

Guardianship Modifications

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kathleen A. Riebe

House Sponsor:

LONG TITLE**General Description:**

This bill addresses guardianships.

Highlighted Provisions:

This bill:

▸ for a guardianship proceeding on and after May 7, 2025, requires the court to make a finding regarding whether an incapacitated person is mentally incompetent and is not permitted to vote in an election or hold office in this state under Utah Constitution, Article IV, Section 6;

▸ for an incapacitated person for whom a guardian was appointed before May 7, 2025, creates a presumption in certain circumstances that the incapacitated person is mentally incompetent and is not permitted to vote in an election or hold office in this state under Utah Constitution, Article IV, Section 6; and

▸ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

75-5-304, as last amended by Laws of Utah 2022, Chapter 441

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

Section 1. Section **75-5-304** is amended to read:

75-5-304 . Findings -- Limited guardianship preferred -- Order of appointment.

(1) The court may appoint a guardian as requested if the court [~~is satisfied~~] finds that:

(a) the person for whom a guardian is sought is incapacitated; and

(b) the appointment is necessary or desirable as a means of providing continuing care

31 and supervision of the incapacitated person.

32 (2)(a)[(†)] The court shall prefer a limited guardianship and may only grant a full
33 guardianship if no other alternative exists.

34 [(††)] (b) If the court does not grant a limited guardianship, a specific finding shall be
35 made that nothing less than a full guardianship is adequate.

36 [(††)] (c)[(†)] An order of appointment of a limited guardianship shall state the
37 limitations of the guardianship.

38 [(††)] (d) Letters of guardianship for a limited guardianship shall state the limitations of
39 the guardianship unless the court determines for good cause shown that a limitation
40 should not be listed in the letters.

41 (3)(a) Except as provided in Subsection (3)(b), a guardian appointed by will or written
42 instrument, under Section 75-5-301, whose appointment has not been prevented or
43 nullified under Subsection 75-5-301(4), has priority over any guardian who may be
44 appointed by the court.

45 (b) Upon a finding that the testamentary or instrumental guardian has failed to accept the
46 appointment within 30 days after notice of the guardianship proceeding, the court
47 may:

48 (i) dismiss the proceeding; or

49 (ii) enter any other appropriate order.

50 (4) If the court grants a guardian with the power to make or assist with health care decisions
51 for an incapacitated person, the court shall include in the order of appointment the name
52 of any interested person for whom the guardian must notify of any significant health
53 care or treatment received by the incapacitated person.

54 (5)(a) For a guardianship proceeding on and after May 7, 2025, and upon a
55 determination that a person for whom the guardian is sought is incapacitated under
56 Subsection (1), the court shall make a finding, by clear and convincing evidence, as
57 to whether the person is mentally incompetent and is not permitted to vote in an
58 election or hold office in this state under Utah Constitution, Article IV, Section 6, of
59 the Utah Constitution.

60 (b) If the court appointed a guardian for an incapacitated person before May 7, 2025,
61 and the order of appointment does not address whether the incapacitated person may
62 vote in an election or hold office in this state, there is a presumption that the
63 incapacitated person is mentally incompetent and is not permitted to vote in an
64 election or hold office in this state under Utah Constitution, Article IV, Section 6,

65 until:
66 (i) the court makes a finding, by clear and convincing evidence, as to whether the
67 person is mentally incompetent and is permitted to vote in an election or hold
68 office in this state under Utah Constitution, Article IV, Section 6; or
69 (ii) the guardianship is terminated.
70 (c) The court shall include a finding described in this Subsection (5) in the order of
71 appointment and the letters of guardianship.

72 Section 2. **Effective Date.**

73 This bill takes effect on May 7, 2025.