

**UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND
OTHER PROTECTIVE ARRANGEMENT ACT**

2019 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill addresses guardianships, conservatorships, and other protective arrangements.

Highlighted Provisions:

This bill:

- ▶ enacts the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, including:
 - enacting general provisions;
 - enacting provisions regarding guardianship of a minor;
 - enacting provisions regarding guardianship of an adult;
 - enacting provisions regarding conservatorships;
 - enacting provisions related to other protective arrangements;
 - providing forms;
 - enacting miscellaneous provisions, such as severability clause;
- ▶ repeals the Protection of Persons Under Disability and Their Property chapter; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 31A-21-104**, as last amended by Laws of Utah 2009, Chapter 355
- 31A-23a-111**, as last amended by Laws of Utah 2018, Chapter 319
- 31A-23b-401**, as last amended by Laws of Utah 2017, Chapter 168
- 31A-25-208**, as last amended by Laws of Utah 2016, Chapter 138

- 32 **31A-26-213**, as last amended by Laws of Utah 2017, Chapter 168
- 33 **53G-6-302**, as last amended by Laws of Utah 2018, Chapter 64 and renumbered and
- 34 amended by Laws of Utah 2018, Chapter 3
- 35 **53G-6-303**, as renumbered and amended by Laws of Utah 2018, Chapter 3
- 36 **53G-6-304**, as renumbered and amended by Laws of Utah 2018, Chapter 3
- 37 **62A-3-320**, as last amended by Laws of Utah 2017, Chapter 176
- 38 **62A-14-102**, as last amended by Laws of Utah 2013, Chapter 364
- 39 **62A-14-105**, as last amended by Laws of Utah 2009, Chapter 75
- 40 **63I-2-275**, as last amended by Laws of Utah 2018, Chapter 455
- 41 **75-1-201**, as last amended by Laws of Utah 2013, Chapter 364
- 42 **75-5b-102**, as enacted by Laws of Utah 2008, Chapter 253
- 43 **75-5b-302**, as enacted by Laws of Utah 2008, Chapter 253
- 44 **75-11-114**, as last amended by Laws of Utah 2018, Chapter 27

45 ENACTS:

- 46 **75-5c-101**, Utah Code Annotated 1953
- 47 **75-5c-102**, Utah Code Annotated 1953
- 48 **75-5c-103**, Utah Code Annotated 1953
- 49 **75-5c-104**, Utah Code Annotated 1953
- 50 **75-5c-105**, Utah Code Annotated 1953
- 51 **75-5c-106**, Utah Code Annotated 1953
- 52 **75-5c-107**, Utah Code Annotated 1953
- 53 **75-5c-108**, Utah Code Annotated 1953
- 54 **75-5c-109**, Utah Code Annotated 1953
- 55 **75-5c-110**, Utah Code Annotated 1953
- 56 **75-5c-111**, Utah Code Annotated 1953
- 57 **75-5c-112**, Utah Code Annotated 1953
- 58 **75-5c-113**, Utah Code Annotated 1953
- 59 **75-5c-114**, Utah Code Annotated 1953
- 60 **75-5c-115**, Utah Code Annotated 1953
- 61 **75-5c-116**, Utah Code Annotated 1953
- 62 **75-5c-117**, Utah Code Annotated 1953

- 63 **75-5c-118**, Utah Code Annotated 1953
- 64 **75-5c-119**, Utah Code Annotated 1953
- 65 **75-5c-120**, Utah Code Annotated 1953
- 66 **75-5c-121**, Utah Code Annotated 1953
- 67 **75-5c-122**, Utah Code Annotated 1953
- 68 **75-5c-123**, Utah Code Annotated 1953
- 69 **75-5c-124**, Utah Code Annotated 1953
- 70 **75-5c-125**, Utah Code Annotated 1953
- 71 **75-5c-126**, Utah Code Annotated 1953
- 72 **75-5c-127**, Utah Code Annotated 1953
- 73 **75-5c-201**, Utah Code Annotated 1953
- 74 **75-5c-202**, Utah Code Annotated 1953
- 75 **75-5c-203**, Utah Code Annotated 1953
- 76 **75-5c-204**, Utah Code Annotated 1953
- 77 **75-5c-205**, Utah Code Annotated 1953
- 78 **75-5c-206**, Utah Code Annotated 1953
- 79 **75-5c-207**, Utah Code Annotated 1953
- 80 **75-5c-208**, Utah Code Annotated 1953
- 81 **75-5c-209**, Utah Code Annotated 1953
- 82 **75-5c-210**, Utah Code Annotated 1953
- 83 **75-5c-211**, Utah Code Annotated 1953
- 84 **75-5c-301**, Utah Code Annotated 1953
- 85 **75-5c-302**, Utah Code Annotated 1953
- 86 **75-5c-303**, Utah Code Annotated 1953
- 87 **75-5c-304**, Utah Code Annotated 1953
- 88 **75-5c-305**, Utah Code Annotated 1953
- 89 **75-5c-306**, Utah Code Annotated 1953
- 90 **75-5c-307**, Utah Code Annotated 1953
- 91 **75-5c-308**, Utah Code Annotated 1953
- 92 **75-5c-309**, Utah Code Annotated 1953

93 **75-5c-310**, Utah Code Annotated 1953
94 **75-5c-311**, Utah Code Annotated 1953
95 **75-5c-312**, Utah Code Annotated 1953
96 **75-5c-313**, Utah Code Annotated 1953
97 **75-5c-314**, Utah Code Annotated 1953
98 **75-5c-315**, Utah Code Annotated 1953
99 **75-5c-316**, Utah Code Annotated 1953
100 **75-5c-317**, Utah Code Annotated 1953
101 **75-5c-318**, Utah Code Annotated 1953
102 **75-5c-319**, Utah Code Annotated 1953
103 **75-5c-401**, Utah Code Annotated 1953
104 **75-5c-402**, Utah Code Annotated 1953
105 **75-5c-403**, Utah Code Annotated 1953
106 **75-5c-404**, Utah Code Annotated 1953
107 **75-5c-405**, Utah Code Annotated 1953
108 **75-5c-406**, Utah Code Annotated 1953
109 **75-5c-407**, Utah Code Annotated 1953
110 **75-5c-408**, Utah Code Annotated 1953
111 **75-5c-409**, Utah Code Annotated 1953
112 **75-5c-410**, Utah Code Annotated 1953
113 **75-5c-411**, Utah Code Annotated 1953
114 **75-5c-412**, Utah Code Annotated 1953
115 **75-5c-413**, Utah Code Annotated 1953
116 **75-5c-414**, Utah Code Annotated 1953
117 **75-5c-415**, Utah Code Annotated 1953
118 **75-5c-416**, Utah Code Annotated 1953
119 **75-5c-417**, Utah Code Annotated 1953
120 **75-5c-418**, Utah Code Annotated 1953
121 **75-5c-419**, Utah Code Annotated 1953
122 **75-5c-420**, Utah Code Annotated 1953
123 **75-5c-421**, Utah Code Annotated 1953

124 **75-5c-422**, Utah Code Annotated 1953
125 **75-5c-423**, Utah Code Annotated 1953
126 **75-5c-424**, Utah Code Annotated 1953
127 **75-5c-425**, Utah Code Annotated 1953
128 **75-5c-426**, Utah Code Annotated 1953
129 **75-5c-427**, Utah Code Annotated 1953
130 **75-5c-428**, Utah Code Annotated 1953
131 **75-5c-429**, Utah Code Annotated 1953
132 **75-5c-430**, Utah Code Annotated 1953
133 **75-5c-431**, Utah Code Annotated 1953
134 **75-5c-432**, Utah Code Annotated 1953
135 **75-5c-501**, Utah Code Annotated 1953
136 **75-5c-502**, Utah Code Annotated 1953
137 **75-5c-503**, Utah Code Annotated 1953
138 **75-5c-504**, Utah Code Annotated 1953
139 **75-5c-505**, Utah Code Annotated 1953
140 **75-5c-506**, Utah Code Annotated 1953
141 **75-5c-507**, Utah Code Annotated 1953
142 **75-5c-508**, Utah Code Annotated 1953
143 **75-5c-509**, Utah Code Annotated 1953
144 **75-5c-510**, Utah Code Annotated 1953
145 **75-5c-511**, Utah Code Annotated 1953
146 **75-5c-512**, Utah Code Annotated 1953
147 **75-5c-601**, Utah Code Annotated 1953
148 **75-5c-602**, Utah Code Annotated 1953
149 **75-5c-603**, Utah Code Annotated 1953
150 **75-5c-604**, Utah Code Annotated 1953
151 **75-5c-701**, Utah Code Annotated 1953
152 **75-5c-702**, Utah Code Annotated 1953
153 **75-5c-703**, Utah Code Annotated 1953

- 154 **75-5c-704**, Utah Code Annotated 1953
- 155 RENUMBERS AND AMENDS:
- 156 **75-5c-128**, (Renumbered from 75-5-103, as last amended by Laws of Utah 2018,
- 157 Chapter 64)
- 158 REPEALS:
- 159 **75-5-101**, as enacted by Laws of Utah 1975, Chapter 150
- 160 **75-5-102**, as last amended by Laws of Utah 2004, Chapter 198
- 161 **75-5-104**, as enacted by Laws of Utah 1975, Chapter 150
- 162 **75-5-105**, as enacted by Laws of Utah 1975, Chapter 150
- 163 **75-5-201**, as last amended by Laws of Utah 2018, Chapter 415
- 164 **75-5-202**, as last amended by Laws of Utah 1985, Chapter 41
- 165 **75-5-202.5**, as enacted by Laws of Utah 1985, Chapter 41
- 166 **75-5-203**, as last amended by Laws of Utah 1985, Chapter 41
- 167 **75-5-204**, as last amended by Laws of Utah 1985, Chapter 41
- 168 **75-5-205**, as enacted by Laws of Utah 1975, Chapter 150
- 169 **75-5-206**, as last amended by Laws of Utah 2010, Chapter 392
- 170 **75-5-207**, as last amended by Laws of Utah 1995, Chapter 156
- 171 **75-5-208**, as last amended by Laws of Utah 1985, Chapter 41
- 172 **75-5-209**, as last amended by Laws of Utah 2008, Chapter 3
- 173 **75-5-210**, as enacted by Laws of Utah 1975, Chapter 150
- 174 **75-5-211**, as last amended by Laws of Utah 1985, Chapter 41
- 175 **75-5-212**, as enacted by Laws of Utah 1975, Chapter 150
- 176 **75-5-301**, as last amended by Laws of Utah 1985, Chapter 41
- 177 **75-5-302**, as enacted by Laws of Utah 1975, Chapter 150
- 178 **75-5-303**, as last amended by Laws of Utah 2018, Chapter 455
- 179 **75-5-304**, as last amended by Laws of Utah 2017, Chapter 403
- 180 **75-5-305**, as last amended by Laws of Utah 1977, Chapter 194
- 181 **75-5-306**, as last amended by Laws of Utah 1977, Chapter 194
- 182 **75-5-307**, as last amended by Laws of Utah 2012, Chapter 274
- 183 **75-5-308**, as enacted by Laws of Utah 1975, Chapter 150
- 184 **75-5-309**, as last amended by Laws of Utah 2018, Chapter 455

185 **75-5-310**, as last amended by Laws of Utah 2017, Chapter 403
186 **75-5-310.5**, as enacted by Laws of Utah 2014, Chapter 142
187 **75-5-311**, as last amended by Laws of Utah 2018, Chapter 455
188 **75-5-312**, as last amended by Laws of Utah 2018, Chapters 244 and 294
189 **75-5-312.5**, as last amended by Laws of Utah 2018, Chapter 244
190 **75-5-313**, as last amended by Laws of Utah 1985, Chapter 41
191 **75-5-314**, as enacted by Laws of Utah 1975, Chapter 150
192 **75-5-315**, as enacted by Laws of Utah 1975, Chapter 150
193 **75-5-316**, as last amended by Laws of Utah 2011, Chapter 366
194 **75-5-317**, as enacted by Laws of Utah 2018, Chapter 294
195 **75-5-401**, as last amended by Laws of Utah 2001, Chapter 375
196 **75-5-402**, as last amended by Laws of Utah 1992, Chapter 30
197 **75-5-403**, as last amended by Laws of Utah 1992, Chapter 30
198 **75-5-404**, as enacted by Laws of Utah 1975, Chapter 150
199 **75-5-405**, as enacted by Laws of Utah 1975, Chapter 150
200 **75-5-406**, as enacted by Laws of Utah 1975, Chapter 150
201 **75-5-407**, as last amended by Laws of Utah 2013, Chapter 364
202 **75-5-408**, as last amended by Laws of Utah 2014, Chapter 142
203 **75-5-409**, as last amended by Laws of Utah 1977, Chapter 194
204 **75-5-410**, as last amended by Laws of Utah 2010, Chapter 324
205 **75-5-411**, as last amended by Laws of Utah 1977, Chapter 194
206 **75-5-412**, as enacted by Laws of Utah 1975, Chapter 150
207 **75-5-413**, as enacted by Laws of Utah 1975, Chapter 150
208 **75-5-414**, as last amended by Laws of Utah 2012, Chapter 274
209 **75-5-415**, as last amended by Laws of Utah 2014, Chapter 142
210 **75-5-416**, as last amended by Laws of Utah 2014, Chapter 142
211 **75-5-417**, as last amended by Laws of Utah 2004, Chapter 89
212 **75-5-418**, as last amended by Laws of Utah 2017, Chapter 403
213 **75-5-419**, as last amended by Laws of Utah 2012, Chapter 274
214 **75-5-420**, as last amended by Laws of Utah 2012, Chapter 274

215 ~~75-5-421~~, as last amended by Laws of Utah 2017, Chapter 403
 216 ~~75-5-422~~, as enacted by Laws of Utah 1975, Chapter 150
 217 ~~75-5-423~~, as enacted by Laws of Utah 1975, Chapter 150
 218 ~~75-5-424~~, as last amended by Laws of Utah 2018, Chapter 244
 219 ~~75-5-425~~, as last amended by Laws of Utah 2017, Chapter 403
 220 ~~75-5-426~~, as enacted by Laws of Utah 1975, Chapter 150
 221 ~~75-5-427~~, as last amended by Laws of Utah 1977, Chapter 194
 222 ~~75-5-428~~, as last amended by Laws of Utah 2007, Chapter 306
 223 ~~75-5-429~~, as enacted by Laws of Utah 1975, Chapter 150
 224 ~~75-5-430~~, as enacted by Laws of Utah 1975, Chapter 150
 225 ~~75-5-431~~, as enacted by Laws of Utah 1975, Chapter 150
 226 ~~75-5-432~~, as last amended by Laws of Utah 1977, Chapter 194
 227 ~~75-5-433~~, as last amended by Laws of Utah 1977, Chapter 194

228

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

230 Section 1. Section **31A-21-104** is amended to read:

231 **31A-21-104. Insurable interest and consent -- Scope.**

232 (1) As used in this chapter:

233 (a) For purposes of this section, "exchange" means an exchange made pursuant to
 234 Section 1035, Internal Revenue Code, as may be amended.

235 (b) "Insurable interest" in a person means the following, including a circumstance
 236 described in Subsection (3):

237 (i) for a person closely related by blood or by law, a substantial interest engendered by
 238 love and affection; or

239 (ii) in the case of a person not described in Subsection (1)(b)(i), a lawful and
 240 substantial interest in having the life, health, and bodily safety of the person insured continue.

241 (c) "Insurable interest" in property or liability means any lawful and substantial
 242 economic interest in the nonoccurrence of the event insured against.

243 (d) "Life settlement" is as defined in Section 31A-36-102.

244 (2) (a) An insurer may not knowingly provide insurance to a person who does not have
 245 or expect to have an insurable interest in the subject of the insurance.

246 (b) A person may not knowingly procure, directly, by assignment, or otherwise, an
247 interest in the proceeds of an insurance policy unless that person has or expects to have an
248 insurable interest in the subject of the insurance.

249 (c) In the case of life insurance, the insurable interest requirements of Subsections
250 (2)(a) and (b):

251 (i) are satisfied if the requirements are met:

252 (A) at the effective date of the insurance policy; and

253 (B) at the time of a later procurement, if any, of an interest in the proceeds of an
254 insurance policy; and

255 (ii) do not need to be met at the time that proceeds of an insurance policy are payable if
256 the requirements are met at the times specified in Subsection (2)(c)(i).

257 (d) Except as provided in Subsections (7) and (8), insurance provided in violation of
258 this Subsection (2) is subject to Subsection (6).

259 (e) A policy holder in a group insurance policy does not need an insurable interest if a
260 certificate holder or a person other than the group policyholder who is specified by the
261 certificate holder is the recipient of the proceeds of the group insurance policy.

262 (3) The following is a nonexhaustive list of insurable interests:

263 (a) A person has an unlimited insurable interest in that person's own life and health.

264 (b) A shareholder, member, or partner has an insurable interest in the life of another
265 shareholder, member, or partner for purposes of an insurance contract that is an integral part of
266 a legitimate buy-sell agreement respecting shares, membership interests, or partnership
267 interests in the business.

268 (c) (i) A trust has an insurable interest in the subject of the insurance to the extent that
269 all beneficiaries of the trust have an insurable interest.

270 (ii) A trust violates this section if the trust:

271 (A) is created to give the appearance of an insurable interest, but an insurable interest
272 does not exist; and

273 (B) is used to initiate a policy for an investor or other person who has no insurable
274 interest in the insured.

275 (d) (i) Subject to Subsection (3)(d)(v), an employer or an employer sponsored trust:

276 (A) has an insurable interest in the lives of the employer's:

- 277 (I) directors;
- 278 (II) officers;
- 279 (III) managers;
- 280 (IV) nonmanagement employees; and
- 281 (V) retired employees; and
- 282 (B) may insure a life listed in Subsection (3)(d)(i)(A):
- 283 (I) on an individual or group basis; and
- 284 (II) with the written consent of the insured.
- 285 (ii) (A) A trustee of a trust established by an employer for the sole benefit of the
- 286 employer has the same insurable interest in the life and health of any person as does the
- 287 employer.
- 288 (B) Without limiting the general principle in Subsection (3)(d)(ii)(A), a trustee of a
- 289 trust established by an employer that provides life, health, disability, retirement, or similar
- 290 benefits to an individual identified in Subsection (3)(d)(i)(A) has an insurable interest in the
- 291 life of the individual described in Subsection (3)(d)(i)(A) for whom the benefits are provided.
- 292 (iii) (A) For the purpose of exchanging life insurance, an individual described in
- 293 Subsection (3)(d)(i)(A) includes an individual who was formerly included under Subsection
- 294 (3)(d)(i)(A) if the life insurance to be exchanged:
- 295 (I) is purchased or acquired while the individual is a current director, officer, manager,
- 296 or employee; and
- 297 (II) is exchanged for life insurance in an amount that does not exceed the amount of the
- 298 insurance being exchanged.
- 299 (B) Written consent of an individual described in this Subsection (3)(d)(iii) is not
- 300 required at the time of the exchange of the life insurance.
- 301 (C) This Subsection (3)(d)(iii) shall be interpreted in a manner consistent with
- 302 Subsection (2)(c).
- 303 (iv) (A) If an employer or trustee establishes an insurable interest as provided in this
- 304 Subsection (3)(d) and all of the employer's business is acquired, purchased, merged into, or
- 305 otherwise transferred to a subsequent employer, the insurable interest of the original employer
- 306 or trustee in an individual described in Subsection (3)(d)(i)(A) is automatically transferred to:
- 307 (I) the subsequent employer; or

308 (II) the trustee of a trust established by the subsequent employer for the subsequent
309 employer's sole benefit.

310 (B) A subsequent employer or a trustee of a trust described in Subsection
311 (3)(d)(iv)(A)(II) may exchange life insurance that is purchased or acquired in an individual
312 described in Subsection (3)(d)(i)(A) by the original employer or trustee without establishing a
313 new insurable interest at the time of the exchange of the insurance.

314 (v) The extent of an employer's or employer sponsored trust's insurable interest for a
315 nonmanagement or retired employee under Subsection (3)(d)(i) is limited to an amount
316 commensurate with the employer's unfunded liabilities at the time insurance on the
317 nonmanagement or retired employee is procured.

318 (4) (a) Except as provided in Subsection (5), an insurer may not knowingly issue an
319 individual life or accident and health insurance policy to a person other than the one whose life
320 or health is at risk unless that person:

321 (i) is 18 years of age or older;

322 (ii) is not under guardianship under Title 75, Chapter [~~5, Protection of Persons Under~~
323 ~~Disability and Their Property~~] 5c, Uniform Guardianship, Conservatorship, and Other
324 Protective Arrangements Act; and

325 (iii) gives written consent to the issuance of the policy.

326 (b) A person shall express consent:

327 (i) by signing an application for the insurance with knowledge of the nature of the
328 document; or

329 (ii) in any other reasonable way.

330 (c) Insurance provided in violation of this Subsection (4) is subject to Subsection (6).

331 (5) (a) A life or accident and health insurance policy may be taken out without consent
332 in a circumstance described in this Subsection (5)(a).

333 (i) A person may obtain insurance on a dependent who does not have legal capacity.

334 (ii) A creditor may, at the creditor's expense, obtain insurance on the debtor in an
335 amount reasonably related to the amount of the debt.

336 (iii) A person may obtain life and accident and health insurance on an immediate
337 family member who is living with or dependent on the person.

338 (iv) A person may obtain an accident and health insurance policy on others that would

339 merely indemnify the policyholder against expenses the person would be legally or morally
340 obligated to pay.

341 (v) The commissioner may adopt rules permitting issuance of insurance for a limited
342 term on the life or health of a person serving outside the continental United States who is in the
343 public service of the United States, if the policyholder is related within the second degree by
344 blood or by marriage to the person whose life or health is insured.

345 (b) Consent may be given by another in a circumstance described in this Subsection
346 (5)(b).

347 (i) A parent, a person having legal custody of a minor, or a guardian of a person under
348 Title 75, Chapter [~~5, Protection of Persons Under Disability and Their Property~~] 5c, Uniform
349 Guardianship, Conservativeship, and Other Protective Arrangements Act, may consent to the
350 issuance of a policy on a dependent child or on a person under guardianship under Title 75,
351 Chapter [~~5, Protection of Persons Under Disability and Their Property~~] 5c, Uniform
352 Guardianship, Conservativeship, and Other Protective Arrangements Act.

353 (ii) A grandparent may consent to the issuance of life or accident and health insurance
354 on a grandchild.

355 (iii) A court of general jurisdiction may give consent to the issuance of a life or
356 accident and health insurance policy on an ex parte application showing facts the court
357 considers sufficient to justify the issuance of that insurance.

358 (6) (a) An insurance policy is not invalid because:

359 (i) the insurance policy is issued or procured in violation of Subsection (2); or

360 (ii) consent has not been given.

361 (b) Notwithstanding Subsection (6)(a), a court with appropriate jurisdiction may:

362 (i) order the proceeds to be paid to some person who is equitably entitled to the
363 proceeds, other than the one to whom the policy is designated to be payable; or

364 (ii) create a constructive trust in the proceeds or a part of the proceeds on behalf of a
365 person who is equitably entitled to the proceeds, subject to all the valid terms and conditions of
366 the policy other than those relating to insurable interest or consent.

367 (7) This section does not prevent an organization described under Section 501(c)(3),
368 (e), or (f), Internal Revenue Code, as amended, and the regulations made under this section,
369 and which is regulated under Title 13, Chapter 22, Charitable Solicitations Act, from soliciting

370 and procuring, by assignment or designation as beneficiary, a gift or assignment of an interest
371 in life insurance on the life of the donor or assignor or from enforcing payment of proceeds
372 from that interest.

373 (8) (a) Subsection (8)(b) applies if:

374 (i) an insurance policy is transferred pursuant to a life settlement in accordance with
375 Chapter 36, Life Settlements Act; and

376 (ii) before the transfer described in Subsection (8)(a)(i) the insurable interest
377 requirements of Subsection (2)(c)(i) are met for the insurance policy.

378 (b) An insurance policy described in Subsection (8)(a) is not subject to Subsection
379 (6)(b) and nothing in this section prevents:

380 (i) an owner of life insurance, whether or not the owner is also the subject of the
381 insurance, from entering into a life settlement;

382 (ii) a life settlement producer from soliciting a person to enter into a life settlement;

383 (iii) a person from enforcing payment of proceeds from the interest obtained under a
384 life settlement; or

385 (iv) the execution:

386 (A) of any of the following with respect to the death benefit or ownership of any
387 portion of a settled policy as provided for in Section 31A-36-109:

388 (I) an assignment;

389 (II) a sale;

390 (III) a transfer;

391 (IV) a devise; or

392 (V) a bequest; and

393 (B) by any of the following:

394 (I) a life settlement provider;

395 (II) a life settlement purchaser;

396 (III) a financing entity;

397 (IV) a related provider trust;

398 (V) a special purpose entity;

399 (VI) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A;

400 or

401 (VII) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.
402 230.501.

403 (9) (a) The insurable interests described in this section:

404 (i) are not exclusive;

405 (ii) are cumulative of an insurable interest that is not expressly included in this section
406 but exists in common law; and

407 (iii) are not in lieu of an insurable interest that is not expressly included in this section
408 but exists in common law.

409 (b) The inclusion of an insurable interest in this section may not be considered to be
410 excluding another insurable interest that is similar to the insurable interest included in this
411 section.

412 (c) (i) The recognition of an insurable interest in this section by Chapter 89, Laws of
413 Utah 2007, does not imply or create a presumption that the insurable interest did not exist
414 before April 30, 2007.

415 (ii) An insurable interest shall be presumed with respect to a life insurance policy
416 issued before April 30, 2007 to a person whose insurable interest is recognized in this section
417 by Chapter 89, Laws of Utah 2007.

418 Section 2. Section **31A-23a-111** is amended to read:

419 **31A-23a-111. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
420 **terminating a license -- Forfeiture -- Rulemaking for renewal or reinstatement.**

421 (1) A license type issued under this chapter remains in force until:

422 (a) revoked or suspended under Subsection (5);

423 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
424 administrative action;

425 (c) the licensee dies or is adjudicated incompetent as defined under:

426 (i) Title 75, Chapter 5c, Part 3, [~~Guardians of Incapacitated Persons~~] Guardianship of
427 Adult; or

428 (ii) Title 75, Chapter 5c, Part 4, [~~Protection of Property of Persons Under Disability~~
429 ~~and Minors~~] Conservatorship, and Part 5, Other Protective Arrangements;

430 (d) lapsed under Section 31A-23a-113; or

431 (e) voluntarily surrendered.

432 (2) The following may be reinstated within one year after the day on which the license
433 is no longer in force:

434 (a) a lapsed license; or

435 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
436 not be reinstated after the license period in which the license is voluntarily surrendered.

437 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
438 license, submission and acceptance of a voluntary surrender of a license does not prevent the
439 department from pursuing additional disciplinary or other action authorized under:

440 (a) this title; or

441 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
442 Administrative Rulemaking Act.

443 (4) A line of authority issued under this chapter remains in force until:

444 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;

445 or

446 (b) the supporting license type:

447 (i) is revoked or suspended under Subsection (5);

448 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
449 administrative action;

450 (iii) lapses under Section 31A-23a-113; or

451 (iv) is voluntarily surrendered; or

452 (c) the licensee dies or is adjudicated incompetent as defined under:

453 (i) Title 75, Chapter 5c, Part 3, [~~Guardians of Incapacitated Persons~~] Guardianship of
454 Adults; or

455 (ii) Title 75, Chapter 5c, Part 4, [~~Protection of Property of Persons Under Disability~~
456 ~~and Minors~~] Conservatorship, and Part 5, Other Protective Arrangements.

457 (5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an
458 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
459 commissioner may:

460 (i) revoke:

461 (A) a license; or

462 (B) a line of authority;

- 463 (ii) suspend for a specified period of 12 months or less:
- 464 (A) a license; or
- 465 (B) a line of authority;
- 466 (iii) limit in whole or in part:
- 467 (A) a license; or
- 468 (B) a line of authority;
- 469 (iv) deny a license application;
- 470 (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or
- 471 (vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and
- 472 Subsection (5)(a)(v).
- 473 (b) The commissioner may take an action described in Subsection (5)(a) if the
- 474 commissioner finds that the licensee:
- 475 (i) is unqualified for a license or line of authority under Section 31A-23a-104,
- 476 31A-23a-105, or 31A-23a-107;
- 477 (ii) violates:
- 478 (A) an insurance statute;
- 479 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 480 (C) an order that is valid under Subsection 31A-2-201(4);
- 481 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 482 delinquency proceedings in any state;
- 483 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 484 days after the day on which the judgment became final;
- 485 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 486 admitted insurers;
- 487 (vi) is affiliated with and under the same general management or interlocking
- 488 directorate or ownership as another insurance producer that transacts business in this state
- 489 without a license;
- 490 (vii) refuses:
- 491 (A) to be examined; or
- 492 (B) to produce its accounts, records, and files for examination;
- 493 (viii) has an officer who refuses to:

- 494 (A) give information with respect to the insurance producer's affairs; or
495 (B) perform any other legal obligation as to an examination;
496 (ix) provides information in the license application that is:
497 (A) incorrect;
498 (B) misleading;
499 (C) incomplete; or
500 (D) materially untrue;
501 (x) violates an insurance law, valid rule, or valid order of another regulatory agency in
502 any jurisdiction;
503 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;
504 (xii) improperly withholds, misappropriates, or converts money or properties received
505 in the course of doing insurance business;
506 (xiii) intentionally misrepresents the terms of an actual or proposed:
507 (A) insurance contract;
508 (B) application for insurance; or
509 (C) life settlement;
510 (xiv) is convicted of:
511 (A) a felony; or
512 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;
513 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;
514 (xvi) in the conduct of business in this state or elsewhere:
515 (A) uses fraudulent, coercive, or dishonest practices; or
516 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;
517 (xvii) has had an insurance license or other professional or occupational license, or an
518 equivalent to an insurance license or other professional or occupational license:
519 (A) denied;
520 (B) suspended;
521 (C) revoked; or
522 (D) surrendered to resolve an administrative action;
523 (xviii) forges another's name to:
524 (A) an application for insurance; or

- 525 (B) a document related to an insurance transaction;
- 526 (xix) improperly uses notes or another reference material to complete an examination
527 for an insurance license;
- 528 (xx) knowingly accepts insurance business from an individual who is not licensed;
- 529 (xxi) fails to comply with an administrative or court order imposing a child support
530 obligation;
- 531 (xxii) fails to:
- 532 (A) pay state income tax; or
- 533 (B) comply with an administrative or court order directing payment of state income
534 tax;
- 535 (xxiii) violates or permits others to violate the federal Violent Crime Control and Law
536 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
537 prohibited from engaging in the business of insurance; or
- 538 (xxiv) engages in a method or practice in the conduct of business that endangers the
539 legitimate interests of customers and the public.
- 540 (c) For purposes of this section, if a license is held by an agency, both the agency itself
541 and any individual designated under the license are considered to be the holders of the license.
- 542 (d) If an individual designated under the agency license commits an act or fails to
543 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
544 the commissioner may suspend, revoke, or limit the license of:
- 545 (i) the individual;
- 546 (ii) the agency, if the agency:
- 547 (A) is reckless or negligent in its supervision of the individual; or
- 548 (B) knowingly participates in the act or failure to act that is the ground for suspending,
549 revoking, or limiting the license; or
- 550 (iii) (A) the individual; and
- 551 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
- 552 (6) A licensee under this chapter is subject to the penalties for acting as a licensee
553 without a license if:
- 554 (a) the licensee's license is:
- 555 (i) revoked;

- 556 (ii) suspended;
- 557 (iii) limited;
- 558 (iv) surrendered in lieu of administrative action;
- 559 (v) lapsed; or
- 560 (vi) voluntarily surrendered; and
- 561 (b) the licensee:
- 562 (i) continues to act as a licensee; or
- 563 (ii) violates the terms of the license limitation.
- 564 (7) A licensee under this chapter shall immediately report to the commissioner:
- 565 (a) a revocation, suspension, or limitation of the person's license in another state, the
- 566 District of Columbia, or a territory of the United States;
- 567 (b) the imposition of a disciplinary sanction imposed on that person by another state,
- 568 the District of Columbia, or a territory of the United States; or
- 569 (c) a judgment or injunction entered against that person on the basis of conduct
- 570 involving:
- 571 (i) fraud;
- 572 (ii) deceit;
- 573 (iii) misrepresentation; or
- 574 (iv) a violation of an insurance law or rule.
- 575 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
- 576 license in lieu of administrative action may specify a time, not to exceed five years, within
- 577 which the former licensee may not apply for a new license.
- 578 (b) If no time is specified in an order or agreement described in Subsection (8)(a), the
- 579 former licensee may not apply for a new license for five years from the day on which the order
- 580 or agreement is made without the express approval by the commissioner.
- 581 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
- 582 a license issued under this part if so ordered by a court.
- 583 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
- 584 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 585 Section 3. Section **31A-23b-401** is amended to read:
- 586 **31A-23b-401. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**

587 **terminating a license -- Rulemaking for renewal or reinstatement.**

588 (1) A license as a navigator under this chapter remains in force until:

589 (a) revoked or suspended under Subsection (4);

590 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
591 administrative action;

592 (c) the licensee dies or is adjudicated incompetent as defined under:

593 (i) Title 75, Chapter 5c, Part 3, [~~Guardians of Incapacitated Persons~~] Guardianship of
594 Adult; or

595 (ii) Title 75, Chapter 5c, Part 4, [~~Protection of Property of Persons Under Disability~~
596 ~~and Minors~~] Conservatorship, or Part 5, Other Protective Arrangements;

597 (d) lapsed under this section; or

598 (e) voluntarily surrendered.

599 (2) The following may be reinstated within one year after the day on which the license
600 is no longer in force:

601 (a) a lapsed license; or

602 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
603 not be reinstated after the license period in which the license is voluntarily surrendered.

604 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
605 license, submission and acceptance of a voluntary surrender of a license does not prevent the
606 department from pursuing additional disciplinary or other action authorized under:

607 (a) this title; or

608 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
609 Administrative Rulemaking Act.

610 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an
611 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
612 commissioner may:

613 (i) revoke a license;

614 (ii) suspend a license for a specified period of 12 months or less;

615 (iii) limit a license in whole or in part;

616 (iv) deny a license application;

617 (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or

- 618 (vi) take a combination of actions under Subsections (4)(a)(i) through (iv) and
619 Subsection (4)(a)(v).
- 620 (b) The commissioner may take an action described in Subsection (4)(a) if the
621 commissioner finds that the licensee:
- 622 (i) is unqualified for a license under Section 31A-23b-204, 31A-23b-205, or
623 31A-23b-206;
- 624 (ii) violated:
- 625 (A) an insurance statute;
- 626 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 627 (C) an order that is valid under Subsection 31A-2-201(4);
- 628 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
629 delinquency proceedings in any state;
- 630 (iv) failed to pay a final judgment rendered against the person in this state within 60
631 days after the day on which the judgment became final;
- 632 (v) refused:
- 633 (A) to be examined; or
- 634 (B) to produce its accounts, records, and files for examination;
- 635 (vi) had an officer who refused to:
- 636 (A) give information with respect to the navigator's affairs; or
- 637 (B) perform any other legal obligation as to an examination;
- 638 (vii) provided information in the license application that is:
- 639 (A) incorrect;
- 640 (B) misleading;
- 641 (C) incomplete; or
- 642 (D) materially untrue;
- 643 (viii) violated an insurance law, valid rule, or valid order of another regulatory agency
644 in any jurisdiction;
- 645 (ix) obtained or attempted to obtain a license through misrepresentation or fraud;
- 646 (x) improperly withheld, misappropriated, or converted money or properties received
647 in the course of doing insurance business;
- 648 (xi) intentionally misrepresented the terms of an actual or proposed:

- 649 (A) insurance contract;
- 650 (B) application for insurance; or
- 651 (C) application for public program;
- 652 (xii) is convicted of a felony;
- 653 (xiii) admitted or is found to have committed an insurance unfair trade practice or
- 654 fraud;
- 655 (xiv) in the conduct of business in this state or elsewhere:
- 656 (A) used fraudulent, coercive, or dishonest practices; or
- 657 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 658 (xv) had an insurance license, navigator license, or its equivalent, denied, suspended,
- 659 or revoked in another state, province, district, or territory;
- 660 (xvi) forged another's name to:
- 661 (A) an application for insurance;
- 662 (B) a document related to an insurance transaction;
- 663 (C) a document related to an application for a public program; or
- 664 (D) a document related to an application for premium subsidies;
- 665 (xvii) improperly used notes or another reference material to complete an examination
- 666 for a license;
- 667 (xviii) knowingly accepted insurance business from an individual who is not licensed;
- 668 (xix) failed to comply with an administrative or court order imposing a child support
- 669 obligation;
- 670 (xx) failed to:
- 671 (A) pay state income tax; or
- 672 (B) comply with an administrative or court order directing payment of state income
- 673 tax;
- 674 (xxi) violated or permitted others to violate the federal Violent Crime Control and Law
- 675 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
- 676 prohibited from engaging in the business of insurance; or
- 677 (xxii) engaged in a method or practice in the conduct of business that endangered the
- 678 legitimate interests of customers and the public.
- 679 (c) For purposes of this section, if a license is held by an agency, both the agency itself

680 and any individual designated under the license are considered to be the holders of the license.

