

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: Todd D. Weiler

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ addresses the rights of a person alleged to be incapacitated 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;
- ▶ amends the powers and duties of a guardian and conservator to address the rights of an incapacitated person; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **75-5-312**, as last amended by Laws of Utah 2018, Chapters 244 and 294

29 **75-5-417**, as last amended by Laws of Utah 2004, Chapter 89

30 ENACTS:

31 **75-5-301.5**, Utah Code Annotated 1953

32 **Utah Code Sections Affected by Coordination Clause:**

33 **75-5-301.5**, Utah Code Annotated 1953

34 **75-5-312**, as last amended by Laws of Utah 2018, Chapters 244 and 294



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

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

38 **75-5-301.5. Rights of a person alleged to be incapacitated -- Rights of an**
39 **incapacitated person.**

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

42 (a) be represented by counsel before a guardianship is imposed and have counsel
43 represent the person during the guardianship proceeding;

44 (b) receive a copy of all documents filed in a guardianship proceeding;

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

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

48 (e) be treated with respect and dignity.

49 (2) Except as otherwise provided by this chapter or any other law, an incapacitated
50 person for whom a guardian is appointed has right to:

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

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

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

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

- 57 (e) ask questions and express concerns or complaints about a guardian and the actions
58 of a guardian to the court;
- 59 (f) participate in developing an individualized plan for the incapacitated person's care,
60 including:
- 61 (i) managing the incapacitated person's assets and property;
62 (ii) determining the incapacitated person's residence; and
63 (iii) determining the services to be received by the incapacitated person;
- 64 (g) be given consideration in regards to the incapacitated person's current and
65 previously stated desires, preferences for health care and medical treatment, and religious and
66 moral beliefs;
- 67 (h) remain as independent as possible, including giving deference to the incapacitated
68 person's preference for the incapacitated person's residence and standard of living:
- 69 (i) as expressed or demonstrated before a determination of capacity was made; or
70 (ii) as currently expressed or demonstrated by the incapacitated person if the preference
71 is reasonable under the circumstances;
- 72 (i) be granted the greatest degree of freedom possible that is consistent with the reasons
73 for the guardianship;
- 74 (j) be able to exercise control over all aspects of the incapacitated person's life that are
75 not granted to the guardian in the order of appointment;
- 76 (k) engage in any activity that the court has not expressly reserved for the guardian,
77 including marriage or domestic partnership, traveling, working, or having a driver license;
- 78 (l) be treated with respect and dignity;
79 (m) be treated fairly by the incapacitated person's guardian;
80 (n) maintain privacy and confidentiality in personal matters;
- 81 (o) receive telephone calls and personal mail and associate with relatives and
82 acquaintances unless the guardian and the court determine that the association should be
83 restricted or prohibited in accordance with Section [75-5-312.5](#);
- 84 (p) receive timely, effective, and appropriate health care and medical treatment that
85 does not violate the incapacitated person's rights;
- 86 (q) have all services provided by a guardian at a reasonable rate of compensation;
87 (r) have a court review any request for payment by a guardian to avoid excessive or

88 unnecessary fees or duplicative billing;

89 (s) receive prudent financial management of the incapacitated person's property;

90 (t) subject to Subsections 75-5-312(3)(f)(viii) and 75-5-417(4), receive a copy of an
91 accounting report regarding the incapacitated person's estate that is submitted to the court by
92 the guardian under Section 75-5-312 or the conservator under Section 75-5-417 if a conservator
93 is appointed for the incapacitated person;

94 (u) receive and control the incapacitated person's salary;

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

96 and

97 (w) ask the court to:

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

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

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

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

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

107 (a) addressed in a guardianship proceeding; or

108 (b) enforced through a private cause of action.

109 Section 2. Section 75-5-312 is amended to read:

110 **75-5-312. General powers and duties of guardian -- Penalties.**

111 (1) A guardian of an incapacitated person has only the powers, rights, and duties
112 respecting the ward granted in the order of appointment under Section 75-5-304.

113 (2) Except as provided in Subsection (4), a guardian has the same powers, rights, and
114 duties respecting the ward that a parent has respecting the parent's unemancipated minor child.

115 (3) In particular, and without qualifying Subsections (1) and (2), a guardian has the
116 following powers and duties, except as modified by order of the court:

117 (a) To the extent that it is consistent with the terms of any order by a court of
118 competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled

119 to custody of the person of the ward and may establish the ward's place of [~~abode~~] residence
120 within or without this state, except that the guardian must give consideration to the ward's
121 preference for the ward's place of residence in accordance with Section 75-5-301.5.

