

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

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ 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;
- ▶ 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

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 [~~a preponderance of the~~] clear and convincing
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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Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