681 (d) If an individual designated under the agency license commits an act or fails to
682 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
683 the commissioner may suspend, revoke, or limit the license of:

684 (i) the individual;

685 (ii) the agency, if the agency:

686 (A) is reckless or negligent in its supervision of the individual; or

687 (B) knowingly participates in the act or failure to act that is the ground for suspending,
688 revoking, or limiting the license; or

689 (iii) (A) the individual; and

690 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

691 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
692 without a license if:

693 (a) the licensee's license is:

694 (i) revoked;

695 (ii) suspended;

696 (iii) surrendered in lieu of administrative action;

697 (iv) lapsed; or

698 (v) voluntarily surrendered; and

699 (b) the licensee:

700 (i) continues to act as a licensee; or

701 (ii) violates the terms of the license limitation.

702 (6) A licensee under this chapter shall immediately report to the commissioner:

703 (a) a revocation, suspension, or limitation of the person's license in another state, the
704 District of Columbia, or a territory of the United States;

705 (b) the imposition of a disciplinary sanction imposed on that person by another state,
706 the District of Columbia, or a territory of the United States; or

707 (c) a judgment or injunction entered against that person on the basis of conduct
708 involving:

709 (i) fraud;

710 (ii) deceit;

- 711 (iii) misrepresentation; or
- 712 (iv) a violation of an insurance law or rule.
- 713 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
- 714 license in lieu of administrative action may specify a time, not to exceed five years, within
- 715 which the former licensee may not apply for a new license.
- 716 (b) If no time is specified in an order or agreement described in Subsection (7)(a), the
- 717 former licensee may not apply for a new license for five years from the day on which the order
- 718 or agreement is made without the express approval of the commissioner.
- 719 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
- 720 a license issued under this chapter if so ordered by a court.
- 721 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
- 722 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 723 Section 4. Section **31A-25-208** is amended to read:
- 724 **31A-25-208. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
- 725 **terminating a license -- Rulemaking for renewal and reinstatement.**
- 726 (1) A license type issued under this chapter remains in force until:
- 727 (a) revoked or suspended under Subsection (4);
- 728 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
- 729 administrative action;
- 730 (c) the licensee dies or is adjudicated incompetent as defined under:
- 731 (i) Title 75, Chapter 5c, Part 3, [~~Guardians of Incapacitated Persons~~] Guardianship of
- 732 Adults; or
- 733 (ii) Title 75, Chapter 5c, Part 4, [~~Protection of Property of Persons Under Disability~~
- 734 ~~and Minors~~] Conservatorship, or Part 5, Other Protective Arrangements;
- 735 (d) lapsed under Section 31A-25-210; or
- 736 (e) voluntarily surrendered.
- 737 (2) The following may be reinstated within one year after the day on which the license
- 738 is no longer in force:
- 739 (a) a lapsed license; or
- 740 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
- 741 not be reinstated after the license period in which the license is voluntarily surrendered.

742 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
743 license, submission and acceptance of a voluntary surrender of a license does not prevent the
744 department from pursuing additional disciplinary or other action authorized under:

745 (a) this title; or

746 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
747 Administrative Rulemaking Act.

748 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an
749 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
750 commissioner may:

751 (i) revoke a license;

752 (ii) suspend a license for a specified period of 12 months or less;

753 (iii) limit a license in whole or in part; or

754 (iv) deny a license application.

755 (b) The commissioner may take an action described in Subsection (4)(a) if the
756 commissioner finds that the licensee:

757 (i) is unqualified for a license under Section 31A-25-202, 31A-25-203, or 31A-25-204;

758 (ii) has violated:

759 (A) an insurance statute;

760 (B) a rule that is valid under Subsection 31A-2-201(3); or

761 (C) an order that is valid under Subsection 31A-2-201(4);

762 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
763 delinquency proceedings in any state;

764 (iv) fails to pay a final judgment rendered against the person in this state within 60
765 days after the day on which the judgment became final;

766 (v) fails to meet the same good faith obligations in claims settlement that is required of
767 admitted insurers;

768 (vi) is affiliated with and under the same general management or interlocking
769 directorate or ownership as another third party administrator that transacts business in this state
770 without a license;

771 (vii) refuses:

772 (A) to be examined; or

- 773 (B) to produce its accounts, records, and files for examination;
- 774 (viii) has an officer who refuses to:
- 775 (A) give information with respect to the third party administrator's affairs; or
- 776 (B) perform any other legal obligation as to an examination;
- 777 (ix) provides information in the license application that is:
- 778 (A) incorrect;
- 779 (B) misleading;
- 780 (C) incomplete; or
- 781 (D) materially untrue;
- 782 (x) has violated an insurance law, valid rule, or valid order of another regulatory
- 783 agency in any jurisdiction;
- 784 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 785 (xii) has improperly withheld, misappropriated, or converted money or properties
- 786 received in the course of doing insurance business;
- 787 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 788 (A) insurance contract; or
- 789 (B) application for insurance;
- 790 (xiv) has been convicted of a felony;
- 791 (xv) has admitted or been found to have committed an insurance unfair trade practice
- 792 or fraud;
- 793 (xvi) in the conduct of business in this state or elsewhere has:
- 794 (A) used fraudulent, coercive, or dishonest practices; or
- 795 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 796 (xvii) has had an insurance license or its equivalent, denied, suspended, or revoked in
- 797 any other state, province, district, or territory;
- 798 (xviii) has forged another's name to:
- 799 (A) an application for insurance; or
- 800 (B) a document related to an insurance transaction;
- 801 (xix) has improperly used notes or any other reference material to complete an
- 802 examination for an insurance license;
- 803 (xx) has knowingly accepted insurance business from an individual who is not

804 licensed;

805 (xxi) has failed to comply with an administrative or court order imposing a child
806 support obligation;

807 (xxii) has failed to:

808 (A) pay state income tax; or

809 (B) comply with an administrative or court order directing payment of state income
810 tax;

811 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
812 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
813 prohibited from engaging in the business of insurance; or

814 (xxiv) has engaged in methods and practices in the conduct of business that endanger
815 the legitimate interests of customers and the public.

816 (c) For purposes of this section, if a license is held by an agency, both the agency itself
817 and any individual designated under the license are considered to be the holders of the agency
818 license.

819 (d) If an individual designated under the agency license commits an act or fails to
820 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
821 the commissioner may suspend, revoke, or limit the license of:

822 (i) the individual;

823 (ii) the agency if the agency:

824 (A) is reckless or negligent in its supervision of the individual; or

825 (B) knowingly participated in the act or failure to act that is the ground for suspending,
826 revoking, or limiting the license; or

827 (iii) (A) the individual; and

828 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

829 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
830 without a license if:

831 (a) the licensee's license is:

832 (i) revoked;

833 (ii) suspended;

834 (iii) limited;

- 835 (iv) surrendered in lieu of administrative action;
- 836 (v) lapsed; or
- 837 (vi) voluntarily surrendered; and
- 838 (b) the licensee:
- 839 (i) continues to act as a licensee; or
- 840 (ii) violates the terms of the license limitation.
- 841 (6) A licensee under this chapter shall immediately report to the commissioner:
- 842 (a) a revocation, suspension, or limitation of the person's license in any other state, the
- 843 District of Columbia, or a territory of the United States;
- 844 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
- 845 the District of Columbia, or a territory of the United States; or
- 846 (c) a judgment or injunction entered against the person on the basis of conduct
- 847 involving:
- 848 (i) fraud;
- 849 (ii) deceit;
- 850 (iii) misrepresentation; or
- 851 (iv) a violation of an insurance law or rule.
- 852 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
- 853 license in lieu of administrative action may specify a time, not to exceed five years, within
- 854 which the former licensee may not apply for a new license.
- 855 (b) If no time is specified in the order or agreement described in Subsection (7)(a), the
- 856 former licensee may not apply for a new license for five years from the day on which the order
- 857 or agreement is made without the express approval of the commissioner.
- 858 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
- 859 a license issued under this part if so ordered by the court.
- 860 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
- 861 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 862 Section 5. Section **31A-26-213** is amended to read:
- 863 **31A-26-213. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**
- 864 **terminating a license -- Forfeiture -- Rulemaking for renewal or reinstatement.**
- 865 (1) A license type issued under this chapter remains in force until:

- 866 (a) revoked or suspended under Subsection (5);
- 867 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
868 administrative action;
- 869 (c) the licensee dies or is adjudicated incompetent as defined under:
- 870 (i) Title 75, Chapter 5c, Part 3, [~~Guardians of Incapacitated Persons~~] Guardianship of
871 Adult; or
- 872 (ii) Title 75, Chapter 5c, Part 4, [~~Protection of Property of Persons Under Disability~~
873 ~~and Minors~~] Conservatorship, or Part 5, Other Protective Arrangements;
- 874 (d) lapsed under Section 31A-26-214.5; or
- 875 (e) voluntarily surrendered.
- 876 (2) The following may be reinstated within one year after the day on which the license
877 is no longer in force:
- 878 (a) a lapsed license; or
- 879 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may
880 not be reinstated after the license period in which it is voluntarily surrendered.
- 881 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a
882 license, submission and acceptance of a voluntary surrender of a license does not prevent the
883 department from pursuing additional disciplinary or other action authorized under:
- 884 (a) this title; or
- 885 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah
886 Administrative Rulemaking Act.
- 887 (4) A license classification issued under this chapter remains in force until:
- 888 (a) the qualifications pertaining to a license classification are no longer met by the
889 licensee; or
- 890 (b) the supporting license type:
- 891 (i) is revoked or suspended under Subsection (5); or
- 892 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
893 administrative action.
- 894 (5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an
895 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the
896 commissioner may:

- 897 (i) revoke:
- 898 (A) a license; or
- 899 (B) a license classification;
- 900 (ii) suspend for a specified period of 12 months or less:
- 901 (A) a license; or
- 902 (B) a license classification;
- 903 (iii) limit in whole or in part:
- 904 (A) a license; or
- 905 (B) a license classification;
- 906 (iv) deny a license application;
- 907 (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or
- 908 (vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and
- 909 Subsection (5)(a)(v).
- 910 (b) The commissioner may take an action described in Subsection (5)(a) if the
- 911 commissioner finds that the licensee:
- 912 (i) is unqualified for a license or license classification under Section 31A-26-202,
- 913 31A-26-203, 31A-26-204, or 31A-26-205;
- 914 (ii) has violated:
- 915 (A) an insurance statute;
- 916 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 917 (C) an order that is valid under Subsection 31A-2-201(4);
- 918 (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other
- 919 delinquency proceedings in any state;
- 920 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 921 days after the judgment became final;
- 922 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 923 admitted insurers;
- 924 (vi) is affiliated with and under the same general management or interlocking
- 925 directorate or ownership as another insurance adjuster that transacts business in this state
- 926 without a license;
- 927 (vii) refuses:

- 928 (A) to be examined; or
- 929 (B) to produce its accounts, records, and files for examination;
- 930 (viii) has an officer who refuses to:
- 931 (A) give information with respect to the insurance adjuster's affairs; or
- 932 (B) perform any other legal obligation as to an examination;
- 933 (ix) provides information in the license application that is:
- 934 (A) incorrect;
- 935 (B) misleading;
- 936 (C) incomplete; or
- 937 (D) materially untrue;
- 938 (x) has violated an insurance law, valid rule, or valid order of another regulatory
- 939 agency in any jurisdiction;
- 940 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 941 (xii) has improperly withheld, misappropriated, or converted money or properties
- 942 received in the course of doing insurance business;
- 943 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 944 (A) insurance contract; or
- 945 (B) application for insurance;
- 946 (xiv) has been convicted of a felony;
- 947 (xv) has admitted or been found to have committed an insurance unfair trade practice
- 948 or fraud;
- 949 (xvi) in the conduct of business in this state or elsewhere has:
- 950 (A) used fraudulent, coercive, or dishonest practices; or
- 951 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 952 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in
- 953 any other state, province, district, or territory;
- 954 (xviii) has forged another's name to:
- 955 (A) an application for insurance; or
- 956 (B) a document related to an insurance transaction;
- 957 (xix) has improperly used notes or any other reference material to complete an
- 958 examination for an insurance license;

- 959 (xx) has knowingly accepted insurance business from an individual who is not
960 licensed;
- 961 (xxi) has failed to comply with an administrative or court order imposing a child
962 support obligation;
- 963 (xxii) has failed to:
- 964 (A) pay state income tax; or
965 (B) comply with an administrative or court order directing payment of state income
966 tax;
- 967 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
968 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
969 prohibited from engaging in the business of insurance; or
- 970 (xxiv) has engaged in methods and practices in the conduct of business that endanger
971 the legitimate interests of customers and the public.
- 972 (c) For purposes of this section, if a license is held by an agency, both the agency itself
973 and any individual designated under the license are considered to be the holders of the license.
- 974 (d) If an individual designated under the agency license commits an act or fails to
975 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
976 the commissioner may suspend, revoke, or limit the license of:
- 977 (i) the individual;
- 978 (ii) the agency, if the agency:
- 979 (A) is reckless or negligent in its supervision of the individual; or
980 (B) knowingly participated in the act or failure to act that is the ground for suspending,
981 revoking, or limiting the license; or
- 982 (iii) (A) the individual; and
983 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
- 984 (6) A licensee under this chapter is subject to the penalties for conducting an insurance
985 business without a license if:
- 986 (a) the licensee's license is:
- 987 (i) revoked;
988 (ii) suspended;
989 (iii) limited;

- 990 (iv) surrendered in lieu of administrative action;
- 991 (v) lapsed; or
- 992 (vi) voluntarily surrendered; and
- 993 (b) the licensee:
- 994 (i) continues to act as a licensee; or
- 995 (ii) violates the terms of the license limitation.
- 996 (7) A licensee under this chapter shall immediately report to the commissioner:
- 997 (a) a revocation, suspension, or limitation of the person's license in any other state, the
- 998 District of Columbia, or a territory of the United States;
- 999 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
- 1000 the District of Columbia, or a territory of the United States; or
- 1001 (c) a judgment or injunction entered against that person on the basis of conduct
- 1002 involving:
- 1003 (i) fraud;
- 1004 (ii) deceit;
- 1005 (iii) misrepresentation; or
- 1006 (iv) a violation of an insurance law or rule.
- 1007 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
- 1008 license in lieu of administrative action may specify a time not to exceed five years within
- 1009 which the former licensee may not apply for a new license.
- 1010 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the
- 1011 former licensee may not apply for a new license for five years without the express approval of
- 1012 the commissioner.
- 1013 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
- 1014 a license issued under this part if so ordered by a court.
- 1015 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
- 1016 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1017 Section 6. Section **53G-6-302** is amended to read:
- 1018 **53G-6-302. Child's school district of residence -- Determination -- Responsibility**
- 1019 **for providing educational services.**
- 1020 (1) As used in this section:

1021 (a) "Health care facility" means the same as that term is defined in Section 26-21-2.

1022 (b) "Human services program" means the same as that term is defined in Section

1023 62A-2-101.

1024 (2) The school district of residence of a minor child whose custodial parent or legal
1025 guardian resides within Utah is:

1026 (a) the school district in which the custodial parent or legal guardian resides; or

1027 (b) the school district in which the child resides:

1028 (i) while in the custody or under the supervision of a Utah state agency;

1029 (ii) while under the supervision of a private or public agency which is in compliance
1030 with Section 62A-4a-606 and is authorized to provide child placement services by the state;

1031 (iii) while living with a responsible adult resident of the district, if a determination has
1032 been made in accordance with rules made by the State Board of Education in accordance with
1033 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

1034 (A) the child's physical, mental, moral, or emotional health will best be served by
1035 considering the child to be a resident for school purposes;

1036 (B) exigent circumstances exist that do not permit the case to be appropriately
1037 addressed under Section 53G-6-402; and

1038 (C) considering the child to be a resident of the district under this Subsection (2)(b)(iii)
1039 does not violate any other law or rule of the State Board of Education;

1040 (iv) while the child is receiving services from a health care facility or human services
1041 program, if a determination has been made in accordance with rules made by the State Board of
1042 Education in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

1043 (A) the child's physical, mental, moral, or emotional health will best be served by
1044 considering the child to be a resident for school purposes;

1045 (B) exigent circumstances exist that do not permit the case to be appropriately
1046 addressed under Section 53G-6-402; and

1047 (C) considering the child to be a resident of the district under this Subsection (2)(b)(iv)
1048 does not violate any other law or rule of the State Board of Education; or

1049 (v) if the child is married or has been determined to be an emancipated minor by a
1050 court of law or by a state administrative agency authorized to make that determination.

1051 (3) A minor child whose custodial parent or legal guardian does not reside in the state

1052 is considered to be a resident of the district in which the child lives, unless that designation
1053 violates any other law or rule of the State Board of Education, if:

1054 (a) the child is married or an emancipated minor under Subsection (2)(b)(v);

1055 (b) the child lives with a resident of the district who is a responsible adult and whom
1056 the district agrees to designate as the child's legal guardian under Section 53G-6-303;

1057 (c) if permissible under policies adopted by a local school board, it is established to the
1058 satisfaction of the local school board that:

1059 (i) the child lives with a responsible adult who is a resident of the district and is the
1060 child's noncustodial parent, grandparent, brother, sister, uncle, or aunt;

1061 (ii) the child's presence in the district is not for the primary purpose of attending the
1062 public schools;

1063 (iii) the child's physical, mental, moral, or emotional health will best be served by
1064 considering the child to be a resident for school purposes; and

1065 (iv) the child is prepared to abide by the rules and policies of the school and school
1066 district in which attendance is sought; or

1067 (d) it is established to the satisfaction of the local school board that:

1068 (i) the child's parent or guardian moves from the state;

1069 (ii) the child's parent or guardian executes a power of attorney under Section
1070 ~~[75-5-103]~~ 75-5c-128 that:

1071 (A) meets the requirements of Subsection (4); and

1072 (B) delegates powers regarding care, custody, or property, including schooling, to a
1073 responsible adult with whom the child resides;

1074 (iii) the responsible adult described in Subsection (3)(d)(ii)(B) is a resident of the
1075 district;

1076 (iv) the child's physical, mental, moral, or emotional health will best be served by
1077 considering the child to be a resident for school purposes;

1078 (v) the child is prepared to abide by the rules and policies of the school and school
1079 district in which attendance is sought; and

1080 (vi) the child's attendance in the school will not be detrimental to the school or school
1081 district.

1082 (4) (a) If admission is sought under Subsection (2)(b)(iii), (3)(c), or (3)(d), then the

1083 district may require the person with whom the child lives to be designated as the child's
1084 custodian in a durable power of attorney, issued by the party who has legal custody of the child,
1085 granting the custodian full authority to take any appropriate action, including authorization for
1086 educational or medical services, in the interests of the child.

1087 (b) Both the party granting and the party empowered by the power of attorney shall
1088 agree to:

1089 (i) assume responsibility for any fees or other charges relating to the child's education
1090 in the district; and

1091 (ii) if eligibility for fee waivers is claimed under Section 53G-7-504, provide the
1092 school district with all financial information requested by the district for purposes of
1093 determining eligibility for fee waivers.

1094 (c) Notwithstanding Section [~~75-5-103~~] 75-5c-128, a power of attorney meeting the
1095 requirements of this section and accepted by the school district shall remain in force until the
1096 earliest of the following occurs:

1097 (i) the child reaches the age of 18, marries, or becomes emancipated;

1098 (ii) the expiration date stated in the document; or

1099 (iii) the power of attorney is revoked or rendered inoperative by the grantor or grantee,
1100 or by order of a court of competent jurisdiction.

1101 (5) A power of attorney does not confer legal guardianship.

1102 (6) Each school district is responsible for providing educational services for all
1103 children of school age who are residents of the district.

1104 Section 7. Section **53G-6-303** is amended to read:

1105 **53G-6-303. Guardianship for residency purposes by responsible adult --**

1106 **Procedure to obtain -- Termination.**

1107 (1) For purposes of this part, "responsible adult" means a person 21 years of age or
1108 older who is a resident of this state and is willing and able to provide reasonably adequate food,
1109 clothing, shelter, and supervision for a minor child.

1110 (2) A local board of education may adopt a policy permitting it to designate a
1111 responsible adult residing in the school district as legal guardian of a child whose custodial
1112 parent or legal guardian does not reside within the state upon compliance with the following
1113 requirements:

1114 (a) submission to the school district of a signed and notarized affidavit by the child's
1115 custodial parent or legal guardian stating that:

1116 (i) the child's presence in the district is not for the primary purpose of attending the
1117 public schools;

1118 (ii) the child's physical, mental, moral, or emotional health would best be served by a
1119 transfer of guardianship to the Utah resident;

1120 (iii) the affiant is aware that designation of a guardian under this section is equivalent
1121 to a court-ordered guardianship under [~~Section 75-5-206~~] Title 75, Chapter 5c, Part 2,
1122 Guardianship of Minor, and will suspend or terminate any existing parental or guardianship
1123 rights in the same manner as would occur under a court-ordered guardianship;

1124 (iv) the affiant consents and submits to any such suspension or termination of parental
1125 or guardianship rights;

1126 (v) the affiant consents and submits to the jurisdiction of the state district court in
1127 which the school district is located in any action relating to the guardianship or custody of the
1128 child in question;

1129 (vi) the affiant designates a named responsible adult as agent, authorized to accept
1130 service on behalf of the affiant of any process, notice, or demand required or permitted to be
1131 served in connection with any action under Subsection (2)(a)(v); and

1132 (vii) it is the affiant's intent that the child become a permanent resident of the state and
1133 reside with and be under the supervision of the named responsible adult;

1134 (b) submission to the school district of a signed and notarized affidavit by the
1135 responsible adult stating that:

1136 (i) the affiant is a resident of the school district and desires to become the guardian of
1137 the child;

1138 (ii) the affiant consents and submits to the jurisdiction of the state district court in
1139 which the school district is located in any action relating to the guardianship or custody of the
1140 child in question;

1141 (iii) the affiant will accept the responsibilities of guardianship for the duration,
1142 including the responsibility to provide adequate supervision, discipline, food, shelter,
1143 educational and emotional support, and medical care for the child if designated as the child's
1144 guardian; and

- 1145 (iv) the affiant accepts the designation as agent under Subsection (2)(a)(vi);
1146 (c) submission to the school district of a signed and notarized affidavit by the child
1147 stating that:
- 1148 (i) the child desires to become a permanent resident of Utah and reside with and be
1149 responsible to the named responsible adult; and
- 1150 (ii) the child will abide by all applicable rules of any public school which the child may
1151 attend after guardianship is awarded; and
- 1152 (d) if the child's custodial parent or legal guardian cannot be found in order to execute
1153 the statement required under Subsection (2)(a), the responsible adult must submit an affidavit
1154 to that effect to the district. The district shall also submit a copy of the statement to the
1155 Criminal Investigations and Technical Services Division of the Department of Public Safety,
1156 established in Section 53-10-103.
- 1157 (3) The district may require the responsible adult, in addition to the documents set forth
1158 in Subsection (2), to also submit any other documents which are relevant to the appointment of
1159 a guardian of a minor or which the district reasonably believes to be necessary in connection
1160 with a given application to substantiate any claim or assertion made in connection with the
1161 application for guardianship.
- 1162 (4) Upon receipt of the information and documentation required under Subsections (2)
1163 and (3), and a determination by the board that the information is accurate, that the requirements
1164 of this section have been met, and that the interests of the child would best be served by
1165 granting the requested guardianship, the school board or its authorized representative may
1166 designate the applicant as guardian of the child by issuing a designation of guardianship letter
1167 to the applicant.
- 1168 (5) (a) If a local school board has adopted a policy permitting the board to designate a
1169 guardian under this section, a denial of an application for appointment of a guardian may be
1170 appealed to the district court in which the school district is located.
- 1171 (b) The court shall uphold the decision of the board unless it finds, by clear and
1172 convincing evidence, that the board's decision was arbitrary and capricious.
- 1173 (c) An applicant may, rather than appealing the board's decision under Subsection
1174 (5)(b), file an original Petition for Appointment of Guardian with the district court, which
1175 action shall proceed as if no decision had been made by the school board.

1176 (6) A responsible adult obtaining guardianship under this section has the same rights,
1177 authority, and responsibilities as a guardian appointed under ~~[Section 75-5-201]~~ Title 75,
1178 Chapter 5c, Part 2, Guardianship of Minor.

1179 (7) (a) The school district shall deliver the original documents filed with the school
1180 district, together with a copy of the designation of guardianship issued by the district, in person
1181 or by any form of mail requiring a signed receipt, to the clerk of the state district court in which
1182 the school district is located.

1183 (b) The court may not charge the school district a fee for filing guardianship papers
1184 under this section.

1185 (8) (a) The authority and responsibility of a custodial parent or legal guardian
1186 submitting an affidavit under this section may be restored by the district, and the guardianship
1187 obtained under this section terminated by the district:

1188 (i) upon submission to the school district in which the guardianship was obtained of a
1189 signed and notarized statement by the person who consented to guardianship under Subsection
1190 (2)(a) requesting termination of the guardianship; or

1191 (ii) by the person accepting guardianship under Subsection (2)(b) requesting the
1192 termination of the guardianship.

1193 (b) If the school district determines that it would not be in the best interests of the child
1194 to terminate the guardianship, the district may refer the request for termination to the state
1195 district court in which the documents were filed under Subsection (5) for further action
1196 consistent with the interests of the child.

1197 (9) The school district shall retain copies of all documents required by this section
1198 until the child in question has reached the age of 18 unless directed to surrender the documents
1199 by a court of competent jurisdiction.

1200 (10) (a) Intentional submission to a school district of fraudulent or misleading
1201 information under this part is punishable under Section 76-8-504.

1202 (b) A school district which has reason to believe that a party has intentionally
1203 submitted false or misleading information under this part may, after notice and opportunity for
1204 the party to respond to the allegation:

1205 (i) void any guardianship, authorization, or action which was based upon the false or
1206 misleading information; and

1207 (ii) recover, from the party submitting the information, the full cost of any benefits
1208 received by the child on the basis of the false or misleading information, including tuition, fees,
1209 and other unpaid school charges, together with any related costs of recovery.

1210 (c) A student whose guardianship or enrollment has been terminated under this section
1211 may, upon payment of all applicable tuition and fees, continue in enrollment until the end of
1212 the school year unless excluded from attendance for cause.

1213 Section 8. Section **53G-6-304** is amended to read:

1214 **53G-6-304. Recognition of guardianship.**

1215 (1) A document issued by other than a court of law which purports to award
1216 guardianship to a person who is not a legal resident of the jurisdiction in which the
1217 guardianship is awarded is not valid in the state of Utah until reviewed and approved by a Utah
1218 court.

1219 (2) The procedure for obtaining approval under Subsection (1) is the procedure
1220 required under Title 75, Chapter 5c, Part 2, [~~Guardians of Minors~~] Guardianship of Minor, for
1221 obtaining a court appointment of a guardian.

1222 Section 9. Section **62A-3-320** is amended to read:

1223 **62A-3-320. Emergency protective services -- Forcible entry.**

1224 (1) Adult Protective Services shall, immediately upon court order, provide emergency
1225 protective services to a court-designated vulnerable adult.

1226 (2) A court may, without notice, order emergency protective services immediately upon
1227 receipt of a petition for emergency protective services when a court finds that:

1228 (a) the subject of the petition is a vulnerable adult;

1229 (b) (i) the vulnerable adult does not have a court-appointed guardian or conservator; or

1230 (ii) the guardian or conservator is not effectively performing the guardian's or
1231 conservator's duties;

1232 (c) an emergency exists; and

1233 (d) the welfare, safety, or best interests of the vulnerable adult requires emergency
1234 protective services.

1235 (3) An emergency protective services order shall specifically designate the services that
1236 are approved and the facts that support the provision of those services.

1237 (4) Services authorized in an emergency protective services order may include

1238 hospitalization, nursing, custodial care, or a change in residence.

1239 (5) An emergency protective services order expires five business days after the day on
1240 which the court issues the order unless an appropriate party petitions for [~~temporary~~
1241 ~~guardianship pursuant to Section 75-5-310~~] an emergency guardianship pursuant to Section
1242 75-5c-208 or the division files a new petition for an emergency services order.

1243 (6) If a petition for guardianship or an additional emergency protective services petition
1244 is filed within five business days after the day on which the court issues the original emergency
1245 protective services order, a court may extend the duration of the original order an additional 15
1246 business days after the day on which the subsequent petition is filed to allow for a court hearing
1247 on the petition.

1248 (7) To implement an emergency protective services order, a court may authorize
1249 forcible entry by a peace officer into the premises where the vulnerable adult may be found.

1250 Section 10. Section **62A-14-102** is amended to read:

1251 **62A-14-102. Definitions.**

1252 As used in this chapter:

1253 (1) "Conservator" is as defined in Section 75-1-201.

1254 (2) "Court" is as defined in Section 75-1-201.

1255 (3) "Estate" is as defined in Section 75-1-201.

1256 (4) "Guardian" is as defined in Section 75-1-201.

1257 (5) "Incapacitated" means a person who has been determined by a court[~~, pursuant to~~
1258 ~~Section 75-5-303,~~] to be incapacitated, as defined in Section 75-1-201, after the office has
1259 determined that the person is 18 years of age or older and suffers from a mental or physical
1260 impairment as part of the prepetition assessment in Section 62A-14-107.

1261 (6) "Office" means the Office of Public Guardian.

1262 (7) "Property" is as defined in Section 75-1-201.

1263 (8) "Ward" means an incapacitated person for whom the office has been appointed as
1264 guardian or conservator.

1265 Section 11. Section **62A-14-105** is amended to read:

1266 **62A-14-105. Powers and duties of the office.**

1267 (1) The office shall:

1268 (a) before January 1, 2000, develop and operate a statewide program to:

- 1269 (i) educate the public about the role and function of guardians and conservators; and
1270 (ii) serve as a guardian, conservator, or both for a ward upon appointment by a court
1271 when no other person is able and willing to do so and the office petitioned for or agreed in
1272 advance to the appointment;
- 1273 (b) possess and exercise all the powers and duties specifically given to the office by
1274 virtue of being appointed as guardian or conservator of a ward, including the power to access a
1275 ward's records;
- 1276 (c) review and monitor the personal and, if appropriate, financial status of each ward
1277 for whom the office has been appointed to serve as guardian or conservator;
- 1278 (d) train and monitor each employee and volunteer, and monitor each contract provider
1279 to whom the office has delegated a responsibility for a ward;
- 1280 (e) retain all court-delegated powers and duties for a ward;
- 1281 (f) report on the personal and financial status of a ward as required by a court in
1282 accordance with Title 75, Chapter ~~[5, Protection of Persons Under Disability and Their~~
1283 ~~Property]~~ 5c, Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act;
- 1284 (g) handle a ward's funds in accordance with the department's trust account system;
- 1285 (h) request that the department's audit plan, established pursuant to Section 63I-5-401,
1286 include the requirement of an annual audit of all funds and property held by the office on behalf
1287 of wards;
- 1288 (i) maintain accurate records concerning each ward, the ward's property, and office
1289 services provided to the ward;
- 1290 (j) make reasonable and continuous efforts to find a family member, friend, or other
1291 person to serve as a ward's guardian or conservator;
- 1292 (k) after termination as guardian or conservator, distribute a ward's property in
1293 accordance with Title 75, Chapter ~~[5, Protection of Persons Under Disability and Their~~
1294 ~~Property]~~ 5c, Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act;
- 1295 (l) submit recommendations for changes in state law and funding to the governor and
1296 the Legislature and report to the governor and Legislature, upon request; and
- 1297 (m) establish, implement, and enforce rules.
- 1298 (2) The office may:
- 1299 (a) petition a court pursuant to Title 75, Chapter ~~[5, Protection of Persons Under~~

1300 ~~Disability and Their Property]~~ 5c, Uniform Guardianship, Conservatorship, and Other
 1301 Protective Arrangements Act, to be appointed an incapacitated person's guardian, conservator,
 1302 or both after conducting a prepetition assessment under Section 62A-14-107;

1303 (b) develop and operate a statewide program to recruit, train, supervise, and monitor
 1304 volunteers to assist the office in providing guardian and conservator services;

1305 (c) delegate one or more responsibilities for a ward to an employee, volunteer, or
 1306 contract provider, except as provided in Subsection 62A-14-107(1);

1307 (d) solicit and receive private donations to provide guardian and conservator services
 1308 under this chapter; and

1309 (e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative
 1310 Rulemaking Act, to:

1311 (i) effectuate policy; and

1312 (ii) carry out the office's role as guardian and conservator of wards as provided in this
 1313 chapter.

1314 Section 12. Section **63I-2-275** is amended to read:

1315 **63I-2-275. Repeal dates -- Title 75.**

1316 [~~Subsection 75-5-303(5)(d) is repealed on July 1, 2028.~~]

1317 Section 13. Section **75-1-201** is amended to read:

1318 **75-1-201. General definitions.**

1319 Subject to additional definitions contained in the subsequent chapters that are
 1320 applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in
 1321 this [~~code~~] title:

1322 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of
 1323 attorney, an individual authorized to make decisions concerning another's health care, and an
 1324 individual authorized to make decisions for another under a natural death act.

1325 (2) "Application" means a written request to the registrar for an order of informal
 1326 probate or appointment under [~~Title 75,~~] Chapter 3, Part 3, Informal Probate and Appointment
 1327 Proceedings.

1328 (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any
 1329 present or future interest, vested or contingent, and also includes the owner of an interest by
 1330 assignment or other transfer; as it relates to a charitable trust, includes any person entitled to

1331 enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a
1332 beneficiary of an insurance or annuity policy, of an account with POD designation, of a security
1333 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar
1334 benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated
1335 in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a
1336 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of
1337 appointment, and a person in whose favor a power of attorney or a power held in any
1338 individual, fiduciary, or representative capacity is exercised.

1339 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of
1340 an insurance or annuity policy, of an account with POD designation, of a security registered in
1341 beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or
1342 other nonprobate transfer at death.

1343 (5) "Child" includes any individual entitled to take as a child under this code by
1344 intestate succession from the parent whose relationship is involved and excludes any person
1345 who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

1346 (6) "Claims," in respect to estates of decedents and protected persons, includes
1347 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,
1348 and liabilities of the estate which arise at or after the death of the decedent or after the
1349 appointment of a conservator, including funeral expenses and expenses of administration.

1350 "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of
1351 a decedent or protected person to specific assets alleged to be included in the estate.

1352 (7) "Conservator" means a person who is appointed by a court to manage the estate of a
1353 protected person.

1354 (8) "Court" means any of the courts of record in this state having jurisdiction in matters
1355 relating to the affairs of decedents.

1356 (9) "Descendant" of an individual means all of his descendants of all generations, with
1357 the relationship of parent and child at each generation being determined by the definition of
1358 child and parent contained in this title.

1359 (10) "Devise," when used as a noun, means a testamentary disposition of real or
1360 personal property and, when used as a verb, means to dispose of real or personal property by
1361 will.

1362 (11) "Devisee" means any person designated in a will to receive a devise. For the
1363 purposes of [~~Title 75;~~] Chapter 3, Probate of Wills and Administration, in the case of a devise
1364 to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the
1365 devisee, and the beneficiaries are not devisees.

1366 (12) "Disability" means cause for a protective order as described by Section [~~75-5-401~~]
1367 75-5c-502 or 75-5c-503.

1368 (13) "Distributee" means any person who has received property of a decedent from his
1369 personal representative other than as a creditor or purchaser. A testamentary trustee is a
1370 distributee only to the extent of distributed assets or increment thereto remaining in his hands.
1371 A beneficiary of a testamentary trust to whom the trustee has distributed property received from
1372 a personal representative is a distributee of the personal representative. For purposes of this
1373 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to
1374 the extent of the devised assets.

1375 (14) "Estate" includes the property of the decedent, trust, or other person whose affairs
1376 are subject to this title as originally constituted and as it exists from time to time during
1377 administration.

1378 (15) "Exempt property" means that property of a decedent's estate which is described in
1379 Section 75-2-403.

1380 (16) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

1381 (17) "Foreign personal representative" means a personal representative of another
1382 jurisdiction.

