

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 734 - L.D. 1065

**An Act To Amend the Law Regarding Temporary Powers of Attorney over
Minors and To Require Organizations To Screen Agents before Providing
Care**

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

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

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

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

(c). This subsection applies when a parent or guardian executes a power of attorney under subsection (a) for the purpose of providing for the temporary care of a minor.

(1). The execution of a power of attorney under subsection (a), without other evidence, does not constitute abandonment, abuse or neglect. A parent or guardian of a minor may not execute a power of attorney with the intention of permanently avoiding or divesting the parent or guardian of parental and legal responsibility for the care of the minor. Upon the expiration or termination of the power of attorney, the minor must be returned to the custody of the parent or guardian as soon as reasonably possible unless otherwise ordered by the court.

(2). Unless the power of attorney is terminated, the agent named in the power of attorney shall exercise parental or legal authority on a continuous basis without compensation from the State for the duration of the power of attorney authorized by subsection (a). Nothing in this subsection disqualifies the agent from applying for and

receiving benefits from any state or federal program of assistance for the minor or the agent. Nothing in this subsection prevents individuals or religious, community or other charitable organizations from voluntarily providing the agent with support related to the care of the minor while the minor is in the temporary care of the agent.

(3). A minor may not be considered placed in foster care or in any way a ward of the State by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection (a). The agent named in the power of attorney may not be considered a family foster home by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection (a) and is not subject to any laws regarding the licensure or regulation of family foster homes unless licensed as a family foster home. Nothing in this subsection disqualifies the agent from being or becoming a family foster home licensed by the State or prevents the placement of the minor in the agent's care if the minor enters state custody.

(4). An organization, other than an organization whose primary purpose is to provide free legal services, that is exempt from federal income taxation under Section 501(a) of the United States Internal Revenue Code of 1986 as an organization described by Section 501(c)(3) and that assists parents or guardians with the process of executing a power of attorney for the temporary care of a minor shall ensure that a background check is conducted for the agent and any adult members of the agent's household, whether by completing the background check directly or by verifying that a current background check has already been conducted. The background check must include the following sources, and the results must be shared with the parent or guardian and the proposed agent:

(i) A screening for child and adult abuse, neglect or exploitation cases in the records of the Department of Health and Human Services; and

(ii) A criminal history record check that includes information obtained from the Federal Bureau of Investigation.

The organization shall maintain records on the training and background checks of agents, including the content and dates of training and full transcripts of background checks, for a period of not less than 5 years after the minor attains 18 years of age. The organization shall make the records available to a parent or guardian executing a power of attorney under this subsection and to the ombudsman under Title 22, section 4087-A and any local, state or federal authority conducting an investigation involving the agent, the parent or guardian or the minor.

(5). An employee or volunteer for an organization described in paragraph (4) may not further assist with a process that results in the completion of a power of attorney for the temporary care of a minor if the background checks conducted pursuant to paragraph (4), subparagraphs (i) and (ii) disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home in the State.

(6). The following penalties apply to violations of this subsection.

(i) An organization that knowingly fails to perform or verify the background checks or fails to share the background check information as required by this

subsection is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action.

(ii) An organization or an employee or volunteer of an organization that continues to assist a parent, guardian or agent in completing a power of attorney under this subsection if the background checks conducted pursuant to paragraph (4) disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action.

(iii) An organization or an employee or volunteer of an organization that knowingly fails to maintain records or to disclose information as required by this subsection is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action.