter a protective order for a minor if it~~

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finds that:

- ~~—— (a) the order is in the respondent's best interests;~~
- ~~—— (b) a qualified person seeks appointment;~~
- ~~—— (c) the court has jurisdiction and venue is proper;~~
- ~~—— (d) the required notices have been given; and~~
- ~~—— (e) the respondent:~~
 - ~~—— (i) owns money or property requiring management or protection that cannot otherwise be provided;~~
 - ~~—— (ii) has or may have business affairs that may be put at risk or prevented because of the respondent's age;~~
 - ~~—— (iii) has property that will be wasted or dissipated unless management is provided; or~~
 - ~~—— (iv) needs money for the support, care, education, health, and welfare of the respondent or of individuals who are entitled to the respondent's support and that protection is necessary or desirable to obtain or provide the money;~~
- ~~—— (2) The court may appoint a conservator for a specified time not to exceed the respondent's 18th birthday. In other cases, the court may dismiss the proceeding or make any other disposition that will serve the respondent's best interests;~~

~~—— Section 49. Section ~~75-5c-405~~ is enacted to read:~~

~~—— **75-5c-405. Petition to appoint a conservator or enter a protective order for an adult -- Findings:**~~

- ~~—— (1) The court shall appoint a conservator or enter a protective order for an adult if it finds:~~
 - ~~—— (a) based on clear and convincing evidence, that the person to be protected has knowingly and voluntarily petitioned the court to appoint a conservator or enter a protective order; or~~
 - ~~—— (b) (i) based on clear and convincing evidence, that the respondent is unable to manage property and business affairs because the respondent is incapacitated, missing, detained, or unable to return to the United States; and~~
 - ~~—— (ii) by a preponderance of evidence, that the respondent:~~
 - ~~—— (A) has property that will be wasted or dissipated unless management is provided; or~~
 - ~~—— (B) needs money for the support, care, education, health, and welfare of the respondent~~

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~~or of individuals who are entitled to the respondent's support and that protection is necessary or desirable to obtain or provide the money:~~

~~—— (2) Appointment of a conservator or entry of a protective order based on a petition by the person to be protected or because the respondent is missing, detained, or unable to return to the United States is not a determination of that person's incapacity:~~

~~—— (3) Appointment of a conservator or entry of a protective order may not be denied solely because the respondent has a valid power of attorney:~~

~~—— Section 50. Section 75-5c-406 is enacted to read:~~

~~—— **75-5c-406. Least restrictive order -- Factors:**~~

~~—— The court shall enter the least restrictive order consistent with its findings to accommodate the respondent's particular functional limitations and demonstrated needs, including appointive and other orders that will encourage the respondent to develop maximum self-reliance and independence. The court should consider and weigh, as appropriate:~~

~~—— (1) whether the protected person can manage the activities of daily living through training, education, support services, mental and physical health care, medication, therapy, assistants, assistive devices, or other means that the person will accept:~~

~~—— (2) whether the protected person has planned for financial decision making, such as a power of attorney, a trust or jointly held account, and whether the less restrictive alternatives to a conservatorship are meeting the respondent's needs:~~

~~—— (3) whether the incapacity is likely to be temporary:~~

~~—— (4) the protected person's long-standing values, preferences, and patterns of behavior:~~
~~and~~

~~—— (5) other relevant factors:~~

~~—— Section 51. Section 75-5c-407 is enacted to read:~~

~~—— **75-5c-407. Authority of court:**~~

~~—— (1) Upon determining that a basis exists for a conservatorship or protective order, the court has the following authority, which may be exercised directly or through a conservator:~~

~~—— (a) The court has all the authority over the estate and business affairs of a minor protected person that may be necessary for the best interest of the protected person and members of the protected person's immediate family:~~

~~—— (b) The court has all the authority over the estate and business affairs of an adult~~

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~~protected person for the benefit of the protected person and individuals entitled to the protected person's support that the protected person could exercise if present and not under conservatorship or protective order.~~

~~—— (2) The court may limit authority otherwise conferred on a conservator and may remove or modify any limitation at any time.~~