1383 (18) "Formal proceedings" means proceedings conducted before a judge with notice to
1384 interested persons.

1385 (19) "Governing instrument" means a deed, will, trust, insurance or annuity policy,
1386 account with POD designation, security registered in beneficiary form (TOD), pension,
1387 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of
1388 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of
1389 any similar type.

1390 (20) "Guardian" means a person who has qualified as a guardian of a minor [~~or~~
1391 ~~incapacitated person~~] by court appointment or an adult pursuant to testamentary or court
1392 appointment[~~, or by written instrument as provided in Section 75-5-202.5~~], but excludes one

1393 who is merely a guardian ad litem.

1394 (21) "Heirs," except as controlled by Section 75-2-711, means persons, including the
1395 surviving spouse and state, who are entitled under the statutes of intestate succession to the
1396 property of a decedent.

1397 (22) "Incapacitated" or "incapacity" is measured by functional limitations and means a
1398 judicial determination after proof by clear and convincing evidence that an adult's ability to do
1399 the following is impaired to the extent that the individual lacks the ability, even with
1400 appropriate technological assistance, to meet the essential requirements for financial protection
1401 or physical health, safety, or self-care:

1402 (a) receive and evaluate information;

1403 (b) make and communicate decisions; or

1404 (c) provide for necessities such as food, shelter, clothing, health care, or safety.

1405 (23) "Informal proceedings" mean those conducted without notice to interested persons
1406 by an officer of the court acting as a registrar for probate of a will or appointment of a personal
1407 representative.

1408 (24) "Interested person" includes heirs, devisees, children, spouses, creditors,
1409 beneficiaries, and any others having a property right in or claim against a trust estate or the
1410 estate of a decedent, ward, or protected person. It also includes persons having priority for
1411 appointment as personal representative, other fiduciaries representing interested persons, a
1412 settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but
1413 incapacitated. The meaning as it relates to particular persons may vary from time to time and
1414 shall be determined according to the particular purposes of, and matter involved in, any
1415 proceeding.

1416 (25) "Issue" of a person means descendant as defined in Subsection (9).

1417 (26) "Joint tenants with the right of survivorship" and "community property with the
1418 right of survivorship" includes coowners of property held under circumstances that entitle one
1419 or more to the whole of the property on the death of the other or others, but excludes forms of
1420 coownership registration in which the underlying ownership of each party is in proportion to
1421 that party's contribution.

1422 (27) "Lease" includes an oil, gas, or other mineral lease.

1423 (28) "Letters" includes letters testamentary, letters of guardianship, letters of

1424 administration, and letters of conservatorship.

1425 (29) "Minor" means a person who is under 18 years of age.

1426 (30) "Mortgage" means any conveyance, agreement, or arrangement in which property
1427 is used as security.

1428 (31) "Nonresident decedent" means a decedent who was domiciled in another
1429 jurisdiction at the time of his death.

1430 (32) "Organization" includes a corporation, limited liability company, business trust,
1431 estate, trust, partnership, joint venture, association, government or governmental subdivision or
1432 agency, or any other legal or commercial entity.

1433 (33) "Parent" includes any person entitled to take, or who would be entitled to take if
1434 the child died without a will, as a parent under this code by intestate succession from the child
1435 whose relationship is in question and excludes any person who is only a stepparent, foster
1436 parent, or grandparent.

1437 (34) "Payor" means a trustee, insurer, business entity, employer, government,
1438 governmental agency or subdivision, or any other person authorized or obligated by law or a
1439 governing instrument to make payments.

1440 (35) "Person" means an individual or an organization.

1441 (36) (a) "Personal representative" includes executor, administrator, successor personal
1442 representative, special administrator, and persons who perform substantially the same function
1443 under the law governing their status.

1444 (b) "General personal representative" excludes special administrator.

1445 (37) "Petition" means a written request to the court for an order after notice.

1446 (38) "Proceeding" includes action at law and suit in equity.

1447 (39) "Property" includes both real and personal property or any interest therein and
1448 means anything that may be the subject of ownership.

1449 (40) "Protected person" means a person for whom a conservator has been appointed. A
1450 "minor protected person" means a minor for whom a conservator has been appointed because
1451 of minority.

1452 (41) "Protective proceeding" means a proceeding described in Section ~~[75-5-401]~~
1453 75-5c-501.

1454 (42) "Record" means information that is inscribed on a tangible medium or that is

1455 stored in an electronic or other medium and is retrievable in perceivable form.

1456 (43) "Registrar" refers to the official of the court designated to perform the functions of
1457 registrar as provided in Section 75-1-307.

1458 (44) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of
1459 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in
1460 payments out of production under such a title or lease, collateral trust certificate, transferable
1461 share, voting trust certificate, and, in general, any interest or instrument commonly known as a
1462 security, or any certificate of interest or participation, any temporary or interim certificate,
1463 receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of
1464 the foregoing.

1465 (45) "Settlement," in reference to a decedent's estate, includes the full process of
1466 administration, distribution, and closing.

1467 (46) "Sign" means, with present intent to authenticate or adopt a record other than a
1468 will:

1469 (a) to execute or adopt a tangible symbol; or

1470 (b) to attach to or logically associate with the record an electronic symbol, sound, or
1471 process.

1472 (47) "Special administrator" means a personal representative as described in Sections
1473 75-3-614 through 75-3-618.

1474 (48) "State" means a state of the United States, the District of Columbia, the
1475 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of
1476 the United States, or a Native American tribe or band recognized by federal law or formally
1477 acknowledged by a state.

1478 (49) "Successor personal representative" means a personal representative, other than a
1479 special administrator, who is appointed to succeed a previously appointed personal
1480 representative.

1481 (50) "Successors" means persons, other than creditors, who are entitled to property of a
1482 decedent under the decedent's will or this title.

1483 (51) "Supervised administration" refers to the proceedings described in [~~Title 75,~~
1484 Chapter 3, Part 5, Supervised Administration.

1485 (52) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security

1486 Registration Act, means that an individual has neither predeceased an event, including the
1487 death of another individual, nor is considered to have predeceased an event under Section
1488 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"
1489 "survivor," and "surviving."

1490 (53) "Testacy proceeding" means a proceeding to establish a will or determine
1491 intestacy.

1492 (54) "Testator" includes an individual of either sex.

1493 (55) "Trust" includes a health savings account, as defined in Section 223, Internal
1494 Revenue Code, any express trust, private or charitable, with additions thereto, wherever and
1495 however created. The term also includes a trust created or determined by judgment or decree
1496 under which the trust is to be administered in the manner of an express trust. The term
1497 excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal
1498 representatives, trust accounts as defined in [~~Title 75;~~] Chapter 6, Nonprobate Transfers,
1499 custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts
1500 providing for certificates to be issued to beneficiaries, common trust funds, voting trusts,
1501 preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act, security
1502 arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends,
1503 interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any
1504 arrangement under which a person is nominee or escrowee for another.

1505 (56) "Trustee" includes an original, additional, and successor trustee, and cotrustee,
1506 whether or not appointed or confirmed by the court.

1507 (57) "Ward" means a person for whom a guardian has been appointed. A "minor ward"
1508 is a minor for whom a guardian has been appointed solely because of minority.

1509 (58) "Will" includes codicil and any testamentary instrument which merely appoints an
1510 executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits
1511 the right of an individual or class to succeed to property of the decedent passing by intestate
1512 succession.

1513 Section 14. Section **75-5b-102** is amended to read:

1514 **75-5b-102. Definitions.**

1515 In this chapter:

1516 (1) "Adult" means an individual who has attained 18 years of age.

1517 (2) "Conservator" means a person appointed by the court to administer the property of
1518 an adult, including a person appointed under [~~Title 75,~~] Chapter 5c, Part 4, [~~Protection of~~
1519 ~~Property of Persons Under Disability and Minors~~] Conservatorship.

1520 (3) "Emergency" means circumstances that likely will result in substantial harm to a
1521 respondent's health, safety, or welfare, and in which the appointment of a guardian is necessary
1522 because no other person has authority to and is willing to act on the respondent's behalf.

1523 (4) "Guardian" means a person appointed by the court to make decisions regarding the
1524 person of an adult, including a person appointed under [~~Title 75,~~] Chapter 5c, Part 3,
1525 [~~Guardians of Incapacitated Persons~~] Guardianship of Adult.

1526 (5) "Guardianship order" means an order appointing a guardian.

1527 (6) "Guardianship proceeding" means a proceeding in which an order for the
1528 appointment of a guardian is sought or has been issued.

1529 (7) "Home state" means the state in which the respondent was physically present for at
1530 least six consecutive months immediately before the filing of a petition for the appointment of
1531 a guardian or protective order. A period of temporary absence counts as part of the six-month
1532 period.

1533 (8) "Incapacitated person" means an adult for whom a guardian has been appointed.

1534 (9) "Party" means the respondent, petitioner, guardian, conservator, or any other person
1535 allowed by the court to participate in a guardianship or protective proceeding.

1536 (10) "Person," except in the terms "incapacitated person" or "protected person," means
1537 an individual, corporation, business trust, estate, trust, partnership, limited liability company,
1538 association, joint venture, government or governmental subdivision, agency or instrumentality,
1539 public corporation, or any other legal or commercial entity.

1540 (11) "Protected person" means an adult for whom a protective order has been made.

1541 (12) "Protective order" means an order appointing a conservator or another court order
1542 related to management of an adult's property.

1543 (13) "Protective proceeding" means a judicial proceeding in which a protective order is
1544 sought or has been issued.

1545 (14) "Record" means information that is inscribed on a tangible medium or that is
1546 stored in an electronic or other medium and is retrievable in perceivable form.

1547 (15) "Respondent" means an adult for whom a protective order or the appointment of a

1548 guardian is sought.

1549 (16) "Significant-connection state" means a state, other than the home state, with which
1550 a respondent has a significant connection other than mere physical presence and in which
1551 substantial evidence concerning the respondent is available.

1552 (17) "State" means a state of the United States, the District of Columbia, Puerto Rico,
1553 the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular
1554 possession subject to the jurisdiction of the United States.

1555 Section 15. Section **75-5b-302** is amended to read:

1556 **75-5b-302. Accepting guardianship or conservatorship transferred from another**
1557 **state.**

1558 (1) To confirm transfer of a guardianship or conservatorship transferred to this state
1559 under provisions similar to Section 75-5b-301, the guardian or conservator shall petition the
1560 court in this state to accept the guardianship or conservatorship. The petition shall include a
1561 certified copy of the other state's provisional order of transfer.

1562 (2) Notice of a petition under Subsection (1) shall be given by the petitioner to those
1563 persons who would be entitled to notice if the petition were a petition for the appointment of a
1564 guardian or issuance of a protective order in both the transferring state and this state. The
1565 notice shall be given in the same manner as notice is given in this state.

1566 (3) On the court's own motion or on request of the incapacitated or protected person, or
1567 other person required to be notified of the proceeding, the court shall hold a hearing on a
1568 petition filed pursuant to Subsection (1).

1569 (4) The court shall issue an order provisionally granting a petition filed under
1570 Subsection (1) unless:

1571 (a) an objection is made and the objector establishes that transfer of the proceeding
1572 would be contrary to the interests of the incapacitated or protected person; or

1573 (b) the guardian or conservator is ineligible for appointment in this state.

1574 (5) The court shall issue a final order accepting the proceeding and appointing the
1575 guardian or conservator as guardian or conservator in this state upon its receipt from the court
1576 from which the proceeding is being transferred of a final order issued under provisions similar
1577 to Section 75-5b-301 transferring the proceeding to this state.

1578 (6) Not later than 90 days after issuance of a final order accepting transfer of a

1579 guardianship or conservatorship, the court shall determine whether the guardianship or
1580 conservatorship needs to be modified to conform to the law of this state.

1581 (7) In granting a petition under this section, the court shall recognize a guardianship or
1582 conservatorship order from the other state, including the determination of the incapacitated or
1583 protected person's incapacity and the appointment of the guardian or conservator.

1584 (8) The denial by a court of this state of a petition to accept a guardianship or
1585 conservatorship transferred from another state does not affect the ability of the guardian or
1586 conservator to seek appointment as guardian or conservator in this state under [~~Title 75,~~
1587 Chapter 5c, Part 3, [~~Guardians of Incapacitated Persons~~] Guardianship of Adult, if the court has
1588 jurisdiction to make an appointment other than by reason of the provisional order of transfer.

1589 Section 16. Section **75-5c-101** is enacted to read:

1590 **CHAPTER 5c. UNIFORM GUARDIANSHIP, CONSERVATORSHIP,**
1591 **AND OTHER PROTECTIVE ARRANGEMENTS ACT**

1592 **Part 1. General Provisions**

1593 **75-5c-101. Title.**

1594 This chapter may be cited as the "Uniform Guardianship, Conservatorship, and Other
1595 Protective Arrangements Act."

1596 Section 17. Section **75-5c-102** is enacted to read:

1597 **75-5c-102. Definitions.**

1598 In this chapter:

1599 (1) "Adult" means an individual at least 18 years of age or an emancipated individual
1600 under 18 years of age.

1601 (2) "Adult subject to conservatorship" means an adult for whom a conservator has been
1602 appointed under this chapter.

1603 (3) "Adult subject to guardianship" means an adult for whom a guardian has been
1604 appointed under this chapter.

1605 (4) "Claim" includes a claim against an individual or conservatorship estate, whether
1606 arising in contract, tort, or otherwise.

1607 (5) "Conservator" means a person appointed by a court to make decisions with respect
1608 to the property or financial affairs of an individual subject to conservatorship. The term
1609 includes a co-conservator.

1610 (6) "Conservatorship estate" means the property subject to conservatorship under this
1611 chapter.

1612 (7) "Full conservatorship" means a conservatorship that grants the conservator all
1613 powers available under this chapter.

1614 (8) "Full guardianship" means a guardianship that grants the guardian all powers
1615 available under this chapter.

1616 (9) "Guardian" means a person appointed by the court to make decisions with respect
1617 to the personal affairs of an individual. The term includes a co-guardian but does not include a
1618 guardian ad litem.

1619 (10) "Guardian ad litem" means a person appointed to inform the court about, and to
1620 represent, the needs and best interest of an individual.

1621 (11) "Individual subject to conservatorship" means an adult or minor for whom a
1622 conservator has been appointed under this chapter.

1623 (12) "Individual subject to guardianship" means an adult or minor for whom a guardian
1624 has been appointed under this chapter.

1625 (13) (a) "Less restrictive alternative" means an approach to meeting an individual's
1626 needs which restricts fewer rights of the individual than would the appointment of a guardian
1627 or conservator.

1628 (b) "Less restrictive alternative" includes supported decision making, appropriate
1629 technological assistance, appointment of a representative payee, and appointment of an agent
1630 by the individual, including appointment under a power of attorney for health care or power of
1631 attorney for finances.

1632 (14) "Letters of office" means a record issued by a court certifying a guardian's or
1633 conservator's authority to act.

1634 (15) "Limited conservatorship" means a conservatorship that grants the conservator
1635 less than all powers available under this chapter, grants powers over only certain property, or
1636 otherwise restricts the powers of the conservator.

1637 (16) "Limited guardianship" means a guardianship that grants the guardian less than all
1638 powers available under this chapter or otherwise restricts the powers of the guardian.

1639 (17) "Minor" means an unemancipated individual under 18 years of age.

1640 (18) "Minor subject to conservatorship" means a minor for whom a conservator has

1641 been appointed under this chapter.

1642 (19) "Minor subject to guardianship" means a minor for whom a guardian has been
1643 appointed under this chapter.

1644 (20) "Parent" does not include an individual whose parental rights have been
1645 terminated.

1646 (21) "Person" means an individual, estate, business or nonprofit entity, public
1647 corporation, government or governmental subdivision, agency, or instrumentality, or other
1648 legal entity.

1649 (22) "Property" includes tangible and intangible property.

1650 (23) "Protective arrangement instead of conservatorship" means a court order entered
1651 under Section 75-5c-503.

1652 (24) "Protective arrangement instead of guardianship" means a court order entered
1653 under Section 75-5c-502.

1654 (25) "Protective arrangement under Part 5" means a court order entered under Section
1655 75-5c-502 or 75-5c-503.

1656 (26) "Record", used as a noun, means information that is inscribed on a tangible
1657 medium or that is stored in an electronic or other medium and is retrievable in perceivable
1658 form.

1659 (27) "Respondent" means an individual for whom appointment of a guardian or
1660 conservator or a protective arrangement instead of guardianship or conservatorship is sought.

1661 (28) "Sign" means, with present intent to authenticate or adopt a record:

1662 (a) to execute or adopt a tangible symbol; or

1663 (b) to attach to or logically associate with the record an electronic symbol, sound, or
1664 process.

1665 (29) "Standby guardian" means a person appointed by the court under Section
1666 75-5c-207.

1667 (30) "State" means a state of the United States, the District of Columbia, Puerto Rico,
1668 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
1669 of the United States. The term includes a federally recognized Indian tribe.

1670 (31) "Supported decision making" means assistance from one or more persons of an
1671 individual's choosing in understanding the nature and consequences of potential personal and

1672 financial decisions, which enables the individual to make the decisions, and in communicating
1673 a decision once made if consistent with the individual's wishes.

1674 Section 18. Section **75-5c-103** is enacted to read:

1675 **75-5c-103. Supplemental principles of law and equity applicable.**

1676 Unless displaced by a particular provision of this chapter, the principles of law and
1677 equity supplement its provisions.

1678 Section 19. Section **75-5c-104** is enacted to read:

1679 **75-5c-104. Subject-matter jurisdiction.**

1680 (1) Except to the extent jurisdiction is precluded by Title 78B, Chapter 13, Utah
1681 Uniform Child Custody Jurisdiction and Enforcement Act, the district court has jurisdiction
1682 over a guardianship for a minor domiciled or present in this state. The court has jurisdiction
1683 over a conservatorship or protective arrangement instead of conservatorship for a minor
1684 domiciled or having property in this state.

1685 (2) The district court has jurisdiction over a guardianship, conservatorship, or
1686 protective arrangement under Part 5, Other Protective Arrangements, for an adult as provided
1687 in the Chapter 5b, Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

1688 (3) After notice is given in a proceeding for a guardianship, conservatorship, or
1689 protective arrangement under Part 5, Other Protective Arrangements, and until termination of
1690 the proceeding, the court in which the petition is filed has:

1691 (a) exclusive jurisdiction to determine the need for the guardianship, conservatorship,
1692 or protective arrangement;

1693 (b) exclusive jurisdiction to determine how property of the respondent must be
1694 managed, expended, or distributed to or for the use of the respondent, an individual who is
1695 dependent in fact on the respondent, or other claimant;

1696 (c) nonexclusive jurisdiction to determine the validity of a claim against the respondent
1697 or property of the respondent or a question of title concerning the property; and

1698 (d) if a guardian or conservator is appointed, exclusive jurisdiction over issues related
1699 to administration of the guardianship or conservatorship.

1700 (4) A court that appoints a guardian or conservator, or authorizes a protective
1701 arrangement under Part 5, Other Protective Arrangements, has exclusive and continuing
1702 jurisdiction over the proceeding until the court terminates the proceeding or the appointment or

1703 protective arrangement expires by its terms.

1704 Section 20. Section **75-5c-105** is enacted to read:

1705 **75-5c-105. Transfer of proceeding.**

1706 (1) This section does not apply to a guardianship or conservatorship for an adult which
1707 is subject to the transfer provisions of Chapter 5b, Part 3, Transfer of Jurisdiction.

1708 (2) After appointment of a guardian or conservator, the court that made the
1709 appointment may transfer the proceeding to a court in another county in this state or another
1710 state if transfer is in the best interest of the individual subject to the guardianship or
1711 conservatorship.

1712 (3) If a proceeding for a guardianship or conservatorship is pending in another state or
1713 a foreign country and a petition for guardianship or conservatorship for the same individual is
1714 filed in a court in this state, the court shall notify the court in the other state or foreign country
1715 and, after consultation with that court, assume or decline jurisdiction, whichever is in the best
1716 interest of the respondent.

1717 (4) A guardian or conservator appointed in another state or country may petition the
1718 court for appointment as a guardian or conservator in this state for the same individual if
1719 jurisdiction in this state is or will be established. The appointment may be made on proof of
1720 appointment in the other state or foreign country and presentation of a certified copy of the part
1721 of the court record in the other state or country specified by the court in this state.

1722 (5) Notice of hearing on a petition under Subsection (4), together with a copy of the
1723 petition, must be given to the respondent, if the respondent is at least 12 years of age at the time
1724 of the hearing, and to the persons that would be entitled to notice if the procedures for
1725 appointment of a guardian or conservator under this chapter were applicable. The court shall
1726 make the appointment unless it determines the appointment would not be in the best interest of
1727 the respondent.

1728 (6) Not later than 14 days after appointment under Subsection (5), the guardian or
1729 conservator shall give a copy of the order of appointment to the individual subject to
1730 guardianship or conservatorship, if the individual is at least 12 years of age, and to all persons
1731 given notice of the hearing on the petition.

1732 Section 21. Section **75-5c-106** is enacted to read:

1733 **75-5c-106. Venue.**

- 1734 (1) Venue for a guardianship proceeding for a minor is in:
1735 (a) the county in which the minor resides or is present at the time the proceeding
1736 commences; or
1737 (b) the county in which another proceeding concerning the custody or parental rights of
1738 the minor is pending.
1739 (2) Venue for a guardianship proceeding or protective arrangement instead of
1740 guardianship for an adult is in:
1741 (a) the county in which the respondent resides;
1742 (b) if the respondent has been admitted to an institution by court order, the county in
1743 which the court is located; or
1744 (c) if the proceeding is for appointment of an emergency guardian for an adult, the
1745 county in which the respondent is present.
1746 (3) Venue for a conservatorship proceeding or protective arrangement instead of
1747 conservatorship is in:
1748 (a) the county in which the respondent resides, whether or not a guardian has been
1749 appointed in another county or other jurisdiction; or
1750 (b) if the respondent does not reside in this state, in any county in which property of the
1751 respondent is located.
1752 (4) If proceedings under this chapter are brought in more than one county, the court of
1753 the county in which the first proceeding is brought has the exclusive right to proceed unless the
1754 court determines venue is properly in another court or the interest of justice otherwise requires
1755 transfer of the proceeding.

1756 Section 22. Section **75-5c-107** is enacted to read:

1757 **75-5c-107. Practice in court.**

1758 (1) Except as otherwise provided in this chapter, the rules of evidence and civil
1759 procedure, including rules concerning appellate review, govern a proceeding under this chapter.

1760 (2) If proceedings for a guardianship, conservatorship, or protective arrangement under
1761 Part 5, Other Protective Arrangements, for the same individual are commenced or pending in
1762 the same court, the proceedings may be consolidated.

1763 Section 23. Section **75-5c-108** is enacted to read:

1764 **75-5c-108. Letters of office.**

1765 (1) The court shall issue letters of office to a guardian on filing by the guardian of an
1766 acceptance of appointment.

1767 (2) The court shall issue letters of office to a conservator on filing by the conservator of
1768 an acceptance of appointment and filing of any required bond or compliance with any other
1769 asset-protection arrangement required by the court.

1770 (3) Limitations on the powers of a guardian or conservator or on the property subject to
1771 conservatorship must be stated on the letters of office.

1772 (4) The court at any time may limit the powers conferred on a guardian or conservator.
1773 The court shall issue new letters of office to reflect the limitation. The court shall give notice of
1774 the limitation to the guardian or conservator, individual subject to guardianship or
1775 conservatorship, each parent of a minor subject to guardianship or conservatorship, and any
1776 other person the court determines.

1777 Section 24. Section **75-5c-109** is enacted to read:

1778 **75-5c-109. Effect of acceptance of appointment.**

1779 On acceptance of appointment, a guardian or conservator submits to personal
1780 jurisdiction of the court in this state in any proceeding relating to the guardianship or
1781 conservatorship.

1782 Section 25. Section **75-5c-110** is enacted to read:

1783 **75-5c-110. Co-guardian -- Co-conservator.**

1784 (1) The court at any time may appoint a co-guardian or co-conservator to serve
1785 immediately or when a designated event occurs.

1786 (2) A co-guardian or co-conservator appointed to serve immediately may act when that
1787 co-guardian or co-conservator complies with Section 75-5c-108.

1788 (3) A co-guardian or co-conservator appointed to serve when a designated event occurs
1789 may act when:

1790 (a) the event occurs; and

1791 (b) that co-guardian or co-conservator complies with Section 75-5c-108.

1792 (4) Unless an order of appointment under Subsection (1) or subsequent order states
1793 otherwise, co-guardians or co-conservators shall make decisions jointly.

1794 Section 26. Section **75-5c-111** is enacted to read:

1795 **75-5c-111. Judicial appointment of successor guardian or successor conservator.**

1796 (1) The court at any time may appoint a successor guardian or successor conservator to
1797 serve immediately or when a designated event occurs.

1798 (2) A person entitled under Section 75-5c-202 or 75-5c-302 to petition the court to
1799 appoint a guardian may petition the court to appoint a successor guardian. A person entitled
1800 under Section 75-5c-402 to petition the court to appoint a conservator may petition the court to
1801 appoint a successor conservator.

1802 (3) A successor guardian or successor conservator appointed to serve when a
1803 designated event occurs may act as guardian or conservator when:

1804 (a) the event occurs; and

1805 (b) the successor complies with Section 75-5c-108.

1806 (4) A successor guardian or successor conservator has the predecessor's powers unless
1807 otherwise provided by the court.

1808 Section 27. Section **75-5c-112** is enacted to read:

1809 **75-5c-112. Effect of death, removal, or resignation of guardian or conservator.**

1810 (1) Appointment of a guardian or conservator terminates on the death or removal of the
1811 guardian or conservator, or when the court under Subsection (2) approves a resignation of the
1812 guardian or conservator.

1813 (2) A guardian or conservator must petition the court to resign. The petition may
1814 include a request that the court appoint a successor. Resignation of a guardian or conservator is
1815 effective on the date the resignation is approved by the court.

1816 (3) Death, removal, or resignation of a guardian or conservator does not affect liability
1817 for a previous act or the obligation to account for:

1818 (a) an action taken on behalf of the individual subject to guardianship or
1819 conservatorship; or

1820 (b) the individual's funds or other property.

1821 Section 28. Section **75-5c-113** is enacted to read:

1822 **75-5c-113. Notice of hearing generally.**

1823 (1) Except as otherwise provided in Sections 75-5c-203, 75-5c-207, 75-5c-303,
1824 75-5c-403, and 75-5c-505, if notice of a hearing under this chapter is required, the movant shall
1825 give notice of the date, time, and place of the hearing to the person to be notified unless
1826 otherwise ordered by the court for good cause. Except as otherwise provided in this chapter,

1827 notice must be given in compliance with Rule 6, Utah Rules of Civil Procedure, at least 14
1828 days before the hearing.

1829 (2) Proof of notice of a hearing under this chapter must be made before or at the
1830 hearing and filed in the proceeding.

1831 (3) Notice of a hearing under this chapter must be in at least 16-point font, in plain
1832 language, and, to the extent feasible, in a language in which the person to be notified is
1833 proficient.

1834 Section 29. Section **75-5c-114** is enacted to read:

1835 **75-5c-114. Waiver of notice.**

1836 (1) Except as otherwise provided in Subsection (2), a person may waive notice under
1837 this chapter in a record signed by the person or person's attorney and filed in the proceeding.

1838 (2) A respondent, individual subject to guardianship, individual subject to
1839 conservatorship, or individual subject to a protective arrangement under Part 5, Other
1840 Protective Arrangements, may not waive notice under this chapter.

1841 Section 30. Section **75-5c-115** is enacted to read:

1842 **75-5c-115. Guardian ad litem.**

1843 The court at any time may appoint a guardian ad litem for an individual if the court
1844 determines the individual's interest otherwise would not be adequately represented. If no
1845 conflict of interest exists, a guardian ad litem may be appointed to represent multiple
1846 individuals or interests. The guardian ad litem may not be the same individual as the attorney
1847 representing the respondent. The court shall state the duties of the guardian ad litem and the
1848 reasons for the appointment.

1849 Section 31. Section **75-5c-116** is enacted to read:

1850 **75-5c-116. Request for notice.**

1851 (1) A person may file with the court a request for notice under this chapter if the person
1852 is:

1853 (a) not otherwise entitled to notice; and

1854 (b) interested in the welfare of a respondent, individual subject to guardianship or
1855 conservatorship, or individual subject to a protective arrangement under Part 5, Other Protective
1856 Arrangements.

1857 (2) A request under Subsection (1) must include a statement showing the interest of the

1858 person making the request and the address of the person or an attorney for the person to whom
1859 notice is to be given.

1860 (3) If the court approves a request under Subsection (1), the court shall give notice of
1861 the approval to the guardian or conservator, if one has been appointed, or the respondent if no
1862 guardian or conservator has been appointed.

1863 Section 32. Section **75-5c-117** is enacted to read:

1864 **75-5c-117. Disclosure of bankruptcy or criminal history.**

1865 (1) Before accepting appointment as a guardian or conservator, a person shall disclose
1866 to the court whether the person:

1867 (a) is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding; or

1868 (b) been convicted of:

1869 (i) a felony;

1870 (ii) a crime involving dishonesty, neglect, violence, or use of physical force; or

1871 (iii) other crime relevant to the functions the individual would assume as guardian or
1872 conservator.

1873 (2) A guardian or conservator that engages or anticipates engaging an agent the
1874 guardian or conservator knows has been convicted of a felony, a crime involving dishonesty,
1875 neglect, violence, or use of physical force, or other crime relevant to the functions the agent is
1876 being engaged to perform promptly shall disclose that knowledge to the court.

1877 (3) If a conservator engages or anticipates engaging an agent to manage finances of the
1878 individual subject to conservatorship and knows the agent is or has been a debtor in a
1879 bankruptcy, insolvency, or receivership proceeding, the conservator promptly shall disclose
1880 that knowledge to the court.

1881 Section 33. Section **75-5c-118** is enacted to read:

1882 **75-5c-118. Multiple nominations.**

1883 If a respondent or other person makes more than one nomination of a guardian or
1884 conservator, the latest in time governs.

1885 Section 34. Section **75-5c-119** is enacted to read:

1886 **75-5c-119. Compensation and Expenses -- In general.**

1887 (1) Unless otherwise compensated or reimbursed, an attorney for a respondent in a
1888 proceeding under this chapter is entitled to reasonable compensation for services and

1889 reimbursement of reasonable expenses from the property of the respondent.

1890 (2) Unless otherwise compensated or reimbursed, an attorney or other person whose
1891 services resulted in an order beneficial to an individual subject to guardianship or
1892 conservatorship or for whom a protective arrangement under Part 5, Other Protective
1893 Arrangements, was ordered is entitled to reasonable compensation for services and
1894 reimbursement of reasonable expenses from the property of the individual.

1895 (3) The court must approve compensation and expenses payable under this section
1896 before payment. Approval is not required before a service is provided or an expense is
1897 incurred.

1898 (4) If the court dismisses a petition under this chapter and determines the petition was
1899 filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or
1900 visitor against the petitioner.

1901 Section 35. Section **75-5c-120** is enacted to read:

1902 **75-5c-120. Compensation of guardian or conservator.**

1903 (1) Subject to court approval, a guardian is entitled to reasonable compensation for
1904 services as guardian and to reimbursement for room, board, clothing, and other appropriate
1905 expenses advanced for the benefit of the individual subject to guardianship. If a conservator,
1906 other than the guardian or a person affiliated with the guardian, is appointed for the individual,
1907 reasonable compensation and reimbursement to the guardian may be approved and paid by the
1908 conservator without court approval.

1909 (2) Subject to court approval, a conservator is entitled to reasonable compensation for
1910 services and reimbursement for appropriate expenses from the property of the individual
1911 subject to conservatorship.

1912 (3) In determining reasonable compensation for a guardian or conservator, the court, or
1913 a conservator in determining reasonable compensation for a guardian as provided in Subsection
1914 (1), shall consider:

1915 (a) the necessity and quality of the services provided;

1916 (b) the experience, training, professional standing, and skills of the guardian or
1917 conservator;

1918 (c) the difficulty of the services performed, including the degree of skill and care
1919 required;

1920 (d) the conditions and circumstances under which a service was performed, including
1921 whether the service was provided outside regular business hours or under dangerous or
1922 extraordinary conditions;

1923 (e) the effect of the services on the individual subject to guardianship or
1924 conservatorship;

1925 (f) the extent to which the services provided were or were not consistent with the
1926 guardian's plan under Section 75-5c-316 or conservator's plan under Section 75-5c-419; and

1927 (g) the fees customarily paid to a person that performs a like service in the community.

1928 (4) A guardian or conservator need not use personal funds of the guardian or
1929 conservator for the expenses of the individual subject to guardianship or conservatorship.

1930 (5) If an individual subject to guardianship or conservatorship seeks to modify or
1931 terminate the guardianship or conservatorship or remove the guardian or conservator, the court
1932 may order compensation to the guardian or conservator for time spent opposing modification,
1933 termination, or removal only to the extent the court determines the opposition was reasonably
1934 necessary to protect the interest of the individual subject to guardianship or conservatorship.

1935 Section 36. Section **75-5c-121** is enacted to read:

1936 **75-5c-121. Liability of guardian or conservator for act of individual subject to**
1937 **guardianship or conservatorship.**

1938 A guardian or conservator is not personally liable to another person solely because of
1939 the guardianship or conservatorship for an act or omission of the individual subject to
1940 guardianship or conservatorship.

1941 Section 37. Section **75-5c-122** is enacted to read:

1942 **75-5c-122. Petition after appointment for instruction or ratification.**

1943 (1) A guardian or conservator may petition the court for instruction concerning
1944 fiduciary responsibility or ratification of a particular act related to the guardianship or
1945 conservatorship.

1946 (2) On notice and hearing on a petition under Subsection (1), the court may give an
1947 instruction and issue an appropriate order.

1948 Section 38. Section **75-5c-123** is enacted to read:

1949 **75-5c-123. Third-party acceptance of authority of guardian or conservator.**

1950 (1) A person must not recognize the authority of a guardian or conservator to act on

1951 behalf of an individual subject to guardianship or conservatorship if:

1952 (a) the person has actual knowledge or a reasonable belief that the letters of office of
1953 the guardian or conservator are invalid or the conservator or guardian is exceeding or
1954 improperly exercising authority granted by the court; or

1955 (b) the person has actual knowledge that the individual subject to guardianship or
1956 conservatorship is subject to physical or financial abuse, neglect, exploitation, or abandonment
1957 by the guardian or conservator or a person acting for or with the guardian or conservator.

1958 (2) A person may refuse to recognize the authority of a guardian or conservator to act
1959 on behalf of an individual subject to guardianship or conservatorship if:

1960 (a) the guardian's or conservator's proposed action would be inconsistent with this
1961 chapter; or

1962 (b) the person makes, or has actual knowledge that another person has made, a report
1963 to the Division of Child and Family Services or Adult Protective Services within the
1964 Department of Human Services stating a good-faith belief that the individual subject to
1965 guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation,
1966 or abandonment by the guardian or conservator or a person acting for or with the guardian or
1967 conservator.

1968 (3) A person that refuses to accept the authority of a guardian or conservator in
1969 accordance with Subsection (2) may report the refusal and the reason for refusal to the court.
1970 The court on receiving the report shall consider whether removal of the guardian or conservator
1971 or other action is appropriate.

1972 (4) A guardian or conservator may petition the court to require a third party to accept a
1973 decision made by the guardian or conservator on behalf of the individual subject to
1974 guardianship or conservatorship.

1975 Section 39. Section **75-5c-124** is enacted to read:

1976 **75-5c-124. Use of agent by guardian or conservator.**

1977 (1) Except as otherwise provided in Subsection (3), a guardian or conservator may
1978 delegate a power to an agent which a prudent guardian or conservator of comparable skills
1979 could delegate prudently under the circumstances if the delegation is consistent with the
1980 guardian's or conservator's fiduciary duties and the guardian's plan under Section 75-5c-316 or
1981 conservator's plan under Section 75-5c-419.

1982 (2) In delegating a power under Subsection (1), the guardian or conservator shall
1983 exercise reasonable care, skill, and caution in:

1984 (a) selecting the agent;

1985 (b) establishing the scope and terms of the agent's work in accordance with the
1986 guardian's plan under Section 75-5c-316 or conservator's plan under Section 75-5c-419;

1987 (c) monitoring the agent's performance and compliance with the delegation; and

1988 (d) redressing an act or omission of the agent which would constitute a breach of the
1989 guardian's or conservator's duties if done by the guardian or conservator.

1990 (3) A guardian or conservator may not delegate all powers to an agent.

