

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 573

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO DELEGATION OF POWERS BY A PARENT OR GUARDIAN; AMENDING SECTION  
2 15-5-104, IDAHO CODE, TO REVISE PROVISIONS REGARDING DELEGATION OF POW-  
3 ERS BY A PARENT OR GUARDIAN, TO PROVIDE THAT SUCH A DELEGATION DOES NOT  
4 DEPRIVE A PARENT OR GUARDIAN OF CERTAIN AUTHORITY OR SUPERSEDE A COURT  
5 ORDER ON THE CARE AND CUSTODY OF A CHILD, TO PROVIDE THAT SUCH A DELEGA-  
6 TION DOES NOT BY ITSELF CONSTITUTE EVIDENCE OF CHILD ABANDONMENT, ABUSE  
7 OR NEGLECT AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING CHAPTER 5,  
8 TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-5-108, IDAHO  
9 CODE, TO ESTABLISH PROVISIONS REGARDING ASSISTANCE BY A QUALIFIED NON-  
10 PROFIT ORGANIZATION IN A PARENT OR GUARDIAN'S DELEGATION OF POWERS.  
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Section 15-5-104, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 15-5-104. DELEGATION OF POWERS BY PARENT OR GUARDIAN. (a) A parent or  
16 a guardian of a minor or incapacitated person, by a properly executed power  
17 of attorney, may delegate to another person, for a period not exceeding ~~six~~  
18 ~~(6) months~~ one (1) year, or in the case of military personnel serving beyond  
19 the territorial limits of the United States ~~for a period not exceeding twelve~~  
20 ~~(12) months~~, including any reserve component thereof, or personnel in the  
21 commissioned corps of the national oceanic and atmospheric administration  
22 or the public health services of the United States department of health and  
23 human services detailed by proper authority for duty with the armed forces of  
24 the United States, or a person who is required to enter or serve in the active  
25 military service of the United States under a call or order of the president  
26 of the United States or to serve on state active duty, may delegate for a pe-  
27 riod longer than one (1) year if on active duty service any of the parent's  
28 or guardian's powers regarding care, custody, or property of the minor or  
29 ward including, but not limited to, powers for medical care and educational  
30 care of the minor or ward, except the parent's or guardian's power to con-  
31 sent to marriage or adoption of a minor or ward. The delegation for a minor  
32 to a grandparent of the minor, or to a sibling of the minor, or to a sibling  
33 of either parent of the minor, shall continue in effect until the time pe-  
34 riod, or date, or condition set forth in the power of attorney for automatic  
35 expiration of the power of attorney occurs. If the power of attorney does not  
36 provide a time period, or date, or condition for automatic expiration of the  
37 power, the power of attorney shall continue in effect for a period of three  
38 (3) years. The power may be revoked prior to the expiration of the three (3)  
39 year period, or prior to the time period, or date, or condition for automatic  
40 expiration, in a writing delivered to the grandparent or sibling by the del-  
41 egating parent or guardian. The power of attorney does not need to be nota-  
42 rized or recorded to be valid. However, if the power is recorded, any revoca-

1 tion of the power by a writing must also be recorded before the revocation is  
2 effective.

3 (b) A delegation of powers under this section shall not deprive any par-  
4 ent or legal guardian of any parental or legal authority regarding the care  
5 and custody of a child nor supersede any court order regarding the care and  
6 custody of a child.

7 (c) Except as otherwise provided by law, a delegation of powers to a  
8 host family in accordance with section 15-5-108(b), Idaho Code, shall not,  
9 by itself, constitute evidence that a child has been abandoned, abused or ne-  
10 glected as defined by section 16-1602, Idaho Code. Nothing in this section,  
11 however, shall be interpreted to preclude an investigation into child aban-  
12 donment, abuse or neglect, and any evidence obtained pursuant to such an in-  
13 vestigation by the state department of health and welfare or a law enforce-  
14 ment agency of suspected abandonment, abuse or neglect, nor shall anything  
15 in this section be interpreted to insulate a parent or guardian from liabil-  
16 ity for negligence or misconduct in selecting the person to whom powers are  
17 delegated under this section.

