

MAINE STATE LEGISLATURE

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L.D. 1065

Date: 4/8/16

(Filing No. H-657)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 734, L.D. 1065, Bill, "An Act To Amend the Law Regarding Temporary Powers of Attorney over Minors and Incapacitated Persons"

Amend the bill by striking out the title and substituting the following:

'An Act To Amend the Law Regarding Temporary Powers of Attorney over Minors and To Require Organizations To Screen Agents before Providing Care'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 18-A MRSA §5-104, sub-§(a), as amended by PL 2011, c. 43, §1, is further amended to read:

(a). A parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 12 months, any of that parent's or guardian's powers regarding care, custody or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward or termination of parental rights to the minor. A delegation by a court-appointed guardian becomes effective only when the power of attorney is filed with the court. A delegation of powers under this section does not deprive the parent or guardian of any parental or legal authority regarding the care and custody of the minor or incapacitated person.

Sec. 2. 18-A MRSA §5-104, sub-§(c) is enacted to read:

(c). This subsection applies when a parent or guardian executes a power of attorney under subsection (a) for the purpose of providing for the temporary care of a minor.

(1). The execution of a power of attorney under subsection (a), without other evidence, does not constitute abandonment, abuse or neglect. A parent or guardian of a minor may not execute a power of attorney with the intention of permanently avoiding or divesting the parent or guardian of parental and legal responsibility for the care of the minor. Upon the expiration or termination of the power of attorney, the

COMMITTEE AMENDMENT

1 minor must be returned to the custody of the parent or guardian as soon as reasonably
2 possible unless otherwise ordered by the court.

3 (2). Unless the power of attorney is terminated, the agent named in the power of
4 attorney shall exercise parental or legal authority on a continuous basis without
5 compensation from the State for the duration of the power of attorney authorized by
6 subsection (a). Nothing in this subsection disqualifies the agent from applying for and
7 receiving benefits from any state or federal program of assistance for the minor or the
8 agent. Nothing in this subsection prevents individuals or religious, community or
9 other charitable organizations from voluntarily providing the agent with support
10 related to the care of the minor while the minor is in the temporary care of the agent.

11 (3). A minor may not be considered placed in foster care or in any way a ward of the
12 State by virtue of the parent's or guardian's execution of a power of attorney
13 authorized by subsection (a). The agent named in the power of attorney may not be
14 considered a family foster home by virtue of the parent's or guardian's execution of a
15 power of attorney authorized by subsection (a) and is not subject to any laws
16 regarding the licensure or regulation of family foster homes unless licensed as a
17 family foster home. Nothing in this subsection disqualifies the agent from being or
18 becoming a family foster home licensed by the State or prevents the placement of the
19 minor in the agent's care if the minor enters state custody.

20 (4). An organization, other than an organization whose primary purpose is to provide
21 free legal services, that is exempt from federal income taxation under Section 501(a)
22 of the United States Internal Revenue Code of 1986 as an organization described by
23 Section 501(c)(3) and that assists parents or guardians with the process of executing a
24 power of attorney for the temporary care of a minor shall ensure that a background
25 check is conducted for the agent and any adult members of the agent's household,
26 whether by completing the background check directly or by verifying that a current
27 background check has already been conducted. The background check must include
28 the following sources, and the results must be shared with the parent or guardian and
29 the proposed agent:

30 (i) A screening for child and adult abuse, neglect or exploitation cases in the
31 records of the Department of Health and Human Services; and

32 (ii) A criminal history record check that includes information obtained from the
33 Federal Bureau of Investigation.

34 The organization shall maintain records on the training and background checks of
35 agents, including the content and dates of training and full transcripts of background
36 checks, for a period of not less than 5 years after the minor attains 18 years of age.
37 The organization shall make the records available to a parent or guardian executing a
38 power of attorney under this subsection and to the ombudsman under Title 22, section
39 4087-A and any local, state or federal authority conducting an investigation involving
40 the agent, the parent or guardian or the minor.

