

IN THE SENATE

SENATE BILL NO. 1375

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE DELEGATION OF POWERS OVER MINORS OR PERSONS WITH DEVELOP-  
2 TAL DISABILITIES; AMENDING SECTION 15-5-104, IDAHO CODE, TO CLARIFY THE  
3 DURATION AND REVOCATION OF A POWER OF ATTORNEY DELEGATING POWERS AND TO  
4 AUTHORIZE A PARENT OR GUARDIAN OF A MINOR OR PERSON WITH A DEVELOP-  
5 TAL DISABILITY TO DELEGATE CERTAIN POWERS UPON THE OCCURRENCE OF CER-  
6 TAIN CONDITIONS.  
7

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

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

11 15-5-104. DELEGATION OF POWERS BY PARENT OR GUARDIAN. (1) Delegation  
12 Effective Immediately. A parent or a guardian of a minor or ~~incapacitated~~  
13 person with a developmental disability, by a properly executed power of at-  
14 torney, may delegate to another person, for a period not exceeding six (6)  
15 months, or in the case of military personnel serving beyond the territorial  
16 limits of the United States for a period not exceeding twelve (12) months,  
17 any of the parent's or guardian's powers regarding care, custody, or prop-  
18 erty of the minor or ward including, but not limited to, powers for medi-  
19 cal care and educational care of the minor or ward, except the parent's or  
20 guardian's power to consent to marriage or adoption of a minor or ward. The  
21 delegation for a minor to a grandparent of the minor, or to a sibling of the  
22 minor, or to a sibling of either parent of the minor, shall continue in ef-  
23 fect until the time period, ~~or~~ date, or condition set forth in the power of  
24 attorney for automatic expiration of the power of attorney occurs, ~~—~~ If but  
25 if the power of attorney to the individual does not provide a time period, ~~or~~  
26 date, or condition for automatic expiration of the power, the power of at-  
27 torney shall continue in effect for a period of three (3) years. Delegation  
28 to an individual who is not a grandparent of the minor, sibling of the minor,  
29 nor a sibling of either parent of the minor, shall continue for a period not  
30 exceeding six (6) months or, in the case of military personnel serving be-  
31 yond the territorial limits of the United States, shall continue for a period  
32 not exceeding twelve (12) months. The power of attorney may be revoked in a  
33 writing by the delegating parent or guardian that is delivered to the indi-  
34 vidual to whom the delegation has been made prior to the expiration of the six  
35 (6) month, twelve (12) month or three (3) year period, or prior to the time  
36 period, ~~or~~ date, or condition for automatic expiration, in a writing deliv-  
37 ered to the grandparent or sibling by the delegating parent or guardian. The  
38 power of attorney does not need to be notarized or recorded to be valid. How-  
39 ever, if the power of attorney is recorded, any revocation of the power of at-  
40 torney by a writing must also be recorded, except where actual notice exists,  
41 before the revocation is effective.

1       (2) Springing Delegation. A parent or a guardian of a minor or per-  
2 son with a developmental disability, by a properly executed power of attor-  
3 ney, may delegate to another person any of the parent's or guardian's pow-  
4 ers regarding care, custody or property of the minor or ward including, but  
5 not limited to, powers for medical care and educational care of the minor or  
6 ward, except the parent's or guardian's power to consent to marriage or adop-  
7 tion of a minor or ward. The delegation shall become effective upon any of  
8 the following:

9       (a) Certification by a licensed physician that the delegating parent  
10 or guardian is unable to adequately care for the minor or person with a  
11 developmental disability. If effective under this provision, the power  
12 of attorney will continue until a licensed physician has certified  
13 that the delegating parent or guardian has regained the ability to ad-  
14 equately care for the minor or person with a developmental disability.  
15 The written delegation may require certification by one (1) or more spe-  
16 cific physicians or more than one (1) physician to be effective;

17       (b) The incarceration of the delegating parent or guardian. If effec-  
18 tive under this provision, the power of attorney will continue until the  
19 delegating parent or guardian is no longer incarcerated and has given  
20 written notice, delivered to the person to whom the delegation has been  
21 made, that the power of attorney has been terminated; or

22       (c) Certification in writing by the delegating parent or guardian that  
23 the delegation should become effective.

24 In the event of the delegation becoming effective under paragraph (c) of this  
25 subsection, the delegation for a minor to a grandparent of the minor, or to  
26 a sibling of the minor, or to a sibling of either parent of the minor, shall  
27 continue in effect until the time period, date or condition set forth in the  
28 power of attorney for automatic expiration of the power of attorney occurs,  
29 but if the power of attorney to the individual does not provide a time pe-  
30 riod, date or condition for automatic expiration of the power of attorney,  
31 then the power of attorney shall continue in effect for a period of three (3)  
32 years. Delegation to an individual who is not a grandparent of the minor, or  
33 to a sibling of the minor, or to a sibling of either parent of the minor, shall  
34 continue for a period not exceeding six (6) months or, in the case of mili-  
35 tary personnel serving beyond the territorial limits of the United States,  
36 shall continue for a period not exceeding twelve (12) months. The power of  
37 attorney may be revoked in a writing by the delegating parent or guardian de-  
38 livered to the person to whom the delegation has been made. The power of at-  
39 torney does not need to be notarized or recorded to be valid. However, if the  
40 power of attorney is recorded, any revocation of the power of attorney by a  
41 writing must also be recorded before the revocation is effective.

42       (3) The existence of an effective delegation under subsection (1) or  
43 (2) of this section does not foreclose the initiation by an interested person  
44 of proceedings under section 15-5-207 or 66-404, Idaho Code.