1991 (4) In performing a power delegated under this section, an agent shall:

1992 (a) exercise reasonable care to comply with the terms of the delegation and use
1993 reasonable care in the performance of the power; and

1994 (b) if the guardian or conservator has delegated to the agent the power to make a
1995 decision on behalf of the individual subject to guardianship or conservatorship, use the same
1996 decision-making standard the guardian or conservator would be required to use.

1997 (5) By accepting a delegation of a power under Subsection (1) from a guardian or
1998 conservator, an agent submits to the personal jurisdiction of the courts of this state in an action
1999 involving the agent's performance as agent.

2000 (6) A guardian or conservator that delegates and monitors a power in compliance with
2001 this section is not liable for the decision, act, or omission of the agent.

2002 Section 40. Section **75-5c-125** is enacted to read:

2003 **75-5c-125. Temporary substitute guardian or conservator.**

2004 (1) The court may appoint a temporary substitute guardian for an individual subject to
2005 guardianship for a period not exceeding six months if:

2006 (a) a proceeding to remove a guardian for the individual is pending; or

2007 (b) the court finds a guardian is not effectively performing the guardian's duties and the
2008 welfare of the individual requires immediate action.

2009 (2) The court may appoint a temporary substitute conservator for an individual subject
2010 to conservatorship for a period not exceeding six months if:

2011 (a) a proceeding to remove a conservator for the individual is pending; or

2012 (b) the court finds that a conservator for the individual is not effectively performing the

2013 conservator's duties and the welfare of the individual or the conservatorship estate requires
2014 immediate action.

2015 (3) Except as otherwise ordered by the court, a temporary substitute guardian or
2016 temporary substitute conservator appointed under this section has the powers stated in the order
2017 of appointment of the guardian or conservator. The authority of the existing guardian or
2018 conservator is suspended for as long as the temporary substitute guardian or conservator has
2019 authority.

2020 (4) The court shall give notice of appointment of a temporary substitute guardian or
2021 temporary substitute conservator, as soon as reasonably possible after the appointment, to:

2022 (a) the individual subject to guardianship or conservatorship;

2023 (b) the affected guardian or conservator; and

2024 (c) in the case of a minor, each parent of the minor and any person currently having
2025 care or custody of the minor.

2026 (5) The court may remove a temporary substitute guardian or temporary substitute
2027 conservator at any time. The temporary substitute guardian or temporary substitute conservator
2028 shall make any report the court requires.

2029 Section 41. Section **75-5c-126** is enacted to read:

2030 **75-5c-126. Registration of order -- Effect.**

2031 (1) If a guardian has been appointed in another state for an individual, and a petition
2032 for guardianship for the individual is not pending in this state, the guardian appointed in the
2033 other state, after giving notice to the appointing court, may register the guardianship order in
2034 this state by filing as a foreign judgment, in a court of an appropriate county of this state,
2035 certified copies of the order and letters of office.

2036 (2) If a conservator has been appointed in another state for an individual, and a petition
2037 for conservatorship for the individual is not pending in this state, the conservator appointed for
2038 the individual in the other state, after giving notice to the appointing court, may register the
2039 conservatorship in this state by filing as a foreign judgment, in a court of a county in which
2040 property belonging to the individual subject to conservatorship is located, certified copies of
2041 the order of conservatorship, letters of office, and any bond or other asset-protection
2042 arrangement required by the court.

2043 (3) On registration under this section of a guardianship or conservatorship order from

2044 another state, the guardian or conservator may exercise in this state all powers authorized in the
2045 order except as prohibited by this chapter and law of this state other than this chapter. If the
2046 guardian or conservator is not a resident of this state, the guardian or conservator may maintain
2047 an action or proceeding in this state subject to any condition imposed by this state on an action
2048 or proceeding by a nonresident party.

2049 (4) The court may grant any relief available under this chapter and law of this state
2050 other than this chapter to enforce an order registered under this section.

2051 Section 42. Section **75-5c-127** is enacted to read:

2052 **75-5c-127. Grievance against guardian or conservator.**

2053 (1) An individual who is subject to guardianship or conservatorship, or person
2054 interested in the welfare of an individual subject to guardianship or conservatorship, that
2055 reasonably believes the guardian or conservator is breaching the guardian's or conservator's
2056 fiduciary duty or otherwise acting in a manner inconsistent with this chapter may file a
2057 grievance in a record with the court.

2058 (2) Subject to Subsection (3), after receiving a grievance under Subsection (1), the
2059 court:

2060 (a) shall review the grievance and, if necessary to determine the appropriate response,
2061 court records related to the guardianship or conservatorship;

2062 (b) shall schedule a hearing if the individual subject to guardianship or conservatorship
2063 is an adult and the grievance supports a reasonable belief that:

2064 (i) removal of the guardian and appointment of a successor may be appropriate under
2065 Section 75-5c-318;

2066 (ii) termination or modification of the guardianship may be appropriate under Section
2067 75-5c-319;

2068 (iii) removal of the conservator and appointment of a successor may be appropriate
2069 under Section 75-5c-430; or

2070 (iv) termination or modification of the conservatorship may be appropriate under
2071 Section 75-5c-431; and

2072 (c) may take any action supported by the evidence, including:

2073 (i) ordering the guardian or conservator to provide the court a report, accounting,
2074 inventory, updated plan, or other information;

2075 (ii) appointing a guardian ad litem;

2076 (iii) appointing an attorney for the individual subject to guardianship or

2077 conservatorship; or

2078 (iv) holding a hearing.

2079 (3) The court may decline to act under Subsection (2) if a similar grievance was filed

2080 within the six months preceding the filing of the current grievance and the court followed the

2081 procedures of Subsection (2) in considering the earlier grievance.

2082 Section 43. Section **75-5c-128**, which is renumbered from Section 75-5-103 is

2083 renumbered and amended to read:

2084 **[75-5-103]. 75-5c-128. Delegation of powers by parent or guardian.**

2085 A parent or a guardian of a minor or [~~incapacitated person~~] of an individual subject to a

2086 guardianship, by a properly-executed power of attorney, may delegate to another person, for a

2087 period not exceeding six months, any of the parent's or guardian's powers regarding care,

2088 custody, or property of the minor child or ward:

2089 (1) except the power to consent to:

2090 (a) marriage; or

2091 (b) adoption of a minor ward; and

2092 (2) subject to Section 53G-6-302, including making decisions related to schooling.

2093 Section 44. Section **75-5c-201** is enacted to read:

2094 **Part 2. Guardianship of Minor**

2095 **75-5c-201. Basis for appointment of guardian for minor.**

2096 (1) A person becomes a guardian for a minor only on appointment by the court.

2097 (2) The court may appoint a guardian for a minor who does not have a guardian if the

2098 court finds the appointment is in the minor's best interest and:

2099 (a) each parent of the minor, after being fully informed of the nature and consequences

2100 of guardianship, consents;

2101 (b) all parental rights have been terminated; or

2102 (c) there is clear-and-convincing evidence that no parent of the minor is willing or able

2103 to exercise the powers the court is granting the guardian.

2104 Section 45. Section **75-5c-202** is enacted to read:

2105 **75-5c-202. Petition for Appointment of Guardian for Minor.**

2106 (1) A person interested in the welfare of a minor, including the minor, may petition for
2107 appointment of a guardian for the minor.

2108 (2) A petition under Subsection (1) must state the petitioner's name, principal
2109 residence, current street address, if different, relationship to the minor, interest in the
2110 appointment, the name and address of any attorney representing the petitioner, and, to the
2111 extent known, the following:

2112 (a) the minor's name, age, principal residence, current street address, if different, and, if
2113 different, address of the dwelling in which it is proposed the minor will reside if the
2114 appointment is made;

2115 (b) the name and current street address of the minor's parents;

2116 (c) the name and address, if known, of each person that had primary care or custody of
2117 the minor for at least 60 days during the two years immediately before the filing of the petition
2118 or for at least 730 days during the five years immediately before the filing of the petition;

2119 (d) the name and address of any attorney for the minor and any attorney for each parent
2120 of the minor;

2121 (e) the reason guardianship is sought and would be in the best interest of the minor;

2122 (f) the name and address of any proposed guardian and the reason the proposed
2123 guardian should be selected;

2124 (g) if the minor has property other than personal effects, a general statement of the
2125 minor's property with an estimate of its value;

2126 (h) whether the minor needs an interpreter, translator, or other form of support to
2127 communicate effectively with the court or understand court proceedings;

2128 (i) whether any parent of the minor needs an interpreter, translator, or other form of
2129 support to communicate effectively with the court or understand court proceedings; and

2130 (j) whether any other proceeding concerning the care or custody of the minor is
2131 pending in any court in this state or another jurisdiction.

2132 Section 46. Section **75-5c-203** is enacted to read:

2133 **75-5c-203. Notice of hearing for appointment of guardian for minor.**

2134 (1) If a petition is filed under Section 75-5c-202, the court shall schedule a hearing and
2135 the petitioner shall:

2136 (a) serve notice of the date, time, and place of the hearing, together with a copy of the

2137 petition, personally on each of the following that is not the petitioner:

2138 (i) the minor, if the minor will be 12 years of age or older at the time of the hearing;

2139 (ii) each parent of the minor or, if there is none, the adult nearest in kinship who can be
2140 found with reasonable diligence;

2141 (iii) any adult with whom the minor resides;

2142 (iv) each person that had primary care or custody of the minor for at least 60 days
2143 during the two years immediately before the filing of the petition or for at least 730 days during
2144 the five years immediately before the filing of the petition; and

2145 (v) any other person the court determines should receive personal service of notice; and

2146 (b) give notice under Section 75-5c-113 of the date, time, and place of the hearing,
2147 together with a copy of the petition, to:

2148 (i) any person nominated as guardian by the minor, if the minor is 12 years of age or
2149 older;

2150 (ii) any nominee of a parent;

2151 (iii) each grandparent and adult sibling of the minor;

2152 (iv) any guardian or conservator acting for the minor in any jurisdiction; and

2153 (v) any other person the court determines.

2154 (2) Notice required by Subsection (1) must include a statement of the right to request
2155 appointment of an attorney for the minor or object to appointment of a guardian and a
2156 description of the nature, purpose, and consequences of appointment of a guardian.

2157 (3) The court may not grant a petition for guardianship of a minor if notice
2158 substantially complying with Subsection (1)(a) is not served on:

2159 (a) the minor, if the minor is 12 years of age or older; and

2160 (b) each parent of the minor, unless the court finds by clear-and-convincing evidence
2161 that the parent cannot with due diligence be located and served or the parent waived, in a
2162 record, the right to notice.

2163 (4) If a petitioner is unable to serve notice under Subsection (1)(a) on a parent of a
2164 minor or alleges that the parent waived, in a record, the right to notice under this section, the
2165 court shall appoint a visitor who shall:

2166 (a) interview the petitioner and the minor;

2167 (b) if the petitioner alleges the parent cannot be located, ascertain whether the parent

2168 cannot be located with due diligence; and

2169 (c) investigate any other matter relating to the petition the court directs.

2170 Section 47. Section **75-5c-204** is enacted to read:

2171 **75-5c-204. Attorney for minor or parent.**

2172 (1) The court shall appoint an attorney to represent a minor who is the subject of a
2173 proceeding under Section 75-5c-202 if:

2174 (a) requested by the minor and the minor is 12 years of age or older;

2175 (b) recommended by a guardian ad litem; or

2176 (c) the court determines the minor needs representation.

2177 (2) An attorney appointed under Subsection (1) shall:

2178 (a) make a reasonable effort to ascertain the minor's wishes;

2179 (b) advocate for the minor's wishes to the extent reasonably ascertainable; and

2180 (c) if the minor's wishes are not reasonably ascertainable, advocate for the minor's best
2181 interest.

2182 (3) A minor who is the subject of a proceeding under Section 75-5c-202 may retain an
2183 attorney to represent the minor in the proceeding.

2184 (4) A parent of a minor who is the subject of a proceeding under Section 75-5c-202
2185 may retain an attorney to represent the parent in the proceeding.

2186 (5) The court shall appoint an attorney to represent a parent of a minor who is the
2187 subject of a proceeding under Section 75-5c-202 if:

2188 (a) the parent objects to appointment of a guardian for the minor;

2189 (b) the court determines that counsel is needed to ensure that consent to appointment of
2190 a guardian is informed; or

2191 (c) the court otherwise determines the parent needs representation.

2192 Section 48. Section **75-5c-205** is enacted to read:

2193 **75-5c-205. Attendance and participation at hearing for appointment of guardian**
2194 **for minor.**

2195 (1) The court shall require a minor who is the subject of a hearing under Section
2196 75-5c-203 to attend the hearing and allow the minor to participate in the hearing unless the
2197 court determines, by clear-and-convincing evidence presented at the hearing or a separate
2198 hearing, that:

2199 (a) the minor consistently and repeatedly refused to attend the hearing after being fully
2200 informed of the right to attend and, if the minor is 12 years of age or older, the potential
2201 consequences of failing to do so;

2202 (b) there is no practicable way for the minor to attend the hearing;

2203 (c) the minor lacks the ability or maturity to participate meaningfully in the hearing; or

2204 (d) attendance would be harmful to the minor.

2205 (2) Unless excused by the court for good cause, the person proposed to be appointed as
2206 guardian for a minor shall attend a hearing under Section 75-5c-203.

2207 (3) Each parent of a minor who is the subject of a hearing under Section 75-5c-203 has
2208 the right to attend the hearing.

2209 (4) A person may request permission to participate in a hearing under Section
2210 75-5c-203. The court may grant the request, with or without hearing, on determining that it is
2211 in the best interest of the minor who is the subject of the hearing. The court may impose
2212 appropriate conditions on the person's participation.

2213 Section 49. Section **75-5c-206** is enacted to read:

2214 **75-5c-206. Order of appointment -- Priority of nominee -- Limited guardianship**
2215 **for minor.**

2216 (1) After a hearing under Section 75-5c-203, the court may appoint a guardian for a
2217 minor, if appointment is proper under Section 75-5c-201, dismiss the proceeding, or take other
2218 appropriate action consistent with this chapter or law of this state other than this chapter.

2219 (2) In appointing a guardian under Subsection (1), the following rules apply:

2220 (a) The court shall appoint a person nominated as guardian by a parent of the minor in
2221 a will or other record unless the court finds the appointment is contrary to the best interest of
2222 the minor.

2223 (b) If multiple parents have nominated different persons to serve as guardian, the court
2224 shall appoint the nominee whose appointment is in the best interest of the minor, unless the
2225 court finds that appointment of none of the nominees is in the best interest of the minor.

2226 (c) If a guardian is not appointed under Subsection (2)(a) or (b), the court shall appoint
2227 the person nominated by the minor if the minor is 12 years of age or older unless the court
2228 finds that appointment is contrary to the best interest of the minor. In that case, the court shall
2229 appoint as guardian a person whose appointment is in the best interest of the minor.

2230 (3) In the interest of maintaining or encouraging involvement by a minor's parent in the
2231 minor's life, developing self-reliance of the minor, or for other good cause, the court, at the
2232 time of appointment of a guardian for the minor or later, on its own or on motion of the minor
2233 or other interested person, may create a limited guardianship by limiting the powers otherwise
2234 granted by this part to the guardian. Following the same procedure, the court may grant
2235 additional powers or withdraw powers previously granted.

2236 (4) The court, as part of an order appointing a guardian for a minor, shall state rights
2237 retained by any parent of the minor, which may include contact or visitation with the minor,
2238 decision making regarding the minor's health care, education, or other matter, or access to a
2239 record regarding the minor.

2240 (5) An order granting a guardianship for a minor must state that each parent of the
2241 minor is entitled to notice that:

2242 (a) the guardian has delegated custody of the minor subject to guardianship;

2243 (b) the court has modified or limited the powers of the guardian; or

2244 (c) the court has removed the guardian.

2245 (6) An order granting a guardianship for a minor must identify any person in addition
2246 to a parent of the minor which is entitled to notice of the events listed in Subsection (5).

2247 Section 50. Section **75-5c-207** is enacted to read:

2248 **75-5c-207. Standby guardian for minor.**

2249 (1) A standby guardian appointed under this section may act as guardian, with all
2250 duties and powers of a guardian under Sections 75-5c-209 and 75-5c-210, when no parent of
2251 the minor is willing or able to exercise the duties and powers granted to the guardian.

2252 (2) A parent of a minor, in a signed record, may nominate a person to be appointed by
2253 the court as standby guardian for the minor. The parent, in a signed record, may state desired
2254 limitations on the powers to be granted the standby guardian. The parent, in a signed record,
2255 may revoke or amend the nomination at any time before the court appoints a standby guardian.

2256 (3) The court may appoint a standby guardian for a minor on:

2257 (a) petition by a parent of the minor or a person nominated under Subsection (2); and

2258 (b) finding that no parent of the minor likely will be able or willing to care for or make
2259 decisions with respect to the minor not later than two years after the appointment.

2260 (4) A petition under Subsection (3)(a) must include the same information required

2261 under Section 75-5c-202 for the appointment of a guardian for a minor.

2262 (5) On filing a petition under Subsection (3)(a), the petitioner shall:

2263 (a) serve a copy of the petition personally on:

2264 (iii) the minor, if the minor is 12 years of age or older, and the minor's attorney, if any;

2265 (ii) each parent of the minor;

2266 (iii) the person nominated as standby guardian; and

2267 (iv) any other person the court determines; and

2268 (b) include with the copy of the petition served under Subsection (5)(a) a statement of

2269 the right to request appointment of an attorney for the minor or to object to appointment of the

2270 standby guardian, and a description of the nature, purpose, and consequences of appointment of

2271 a standby guardian.

2272 (6) A person entitled to notice under Subsection (5), not later than 60 days after service

2273 of the petition and statement, may object to appointment of the standby guardian by filing an

2274 objection with the court and giving notice of the objection to each other person entitled to

2275 notice under Subsection (5).

2276 (7) If an objection is filed under Subsection (6), the court shall hold a hearing to

2277 determine whether a standby guardian should be appointed and, if so, the person that should be

2278 appointed. If no objection is filed, the court may make the appointment.

2279 (8) The court may not grant a petition for a standby guardian of the minor if notice

2280 substantially complying with Subsection (5) is not served on:

2281 (a) the minor, if the minor is 12 years of age or older; and

2282 (b) each parent of the minor, unless the court finds by clear-and-convincing evidence

2283 that the parent, in a record, waived the right to notice or cannot be located and served with due

2284 diligence.

2285 (9) If a petitioner is unable to serve notice under Subsection (5) on a parent of the

2286 minor or alleges that a parent of the minor waived the right to notice under this section, the

2287 court shall appoint a visitor who shall:

2288 (a) interview the petitioner and the minor;

2289 (b) if the petitioner alleges the parent cannot be located and served, ascertain whether

2290 the parent cannot be located with due diligence; and

2291 (c) investigate any other matter relating to the petition the court directs.

2292 (10) If the court finds under Subsection (3) that a standby guardian should be
2293 appointed, the following rules apply:

2294 (a) The court shall appoint the person nominated under Subsection (2) unless the court
2295 finds the appointment is contrary to the best interest of the minor.

2296 (b) If the parents have nominated different persons to serve as standby guardian, the
2297 court shall appoint the nominee whose appointment is in the best interest of the minor, unless
2298 the court finds that appointment of none of the nominees is in the best interest of the minor.

2299 (11) An order appointing a standby guardian under this section must state that each
2300 parent of the minor is entitled to notice, and identify any other person entitled to notice, if:

2301 (a) the standby guardian assumes the duties and powers of the guardian;

2302 (b) the guardian delegates custody of the minor;

2303 (c) the court modifies or limits the powers of the guardian; or

2304 (d) the court removes the guardian.

2305 (12) Before assuming the duties and powers of a guardian, a standby guardian must file
2306 with the court an acceptance of appointment as guardian and give notice of the acceptance to:

2307 (a) each parent of the minor, unless the parent, in a record, waived the right to notice or
2308 cannot be located and served with due diligence;

2309 (b) the minor, if the minor is 12 years of age or older; and

2310 (c) any person, other than the parent, having care or custody of the minor.

2311 (13) A person that receives notice under Subsection (12) or any other person interested
2312 in the welfare of the minor may file with the court an objection to the standby guardian's
2313 assumption of duties and powers of a guardian. The court shall hold a hearing if the objection
2314 supports a reasonable belief that the conditions for assumption of duties and powers have not
2315 been satisfied.

2316 Section 51. Section **75-5c-208** is enacted to read:

2317 **75-5c-208. Emergency guardian for minor.**

2318 (1) On its own, or on petition by a person interested in a minor's welfare, the court may
2319 appoint an emergency guardian for the minor if the court finds:

2320 (a) appointment of an emergency guardian is likely to prevent substantial harm to the
2321 minor's health, safety, or welfare; and

2322 (b) no other person appears to have authority and willingness to act in the

2323 circumstances.

2324 (2) The duration of authority of an emergency guardian for a minor may not exceed 60
2325 days and the emergency guardian may exercise only the powers specified in the order of
2326 appointment. The emergency guardian's authority may be extended once for not more than 60
2327 days if the court finds that the conditions for appointment of an emergency guardian in
2328 Subsection (1) continue.

2329 (3) Except as otherwise provided in Subsection (4), reasonable notice of the date, time,
2330 and place of a hearing on a petition for appointment of an emergency guardian for a minor must
2331 be given to:

2332 (a) the minor, if the minor is 12 years of age or older;

2333 (b) any attorney appointed under Section 75-5c-204;

2334 (c) each parent of the minor;

2335 (d) any person, other than a parent, having care or custody of the minor; and

2336 (e) any other person the court determines.

2337 (4) The court may appoint an emergency guardian for a minor without notice under
2338 Subsection (3) and a hearing only if the court finds from an affidavit or testimony that the
2339 minor's health, safety, or welfare will be substantially harmed before a hearing with notice on
2340 the appointment can be held. If the court appoints an emergency guardian without notice to an
2341 unrepresented minor or the attorney for a represented minor, notice of the appointment must be
2342 given not later than 48 hours after the appointment to the individuals listed in Subsection (3).
2343 As soon as reasonable possible after the appointment, the court shall hold a hearing on the
2344 appropriateness of the appointment.

2345 (5) Appointment of an emergency guardian under this section, with or without notice,
2346 is not a determination that a basis exists for appointment of a guardian under Section
2347 75-5c-201.

2348 (6) The court may remove an emergency guardian appointed under this section at any
2349 time. The emergency guardian shall make any report the court requires.

2350 Section 52. Section **75-5c-209** is enacted to read:

2351 **75-5c-209. Duties of guardian for minor.**

2352 (1) A guardian for a minor is a fiduciary. Except as otherwise limited by the court, a
2353 guardian for a minor has the duties and responsibilities of a parent regarding the minor's

2354 support, care, education, health, safety, and welfare. A guardian shall act in the minor's best
2355 interest and exercise reasonable care, diligence, and prudence.

2356 (2) A guardian for a minor shall:

2357 (a) be personally acquainted with the minor and maintain sufficient contact with the
2358 minor to know the minor's abilities, limitations, needs, opportunities, and physical and mental
2359 health;

2360 (b) take reasonable care of the minor's personal effects and bring a proceeding for a
2361 conservatorship or protective arrangement instead of conservatorship if necessary to protect
2362 other property of the minor;

2363 (c) expend funds of the minor which have been received by the guardian for the minor's
2364 current needs for support, care, education, health, safety, and welfare;

2365 (d) conserve any funds of the minor not expended under Subsection (2)(c) for the
2366 minor's future needs, but if a conservator is appointed for the minor, pay the funds at least
2367 quarterly to the conservator to be conserved for the minor's future needs;

2368 (e) report the condition of the minor and account for funds and other property of the
2369 minor in the guardian's possession or subject to the guardian's control, as required by court rule
2370 or ordered by the court on application of a person interested in the minor's welfare;

2371 (f) inform the court of any change in the minor's dwelling or address; and

2372 (g) in determining what is in the minor's best interest, take into account the minor's
2373 preferences to the extent actually known or reasonably ascertainable by the guardian.

2374 Section 53. Section **75-5c-210** is enacted to read:

2375 **75-5c-210. Powers of guardian for minor.**

2376 (1) Except as otherwise limited by court order, a guardian of a minor has the powers a
2377 parent otherwise would have regarding the minor's support, care, education, health, safety, and
2378 welfare.

2379 (2) Except as otherwise limited by court order, a guardian for a minor may:

2380 (a) apply for and receive funds and benefits otherwise payable for the support of the
2381 minor to the minor's parent, guardian, or custodian under a statutory system of benefits or
2382 insurance or any private contract, devise, trust, conservatorship, or custodianship;

2383 (b) unless inconsistent with a court order entitled to recognition in this state, take
2384 custody of the minor and establish the minor's place of dwelling and, on authorization of the

2385 court, establish or move the minor's dwelling outside this state;

2386 (c) if the minor is not subject to conservatorship, commence a proceeding, including an
2387 administrative proceeding, or take other appropriate action to compel a person to support the
2388 minor or make a payment for the benefit of the minor;

2389 (d) consent to health or other care, treatment, or service for the minor; or

2390 (e) to the extent reasonable, delegate to the minor responsibility for a decision affecting
2391 the minor's well-being.

2392 (3) The court may authorize a guardian for a minor to consent to the adoption of the
2393 minor if the minor does not have a parent.

2394 (4) Notwithstanding Sections 30-1-2 and 30-1-9, a minor who is subject to a
2395 guardianship may not marry before the minor is 18 years of age. If the minor becomes an adult
2396 subject to a guardianship, the adult's right to marry is subject to Sections 75-5c-310 and
2397 75-5c-314.

2398 Section 54. Section **75-5c-211** is enacted to read:

2399 **75-5c-211. Removal of guardian for minor -- Termination of guardianship --**

2400 **Appointment of successor.**

2401 (1) Guardianship under this chapter for a minor terminates:

2402 (a) on the minor's death, adoption, emancipation, or attainment of majority; or

2403 (b) when the court finds that the standard in Section 75-5c-201 for appointment of a
2404 guardian is not satisfied, unless the court finds that:

2405 (i) termination of the guardianship would be harmful to the minor; and

2406 (ii) the minor's interest in the continuation of the guardianship outweighs the interest of
2407 any parent of the minor in restoration of the parent's right to make decisions for the minor.

2408 (2) A minor subject to guardianship or a person interested in the welfare of the minor
2409 may petition the court to terminate the guardianship, modify the guardianship, remove the
2410 guardian and appoint a successor guardian, or remove a standby guardian and appoint a
2411 different standby guardian.

2412 (3) A petitioner under Subsection (2) shall give notice of the hearing on the petition to
2413 the minor, if the minor is 12 years of age or older and is not the petitioner, the guardian, each
2414 parent of the minor, and any other person the court determines.

2415 (4) The court shall follow the priorities in Subsection 75-5c-206(2) when selecting a

2416 successor guardian for a minor.

2417 (5) Not later than 30 days after appointment of a successor guardian for a minor, the
2418 court shall give notice of the appointment to the minor subject to guardianship, if the minor is
2419 12 years of age or older, each parent of the minor, and any other person the court determines.

2420 (6) When terminating a guardianship for a minor under this section, the court may
2421 issue an order providing for transitional arrangements that will assist the minor with a
2422 transition of custody and is in the best interest of the minor.

2423 (7) A guardian for a minor that is removed shall cooperate with a successor guardian to
2424 facilitate transition of the guardian's responsibilities and protect the best interest of the minor.

2425 Section 55. Section **75-5c-301** is enacted to read:

2426 **Part 3. Guardianship of Adult**

2427 **75-5c-301. Basis for appointment of guardian for adult.**

2428 (1) On petition and after notice and hearing, the court may:

2429 (a) appoint a guardian for an adult if the court finds by clear-and-convincing evidence
2430 that:

2431 (i) the respondent lacks the ability to meet essential requirements for physical health,
2432 safety, or self-care because the respondent is unable to receive and evaluate information or
2433 make or communicate decisions, even with appropriate supportive services, technological
2434 assistance, or supported decision making; and

2435 (ii) the respondent's identified needs cannot be met by a protective arrangement instead
2436 of guardianship or other less restrictive alternative; or

2437 (b) with appropriate findings, treat the petition as one for a conservatorship under Part
2438 4, Conservatorship, or protective arrangement under Part 5, Other Protective Arrangements,
2439 issue any appropriate order, or dismiss the proceeding.

2440 (2) The court shall grant a guardian appointed under Subsection (1) only those powers
2441 necessitated by the demonstrated needs and limitations of the respondent and issue orders that
2442 will encourage development of the respondent's maximum self-determination and
2443 independence. The court may not establish a full guardianship if a limited guardianship,
2444 protective arrangement instead of guardianship, or other less restrictive alternatives would meet
2445 the needs of the respondent.

2446 Section 56. Section **75-5c-302** is enacted to read:

2447 **75-5c-302. Petition for appointment of guardian for adult.**

2448 (1) A person interested in an adult's welfare, including the adult for whom the order is
2449 sought, may petition for appointment of a guardian for the adult.

2450 (2) A petition under Subsection (1) must state the petitioner's name, principal
2451 residence, current street address, if different, relationship to the respondent, interest in the
2452 appointment, the name and address of any attorney representing the petitioner, and, to the
2453 extent known, the following:

2454 (a) the respondent's name, age, principal residence, current street address, if different,
2455 and, if different, address of the dwelling in which it is proposed the respondent will reside if
2456 the petition is granted;

2457 (b) the name and address of the respondent's:

2458 (i) spouse or, if the respondent has none, an adult with whom the respondent has shared
2459 household responsibilities for more than six months in the 12-month period immediately before
2460 the filing of the petition;

2461 (ii) adult children or, if none, each parent and adult sibling of the respondent, or, if
2462 none, at least one adult nearest in kinship to the respondent who can be found with reasonable
2463 diligence; and

2464 (iii) adult stepchildren whom the respondent actively parented during the stepchildren's
2465 minor years and with whom the respondent had an ongoing relationship in the two-year period
2466 immediately before the filing of the petition;

2467 (c) the name and current address of each of the following, if applicable:

2468 (i) a person responsible for care of the respondent;

2469 (ii) any attorney currently representing the respondent;

2470 (iii) any representative payee appointed by the Social Security Administration for the
2471 respondent;

2472 (iv) a guardian or conservator acting for the respondent in this state or in another
2473 jurisdiction;

2474 (v) a trustee or custodian of a trust or custodianship of which the respondent is a
2475 beneficiary;

2476 (vi) any fiduciary for the respondent appointed by the Department of Veterans Affairs;

2477 (vii) an agent designated under a power of attorney for health care in which the

2478 respondent is identified as the principal;
2479 (viii) an agent designated under a power of attorney for finances in which the
2480 respondent is identified as the principal;
2481 (ix) a person nominated as guardian by the respondent;
2482 (x) a person nominated as guardian by the respondent's parent or spouse in a will or
2483 other signed record;
2484 (xi) a proposed guardian and the reason the proposed guardian should be selected; and
2485 (xii) a person known to have routinely assisted the respondent with decision making
2486 during the six months immediately before the filing of the petition;
2487 (d) the reason a guardianship is necessary, including a brief description of:
2488 (i) the nature and extent of the respondent's alleged need;
2489 (ii) any protective arrangement instead of guardianship or other less restrictive
2490 alternatives for meeting the respondent's alleged need which have been considered or
2491 implemented;
2492 (iii) if no protective arrangement instead of guardianship or other less restrictive
2493 alternatives have been considered or implemented, the reason they have not been considered or
2494 implemented; and
2495 (iv) the reason a protective arrangement instead of guardianship or other less restrictive
2496 alternative is insufficient to meet the respondent's alleged need;
2497 (e) whether the petitioner seeks a limited guardianship or full guardianship;
2498 (f) if the petitioner seeks a full guardianship, the reason a limited guardianship or
2499 protective arrangement instead of guardianship is not appropriate;
2500 (g) if a limited guardianship is requested, the powers to be granted to the guardian;
2501 (h) the name and current address, if known, of any person with whom the petitioner
2502 seeks to limit the respondent's contact;
2503 (i) if the respondent has property other than personal effects, a general statement of the
2504 respondent's property, with an estimate of its value, including any insurance or pension, and the
2505 source and amount of other anticipated income or receipts; and
2506 (j) whether the respondent needs an interpreter, translator, or other form of support to
2507 communicate effectively with the court or understand court proceedings.
2508 Section 57. Section **75-5c-303** is enacted to read:

2509 **75-5c-303. Notice of hearing for appointment of guardian for adult.**

2510 (1) On filing of a petition under Section 75-5c-302 for appointment of a guardian for
2511 an adult, the court shall set a date, time, and place for hearing the petition.

2512 (2) A copy of a petition under Section 75-5c-302 and notice of a hearing on the petition
2513 must be served personally on the respondent. The notice must inform the respondent of the
2514 respondent's rights at the hearing, including the right to an attorney and to attend the hearing.
2515 The notice must include a description of the nature, purpose, and consequences of granting the
2516 petition. The court may not grant the petition if notice substantially complying with this
2517 Subsection (2) is not served on the respondent.

2518 (3) In a proceeding on a petition under Section 75-5c-302, the notice required under
2519 Subsection (2) must be given to the persons required to be listed in the petition under
2520 Subsections 75-5c-302(2)(a) through (c) and any other person interested in the respondent's
2521 welfare the court determines. Failure to give notice under this Subsection (3) does not preclude
2522 the court from appointing a guardian.

2523 (4) After the appointment of a guardian, notice of a hearing on a petition for an order
2524 under this part, together with a copy of the petition, must be given to:

- 2525 (a) the adult subject to guardianship;
2526 (b) the guardian; and
2527 (c) any other person the court determines.

2528 Section 58. Section **75-5c-304** is enacted to read:

2529 **75-5c-304. Appointment and role of visitor.**

2530 (1) On receipt of a petition under Section 75-5c-302 for appointment of a guardian for
2531 an adult, the court shall appoint a visitor. The visitor must be an individual with training or
2532 experience in the type of abilities, limitations, and needs alleged in the petition.

2533 (2) A visitor appointed under Subsection (1) shall interview the respondent in person
2534 and, in a manner the respondent is best able to understand:

2535 (a) explain to the respondent the substance of the petition, the nature, purpose, and
2536 effect of the proceeding, the respondent's rights at the hearing on the petition, and the general
2537 powers and duties of a guardian;

2538 (b) determine the respondent's views about the appointment sought by the petitioner,
2539 including views about a proposed guardian, the guardian's proposed powers and duties, and the

2540 scope and duration of the proposed guardianship;

2541 (c) inform the respondent of the respondent's right to employ and consult with an
2542 attorney at the respondent's expense and the right to request a court-appointed attorney; and

2543 (d) inform the respondent that all costs and expenses of the proceeding, including
2544 respondent's attorney fees, may be paid from the respondent's assets.

2545 (3) The visitor appointed under Subsection (1) shall:

2546 (a) interview the petitioner and proposed guardian, if any;

2547 (b) visit the respondent's present dwelling and any dwelling in which it is reasonably
2548 believed the respondent will live if the appointment is made;

2549 (c) obtain information from any physician or other person known to have treated,
2550 advised, or assessed the respondent's relevant physical or mental condition; and

2551 (d) investigate the allegations in the petition and any other matter relating to the
2552 petition the court directs.

2553 (4) A visitor appointed under Subsection (1) promptly shall file a report in a record
2554 with the court, which must include:

2555 (a) a summary of self-care and independent-living tasks the respondent can manage
2556 without assistance or with existing supports, could manage with the assistance of appropriate
2557 supportive services, technological assistance, or supported decision making, and cannot
2558 manage;

2559 (b) a recommendation regarding the appropriateness of guardianship, including
2560 whether a protective arrangement instead of guardianship or other less restrictive alternative for
2561 meeting the respondent's needs is available and:

2562 (i) if a guardianship is recommended, whether it should be full or limited; and

2563 (ii) if a limited guardianship is recommended, the powers to be granted to the guardian;

2564 (c) a statement of the qualifications of the proposed guardian and whether the
2565 respondent approves or disapproves of the proposed guardian;

2566 (d) a statement whether the proposed dwelling meets the respondent's needs and
2567 whether the respondent has expressed a preference as to residence;

2568 (e) a recommendation whether a professional evaluation under Section 75-5c-306 is
2569 necessary;

2570 (f) a statement whether the respondent is able to attend a hearing at the location court

2571 proceedings typically are held;

2572 (g) a statement whether the respondent is able to participate in a hearing and which
2573 identifies any technology or other form of support that would enhance the respondent's ability
2574 to participate; and

2575 (h) any other matter the court directs.

