

**Representative Stephen E. Sandstrom** proposes the following substitute bill:

**LEGAL GUARDIANSHIP AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen E. Sandstrom**

Senate Sponsor: John L. Valentine

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**LONG TITLE**

**General Description:**

This bill amends the Utah Uniform Probate Code as it relates to guardianship of minors.

**Highlighted Provisions:**

This bill:

~~H→ [→ increases the burden of proof that a school district must demonstrate to object to a court appointment of a guardian for a minor if certain evidence is met;] ←H~~

▶ requires attorney fees to be paid in certain circumstances; and

▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**75-5-206**, as last amended by Laws of Utah 1995, Chapter 156

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

Section 1. Section **75-5-206** is amended to read:



26           **75-5-206. Court appointment of guardian of minor -- Qualifications -- Priority of**  
 27 **minor's nominee.**

28           (1) (a) The court may appoint as guardian any person whose appointment would be in  
 29 the best interests of the minor.

30           (b) In determining the minor's best interests, the court may consider the minor's  
 31 physical, mental, moral, and emotional health needs.

32           (2) Except as provided in Subsection (3), the court shall appoint a person nominated by  
 33 the minor, if the minor is 14 years of age or older, unless the court finds the appointment  
 34 contrary to the best interests of the minor.

35           (3) The court may deny the appointment of a guardian for a minor of school age if it  
 36 finds that:

37           (a) if the minor is older than 11 years of age:

38           (i) the minor has not secured a certificate from the local police authority in the  
 39 jurisdiction where the minor has lived during the past two years stating that there have been no  
 40 criminal charges filed against the minor and the minor is not the subject of a criminal  
 41 investigation in that jurisdiction and given a copy of the certificate to the superintendent of the  
 42 school district in which the minor would attend school in Utah; or

43           (ii) a release has not been given by or on behalf of the minor to the superintendent of  
 44 the school district in which the minor would attend school in Utah within a reasonable time  
 45 prior to the guardianship hearing, allowing the superintendent full access to all criminal records  
 46 of the minor in those jurisdictions outside the state where the minor has resided during the  
 47 previous two years, which release remains part of the minor's school records together with  
 48 verification of residence for the previous two years, except that information disclosed in the  
 49 criminal records may not be made a part of the minor's school record;

50           (b) the school district has proven by ~~H~~→ [f] **a preponderance of the [f] [clear and**  
 50a **convincing]** ←~~H~~

51 evidence that the primary purpose for the guardianship is to avoid the payment of tuition,  
 52 which a school district may assess against a nonresident for attendance at a Utah public school;  
 53 or

54           (c) after consideration of relevant evidence, including any presented by the school  
 55 district in which the petitioner resides, the minor's behavior indicates an ongoing unwillingness  
 56 to abide by applicable law or school rules.

57           (4) If a school district files an objection for reasons described in Subsection (3)(b), and  
58 the court does not find in favor of the school district, the court may award the petitioner  
59 attorney fees and costs if the court finds that the school district's arguments lack a reasonable  
60 basis in law or fact.

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**H.B. 355 1st Sub. (Buff) - Legal Guardianship Amendments**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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