

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1065

H.P. 734

House of Representatives, March 24, 2015

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

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative SANDERSON of Chelsea.
Cosponsored by Senator HAMPER of Oxford and
Representatives: BUCKLAND of Farmington, MAKER of Calais, POULIOT of Augusta,
PRESCOTT of Waterboro, STANLEY of Medway, TUELL of East Machias, Senators:
BURNS of Washington, VOLK of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

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

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

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

15 (c). The execution of a power of attorney by a parent or guardian under subsection
16 (a) does not constitute abandonment, abuse or neglect unless the parent or guardian fails
17 to take custody of the minor or incapacitated person or execute a new power of attorney
18 after the power of attorney is terminated. If the power of attorney is terminated, the
19 minor or incapacitated person must be returned to the custody of the parent or guardian as
20 soon as reasonably possible. Unless the power of attorney is terminated, the agent named
21 in the power of attorney shall exercise parental or legal authority on a continuous basis
22 without compensation for the duration of the power of attorney authorized by subsection
23 (a) and is not subject to any laws regarding the licensure or regulation of foster care
24 homes. A minor may not be considered to be placed in foster care by virtue of the
25 execution of a power of attorney under this section.

26 **SUMMARY**

27 This bill amends current law allowing a parent or guardian to execute a temporary
28 power of attorney for up to 12 months, delegating the powers regarding the care and
29 custody of a child or incapacitated person, by doing the following:

30 1. Limiting the power of attorney to exclude the parent or guardian's powers
31 regarding the performance of an abortion for the minor or the incapacitated person or the
32 termination of parental rights to the minor;

33 2. Clarifying that executing this temporary power of attorney does not deprive the
34 parent or guardian of any parental or legal authority regarding the care and custody of the
35 minor or incapacitated person;

36 3. Clarifying that a parent or guardian's granting of this temporary power of attorney
37 does not constitute abandonment, abuse or neglect, if the parent or guardian either
38 executes a new power of attorney or takes custody of the child or incapacitated person as
39 soon as reasonably possible after the termination of the temporary power of attorney;

- 1 4. Providing that the agent with the power of attorney may not receive compensation;
- 2 and
- 3 5. Clarifying that this power of attorney does not implicate the laws regarding foster
- 4 care.