2576 Section 59. Section **75-5c-305** is enacted to read:

2577 **75-5c-305. Appointment and role of attorney for adult.**

2578 (1) Unless the respondent in a proceeding for appointment of a guardian for an adult is
2579 represented by an attorney, the court shall appoint an attorney to represent the respondent,
2580 regardless of the respondent's ability to pay.

2581 (2) An attorney representing the respondent in a proceeding for appointment of a
2582 guardian for an adult shall:

2583 (a) make reasonable efforts to ascertain the respondent's wishes;

2584 (b) advocate for the respondent's wishes to the extent reasonably ascertainable; and

2585 (c) if the respondent's wishes are not reasonably ascertainable, advocate for the result
2586 that is the least restrictive in type, duration, and scope, consistent with the respondent's
2587 interests.

2588 Section 60. Section **75-5c-306** is enacted to read:

2589 **75-5c-306. Professional evaluation.**

2590 (1) At or before a hearing on a petition for a guardianship for an adult, the court shall
2591 order a professional evaluation of the respondent:

2592 (a) if the respondent requests the evaluation; or

2593 (b) in other cases, unless the court finds that it has sufficient information to determine
2594 the respondent's needs and abilities without the evaluation.

2595 (2) If the court orders an evaluation under Subsection (1), the respondent must be
2596 examined by a licensed physician, psychologist, social worker, or other individual appointed by
2597 the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities
2598 and limitations and will not be advantaged or disadvantaged by a decision to grant the petition
2599 or otherwise have a conflict of interest. The individual conducting the evaluation promptly
2600 shall file report in a record with the court. Unless otherwise directed by the court, the report
2601 must contain:

2602 (a) a description of the nature, type, and extent of the respondent's cognitive and
2603 functional abilities and limitations;

2604 (b) an evaluation of the respondent's mental and physical condition and, if appropriate,
2605 educational potential, adaptive behavior, and social skills;

2606 (c) a prognosis for improvement and recommendation for the appropriate treatment,
2607 support, or habilitation plan; and

2608 (d) the date of the examination on which the report is based.

2609 (3) The respondent may decline to participate in an evaluation ordered under
2610 Subsection (1).

2611 Section 61. Section **75-5c-307** is enacted to read:

2612 **75-5c-307. Attendance and rights at hearing.**

2613 (1) Except as otherwise provided in Subsection (2), a hearing under Section 75-5c-303
2614 may not proceed unless the respondent attends the hearing. If it is not reasonably feasible for
2615 the respondent to attend a hearing at the location court proceedings typically are held, the court
2616 shall make reasonable efforts to hold the hearing at an alternative location convenient to the
2617 respondent or allow the respondent to attend the hearing using real-time audio-visual
2618 technology.

2619 (2) A hearing under Section 75-5c-303 may proceed without the respondent in
2620 attendance if the court finds by clear-and-convincing evidence that:

2621 (a) the respondent consistently and repeatedly has refused to attend the hearing after
2622 having been fully informed of the right to attend and the potential consequences of failing to do
2623 so; or

2624 (b) there is no practicable way for the respondent to attend and participate in the
2625 hearing even with appropriate supportive services and technological assistance.

2626 (3) The respondent may be assisted in a hearing under Section 75-5c-303 by a person
2627 or persons of the respondent's choosing, assistive technology, or an interpreter or translator, or
2628 a combination of these supports. If assistance would facilitate the respondent's participation in
2629 the hearing, but is not otherwise available to the respondent, the court shall make reasonable
2630 efforts to provide it.

2631 (4) The respondent has a right to choose an attorney to represent the respondent at a
2632 hearing under Section 75-5c-303.

- 2633 (5) At a hearing held under Section 75-5c-303, the respondent may:
2634 (a) present evidence and subpoena witnesses and documents;
2635 (b) examine witnesses, including any court-appointed evaluator and the visitor; and
2636 (c) otherwise participate in the hearing.
2637 (6) Unless excused by the court for good cause, a proposed guardian shall attend a
2638 hearing under Section 75-5c-303.
2639 (7) A hearing under Section 75-5c-303 must be closed on request of the respondent and
2640 a showing of good cause.
2641 (8) Any person may request to participate in a hearing under Section 75-5c-303. The
2642 court may grant the request, with or without a hearing, on determining that the best interest of
2643 the respondent will be served. The court may impose appropriate conditions on the person's
2644 participation.
- 2645 Section 62. Section **75-5c-308** is enacted to read:
2646 **75-5c-308. Confidentiality of records.**
- 2647 (1) The existence of a proceeding for or the existence of a guardianship for an adult is a
2648 matter of public record unless the court seals the record after:
2649 (a) the respondent or individual subject to guardianship requests the record be sealed;
2650 and
2651 (b) either:
2652 (i) the petition for guardianship is dismissed; or
2653 (ii) the guardianship is terminated.
2654 (2) An adult subject to a proceeding for a guardianship, whether or not a guardian is
2655 appointed, an attorney designated by the adult, and a person entitled to notice under Subsection
2656 75-5c-310(5) or a subsequent order are entitled to access court records of the proceeding and
2657 resulting guardianship, including the guardian's plan under Section 75-5c-316 and report under
2658 Section 75-5c-317. A person not otherwise entitled to access court records under this
2659 Subsection (2) for good cause may petition the court for access to court records of the
2660 guardianship, including the guardian's report and plan. The court shall grant access if access is
2661 in the best interest of the respondent or adult subject to guardianship or furthers the public
2662 interest and does not endanger the welfare or financial interests of the adult.
2663 (3) (a) A report under Section 75-5c-304 of a visitor or a professional evaluation under

2664 Section 75-5c-306 is confidential and must be sealed on filing, but is available to:
2665 (i) the court;
2666 (ii) the individual who is the subject of the report or evaluation, for purposes of the
2667 proceeding;
2668 (iii) the petitioner, visitor, and petitioner's and respondent's attorneys, for purposes of
2669 the proceeding;
2670 (iv) unless the court orders otherwise, an agent appointed under a power of attorney for
2671 health care or power of attorney for finances in which the respondent is the principal; and
2672 (v) any other person if it is in the public interest or for a purpose the court orders for
2673 good cause.

2674 (b) A report described in Subsection (3)(a) is not subject to Title 63G, Chapter 2,
2675 Government Records Access and Management Act.

2676 Section 63. Section **75-5c-309** is enacted to read:
2677 **75-5c-309. Who may be guardian for adult -- Order of priority.**

2678 (1) Except as otherwise provided in Subsection (3), the court in appointing a guardian
2679 for an adult shall consider persons qualified to be guardian in the following order of priority:

2680 (a) a guardian, other than a temporary or emergency guardian, currently acting for the
2681 respondent in another jurisdiction;

2682 (b) a person nominated as guardian by the respondent, including the respondent's most
2683 recent nomination made in a power of attorney;

2684 (c) an agent appointed by the respondent under a power of attorney for health care;
2685 (d) a spouse of the respondent; and
2686 (e) a family member or other individual who has shown special care and concern for
2687 the respondent.

2688 (2) If two or more persons have equal priority under Subsection (1), the court shall
2689 select as guardian the person the court considers best qualified. In determining the best
2690 qualified person, the court shall consider the person's relationship with the respondent, the
2691 person's skills, the expressed wishes of the respondent, the extent to which the person and the
2692 respondent have similar values and preferences, and the likelihood the person will be able to
2693 perform the duties of a guardian successfully.

2694 (3) The court, acting in the best interest of the respondent, may decline to appoint as

2695 guardian a person having priority under Subsection (1) and appoint a person having a lower
2696 priority or no priority.

2697 (4) A person that provides paid services to the respondent, or an individual who is
2698 employed by a person that provides paid services to the respondent or is the spouse, parent, or
2699 child of an individual who provides or is employed to provide paid services to the respondent,
2700 may not be appointed as guardian unless:

2701 (a) the individual is related to the respondent by blood, marriage, or adoption; or

2702 (b) the court finds by clear-and-convincing evidence that the person is the best
2703 qualified person available for appointment and the appointment is in the best interest of the
2704 respondent.

2705 (5) An owner, operator, or employee of a long-term-care facility, as defined in Section
2706 62A-3-202, at which the respondent is receiving care may not be appointed as guardian unless
2707 the owner, operator, or employee is related to the respondent by blood, marriage, or adoption.

2708 Section 64. Section **75-5c-310** is enacted to read:

2709 **75-5c-310. Order of appointment for guardian.**

2710 (1) A court order appointing a guardian for an adult must:

2711 (a) include a specific finding that clear-and-convincing evidence established that the
2712 identified needs of the respondent cannot be met by a protective arrangement instead of
2713 guardianship or other less restrictive alternative, including use of appropriate supportive
2714 services, technological assistance, or supported decision making;

2715 (b) include a specific finding that clear-and-convincing evidence established the
2716 respondent was given proper notice of the hearing on the petition;

2717 (c) state whether the adult subject to guardianship retains the right to vote and, if the
2718 adult does not retain the right to vote, include findings that support removing that right which
2719 must include a finding that the adult cannot communicate, with or without support, a specific
2720 desire to participate in the voting process; and

2721 (d) state whether the adult subject to guardianship retains the right to marry and, if the
2722 adult does not retain the right to marry, include findings that support removing that right.

2723 (2) An adult subject to guardianship retains the right to vote unless the order under
2724 Subsection (1) includes the statement required by Subsection (1)(c). An adult subject to
2725 guardianship retains the right to marry unless the order under Subsection (1) includes the

2726 findings required by Subsection (1)(d).

2727 (3) A court order establishing a full guardianship for an adult must state the basis for
2728 granting a full guardianship and include specific findings that support the conclusion that a
2729 limited guardianship would not meet the functional needs of the adult subject to guardianship.

2730 (4) A court order establishing a limited guardianship for an adult must state the specific
2731 powers granted to the guardian.

2732 (5) The court, as part of an order establishing a guardianship for an adult, shall identify
2733 any person that subsequently is entitled to:

2734 (a) notice of the rights of the adult under Subsection 75-5c-311(2);

2735 (b) notice of a change in the primary dwelling of the adult;

2736 (c) notice that the guardian has delegated:

2737 (i) the power to manage the care of the adult;

2738 (ii) the power to make decisions about where the adult lives;

2739 (iii) the power to make major medical decisions on behalf of the adult;

2740 (iv) a power that requires court approval under Section 75-5c-315; or

2741 (v) substantially all powers of the guardian;

2742 (d) notice that the guardian will be unavailable to visit the adult for more than two
2743 months or unavailable to perform the guardian's duties for more than one month;

2744 (e) a copy of the guardian's plan under Section 75-5c-316 and the guardian's report
2745 under Section 75-5c-317;

2746 (f) access to court records relating to the guardianship;

2747 (g) notice of the death or significant change in the condition of the adult;

2748 (h) notice that the court has limited or modified the powers of the guardian; and

2749 (i) notice of the removal of the guardian.

2750 (6) A spouse and adult children of an adult subject to guardianship are entitled to
2751 notice under Subsection (5) unless the court determines notice would be contrary to the
2752 preferences or prior directions of the adult subject to guardianship or not in the best interest of
2753 the adult.

2754 Section 65. Section **75-5c-311** is enacted to read:

2755 **75-5c-311. Notice of order of appointment -- Rights.**

2756 (1) A guardian appointed under Section 75-5c-309 shall give the adult subject to

2757 guardianship and all other persons given notice under Section 75-5c-303 a copy of the order of
2758 appointment, together with notice of the right to request termination or modification. The order
2759 and notice must be given not later than 14 days after the appointment.

2760 (2) Not later than 30 days after appointment of a guardian under Section 75-5c-309, the
2761 court shall give to the adult subject to guardianship, the guardian, and any other person entitled
2762 to notice under Subsection 75-5c-310(5) or a subsequent order a statement of the rights of the
2763 adult subject to guardianship and procedures to seek relief if the adult is denied those rights.

2764 The statement must be in at least 16-point font, in plain language, and, to the extent feasible, in
2765 a language in which the adult subject to guardianship is proficient. The statement must notify
2766 the adult subject to guardianship of the right to:

2767 (a) seek termination or modification of the guardianship, or removal of the guardian,
2768 and choose an attorney to represent the adult in these matters;

2769 (b) be involved in decisions affecting the adult, including decisions about the adult's
2770 care, dwelling, activities, or social interactions, to the extent reasonably feasible;

2771 (c) be involved in health-care decision making to the extent reasonably feasible and
2772 supported in understanding the risks and benefits of health-care options to the extent
2773 reasonably feasible;

2774 (d) be notified at least 14 days before a change in the adult's primary dwelling or
2775 permanent move to a nursing home, mental-health facility, or other facility that places
2776 restrictions on the individual's ability to leave or have visitors unless the change or move is
2777 proposed in the guardian's plan under Section 75-5c-316 or authorized by the court by specific
2778 order;

2779 (e) object to a change or move described in Subsection (2)(d) and the process for
2780 objecting;

2781 (f) communicate, visit, or interact with others, including receiving visitors, and making
2782 or receiving telephone calls, personal mail, or electronic communications, including through
2783 social media, unless:

2784 (i) the guardian has been authorized by the court by specific order to restrict
2785 communications, visits, or interactions;

2786 (ii) a protective order or protective arrangement instead of guardianship is in effect that
2787 limits contact between the adult and a person; or

2788 (iii) the guardian has good cause to believe restriction is necessary because interaction
2789 with a specified person poses a risk of significant physical, psychological, or financial harm to
2790 the adult, and the restriction is:

2791 (A) for a period of not more than seven business days if the person has a family or
2792 pre-existing social relationship with the adult; or

2793 (B) for a period of not more than 60 days if the person does not have a family or
2794 pre-existing social relationship with the adult;

2795 (g) receive a copy of the guardian's plan under Section 75-5c-316 and the guardian's
2796 report under Section 75-5c-317; and

2797 (h) object to the guardian's plan or report.

2798 Section 66. Section **75-5c-312** is enacted to read:

2799 **75-5c-312. Emergency guardian for adult.**

2800 (1) On its own after a petition has been filed under Section 75-5c-302, or on petition by
2801 a person interested in an adult's welfare, the court may appoint an emergency guardian for the
2802 adult if the court finds:

2803 (a) appointment of an emergency guardian is likely to prevent substantial harm to the
2804 adult's physical health, safety, or welfare;

2805 (b) no other person appears to have authority and willingness to act in the
2806 circumstances; and

2807 (c) there is reason to believe that a basis for appointment of a guardian under Section
2808 75-5c-301 exists.

2809 (2) The duration of authority of an emergency guardian for an adult may not exceed 60
2810 days, and the emergency guardian may exercise only the powers specified in the order of
2811 appointment. The emergency guardian's authority may be extended once for not more than 60
2812 days if the court finds that the conditions for appointment of an emergency guardian in
2813 Subsection (1) continue.

2814 (3) Immediately on filing of a petition for appointment of an emergency guardian for
2815 an adult, the court shall appoint an attorney to represent the respondent in the proceeding.
2816 Except as otherwise provided in Subsection (4), reasonable notice of the date, time, and place
2817 of a hearing on the petition must be given to the respondent, the respondent's attorney, and any
2818 other person the court determines.

2819 (4) The court may appoint an emergency guardian for an adult without notice to the
2820 adult and any attorney for the adult only if the court finds from an affidavit or testimony that
2821 the respondent's physical health, safety, or welfare will be substantially harmed before a
2822 hearing with notice on the appointment can be held. If the court appoints an emergency
2823 guardian without giving notice under Subsection (3), the court must:

2824 (a) give notice of the appointment not later than 48 hours after the appointment to:

2825 (i) the respondent;

2826 (ii) the respondent's attorney; and

2827 (iii) any other person the court determines; and

2828 (b) hold a hearing on the appropriateness of the appointment not later than reasonable
2829 possible after the appointment.

2830 (5) Appointment of an emergency guardian under this section is not a determination
2831 that a basis exists for appointment of a guardian under Section 75-5c-301.

2832 (6) The court may remove an emergency guardian appointed under this section at any
2833 time. The emergency guardian shall make any report the court requires.

2834 Section 67. Section **75-5c-313** is enacted to read:

2835 **75-5c-313. Duties of guardian for adult.**

2836 (1) A guardian for an adult is a fiduciary. Except as otherwise limited by the court, a
2837 guardian for an adult shall make decisions regarding the support, care, education, health, and
2838 welfare of the adult subject to guardianship to the extent necessitated by the adult's limitations.

2839 (2) A guardian for an adult shall promote the self-determination of the adult and, to the
2840 extent reasonably feasible, encourage the adult to participate in decisions, act on the adult's
2841 own behalf, and develop or regain the capacity to manage the adult's personal affairs. In
2842 furtherance of this duty, the guardian shall:

2843 (a) become or remain personally acquainted with the adult and maintain sufficient
2844 contact with the adult, including through regular visitation, to know the adult's abilities,
2845 limitations, needs, opportunities, and physical and mental health;

2846 (b) to the extent reasonably feasible, identify the values and preferences of the adult
2847 and involve the adult in decisions affecting the adult, including decisions about the adult's care,
2848 dwelling, activities, or social interactions; and

2849 (c) make reasonable efforts to identify and facilitate supportive relationships and

2850 services for the adult.

2851 (3) A guardian for an adult at all times shall exercise reasonable care, diligence, and
2852 prudence when acting on behalf of or making decisions for the adult. In furtherance of this
2853 duty, the guardian shall:

2854 (a) take reasonable care of the personal effects, pets, and service or support animals of
2855 the adult and bring a proceeding for a conservatorship or protective arrangement instead of
2856 conservatorship if necessary to protect the adult's property;

2857 (b) expend funds and other property of the adult received by the guardian for the adult's
2858 current needs for support, care, education, health, and welfare;

2859 (c) conserve any funds and other property of the adult not expended under Subsection
2860 (3)(b) for the adult's future needs, but if a conservator has been appointed for the adult, pay the
2861 funds and other property at least quarterly to the conservator to be conserved for the adult's
2862 future needs; and

2863 (d) monitor the quality of services, including long-term care services, provided to the
2864 adult.

2865 (4) In making a decision for an adult subject to guardianship, the guardian shall make
2866 the decision the guardian reasonably believes the adult would make if the adult were able
2867 unless doing so would unreasonably harm or endanger the welfare or personal or financial
2868 interests of the adult. To determine the decision the adult subject to guardianship would make
2869 if able, the guardian shall consider the adult's previous or current directions, preferences,
2870 opinions, values, and actions, to the extent actually known or reasonably ascertainable by the
2871 guardian.

2872 (5) If a guardian for an adult cannot make a decision under Subsection (4) because the
2873 guardian does not know and cannot reasonably determine the decision the adult probably
2874 would make if able, or the guardian reasonably believes the decision the adult would make
2875 would unreasonably harm or endanger the welfare or personal or financial interests of the adult,
2876 the guardian shall act in accordance with the best interest of the adult. In determining the best
2877 interest of the adult, the guardian shall consider:

2878 (a) information received from professionals and persons that demonstrate sufficient
2879 interest in the welfare of the adult;

2880 (b) other information the guardian believes the adult would have considered if the adult

2881 were able to act; and
2882 (c) other factors a reasonable person in the circumstances of the adult would consider,
2883 including consequences for others.
2884 (6) A guardian for an adult immediately shall notify the court if the condition of the
2885 adult has changed so that the adult is capable of exercising rights previously removed.
2886 Section 68. Section **75-5c-314** is enacted to read:
2887 **75-5c-314. Powers of guardian for adult.**
2888 (1) Except as limited by court order, a guardian for an adult may:
2889 (a) apply for and receive funds and benefits for the support of the adult, unless a
2890 conservator is appointed for the adult and the application or receipt is within the powers of the
2891 conservator;
2892 (b) unless inconsistent with a court order, establish the adult's place of dwelling;
2893 (c) consent to health or other care, treatment, or service for the adult;
2894 (d) if a conservator for the adult has not been appointed, commence a proceeding
2895 including an administrative proceeding, or take other appropriate action to compel another
2896 person to support the adult or pay funds for the adult's benefit;
2897 (e) to the extent reasonable, delegate to the adult responsibility for a decision affecting
2898 the adult's well-being; and
2899 (f) receive personally identifiable health-care information regarding the adult.
2900 (2) The court by specific order may authorize a guardian for an adult to consent to the
2901 adoption of the adult.
2902 (3) The court by specific order may authorize a guardian for an adult to:
2903 (a) consent or withhold consent to the marriage of the adult if the adult's right to marry
2904 has been removed under Section 75-5c-310;
2905 (b) petition for divorce, dissolution, or annulment of marriage of the adult or a
2906 declaration of invalidity of the adult's marriage; or
2907 (c) support or oppose a petition for divorce, dissolution, or annulment of marriage of
2908 the adult or a declaration of invalidity of the adult's marriage.
2909 (4) In determining whether to authorize a power under Subsection (2) or (3), the court
2910 shall consider whether the underlying act would be in accordance with the adult's preferences,
2911 values, and prior directions and whether the underlying act would be in the adult's best interest.

2912 (5) In exercising a guardian's power under Subsection (1)(b) to establish the adult's
2913 place of dwelling, the guardian shall:

2914 (a) select a residential setting the guardian believes the adult would select if the adult
2915 were able, in accordance with the decision-making standard in Subsections 75-5c-313(4) and
2916 (5). If the guardian does not know and cannot reasonably determine what setting the adult
2917 subject to guardianship probably would choose if able, or the guardian reasonably believes the
2918 decision the adult would make would unreasonably harm or endanger the welfare or personal
2919 or financial interests of the adult, the guardian shall choose in accordance with Subsection
2920 75-5c-313(5) a residential setting that is consistent with the adult's best interest;

2921 (b) in selecting among residential settings, give priority to a residential setting in a
2922 location that will allow the adult to interact with persons important to the adult and meet the
2923 adult's needs in the least restrictive manner reasonably feasible unless to do so would be
2924 inconsistent with the decision-making standard in Subsections 75-5c-313(4) and (5);

2925 (c) not later than 30 days after a change in the dwelling of the adult:

2926 (i) give notice of the change to the court, the adult, and any person identified as entitled
2927 to the notice in the court order appointing the guardian or a subsequent order; and

2928 (ii) include in the notice the address and nature of the new dwelling and state whether
2929 the adult received advance notice of the change and whether the adult objected to the change;

2930 (d) establish or move the permanent place of dwelling of the adult to a nursing home,
2931 mental-health facility, or other facility that places restrictions on the adult's ability to leave or
2932 have visitors only if:

2933 (i) the establishment or move is in the guardian's plan under Section 75-5c-316;

2934 (ii) the court authorizes the establishment or move; or

2935 (iii) the guardian gives notice of the establishment or move at least 14 days before the
2936 establishment or move to the adult and all persons entitled to notice under Subsection
2937 75-5c-310(5)(b) or a subsequent order, and no objection is filed;

2938 (e) establish or move the place of dwelling of the adult outside this state only if
2939 consistent with the guardian's plan and authorized by the court by specific order; and

2940 (f) take action that would result in the sale of or surrender of the lease to the primary
2941 dwelling of the adult only if:

2942 (i) the action is specifically included in the guardian's plan under Section 75-5c-316;

2943 (ii) the court authorizes the action by specific order; or
2944 (iii) notice of the action was given at least 14 days before the action to the adult and all
2945 persons entitled to the notice under Subsection 75-5c-310(5)(b) or a subsequent order and no
2946 objection has been filed.

2947 (6) In exercising a guardian's power under Subsection (1)(c) to make health-care
2948 decisions, the guardian shall:

2949 (a) involve the adult in decision making to the extent reasonably feasible, including,
2950 when practicable, by encouraging and supporting the adult in understanding the risks and
2951 benefits of health-care options;

2952 (b) defer to a decision by an agent under a power of attorney for health care executed
2953 by the adult and cooperate to the extent feasible with the agent making the decision; and

2954 (c) take into account:

2955 (i) the risks and benefits of treatment options; and

2956 (ii) the current and previous wishes and values of the adult, if known or reasonably
2957 ascertainable by the guardian.

2958 Section 69. Section **75-5c-315** is enacted to read:

2959 **75-5c-315. Special limitations on guardian's power.**

2960 (1) Unless authorized by the court by specific order, a guardian for an adult does not
2961 have the power to revoke or amend a power of attorney for health care or power of attorney for
2962 finances executed by the adult. If a power of attorney for health care is in effect, unless there is
2963 a court order to the contrary, a health-care decision of an agent takes precedence over that of
2964 the guardian and the guardian shall cooperate with the agent to the extent feasible. If a power of
2965 attorney for finances is in effect, unless there is a court order to the contrary, a decision by the
2966 agent which the agent is authorized to make under the power of attorney for finances takes
2967 precedence over that of the guardian and the guardian shall cooperate with the agent to the
2968 extent feasible.

2969 (2) A guardian for an adult may not initiate the commitment of the adult to a mental
2970 health facility except in accordance with the state's procedure for involuntary civil
2971 commitment.

2972 (3) A guardian for an adult may not restrict the ability of the adult to communicate,
2973 visit, or interact with others, including receiving visitors and making or receiving telephone

2974 calls, personal mail, or electronic communications, including through social media, or
2975 participating in social activities, unless:

2976 (a) authorized by the court by specific order;

2977 (b) a protective order or a protective arrangement instead of guardianship is in effect
2978 that limits contact between the adult and a person; or

2979 (c) the guardian has good cause to believe restriction is necessary because interaction
2980 with a specified person poses a risk of significant physical, psychological, or financial harm to
2981 the adult and the restriction is:

2982 (i) for a period of not more than seven business days if the person has a family or
2983 pre-existing social relationship with the adult; or

2984 (ii) for a period of not more than 60 days if the person does not have a family or
2985 pre-existing social relationship with the adult.

2986 Section 70. Section **75-5c-316** is enacted to read:

2987 **75-5c-316. Guardian's Plan.**

2988 (1) A guardian for an adult, not later than 60 days after appointment and when there is
2989 a significant change in circumstances, or the guardian seeks to deviate significantly from the
2990 guardian's plan, shall file with the court a plan for the care of the adult. The plan must be based
2991 on the needs of the adult and take into account the best interest of the adult as well as the
2992 adult's preferences, values, and prior directions, to the extent known to or reasonably
2993 ascertainable by the guardian. The guardian shall include in the plan:

2994 (a) the living arrangement, services, and supports the guardian expects to arrange,
2995 facilitate, or continue for the adult;

2996 (b) social and educational activities the guardian expects to facilitate on behalf of the
2997 adult;

2998 (c) any person with whom the adult has a close personal relationship or relationship
2999 involving regular visitation and any plan the guardian has for facilitating visits with the person;

3000 (d) the anticipated nature and frequency of the guardian's visits and communication
3001 with the adult;

3002 (e) goals for the adult, including any goal related to the restoration of the adult's rights,
3003 and how the guardian anticipates achieving the goals;

3004 (f) whether the adult has an existing plan and, if so, whether the guardian's plan is

3005 consistent with the adult's plan; and

3006 (g) a statement or list of the amount the guardian proposes to charge for each service
3007 the guardian anticipates providing to the adult.

3008 (2) A guardian shall give notice of the filing of the guardian's plan under Subsection
3009 (1), together with a copy of the plan, to the adult subject to guardianship, a person entitled to
3010 notice under Subsection 75-5c-310(5) or a subsequent order, and any other person the court
3011 determines. The notice must include a statement of the right to object to the plan and be given
3012 not later than 14 days after the filing.

3013 (3) An adult subject to guardianship and any person entitled under Subsection (2) to
3014 receive notice and a copy of the guardian's plan may object to the plan.

3015 (4) The court shall review the guardian's plan filed under Subsection (1) and determine
3016 whether to approve the plan or require a new plan. In deciding whether to approve the plan, the
3017 court shall consider an objection under Subsection (3) and whether the plan is consistent with
3018 the guardian's duties and powers under Sections 75-5c-313 and 75-5c-314. The court may not
3019 approve the plan until 30 days after its filing.

3020 (5) After the guardian's plan filed under this section is approved by the court, the
3021 guardian shall provide a copy of the plan to the adult subject to guardianship, a person entitled
3022 to notice under Subsection 75-5c-310(5) or a subsequent order, and any other person the court
3023 determines.

3024 Section 71. Section **75-5c-317** is enacted to read:

3025 **75-5c-317. Guardian's report-- Monitoring of guardianship.**

3026 (1) A guardian for an adult, not later than 60 days after appointment and at least
3027 annually thereafter, shall file with the court a report in a record regarding the condition of the
3028 adult and accounting for funds and other property in the guardian's possession or subject to the
3029 guardian's control.

3030 (2) A report under Subsection (1) must state or contain:

3031 (a) the mental, physical, and social condition of the adult;

3032 (b) the living arrangements of the adult during the reporting period;

3033 (c) a summary of the supported decision making, technological assistance, medical

3034 services, educational and vocational services, and other supports and services provided to the

3035 adult and the guardian's opinion as to the adequacy of the adult's care;

- 3036 (d) a summary of the guardian's visits with the adult, including the dates of the visits;
3037 (e) action taken on behalf of the adult;
3038 (f) the extent to which the adult has participated in decision making;
3039 (g) if the adult is living in a mental health facility or living in a facility that provides
3040 the adult with health-care or other personal services, whether the guardian considers the
3041 facility's current plan for support, care, treatment, or habilitation consistent with the adult's
3042 preferences, values, prior directions, and best interest;
3043 (h) anything of more than de minimis value which the guardian, any individual who
3044 resides with the guardian, or the spouse, parent, child, or sibling of the guardian has received
3045 from an individual providing goods or services to the adult;
3046 (i) if the guardian delegated a power to an agent, the power delegated and the reason
3047 for the delegation;
3048 (j) any business relation the guardian has with a person the guardian has paid or that
3049 has benefitted from the property of the adult;
3050 (k) a copy of the guardian's most recently approved plan under Section 75-5c-316 and a
3051 statement whether the guardian has deviated from the plan and, if so, how the guardian has
3052 deviated and why;
3053 (l) plans for future care and support of the adult;
3054 (m) a recommendation as to the need for continued guardianship and any
3055 recommended change in the scope of the guardianship; and
3056 (n) whether any co-guardian or successor guardian appointed to serve when a
3057 designated event occurs is alive and able to serve.
3058 (3) The court may appoint a visitor to review a report submitted under this section or a
3059 guardian's plan submitted under Section 75-5c-316, interview the guardian or adult subject to
3060 guardianship, or investigate any other matter involving the guardianship.
3061 (4) Notice of the filing under this section of a guardian's report, together with a copy of
3062 the report, must be given to the adult subject to guardianship, a person entitled to notice under
3063 Subsection 75-5c-310(5) or a subsequent order, and any other person the court determines. The
3064 notice and report must be given not later than 14 days after the filing.
3065 (5) The court shall establish procedures for monitoring a report submitted under this
3066 section and review each report at least annually to determine whether:

3067 (a) the report provides sufficient information to establish the guardian has complied
3068 with the guardian's duties;

3069 (b) the guardianship should continue; and

3070 (c) the guardian's requested fees, if any, should be approved.

3071 (6) If the court determines there is reason to believe a guardian for an adult has not
3072 complied with the guardian's duties or the guardianship should be modified or terminated, the
3073 court:

3074 (a) shall notify the adult, the guardian, and any other person entitled to notice under
3075 Subsection 75-5c-310(5) or a subsequent order;

3076 (b) may require additional information from the guardian;

3077 (c) may appoint a visitor to interview the adult or guardian or investigate any matter
3078 involving the guardianship; and

3079 (d) consistent with Sections 75-5c-318 and 75-5c-319, may hold a hearing to consider
3080 removal of the guardian, termination of the guardianship, or a change in the powers granted to
3081 the guardian or terms of the guardianship.

3082 (7) If the court has reason to believe fees requested by a guardian for an adult are not
3083 reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

3084 (8) A guardian for an adult may petition the court for approval of a report filed under
3085 this section. The court after review may approve the report. If the court approves the report,
3086 there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in
3087 the report.

3088 Section 72. Section **75-5c-318** is enacted to read:

3089 **75-5c-318. Removal of guardian for adult-- Appointment of successor.**

3090 (1) The court may remove a guardian for an adult for failure to perform the guardian's
3091 duties or for other good cause and appoint a successor guardian to assume the duties of
3092 guardian.

3093 (2) The court shall hold a hearing to determine whether to remove a guardian for an
3094 adult and appoint a successor guardian on:

3095 (a) petition of the adult, guardian, or person interested in the welfare of the adult,
3096 which contains allegations that, if true, would support a reasonable belief that removal of the
3097 guardian and appointment of a successor guardian may be appropriate, but the court may

3098 decline to hold a hearing if a petition based on the same or substantially similar facts was filed
3099 during the preceding six months;

3100 (b) communication from the adult, guardian, or person interested in the welfare of the
3101 adult which supports a reasonable belief that removal of the guardian and appointment of a
3102 successor guardian may be appropriate; or

3103 (c) determination by the court that a hearing would be in the best interest of the adult.

3104 (3) Notice of a petition under Subsection (2)(a) must be given to the adult subject to
3105 guardianship, the guardian, and any other person the court determines.

3106 (4) An adult subject to guardianship who seeks to remove the guardian and have a
3107 successor guardian appointed has the right to choose an attorney to represent the adult in this
3108 matter. The court shall award reasonable attorney fees to the attorney for the adult as provided
3109 in Section 75-5c-119.

3110 (5) In selecting a successor guardian for an adult, the court shall follow the priorities
3111 under Section 75-5c-309.

3112 (6) Not later than 30 days after appointing a successor guardian, the court shall give
3113 notice of the appointment to the adult subject to guardianship and any person entitled to notice
3114 under Subsection 75-5c-310(5) or a subsequent order.

3115 Section 73. Section **75-5c-319** is enacted to read:

3116 **75-5c-319. Termination or modification of guardianship for adult.**

3117 (1) An adult subject to guardianship, the guardian for the adult, or a person interested
3118 in the welfare of the adult may petition for:

3119 (a) termination of the guardianship on the ground that a basis for appointment under
3120 Section 75-5c-301 does not exist or termination would be in the best interest of the adult or for
3121 other good cause; or

3122 (b) modification of the guardianship on the ground that the extent of protection or
3123 assistance granted is not appropriate or for other good cause.

3124 (2) The court shall hold a hearing to determine whether termination or modification of
3125 a guardianship for an adult is appropriate on:

3126 (a) petition under Subsection (1) which contains allegations that, if true, would support
3127 a reasonable belief that termination or modification of the guardianship may be appropriate, but
3128 the court may decline to hold a hearing if a petition based on the same or substantially similar

3129 facts was filed during the preceding six months;

3130 (b) communication from the adult, guardian, or person interested in the welfare of the
3131 adult which supports a reasonable belief that termination or modification of the guardianship
3132 may be appropriate, including because the functional needs of the adult or supports or services
3133 available to the adult have changed;

3134 (c) a report from a guardian or conservator which indicates that termination or
3135 modification may be appropriate because the functional needs of the adult or supports or
3136 services available to the adult have changed or a protective arrangement instead of
3137 guardianship or other less restrictive alternative for meeting the adult's needs is available; or

3138 (d) a determination by the court that a hearing would be in the best interest of the adult.

3139 (3) Notice of a petition under Subsection (2)(a) must be given to the adult subject to
3140 guardianship, the guardian, and any other person the court determines.

3141 (4) On presentation of prima facie evidence for termination of a guardianship for an
3142 adult, the court shall order termination unless it is proven that a basis for appointment of a
3143 guardian under Section 75-5c-301 exists.

3144 (5) The court shall modify the powers granted to a guardian for an adult if the powers
3145 are excessive or inadequate due to a change in the abilities or limitations of the adult, the
3146 adult's supports, or other circumstances.

3147 (6) Unless the court otherwise orders for good cause, before terminating or modifying a
3148 guardianship for an adult, the court shall follow the same procedures to safeguard the rights of
3149 the adult which apply to a petition for guardianship.

3150 (7) An adult subject to guardianship who seeks to terminate or modify the terms of the
3151 guardianship has the right to choose an attorney to represent the adult in the matter. The court
3152 shall award reasonable attorney fees to the attorney for the adult as provided in Section
3153 75-5c-119.

3154 Section 74. Section **75-5c-401** is enacted to read:

3155 **Part 4. Conservatorship**

3156 **75-5c-401. Basis for appointment of conservator.**

3157 (1) On petition and after notice and hearing, the court may appoint a conservator for
3158 the property or financial affairs of a minor if the court finds by a preponderance of evidence
3159 that appointment of a conservator is in the minor's best interest, and:

3160 (a) if the minor has a parent, the court gives weight to any recommendation of the
3161 parent whether an appointment is in the minor's best interest; and

3162 (b) either:

3163 (i) the minor owns funds or other property requiring management or protection that
3164 otherwise cannot be provided;

3165 (ii) the minor has or may have financial affairs that may be put at unreasonable risk or
3166 hindered because of the minor's age; or

3167 (iii) appointment is necessary or desirable to obtain or provide funds or other property
3168 needed for the support, care, education, health, or welfare of the minor.