~~—— Section 52. Section 75-5c-408 is enacted to read:~~

~~—— **75-5c-408. Protective arrangements and single transactions.**~~

~~—— (1) Upon determining that a basis exists for a protective order, the court, without appointing a conservator, may:~~

~~—— (a) authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:~~

~~—— (i) payment, delivery, deposit, or retention of funds or property;~~

~~—— (ii) sale, mortgage, lease, or other transfer of property;~~

~~—— (iii) purchase of an annuity;~~

~~—— (iv) making a contract for life care, deposit contract, or contract for training and education; or~~

~~—— (v) addition to or establishment of a suitable trust; and~~

~~—— (b) authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including settlement of a claim, upon determining that it is in the protected person's best interest.~~

~~—— (2) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in Subsection 75-5c-409(3).~~

~~—— (3) The court may appoint a master to assist in any transaction or protective arrangement authorized under this section. The master has the authority conferred by the order and shall serve until discharged after reporting to the court.~~

~~—— Section 53. Section 75-5c-409 is enacted to read:~~

~~—— **75-5c-409. Action requiring court approval.**~~

~~—— (1) After notice to interested persons and upon express authorization of the court, a conservator may:~~

~~—— (a) if an estate is ample to provide for the distributions authorized by Section~~

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~~75-5c-417, for a protected person other than a minor, give gifts, donations, and contributions that the protected person might have been expected to give;~~

~~—— (b) convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;~~

~~—— (c) exercise or release a power of appointment;~~

~~—— (d) create a revocable or irrevocable trust of estate property, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person;~~

~~—— (e) exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities for their cash value;~~

~~—— (f) exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and~~

~~—— (g) make, amend, or revoke the protected person's will.~~

~~—— (2) A conservator, in making, amending, or revoking the protected person's will, shall comply with Chapter 2, Part 5, Wills.~~

~~—— (3) In exercising or in approving a conservator's exercise of the authority listed in Subsection (1), the court shall use the best interest decision-making standard. The court shall also consider:~~

~~—— (a) the financial needs of the protected person, the needs of individuals entitled to the protected person's support, and the interest of creditors;~~

~~—— (b) possible reduction of tax liabilities;~~

~~—— (c) eligibility for governmental assistance;~~

~~—— (d) the protected person's previous pattern of giving or level of support;~~

~~—— (e) the existing estate plan;~~

~~—— (f) the protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death; and~~

~~—— (g) any other relevant factors.~~

~~—— (4) A conservator may revoke or amend a durable power of attorney of which the protected person is the principal. If a durable power of attorney is in effect, a decision of the~~

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~~conservator takes precedence over that of the agent unless the court orders otherwise.~~

~~Section 54. Section ~~75-5c-410~~ is enacted to read:~~

~~75-5c-410. Conservator's duties.~~

~~The conservator shall:~~

~~(1) within 14 days after appointment, serve on the protected person, and all other people entitled to notice of the petition, a copy of the appointment order and notice of the right to request termination or modification;~~

~~(2) within 90 days after appointment, file and serve a management plan as required by court rule or court order describing the strategies that will be used to implement the court order;~~

~~(3) within 90 days after appointment, file and serve an inventory of the estate subject to the conservator's possession, ownership, or control under an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits;~~

~~(4) file and serve a report about the administration of the protected person's estate to the satisfaction of the court upon resignation or removal, upon termination, and as required by court rule or court order;~~

~~(5) comply with Section ~~75-5c-418~~ if the protected person dies;~~

~~(6) file a petition to terminate or modify the conservatorship within 30 days after the protected person becomes capable of exercising rights previously removed;~~

~~(7) if the appointment is for a minor protected person, file a final report and petition to terminate the conservatorship within 30 days after the protected person reaches majority;~~

~~(8) immediately notify the court and interested persons if the protected person or conservator changes their dwelling place;~~

~~(9) exercise duties and authority authorized by statute and court order as necessary to accommodate the protected person's particular functional limitations;~~

~~(10) if reasonable under the circumstances, encourage the protected person to:~~

~~(a) participate in decisions;~~

~~(b) act on their own behalf; and~~

~~(c) overcome the functional limitations that resulted in the protected person's incapacity;~~