122 (b) If entitled to custody of the ward the guardian shall provide for the care, comfort,
123 and maintenance of the ward and, whenever appropriate, arrange for the ward's training and
124 education. Without regard to custodial rights of the ward's person, the guardian shall take
125 reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and
126 commence protective proceedings if other property of the ward is in need of protection.

127 (c) A guardian may give any consents or approvals that may be necessary to enable the
128 ward to receive medical or other professional care, counsel, treatment, or service, except that
129 the guardian must:

130 (i) give consideration to the ward's current and previously stated desires for health care
131 and medical treatment in accordance with Section 75-5-301.5; and

132 (ii) respect the ward's right to receive timely, effective, and appropriate health care in
133 accordance with Section 75-5-301.5.

134 (d) A guardian may not unreasonably restrict visitation with the ward by family,
135 relatives, or friends.

136 (e) If no conservator for the estate of the ward has been appointed, the guardian may:

137 (i) institute proceedings to compel any person under a duty to support the ward or to
138 pay sums for the welfare of the ward to perform that duty;

139 (ii) compel the production of the ward's estate documents, including the ward's will,
140 trust, power of attorney, and any advance health care directive; and

141 (iii) receive money and tangible property deliverable to the ward and apply the money
142 and property for support, care, and education of the ward:

143 (A) except that the guardian may not use funds from the ward's estate for room and
144 board that the guardian, the guardian's spouse, parent, or child have furnished the ward unless a
145 charge for the service is approved by order of the court made upon notice to at least one adult
146 relative in the nearest degree of kinship to the ward in which there is an adult; and

147 (B) the guardian shall exercise care to conserve any excess for the ward's needs.

148 (f) (i) A guardian is required to report the condition of the ward and of the estate that
149 has been subject to the guardian's possession or control, as required by the court or court rule.

150 (ii) A guardian is required to immediately notify all interested persons if the guardian
151 reasonably believes that the ward's death is likely to occur within the next 30 days, based on:

152 (A) the guardian's own observations; or

153 (B) information from the ward's physician or other medical care providers.

154 (iii) A guardian is required to immediately notify persons who request notification and
155 are not restricted in associating with the ward pursuant to Section 75-5-312.5 of:

156 (A) the ward's admission to a hospital for three or more days or to a hospice program;

157 (B) the ward's death; and

158 (C) the arrangements for the disposition of the ward's remains.

159 (iv) Unless emergency conditions exist, a guardian is required to file with the court a
160 notice of the guardian's intent to move the ward and to serve the notice on all interested persons
161 at least 10 days before the move. The guardian shall take reasonable steps to notify all
162 interested persons and to file the notice with the court as soon as practicable following the
163 earlier of the move or the date when the guardian's intention to move the ward is made known
164 to the ward, the ward's care giver, or any other third party.

165 (v) (A) If no conservator for the estate of the ward has been appointed, the guardian
166 shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a
167 report with a full accounting to the court on an annual basis.

168 (B) For estates less than \$50,000, excluding the residence owned by the ward, the
169 guardian shall fill out an informal annual report and mail the report to the court.

170 ~~[(C)]~~ (vi) A report under Subsection (3)(f)(v)(A) or (B) shall include a statement ~~[of]~~
171 regarding:

172 (A) all assets at the beginning and end of the reporting year[;];

173 (B) any income received during the year[;];

174 (C) any disbursements for the support of the ward[~~, and~~];

175 (D) any investments or trusts that are held for the ward's benefit;

176 (E) any expenditures or fees charged to the ward's estate; and

177 (F) any other expenses incurred by the ward's estate.

178 (vii) (A) ~~[The]~~ A guardian shall ~~[also]~~ report the physical conditions of the ward, the
179 place of residence, and a list of others living in the same household to the court.

180 (B) The court may require additional information.

181 ~~[(D)]~~ (C) The forms for both the informal report for estates under \$50,000, excluding
182 the residence owned by the ward, and the full accounting report for larger estates shall be
183 approved by the Judicial Council.

184 ~~[(E)]~~ (D) An annual report shall be examined and approved by the court.

185 ~~[(F)]~~ (E) If the ward's income is limited to a federal or state program requiring an
186 annual accounting report, a copy of that report may be submitted to the court in lieu of the
187 required annual report.

188 (viii) Upon a motion and after a hearing, the court may alter the frequency of, or the
189 information included in, an accounting report provided to a ward in accordance with
190 Subsection 75-5-301.5(2)(t).

191 ~~[(vi)]~~ (ix) Corporate fiduciaries are not required to petition the court, but shall submit
192 their internal report annually to the court. The report shall be examined and approved by the
193 court.

