

**GUARDIANSHIP OF ADULT CHILDREN WITH
DISABILITIES**

2015 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates a simplified process for a parent to obtain guardianship of a disabled child.

Highlighted Provisions:

This bill:

- ▶ sets definitions;
- ▶ declares the purpose of the part as providing for a simplified process for the parents of a child with disabilities to obtain guardianship;
- ▶ requires the Judicial Council to develop a streamlined process and petition;
- ▶ sets the filing fee for the simplified process at \$35; and
- ▶ provides that counsel for the child is not required.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-2-301, as last amended by Laws of Utah 2014, Chapters 189 and 263

ENACTS:



- 28 **78B-6-2001**, Utah Code Annotated 1953
- 29 **78B-6-2002**, Utah Code Annotated 1953
- 30 **78B-6-2003**, Utah Code Annotated 1953
- 31 **78B-6-2004**, Utah Code Annotated 1953
- 32 **78B-6-2005**, Utah Code Annotated 1953

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

35 Section 1. Section **78A-2-301** is amended to read:

36 **78A-2-301. Civil fees of the courts of record -- Courts complex design.**

37 (1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a
38 court of record not governed by another subsection is \$360.

39 (b) The fee for filing a complaint or petition is:

40 (i) \$75 if the claim for damages or amount in interpleader exclusive of court costs,
41 interest, and attorney fees is \$2,000 or less;

42 (ii) \$185 if the claim for damages or amount in interpleader exclusive of court costs,
43 interest, and attorney fees is greater than \$2,000 and less than \$10,000;

44 (iii) \$360 if the claim for damages or amount in interpleader is \$10,000 or more;

45 (iv) \$310 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter
46 4, Separate Maintenance;

47 (v) \$35 for a motion for temporary separation order filed under Section **30-3-4.5**; ~~and~~

48 (vi) \$125 if the petition is for removal from the Sex Offender and Kidnap Offender
49 Registry under Section **77-41-112**[~~;~~]; and

50 (vii) \$35 if the petition is for guardianship of an incapacitated child in accordance with
51 Title 78B, Chapter 6, Part 20, Guardianship Proceedings for Incapacitated Adult Child.

52 (c) The fee for filing a small claims affidavit is:

53 (i) \$60 if the claim for damages or amount in interpleader exclusive of court costs,
54 interest, and attorney fees is \$2,000 or less;

55 (ii) \$100 if the claim for damages or amount in interpleader exclusive of court costs,
56 interest, and attorney fees is greater than \$2,000, but less than \$7,500; and

57 (iii) \$185 if the claim for damages or amount in interpleader exclusive of court costs,
58 interest, and attorney fees is \$7,500 or more.

59 (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party
60 complaint, or other claim for relief against an existing or joined party other than the original
61 complaint or petition is:

62 (i) \$55 if the claim for relief exclusive of court costs, interest, and attorney fees is
63 \$2,000 or less;

64 (ii) \$150 if the claim for relief exclusive of court costs, interest, and attorney fees is
65 greater than \$2,000 and less than \$10,000;

66 (iii) \$155 if the original petition is filed under Subsection (1)(a), the claim for relief is
67 \$10,000 or more, or the party seeks relief other than monetary damages; and

68 (iv) \$115 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30,
69 Chapter 4, Separate Maintenance.

70 (e) The fee for filing a small claims counter affidavit is:

71 (i) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is
72 \$2,000 or less;

73 (ii) \$70 if the claim for relief exclusive of court costs, interest, and attorney fees is
74 greater than \$2,000, but less than \$7,500; and

75 (iii) \$120 if the claim for relief exclusive of court costs, interest, and attorney fees is
76 \$7,500 or more.

77 (f) The fee for depositing funds under Section 57-1-29 when not associated with an
78 action already before the court is determined under Subsection (1)(b) based on the amount
79 deposited.

80 (g) The fee for filing a petition is:

81 (i) \$225 for trial de novo of an adjudication of the justice court or of the small claims
82 department; and

83 (ii) \$65 for an appeal of a municipal administrative determination in accordance with
84 Section 10-3-703.7.

85 (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or
86 petition for writ of certiorari is \$225.

87 (i) The fee for filing a petition for expungement is \$135.

88 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be
89 allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges'

90 Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges'
91 Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement
92 Act.

93 (ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be
94 allocated by the state treasurer to be deposited in the restricted account, Children's Legal
95 Defense Account, as provided in Section [51-9-408](#).

96 (iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g),
97 and (1)(s) shall be allocated to and deposited with the Dispute Resolution Account as provided
98 in Section [78B-6-209](#).

99 (iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv),
100 (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be
101 deposited in the restricted account, Court Security Account, as provided in Section [78A-2-602](#).