~~(11) act as a fiduciary and observe the standard of care of a trustee under Chapter 7.~~

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~~—— (12) keep contemporaneous records of the administration of the estate and make them available for examination as directed by the court;~~

~~—— (13) take into account any estate plan of the protected person known to the conservator and may examine the will and any other donative, nominative, or other appointive instrument of the protected person in investing the estate, selecting assets of the estate for distribution, and invoking power of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator; and~~

~~—— (14) at termination, deliver any of the estate subject to the conservator's possession, ownership, or control and any records as directed by law or the court.~~

~~—— Section 55. Section ~~75-5c-411~~ is enacted to read:~~

~~—— **75-5c-411. Title by appointment.**~~

~~—— The appointment of a conservator vests title in the conservator as trustee to all property of the protected person, or to the part specified in the order, held at the time of appointment or later acquired. An order vesting title in the conservator to only part of the property of the protected person creates a conservatorship limited to assets specified in the order.~~

~~—— Section 56. Section ~~75-5c-412~~ is enacted to read:~~

~~—— **75-5c-412. Protected person's interest inalienable.**~~

~~—— (1) Except as otherwise provided in Subsections (3) and (4), the interest of a protected person in property vested in a conservator is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, although ineffective to affect property rights, may give rise to a claim against the protected person for restitution or damages, which may be presented to the conservator.~~

~~—— (2) Property vested in a conservator by appointment and the interest of the protected person in that property are not subject to levy, garnishment, or similar process for claims against the protected person unless allowed after presentation.~~

~~—— (3) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery of tangible personal property normally transferred by delivery is protected as if the protected person or transferee had valid title.~~

~~—— (4) A third party who deals with the protected person with respect to property vested in~~

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~~a conservator is entitled to any protection provided in other law:~~

~~Section 57. Section 75-5c-413 is enacted to read:~~

~~**75-5c-413. Sale, encumbrance, or other transaction involving conflict of interest.**~~

~~Any transaction affected by a substantial conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a substantial conflict between fiduciary and personal interests includes any sale, encumbrance, or other transaction involving the estate entered into by the conservator, the spouse, descendant, agent, attorney of a conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.~~

~~Section 58. Section 75-5c-414 is enacted to read:~~

~~**75-5c-414. Protection of person dealing with conservator.**~~

~~(1) A person who assists or deals with a conservator in good faith and for value in any transaction other than one requiring a court order is protected as though the conservator properly exercised the authority. That a person knowingly assists or deals with a conservator does not alone require the person to inquire into the conservator's authority or the propriety of its exercise, but restrictions on the conservator's authority endorsed on letters of office are effective as to third persons. A person who pays or delivers assets to a conservator is not responsible for their proper application.~~

~~(2) Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in the proceedings leading to the issuance of letters and is not a substitute for protection provided to persons assisting or dealing with a conservator by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.~~

~~Section 59. Section 75-5c-415 is enacted to read:~~

~~**75-5c-415. Authority of conservator in administration.**~~

~~(1) Except as otherwise restricted in the appointment order and endorsed on the letters of office, a conservator has all of the authority granted in this section and any additional authority granted by law to a trustee.~~

~~(2) A conservator, acting reasonably and in an effort to accomplish the purpose of the appointment, and without court authorization, may:~~

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- ~~—— (a) collect, hold, and retain estate assets, including assets in which the conservator has a personal interest and real property in another state, until the conservator considers that disposition of an asset should be made;~~
- ~~—— (b) receive additions to the estate;~~
- ~~—— (c) continue or participate in the operation of a business or other enterprise;~~
- ~~—— (d) acquire an undivided interest in an estate asset in which the conservator, in a fiduciary capacity, holds an undivided interest;~~
- ~~—— (e) invest estate assets as though the conservator were a trustee;~~
- ~~—— (f) deposit estate money in a financial institution, including one operated by the conservator;~~
- ~~—— (g) acquire or dispose of an estate asset, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;~~
- ~~—— (h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;~~
- ~~—— (i) subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;~~
- ~~—— (j) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;~~
- ~~—— (k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;~~
- ~~—— (l) grant an option involving disposition of an estate asset and take an option for the acquisition of any asset;~~
- ~~—— (m) vote a security, in person or by general or limited proxy;~~
- ~~—— (n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;~~
- ~~—— (o) sell or exercise stock subscription or conversion rights;~~
- ~~—— (p) consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;~~
- ~~—— (q) hold a security in the name of a nominee or in other form without disclosure of the~~