194 ~~[(vii)]~~ (x) (A) The guardian shall also render an annual accounting of the status of the
195 person to the court that shall be included in the petition or the informal annual report as
196 required under this Subsection (3)(f).

197 (B) If a fee is paid for an accounting of an estate, a fee may not be charged for an
198 accounting of the status of a person.

199 ~~[(viii)]~~ (xi) If a guardian:

200 (A) makes a substantial misstatement on filings of annual reports;

201 (B) is guilty of gross impropriety in handling the property of the ward; or

202 (C) willfully fails to file the report required by this Subsection (3)(f), after receiving
203 written notice from the court of the failure to file and after a grace period of two months has
204 elapsed, the court may impose a penalty in an amount not to exceed \$5,000.

205 ~~[(ix)]~~ (xii) The court may also order restitution of funds misappropriated from the
206 estate of a ward. The penalty shall be paid by the guardian and may not be paid by the estate.

207 ~~[(x)]~~ (xiii) The provisions and penalties in this Subsection (3)(f) governing annual
208 reports do not apply if the guardian or a coguardian is the parent of the ward.

209 ~~[(xi)]~~ (xiv) For the purposes of Subsections (3)(f)(i), (ii), (iii), and (iv), "interested
210 persons" means those persons required to receive notice in guardianship proceedings as set
211 forth in Section 75-5-309.

212 (g) If a conservator has been appointed:
213 (i) all of the ward's estate received by the guardian in excess of those funds expended
214 to meet current expenses for support, care, and education of the ward shall be paid to the
215 conservator for management as provided in this code; and
216 (ii) the guardian shall account to the conservator for funds expended.
217 (4) (a) A court may, in the order of appointment, place specific limitations on the
218 guardian's power.
219 (b) A guardian may not prohibit or place restrictions on association with a relative or
220 qualified acquaintance of an adult ward, unless permitted by court order under Section
221 75-5-312.5.
222 (c) A guardian is not liable to a third person for acts of the guardian's ward solely by
223 reason of the relationship described in Subsection (2).
224 (5) Any guardian of one for whom a conservator also has been appointed shall control
225 the custody and care of the ward and is entitled to receive reasonable sums for services and for
226 room and board furnished to the ward as agreed upon between the guardian and the
227 conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian
228 may request the conservator to expend the ward's estate by payment to third persons or
229 institutions for the ward's care and maintenance.
230 (6) A person who refuses to accept the authority of a guardian with authority over
231 financial decisions to transact business with the assets of the protected person after receiving a
232 certified copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages
233 if the court determines that the person did not act in good faith in refusing to accept the
234 authority of the guardian.
235 (7) A guardian shall, to the extent practicable, encourage the ward to participate in
236 decisions, exercise self-determination, act on the ward's own behalf, and develop or regain the
237 capacity to manage the ward's personal affairs. To the extent known, a guardian, in making
238 decisions, shall consider the expressed desires and personal values of the ward.
239 Section 3. Section 75-5-417 is amended to read:
240 **75-5-417. General duty of conservator.**
241 (1) A conservator shall act as a fiduciary and shall observe the standards of care as set
242 forth in Section 75-7-902.

243 ~~[(2) The conservator shall, for all estates in excess of \$50,000, excluding the residence~~
244 ~~owned by the ward, send a report with a full accounting to the court on an annual basis.]~~

245 (2) (a) For all estates in excess of \$50,000 excluding the residence owned by the ward,
246 the conservator shall send a report with a full accounting to the court on an annual basis.

247 (b) For estates less than \$50,000[;] excluding the residence owned by the ward, the
248 conservator shall fill out an informal annual report and mail the report to the court. [The report
249 shall include the following: a statement of assets at the beginning and end of the reporting year,
250 income received during the year, disbursements for the support of the ward, and other expenses
251 incurred by the estate. The court may require additional information. The forms for both the
252 informal report for estates under \$50,000, excluding the residence owned by the ward, and the
253 full accounting report for larger estates shall be approved by the judicial council. This annual
254 report shall be examined and approved by the court.]

255 (c) A report under Subsection (2)(a) or (b) shall include a statement regarding:

256 (i) all assets at the beginning and end of the reporting year;

257 (ii) any income received during the year;

258 (iii) any disbursements for the support of the ward;

259 (iv) any investments or trusts that are held for the ward's benefit;

260 (v) any expenditures or fees charged to the ward's estate; and

261 (vi) any other expenses incurred by the ward's estate.