18 SECTION 2. That Chapter 5, Title 15, Idaho Code, be, and the same is  
19 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
20 ignated as Section 15-5-108, Idaho Code, and to read as follows:

21 15-5-108. ASSISTANCE OF QUALIFIED NONPROFIT ORGANIZATION. (a) As used  
22 in this section:

23 (1) "Guardian" shall have the same meaning as provided in section 15-1-  
24 201, Idaho Code;

25 (2) "Host family" means an individual or family volunteering through a  
26 qualified nonprofit organization to whom powers are delegated for the  
27 temporary care of a child;

28 (3) "Parent" shall have the same meaning as provided in section 15-1-  
29 201, Idaho Code; and

30 (4) "Qualified nonprofit organization" means a charitable or religious  
31 institution that is exempt from federal income taxation under section  
32 501(a) of the United States Internal Revenue Code of 1986, as an organ-  
33 ization described by section 501(c) (3) of that code, which organization  
34 assists a parent or legal guardian of a child with the process of tem-  
35 porarily delegating powers pursuant to section 15-5-104, Idaho Code,  
36 including identifying an appropriate placement for the child and pro-  
37 viding services and resources to support the child, parent or guardian,  
38 or persons authorized to provided temporary care for the child pursuant  
39 to a delegation.

40 (b) A parent or guardian may temporarily delegate powers regarding the  
41 care or custody of a minor child or ward under a power of attorney autho-  
42 rized by section 15-5-104, Idaho Code, with the assistance of a qualified  
43 nonprofit organization subject to the procedures provided in this section.

44 (c) A qualified nonprofit organization assisting a parent or guardian  
45 with temporarily delegating powers to a host family pursuant to section  
46 15-5-104, Idaho Code, shall:

47 (1) Conduct a criminal history and child abuse and neglect background  
48 check for the host family and for each adult member of the host family's  
49 household prior to approving the host family for the delegation;

1 (2) Ensure that the host family is trained in the rights, duties and  
2 limitations regarding providing care for a child pursuant to the dele-  
3 gation; and

4 (3) Provide regular supervision of the placement throughout the time  
5 the child resides with the host family.

6 (d) Except as provided by section 32-710A, Idaho Code, a host family  
7 shall not receive payment other than reimbursement for actual expenses of  
8 providing temporary care for the child. Such reimbursement may come from  
9 individuals, religious communities or other charitable organizations that  
10 voluntarily wish to support the host family.

11 (e) A child placed pursuant to a delegation made under section 15-5-  
12 104, Idaho Code, with the assistance of a qualified nonprofit organization  
13 as defined herein, shall not be considered placed in foster care or otherwise  
14 in the custody of the state department of health and welfare.

15 (f) A qualified nonprofit organization as defined herein is not a child  
16 care agency as defined in chapter 12, title 39, Idaho Code, and is not re-  
17 quired to be licensed as such unless the organization pursues additional  
18 child care related activities as provided in chapter 12, title 39, Idaho  
19 Code. This exemption shall not apply to activities and/or agencies already  
20 subject to licensure under Idaho law or to the placement of children in fos-  
21 ter care as defined in section 16-1602, Idaho Code.

22 (g) During any child protection investigation by the state department  
23 of health and welfare that does not result in an out-of-home placement of a  
24 child, the investigator may provide information to the parent or guardian  
25 about community service programs offered by qualified nonprofit organiza-  
26 tions that provide assistance and support for families in crisis, including  
27 arranging temporary care for children through a delegation made pursuant to  
28 section 15-5-104, Idaho Code. The provision of such information by the de-  
29 partment does not result in or may not be considered to result in any obliga-  
30 tion on the part of the department, and the department shall not be held li-  
31 able for any action arising out of having furnished such information.