102 (v) Five dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and
103 (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court
104 Security Account, as provided in Section [78A-2-602](#).

105 (k) The fee for filing a judgment, order, or decree of a court of another state or of the
106 United States is \$35.

107 (l) The fee for filing a renewal of judgment in accordance with Section [78B-6-1801](#) is
108 50% of the fee for filing an original action seeking the same relief.

109 (m) The fee for filing probate or child custody documents from another state is \$35.

110 (n) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the
111 Utah State Tax Commission is \$30.

112 (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state
113 or a judgment, order, or decree of an administrative agency, commission, board, council, or
114 hearing officer of this state or of its political subdivisions other than the Utah State Tax
115 Commission, is \$50.

116 (o) The fee for filing a judgment by confession without action under Section
117 [78B-5-205](#) is \$35.

118 (p) The fee for filing an award of arbitration for confirmation, modification, or
119 vacation under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an
120 action before the court is \$35.

121 (q) The fee for filing a petition or counter-petition to modify a domestic relations order
122 other than a protective order or stalking injunction is \$100.

123 (r) The fee for filing any accounting required by law is:

124 (i) \$15 for an estate valued at \$50,000 or less;

125 (ii) \$30 for an estate valued at \$75,000 or less but more than \$50,000;

126 (iii) \$50 for an estate valued at \$112,000 or less but more than \$75,000;

127 (iv) \$90 for an estate valued at \$168,000 or less but more than \$112,000; and

128 (v) \$175 for an estate valued at more than \$168,000.

129 (s) The fee for filing a demand for a civil jury is \$250.

130 (t) The fee for filing a notice of deposition in this state concerning an action pending in
131 another state under Utah Rule of Civil Procedure 26 is \$35.

132 (u) The fee for filing documents that require judicial approval but are not part of an
133 action before the court is \$35.

134 (v) The fee for a petition to open a sealed record is \$35.

135 (w) The fee for a writ of replevin, attachment, execution, or garnishment is \$50 in
136 addition to any fee for a complaint or petition.

137 (x) (i) The fee for a petition for authorization for a minor to marry required by Section
138 [30-1-9](#) is \$5.

139 (ii) The fee for a petition for emancipation of a minor provided in Title 78A, Chapter 6,
140 Part 8, Emancipation, is \$50.

141 (y) The fee for a certificate issued under Section [26-2-25](#) is \$8.

142 (z) The fee for a certified copy of a document is \$4 per document plus 50 cents per
143 page.

144 (aa) The fee for an exemplified copy of a document is \$6 per document plus 50 cents
145 per page.

146 (bb) The Judicial Council shall by rule establish a schedule of fees for copies of
147 documents and forms and for the search and retrieval of records under Title 63G, Chapter 2,
148 Government Records Access and Management Act. Fees under this Subsection (1)(bb) shall
149 be credited to the court as a reimbursement of expenditures.

150 (cc) There is no fee for services or the filing of documents not listed in this section or
151 otherwise provided by law.

152 (dd) Except as provided in this section, all fees collected under this section are paid to
153 the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk
154 accepts the pleading for filing or performs the requested service.

155 (ee) The filing fees under this section may not be charged to the state, its agencies, or
156 political subdivisions filing or defending any action. In judgments awarded in favor of the
157 state, its agencies, or political subdivisions, except the Office of Recovery Services, the court
158 shall order the filing fees and collection costs to be paid by the judgment debtor. The sums
159 collected under this Subsection (1)(ee) shall be applied to the fees after credit to the judgment,
160 order, fine, tax, lien, or other penalty and costs permitted by law.

161 (2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts
162 shall transfer all revenues representing the difference between the fees in effect after May 2,
163 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of
164 Facilities Construction and Management Capital Projects Fund.

165 (ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities
166 Construction and Management shall use up to \$3,750,000 of the revenue deposited in the
167 Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to
168 initiate the development of a courts complex in Salt Lake City.

169 (B) If the Legislature approves funding for construction of a courts complex in Salt
170 Lake City in the 1995 Annual General Session, the Division of Facilities Construction and
171 Management shall use the revenue deposited in the Capital Projects Fund under this Subsection
172 (2)(a)(ii) to construct a courts complex in Salt Lake City.

173 (C) After the courts complex is completed and all bills connected with its construction
174 have been paid, the Division of Facilities Construction and Management shall use any money
175 remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal
176 District Court building.

177 (iii) The Division of Facilities Construction and Management may enter into
178 agreements and make expenditures related to this project before the receipt of revenues
179 provided for under this Subsection (2)(a)(iii).

180 (iv) The Division of Facilities Construction and Management shall:

181 (A) make those expenditures from unexpended and unencumbered building funds
182 already appropriated to the Capital Projects Fund; and

183 (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for
184 under this Subsection (2).