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conservatorship so that title to the security may pass by delivery:

~~—— (r) insure estate assets against damage or loss and the conservator against liability with respect to a third person;~~

~~—— (s) borrow money on behalf of the protected person, with or without security, to be repaid from the estate or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;~~

~~—— (t) pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;~~

~~—— (u) pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;~~

~~—— (v) allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;~~

~~—— (w) pay any sum distributable to a protected person or to individuals entitled to the protected person's support by paying the sum to the distributee or by paying the sum for the use of the distributee;~~

~~—— (i) to the distributee's guardian or custodian under Chapter 5a, Uniform Transfers to Minors Act; or~~

~~—— (ii) if there is no guardian or custodian, to a relative or other person having physical custody of the distributee;~~

~~—— (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of fiduciary duties; and~~

~~—— (y) execute and deliver all instruments that will accomplish or facilitate the exercise of the conservator's authority;~~

~~—— Section 60. Section ~~75-5c-416~~ is enacted to read:~~

~~—— **75-5c-416. Delegation.**~~

~~—— (1) A conservator may not delegate to an agent or another conservator the entire administration of the estate, but a conservator may delegate the performance of functions that a~~

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~~prudent trustee of comparable skills may delegate under similar circumstances:~~

~~—— (2) The conservator shall exercise reasonable care, skill, and caution in:~~

~~—— (a) selecting an agent;~~

~~—— (b) establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship;~~

~~—— (c) periodically reviewing an agent's overall performance and compliance with the terms of the delegation; and~~

~~—— (d) redressing an action or decision of an agent which would constitute a breach of trust if performed by the conservator;~~

~~—— (3) A conservator who complies with Subsections (1) and (2) is not liable to the protected person or to the estate for the decisions or actions of the agent to whom a function was delegated.~~

~~—— (4) In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.~~

~~—— (5) By accepting a delegation from a conservator subject to the laws of this state, an agent submits to the jurisdiction of the Utah courts.~~

~~—— Section 61. Section 75-5c-417 is enacted to read:~~

~~—— **75-5c-417. Principles of distribution by conservator.**~~

~~—— Unless otherwise specified in the appointment order and endorsed on the letters of office or contrary to the management plan, a conservator may, without further court authorization or confirmation, expend or distribute income or principal of the estate for the support, care, education, health, and welfare of the protected person and individuals entitled to the protected person's support, including the payment of child support or spousal support, under the following rules:~~

~~—— (1) A conservator shall consider a guardian's recommendations about the appropriate standard of support, care, education, health, and welfare for the protected person or individuals entitled to the protected person's support. If the protected person is a protected person, the conservator shall consider a parent's recommendations.~~

~~—— (2) A conservator may not be surcharged for money paid to persons furnishing support, care, education, or benefits to a protected person or individuals entitled to the protected person's support under the recommendations of the protected person's parent or guardian.~~

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~~unless the conservator knows that the parent or guardian derives a personal financial benefit, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person:~~

~~—— (3) In making distributions under this section, the conservator shall consider:~~

~~—— (a) the size of the estate, the estimated duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully self-sufficient and able to manage business affairs and the estate;~~

~~—— (b) the accustomed standard of living of the protected person and individuals entitled to the protected person's support; and~~

~~—— (c) other money or sources used for the support of the protected person and individuals entitled to the protected person's support;~~

~~—— (4) Money expended under this section may be paid by the conservator to any person, including the protected person, as reimbursement for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances:~~

~~—— Section 62. Section 75-5c-418 is enacted to read:~~

~~—— **75-5c-418. Death of protected person.**~~

~~—— (1) Upon the death of a protected person, the conservator shall deliver to the court for safekeeping any will of the protected person, which may have come into the conservator's possession, inform the personal representative or beneficiary named in the will of the delivery, and preserve and protect the estate for delivery to the decedent's personal representative or to another person entitled to it.~~

