

L Approved for Filing: P. Owen L

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1 **POWER OF ATTORNEY AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Keven J. Stratton**

5 Senate Sponsor: _____

6 **LONG TITLE**7 **General Description:**

8 This bill modifies provisions related to delegation of powers of parent or guardian.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ provides for a local school district to determine that a child lives within the district
- 12 if certain conditions are met related to a power of attorney;
- 13 ▶ clarifies that the parent or guardian powers that can be delegated include decisions
- 14 related to school; and
- 15 ▶ makes technical changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**21 **AMENDS:**22 **53A-2-201**, as last amended by Laws of Utah 2017, Chapter 17523 **75-5-103**, as enacted by Laws of Utah 1975, Chapter 15024 **Be it enacted by the Legislature of the state of Utah:**25 Section 1. Section **53A-2-201** is amended to read:

28 **53A-2-201. Child's school district of residence -- Determination -- Responsibility**
29 **for providing educational services.**

30 (1) As used in this section:

31 (a) "Health care facility" means the same as that term is defined in Section [26-21-2](#).

32 (b) "Human services program" means the same as that term is defined in Section

33 [62A-2-101](#).

34 (2) The school district of residence of a minor child whose custodial parent or legal
35 guardian resides within Utah is:

36 (a) the school district in which the custodial parent or legal guardian resides; or

37 (b) the school district in which the child resides:

38 (i) while in the custody or under the supervision of a Utah state agency;

39 (ii) while under the supervision of a private or public agency which is in compliance
40 with Section [62A-4a-606](#) and is authorized to provide child placement services by the state;

41 (iii) while living with a responsible adult resident of the district, if a determination has
42 been made in accordance with rules made by the State Board of Education in accordance with
43 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

44 (A) the child's physical, mental, moral, or emotional health will best be served by
45 considering the child to be a resident for school purposes;

46 (B) exigent circumstances exist that do not permit the case to be appropriately
47 addressed under Section [53A-2-207](#); and

48 (C) considering the child to be a resident of the district under this Subsection (2)(b)(iii)
49 does not violate any other law or rule of the State Board of Education;

50 (iv) while the child is receiving services from a health care facility or human services
51 program, if a determination has been made in accordance with rules made by the State Board of
52 Education in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

53 (A) the child's physical, mental, moral, or emotional health will best be served by
54 considering the child to be a resident for school purposes;

55 (B) exigent circumstances exist that do not permit the case to be appropriately
56 addressed under Section [53A-2-207](#); and

57 (C) considering the child to be a resident of the district under this Subsection (2)(b)(iv)
58 does not violate any other law or rule of the State Board of Education; or

(v) if the child is married or has been determined to be an emancipated minor by a court of law or by a state administrative agency authorized to make that determination.

(3) A minor child whose custodial parent or legal guardian does not reside in the state is considered to be a resident of the district in which the child lives, unless that designation violates any other law or rule of the State Board of Education, if:

(a) the child is married or an emancipated minor under Subsection (2)(b)(v);

(b) the child lives with a resident of the district who is a responsible adult and whom the district agrees to designate as the child's legal guardian under Section 53A-2-202; [or]

(c) if permissible under policies adopted by a local school board, it is established to the satisfaction of the local school board that:

(i) the child lives with a responsible adult who is a resident of the district and is the child's noncustodial parent, grandparent, brother, sister, uncle, or aunt;

(ii) the child's presence in the district is not for the primary purpose of attending the public schools;

(iii) the child's physical, mental, moral, or emotional health will best be served by considering the child to be a resident for school purposes; and

(iv) the child is prepared to abide by the rules and policies of the school and school district in which attendance is sought[.]; or

(d) it is established to the satisfaction of the local school board that:

(i) the child's parent or guardian moves from the state;

(ii) the child's parent or guardian executes a power of attorney under Section 75-5-103

(A) meets the requirements of Subsection (4); and

(B) delegates powers regarding care, custody, or property, including schooling, to a responsible adult with whom the child resides;

(iii) the responsible adult described in Subsection (3)(d)(ii)(B) is a resident of the

(iv) the child's physical, mental, moral, or emotional health will best be served by considering the child to be a resident for school purposes; and

(v) the child is prepared to abide by the rules and policies of the school and school district in which attendance is sought.

(4) (a) If admission is sought under Subsection (2)(b)(iii), [or] (3)(c), [then] or (3)(d), the district may require the person with whom the child lives to be designated as the child's custodian in a durable power of attorney, issued by the party who has legal custody of the child, granting the custodian full authority to take any appropriate action, including authorization for educational or medical services, in the interests of the child.

(b) Both the party granting and the party empowered by the power of attorney shall agree to:

(i) assume responsibility for any fees or other charges relating to the child's education in the district; and

(ii) if eligibility for fee waivers is claimed under Section 53A-12-103, provide the school district with all financial information requested by the district for purposes of determining eligibility for fee waivers.

(c) Notwithstanding Section 75-5-103, a power of attorney meeting the requirements of this section and accepted by the school district shall remain in force until the earliest of the following occurs:

(i) the child reaches the age of 18, marries, or becomes emancipated;

(ii) the expiration date stated in the document; or

(iii) the power of attorney is revoked or rendered inoperative by the grantor or grantee, or by order of a court of competent jurisdiction.

(5) A power of attorney does not confer legal guardianship.

(6) Each school district is responsible for providing educational services for all children of school age who are residents of the district.

Section 2. Section **75-5-103** is amended to read:

75-5-103. Delegation of powers by parent or guardian.

A parent or a guardian of a minor or incapacitated person, by a properly-executed power of attorney, may delegate to another person, for a period not exceeding six months, any of [his] the parent's or guardian's powers regarding care, custody, or property of the minor child or ward[;]:

(1) except [his] the power to consent to:

(a) marriage; or

(b) adoption of a minor ward[-]; and

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(2) subject to Section 53A-2-201, including making decisions related to schooling.

Legislative Review Note
Office of Legislative Research and General Counsel