

125th MAINE LEGISLATURE

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Legislative Document

No. 978

H.P. 722

House of Representatives, March 8, 2011

An Act To Amend the Probate Code Regarding Powers of Attorney, Education of Children and Guardianship

Reference to the Committee on Judiciary suggested and ordered printed.

HEATHER J.R. PRIEST Clerk

Presented by Representative STEVENS of Bangor. Cosponsored by Senator ROSEN of Hancock and

 $Representatives: BEAULIEU \ of \ Auburn, \ DILL \ of \ Cape \ Elizabeth, \ NASS \ of \ Acton, \ PRIEST \ of \ Acton, \ Acton, \ PRIEST \ of \ Acton, \ PRIEST \ of \ Acton, \ Acton$

Brunswick, WEBSTER of Freeport, Senators: BLISS of Cumberland, CRAVEN of

Androscoggin, HASTINGS of Oxford.

1	Be it enacted by the People of the State of Maine as follows:
2 3	Sec. 1. 18-A MRSA §5-104, sub-§(a), as enacted by PL 1997, c. 455, §7, is amended to read:
4 5 6 7 8 9	(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 6 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. A delegation by a court appointed court-appointed guardian becomes effective only when the power of attorney is filed with the court.
10	Sec. 2. 18-A MRSA §5-213 is enacted to read:
11	§5-213. Transitional arrangements for minors
12 13 14 15	In issuing, modifying or terminating an order of guardianship for a minor under this Part, the court may enter an order providing for a transitional arrangement for the minor if the court determines that the arrangement is in the best interest of the minor and will assist the minor with a transition of custody.
16	Sec. 3. 20-A MRSA §5207 is enacted to read:
17	§5207. Kinship family children
18 19	1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
20 21	A. "Kinship family" means a family consisting of a kinship family child, the kinship parent or kinship parents and any other children in the family.
22 23	B. "Kinship family child" means a child for whom a kinship parent cares and assumes responsibility.
24 25 26 27 28	C. "Kinship parent" means an adult who is not the parent of a kinship family child and assumes responsibility for the kinship family child and: is related to the kinship family child by birth, adoption or marriage; has strong emotional ties to the kinship family child; or has been designated as the kinship parent by the parent of the kinship family child.
29 30 31 32 33	2. School enrollment and participation in educational decisions permitted. Notwithstanding section 5202, upon application by the kinship parent, a kinship family child may enroll in a school in the school administrative unit where the kinship family resides and a kinship parent may participate in educational decisions for the kinship family child if:
34 35	A. The kinship parent is named in a properly executed power of attorney by the parent or legal guardian of the kinship family child under Title 18-A, section 5-104;

35 36

or

- B. The kinship parent provides to the school administrative unit written certification from the Probate Court that the kinship parent has applied for guardianship of the kinship family child, a court date has been set for a hearing on the application and the application is uncontested.
- 3. Denial of enrollment. The superintendent may deny permission for a kinship family child to enroll in a school in a school administrative unit under subsection 2 if the superintendent determines that enrollment is not in the best interest of the kinship family child. Within 7 days of a denial of enrollment under this subsection, the superintendent shall send written notice to the kinship parent informing the kinship parent of the denial of enrollment, the reason for the denial and the right to appeal under subsection 4.
- 4. Appeal of denial of enrollment. Notwithstanding Title 5, chapter 375, subchapter 4, a kinship parent may appeal in writing to the commissioner a denial of enrollment under subsection 3 within 21 days of receipt of the notice of denial under subsection 3.
- **5. Enrollment after denial.** A kinship family child may enroll or remain enrolled in a school in a school administrative unit after a denial of enrollment in that school under subsection 3 until the end of the appeal period under subsection 4, or if the kinship parent appeals the denial of enrollment under subsection 4, until final disposition of the appeal, including an appeal of the commissioner's decision to the Superior Court pursuant to Title 5, chapter 375, subchapter 7.

21 SUMMARY

This bill:

- 1. Extends the duration of a guardianship under the Probate Code for a minor or incapacitated person from 6 months to 12 months;
- 2. Authorizes the Probate Court in issuing, modifying or terminating a guardianship of a minor to enter an order providing transition arrangements that are in the best interests of the minor;
- 3. Defines "kinship parent" as an adult who assumes responsibility for a child but is not a parent of that child. The kinship parent must hold power of attorney for the kinship family child or apply to the Probate Court for guardianship of the kinship family child in order to enroll the kinship family child in school and participate in educational decisions made for the kinship family child; and
- 4. Allows a superintendent to deny enrollment of a kinship family child in the superintendent's school administrative unit if the superintendent determines that enrollment is not in the best interest of the kinship family child and provides an appeal process for the kinship parent to appeal this denial.