185 (b) After June 30, 1998, the administrator of the courts shall ensure that all revenues
186 representing the difference between the fees in effect after May 2, 1994, and the fees in effect
187 before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted
188 account.

189 (c) The Division of Finance shall deposit all revenues received from the court
190 administrator into the restricted account created by this section.

191 (d) (i) From May 1, 1995, until June 30, 1998, the administrator of the courts shall
192 transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor
193 Vehicles, in a court of record to the Division of Facilities Construction and Management
194 Capital Projects Fund. The division of money pursuant to Section 78A-5-110 shall be
195 calculated on the balance of the fine or bail forfeiture paid.

196 (ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer
197 \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in
198 a court of record to the Division of Finance for deposit in the restricted account created by this
199 section. The division of money pursuant to Section 78A-5-110 shall be calculated on the
200 balance of the fine or bail forfeiture paid.

201 (3) (a) There is created within the General Fund a restricted account known as the State
202 Courts Complex Account.

203 (b) The Legislature may appropriate money from the restricted account to the
204 administrator of the courts for the following purposes only:

205 (i) to repay costs associated with the construction of the court complex that were
206 funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

207 (ii) to cover operations and maintenance costs on the court complex.

208 Section 2. Section 78B-6-2001 is enacted to read:

209 **Part 20. Guardianship Proceedings for Incapacitated Adult Child**

210 **78B-6-2001. Definition of parent -- Purpose -- Exemption from specific**

211 **requirements.**

212 (1) For the purpose of this part, "parent" means a biological parent, adoptive parent,
213 stepparent, or grandparent.

214 (2) The purpose of this part is to provide a parent of an incapacitated child with a
215 simplified procedure to obtain guardianship when the child reaches 18 years of age.

216 (3) A parent who is caring for a permanently incapacitated child is exempt from the
217 requirements regarding guardianships in Title 75, Chapter 5, Protection of Persons Under
218 Disability and Their Property, and Chapter 5b, Uniform Adult Guardianship and Protective
219 Proceedings Jurisdiction Act.

220 Section 3. Section **78B-6-2002** is enacted to read:

221 **78B-6-2002. Definitions.**

222 As used in this part:

223 (1) "Child" means an individual who:

224 (a) is less than 22 years of age; and

225 (b) has been diagnosed by a physician, psychiatrist, psychologist, or neuropsychologist
226 with a condition that permanently incapacitates the child.

227 (2) "Incapacitated" or "incapacity" is measured by functional limitations and means
228 that an individual's ability to do the following is impaired to the extent that the individual lacks
229 the ability, even with appropriate technological assistance, to meet the essential requirements
230 for physical health, safety, self-care, or financial protection:

231 (a) receive and evaluate information;

232 (b) make and communicate decisions; or

233 (c) provide for necessities such as food, shelter, clothing, health care, or safety.

234 Section 4. Section **78B-6-2003** is enacted to read:

235 **78B-6-2003. Guardianship of incapacitated child -- Simplified procedure.**

236 (1) The parent of an incapacitated child may petition the juvenile court for
237 guardianship of the child within six months of the child's 18th birthday.

238 (2) The Judicial Council shall create a simplified petition and court procedure for
239 guardianships when the petitioner is the parent of a child who is permanently incapacitated.
240 The procedure shall include forms created for use with the Online Court Assistance Program.

241 (3) The simplified petition shall require that the petitioner provide:

242 (a) a letter to the court from a representative of the child's educational institution
243 describing the child's physical and mental capacity, including the child's ability to consider and
244 make decisions regarding:

- 245 (i) where and with whom the child will live;
- 246 (ii) when and how to seek medical treatment; and
- 247 (iii) general participation in day-to-day activities;
- 248 (b) a copy of the child's most recent individual education plan; and
- 249 (c) a statement by the petitioner describing the extent of care provided by the
- 250 petitioner, including efforts regarding the child's:
 - 251 (i) education;
 - 252 (ii) socialization;
 - 253 (iii) counseling; and
 - 254 (iv) work history, if any.

255 Section 5. Section **78B-6-2004** is enacted to read:

256 **78B-6-2004. Counsel not required -- When court may request.**

257 Interested parties may receive notice of a guardianship proceeding under this part by
258 certified mail, return receipt requested.

259 Section 6. Section **78B-6-2005** is enacted to read:

260 **78B-6-2005. Counsel not required -- When court may request.**

261 Counsel is not required to be retained for the incapacitated child to pursue a
262 guardianship in accordance with this part.

Legislative Review Note
as of 2-24-15 10:35 AM

Office of Legislative Research and General Counsel