

IN THE SENATE

SENATE BILL NO. 1299

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO PARENTS AND GUARDIANS; AMENDING SECTION 15-5-104, IDAHO CODE,  
2 TO REVISE PROVISIONS REGARDING AN IMMEDIATE DELEGATION OF POWERS, TO  
3 PROVIDE FOR HOW LONG AN IMMEDIATE DELEGATION SHALL CONTINUE, TO PROVIDE  
4 FOR A SPRINGING DELEGATION OF POWERS IN CERTAIN INSTANCES, TO PROVIDE  
5 PROCEDURES FOR A SPRINGING DELEGATION OF POWERS, TO PROVIDE THAT A DEL-  
6 EGATION OF POWERS SHALL NOT FORECLOSE CERTAIN PROCEEDINGS, TO PROVIDE  
7 THAT A DELEGATION OF POWERS SHALL NOT SUPERSEDE A COURT ORDER, TO PRO-  
8 VIDE CERTAIN REQUIREMENTS FOR THE DELEGATION OF POWERS TO CO-GUARDIANS,  
9 TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS.  
10

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

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

14 15-5-104. DELEGATION OF POWERS BY PARENT OR GUARDIAN. (1) Delegation  
15 effective immediately.

16 (a) A parent or a guardian of a minor or incapacitated person, by a  
17 properly executed power of attorney, may delegate to another person or  
18 persons, for a period not exceeding six (6) months, or in the case of  
19 military personnel serving beyond the territorial limits of the United  
20 States for a period not exceeding twelve (12) months, any of the par-  
21 ent's or guardian's powers regarding care, custody, or property of the  
22 minor or ward including, but not limited to, powers for medical care and  
23 educational care of the minor or ward, except the parent's or guardian's  
24 power to consent to marriage or adoption of a minor or ward.

25 (b) The delegation of parental powers for a minor to a grandparent of  
26 the minor, or to an adult sibling of the minor, or to an adult sib-  
27 ling of either parent of the minor, shall continue in effect until the  
28 time period, or date, or condition set forth in the power of attorney  
29 for automatic expiration of the power of attorney occurs, but if the  
30 power of attorney to such individual does not provide a time period, or  
31 date, or condition for automatic expiration of the power of attorney,  
32 the power of attorney shall continue in effect for a period of three (3)  
33 years from the date of execution of the power of attorney.

34 (c) Delegation to an individual who is not a grandparent of the minor,  
35 an adult sibling of the minor or an adult sibling of either parent of  
36 the minor shall continue for a period not exceeding twelve (12) months  
37 from the date of execution of the power of attorney or, in the case of  
38 military personnel serving beyond the territorial limits of the United  
39 States, shall continue for a period not exceeding twenty-four (24)  
40 months from the date of execution of the power of attorney.

41 (d) The power of attorney may be revoked prior to the expiration of the  
42 twelve (12) month, twenty-four (24) month or three (3) year period, or

1 prior to the time period, ~~or date,~~ or condition for automatic expira-  
2 tion, in a writing ~~delivered to the grandparent or sibling~~ by the dele-  
3 gating parent ~~or guardian~~. The revocation must be delivered to the per-  
4 son or persons to whom the delegation has been made, and the revocation  
5 will be effective as of the date of such delivery.

6 (e) The power of attorney does not need to be notarized or recorded to  
7 be valid. However, if the power of attorney is recorded, any revocation  
8 of the power of attorney by a writing must also be recorded before the  
9 revocation is effective.

10 (2) Springing delegation.

11 (a) A parent of a minor, by a properly executed power of attorney, may  
12 delegate to another person or persons any of the parent's powers regard-  
13 ing care, custody or property of the minor including, but not limited  
14 to, powers for medical care and educational care of the minor, except  
15 the parent's power to consent to marriage or adoption of a minor. The  
16 delegation shall become effective upon any of the following:

17 (i) Certification by a licensed physician that the delegating  
18 parent is unable to adequately care for the minor. If effective  
19 under this subparagraph, the power of attorney shall continue un-  
20 til a licensed physician has certified that the delegating par-  
21 ent has regained the ability to adequately care for the minor. The  
22 written delegation may require that to be effective the certifica-  
23 tion must be made by:

24 1. One (1) or more specific physicians named in the power; or

25 2. Two (2) or more physicians;

26 (ii) Incarceration of the delegating parent. If effective under  
27 this subparagraph, the power of attorney shall continue until the  
28 delegating parent is no longer incarcerated and has given written  
29 notice, which must be delivered to the person or persons to whom  
30 the delegation has been made, that the power of attorney has been  
31 terminated and the revocation will be effective as of the date of  
32 such delivery; or

33 (iii) Certification in writing by the delegating parent that the  
34 delegation should become effective, which certification must be  
35 delivered to the person or persons to whom the delegation has been  
36 made and the delegation will be effective as of the date of such  
37 delivery.

38 (b) If a delegation becomes effective under paragraph (a) (iii) of this  
39 subsection, the delegation for a minor to a grandparent of the minor, to  
40 an adult sibling of the minor, or to an adult sibling of either parent of  
41 the minor shall continue in effect until the time period, date or condi-  
42 tion set forth in the power of attorney for automatic expiration of the  
43 power of attorney occurs; but if the power of attorney to such individ-  
44 ual does not provide a time period, date or condition for automatic ex-  
45 piration of the power of attorney, then the power of attorney shall con-  
46 tinue in effect for a period of three (3) years from the date of delivery  
47 of the writing to the person or persons to whom the delegation has been  
48 made.

49 (c) Delegation to a person or persons who are not a grandparent of the  
50 minor, to an adult sibling of the minor, or to an adult sibling of either

1 parent of the minor shall continue for a period not exceeding twelve  
2 (12) months from the effective date of the power of attorney under para-  
3 graph (a) of this subsection or, in the case of military personnel serv-  
4 ing beyond the territorial limits of the United States, shall continue  
5 for a period not exceeding twenty-four (24) months from the effective  
6 date of the power of attorney under paragraph (a) of this subsection.

7 (d) The power of attorney may be revoked in a writing by the delegat-  
8 ing parent. The revocation must be delivered to the person or persons to  
9 whom the delegation has been made, and the revocation shall be effective  
10 as of the date of such delivery.

11 (e) The power of attorney does not need to be notarized or recorded to  
12 be valid. However, if the power of attorney is recorded, any revocation  
13 of the power by a writing must also be recorded before the revocation is  
14 effective.

15 (3) The existence of an effective delegation under subsection (1) or  
16 (2) of this section shall not foreclose the initiation by an interested per-  
17 son of proceedings under section 15-5-207, Idaho Code.

18 (4) A delegation of powers under this section shall not supersede any  
19 court order regarding the care and custody of the minor.

20 (5) A delegation of powers to co-guardians shall be to no more  
21 than two (2) persons. The delegation to co-guardians may state that the  
22 co-guardians:

23 (a) May act independently;

24 (b) May act independently but must act jointly in specified matters; or

25 (c) Must act jointly.

26 In the absence of such direction, the co-guardians may act independently.