~~—— (2) Upon the death of a protected person, the conservator shall conclude the administration of the estate by distribution to the protected person's successors. The conservator shall file a final report and petition to terminate the conservatorship within 30 days after distribution.~~

~~—— Section 63. Section 75-5c-419 is enacted to read:~~

~~—— **75-5c-419. Presentation and allowance of claims.**~~

~~—— (1) A conservator may pay, or secure by encumbering estate assets, claims against the estate or against the protected person arising before or during the conservatorship upon~~

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~~presentation and allowance under the priorities stated in Subsection (5). A claimant may present a claim by:~~

~~—— (a) sending or delivering to the conservator a written statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or~~

~~—— (b) filing a written statement of the claim, in a form acceptable to the court, with the court clerk and sending or delivering a copy of the statement to the conservator.~~

~~—— (2) A claim is considered presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court clerk, whichever occurs first.~~

~~—— (3) A presented claim is allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within 60 days after its presentation. Before payment, the conservator may change an allowance to a disallowance in whole or in part, but not after allowance under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until 30 days after its disallowance.~~

~~—— (4) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by a statute of limitations and, upon proof, procure an order for its allowance, payment, or security by encumbering estate assets. If a proceeding is pending against a protected person at the time of the conservator's appointment or is later initiated against the protected person, the moving party shall give to the conservator notice of any proceeding that could result in creating a claim against the estate.~~

~~—— (5) If it appears that the estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:~~

~~—— (a) costs and expenses of administration;~~

~~—— (b) claims of the federal or state government having priority under other law;~~

~~—— (c) claims incurred by the conservator for support, care, education, health, and welfare previously provided to the protected person or individuals entitled to the protected person's support;~~

~~—— (d) claims arising before the conservatorship; and~~

~~—— (e) all other claims.~~

~~—— (6) Preference may not be given in the payment of a claim over any other claim of the~~

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~~same class, and a claim due and payable may not be preferred over a claim not due.~~

~~—— (7) If assets of the conservatorship are adequate to meet all existing claims, the court, acting in the best interest of the protected person, may order the conservator to grant a security interest in the estate for the payment of any or all claims at a future date.~~

~~—— Section 64. Section 75-5c-420 is enacted to read:~~

~~—— **75-5c-420. Personal liability of conservator:**~~

~~—— (1) Except as otherwise agreed, a conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal in the contract the representative capacity and identify the estate.~~

~~—— (2) A conservator is not personally liable for obligations arising from possession, ownership, or control of estate property or for other acts or omissions occurring in the course of administration of the estate unless the conservator is personally at fault.~~

~~—— (3) Regardless of whether the conservator is personally liable, claims based on contracts entered into by a conservator in a fiduciary capacity, obligations arising from possession, ownership or control of the estate, and claims based on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity.~~

~~—— (4) A question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification, or in another appropriate proceeding or action.~~

~~—— (5) A conservator is not personally liable for any environmental condition or injury resulting from any environmental condition on land solely by reason of acquisition of title under Section 75-5c-411.~~

~~—— Section 65. Section 75-5c-421 is enacted to read:~~

~~—— **75-5c-421. Payment of debt and delivery of property to foreign conservator without local proceeding:**~~

~~—— (1) A person who is indebted to or has the possession of tangible or intangible property of a protected person may pay the debt or deliver the property to a foreign conservator, guardian of the estate, or other court-appointed fiduciary of the state in which a protected person resides.~~

~~—— (2) Payment or delivery may be made only upon proof of appointment and presentation~~

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~~of an affidavit made by or on behalf of the fiduciary stating that a protective proceeding relating to the protected person is not pending in this state and the foreign fiduciary is entitled to payment or to receive delivery.~~

~~—— (3) Payment or delivery under Subsection (1) discharges the debtor or possessor, absent knowledge of a protective proceeding pending in this state.~~

~~—— Section 66. Section **78B-5-804** is amended to read:~~

~~—— **78B-5-804. Money deposited in court.**~~

~~—— (1) (a) Any person depositing money in court, to be held in trust, shall pay it to the court clerk.~~

