

HB0320S01 compared with HB0320

~~text~~ shows text that was in HB0320 but was deleted in HB0320S01.

text shows text that was not in HB0320 but was inserted into HB0320S01.

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Representative Nelson T. Abbott proposes the following substitute bill:

GUARDIANSHIP BILL OF RIGHTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the rights of ~~an incapacitated~~a person with respect to a guardianship.

Highlighted Provisions:

This bill:

- ▶ addresses the rights ~~that an~~of a person alleged to be incapacitated ~~person has~~ with respect to a guardianship;
- ▶ addresses the rights of an incapacitated person with respect to a guardianship;
- ▶ provides that the rights of an incapacitated person do not abrogate any remedy provided by law; and
- ▶ provides that the rights of an incapacitated person may be addressed in a guardianship proceeding or a private cause of action.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

75-5-301.5, Utah Code Annotated 1953

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

Section 1. Section 75-5-301.5 is enacted to read:

75-5-301.5. Rights of a person alleged to be incapacitated -- Rights of an incapacitated person~~{in regard to guardianship}~~.

(1) Except as otherwise provided by this chapter or any other law, ~~{an}~~a person alleged to be incapacitated~~{ person}~~ has the right to:

(a) be represented by counsel before a guardianship is imposed~~{, have an attorney represent the incapacitated person in order to ask the court for relief}~~;

~~— (b) have an attorney, at any time, represent the incapacitated}~~ and have counsel represent the person during the guardianship ~~{in order to ask the court for relief}~~proceeding;

~~(f)c}~~ b receive a copy of all documents filed in a guardianship proceeding;

~~(f)d}~~ c have a relative, a physician, or any interested person speak about or raise any issue of concern on behalf of the person during the guardianship proceeding;

(d) receive information about guardianships from the court; and

(e) be treated with respect and dignity.

(2) Except as otherwise provided by this chapter or any other law, an incapacitated person ~~{during a court hearing, in writing or orally}~~;

~~— (e)}~~ for whom a guardian is appointed has right to:

(a) have counsel represent the incapacitated person at any time after the guardian is appointed;

(b) have a relative, a physician, or any interested person speak about or raise any issue of concern on behalf of the person in any court hearing about the guardianship;

(c) receive a copy of all documents filed in court regarding the guardianship;

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(d) receive information about guardianships from the court;

(ff)e) ask questions and express concerns or complaints about a guardian and the actions of a guardian to the court ~~{, in writing or orally}~~;

(fgf) participate in developing an individualized plan for the incapacitated person's care, including:

(i) managing the incapacitated person's assets and property;

(ii) determining the incapacitated person's residence; and

(iii) determining the services to be received by the incapacitated person;

(fhg) be given consideration in regards to the incapacitated person's current and previously stated desires, preferences for health care and medical treatment, and religious and moral beliefs;

(fih) remain as independent as possible, including giving deference to the incapacitated person's preference for the incapacitated person's residence and standard of living:

(i) as expressed or demonstrated before a determination of capacity was made; or

(ii) as currently expressed or demonstrated by the incapacitated person if the preference is reasonable under the circumstances;

(fii) be granted the greatest degree of freedom possible that is consistent with the reasons for the guardianship;

(fki) be able to exercise control over all aspects of the incapacitated person's life that are not granted to the guardian in the order of appointment;

(fkj) engage in any activity that the court has not expressly reserved for the guardian, including marriage or domestic partnership, traveling, working, or having a driver license;

(fmj) be treated with respect and dignity;

(fnm) be treated fairly by the incapacitated person's guardian;

(fon) maintain privacy and confidentiality in personal matters;

(fpo) receive telephone calls and personal mail and associate with relatives and acquaintances unless the guardian and the court determine that the association should be restricted or prohibited in accordance with Section 75-5-312.5;

(fqp) receive timely, effective, and appropriate health care and medical treatment that does not violate the incapacitated person's rights;

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(fr)g have all services provided by a guardian at a reasonable rate of compensation;

(fs)r have a court review any request for payment by a guardian to avoid excessive or unnecessary fees or duplicative billing;

(ft)s receive prudent financial management of the incapacitated person's property and regular detailed reports of financial accounting, including reports on:

(i) any investments or trusts that are held for the incapacitated person's benefit; and

(ii) any expenditures or fees charged to the incapacitated person's estate;

(fu)t receive and control the incapacitated person's salary;

(fv)u maintain a bank account and manage the incapacitated person's personal money;

and

(fw)v ask the court to:

(i) review the management activity of a guardian if a dispute cannot be resolved regarding the guardian's management;

(ii) continue to review the need for a guardianship or to modify or terminate a guardianship; and

(iii) enter an order restoring the incapacitated person's capacity at the earliest possible time.

(f2)3 The rights of an incapacitated person under this section do not abrogate any remedy provided by law.

(f3)4 Any right described in this section may be:

(a) addressed in a guardianship proceeding; or

(b) enforced through a private cause of action.