

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 105

H.P. 81

House of Representatives, January 11, 2005

An Act To Amend the Laws Pertaining to Temporary Guardianship

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BISHOP of Boothbay.
Cosponsored by Representative: LINDELL of Frankfort.

Be it enacted by the People of the State of Maine as follows:

2 **Sec. 1. 18-A MRSA §5-310-A, sub-§(a)**, as enacted by PL 1993, c.
4 652, §3, is amended to read:

6 (a) When a person alleged to be incapacitated has no
7 guardian and an emergency exists and no other person appears to
8 have authority to act in the circumstances, upon appropriate
9 petition and notice to the person alleged to be incapacitated,
10 the court may exercise the power of a guardian or may enter an ex
11 parte order appointing a temporary guardian to address the
12 emergency. A petition for temporary guardianship must be
13 accompanied by an affidavit that sets forth the factual basis for
14 the emergency and the specific powers requested by the proposed
15 guardian, including any power to consent to medication of the
16 incapacitated person. In the order and in the letters of
17 temporary guardianship, the court shall specify the powers and
18 duties of the temporary guardian whom the court has found to be
19 qualified for the particular situation of the incapacitated
20 person, limiting the powers and duties to those necessary to
21 address the emergency and providing to the incapacitated person,
22 to the greatest extent possible, power to control visitation of
23 the incapacitated person with family and friends. In any
24 proceeding under this subsection, the person alleged to be
25 incapacitated has the right to retained or appointed counsel.

26 **Sec. 2. 18-A MRSA §5-310-A, sub-§(a-1)**, as amended by PL 1997,
28 c. 35, §1, is further amended to read:

30 (a-1) If the court takes action to exercise the powers of a
31 guardian or to appoint a temporary guardian under subsection (a),
32 then the court, within 2 days, excluding Saturdays, Sundays and
33 legal holidays, of taking the action, shall appoint a visitor or
34 a guardian ad litem whom the court has found to be qualified for
35 the particular situation of the incapacitated person to visit the
36 allegedly incapacitated person and make a report to the court
37 within ~~10~~ 5 days of the appointment of the visitor or guardian ad
38 litem. The visitor or guardian ad litem shall serve the
39 allegedly incapacitated person with a copy of the order
40 appointing the temporary guardian and shall explain the meaning
41 and consequences of the appointment. The visitor or guardian ad
42 litem shall inquire of the allegedly incapacitated person whether
43 that person wishes to contest any aspect of the temporary
44 guardianship or seek any limitation of the temporary guardian's
45 powers. The visitor or guardian ad litem shall advise the
46 allegedly incapacitated person of that person's right to contest
47 the temporary guardianship by requesting a hearing under
48 subsection (b) and shall advise the allegedly incapacitated
49 person of that person's right to be represented in the proceeding
50 by counsel of that person's own choice or by counsel appointed by

2 the court. The visitor or guardian ad litem shall also interview
3 the temporary guardian, except in cases where the court itself
4 has taken action to exercise the powers of a temporary guardian.
5 In the report to the court, the visitor or guardian ad litem
6 shall inform the court that the allegedly incapacitated person
7 has received a copy of the order appointing the temporary
8 guardian. The visitor or guardian ad litem shall advise the
9 court as to whether the allegedly incapacitated person wishes to
10 contest any aspect of the temporary guardianship or seek a
11 limitation of the temporary guardian's powers and whether the
12 allegedly incapacitated person is already represented by
13 counsel. The visitor or guardian ad litem shall also advise the
14 court whether any issue exists with respect to whether the
15 appointment of the temporary guardian is in the allegedly
16 incapacitated person's best interest.

18 SUMMARY

20 This bill amends the temporary guardianship proceedings in
21 the Maine Revised Statutes, Title 18-A. The bill requires notice
22 to the allegedly incapacitated person prior to appointment of a
23 temporary guardian and provides the right to retained or
24 appointed counsel. The bill requires an application for
25 temporary guardianship to set forth the factual basis for any
26 power requested for the guardian to consent to medication. The
27 bill allows the allegedly incapacitated person the power to
28 control, to the extent possible, visitation with family and
29 friends. The bill requires the temporary guardian and the
30 guardian ad litem or visitor to be qualified to serve in that
31 capacity. The bill shortens the time period for the report of
32 the guardian ad litem or visitor to the court from 10 days from
the date of appointment to 5 days from that date.