~~—— (b) The clerk shall deposit the money in a court trust fund or with the county treasurer or city recorder to be held subject to the order of the court.~~

~~—— (2) The Judicial Council shall adopt rules governing the maintenance of court trust funds and the disposition of interest earnings on those trust funds.~~

~~—— (3) (a) Any interest earned on trust funds in the courts of record that is not required to accrue to the litigants by Judicial Council rule or court order shall be deposited in a restricted account. Any interest earned on trust funds in the courts not of record that is not required to accrue to the litigants by Judicial Council rule or court order shall be deposited in the general fund of the county or municipality.~~

~~—— (b) The Legislature shall appropriate funds from the restricted account of the courts of record to the Judicial Council to:~~

~~—— (i) offset costs to the courts for collection and maintenance of court trust funds; [and]~~

~~—— (ii) provide accounting and auditing of all court revenue and trust accounts[.]; and~~

~~—— (iii) review or audit annual reports and accountings of guardians and conservators, and recruit court visitors in guardianship and conservatorship proceedings.~~

~~—— Section 67. **Repealer.**~~

~~—— This bill repeals:~~

~~—— Section **75-5-101, Jurisdiction of subject matter -- Consolidation of proceedings.**~~

~~—— Section **75-5-102, Facility of payment or delivery.**~~

~~—— Section **75-5-103, Delegation of powers by parent or guardian.**~~

~~—— Section **75-5-104, Power of court to appoint guardian ad litem not affected.**~~

~~—— Section **75-5-105, Bond of guardian.**~~

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- ~~Section 75-5-201, Status of guardian of minor -- General.~~
- ~~Section 75-5-202, Appointment of guardian of minor.~~
- ~~Section 75-5-202.5, Appointment of guardian by written instrument.~~
- ~~Section 75-5-203, Objection to appointment.~~
- ~~Section 75-5-204, Court appointment of guardian of minor -- Conditions for appointment.~~
- ~~Section 75-5-205, Court appointment of guardian of minor -- Venue.~~
- ~~Section 75-5-206, Court appointment of guardian of minor -- Qualifications -- Priority of minor's nominee.~~
- ~~Section 75-5-207, Court appointment of guardian of minor -- Procedure.~~
- ~~Section 75-5-208, Consent to service by acceptance of appointment -- Notice.~~
- ~~Section 75-5-209, Powers and duties of guardian of minor -- Residual parental rights and duties -- Adoption of a ward.~~
- ~~Section 75-5-210, Termination of appointment of guardian -- General.~~
- ~~Section 75-5-211, Proceedings subsequent to appointment -- Venue.~~
- ~~Section 75-5-212, Resignation or removal proceedings.~~
- ~~Section 75-5-301, Appointment of guardian for incapacitated person.~~
- ~~Section 75-5-302, Venue.~~
- ~~Section 75-5-303, } 75-5-303. Procedure for court appointment of a guardian of an incapacitated person.~~
- ~~{ Section 75-5-304, Findings -- Limited guardianship preferred -- Order of appointment.~~
- ~~Section 75-5-305, Acceptance of appointment -- Consent to jurisdiction.~~
- ~~Section 75-5-306, Termination of guardianship for } (1) The incapacitated person {.~~
- ~~Section 75-5-307, Removal or resignation of guardian -- Termination of incapacity.~~
- ~~Section 75-5-308, Visitor in guardianship proceeding.~~
- ~~Section 75-5-309, Notices in guardianship proceedings.~~
- ~~} or any person interested in the incapacitated person's welfare may petition for a finding of incapacity and appointment of a guardian.~~
- (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity; and unless the allegedly incapacitated person has counsel of the person's own

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choice, it shall appoint an attorney to represent the person in the proceeding the cost of which shall be paid by the person alleged to be incapacitated, unless the court determines that the petition is without merit, in which case the attorney fees and court costs shall be paid by the person filing the petition.

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

(4) (a) The person alleged to be incapacitated shall be present at the hearing in person and see or hear all evidence bearing upon the person's condition. If the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated, the court shall order an investigation by a court visitor, the costs of which shall be paid by the person seeking the guardianship.

