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2	2010 GENERAL SESSION
3	STATE OF UTAH
4	Chief Sponsor: Stephen E. Sandstrom
5	Senate Sponsor:
6	
7	LONG TITLE
8	General Description:
9	This bill amends the Utah Uniform Probate Code as it relates to guardianship of minors.
10	Highlighted Provisions:
11	This bill:
12	<ul> <li>increases the burden of proof that a school district must demonstrate to object to a</li> </ul>
13	court appointment of a guardian for a minor if certain evidence is met;
14	<ul> <li>requires attorney fees to be paid in certain circumstances; and</li> </ul>
15	<ul><li>makes technical changes.</li></ul>
16	Monies Appropriated in this Bill:
17	None
18	Other Special Clauses:
19	None
20	<b>Utah Code Sections Affected:</b>
21	AMENDS:
22	75-5-206, as last amended by Laws of Utah 1995, Chapter 156
23	
24	Be it enacted by the Legislature of the state of Utah:
25	Section 1. Section <b>75-5-206</b> is amended to read:
26	75-5-206. Court appointment of guardian of minor Qualifications Priority of

LEGAL GUARDIANSHIP AMENDMENTS



minor's nominee.

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

- (b) In determining the minor's best interests, the court may consider the minor's physical, mental, moral, and emotional health needs.
- (2) Except as provided in Subsection (3), the court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor.
- (3) The court may deny the appointment of a guardian for a minor of school age if it finds that:
  - (a) if the minor is older than 11 years of age:

- (i) the minor has not secured a certificate from the local police authority in the jurisdiction where the minor has lived during the past two years stating that there have been no criminal charges filed against the minor and the minor is not the subject of a criminal investigation in that jurisdiction and given a copy of the certificate to the superintendent of the school district in which the minor would attend school in Utah; or
- (ii) a release has not been given by or on behalf of the minor to the superintendent of the school district in which the minor would attend school in Utah within a reasonable time prior to the guardianship hearing, allowing the superintendent full access to all criminal records of the minor in those jurisdictions outside the state where the minor has resided during the previous two years, which release remains part of the minor's school records together with verification of residence for the previous two years, except that information disclosed in the criminal records may not be made a part of the minor's school record;
- (b) the school district has proven by [a preponderance of the] clear and convincing evidence that the primary purpose for the guardianship is to avoid the payment of tuition, which a school district may assess against a nonresident for attendance at a Utah public school; or
- (c) after consideration of relevant evidence, including any presented by the school district in which the petitioner resides, the minor's behavior indicates an ongoing unwillingness to abide by applicable law or school rules.
- (4) If a school district files an objection for reasons described in Subsection (3)(b), and the court does not find in favor of the school district, the school district shall pay the

59 petitioner's attorney fees and costs associated with the defense of the school district's objection.

Legislative Review Note as of 2-12-10 6:15 AM

Office of Legislative Research and General Counsel

## H.B. 355 - Legal Guardianship Amendments

## **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 may result in costs of attorney's fees for school districts where the court does not find in their favor for suits regarding nonresident tuition costs.

2/17/2010, 4:48:42 PM, Lead Analyst: Lee, P.W./Attny: AOS

Office of the Legislative Fiscal Analyst