

## HB0320S02 compared with HB0320S01

~~text~~ shows text that was in HB0320S01 but was deleted in HB0320S02.

text shows text that was not in HB0320S01 but was inserted into HB0320S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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

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#### 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~~.~~

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- ▶ 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:

~~{ None }~~ This bill provides a coordination clause.

### Utah Code Sections Affected:

#### AMENDS:

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

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

#### ENACTS:

75-5-301.5, Utah Code Annotated 1953

#### Utah Code Sections Affected by Coordination Clause:

75-5-301.5, Utah Code Annotated 1953

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

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*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.**

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

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

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

(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

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person 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;

(d) receive information about guardianships from the court;

(e) ask questions and express concerns or complaints about a guardian and the actions of a guardian to the court;

(f) 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;

(g) 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;

(h) 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;

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

(j) 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;

(k) 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;

(l) be treated with respect and dignity;

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

(n) maintain privacy and confidentiality in personal matters;

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(o) 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;

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

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

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

(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};~~

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

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

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

and

~~(~~fv~~w)~~ 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.

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

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

(a) addressed in a guardianship proceeding; or

(b) enforced through a private cause of action.

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

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

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

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

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

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of [abode] residence within or without this state, except that the guardian must give consideration to the ward's preference for the ward's place of residence in accordance with Section 75-5-301.5.

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

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

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

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

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

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

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

(ii) compel the production of the ward's estate documents, including the ward's will,

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trust, power of attorney, and any advance health care directive; and

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

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

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

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

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

(A) the guardian's own observations; or

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

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

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

(B) the ward's death; and

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

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

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

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

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

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regarding:

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

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

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

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

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

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

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

(B) The court may require additional information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) If a conservator has been appointed:

(i) all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward shall be paid to the conservator for management as provided in this code; and

(ii) the guardian shall account to the conservator for funds expended.

(4) (a) A court may, in the order of appointment, place specific limitations on the guardian's power.

(b) A guardian may not prohibit or place restrictions on association with a relative or qualified acquaintance of an adult ward, unless permitted by court order under Section 75-5-312.5.

(c) A guardian is not liable to a third person for acts of the guardian's ward solely by reason of the relationship described in Subsection (2).

(5) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(6) A person who refuses to accept the authority of a guardian with authority over financial decisions to transact business with the assets of the protected person after receiving a certified copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages



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if the court determines that the person did not act in good faith in refusing to accept the authority of the guardian.

(7) A guardian shall, to the extent practicable, encourage the ward to participate in decisions, exercise self-determination, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. To the extent known, a guardian, in making decisions, shall consider the expressed desires and personal values of the ward.

Section 3. Section 75-5-417 is amended to read:

### 75-5-417. General duty of conservator.

(1) A conservator shall act as a fiduciary and shall observe the standards of care as set forth in Section 75-7-902.

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

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

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

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

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

(ii) any income received during the year;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(a) to the extent that it is consistent with the terms of any order by a court relating to

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detention or commitment of the ward, a guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within, or outside of, this state, except that the guardian must give consideration to the ward's preference for the ward's place of residence in accordance with Section 75-5-301.5;"

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

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

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

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

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

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

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

(ii) any income received during the year;

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

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

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

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

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

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

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

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

(f) (i) A corporate fiduciary is not required to petition the court, but shall submit the

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corporate fiduciary's internal report annually to the court.

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

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

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