41 (5). An employee or volunteer for an organization described in paragraph (4) may
42 not further assist with a process that results in the completion of a power of attorney
43 for the temporary care of a minor if the background checks conducted pursuant to
44 paragraph (4), subparagraphs (i) and (ii) disclose any substantiated allegations of

1 child abuse, neglect or exploitation or any crimes that would disqualify the agent
 2 from becoming a licensed family foster home in the State.

3 (6). The following penalties apply to violations of this subsection.

4 (i) An organization that knowingly fails to perform or verify the background
 5 checks or fails to share the background check information as required by this
 6 subsection is subject to a civil penalty not to exceed \$5,000, payable to the State
 7 and recoverable in a civil action.

8 (ii) An organization or an employee or volunteer of an organization that
 9 continues to assist a parent, guardian or agent in completing a power of attorney
 10 under this subsection if the background checks conducted pursuant to paragraph
 11 (4) disclose any substantiated allegations of child abuse, neglect or exploitation
 12 or any crimes that would disqualify the agent from becoming a licensed family
 13 foster home is subject to a civil penalty not to exceed \$5,000, payable to the State
 14 and recoverable in a civil action.

15 (iii) An organization or an employee or volunteer of an organization that
 16 knowingly fails to maintain records or to disclose information as required by this
 17 subsection is subject to a civil penalty not to exceed \$5,000, payable to the State
 18 and recoverable in a civil action.'

19 **SUMMARY**

20 This amendment replaces the bill.

21 The amendment provides that a power of attorney cannot authorize the agent to
 22 consent to the termination of a parent's parental rights. It also provides that a delegation
 23 of powers by a power of attorney does not deprive the parent or guardian of any parental
 24 or legal authority regarding the care and custody of the minor or incapacitated person.

25 The amendment creates a new subsection that applies to powers of attorney executed
 26 by a parent or a guardian for the purpose of providing temporary care of a minor. It
 27 specifically provides that, without other evidence, the execution of the power of attorney
 28 by a parent or guardian does not constitute abandonment, abuse or neglect of the minor.

29 The amendment prohibits the agent from receiving any financial assistance from the
 30 State for the care of the minor, except for any assistance that the minor or the agent is
 31 entitled to receive pursuant to any state or federal program.

32 The amendment provides that a minor subject to a power of attorney is not in foster
 33 care and is not considered a ward of the State. In addition, the agent named in the power
 34 of attorney is not considered a family foster home and is not required to be licensed as a
 35 family foster home. However, the agent is not prohibited from becoming a foster home
 36 and the minor may be placed with the agent if the State takes custody of the minor.

37 The amendment provides that an organization, other than an organization whose
 38 primary purpose is to provide free legal services, that is exempt from federal income
 39 taxation under Section 501(a) of the United States Internal Revenue Code of 1986 as an
 40 organization described by Section 501(c)(3) and that assists parents or guardians with the
 41 process of executing a power of attorney for the temporary care of a minor must ensure

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COMMITTEE AMENDMENT "A" to H.P. 734, L.D. 1065

1 that a background check is completed for the agent and any adult members of the agent's
2 household. The background check must include screening for child abuse cases and a
3 federal criminal history record check.

4 The amendment requires that the organization keep records of training and transcripts
5 of background checks and that the organization must make those records available to a
6 parent or guardian executing a power of attorney under these provisions and to the child
7 welfare ombudsman and any local, state or federal authority performing an investigation
8 involving the agent, the parent or guardian or the minor.

9 The amendment imposes penalties on an organization that does not act as required
10 and on employees or volunteers of an organization that knowingly continue to assist
11 parents, guardians or agents in completing a power of attorney for a minor after a
12 background check returns disqualifying information.

13 **FISCAL NOTE REQUIRED**

14 **(See attached)**



127th MAINE LEGISLATURE

LD 1065

LR 721(04)

An Act To Amend the Law Regarding Temporary Powers of Attorney over Minors and Incapacitated Persons

Fiscal Note for Bill as Amended by Committee Amendment 'A' (H-657)
Committee: Judiciary
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes new civil violations.

The collection of additional fines may also increase General Fund revenue by minor amounts.