3169 (2) On petition and after notice and hearing, the court may appoint a conservator for
3170 the property or financial affairs of an adult if the court finds by clear-and-convincing evidence
3171 that:

3172 (a) the adult is unable to manage property or financial affairs because:

3173 (i) of a limitation in the adult's ability to receive and evaluate information or make or
3174 communicate decisions, even with the use of appropriate supportive services, technological
3175 assistance, or supported decision making; or

3176 (ii) the adult is missing, detained, or unable to return to the United States;

3177 (b) appointment is necessary to:

3178 (i) avoid harm to the adult or significant dissipation of the property of the adult; or

3179 (ii) obtain or provide funds or other property needed for the support, care, education,
3180 health, or welfare of the adult or of an individual entitled to the adult's support; and

3181 (c) the respondent's identified needs cannot be met by a protective arrangement instead
3182 of conservatorship or other less restrictive alternative.

3183 (3) The court shall grant a conservator only those powers necessitated by demonstrated
3184 limitations and needs of the respondent and issue orders that will encourage development of the
3185 respondent's maximum self-determination and independence. The court may not establish a full
3186 conservatorship if a limited conservatorship, protective arrangement instead of conservatorship,
3187 or other less restrictive alternative would meet the needs of the respondent.

3188 Section 75. Section **75-5c-402** is enacted to read:

3189 **75-5c-402. Petition for appointment of conservator.**

3190 (1) The following may petition for the appointment of a conservator:

- 3191 (a) the individual for whom the order is sought;
3192 (b) a person interested in the estate, financial affairs, or welfare of the individual,
3193 including a person that would be adversely affected by lack of effective management of
3194 property or financial affairs of the individual; or
3195 (c) the guardian for the individual.
- 3196 (2) A petition under Subsection (1) must state the petitioner's name, principal
3197 residence, current street address, if different, relationship to the respondent, interest in the
3198 appointment, the name and address of any attorney representing the petitioner, and, to the
3199 extent known, the following:
- 3200 (a) the respondent's name, age, principal residence, current street address, if different,
3201 and, if different, address of the dwelling in which it is proposed the respondent will reside if
3202 the petition is granted;
- 3203 (b) the name and address of the respondent's:
- 3204 (i) spouse or, if the respondent has none, an adult with whom the respondent has shared
3205 household responsibilities for more than six months in the 12-month period before the filing of
3206 the petition;
- 3207 (ii) adult children or, if none, each parent and adult sibling of the respondent, or, if
3208 none, at least one adult nearest in kinship to the respondent who can be found with reasonable
3209 diligence; and
- 3210 (iii) adult stepchildren whom the respondent actively parented during the stepchildren's
3211 minor years and with whom the respondent had an ongoing relationship during the two years
3212 immediately before the filing of the petition;
- 3213 (c) the name and current address of each of the following, if applicable:
- 3214 (i) a person responsible for the care or custody of the respondent;
3215 (ii) any attorney currently representing the respondent;
3216 (iii) the representative payee appointed by the Social Security Administration for the
3217 respondent;
- 3218 (iv) a guardian or conservator acting for the respondent in this state or another
3219 jurisdiction;
- 3220 (v) a trustee or custodian of a trust or custodianship of which the respondent is a
3221 beneficiary;

- 3222 (vi) the fiduciary appointed for the respondent by the Department of Veterans Affairs;
3223 (vii) an agent designated under a power of attorney for health care in which the
3224 respondent is identified as the principal;
3225 (viii) an agent designated under a power of attorney for finances in which the
3226 respondent is identified as the principal;
3227 (ix) a person known to have routinely assisted the respondent with decision making in
3228 the six-month period immediately before the filing of the petition;
3229 (x) any proposed conservator, including a person nominated by the respondent, if the
3230 respondent is 12 years of age or older; and
3231 (xi) if the individual for whom a conservator is sought is a minor:
3232 (A) an adult not otherwise listed with whom the minor resides; and
3233 (B) each person not otherwise listed that had primary care or custody of the minor for
3234 at least 60 days during the two years immediately before the filing of the petition or for at least
3235 730 days during the five years immediately before the filing of the petition;
3236 (d) a general statement of the respondent's property with an estimate of its value,
3237 including any insurance or pension, and the source and amount of other anticipated income or
3238 receipts;
3239 (e) the reason conservatorship is necessary, including a brief description of:
3240 (i) the nature and extent of the respondent's alleged need;
3241 (ii) if the petition alleges the respondent is missing, detained, or unable to return to the
3242 United States, the relevant circumstances, including the time and nature of the disappearance or
3243 detention and any search or inquiry concerning the respondent's whereabouts;
3244 (iii) any protective arrangement instead of conservatorship or other less restrictive
3245 alternative for meeting the respondent's alleged need which has been considered or
3246 implemented;
3247 (iv) if no protective arrangement or other less restrictive alternatives have been
3248 considered or implemented, the reason it has not been considered or implemented; and
3249 (v) the reason a protective arrangement or other less restrictive alternative is
3250 insufficient to meet the respondent's need;
3251 (f) whether the petitioner seeks a limited conservatorship or a full conservatorship;
3252 (g) if the petitioner seeks a full conservatorship, the reason a limited conservatorship or

3253 protective arrangement instead of conservatorship is not appropriate;

3254 (h) if the petition includes the name of a proposed conservator, the reason the proposed
3255 conservator should be appointed;

3256 (i) if the petition is for a limited conservatorship, a description of the property to be
3257 placed under the conservator's control and any requested limitation on the authority of the
3258 conservator;

3259 (j) whether the respondent needs an interpreter, translator, or other form of support to
3260 communicate effectively with the court or understand court proceedings; and

3261 (k) the name and address of an attorney representing the petitioner, if any.

3262 Section 76. Section **75-5c-403** is enacted to read:

3263 **75-5c-403. Notice and hearing for appointment of conservator.**

3264 (1) On filing of a petition under Section 75-5c-402 for appointment of a conservator,
3265 the court shall set a date, time, and place for a hearing on the petition.

3266 (2) A copy of a petition under Section 75-5c-402 and notice of a hearing on the petition
3267 must be served personally on the respondent. If the respondent's whereabouts are unknown or
3268 personal service cannot be made, service on the respondent must be made by substituted
3269 service or publication. The notice must inform the respondent of the respondent's rights at the
3270 hearing, including the right to an attorney and to attend the hearing. The notice must include a
3271 description of the nature, purpose, and consequences of granting the petition. The court may
3272 not grant a petition for appointment of a conservator if notice substantially complying with this
3273 Subsection (2) is not served on the respondent.

3274 (3) In a proceeding on a petition under Section 75-5c-402, the notice required under
3275 Subsection (2) must be given to the persons required to be listed in the petition under
3276 Subsections 75-5c-402(2)(a) through (c) and any other person interested in the respondent's
3277 welfare the court determines. Failure to give notice under this Subsection (3) does not preclude
3278 the court from appointing a conservator.

3279 (4) After the appointment of a conservator, notice of a hearing on a petition for an
3280 order under this part, together with a copy of the petition, must be given to:

3281 (a) the individual subject to conservatorship, if the individual is 12 years of age or
3282 older and not missing, detained, or unable to return to the United States;

3283 (b) the conservator; and

3284 (c) any other person the court determines.

3285 Section 77. Section **75-5c-404** is enacted to read:

3286 **75-5c-404. Order to preserve or apply property while proceeding pending.**

3287 While a petition under Section 75-5c-402 is pending, after preliminary hearing and
3288 without notice to others, the court may issue an order to preserve and apply property of the
3289 respondent as required for the support of the respondent or an individual who is in fact
3290 dependent on the respondent. The court may appoint a master to assist in implementing the
3291 order.

3292 Section 78. Section **75-5c-405** is enacted to read:

3293 **75-5c-405. Appointment and role of visitor.**

3294 (1) If the respondent in a proceeding to appoint a conservator is a minor, the court may
3295 appoint a visitor to investigate a matter related to the petition or inform the minor or a parent of
3296 the minor about the petition or a related matter.

3297 (2) If the respondent in a proceeding to appoint a conservator is an adult, the court shall
3298 appoint a visitor unless the adult is represented by an attorney appointed by the court. The
3299 duties and reporting requirements of the visitor are limited to the relief requested in the
3300 petition. The visitor must be an individual with training or experience in the type of abilities,
3301 limitations, and needs alleged in the petition.

3302 (3) A visitor appointed under Subsection (2) for an adult shall interview the respondent
3303 in person and in a manner the respondent is best able to understand:

3304 (a) explain to the respondent the substance of the petition, the nature, purpose, and
3305 effect of the proceeding, the respondent's rights at the hearing on the petition, and the general
3306 powers and duties of a conservator;

3307 (b) determine the respondent's views about the appointment sought by the petitioner,
3308 including views about a proposed conservator, the conservator's proposed powers and duties,
3309 and the scope and duration of the proposed conservatorship;

3310 (c) inform the respondent of the respondent's right to employ and consult with an
3311 attorney at the respondent's expense and the right to request a court-appointed attorney; and

3312 (d) inform the respondent that all costs and expenses of the proceeding, including
3313 respondent's attorney fees, may be paid from the respondent's assets.

3314 (4) A visitor appointed under Subsection (2) for an adult shall:

3315 (a) interview the petitioner and proposed conservator, if any;
3316 (b) review financial records of the respondent, if relevant to the visitor's
3317 recommendation under Subsection (5)(b);
3318 (c) investigate whether the respondent's needs could be met by a protective
3319 arrangement instead of conservatorship or other less restrictive alternative and, if so, identify
3320 the arrangement or other less restrictive alternative; and
3321 (d) investigate the allegations in the petition and any other matter relating to the
3322 petition the court directs.
3323 (5) A visitor appointed under Subsection (2) for an adult promptly shall file a report in
3324 a record with the court, which must include:
3325 (a) a recommendation:
3326 (i) regarding the appropriateness of conservatorship, or whether a protective
3327 arrangement instead of conservatorship or other less restrictive alternative for meeting the
3328 respondent's needs is available;
3329 (ii) if a conservatorship is recommended, whether it should be full or limited; and
3330 (iii) if a limited conservatorship is recommended, the powers to be granted to the
3331 conservator, and the property that should be placed under the conservator's control;
3332 (b) a statement of the qualifications of the proposed conservator and whether the
3333 respondent approves or disapproves of the proposed conservator;
3334 (c) a recommendation whether a professional evaluation under Section 75-5c-407 is
3335 necessary;
3336 (d) a statement whether the respondent is able to attend a hearing at the location court
3337 proceedings typically are held;
3338 (e) a statement whether the respondent is able to participate in a hearing and which
3339 identifies any technology or other form of support that would enhance the respondent's ability
3340 to participate; and
3341 (f) any other matter the court directs.
3342 Section 79. Section **75-5c-406** is enacted to read:
3343 **75-5c-406. Appointment and role of attorney.**
3344 (1) Unless the respondent in a proceeding for appointment of a conservator is
3345 represented by an attorney, the court shall appoint an attorney to represent the respondent,

3346 regardless of the respondent's ability to pay.

3347 (2) An attorney representing the respondent in a proceeding for appointment of a
3348 conservator shall:

3349 (a) make reasonable efforts to ascertain the respondent's wishes;

3350 (b) advocate for the respondent's wishes to the extent reasonably ascertainable; and

3351 (c) if the respondent's wishes are not reasonably ascertainable, advocate for the result

3352 that is the least-restrictive in type, duration, and scope, consistent with the respondent's

3353 interests.

3354 Section 80. Section **75-5c-407** is enacted to read:

3355 **75-5c-407. Professional evaluation.**

3356 (1) At or before a hearing on a petition for conservatorship for an adult, the court shall
3357 order a professional evaluation of the respondent:

3358 (a) if the respondent requests the evaluation; or

3359 (b) in other cases, unless the court finds it has sufficient information to determine the
3360 respondent's needs and abilities without the evaluation.

3361 (2) If the court orders an evaluation under Subsection (1), the respondent must be
3362 examined by a licensed physician, psychologist, social worker, or other individual appointed by
3363 the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities
3364 and limitations and will not be advantaged or disadvantaged by a decision to grant the petition
3365 or otherwise have a conflict of interest. The individual conducting the evaluation promptly
3366 shall file a report in a record with the court. Unless otherwise directed by the court, the report
3367 must contain:

3368 (a) a description of the nature, type, and extent of the respondent's cognitive and
3369 functional abilities and limitations with regard to the management of the respondent's property
3370 and financial affairs;

3371 (b) an evaluation of the respondent's mental and physical condition and, if appropriate,
3372 educational potential, adaptive behavior, and social skills;

3373 (c) a prognosis for improvement with regard to the ability to manage the respondent's
3374 property and financial affairs; and

3375 (d) the date of the examination on which the report is based.

3376 (3) A respondent may decline to participate in an evaluation ordered under Subsection

3377 (1).

3378 Section 81. Section **75-5c-408** is enacted to read:

3379 **75-5c-408. Attendance and rights at hearing.**

3380 (1) Except as otherwise provided in Subsection (2), a hearing under Section 75-5c-403
3381 may not proceed unless the respondent attends the hearing. If it is not reasonably feasible for
3382 the respondent to attend a hearing at the location court proceedings typically are held, the court
3383 shall make reasonable efforts to hold the hearing at an alternative location convenient to the
3384 respondent or allow the respondent to attend the hearing using real-time audio-visual
3385 technology.

3386 (2) A hearing under Section 75-5c-403 may proceed without the respondent in
3387 attendance if the court finds by clear-and-convincing evidence that:

3388 (a) the respondent consistently and repeatedly has refused to attend the hearing after
3389 having been fully informed of the right to attend and the potential consequences of failing to do
3390 so;

3391 (b) there is no practicable way for the respondent to attend and participate in the
3392 hearing even with appropriate supportive services or technological assistance; or

3393 (c) the respondent is a minor who has received proper notice and attendance would be
3394 harmful to the minor.

3395 (3) The respondent may be assisted in a hearing under Section 75-5c-403 by a person
3396 or persons of the respondent's choosing, assistive technology, or an interpreter or translator, or
3397 a combination of these supports. If assistance would facilitate the respondent's participation in
3398 the hearing, but is not otherwise available to the respondent, the court shall make reasonable
3399 efforts to provide it.

3400 (4) The respondent has a right to choose an attorney to represent the respondent at a
3401 hearing under Section 75-5c-403.

3402 (5) At a hearing under Section 75-5c-403, the respondent may:

3403 (a) present evidence and subpoena witnesses and documents;

3404 (b) examine witnesses, including any court-appointed evaluator and the visitor; and

3405 (c) otherwise participate in the hearing.

3406 (6) Unless excused by the court for good cause, a proposed conservator shall attend a
3407 hearing under Section 75-5c-403.

3408 (7) A hearing under Section 75-5c-403 must be closed on request of the respondent and
3409 a showing of good cause.

3410 (8) Any person may request to participate in a hearing under Section 75-5c-403. The
3411 court may grant the request, with or without a hearing, on determining that the best interest of
3412 the respondent will be served. The court may impose appropriate conditions on the person's
3413 participation.

3414 Section 82. Section **75-5c-409** is enacted to read:

3415 **75-5c-409. Confidentiality of records.**

3416 (1) The existence of a proceeding for or the existence of conservatorship is a matter of
3417 public record unless the court seals the record after:

3418 (a) the respondent, the individual subject to conservatorship, or the parent of a minor
3419 subject to conservatorship requests the record be sealed; and

3420 (b) either:

3421 (i) the petition for conservatorship is dismissed; or

3422 (ii) the conservatorship is terminated.

3423 (2) An individual subject to a proceeding for a conservatorship, whether or not a
3424 conservator is appointed, an attorney designated by the individual, and a person entitled to
3425 notice under Subsection 75-5c-411(5) or a subsequent order may access court records of the
3426 proceeding and resulting conservatorship, including the conservator's plan under Section
3427 75-5c-419 and the conservator's report under Section 75-5c-423. A person not otherwise
3428 entitled to access to court records under this section for good cause may petition the court for
3429 access to court records of the conservatorship, including the conservator's plan and report. The
3430 court shall grant access if access is in the best interest of the respondent or individual subject to
3431 conservatorship or furthers the public interest and does not endanger the welfare or financial
3432 interests of the respondent or individual.

3433 (3) (a) A report under Section 75-5c-405 of a visitor or professional evaluation under
3434 Section 75-5c-407 is confidential and must be sealed on filing, but is available to:

3435 (i) the court;

3436 (ii) the individual who is the subject of the report or evaluation, for purposes of the
3437 proceeding;

3438 (iii) the petitioner, visitor, and petitioner's and respondent's attorneys, for purposes of

3439 the proceeding;
3440 (iv) unless the court directs otherwise, an agent appointed under a power of attorney for
3441 finances in which the respondent is identified as the principal; and
3442 (v) any other person if it is in the public interest or for a purpose the court orders for
3443 good cause.
3444 (b) A report described in Subsection (3)(a) is not subject to Title 63G, Chapter 2,
3445 Government Records Access and Management Act.
3446 Section 83. Section **75-5c-410** is enacted to read:
3447 **75-5c-410. Who may be conservator -- Order of priority.**
3448 (1) Except as otherwise provided in Subsection (3), the court in appointing a
3449 conservator shall consider persons qualified to be a conservator in the following order of
3450 priority:
3451 (a) a conservator, other than a temporary or emergency conservator, currently acting for
3452 the respondent in another jurisdiction;
3453 (b) a person nominated as conservator by the respondent, including the respondent's
3454 most recent nomination made in a power of attorney for finances;
3455 (c) an agent appointed by the respondent to manage the respondent's property under a
3456 power of attorney for finances;
3457 (d) a spouse of the respondent; and
3458 (e) a family member or other individual who has shown special care and concern for
3459 the respondent.
3460 (2) If two or more persons have equal priority under Subsection (1), the court shall
3461 select as conservator the person the court considers best qualified. In determining the best
3462 qualified person, the court shall consider the person's relationship with the respondent, the
3463 person's skills, the expressed wishes of the respondent, the extent to which the person and the
3464 respondent have similar values and preferences, and the likelihood the person will be able to
3465 perform the duties of a conservator successfully.
3466 (3) The court, acting in the best interest of the respondent, may decline to appoint as
3467 conservator a person having priority under Subsection (1) and appoint a person having a lower
3468 priority or no priority.
3469 (4) A person that provides paid services to the respondent, or an individual who is

3470 employed by a person that provides paid services to the respondent or is the spouse, parent, or
3471 child of an individual who provides or is employed to provide paid services to the respondent,
3472 may not be appointed as conservator unless:

3473 (a) the individual is related to the respondent by blood, marriage, or adoption; or

3474 (b) the court finds by clear-and-convincing evidence that the person is the best
3475 qualified person available for appointment and the appointment is in the best interest of the
3476 respondent.

3477 (5) An owner, operator, or employee of a long-term-care facility, as defined in Section
3478 62A-3-202, at which the respondent is receiving care may not be appointed as conservator
3479 unless the owner, operator, or employee is related to the respondent by blood, marriage, or
3480 adoption.

3481 Section 84. Section **75-5c-411** is enacted to read:

3482 **75-5c-411. Order of appointment of conservator.**

3483 (1) A court order appointing a conservator for a minor must include findings to support
3484 appointment of a conservator and, if a full conservatorship is granted, the reason a limited
3485 conservatorship would not meet the identified needs of the minor.

3486 (2) A court order appointing a conservator for an adult must:

3487 (a) include a specific finding that clear-and-convincing evidence has established that
3488 the identified needs of the respondent cannot be met by a protective arrangement instead of
3489 conservatorship or other less restrictive alternative, including use of appropriate supportive
3490 services, technological assistance, or supported decision making; and

3491 (b) include a specific finding that clear-and-convincing evidence established the
3492 respondent was given proper notice of the hearing on the petition.

3493 (3) A court order establishing a full conservatorship for an adult must state the basis for
3494 granting a full conservatorship and include specific findings to support the conclusion that a
3495 limited conservatorship would not meet the functional needs of the adult.

3496 (4) A court order establishing a limited conservatorship must state the specific property
3497 placed under the control of the conservator and the powers granted to the conservator.

3498 (5) The court, as part of an order establishing a conservatorship, shall identify any
3499 person that subsequently is entitled to:

3500 (a) notice of the rights of the individual subject to conservatorship under Subsection

3501 75-5c-412(2);
3502 (b) notice of a sale of or surrender of a lease to the primary dwelling of the individual;
3503 (c) notice that the conservator has delegated a power that requires court approval under
3504 Section 75-5c-414 or substantially all powers of the conservator;
3505 (d) notice that the conservator will be unavailable to perform the conservator's duties
3506 for more than one month;
3507 (e) a copy of the conservator's plan under Section 75-5c-419 and the conservator's
3508 report under Section 75-5c-423;
3509 (f) access to court records relating to the conservatorship;
3510 (g) notice of a transaction involving a substantial conflict between the conservator's
3511 fiduciary duties and personal interests;
3512 (h) notice of the death or significant change in the condition of the individual;
3513 (i) notice that the court has limited or modified the powers of the conservator; and
3514 (j) notice of the removal of the conservator.
3515 (6) If an individual subject to conservatorship is an adult, the spouse and adult children
3516 of the adult subject to conservatorship are entitled under Subsection (5) to notice unless the
3517 court determines notice would be contrary to the preferences or prior directions of the adult
3518 subject to conservatorship or not in the best interest of the adult.
3519 (7) If an individual subject to conservatorship is a minor, each parent and adult sibling
3520 of the minor is entitled under Subsection (5) to notice unless the court determines notice would
3521 not be in the best interest of the minor.
3522 Section 85. Section **75-5c-412** is enacted to read:
3523 **75-5c-412. Notice of order of appointment-- Rights.**
3524 (1) A conservator appointed under Section 75-5c-411 shall give to the individual
3525 subject to conservatorship and to all other persons given notice under Section 75-5c-403 a copy
3526 of the order of appointment, together with notice of the right to request termination or
3527 modification. The order and notice must be given not later than 14 days after the appointment.
3528 (2) Not later than 30 days after appointment of a conservator under Section 75-5c-411,
3529 the court shall give to the individual subject to conservatorship, the conservator, and any other
3530 person entitled to notice under Subsection 75-5c-411(5) a statement of the rights of the
3531 individual subject to conservatorship and procedures to seek relief if the individual is denied

3532 those rights. The statement must be in plain language, in at least 16-point font, and to the
3533 extent feasible, in a language in which the individual subject to conservatorship is proficient.

3534 The statement must notify the individual subject to conservatorship of the right to:

3535 (a) seek termination or modification of the conservatorship, or removal of the
3536 conservator, and choose an attorney to represent the individual in these matters;

3537 (b) participate in decision making to the extent reasonably feasible;

3538 (c) receive a copy of the conservator's plan under Section 75-5c-419, the conservator's
3539 inventory under Section 75-5c-420, and the conservator's report under Section 75-5c-423; and

3540 (d) object to the conservator's inventory, plan, or report.

3541 (3) If a conservator is appointed for the reasons stated in Subsection 75-5c-401(2)(a)(ii)
3542 and the individual subject to conservatorship is missing, notice under this section to the
3543 individual is not required.

3544 Section 86. Section **75-5c-413** is enacted to read:

3545 **75-5c-413. Emergency conservator.**

3546 (1) On its own or on petition by a person interested in an individual's welfare after a
3547 petition has been filed under Section 75-5c-402, the court may appoint an emergency
3548 conservator for the individual if the court finds:

3549 (a) appointment of an emergency conservator is likely to prevent substantial and
3550 irreparable harm to the individual's property or financial interests;

3551 (b) no other person appears to have authority and willingness to act in the
3552 circumstances; and

3553 (c) there is reason to believe that a basis for appointment of a conservator under
3554 Section 75-5c-401 exists.

3555 (2) The duration of authority of an emergency conservator may not exceed 60 days and
3556 the emergency conservator may exercise only the powers specified in the order of appointment.

3557 The emergency conservator's authority may be extended once for not more than 60 days if the
3558 court finds that the conditions for appointment of an emergency conservator under Subsection

3559 (1) continue.

3560 (3) Immediately on filing of a petition for an emergency conservator, the court shall
3561 appoint an attorney to represent the respondent in the proceeding. Except as otherwise provided
3562 in Subsection (4), reasonable notice of the date, time, and place of a hearing on the petition

3563 must be given to the respondent, the respondent's attorney, and any other person the court
3564 determines.

3565 (4) The court may appoint an emergency conservator without notice to the respondent
3566 and any attorney for the respondent only if the court finds from an affidavit or testimony that
3567 the respondent's property or financial interests will be substantially and irreparably harmed
3568 before a hearing with notice on the appointment can be held. If the court appoints an
3569 emergency conservator without giving notice under Subsection (3), the court must give notice
3570 of the appointment not later than 48 hours after the appointment to:

3571 (a) the respondent;
3572 (b) the respondent's attorney; and
3573 (c) any other person the court determines.

3574 (5) Not later than reasonably possible after the appointment, the court shall hold a
3575 hearing on the appropriateness of the appointment.

3576 (6) Appointment of an emergency conservator under this section is not a determination
3577 that a basis exists for appointment of a conservator under Section 75-5c-401.

3578 (7) The court may remove an emergency conservator appointed under this section at
3579 any time. The emergency conservator shall make any report the court requires.

3580 Section 87. Section **75-5c-414** is enacted to read:

3581 **75-5c-414. Powers of conservator requiring court approval.**

3582 (1) Except as otherwise ordered by the court, a conservator must give notice to persons
3583 entitled to notice under Subsection 75-5c-403(4) and receive specific authorization by the court
3584 before the conservator may exercise with respect to the conservatorship the power to:

3585 (a) make a gift, except a gift of de minimis value;
3586 (b) sell, encumber an interest in, or surrender a lease to the primary dwelling of the
3587 individual subject to conservatorship;
3588 (c) convey, release, or disclaim a contingent or expectant interest in property, including
3589 marital property and any right of survivorship incident to joint tenancy or tenancy by the
3590 entireties;

3591 (d) exercise or release a power of appointment;
3592 (e) create a revocable or irrevocable trust of property of the conservatorship estate,
3593 whether or not the trust extends beyond the duration of the conservatorship, or revoke or

3594 amend a trust revocable by the individual subject to conservatorship;

3595 (f) exercise a right to elect an option or change a beneficiary under an insurance policy
3596 or annuity or surrender the policy or annuity for its cash value;

3597 (g) exercise a right to an elective share in the estate of a deceased spouse of the
3598 individual subject to conservatorship or renounce or disclaim a property interest; and

3599 (h) grant a creditor priority for payment over creditors of the same or higher class if the
3600 creditor is providing property or services used to meet the basic living and care needs of the
3601 individual subject to conservatorship and preferential treatment otherwise would be
3602 impermissible under Subsection 75-5c-428(5); and

3603 (i) make, modify, amend, or revoke the will of the individual subject to
3604 conservatorship in compliance with the state's statute for executing a will under Chapter 2,
3605 Intestate Succession and Wills.

3606 (2) In approving a conservator's exercise of a power listed in Subsection (1), the court
3607 shall consider primarily the decision the individual subject to conservatorship would make if
3608 able, to the extent the decision can be ascertained.

3609 (3) To determine under Subsection (2) the decision the individual subject to
3610 conservatorship would make if able, the court shall consider the individual's prior or current
3611 directions, preferences, opinions, values, and actions, to the extent actually known or
3612 reasonably ascertainable by the conservator. The court also shall consider:

3613 (a) the financial needs of the individual subject to conservatorship and individuals who
3614 are in fact dependent on the individual subject to conservatorship for support, and the interests
3615 of creditors of the individual;

3616 (b) possible reduction of income, estate, inheritance, or other tax liabilities;

3617 (c) eligibility for governmental assistance;

3618 (d) the previous pattern of giving or level of support provided by the individual;

3619 (e) any existing estate plan or lack of estate plan of the individual;

3620 (f) the life expectancy of the individual and the probability the conservatorship will
3621 terminate before the individual's death; and

3622 (g) any other relevant factor.

3623 (4) A conservator may not revoke or amend a power of attorney for finances executed
3624 by the individual subject to conservatorship. If a power of attorney for finances is in effect, a

3625 decision of the agent takes precedence over that of the conservator, unless the court orders
3626 otherwise.

3627 Section 88. Section **75-5c-415** is enacted to read:

3628 **75-5c-415. Petition for order after appointment.**

3629 An individual subject to conservatorship or a person interested in the welfare of the
3630 individual may petition for an order:

3631 (1) requiring the conservator to furnish a bond or collateral or additional bond or
3632 collateral or allowing a reduction in a bond or collateral previously furnished;

3633 (2) requiring an accounting for the administration of the conservatorship estate;

3634 (3) directing distribution;

3635 (4) removing the conservator and appointing a temporary or successor conservator;

3636 (5) modifying the type of appointment or powers granted to the conservator, if the
3637 extent of protection or management previously granted is excessive or insufficient to meet the
3638 individual's needs, including because the individual's abilities or supports have changed;

3639 (6) rejecting or modifying the conservator's plan under Section 75-5c-419, the
3640 conservator's inventory under Section 75-5c-420, or the conservator's report under Section
3641 75-5c-423; or

3642 (7) granting other appropriate relief.

3643 Section 89. Section **75-5c-416** is enacted to read:

3644 **75-5c-416. Bond -- Alternative asset-protection arrangement.**

3645 (1) Except as otherwise provided in Subsection (3), the court shall require a
3646 conservator to furnish a bond with a surety the court specifies, or require an alternative
3647 asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator.
3648 The court may waive the requirement only if the court finds that a bond or other
3649 asset-protection arrangement is not necessary to protect the interests of the individual subject to
3650 conservatorship. Except as otherwise provided in Subsection (3), the court may not waive the
3651 requirement if the conservator is in the business of serving as a conservator and is being paid
3652 for the conservator's service.

3653 (2) Unless the court directs otherwise, the bond required under this section must be in
3654 the amount of the aggregate capital value of the conservatorship estate, plus one year's
3655 estimated income, less the value of property deposited under an arrangement requiring a court

3656 order for its removal and real property the conservator lacks power to sell or convey without
3657 specific court authorization. The court, in place of surety on a bond, may accept collateral for
3658 the performance of the bond, including a pledge of securities or a mortgage of real property.

3659 (3) A regulated financial-service institution qualified to do trust business in this state is
3660 not required to give a bond under this section.

3661 Section 90. Section **75-5c-417** is enacted to read:

3662 **75-5c-417. Terms and requirements of bond.**

3663 (1) The following rules apply to the bond required under Section 75-5c-416:

3664 (a) Except as otherwise provided by the bond, the surety and the conservator are jointly
3665 and severally liable.

3666 (b) By executing a bond provided by a conservator, the surety submits to the personal
3667 jurisdiction of the court that issued letters of office to the conservator in a proceeding relating
3668 to the duties of the conservator in which the surety is named as a party. Notice of the
3669 proceeding must be given to the surety at the address shown in the records of the court in which
3670 the bond is filed and any other address of the surety then known to the person required to
3671 provide the notice.

3672 (c) On petition of a successor conservator or person affected by a breach of the
3673 obligation of the bond, a proceeding may be brought against the surety for breach of the
3674 obligation of the bond.

3675 (d) A proceeding against the bond may be brought until liability under the bond is
3676 exhausted.

3677 (2) A proceeding may not be brought under this section against a surety of a bond on a
3678 matter as to which a proceeding against the conservator is barred.

3679 (3) If a bond under Section 75-5c-416 is not renewed by the conservator, the surety or
3680 sureties immediately shall give notice to the court and the individual subject to
3681 conservatorship.

3682 Section 91. Section **75-5c-418** is enacted to read:

3683 **75-5c-418. Duties of conservator.**

3684 (1) A conservator is a fiduciary and has duties of prudence and loyalty to the individual
3685 subject to conservatorship.

3686 (2) A conservator shall promote the self-determination of the individual subject to

3687 conservatorship and, to the extent feasible, encourage the individual to participate in decisions,
3688 act on the individual's own behalf, and develop or regain the capacity to manage the
3689 individual's personal affairs.

3690 (3) In making a decision for an individual subject to conservatorship, the conservator
3691 shall make the decision the conservator reasonably believes the individual would make if able,
3692 unless doing so would fail to preserve the resources needed to maintain the individual's
3693 well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or
3694 financial interests of the individual. To determine the decision the individual would make if
3695 able, the conservator shall consider the individual's prior or current directions, preferences,
3696 opinions, values, and actions, to the extent actually known or reasonably ascertainable by the
3697 conservator.

3698 (4) If a conservator cannot make a decision under Subsection (3) because the
3699 conservator does not know and cannot reasonably determine the decision the individual subject
3700 to conservatorship probably would make if able, or the conservator reasonably believes the
3701 decision the individual would make would fail to preserve resources needed to maintain the
3702 individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or
3703 personal or financial interests of the individual, the conservator shall act in accordance with the
3704 best interest of the individual. In determining the best interest of the individual, the conservator
3705 shall consider:

3706 (a) information received from professionals and persons that demonstrate sufficient
3707 interest in the welfare of the individual;

3708 (b) other information the conservator believes the individual would have considered if
3709 the individual were able to act; and

3710 (c) other factors a reasonable person in the circumstances of the individual would
3711 consider, including consequences for others.

3712 (5) Except when inconsistent with the conservator's duties under Subsections (1)
3713 through (4), a conservator shall invest and manage the conservatorship estate as a prudent
3714 investor would, by considering:

3715 (a) the circumstances of the individual subject to conservatorship and the
3716 conservatorship estate;

3717 (b) general economic conditions;

- 3718 (c) the possible effect of inflation or deflation;
3719 (d) the expected tax consequences of an investment decision or strategy;
3720 (e) the role of each investment or course of action in relation to the conservatorship
3721 estate as a whole;
3722 (f) the expected total return from income and appreciation of capital;
3723 (g) the need for liquidity, regularity of income, and preservation or appreciation of
3724 capital; and
3725 (h) the special relationship or value, if any, of specific property to the individual
3726 subject to conservatorship.
- 3727 (6) The propriety of a conservator's investment and management of the conservatorship
3728 estate is determined in light of the facts and circumstances existing when the conservator
3729 decides or acts and not by hindsight.
- 3730 (7) A conservator shall make a reasonable effort to verify facts relevant to the
3731 investment and management of the conservatorship estate.
- 3732 (8) A conservator that has special skills or expertise, or is named conservator in
3733 reliance on the conservator's representation of special skills or expertise, has a duty to use the
3734 special skills or expertise in carrying out the conservator's duties.
- 3735 (9) In investing, selecting specific property for distribution, and invoking a power of
3736 revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a
3737 conservator shall consider any estate plan of the individual known or reasonably ascertainable
3738 to the conservator and may examine the will or other donative, nominative, or appointive
3739 instrument of the individual.
- 3740 (10) A conservator shall maintain insurance on the insurable real and personal property
3741 of the individual subject to conservatorship, unless the conservatorship estate lacks sufficient
3742 funds to pay for insurance or the court finds:
- 3743 (a) the property lacks sufficient equity; or
3744 (b) insuring the property would unreasonably dissipate the conservatorship estate or
3745 otherwise not be in the best interest of the individual.
- 3746 (11) If a power of attorney for finances is in effect, a conservator shall cooperate with
3747 the agent to the extent feasible.
- 3748 (12) A conservator has access to and authority over a digital asset of the individual

3749 subject to conservatorship to the extent provided by Chapter 11, Uniform Fiduciary Access to
3750 Digital Assets Act, or court order.

3751 (13) A conservator for an adult shall notify the court if the condition of the adult has
3752 changed so that the adult is capable of exercising rights previously removed. The notice must
3753 be given immediately on learning of the change.

3754 Section 92. Section **75-5c-419** is enacted to read:

3755 **75-5c-419. Conservator's plan.**

3756 (1) A conservator, not later than 60 days after appointment and when there is a
3757 significant change in circumstances or the conservator seeks to deviate significantly from the
3758 conservator's plan, shall file with the court a plan for protecting, managing, expending, and
3759 distributing the assets of the conservatorship estate. The plan must be based on the needs of the
3760 individual subject to conservatorship and take into account the best interest of the individual as
3761 well as the individual's preferences, values, and prior directions, to the extent known to or
3762 reasonably ascertainable by the conservator. The conservator shall include in the plan:

3763 (a) a budget containing projected expenses and resources, including an estimate of the
3764 total amount of fees the conservator anticipates charging per year and a statement or list of the
3765 amount the conservator proposes to charge for each service the conservator anticipates
3766 providing to the individual;

3767 (b) how the conservator will involve the individual in decisions about management of
3768 the conservatorship estate;

3769 (c) any step the conservator plans to take to develop or restore the ability of the
3770 individual to manage the conservatorship estate; and

3771 (d) an estimate of the duration of the conservatorship.

