

IN THE SENATE

SENATE BILL NO. 1374

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO GUARDIANS OF MINORS; AMENDING SECTION 15-5-201, IDAHO CODE,  
2 TO INCLUDE REFERENCE TO THE INTER VIVOS NOMINATION APPOINTMENT OF THE  
3 GUARDIAN OF A MINOR; AMENDING CHAPTER 5, TITLE 15, IDAHO CODE, BY THE  
4 ADDITION OF A NEW SECTION 15-5-202A, IDAHO CODE, AUTHORIZING THE IN-  
5 TER VIVOS NOMINATION APPOINTMENT OF THE GUARDIAN OF A MINOR; AMENDING  
6 SECTION 15-5-203, IDAHO CODE, TO INCLUDE REFERENCE TO THE INTER VIVOS  
7 NOMINATION APPOINTMENT OF THE GUARDIAN OF A MINOR; AMENDING SECTION  
8 15-5-208, IDAHO CODE, TO INCLUDE REFERENCE TO THE INTER VIVOS NOMINA-  
9 TION APPOINTMENT OF THE GUARDIAN OF A MINOR; AMENDING SECTION 15-5-210,  
10 IDAHO CODE, TO PROVIDE FOR THE TERMINATION OF AN INTER VIVOS APPOINTMENT  
11 OF THE GUARDIAN OF A MINOR; AND AMENDING SECTION 15-5-211, IDAHO CODE,  
12 TO INCLUDE REFERENCE TO THE INTER VIVOS NOMINATION APPOINTMENT OF THE  
13 GUARDIAN OF A MINOR.  
14

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

16 SECTION 1. That Section 15-5-201, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18 15-5-201. STATUS OF GUARDIAN OF MINOR -- GENERAL. A person becomes a  
19 guardian of a minor by acceptance of a testamentary or inter vivos nomination  
20 appointment or upon appointment by the court. The guardianship status con-  
21 tinues until terminated, without regard to the location from time to time of  
22 the guardian and minor ward.

23 SECTION 2. That Chapter 5, Title 15, Idaho Code, be, and the same is  
24 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
25 ignated as Section 15-5-202A, Idaho Code, and to read as follows:

26 15-5-202A. INTER VIVOS NOMINATION APPOINTMENT OF GUARDIAN OF MI-  
27 NOR. (1) A parent of a minor may nominate a guardian of an unmarried minor  
28 the parent has or may have in the future by a signed writing, subject to the  
29 right of the minor under section 15-5-203, Idaho Code. The nomination may  
30 specify the desired limitations on the powers to be given to the guardian.  
31 The nominating parent may revoke or amend the nomination at any time. The  
32 termination of parental rights of a parent as to the minor shall also termi-  
33 nate the right of that parent to nominate a guardian for the minor. An inter  
34 vivos nomination becomes effective upon:

35 (a) The filing in the court that has venue under section 15-5-211, Idaho  
36 Code, of the written nomination by an interested person, and of the  
37 guardian's written acceptance; and

38 (b) An adjudication that the nominating parent is an incapacitated per-  
39 son or a written determination by a physician who has examined the nom-  
40 inating parent that the nominating parent is no longer able to care for

1 the minor, whichever occurs first and which must also be filed with the  
2 court.

3 (2) Upon request by the nominated guardian under an effective inter  
4 vivos nomination, which request may be submitted with the filing of the  
5 acceptance by the nominated guardian or thereafter, the court shall issue  
6 letters of guardianship that shall include a statement that the letters are  
7 issued pursuant to an inter vivos nomination.

8 (3) If the written nomination of a guardian of a minor provides for its  
9 effectiveness to be conditioned upon the examination and determination of  
10 one (1) or more specific physicians or more than one (1) physician, such pro-  
11 vision shall be mandatory. Written notice of acceptance of the appointment  
12 must be given by the guardian to the minor and to the person having his cus-  
13 tody, or if none, to the person having his care, or if none, to his nearest  
14 adult relation immediately upon acceptance of appointment. The nominating  
15 parent may nominate one (1) or more alternate guardians, in order of pri-  
16 ority. If a guardian nominated in the writing fails to accept guardianship  
17 within thirty (30) days after receiving a written request to file an accep-  
18 tance, files a notice of declination to accept appointment prior to the run-  
19 ning of the thirty (30) day period, ceases to act after acceptance, or is de-  
20 ceased, then the alternate guardian next in priority becomes the nominated  
21 guardian and may file a written notice of acceptance as provided in this sec-  
22 tion. Written notice of acceptance and a copy of the letters of guardian-  
23 ship, if any, must be given to the minor and to the person having his cus-  
24 tody if such person is not the nominated guardian, and to any parent of the  
25 minor who is alive and who has a right to nominate a guardian for the minor,  
26 within ten (10) days after the filing of the notice of acceptance as to the  
27 notice of acceptance, and within ten (10) days after issuance of the letters  
28 of guardianship as to the letters of guardianship.

