

**GUARDIANSHIP COSTS FOR PARENTS OF DISABLED
ADULT CHILD**

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Aaron Osmond

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to guardianship of incapacitated adults.

Highlighted Provisions:

This bill:

► provides for a biological parent seeking guardianship of an incapacitated adult child reduction or reimbursement of attorney fees and court costs depending on the court's discretion; and

► allows a petitioner or incapacitated person a reduction or reimbursement of attorney fees and court costs under certain circumstances because of financial hardship.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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



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

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

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

42 (3) The court may reduce or reimburse a petitioner's or incapacitated person's court
43 costs and attorney fees described in Subsection (2), if the court determines that the petition has
44 merit and:

45 (a) the petitioner is a biological parent filing for guardianship of the parent's
46 incapacitated child, who is 18 years of age or older; or

47 (b) the petitioner or incapacitated person can demonstrate to the court evidence of
48 financial hardship or limited financial resources.

49 ~~[(3)]~~ (4) The legal representation of the incapacitated person by an attorney shall
50 terminate upon the appointment of a guardian, unless:

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

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

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

56 ~~[(4)]~~ (5) The person alleged to be incapacitated may be examined by a physician
57 appointed by the court who shall submit a report in writing to the court and may be interviewed
58 by a visitor sent by the court. The visitor also may interview the person seeking appointment

59 as guardian, visit the present place of abode of the person alleged to be incapacitated and the
60 place it is proposed that the person will be detained or reside if the requested appointment is
61 made, conduct other investigations or observations as directed by the court, and submit a report
62 in writing to the court.

63 ~~[(5)]~~ (6) (a) The person alleged to be incapacitated shall be present at the hearing in
64 person and see or hear all evidence bearing upon the person's condition. If the person seeking
65 the guardianship requests a waiver of presence of the person alleged to be incapacitated, the
66 court shall order an investigation by a court visitor, the costs of which shall be paid by the
67 person seeking the guardianship.

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

- 70 (i) fourth stage Alzheimer's Disease;
- 71 (ii) extended comatosis; or
- 72 (iii) (A) an intellectual disability; and
- 73 (B) an intelligence quotient score under 20 to 25.

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

Legislative Review Note
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Office of Legislative Research and General Counsel