3772 (2) A conservator shall give notice of the filing of the conservator's plan under
3773 Subsection (1), together with a copy of the plan, to the individual subject to conservatorship, a
3774 person entitled to notice under Subsection 75-5c-411(5) or a subsequent order, and any other
3775 person the court determines. The notice must include a statement of the right to object to the
3776 plan and be given not later than 14 days after the filing.

3777 (3) An individual subject to conservatorship and any person entitled under Subsection
3778 (2) to receive notice and a copy of the conservator's plan may object to the plan.

3779 (4) The court shall review the conservator's plan filed under Subsection (1) and

3780 determine whether to approve the plan or require a new plan. In deciding whether to approve
3781 the plan, the court shall consider an objection under Subsection (3) and whether the plan is
3782 consistent with the conservator's duties and powers. The court may not approve the plan until
3783 30 days after its filing.

3784 (5) After a conservator's plan under this section is approved by the court, the
3785 conservator shall provide a copy of the plan to the individual subject to conservatorship, a
3786 person entitled to notice under Subsection 75-5c-411(5) or a subsequent order, and any other
3787 person the court determines.

3788 Section 93. Section **75-5c-420** is enacted to read:

3789 **75-5c-420. Inventory -- Records.**

3790 (1) Not later than 60 days after appointment, a conservator shall prepare and file with
3791 the appointing court a detailed inventory of the conservatorship estate, together with an oath or
3792 affirmation that the inventory is believed to be complete and accurate as far as information
3793 permits.

3794 (2) A conservator shall give notice of the filing of an inventory to the individual
3795 subject to conservatorship, a person entitled to notice under Subsection 75-5c-411(5) or a
3796 subsequent order, and any other person the court determines. The notice must be given not later
3797 than 14 days after the filing.

3798 (3) A conservator shall keep records of the administration of the conservatorship estate
3799 and make them available for examination on reasonable request of the individual subject to
3800 conservatorship, a guardian for the individual, or any other person the conservator or the court
3801 determines.

3802 Section 94. Section **75-5c-421** is enacted to read:

3803 **75-5c-421. Administrative powers of conservator not requiring court approval.**

3804 (1) Except as otherwise provided in Section 75-5c-414 or qualified or limited in the
3805 court's order of appointment and stated in the letters of office, a conservator has all powers
3806 granted in this section and any additional power granted to a trustee by law of this state other
3807 than this chapter.

3808 (2) A conservator, acting reasonably and consistent with the fiduciary duties of the
3809 conservator to accomplish the purpose of the conservatorship, without specific court
3810 authorization or confirmation, may with respect to the conservatorship estate:

- 3811 (a) collect, hold, and retain property, including property in which the conservator has a
3812 personal interest and real property in another state, until the conservator determines disposition
3813 of the property should be made;
- 3814 (b) receive additions to the conservatorship estate;
- 3815 (c) continue or participate in the operation of a business or other enterprise;
- 3816 (d) acquire an undivided interest in property in which the conservator, in a fiduciary
3817 capacity, holds an undivided interest;
- 3818 (e) invest assets;
- 3819 (f) deposit funds or other property in a financial institution, including one operated by
3820 the conservator;
- 3821 (g) acquire or dispose of property, including real property in another state, for cash or
3822 on credit, at public or private sale, and manage, develop, improve, exchange, partition, change
3823 the character of, or abandon property;
- 3824 (h) make ordinary or extraordinary repairs or alterations in a building or other structure,
3825 demolish any improvement, or raze an existing or erect a new party wall or building;
- 3826 (i) subdivide or develop land, dedicate land to public use, make or obtain the vacation
3827 of a plat and adjust a boundary, adjust a difference in valuation of land, exchange or partition
3828 land by giving or receiving consideration, and dedicate an easement to public use without
3829 consideration;
- 3830 (j) enter for any purpose into a lease of property as lessor or lessee, with or without an
3831 option to purchase or renew, for a term within or extending beyond the term of the
3832 conservatorship;
- 3833 (k) enter into a lease or arrangement for exploration and removal of minerals or other
3834 natural resources or a pooling or unitization agreement;
- 3835 (l) grant an option involving disposition of property or accept or exercise an option for
3836 the acquisition of property;
- 3837 (m) vote a security, in person or by general or limited proxy;
- 3838 (n) pay a call, assessment, or other sum chargeable or accruing against or on account of
3839 a security;
- 3840 (o) sell or exercise a stock subscription or conversion right;
- 3841 (p) consent, directly or through a committee or agent, to the reorganization,

3842 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

3843 (q) hold a security in the name of a nominee or in other form without disclosure of the

3844 conservatorship so that title to the security may pass by delivery;

3845 (r) insure:

3846 (i) the conservatorship estate, in whole or in part, against damage or loss in accordance

3847 with Subsection 75-5c-418(10); and

3848 (ii) the conservator against liability with respect to a third person;

3849 (s) borrow funds, with or without security, to be repaid from the conservatorship estate

3850 or otherwise;

3851 (t) advance funds for the protection of the conservatorship estate or the individual

3852 subject to conservatorship and all expenses, losses, and liability sustained in the administration

3853 of the conservatorship estate or because of holding any property for which the conservator has

3854 a lien on the conservatorship estate;

3855 (u) pay or contest a claim, settle a claim by or against the conservatorship estate or the

3856 individual subject to conservatorship by compromise, arbitration, or otherwise, or release, in

3857 whole or in part, a claim belonging to the conservatorship estate to the extent the claim is

3858 uncollectible;

3859 (v) pay a tax, assessment, compensation of the conservator or any guardian, and other

3860 expense incurred in the collection, care, administration, and protection of the conservatorship

3861 estate;

3862 (w) pay a sum distributable to the individual subject to conservatorship or an individual

3863 who is in fact dependent on the individual subject to conservatorship by paying the sum to the

3864 distributee or for the use of the distributee:

3865 (i) to the guardian for the distributee;

3866 (ii) to the custodian of the distributee under Chapter 5b, Uniform Transfers to Minors

3867 Act, or custodial trustee; or

3868 (iii) if there is no guardian, custodian, or custodial trustee, to a relative or other person

3869 having physical custody of the distributee;

3870 (x) bring or defend an action, claim, or proceeding in any jurisdiction for the protection

3871 of the conservatorship estate or the conservator in the performance of the conservator's duties;

3872 (y) structure the finances of the individual subject to conservatorship to establish

3873 eligibility for a public benefit, including by making gifts consistent with the individual's
3874 preferences, values, and prior directions, if the conservator's action does not jeopardize the
3875 individual's welfare and otherwise is consistent with the conservator's duties; and
3876 (z) execute and deliver any instrument that will accomplish or facilitate the exercise of
3877 a power of the conservator.

3878 Section 95. Section **75-5c-422** is enacted to read:

3879 **75-5c-422. Distribution from conservatorship estate.**

3880 Except as otherwise provided in Section 75-5c-414 or qualified or limited in the court's
3881 order of appointment and stated in the letters of office, and unless contrary to a conservator's
3882 plan under Section 75-5c-419, the conservator may expend or distribute income or principal of
3883 the conservatorship estate without specific court authorization or confirmation for the support,
3884 care, education, health, or welfare of the individual subject to conservatorship or an individual
3885 who is in fact dependent on the individual subject to conservatorship, including the payment of
3886 child or spousal support, in accordance with the following rules:

3887 (1) The conservator shall consider a recommendation relating to the appropriate
3888 standard of support, care, education, health, or welfare for the individual subject to
3889 conservatorship or individual who is dependent on the individual subject to conservatorship,
3890 made by a guardian for the individual subject to conservatorship, if any, and, if the individual
3891 subject to conservatorship is a minor, a recommendation made by a parent of the minor.

3892 (2) The conservator acting in compliance with the conservator's duties under Section
3893 75-5c-418 is not liable for an expenditure or distribution made based on a recommendation
3894 under Subsection (1) unless the conservator knows the expenditure or distribution is not in the
3895 best interest of the individual subject to conservatorship.

3896 (3) In making an expenditure or distribution under this section, the conservator shall
3897 consider:

3898 (a) the size of the conservatorship estate, the estimated duration of the conservatorship,
3899 and the likelihood the individual subject to conservatorship, at some future time, may be fully
3900 self-sufficient and able to manage the individual's financial affairs and the conservatorship
3901 estate;

3902 (b) the accustomed standard of living of the individual subject to conservatorship and
3903 individual who is dependent on the individual subject to conservatorship;

3904 (c) other funds or source used for the support of the individual subject to
3905 conservatorship; and

3906 (d) the preferences, values, and prior directions of the individual subject to
3907 conservatorship.

3908 (4) Funds expended or distributed under this section may be paid by the conservator to
3909 any person, including the individual subject to conservatorship, as reimbursement for
3910 expenditures the conservator might have made, or in advance for services to be provided to the
3911 individual subject to conservatorship or individual who is dependent on the individual subject
3912 to conservatorship if it is reasonable to expect the services will be performed and advance
3913 payment is customary or reasonably necessary under the circumstances.

3914 Section 96. Section **75-5c-423** is enacted to read:

3915 **75-5c-423. Conservator's report and accounting -- Monitoring.**

3916 (1) A conservator shall file with the court a report in a record regarding the
3917 administration of the conservatorship estate annually unless the court otherwise directs, on
3918 resignation or removal, on termination of the conservatorship, and at any other time the court
3919 directs.

3920 (2) A report under Subsection (1) must state or contain:

3921 (a) an accounting that lists property included in the conservatorship estate and the
3922 receipts, disbursements, liabilities, and distributions during the period for which the report is
3923 made;

3924 (b) a list of the services provided to the individual subject to conservatorship;

3925 (c) a copy of the conservator's most recently approved plan and a statement whether the
3926 conservator has deviated from the plan and, if so, how the conservator has deviated and why;

3927 (d) a recommendation as to the need for continued conservatorship and any
3928 recommended change in the scope of the conservatorship;

3929 (e) to the extent feasible, a copy of the most recent reasonably available financial
3930 statements evidencing the status of bank accounts, investment accounts, and mortgages or other
3931 debts of the individual subject to conservatorship with all but the last four digits of the account
3932 numbers and social security number redacted;

3933 (f) anything of more than de minimis value which the conservator, any individual who
3934 resides with the conservator, or the spouse, parent, child, or sibling of the conservator has

3935 received from a person providing goods or services to the individual subject to
3936 conservatorship;

3937 (g) any business relation the conservator has with a person the conservator has paid or
3938 that has benefitted from the property of the individual subject to conservatorship; and

3939 (h) whether any co-conservator or successor conservator appointed to serve when a
3940 designated event occurs is alive and able to serve.

3941 (3) The court may appoint a visitor to review a report under this section or
3942 conservator's plan under Section 75-5c-419, interview the individual subject to conservatorship
3943 or conservator, or investigate any other matter involving the conservatorship. In connection
3944 with the report, the court may order the conservator to submit the conservatorship estate to
3945 appropriate examination in a manner the court directs.

3946 (4) Notice of the filing under this section of a conservator's report, together with a copy
3947 of the report, must be provided to the individual subject to conservatorship, a person entitled to
3948 notice under Subsection 75-5c-411(5) or a subsequent order, and other persons the court
3949 determines. The notice and report must be given not later than 14 days after filing.

3950 (5) The court shall establish procedures for monitoring a report submitted under this
3951 section and review each report at least annually to determine whether:

3952 (a) the reports provide sufficient information to establish the conservator has complied
3953 with the conservator's duties;

3954 (b) the conservatorship should continue; and

3955 (c) the conservator's requested fees, if any, should be approved.

3956 (6) If the court determines there is reason to believe a conservator has not complied
3957 with the conservator's duties or the conservatorship should not continue, the court:

3958 (a) shall notify the individual subject to conservatorship, the conservator, and any other
3959 person entitled to notice under Subsection 75-5c-411(5) or a subsequent order;

3960 (b) may require additional information from the conservator;

3961 (c) may appoint a visitor to interview the individual subject to conservatorship or
3962 conservator or investigate any matter involving the conservatorship; and

3963 (d) consistent with Sections 75-5c-430 and 75-5c-431, may hold a hearing to consider
3964 removal of the conservator, termination of the conservatorship, or a change in the powers
3965 granted to the conservator or terms of the conservatorship.

3966 (7) If the court has reason to believe fees requested by a conservator are not reasonable,
3967 the court shall hold a hearing to determine whether to adjust the requested fees.

3968 (8) A conservator may petition the court for approval of a report filed under this
3969 section. The court after review may approve the report. If the court approves the report, there is
3970 a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

3971 (9) An order, after notice and hearing, approving an interim report of a conservator
3972 filed under this section adjudicates liabilities concerning a matter adequately disclosed in the
3973 report, as to a person given notice of the report or accounting.

3974 (10) An order, after notice and hearing, approving a final report filed under this section
3975 discharges the conservator from all liabilities, claims, and causes of action by a person given
3976 notice of the report and the hearing as to a matter adequately disclosed in the report.

3977 Section 97. Section **75-5c-424** is enacted to read:

3978 **75-5c-424. Attempted transfer of property by individual subject to**
3979 **conservatorship.**

3980 (1) The interest of an individual subject to conservatorship in property included in the
3981 conservatorship estate is not transferrable or assignable by the individual and is not subject to
3982 levy, garnishment, or similar process for claims against the individual unless allowed under
3983 Section 75-5c-428.

3984 (2) If an individual subject to conservatorship enters into a contract after having the
3985 right to enter the contract removed by the court, the contract is void against the individual and
3986 the individual's property but is enforceable against the person that contracted with the
3987 individual.

3988 (3) A person other than the conservator that deals with an individual subject to
3989 conservatorship with respect to property included in the conservatorship estate is entitled to
3990 protection provided by law of this state other than this chapter.

3991 Section 98. Section **75-5c-425** is enacted to read:

3992 **75-5c-425. Transaction involving conflict of interest.**

3993 A transaction involving a conservatorship estate which is affected by a substantial
3994 conflict between the conservator's fiduciary duties and personal interests is voidable unless the
3995 transaction is authorized by court order after notice to persons entitled to notice under
3996 Subsection 75-5c-411(5) or a subsequent order. A transaction affected by a substantial conflict

3997 includes a sale, encumbrance, or other transaction involving the conservatorship estate entered
3998 into by the conservator, an individual with whom the conservator resides, the spouse,
3999 descendant, sibling, agent, or attorney of the conservator, or a corporation or other enterprise in
4000 which the conservator has a substantial beneficial interest.

4001 Section 99. Section **75-5c-426** is enacted to read:

4002 **75-5c-426. Protection of person dealing with conservator.**

4003 (1) A person that assists or deals with a conservator in good faith and for value in any
4004 transaction, other than a transaction requiring a court order under Section 75-5c-414, is
4005 protected as though the conservator properly exercised any power in question. Knowledge by a
4006 person that the person is dealing with a conservator alone does not require the person to inquire
4007 into the existence of authority of the conservator or the propriety of the conservator's exercise
4008 of authority, but restrictions on authority stated in letters of office, or otherwise provided by
4009 law, are effective as to the person. A person that pays or delivers property to a conservator is
4010 not responsible for proper application of the property.

4011 (2) Protection under Subsection (1) extends to a procedural irregularity or jurisdictional
4012 defect in the proceeding leading to the issuance of letters of office and does not substitute for
4013 protection for a person that assists or deals with a conservator provided by comparable
4014 provisions in law of this state other than this chapter relating to a commercial transaction or
4015 simplifying a transfer of securities by a fiduciary.

4016 Section 100. Section **75-5c-427** is enacted to read:

4017 **75-5c-427. Death of individual subject to conservatorship.**

4018 (1) If an individual subject to conservatorship dies, the conservator shall deliver to the
4019 court for safekeeping any will of the individual in the conservator's possession and inform the
4020 personal representative named in the will if feasible, or if not feasible, a beneficiary named in
4021 the will, of the delivery.

4022 (2) If 40 days after the death of an individual subject to conservatorship no personal
4023 representative has been appointed and no application or petition for appointment is before the
4024 court, the conservator may apply to exercise the powers and duties of a personal representative
4025 to administer and distribute the decedent's estate. The conservator shall give notice to a person
4026 nominated as personal representative by a will of the decedent of which the conservator is
4027 aware. The court may grant the application if there is no objection and endorse the letters of

4028 office to note that the individual formerly subject to conservatorship is deceased and the
4029 conservator has acquired the powers and duties of a personal representative.

4030 (3) Issuance of an order under this section has the effect of an order of appointment of
4031 a personal representative under Section 75-3-308 and Chapter 3, Parts 6 through 10.

4032 (4) On the death of an individual subject to conservatorship, the conservator shall
4033 conclude the administration of the conservatorship estate as provided in Section 75-5c-431.

4034 Section 101. Section **75-5c-428** is enacted to read:

4035 **75-5c-428. Presentation and allowance of claim.**

4036 (1) A conservator may pay, or secure by encumbering property included in the
4037 conservatorship estate, a claim against the conservatorship estate or the individual subject to
4038 conservatorship arising before or during the conservatorship, on presentation and allowance in
4039 accordance with the priorities under Subsection (4). A claimant may present a claim by:

4040 (a) sending or delivering to the conservator a statement in a record of the claim,
4041 indicating its basis, the name and address of the claimant, and the amount claimed; or

4042 (b) filing the claim with the court, in a form acceptable to the court, and sending or
4043 delivering a copy of the claim to the conservator.

4044 (2) A claim under Subsection (1) is presented on receipt by the conservator of the
4045 statement of the claim or the filing with the court of the claim, whichever first occurs. A
4046 presented claim is allowed if it is not disallowed in whole or in part by the conservator in a
4047 record sent or delivered to the claimant not later than 60 days after its presentation. Before
4048 payment, the conservator may change an allowance of the claim to a disallowance in whole or
4049 in part, but not after allowance under a court order or order directing payment of the claim.
4050 Presentation of a claim tolls until 30 days after disallowance of the claim the running of a
4051 statute of limitations that has not expired relating to the claim.

4052 (3) A claimant whose claim under Subsection (1) has not been paid may petition the
4053 court to determine the claim at any time before it is barred by a statute of limitations, and the
4054 court may order its allowance, payment, or security by encumbering property included in the
4055 conservatorship estate. If a proceeding is pending against the individual subject to
4056 conservatorship at the time of appointment of the conservator or is initiated thereafter, the
4057 moving party shall give the conservator notice of the proceeding if it could result in creating a
4058 claim against the conservatorship estate.

4059 (4) If a conservatorship estate is likely to be exhausted before all existing claims are
4060 paid, the conservator shall distribute the estate in money or in kind in payment of claims in the
4061 following order:

4062 (a) costs and expenses of administration;

4063 (b) a claim of the federal or state government having priority under law other than this
4064 chapter;

4065 (c) a claim incurred by the conservator for support, care, education, health, or welfare
4066 previously provided to the individual subject to conservatorship or an individual who is in fact
4067 dependent on the individual subject to conservatorship;

4068 (d) a claim arising before the conservatorship; and

4069 (e) all other claims.

4070 (5) Preference may not be given in the payment of a claim under Subsection (4) over
4071 another claim of the same class. A claim due and payable may not be preferred over a claim not
4072 due unless:

4073 (a) doing so would leave the conservatorship estate without sufficient funds to pay the
4074 basic living and health-care expenses of the individual subject to conservatorship; and

4075 (b) the court authorizes the preference under Subsection 75-5c-414(1)(h).

4076 (6) If assets of a conservatorship estate are adequate to meet all existing claims, the
4077 court, acting in the best interest of the individual subject to conservatorship, may order the
4078 conservator to grant a security interest in the conservatorship estate for payment of a claim at a
4079 future date.

4080 Section 102. Section **75-5c-429** is enacted to read:

4081 **75-5c-429. Personal liability of conservator.**

4082 (1) Except as otherwise agreed by a conservator, the conservator is not personally
4083 liable on a contract properly entered into in a fiduciary capacity in the course of administration
4084 of the conservatorship estate unless the conservator fails to reveal the conservator's
4085 representative capacity in the contract or before entering into the contract.

4086 (2) A conservator is personally liable for an obligation arising from control of property
4087 of the conservatorship estate or an act or omission occurring in the course of administration of
4088 the conservatorship estate only if the conservator is personally at fault.

4089 (3) A claim based on a contract entered into by a conservator in a fiduciary capacity, an

4090 obligation arising from control of property included in the conservatorship estate, or a tort
4091 committed in the course of administration of the conservatorship estate may be asserted against
4092 the conservatorship estate in a proceeding against the conservator in a fiduciary capacity,
4093 whether or not the conservator is personally liable for the claim.

4094 (4) A question of liability between a conservatorship estate and the conservator
4095 personally may be determined in a proceeding for accounting, surcharge, or indemnification or
4096 another appropriate proceeding or action.

4097 Section 103. Section **75-5c-430** is enacted to read:

4098 **75-5c-430. Removal of conservator -- Appointment of successor.**

4099 (1) The court may remove a conservator for failure to perform the conservator's duties
4100 or other good cause and appoint a successor conservator to assume the duties of the
4101 conservator.

4102 (2) The court shall hold a hearing to determine whether to remove a conservator and
4103 appoint a successor on:

4104 (a) petition of the individual subject to conservatorship, conservator, or person
4105 interested in the welfare of the individual which contains allegations that, if true, would support
4106 a reasonable belief that removal of the conservator and appointment of a successor may be
4107 appropriate, but the court may decline to hold a hearing if a petition based on the same or
4108 substantially similar facts was filed during the preceding six months;

4109 (b) communication from the individual subject to conservatorship, conservator, or
4110 person interested in the welfare of the individual which supports a reasonable belief that
4111 removal of the conservator and appointment of a successor may be appropriate; or

4112 (c) determination by the court that a hearing would be in the best interest of the
4113 individual subject to conservatorship.

4114 (3) Notice of a petition under Subsection (2)(a) must be given to the individual subject
4115 to conservatorship, the conservator, and any other person the court determines.

4116 (4) An individual subject to conservatorship who seeks to remove the conservator and
4117 have a successor appointed has the right to choose an attorney to represent the individual in this
4118 matter. The court shall award reasonable attorney fees to the attorney as provided in Section
4119 75-5c-119.

4120 (5) In selecting a successor conservator, the court shall follow the priorities under

4121 Section 75-5c-410.

4122 (6) Not later than 30 days after appointing a successor conservator, the court shall give
4123 notice of the appointment to the individual subject to conservatorship and any person entitled
4124 to notice under Subsection 75-5c-411(5) or a subsequent order.

4125 Section 104. Section **75-5c-431** is enacted to read:

4126 **75-5c-431. Termination or modification of conservatorship.**

4127 (1) A conservatorship for a minor terminates on the earliest of:

4128 (a) a court order terminating the conservatorship;

4129 (b) the minor becoming an adult or, if the minor consents or the court finds by
4130 clear-and-convincing evidence that substantial harm to the minor's interests is otherwise likely,
4131 attaining 21 years of age;

4132 (c) emancipation of the minor; or

4133 (d) death of the minor.

4134 (2) A conservatorship for an adult terminates on order of the court or when the adult
4135 dies.

4136 (3) An individual subject to conservatorship, the conservator, or a person interested in
4137 the welfare of the individual may petition for:

4138 (a) termination of the conservatorship on the ground that a basis for appointment under
4139 Section 75-5c-401 does not exist or termination would be in the best interest of the individual
4140 or for other good cause; or

4141 (b) modification of the conservatorship on the ground that the extent of protection or
4142 assistance granted is not appropriate or for other good cause.

4143 (4) The court shall hold a hearing to determine whether termination or modification of
4144 a conservatorship is appropriate on:

4145 (a) petition under Subsection (3) which contains allegations that, if true, would support
4146 a reasonable belief that termination or modification of the conservatorship may be appropriate,
4147 but the court may decline to hold a hearing if a petition based on the same or substantially
4148 similar facts was filed within the preceding six months;

4149 (b) a communication from the individual subject to conservatorship, conservator, or
4150 person interested in the welfare of the individual which supports a reasonable belief that
4151 termination or modification of the conservatorship may be appropriate, including because the

4152 functional needs of the individual or supports or services available to the individual have
4153 changed;

4154 (c) a report from a guardian or conservator which indicates that termination or
4155 modification may be appropriate because the functional needs or supports or services available
4156 to the individual have changed or a protective arrangement instead of conservatorship or other
4157 less restrictive alternative is available; or

4158 (d) a determination by the court that a hearing would be in the best interest of the
4159 individual.

4160 (5) Notice of a petition under Subsection (3) must be given to the individual subject to
4161 conservatorship, the conservator, and any such other person the court determines.

4162 (6) On presentation of prima facie evidence for termination of a conservatorship, the
4163 court shall order termination unless it is proven that a basis for appointment of a conservator
4164 under Section 75-5c-401 exists.

4165 (7) The court shall modify the powers granted to a conservator if the powers are
4166 excessive or inadequate due to a change in the abilities or limitations of the individual subject
4167 to conservatorship, the individual's supports, or other circumstances.

4168 (8) Unless the court otherwise orders for good cause, before terminating a
4169 conservatorship, the court shall follow the same procedures to safeguard the rights of the
4170 individual subject to conservatorship which apply to a petition for conservatorship.

4171 (9) An individual subject to conservatorship who seeks to terminate or modify the
4172 terms of the conservatorship has the right to choose an attorney to represent the individual in
4173 this matter. The court shall award reasonable attorney fees to the attorney as provided in
4174 Section 75-5c-119.

4175 (10) On termination of a conservatorship other than by reason of the death of the
4176 individual subject to conservatorship, property of the conservatorship estate passes to the
4177 individual. The order of termination must direct the conservator to file a final report and
4178 petition for discharge on approval by the court of the final report.

4179 (11) On termination of a conservatorship by reason of the death of the individual
4180 subject to conservatorship, the conservator promptly shall file a final report and petition for
4181 discharge on approval by the court of the final report. On approval of the final report, the
4182 conservator shall proceed expeditiously to distribute the conservatorship estate to the

4183 individual's estate or as otherwise ordered by the court. The conservator may take reasonable
4184 measures necessary to preserve the conservatorship estate until distribution can be made.

4185 (12) The court shall issue a final order of discharge on the approval by the court of the
4186 final report and satisfaction by the conservator of any other condition the court imposed on the
4187 conservator's discharge.

4188 Section 105. Section **75-5c-432** is enacted to read:

4189 **75-5c-432. Transfer for benefit of minor without appointment of conservator.**

4190 (1) Unless a person required to transfer funds or other property to a minor knows that a
4191 conservator for the minor has been appointed or a proceeding is pending for conservatorship,
4192 the person may transfer an amount or value not exceeding \$15,000 in a 12-month period to:

4193 (a) a person that has care or custody of the minor and with whom the minor resides;

4194 (b) a guardian for the minor;

4195 (c) a custodian under Chapter 5a, Uniform Transfers to Minors Act; or

4196 (d) a financial institution as a deposit in an interest-bearing account or certificate solely
4197 in the name of the minor and shall give notice to the minor of the deposit.

4198 (2) A person that transfers funds or other property under this section is not responsible
4199 for its proper application.

4200 (3) A person that receives funds or other property for a minor under Subsection (1)(a)
4201 or (b) may apply it only to the support, care, education, health, or welfare of the minor, and
4202 may not derive a personal financial benefit from it, except for reimbursement for necessary
4203 expenses. Funds not applied for these purposes must be preserved for the future support, care,
4204 education, health, or welfare of the minor, and the balance, if any, transferred to the minor
4205 when the minor becomes an adult or otherwise is emancipated.

4206 Section 106. Section **75-5c-501** is enacted to read:

4207 **Part 5. Other Protective Arrangements**

4208 **75-5c-501. Authority for Protective Arrangement.**

4209 (1) Under this part, a court:

4210 (a) on receiving a petition for a guardianship for an adult may order a protective
4211 arrangement instead of guardianship as a less restrictive alternative to guardianship; and

4212 (b) on receiving a petition for a conservatorship for an individual may order a
4213 protective arrangement instead of conservatorship as a less restrictive alternative to

4214 conservatorship.

4215 (2) A person interested in an adult's welfare, including the adult or a conservator for the
4216 adult, may petition under this part for a protective arrangement instead of guardianship.

4217 (3) The following persons may petition under this part for a protective arrangement
4218 instead of conservatorship:

4219 (a) the individual for whom the protective arrangement is sought;

4220 (b) a person interested in the property, financial affairs, or welfare of the individual,
4221 including a person that would be affected adversely by lack of effective management of
4222 property or financial affairs of the individual; and

4223 (c) the guardian for the individual.

4224 Section 107. Section **75-5c-502** is enacted to read:

4225 **75-5c-502. Basis for protective arrangement instead of guardianship for adult.**

4226 (1) After the hearing on a petition under Section 75-5c-302 for a guardianship or under
4227 Subsection 75-5c-501(2) for a protective arrangement instead of guardianship, the court may
4228 issue an order under Subsection (2) for a protective arrangement instead of guardianship if the
4229 court finds by clear-and-convincing evidence that:

4230 (a) the respondent lacks the ability to meet essential requirements for physical health,
4231 safety, or self-care because the respondent is unable to receive and evaluate information or
4232 make or communicate decisions, even with appropriate supportive services, technological
4233 assistance, or supported decision making; and

4234 (b) the respondent's identified needs cannot be met by a less restrictive alternative.

4235 (2) If the court makes the findings under Subsection (1), the court, instead of
4236 appointing a guardian, may:

4237 (a) authorize or direct a transaction necessary to meet the respondent's need for health,
4238 safety, or care, including:

4239 (i) a particular medical treatment or refusal of a particular medical treatment;

4240 (ii) a move to a specified place of dwelling; or

4241 (iii) visitation or supervised visitation between the respondent and another person;

4242 (b) restrict access to the respondent by a specified person whose access places the
4243 respondent at serious risk of physical, psychological, or financial harm; and

4244 (c) order other arrangements on a limited basis that are appropriate.

4245 (3) In deciding whether to issue an order under this section, the court shall consider the
4246 factors under Sections 75-5c-313 and 75-5c-314 which a guardian must consider when making
4247 a decision on behalf of an adult subject to guardianship.

4248 Section 108. Section **75-5c-503** is enacted to read:

4249 **75-5c-503. Basis for protective arrangement instead of conservatorship for adult**
4250 **or minor.**

4251 (1) After the hearing on a petition under Section 75-5c-402 for conservatorship for an
4252 adult or under Subsection 75-5c-501(3) for a protective arrangement instead of conservatorship
4253 for an adult, the court may issue an order under Subsection (3) for a protective arrangement
4254 instead of conservatorship for the adult if the court finds by clear-and-convincing evidence
4255 that:

4256 (a) the adult is unable to manage property or financial affairs because:

4257 (i) of a limitation in the ability to receive and evaluate information or make or
4258 communicate decisions, even with appropriate supportive services, technological assistance, or
4259 supported decision making; or

4260 (ii) the adult is missing, detained, or unable to return to the United States;

4261 (b) an order under Subsection (3) is necessary to:

4262 (i) avoid harm to the adult or significant dissipation of the property of the adult; or

4263 (ii) obtain or provide funds or other property needed for the support, care, education,
4264 health, or welfare of the adult or an individual entitled to the adult's support; and

4265 (c) the respondent's identified needs cannot be met by a less restrictive alternative.

4266 (2) After the hearing on a petition under Section 75-5c-402 for conservatorship for a

4267 minor or under Subsection 75-5c-501(3) for a protective arrangement instead of

4268 conservatorship for a minor, the court may issue an order under Subsection (3) for a protective

4269 arrangement instead of conservatorship for the respondent if the court finds by a preponderance

4270 of the evidence that the arrangement is in the minor's best interest, and:

4271 (a) if the minor has a parent, the court gives weight to any recommendation of the
4272 parent whether an arrangement is in the minor's best interest;

4273 (b) either:

4274 (i) the minor owns money or property requiring management or protection that

4275 otherwise cannot be provided;

4276 (ii) the minor has or may have financial affairs that may be put at unreasonable risk or
4277 hindered because of the minor's age; or

4278 (iii) the arrangement is necessary or desirable to obtain or provide funds or other
4279 property needed for the support, care, education, health, or welfare of the minor; and

4280 (c) the order under Subsection (3) is necessary or desirable to obtain or provide money
4281 needed for the support, care, education, health, or welfare of the minor.

4282 (3) If the court makes the findings under Subsection (1) or (2), the court, instead of
4283 appointing a conservator, may:

4284 (a) authorize or direct a transaction necessary to protect the financial interest or
4285 property of the respondent, including:

4286 (i) an action to establish eligibility for benefits;

4287 (ii) payment, delivery, deposit, or retention of funds or property;

4288 (iii) sale, mortgage, lease, or other transfer of property;

4289 (iv) purchase of an annuity;

4290 (v) entry into a contractual relationship, including a contract to provide for personal
4291 care, supportive services, education, training, or employment;

4292 (vi) addition to or establishment of a trust;

4293 (vii) ratification or invalidation of a contract, trust, will, or other transaction, including
4294 a transaction related to the property or business affairs of the respondent; or

4295 (viii) settlement of a claim; or

4296 (b) restrict access to the respondent's property by a specified person whose access to
4297 the property places the respondent at serious risk of financial harm.

4298 (4) After the hearing on a petition under Subsection 75-5c-501(1)(b) or (3), whether or
4299 not the court makes the findings under Subsection (1) or (2), the court may issue an order to
4300 restrict access to the respondent or the respondent's property by a specified person that the court
4301 finds by clear-and-convincing evidence:

4302 (a) through fraud, coercion, duress, or the use of deception and control caused or
4303 attempted to cause an action that would have resulted in financial harm to the respondent or the
4304 respondent's property; and

4305 (b) poses a serious risk of substantial financial harm to the respondent or the
4306 respondent's property.

4307 (5) Before issuing an order under Subsection (3) or (4), the court shall consider the
4308 factors under Section 75-5c-418 a conservator must consider when making a decision on behalf
4309 of an individual subject to conservatorship.

4310 (6) Before issuing an order under Subsection (3) or (4) for a respondent who is a
4311 minor, the court also shall consider the best interest of the minor, the preference of the parents
4312 of the minor, and the preference of the minor, if the minor is 12 years of age or older.

4313 Section 109. Section **75-5c-504** is enacted to read:

4314 **75-5c-504. Petition for protective arrangement.**

4315 A petition for a protective arrangement instead of guardianship or conservatorship must
4316 state the petitioner's name, principal residence, current street address, if different, relationship
4317 to the respondent, interest in the protective arrangement, the name and address of any attorney
4318 representing the petitioner, and, to the extent known, the following:

4319 (1) the respondent's name, age, principal residence, current street address, if different,
4320 and, if different, address of the dwelling in which it is proposed the respondent will reside if
4321 the petition is granted;

4322 (2) the name and address of the respondent's:

4323 (a) spouse or, if the respondent has none, an adult with whom the respondent has
4324 shared household responsibilities for more than six months in the 12-month period before the
4325 filing of the petition;

4326 (b) adult children or, if none, each parent and adult sibling of the respondent, or, if
4327 none, at least one adult nearest in kinship to the respondent who can be found with reasonable
4328 diligence; and

4329 (c) adult stepchildren whom the respondent actively parented during the stepchildren's
4330 minor years and with whom the respondent had an ongoing relationship in the two year period
4331 immediately before the filing of the petition;

4332 (3) the name and current address of each of the following, if applicable:

4333 (a) a person responsible for the care or custody of the respondent;

4334 (b) any attorney currently representing the respondent;

4335 (c) the representative payee appointed by the Social Security Administration for the
4336 respondent;

4337 (d) a guardian or conservator acting for the respondent in this state or another

4338 jurisdiction:

4339 (e) a trustee or custodian of a trust or custodianship of which the respondent is a
4340 beneficiary;

4341 (f) the fiduciary appointed for the respondent by the Department of Veterans Affairs;

4342 (g) an agent designated under a power of attorney for health care in which the

4343 respondent is identified as the principal;

4344 (h) an agent designated under a power of attorney for finances in which the respondent
4345 is identified as the principal;

4346 (i) a person nominated as guardian or conservator by the respondent if the respondent
4347 is 12 years of age or older;

4348 (j) a person nominated as guardian by the respondent's parent or spouse in a will or
4349 other signed record;

4350 (k) a person known to have routinely assisted the respondent with decision making in
4351 the six-month period immediately before the filing of the petition; and

4352 (l) if the respondent is a minor:

4353 (i) an adult not otherwise listed with whom the respondent resides; and

4354 (ii) each person not otherwise listed that had primary care or custody of the respondent
4355 for at least 60 days during the two years immediately before the filing of the petition or for at
4356 least 730 days during the five years immediately before the filing of the petition;

4357 (4) the nature of the protective arrangement sought;

4358 (5) the reason the protective arrangement sought is necessary, including a brief
4359 description of:

4360 (a) the nature and extent of the respondent's alleged need;

4361 (b) any less restrictive alternative for meeting the respondent's alleged need which has
4362 been considered or implemented;

4363 (c) if no less restrictive alternative has been considered or implemented, the reason less
4364 restrictive alternatives have not been considered or implemented; and

4365 (d) the reason other less restrictive alternatives are insufficient to meet the respondent's
4366 alleged need;

4367 (6) the name and current address, if known, of any person with whom the petitioner
4368 seeks to limit the respondent's contact;

4369 (7) whether the respondent needs an interpreter, translator, or other form of support to
4370 communicate effectively with the court or understand court proceedings;

4371 (8) if a protective arrangement instead of guardianship is sought and the respondent has
4372 property other than personal effects, a general statement of the respondent's property with an
4373 estimate of its value, including any insurance or pension, and the source and amount of any
4374 other anticipated income or receipts; and

4375 (9) if a protective arrangement instead of conservatorship is sought, a general statement
4376 of the respondent's property with an estimate of its value, including any insurance or pension,
4377 and the source and amount of other anticipated income or receipts.