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

(i) fourth stage Alzheimer's Disease;

(ii) extended comatosis; or

(iii) (A) an intellectual disability; and

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

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

Section 7. Section ~~{75-5-310,}~~ 75-5-311 ~~{Temporary guardians.}~~ is amended to read:

~~{Section }75-5-311{,}~~ **Who may be guardian -- Priorities.**

~~{Section 75-5-312,}~~ (1) As used in this section:

(a) "Specialized care professional" means a person who ~~{(i)}~~ has been certified ~~[or designated as a provider of guardianship services by a nationally recognized guardianship~~

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accrediting organization] as a National Certified Guardian or National Master Guardian by the Center for Guardianship Certification;

[(ii) is licensed by or registered with the Division of Occupational and Professional Licensing as a health care provider including, but not limited to, a registered nurse licensed under Section 58-31b-301, a social service worker, certified social worker, or clinical social worker licensed under Section 58-60-205, a marriage and family therapist licensed under Section 58-60-305, a physician licensed under Title 58, Chapter 67, or a psychologist licensed under Title 58, Chapter 61; or]

[(iii) has been approved by the court as one with specialized training and experience in the care of incapacitated persons.]

(b) "Suitable institution" means any nonprofit or for profit corporation, partnership, sole proprietorship, or other type of business organization that is owned, operated by, or employs a specialized care professional.

[(2) Any competent person or suitable institution may be appointed guardian of an incapacitated person.]

[(3)] (2) The court shall appoint a guardian in accordance with the incapacitated person's most recent nomination, unless that person is disqualified or the court finds other good cause why the person should not serve as guardian. That nomination shall have been made prior to the person's incapacity, shall be in writing and shall be signed by the person making the nomination. The nomination shall be in substantially the following form:

Nomination of Guardian by an Adult

I, (Name), being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as my guardian in the event that after the date of this instrument I become incapacitated.

Executed at _____ (city, state)

on this _____ day of _____

(Signature)

[(4)] (3) Except as provided in Subsection [(3)] (2), persons who are not disqualified have priority for appointment as guardian in the following order:

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(a) a person who has been nominated by the incapacitated person, by any means other than that described in Subsection [(3)] (2), if the incapacitated person was 14 years of age or older when the nomination was executed and, in the opinion of the court, that person acted with sufficient mental capacity to make the nomination;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will, written instrument, or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition;

(f) a person nominated by the person who is caring for him or paying benefits to him;

[or]

(g) a specialized care professional, so long as the specialized care professional does not:

(i) profit financially or otherwise from or receive compensation for acting in that capacity, except for the direct costs of providing guardianship or conservatorship services; or

(ii) otherwise have a conflict of interest in providing those services[-]; or

(h) any competent person or suitable institution.

Section 8. Section 75-5-312 is amended to read:

75-5-312. General powers and duties of guardian -- Penalties.

~~{Section 75-5-313, Proceedings subsequent to appointment -- Venue.~~

~~Section 75-5-316, Expedited guardianship proceedings.~~

~~Section 75-5-401, Protective proceedings.~~

~~Section 75-5-402, Protective}~~ (1) A guardian of an incapacitated person has only the powers, rights, and duties respecting the ward granted in the order of appointment under Section 75-5-304.

(2) Absent a specific limitation on the guardian's power in the order of appointment, the guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as

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modified by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of the ward the guardian shall provide for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings ~~{-- Jurisdiction of affairs of protected persons:~~

~~Section 75-5-403, Venue:~~

~~Section 75-5-404, Original petition for appointment or protective order:~~

~~Section 75-5-405, Notice:~~

~~Section 75-5-406, Protective proceedings -- Request for notice -- Interested person:~~

~~Section 75-5-407, Procedure concerning hearing and order on original petition:~~

~~Section 75-5-408, Permissible court orders:~~

~~Section 75-5-409, Protective arrangements and single transactions authorized:~~