29 (4) The existence of an effective inter vivos nomination does not fore-  
30 close the initiation by an interested person of proceedings under section  
31 15-5-207 or 66-404, Idaho Code.

32 SECTION 3. That Section 15-5-203, Idaho Code, be, and the same is hereby  
33 amended to read as follows:

34 15-5-203. OBJECTION BY MINOR OF FOURTEEN YEARS OR OLDER TO  
35 ~~TESTAMENTARY~~ APPOINTMENT. A minor of fourteen (14) or more years may prevent  
36 an appointment of his testamentary or nominated inter vivos guardian from  
37 becoming effective, or may cause a previously accepted appointment to termi-  
38 nate, by filing with the court in which the will is probated where the accep-  
39 tance was filed a written objection to the appointment before it is accepted  
40 ~~or~~ within thirty (30) days after notice of its acceptance. An objection may  
41 be withdrawn. In the event of such objection, the alternate guardian next in  
42 priority ~~named in the will~~ may accept appointment as set forth in section  
43 15-5-202 or 15-5-202A, Idaho Code, and the minor shall have the same right  
44 of objection. An objection does not preclude appointment by the court in a  
45 proper proceeding of the ~~testamentary~~ nominee, or any other suitable person.

46 SECTION 4. That Section 15-5-208, Idaho Code, be, and the same is hereby  
47 amended to read as follows:

1           15-5-208. CONSENT TO SERVICE BY ACCEPTANCE OF APPOINTMENT -- NO-  
2 TICE. By accepting an inter vivos, testamentary or court appointment as  
3 guardian, a guardian submits personally to the jurisdiction of the court  
4 in any proceeding relating to the guardianship that may be instituted by  
5 any interested person. Notice of any proceeding shall be delivered to the  
6 guardian, or mailed to him by ordinary mail at his address as listed in the  
7 court records and to his address as then known to the petitioner.

8           SECTION 5. That Section 15-5-210, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10           15-5-210. TERMINATION OF APPOINTMENT OF GUARDIAN -- GENERAL. A  
11 guardian's authority and responsibility terminates upon the death, resigna-  
12 tion or removal of the guardian or upon the minor's death, adoption, marriage  
13 or attainment of majority, but termination does not affect his liability for  
14 prior acts, nor his obligation to account for funds and assets of his ward.  
15 Resignation of a guardian does not terminate the guardianship until it has  
16 been approved by the court. A testamentary appointment under an informally  
17 probated will terminates if the will is later denied probate in a formal  
18 proceeding. An inter vivos appointment terminates upon an adjudication  
19 that the nominating parent is no longer an incapacitated person or a written  
20 determination by a physician who has examined the nominating parent that the  
21 nominating parent is able to care for the minor, whichever occurs first.

22           SECTION 6. That Section 15-5-211, Idaho Code, be, and the same is hereby  
23 amended to read as follows:

24           15-5-211. PROCEEDINGS SUBSEQUENT TO APPOINTMENT -- VENUE. (a~~1~~) The  
25 court where the ward resides has concurrent jurisdiction with the court  
26 which appointed the guardian, or in which acceptance of a testamentary or  
27 inter vivos appointment was filed, over resignation, removal, accounting  
28 and other proceedings relating to the guardianship.

29           (b~~2~~) If the court located where the ward resides is not the court in  
30 which acceptance of appointment is filed, the court in which proceedings  
31 subsequent to appointment are commenced shall in all appropriate cases  
32 notify the other court, if in this state, and after consultation with that  
33 court determine whether to retain jurisdiction or transfer the proceedings  
34 to the other court, whichever is in the best interest of the ward. A copy of  
35 any order accepting a resignation or removing a guardian shall be sent to the  
36 court in which acceptance of appointment is filed. If the court in which ac-  
37 ceptance of appointment is filed is in another state, the court in this state  
38 shall proceed in accordance with chapters 9, 10 and/or 11, title 15, Idaho  
39 Code, as appropriate.