

**Representative Mike Winder** proposes the following substitute bill:

**1 INCAPACITATED PERSON GUARDIANSHIP REVISIONS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Mike Winder**

5 Senate Sponsor: Lyle W. Hillyard

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**7 LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to guardianship of an incapacitated person.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ extends the repeal date related to appointment of counsel in a guardianship
- 13 proceeding;
- 14 ▶ addresses appointment of counsel as part of the procedure for court appointment of
- 15 a guardian; and
- 16 ▶ makes technical changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **63I-2-275**, as enacted by Laws of Utah 2016, Chapter 400

24 **75-5-303**, as last amended by Laws of Utah 2016, Chapter 400



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

27 Section 1. Section **63I-2-275** is amended to read:

28 **63I-2-275. Repeal dates -- Title 75.**

29 Subsection **75-5-303**(5)(d) is repealed on July 1, [~~2018~~] 2028.

30 Section 2. Section **75-5-303** is amended to read:

31 **75-5-303. Procedure for court appointment of a guardian of an incapacitated**  
32 **person.**

33 (1) [~~The~~] An incapacitated person or any person interested in the incapacitated person's  
34 welfare may petition for a finding of incapacity and appointment of a guardian.

35 (2) (a) Upon the filing of a petition, the court shall set a date for hearing on the issues  
36 of incapacity.

37 (b) Unless the allegedly incapacitated person has counsel of the person's own choice,  
38 the court shall [~~appoint~~] refer the person to the state court's list of attorneys who have  
39 volunteered to represent respondents in guardianship proceedings from which the person may  
40 select an attorney to represent the person in the proceeding the cost of which shall be paid by  
41 the person alleged to be incapacitated, unless the allegedly incapacitated person is indigent.

42 (c) If the court determines that the petition is without merit, the attorney fees and court  
43 costs shall be paid by the person filing the petition.

44 (d) If the court appoints the petitioner or the petitioner's nominee as guardian of the  
45 incapacitated person, regardless of whether the nominee is specified in the moving petition or  
46 nominated during the proceedings, the petitioner shall be entitled to receive from the  
47 incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting,  
48 or defending the petition.

49 (3) The legal representation of the incapacitated person by an attorney shall terminate  
50 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) The person alleged to be incapacitated may be examined by a physician appointed

57 by the court who shall submit a report in writing to the court and may be interviewed by a  
58 visitor sent by the court. The visitor also may interview the person seeking appointment as  
59 guardian, visit the present place of abode of the person alleged to be incapacitated and the place  
60 it is proposed that the person will be detained or reside if the requested appointment is made,  
61 conduct other investigations or observations as directed by the court, and submit a report in  
62 writing to the court.

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

78 (d) Counsel for the person alleged to be incapacitated, as defined in Subsection  
79 [75-1-201\(22\)](#), is not required if:

- 80 (i) the person is the biological or adopted child of the petitioner;
- 81 (ii) the value of the person's entire estate does not exceed \$20,000 as established by an  
82 affidavit of the petitioner in accordance with Section [75-3-1201](#);
- 83 (iii) the person appears in court with the petitioner;
- 84 (iv) the person is given the opportunity to communicate, to the extent possible, the  
85 person's acceptance of the appointment of petitioner; [~~and~~]

86 (v) no attorney from the state court's list of attorneys who have volunteered to represent  
87 respondents in guardianship proceedings is able to provide counsel to the person within 30

88 days of the referral made pursuant to Subsection (2); and

89 [~~v~~] (vi) the court is satisfied that counsel is not necessary in order to protect the

90 interests of the person.