

1 **GUARDIANSHIP RESIDENCY REQUIREMENTS**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Laura Black**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Utah Uniform Probate Code relating to the court appointment of a
10 minor's guardian.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ requires an individual seeking guardianship to provide evidence relating to the
14 minor's school attendance and intention of becoming a permanent state resident;
- 15 ▶ requires a court to:
- 16 • deny guardianship in certain circumstances; and
 - 17 • conduct an evidentiary hearing in certain circumstances;
- 18 ▶ permits a school district to object to the appointment of a guardian and conduct
19 discovery in certain circumstances; and
- 20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **75-5-206**, as last amended by Laws of Utah 1995, Chapter 156



28

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

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

31 **75-5-206. Court appointment of guardian of minor -- Qualifications -- Priority of**
32 **minor's nominee.**

33 (1) (a) The court may appoint a person as a guardian [~~any person whose~~] of a minor if
34 the appointment would be in the best interests of the minor and the provisions of this chapter
35 have been met.

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

38 (2) Except as provided in [~~Subsection~~] Subsections (3) and (4), the court shall appoint
39 a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds
40 the appointment contrary to the best interests of the minor.

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

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

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

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

56 (b) the [~~school district has proven~~] petitioner fails to prove by a preponderance of the
57 evidence that [~~the primary purpose for~~] the petitioner is not seeking, in part, the guardianship
58 [~~is~~] to avoid the payment of tuition, which a school district may assess against a nonresident for

59 attendance at a Utah public school; or

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

63 (4) (a) The court shall deny the appointment of a guardian for a minor of school age if
64 it finds that:

65 (i) the minor seeks to attend school for more than 30 school days in the state; and

66 (ii) it is not the intention of the petitioner that the minor become a permanent resident
67 of the state.

68 (b) The petitioner shall have the burden to prove the intention for the minor to become
69 a permanent resident of the state by a preponderance of the evidence.

70 (5) (a) A school district may object to the appointment of a guardian for a minor who
71 seeks to attend school in the school district.

72 (b) Upon receipt of the objection described in Subsection (5)(a), the court in which the
73 petition for guardianship has been filed shall conduct an evidentiary hearing in which the
74 school district shall be allowed to participate to determine compliance with this chapter.

75 (c) The school district may conduct discovery if the school district files an objection.

Legislative Review Note

as of 2-16-10 1:02 PM

Office of Legislative Research and General Counsel

H.B. 367 - Guardianship Residency Requirements

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will require an ongoing General Fund appropriation of \$27,600 to the Courts.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$27,600	\$27,600	\$0	\$0	\$0
Total	\$0	\$27,600	\$27,600	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill may result in some additional costs for individuals who must prove they are not seeking guardianship to avoid the payment of tuition.