4378 Section 110. Section **75-5c-505** is enacted to read:

4379 **75-5c-505. Notice and hearing.**

4380 (1) On filing of a petition under Section 75-5c-501, the court shall set a date, time, and
4381 place for a hearing on the petition.

4382 (2) A copy of a petition under Section 75-5c-501 and notice of a hearing on the petition
4383 must be served personally on the respondent. The notice must inform the respondent of the
4384 respondent's rights at the hearing, including the right to an attorney and to attend the hearing.
4385 The notice must include a description of the nature, purpose, and consequences of granting the
4386 petition. The court may not grant the petition if notice substantially complying with this
4387 Subsection (2) is not served on the respondent.

4388 (3) In a proceeding on a petition under Section 75-5c-501, the notice required under
4389 Subsection (2) must be given to the persons required to be listed in the petition under
4390 Subsections 75-5c-504(1) through (3) and any other person interested in the respondent's
4391 welfare the court determines. Failure to give notice under this Subsection (3) does not preclude
4392 the court from granting the petition.

4393 (4) After the court has ordered a protective arrangement under this part, notice of a
4394 hearing on a petition filed under this chapter, together with a copy of the petition, must be
4395 given to the respondent and any other person the court determines.

4396 Section 111. Section **75-5c-506** is enacted to read:

4397 **75-5c-506. Appointment and role of visitor.**

4398 (1) On filing of a petition under Section 75-5c-501 for a protective arrangement instead
4399 of guardianship, the court shall appoint a visitor. The visitor must be an individual with

4400 training or experience in the type of abilities, limitations, and needs alleged in the petition.

4401 (2) On filing of a petition under Section 75-5c-501 for a protective arrangement instead
4402 of conservatorship for a minor, the court may appoint a visitor to investigate a matter related to
4403 the petition or inform the minor or a parent of the minor about the petition or a related matter.

4404 (3) On filing of a petition under Section 75-5c-501 for a protective arrangement instead
4405 of conservatorship for an adult, the court shall appoint a visitor unless the respondent is
4406 represented by an attorney appointed by the court. The visitor must be an individual with
4407 training or experience in the types of abilities, limitations, and needs alleged in the petition.

4408 (4) A visitor appointed under Subsection (1) or (3) shall interview the respondent in
4409 person and in a manner the respondent is best able to understand:

4410 (a) explain to the respondent the substance of the petition, the nature, purpose, and
4411 effect of the proceeding, and the respondent's rights at the hearing on the petition;

4412 (b) determine the respondent's views with respect to the order sought;

4413 (c) inform the respondent of the respondent's right to employ and consult with an
4414 attorney at the respondent's expense and the right to request a court-appointed attorney;

4415 (d) inform the respondent that all costs and expenses of the proceeding, including
4416 respondent's attorney fees, may be paid from the respondent's assets;

4417 (e) if the petitioner seeks an order related to the dwelling of the respondent, visit the
4418 respondent's present dwelling and any dwelling in which it is reasonably believed the
4419 respondent will live if the order is granted;

4420 (f) if a protective arrangement instead of guardianship is sought, obtain information
4421 from any physician or other person known to have treated, advised, or assessed the respondent's
4422 relevant physical or mental condition;

4423 (g) if a protective arrangement instead of conservatorship is sought, review financial
4424 records of the respondent, if relevant to the visitor's recommendation under Subsection (5)(c);
4425 and

4426 (h) investigate the allegations in the petition and any other matter relating to the
4427 petition the court directs.

4428 (5) A visitor under this section promptly shall file a report in a record with the court,
4429 which must include:

4430 (a) a recommendation whether an attorney should be appointed to represent the

4431 respondent;
4432 (b) to the extent relevant to the order sought, a summary of self-care,
4433 independent-living tasks, and financial-management tasks the respondent;
4434 (i) can manage without assistance or with existing supports;
4435 (ii) could manage with the assistance of appropriate supportive services, technological
4436 assistance, or supported decision making; and
4437 (iii) cannot manage;
4438 (c) a recommendation regarding the appropriateness of the protective arrangement
4439 sought and whether a less restrictive alternative for meeting the respondent's needs is available;
4440 (d) if the petition seeks to change the physical location of the dwelling of the
4441 respondent, a statement whether the proposed dwelling meets the respondent's needs and
4442 whether the respondent has expressed a preference as to the respondent's dwelling;
4443 (e) a recommendation whether a professional evaluation under Section 75-5c-508 is
4444 necessary;
4445 (f) a statement whether the respondent is able to attend a hearing at the location court
4446 proceedings typically are held;
4447 (g) a statement whether the respondent is able to participate in a hearing and which
4448 identifies any technology or other form of support that would enhance the respondent's ability
4449 to participate; and
4450 (h) any other matter the court directs.
4451 Section 112. Section **75-5c-507** is enacted to read:
4452 **75-5c-507. Appointment and role of attorney.**
4453 (1) Unless the respondent in a proceeding under this part is represented by an attorney,
4454 the court shall appoint an attorney to represent the respondent, regardless of the respondent's
4455 ability to pay.
4456 (2) An attorney representing the respondent in a proceeding under this part shall:
4457 (a) make reasonable efforts to ascertain the respondent's wishes;
4458 (b) advocate for the respondent's wishes to the extent reasonably ascertainable; and
4459 (c) if the respondent's wishes are not reasonably ascertainable, advocate for the result
4460 that is the least restrictive alternative in type, duration, and scope, consistent with the
4461 respondent's interests.

4462 (3) The court shall appoint an attorney to represent a parent of a minor who is the
4463 subject of a proceeding under this part if:

4464 (a) the parent objects to the entry of an order for a protective arrangement instead of
4465 guardianship or conservatorship;

4466 (b) the court determines that counsel is needed to ensure that consent to the entry of an
4467 order for a protective arrangement is informed; or

4468 (c) the court otherwise determines the parent needs representation.

4469 Section 113. Section **75-5c-508** is enacted to read:

4470 **75-5c-508. Professional evaluation.**

4471 (1) At or before a hearing on a petition under this part for a protective arrangement, the
4472 court shall order a professional evaluation of the respondent:

4473 (a) if the respondent requests the evaluation; or

4474 (b) or in other cases, unless the court finds that it has sufficient information to
4475 determine the respondent's needs and abilities without the evaluation.

4476 (2) If the court orders an evaluation under Subsection (1), the respondent must be
4477 examined by a licensed physician, psychologist, social worker, or other individual appointed by
4478 the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities
4479 and limitations and will not be advantaged or disadvantaged by a decision to grant the petition
4480 or otherwise have a conflict of interest. The individual conducting the evaluation promptly
4481 shall file a report in a record with the court. Unless otherwise directed by the court, the report
4482 must contain:

4483 (a) a description of the nature, type, and extent of the respondent's cognitive and
4484 functional abilities and limitations;

4485 (b) an evaluation of the respondent's mental and physical condition and, if appropriate,
4486 educational potential, adaptive behavior, and social skills;

4487 (c) a prognosis for improvement, including with regard to the ability to manage the
4488 respondent's property and financial affairs if a limitation in that ability is alleged, and
4489 recommendation for the appropriate treatment, support, or habilitation plan; and

4490 (d) the date of the examination on which the report is based.

4491 (3) The respondent may decline to participate in an evaluation ordered under
4492 Subsection (1).

4493 Section 114. Section **75-5c-509** is enacted to read:

4494 **75-5c-509. Attendance and rights at hearing.**

4495 (1) Except as otherwise provided in Subsection (2), a hearing under this part may not
4496 proceed unless the respondent attends the hearing. If it is not reasonably feasible for the
4497 respondent to attend a hearing at the location court proceedings typically are held, the court
4498 shall make reasonable efforts to hold the hearing at an alternative location convenient to the
4499 respondent or allow the respondent to attend the hearing using real-time audio-visual
4500 technology.

4501 (2) A hearing under this part may proceed without the respondent in attendance if the
4502 court finds by clear-and-convincing evidence that:

4503 (a) the respondent consistently and repeatedly has refused to attend the hearing after
4504 having been fully informed of the right to attend and the potential consequences of failing to do
4505 so;

4506 (b) there is no practicable way for the respondent to attend and participate in the
4507 hearing even with appropriate supportive services and technological assistance; or

4508 (c) the respondent is a minor who has received proper notice and attendance would be
4509 harmful to the minor.

4510 (3) The respondent may be assisted in a hearing under this part by a person or persons
4511 of the respondent's choosing, assistive technology, or an interpreter or translator, or a
4512 combination of these supports. If assistance would facilitate the respondent's participation in
4513 the hearing, but is not otherwise available to the respondent, the court shall make reasonable
4514 efforts to provide it.

4515 (4) The respondent has a right to choose an attorney to represent the respondent at a
4516 hearing under this part.

4517 (5) At a hearing under this part, the respondent may:

4518 (a) present evidence and subpoena witnesses and documents;

4519 (b) examine witnesses, including any court-appointed evaluator and the visitor; and

4520 (c) otherwise participate in the hearing.

4521 (6) A hearing under this part must be closed on request of the respondent and a
4522 showing of good cause.

4523 (7) Any person may request to participate in a hearing under this part. The court may

4524 grant the request, with or without a hearing, on determining that the best interest of the
4525 respondent will be served. The court may impose appropriate conditions on the person's
4526 participation.

4527 Section 115. Section **75-5c-510** is enacted to read:

4528 **75-5c-510. Notice of order.**

4529 The court shall give notice of an order under this part to the individual who is subject to
4530 the protective arrangement instead of guardianship or conservatorship, a person whose access
4531 to the individual is restricted by the order, and any other person the court determines.

4532 Section 116. Section **75-5c-511** is enacted to read:

4533 **75-5c-511. Confidentiality of records.**

4534 (1) The existence of a proceeding for or the existence of a protective arrangement
4535 instead of guardianship or conservatorship is a matter of public record unless the court seals the
4536 record after:

4537 (a) the respondent, the individual subject to the protective arrangement, or the parent of
4538 a minor subject to the protective arrangement requests the record be sealed; and

4539 (b) either:

4540 (i) the proceeding is dismissed;

4541 (ii) the protective arrangement is no longer in effect; or

4542 (iii) an act authorized by the order granting the protective arrangement has been
4543 completed.

4544 (2) A respondent, an individual subject to a protective arrangement instead of
4545 guardianship or conservatorship, an attorney designated by the respondent or individual, a
4546 parent of a minor subject to a protective arrangement, and any other person the court
4547 determines are entitled to access court records of the proceeding and resulting protective
4548 arrangement. A person not otherwise entitled to access to court records under this Subsection
4549 (2) for good cause may petition the court for access. The court shall grant access if access is in
4550 the best interest of the respondent or individual subject to the protective arrangement or
4551 further the public interest and does not endanger the welfare or financial interests of the
4552 respondent or individual.

4553 (3) (a) A report of a visitor or professional evaluation generated in the course of a
4554 proceeding under this part must be sealed on filing but is available to:

- 4555 (i) the court;
4556 (ii) the individual who is the subject of the report or evaluation, for purposes of the
4557 proceeding;
4558 (iii) the petitioner, visitor, and petitioner's and respondent's attorneys, for purposes of
4559 the proceeding;
4560 (iv) unless the court orders otherwise, an agent appointed under a power of attorney for
4561 finances in which the respondent is the principal;
4562 (v) if the order is for a protective arrangement instead of guardianship and unless the
4563 court orders otherwise, an agent appointed under a power of attorney for health care in which
4564 the respondent is identified as the principal; and
4565 (vi) any other person if it is in the public interest or for a purpose the court orders for
4566 good cause.

4567 (b) A report described in Subsection (3)(a) is not subject to Title 63G, Chapter 2,
4568 Government Records Access and Management Act.

4569 Section 117. Section **75-5c-512** is enacted to read:

4570 **75-5c-512. Appointment of master.**

4571 The court may appoint a master to assist in implementing a protective arrangement
4572 under this part. The master has the authority conferred by the order of appointment and serves
4573 until discharged by court order.

4574 Section 118. Section **75-5c-601** is enacted to read:

4575 **Part 6. Forms**

4576 **75-5c-601. Use of forms.**

4577 Use of the forms contained in this part is optional. Failure to use these forms does not
4578 prejudice any party.

4579 Section 119. Section **75-5c-602** is enacted to read:

4580 **75-5c-602. Petition for guardianship for minor.**

4581 This form may be used to petition for guardianship for a minor.

4582 Petition for Guardianship for Minor

4583 State of:

4584 [County] of:

4585 Name and address of attorney representing Petitioner, if applicable:

4586 Note to Petitioner: This form can be used to petition for a guardian for a minor. A court
4587 may appoint a guardian for a minor who does not have a guardian if the court finds the
4588 appointment is in the minor's best interest, and: (1) the parents, after being fully informed of
4589 the nature and consequences of guardianship, consent; (2) all parental rights have been
4590 terminated; or (3) the court finds by clear-and-convincing evidence that the parents are
4591 unwilling or unable to exercise their parental rights.

4592 1. Information about the person filing this petition (the "Petitioner").

4593 a. Name:

4594 b. Principal residence:

4595 c. Current street address (if different):

4596 d. Relationship to minor:

4597 e. Interest in this petition:

4598 f. Telephone number (optional):

4599 h. Email address (optional):

4600 2. Information about the minor alleged to need a guardian.

4601 Provide the following information to the extent known.

4602 a. Name:

4603 b. Age:

4604 c. Principal residence:

4605 d. Current street address (if different):

4606 e. If Petitioner anticipates the minor moving, or seeks to move the minor, proposed new
4607 address:

4608 f. Does the minor need an interpreter, translator, or other form of support to
4609 communicate with the court or understand court proceedings? If so, please explain.

4610 g. Telephone number (optional):

4611 h. Email address (optional):

4612 3. Information about the minor's parent(s).

4613 a. Name(s) of living parent(s):

4614 b. Current street address(es) of living parent(s):

4615 d. Does any parent need an interpreter, translator, or other form of support to
4616 communicate with the court or understand court proceedings? If so, please explain.

4617 4. People who are required to be notified of this petition. State the name and current address of
4618 the people listed in Appendix A.

4619 5. Appointment requested. State the name and address of any proposed guardian and the reason
4620 the proposed guardian should be selected.

4621 6. State why Petitioner seeks the appointment. Include a description of the nature and extent of
4622 the minor's alleged need.

4623 7. Property. If the minor has property other than personal effects, state the minor's property
4624 with an estimate of its value.

4625 8. Other proceedings. If there are any other proceedings concerning the care or custody of the
4626 minor currently pending in any court in this state or another jurisdiction, please describe them.

4627 9. Attorney(s). If the minor or the minor's parent is represented by an attorney in this matter,
4628 state the name, telephone number, email address, and address of the attorney(s).

4629 SIGNATURE

4630 _____

4631 Signature of Petitioner Date

4632 _____

4633 Signature of Petitioner's Attorney if Date

4634 Petitioner is Represented by Counsel

4635 APPENDIX A:

4636 People whose name and address must be listed in Section 4 of this petition if they are not the
4637 Petitioner.

- 4638 • The minor, if the minor is 12 years of age or older;
- 4639 • Each parent of the minor or, if there are none, the adult nearest in kinship that can be found;
- 4640 • An adult with whom the minor resides;
- 4641 • Each person that had primary care or custody of the minor for at least 60 days during the two
4642 years immediately before the filing of the petition or for at least 730 days during the five years
4643 immediately before the filing of the petition;
- 4644 • If the minor is 12 years of age or older, any person nominated as guardian by the minor;
- 4645 • Any person nominated as guardian by a parent of the minor;
- 4646 • The grandparents of the minor;
- 4647 • Adult siblings of the minor; and

4648 • Any current guardian or conservator for the minor appointed in this state or another
4649 jurisdiction.

4650 Section 120. Section **75-5c-603** is enacted to read:

4651 **75-5c-603. Petition for Guardianship, conservatorship, or protective arrangement.**

4652 This form may be used to petition for:

- 4653 (1) guardianship for an adult;
- 4654 (2) conservatorship for an adult or minor;
- 4655 (3) a protective arrangement instead of guardianship for an adult; or
- 4656 (4) a protective arrangement instead of conservatorship for an adult or minor.

4657 Petition for Guardianship, Conservatorship, or Protective Arrangement

4658 State of:

4659 [County] of:

4660 Name and address of attorney representing Petitioner, if applicable:

4661 Note to Petitioner: This form can be used to petition for a guardian, conservator, or
4662 both, or for a protective arrangement instead of either a guardianship or conservatorship. This
4663 form should not be used to petition for guardianship for a minor.

4664 The court may appoint a guardian or order a protective arrangement instead of
4665 guardianship for an adult if the adult lacks the ability to meet essential requirements for
4666 physical health, safety, or self-care because (1) the adult is unable to receive and evaluate
4667 information or make or communicate decisions even with the use of supportive services,
4668 technological assistance, and supported decision-making, and (2) the adult's identified needs
4669 cannot be met by a less restrictive alternative.

4670 The court may appoint a conservator or order a protective arrangement instead of
4671 conservatorship for an adult if (1) the adult is unable to manage property and financial affairs
4672 because of a limitation in the ability to receive and evaluate information or make or
4673 communicate decisions even with the use of supportive services, technological assistance, and
4674 supported decision making or the adult is missing, detained, or unable to return to the United
4675 States, and (2) appointment is necessary to avoid harm to the adult or significant dissipation of
4676 the property of the adult, or to obtain or provide funds or other property needed for the support,
4677 care, education, health, or welfare of the adult, or of an individual who is entitled to the adult's
4678 support, and protection is necessary or desirable to provide funds or other property for that

4679 purpose.

4680 The court may appoint a conservator or order a protective arrangement instead of
4681 conservatorship for a minor if (1) the minor owns funds or other property requiring
4682 management or protection that cannot otherwise be provided; or (2) it would be in the minor's
4683 best interest, and the minor has or may have financial affairs that may be put at unreasonable
4684 risk or hindered because of the minor's age, or appointment is necessary or desirable to provide
4685 funds or other property needed for the support, care, education, health, or welfare of the minor.

4686 The court may also order a protective arrangement instead of conservatorship that
4687 restricts access to an individual or an individual's property by a person that the court finds: (1)
4688 through fraud, coercion, duress, or the use of deception and control, caused, or attempted to
4689 cause, an action that would have resulted in financial harm to the individual or the individual's
4690 property; and (2) poses a serious risk of substantial financial harm to the individual or the
4691 individual's property.

4692 1. Information about the person filing this petition (the "Petitioner").

4693 a. Name:

4694 b. Principal residence:

4695 c. Current street address (if different):

4696 d. Relationship to Respondent:

4697 e. Interest in this petition:

4698 f. Telephone number (optional):

4699 g. Email address (optional):

4700 2. Information about the individual alleged to need protection (the "Respondent"). Provide the
4701 following information to the extent known.

4702 a. Name:

4703 b. Age:

4704 c. Principal residence:

4705 d. Current street address (if different):

4706 e. If Petitioner anticipates Respondent moving, or seeks to move Respondent, proposed
4707 new address:

4708 f. Does Respondent need an interpreter, translator, or other form of support to

4709 communicate with the court or understand court proceedings? If so, please explain.

4710 g. Telephone number (optional):

4711 h. Email address (optional):

4712 3. People who are required to be notified of this petition. State the name and address of the
4713 people listed in Appendix A.

4714 4. Existing agents. State the name and address of any person appointed as an agent under a
4715 power of attorney for finances or power of attorney for health care, or who has been appointed
4716 as the individual's representative for payment of benefits.

4717 5. Action requested. State whether Petitioner is seeking appointment of a guardian, a
4718 conservator, or a protective arrangement instead of an appointment.

4719 6. Order requested or appointment requested. If seeking a protective arrangement instead of a
4720 guardianship or conservatorship, state the transaction or other action you want the court to
4721 order. If seeking appointment of a guardian or conservator, state the powers Petitioner requests
4722 the court grant to a guardian or conservator.

4723 7. State why the appointment or protective arrangement sought is necessary. Include a
4724 description of the nature and extent of Respondent's alleged need.

4725 8. State all less restrictive alternatives to meeting Respondent's alleged need that have been
4726 considered or implemented. Less restrictive alternatives could include supported decision
4727 making, technological assistance, or the appointment of an agent by Respondent including
4728 appointment under a power of attorney for health care or power of attorney for finances. If no
4729 alternative has been considered or implemented, state the reason why not.

4730 9. Explain why less restrictive alternatives will not meet Respondent's alleged need.

4731 10. Provide a general statement of Respondent's property and an estimate of its value. Include
4732 any real property such as a house or land, insurance or pension, and the source and amount of
4733 any other anticipated income or receipts. As part of this statement, indicate, if known, how the
4734 property is titled (for example, is it jointly owned?).

4735 11. For a petition seeking appointment of a conservator. (skip this section if not asking for
4736 appointment of a conservator).

4737 a. If seeking appointment of a conservator with all powers permissible under this state's
4738 law, explain why appointment of a conservator with fewer powers (i.e., a "limited
4739 conservatorship") or other protective arrangement instead of conservatorship will not meet the
4740 individual's alleged needs.

4741 b. If seeking a limited conservatorship, state the property Petitioner requests be placed
4742 under the conservator's control and any proposed limitation on the conservator's powers and
4743 duties.

4744 c. State the name and address of any proposed conservator and the reason the proposed
4745 conservator should be selected.

4746 d. If Respondent is 12 years of age or older, state the name and address of any person
4747 Respondent nominates as conservator.

4748 e. If alleging a limitation in Respondent's ability to receive and evaluate information,
4749 provide a brief description of the nature and extent of Respondent's alleged limitation.

4750 f. If alleging that Respondent is missing, detained, or unable to return to the United
4751 States, state the relevant circumstances, including the time and nature of the disappearance or
4752 detention and a description of any search or inquiry concerning Respondent's whereabouts.

4753 12. For a petition seeking appointment of a guardian. (skip this section if not asking for
4754 appointment of a guardian).

4755 a. If seeking appointment of a guardian with all powers permissible under this state's
4756 law, explain why appointment of a guardian with fewer powers (i.e., a "limited guardianship")
4757 or other protective arrangement instead of guardianship will not meet the individual's alleged
4758 needs.

4759 b. If seeking a limited guardianship, state the powers Petitioner requests be granted to
4760 the guardian.

4761 c. State the name and address of any proposed guardian and the reason the proposed
4762 guardian should be selected.

4763 d. State the name and address of any person nominated as guardian by Respondent, or,
4764 in a will or other signed writing or other record, by Respondent's parent or spouse.

4765 13. Attorney. If Petitioner, Respondent, or, if Respondent is a minor, Respondent's parent is
4766 represented by an attorney in this matter, state the name, telephone number, email address, and
4767 address of the attorney(s).

4768 SIGNATURE

4769 _____

4770 Signature of Petitioner Date

4771 _____

4772 Signature of Petitioner's Attorney if Date

4773 Petitioner is Represented by Counsel

4774 APPENDIX A:

4775 People whose name and address must be listed in Section 3 of this petition, if they are not the
4776 Petitioner.

4777 • Respondent's spouse, or if Respondent has none, any adult with whom Respondent has shared
4778 household responsibilities in the past six months;

4779 • Respondent's adult children, or, if Respondent has none, Respondent's parents and adult
4780 siblings, or if Respondent has none, one or more adults nearest in kinship to Respondent who
4781 can be found with reasonable diligence;

4782 • Respondent's adult stepchildren whom Respondent actively parented during the stepchildren's
4783 minor years and with whom Respondent had an ongoing relationship within two years of this
4784 petition;

4785 • Any person responsible for the care or custody of Respondent;

4786 • Any attorney currently representing Respondent;

4787 • Any representative payee for Respondent appointed by the Social Security Administration;

4788 • Any current guardian or conservator for Respondent appointed in this state or another
4789 jurisdiction;

4790 • Any trustee or custodian of a trust or custodianship of which Respondent is a beneficiary;

4791 • Any Veterans Administration fiduciary for Respondent;

4792 • Any person Respondent has designated as agent under a power of attorney for finances;

4793 • Any person Respondent has designated as agent under a power of attorney for health care;

4794 • Any person known to have routinely assisted the individual with decision making in the
4795 previous six months;

4796 • Any person Respondent nominates as guardian or conservator; and

4797 • Any person nominated as guardian by Respondent's parent or spouse in a will or other signed
4798 writing or other record.

4799 Section 121. Section **75-5c-604** is enacted to read:

4800 **75-5c-604. Notification of rights for adult subject to guardianship or**
4801 **conservatorship.**

4802 This form may be used to notify an adult subject to guardianship or conservatorship of

4803 the adult's rights under Sections 75-5c-311 and 75-5c-412.

4804 Notification of Rights

4805 You are getting this notice because a guardian, conservator, or both have been appointed for
4806 you. It tells you about some important rights you have. It does not tell you about all your rights.

4807 If you have questions about your rights, you can ask an attorney or another person, including
4808 your guardian or conservator, to help you understand your rights.

4809 General rights:

4810 You have the right to exercise any right the court has not given to your guardian or conservator.

4811 You also have the right to ask the court to:

4812 • end your guardianship, conservatorship, or both;

4813 • increase or decrease the powers granted to your guardian, conservator, or both;

4814 • make other changes that affect what your guardian or conservator can do or how they do it;

4815 and

4816 • replace the person that was appointed with someone else.

4817 You also have a right to hire an attorney to help you do any of these things.

4818 Additional rights for persons for whom a guardian has been appointed:

4819 As an adult subject to guardianship, you have a right to:

4820 (1) be involved in decisions affecting you, including decisions about your care, where you live,
4821 your activities, and your social interactions, to the extent reasonably feasible;

4822 (2) be involved in decisions about your health care to the extent reasonably feasible, and to
4823 have other people help you understand the risks and benefits of health-care options;

4824 (3) be notified at least 14 days in advance of a change in where you live or a permanent move
4825 to a nursing home, mental-health facility, or other facility that places restrictions on your ability
4826 to leave or have visitors, unless the guardian has proposed this change in the guardian's plan or
4827 the court has expressly authorized it;

4828 (4) ask the court to prevent your guardian from changing where you live or selling or
4829 surrendering your primary dwelling by [insert process for asking the court to prevent such a
4830 move];

4831 (5) vote and get married unless the court order appointing your guardian states that you cannot
4832 do so;

4833 (6) receive a copy of your guardian's report and your guardian's plan; and

4834 (7) communicate, visit, or interact with other people (this includes the right to have visitors, to
 4835 make and receive telephone calls, personal mail, or electronic communications) unless:
 4836 • your guardian has been authorized by the court by specific order to restrict these
 4837 communications, visits, or interactions;
 4838 • a protective order is in effect that limits contact between you and other people; or
 4839 • your guardian has good cause to believe the restriction is needed to protect you from
 4840 significant physical, psychological, or financial harm and the restriction is for not more than
 4841 seven business days if the person has a family or pre-existing social relationship with you or
 4842 not more than 60 days if the person does not have that kind of relationship with you.

4843 Additional rights for persons for whom a conservator has been appointed:

4844 As an adult subject to conservatorship, you have a right to:

- 4845 (1) participate in decisions about how your property is managed to the extent feasible; and
 4846 (2) receive a copy of your conservator's inventory, report, and plan.

4847 Section 122. Section **75-5c-701** is enacted to read:

4848 **Part 7. Miscellaneous Provisions**

4849 **75-5c-701. Uniformity of application and construction.**

4850 In applying and construing this uniform act, consideration must be given to the need to
 4851 promote uniformity of the law with respect to its subject matter among states that enact it.

4852 Section 123. Section **75-5c-702** is enacted to read:

4853 **75-5c-702. Relation to Electronic Signatures in Global and National Commerce**

4854 **Act.**

4855 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
 4856 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede
 4857 Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the
 4858 notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

4859 Section 124. Section **75-5c-703** is enacted to read:

4860 **75-5c-703. Applicability.**

4861 This chapter applies to:

- 4862 (1) a proceeding for appointment of a guardian or conservator or for a protective
 4863 arrangement instead of guardianship or conservatorship commenced after July 1, 2019; and
 4864 (2) a guardianship, conservatorship, or protective arrangement instead of guardianship

4865 or conservatorship in existence on July 1, 2019 unless the court finds application of a particular
4866 provision of this chapter would substantially interfere with the effective conduct of the
4867 proceeding or prejudice the rights of a party, in which case the particular provision of this
4868 chapter does not apply and the superseded law applies.

4869 Section 125. Section **75-5c-704** is enacted to read:

4870 **75-5c-704. Severability.**

4871 If any provision of this chapter or its application to any person or circumstance is held
4872 invalid, the invalidity does not affect other provisions or applications of this chapter which can
4873 be given effect without the invalid provision or application, and to this end the provisions of
4874 this chapter are severable.

4875 Section 126. Section **75-11-114** is amended to read:

4876 **75-11-114. Disclosure of digital assets to conservator or guardian of protected**
4877 **person.**

4878 (1) After an opportunity for a hearing under Chapter [~~5, Protection of Persons Under~~
4879 ~~Disability and Their Property]~~ 5c, Uniform Guardianship, Conservatorship, and Other
4880 Protective Arrangements Act, the court may grant a conservator or guardian access to the
4881 digital assets of a protected person.

4882 (2) Unless otherwise ordered by the court or directed by the user, a custodian shall
4883 disclose to a conservator or guardian the catalogue of electronic communications sent or
4884 received by a protected person and any digital assets, other than the content of electronic
4885 communications, in which the protected person has a right or interest if the conservator or
4886 guardian gives the custodian:

4887 (a) a written request for disclosure in physical or electronic form;

4888 (b) a certified copy of the court order that gives the conservator or guardian authority
4889 over the digital assets of the protected person; and

4890 (c) if requested by the custodian:

4891 (i) a number, username, address, or other unique subscriber or account identifier
4892 assigned by the custodian to identify the account of the protected person; or

4893 (ii) evidence linking the account to the protected person.

4894 (3) A conservator or guardian with general authority to manage the assets of a
4895 protected person may request a custodian of the digital assets of the protected person to

4896 suspend or terminate an account of the protected person for good cause. A request made under
4897 this section must be accompanied by a certified copy of the court order giving the conservator
4898 or guardian authority over the protected person's property.

4899 Section 127. **Repealer.**

4900 This bill repeals:

4901 Section **75-5-101, Jurisdiction of subject matter -- Consolidation of proceedings.**

4902 Section **75-5-102, Facility of payment or delivery.**

4903 Section **75-5-104, Power of court to appoint guardian ad litem not affected.**

4904 Section **75-5-105, Bond of guardian.**

4905 Section **75-5-201, Status of guardian of minor -- General.**

4906 Section **75-5-202, Appointment of guardian of minor.**

4907 Section **75-5-202.5, Appointment of guardian by written instrument.**

4908 Section **75-5-203, Objection to appointment.**

4909 Section **75-5-204, Court appointment of guardian of minor -- Conditions for**
4910 **appointment.**

4911 Section **75-5-205, Court appointment of guardian of minor -- Venue.**

4912 Section **75-5-206, Court appointment of guardian of minor -- Qualifications --**
4913 **Priority of minor's nominee.**

4914 Section **75-5-207, Court appointment of guardian of minor -- Procedure.**

4915 Section **75-5-208, Consent to service by acceptance of appointment -- Notice.**

4916 Section **75-5-209, Powers and duties of guardian of minor -- Residual parental**
4917 **rights and duties -- Adoption of a ward.**

4918 Section **75-5-210, Termination of appointment of guardian -- General.**

4919 Section **75-5-211, Proceedings subsequent to appointment -- Venue.**

4920 Section **75-5-212, Resignation or removal proceedings.**

4921 Section **75-5-301, Appointment of guardian for incapacitated person.**

4922 Section **75-5-302, Venue.**

4923 Section **75-5-303, Procedure for court appointment of a guardian of an**
4924 **incapacitated person.**

4925 Section **75-5-304, Findings -- Limited guardianship preferred -- Order of**

4926 **appointment.**

4927 Section 75-5-305, Acceptance of appointment -- Consent to jurisdiction.

4928 Section 75-5-306, Termination of guardianship for incapacitated person.

4929 Section 75-5-307, Removal or resignation of guardian -- Termination of incapacity.

4930 Section 75-5-308, Visitor in guardianship proceeding.

4931 Section 75-5-309, Notices in guardianship proceedings.

4932 Section 75-5-310, Emergency guardians.

4933 Section 75-5-310.5, Temporary guardians.

4934 Section 75-5-311, Who may be guardian -- Priorities.

4935 Section 75-5-312, General powers and duties of guardian -- Penalties.

4936 Section 75-5-312.5, Association between an adult ward and a relative of the adult

4937 **ward.**

4938 Section 75-5-313, Proceedings subsequent to appointment -- Venue.

4939 Section 75-5-314, Mentally incompetent veteran -- Evidence of necessity for

4940 **appointment of guardian.**

4941 Section 75-5-315, Copies of public records furnished to veterans administration.

4942 Section 75-5-316, Expedited guardianship proceedings.

4943 Section 75-5-317, Guardianship proceedings for minor becoming an incapacitated

4944 **adult.**

4945 Section 75-5-401, Protective proceedings.

4946 Section 75-5-402, Protective proceedings -- Jurisdiction of affairs of protected

4947 **persons.**

4948 Section 75-5-403, Venue.

4949 Section 75-5-404, Original petition for appointment or protective order.

4950 Section 75-5-405, Notice.

4951 Section 75-5-406, Protective proceedings -- Request for notice -- Interested person.

4952 Section 75-5-407, Procedure concerning hearing and order on original petition.

4953 Section 75-5-408, Permissible court orders.

4954 Section 75-5-409, Protective arrangements and single transactions authorized.

4955 Section 75-5-410, Who may be appointed conservator -- Priorities.

4956 Section 75-5-411, Bond.

- 4957 Section **75-5-412, Terms and requirements of bonds.**
- 4958 Section **75-5-413, Acceptance of appointment -- Consent to jurisdiction.**
- 4959 Section **75-5-414, Compensation and expenses.**
- 4960 Section **75-5-415, Death, resignation, or removal of conservator.**
- 4961 Section **75-5-416, Petitions for orders subsequent to appointment.**
- 4962 Section **75-5-417, General duty of conservator.**
- 4963 Section **75-5-418, Inventory and records.**
- 4964 Section **75-5-419, Accounts.**
- 4965 Section **75-5-420, Conservators -- Title by appointment.**
- 4966 Section **75-5-421, Recording of conservator's letters.**
- 4967 Section **75-5-422, Sale, encumbrance or transaction involving conflict of interest --**
- 4968 **Voidable -- Exceptions.**
- 4969 Section **75-5-423, Persons dealing with conservators -- Protection.**
- 4970 Section **75-5-424, Powers of conservator in administration.**
- 4971 Section **75-5-425, Distributive duties and powers of conservator.**
- 4972 Section **75-5-426, Enlargement or limitation of powers of conservator.**
- 4973 Section **75-5-427, Preservation of estate plan.**
- 4974 Section **75-5-428, Claims against protected person -- Enforcement.**
- 4975 Section **75-5-429, Individual liability of conservator.**
- 4976 Section **75-5-430, Termination of proceeding.**
- 4977 Section **75-5-431, Payment of debt and delivery of property to foreign conservator**
- 4978 **without local proceedings.**
- 4979 Section **75-5-432, Foreign conservator -- Proof of authority -- Bond -- Powers.**
- 4980 Section **75-5-433, Embezzlement of protected person's estate -- Citation to person**
- 4981 **suspected.**
- 4982 Section 128. **Effective date.**
- 4983 This bill takes effect on July 1, 2019.