

1 **GUARDIANSHIP AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Robert M. Spendlove**

5 Senate Sponsor: Michael S. Kennedy

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to court appointed guardians for minors.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ adds situations for when a court may appoint a guardian for an unemancipated
- 13 minor;
- 14 ▶ establishes preponderance of the evidence as the burden of proof for appointing a
- 15 guardian for a minor; 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 **75-5-204**, as last amended by Laws of Utah 1985, Chapter 41

24 **75-5-207**, as last amended by Laws of Utah 1995, Chapter 156

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

27 Section 1. Section **75-5-204** is amended to read:

28 **75-5-204. Court appointment of guardian of minor -- Conditions for**
29 **appointment.**

30 (1) [The] In accordance with Subsection (2), the court may appoint a guardian for an
31 unemancipated minor if:

32 (a) each parent of the minor acknowledges that the parent understands the legal effect
33 of the guardianship and consents;

34 (b) all parental rights [of custody] have been terminated [or suspended by
35 circumstances or prior court order.]; or

36 (c) each parent is unwilling or unable to exercise the parent's parental rights for any
37 reason, including a court order suspending the parent's parental rights.

38 (2) (a) A guardian appointed by will under Section 75-5-202, or by written instrument
39 under Section 75-5-202.5, whose appointment has not been prevented or nullified under
40 Section 75-5-203 has priority over any court appointed guardian [~~who may be appointed by the~~
41 ~~court, but the~~].

42 (b) Notwithstanding Subsection (2)(a), the court may proceed with [an] a court
43 appointment upon a finding that the testamentary or instrumental guardian has failed to accept
44 the testamentary appointment within 30 days after notice of the guardianship proceeding.

45 Section 2. Section 75-5-207 is amended to read:

46 **75-5-207. Court appointment of guardian of minor -- Procedure.**

47 (1) Notice of the time and place of hearing of a petition for the appointment of a
48 guardian of a minor is to be given by the petitioner in the manner prescribed by Section
49 75-1-401 to:

50 (a) the minor, if the minor is 14 years ~~[of age]~~ old or older;

51 (b) the person who has had the principal care and custody of the minor during the 60
52 days preceding the date of the petition;

53 (c) any living parent of the minor;

54 (d) any guardian appointed by the will or written instrument of the parent of the minor
55 who died last; and

56 (e) the school district in which the petitioner resides and a representative of the school
57 district may participate in the hearing.

58 (2) (a) ~~Upon hearing,~~ After a hearing, a court may appoint a guardian if the court
59 finds by preponderance of the evidence that:

60 (i) a qualified person seeks appointment[;];

61 (ii) venue is proper[;];

62 (iii) the required notices have been given[;];

63 (iv) the requirements of Sections 75-5-204 and 75-5-206 have been met[;]; and

64 (v) the welfare and best interests of the minor will be served by the requested

65 appointment[; it may make the appointment].

66 (b) In other cases the court may dismiss the proceedings or make any other disposition
67 of the matter that will best serve the interest of the minor.

68 (3) (a) If necessary, the court may appoint a temporary guardian, with the status of an
69 ordinary guardian of a minor.

70 (b) The authority of a temporary guardian may not last longer than six months.

71 (4) If, at any time in the proceeding, the court determines that the interests of the minor
72 are or may be inadequately represented, it may appoint an attorney to represent the minor,
73 giving consideration to the preference of the minor if the minor is 14 years ~~of age~~ old or
74 older.