262 (d) The Judicial Council shall approve the forms for the accounting reports described
263 in Subsections (2)(a) and (b).

264 (e) An annual accounting report under Subsection (2)(a) or (b) shall be examined and
265 approved by the court.

266 (3) (a) Corporate fiduciaries are not required to fully petition the court, but shall submit
267 their internal report annually to the court. [The report]

268 (b) A report under Subsection (3)(a) shall be examined and approved by the court.

269 (4) Upon a motion and after a hearing, the court may alter the frequency of, or the
270 information included in, an accounting report provided to a ward in accordance with
271 Subsection [75-5-301.5\(2\)\(t\)](#).

272 ~~[(4)]~~ (5) (a) The court may impose a fine in an amount not to exceed \$5,000, if, after
273 receiving written notice of the failure to file and after a grace period of two months have

274 elapsed, a conservator or corporate fiduciary:

275 (i) makes a substantial misstatement on filings of any required annual reports;

276 (ii) is guilty of gross impropriety in handling the property of the ward; or

277 (iii) willfully fails to file the report required by this section.

278 (b) The court may also order restitution of funds misappropriated from the estate of a
279 ward.

280 (c) The penalty shall be paid by the conservator or corporate fiduciary and may not be
281 paid by the estate.

282 [~~5~~] (6) These provisions and penalties governing annual reports do not apply if the
283 conservator is the parent of the ward.

284 Section 4. **Coordinating H.B. 320 with S.B. 155 -- Substantive amendment.**

285 If this H.B. 320 and S.B. 155, Guardianship and Conservatorship Amendments, both
286 pass and become law, the Legislature intends that the Office of Legislative Research and
287 General Counsel prepare the database for publication by:

288 (1) amending Subsection 75-5-301.5(2)(t) in H.B. 320 to read:

289 "(t) subject to Subsections 75-5-312(4)(h) and 75-5-417(4), receive a copy of an
290 accounting report regarding the incapacitated person's estate that is submitted to the court by
291 the guardian under Section 75-5-312 or the conservator under Section 75-5-417 if a conservator
292 is appointed for the incapacitated person;";

293 (2) amending Subsection 75-5-312(2)(a) in S.B. 155 to read:

294 "(a) to the extent that it is consistent with the terms of any order by a court relating to
295 detention or commitment of the ward, a guardian is entitled to custody of the person of the
296 ward and may establish the ward's place of residence within, or outside of, this state, except
297 that the guardian must give consideration to the ward's preference for the ward's place of
298 residence in accordance with Section 75-5-301.5;";

299 (3) amending Subsection 75-5-312(2)(d) in S.B. 155 to read:

300 "(d) a guardian may give the consent or approval that may be necessary to enable the
301 ward to receive medical or other professional care, counsel, treatment, or service, except that
302 the guardian must:

303 (i) give consideration to the ward's current and previously stated desires for health care
304 and medical treatment in accordance with Section 75-5-301.5; and

305 (ii) respect the ward's right to receive timely, effective, and appropriate health care in
306 accordance with Section 75-5-301.5;"; and

307 (4) amending Subsection 75-5-312(4) in S.B. 155 to read:

308 "(4)(a) An accounting report under Subsection (2)(k) shall include a statement
309 regarding:

310 (i) all assets at the beginning and end of the reporting year;

311 (ii) any income received during the year;

312 (iii) any disbursements for the support of the ward;

313 (iv) any investments or trusts that are held for the ward's benefit;

314 (v) any expenditures or fees charged to the ward's estate; and

315 (vi) any other expenses incurred by the ward's estate.

316 (b) The court may require additional information in an accounting report under
317 Subsection (2)(k).

318 (c) The Judicial Council shall approve forms for the accounting reports described in
319 Subsection (2)(k).

320 (d) An annual accounting report under Subsection (2)(k) shall be examined and
321 approved by the court.

322 (e) If the ward's income is limited to a federal or state program requiring an annual
323 accounting report, a copy of that report may be submitted to the court in lieu of the required
324 annual accounting report under Subsection (2)(k).

325 (f) (i) A corporate fiduciary is not required to petition the court, but shall submit the
326 corporate fiduciary's internal report annually to the court.

327 (ii) The report under Subsection (4)(f)(i) shall be examined and approved by the court.

328 (g) If a fee is paid for an accounting of an estate, a fee may not be charged for an
329 accounting of the status of a ward under Subsection (2)(l).

330 (h) Upon a motion and after a hearing, the court may alter the frequency of, or the
331 information included in, an accounting report provided to a ward in accordance with
332 Subsection 75-5-301.5(2)(t)."