~~Section 75-5-410, Who may be appointed conservator -- Priorities:~~

~~Section 75-5-411, Bond:~~

~~Section 75-5-412, Terms and requirements of bonds:~~

~~Section 75-5-413, Acceptance of appointment -- Consent to jurisdiction:~~

~~Section 75-5-414, Compensation and expenses:~~

~~Section 75-5-415, Death, resignation or removal of conservator:~~

~~Section 75-5-416, Petitions for orders subsequent to appointment:~~

~~Section 75-5-417, General duty of conservator:~~

~~Section 75-5-418, Inventory and records:~~

~~Section 75-5-419, Accounts:~~

~~Section 75-5-420, Conservators -- Title by appointment:~~

~~Section 75-5-421, Recording of conservator's letters:~~

~~Section 75-5-422, Sale, encumbrance or transaction involving conflict of interest --~~

~~Voidable -- Exceptions:~~

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- ~~Section 75-5-423, Persons dealing with conservators -- Protection.~~
- ~~Section 75-5-424, Powers of conservator in administration.~~
- ~~Section 75-5-425, Distributive duties and powers of conservator.~~
- ~~Section 75-5-426, Enlargement or limitation of powers of conservator.~~
- ~~Section 75-5-427, Preservation of estate plan.~~
- ~~Section 75-5-428, Claims against protected person -- Enforcement.~~
- ~~Section 75-5-429, Individual liability of conservator.~~
- ~~Section 75-5-430, Termination of proceeding.~~
- ~~Section 75-5-431, Payment of debt and delivery of property to foreign conservator without local proceedings.~~
- ~~Section 75-5-432, Foreign conservator -- Proof of authority -- Bond -- Powers.~~
- ~~Section 75-5-433, Embezzlement of protected person's estate -- Citation to person suspected.~~
- ~~Section 68}if other property of the ward is in need of protection.~~

(c) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If no conservator for the estate of the ward has been appointed, the guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty; or

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but the guardian may not use funds from the ward's estate for room and board which the guardian, the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one adult relative in the nearest degree of kinship to the ward in which there is an adult. The guardian must exercise care to conserve any excess for the ward's needs.

(e) (i) A guardian is required to report the condition of the ward and of the estate which has been subject to the guardian's possession or control, as required by the court or court rule.

(ii) The guardian shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a report with a full accounting to the court on an annual basis. For estates less than \$50,000, excluding the residence owned by the ward, the guardian shall fill out

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an informal annual report and mail the report to the court. The report shall include the following: a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The guardian shall also report the physical conditions of the ward, the place of residence, and a list of others living in the same household. The court may require additional information. The forms for both the informal report for estates under \$50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the Judicial Council. This annual report shall be examined and approved by the court. If the ward's income is limited to a federal or state program requiring an annual accounting report, a copy of that report may be submitted to the court in lieu of the required annual report.

(iii) Corporate fiduciaries are not required to petition the court, but shall submit their internal report annually to the court. The report shall be examined and approved by the court.

(iv) The guardian shall also render an annual accounting of the status of the person to the court which shall be included in the petition or the informal annual report as required under Subsection (2)(e). If a fee is paid for an accounting of an estate, no fee shall be charged for an accounting of the status of a person.

(v) If a guardian:

(A) makes a substantial misstatement on filings of annual reports;

(B) is guilty of gross impropriety in handling the property of the ward; or

(C) willfully fails to file the report required by this subsection, after receiving written notice from the court of the failure to file and after a grace period of two months has elapsed, the court may impose a penalty in an amount not to exceed \$5,000. The court may also order restitution of funds misappropriated from the estate of a ward. The penalty shall be paid by the guardian and may not be paid by the estate.

(f) Within 90 days after appointment, the guardian shall file and serve a management plan as required by court rule or court order, describing the strategies that will be used to implement the court order.

[(vi)] (g) These provisions and penalties governing [annual] reports and plans do not apply if the guardian is the parent of the ward with developmental disabilities.

[(f)] (h) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and

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education of the ward must be paid to the conservator for management as provided in this code; and the guardian must account to the conservator for funds expended.

(3) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

Section 9. Effective date.

This bill takes effect January 1, 2013.

†

Legislative Review Note

~~as of 10-11-11 10:42 AM~~

~~Office of Legislative Research and General Counsel}~~