

MAINE STATE LEGISLATURE

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Date: 4/12/18

L.D. 123
(Filing No. H-762)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 91, L.D. 123, Bill, "An Act To Recodify and Revise the Maine Probate Code"

Amend the bill in Part A in section 2 in §1-110 by striking out all of subsection 5 (page 5, lines 11 and 12 in L.D.) and inserting the following:

'5. Application and effective date. This section applies to all trusts and estates in existence on and created after July 1, 2019.'

Amend the bill in Part A section 2 in §1-201 by striking out all of subsection 46 (page 10, lines 3 and 4 in L.D.) and inserting the following:

'46. Protective proceeding. "Protective proceeding" means a proceeding under Article 5, Part 6.'

Amend the bill in Part A in section 2 by striking out all of §1-308 (page 13, lines 27 to 29 in L.D.) and inserting the following:

'§1-308. Appeals

Appeals from all final judgments, orders and decrees of the court may be taken to the Supreme Judicial Court, sitting as the Law Court, as in other civil actions.'

Amend the bill in Part A in section 2 in §1-602 by inserting at the end the following:

'12. Registration of guardianship order from another state. For registering a guardianship order from another state, the fee is \$25.'

Amend the bill in Part A in section 2 in §2-106 in subsection 3 by striking out all of paragraph A (page 29, lines 30 to 32 in L.D.) and inserting the following:

'A. Surviving descendants in the generation nearest to the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants; and'

Amend the bill in Part A in section 2 in §2-113 by striking out all of subsection 1 (page 31, lines 2 to 10 in L.D.) and inserting the following:

COMMITTEE AMENDMENT

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1 1. Parent barred from inheriting though child. A parent is barred from inheriting
2 through intestate succession from or through a child of the parent if:

3 A. The parent's parental rights were terminated and the parent-child relationship was
4 not judicially reestablished; or

5 B. The child died before reaching 18 years of age and there is clear and convincing
6 evidence that immediately before the child's death the parental rights of the parent
7 could have been terminated under the laws of this State other than Articles 1 to 8 on
8 the basis of nonsupport, abandonment, abuse, neglect or other actions or inactions of
9 the parent toward the child.'

10 Amend the bill in Part A in section 2 in Article 2 by striking out all of subpart 2 and
11 inserting the following:

12 **'SUBPART 2**

13 **PARENT-CHILD RELATIONSHIP**

14 **§2-115. Determination of parentage for purposes of intestate succession**

15 Unless otherwise provided in this subpart, "parent" for purposes of intestate
16 succession means a person who has established a parent-child relationship with the child
17 under Article 9 or Title 19-A, chapter 61 and whose parental rights have not been
18 terminated.

19 **§2-116. Effect of a pending petition**

20 If a petition to establish parentage under Title 19-A, chapter 61 or a petition for
21 adoption under Article 9 is pending and has not been finally adjudicated at the time of the
22 petitioner's death, the subject of the petition is considered a child of the petitioner for
23 intestate succession purposes and may inherit from and through the petitioner. If the
24 subject of the petition dies before a final adjudication of parentage is issued, the petitioner
25 may inherit from or through the subject of the petition only if there is a final adjudication
26 of parentage.

27 **§2-117. Effect of an order granting adoption on adoptee and adoptee's former**
28 **parents**

29 An order granting an adoption divests the adoptee's former parents of all legal rights,
30 powers, privileges, immunities, duties and obligations concerning the adoptee, including
31 the right to inherit from or through the adoptee. An adoptee, however, may inherit from
32 the adoptee's former parents if so provided in the adoption decree.

33 **§2-118. Child born after death of parent**

34 An individual is a parent of a child who is born after the individual's death, if the
35 child is:

36 1. In utero. In utero not later than 36 months after the individual's death; or

37 2. Born. Born not later than 45 months after the individual's death.'

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1 Amend the bill in Part A in section 2 in §2-208 by striking out all of subsection 2
2 (page 43, lines 12 to 20 in L.D.) and inserting the following:

3 **2. Valuation.** The value of property is determined as follows.

4 A. The value of property included in the augmented estate under section 2-205,
5 2-206 or 2-207 is reduced in each category by enforceable claims against the included
6 property.

7 B. The value of property includes the commuted value of any present or future
8 interest and the commuted value of amounts payable under any trust, except as
9 provided in paragraph C, life insurance settlement option, annuity contract, public or
10 private pension, disability compensation, death benefit or retirement plan or any
11 similar arrangement, exclusive of the federal Social Security system.

12 C. The value of a surviving spouse's beneficial interest in a trust from which
13 distributions of both income and principal to the surviving spouse are subject to the
14 trustee's discretion, regardless of whether that discretion is expressed in the form of a
15 standard of distribution, is presumed to be 1/2 of the total value of the trust estate
16 unless a different value is established by proof; except that the value of a surviving
17 spouse's beneficial interest in a trust from which distributions of both income and
18 principal to the surviving spouse are subject to the trustee's discretion, without an
19 ascertainable standard, is presumed to be the full value of the trust estate if the spouse
20 is the sole trustee of the trust.'

21 Amend the bill in Part A in section 2 by striking out all of §2-403 (page 49, lines 27
22 to 39 and page 50, lines 1 to 3 in L.D.) and inserting the following:

23 **§2-403. Exempt property**

24 In addition to the homestead allowance, the decedent's surviving spouse is entitled
25 from the estate to a value, not exceeding \$15,000 in excess of any security interests in the
26 estate of tangible personal property, including, but not limited to, in household furniture,
27 automobiles, furnishings, appliances and personal effects. If there is no surviving spouse,
28 children of the decedent are entitled jointly to the same value; however, the decedent, by
29 will, may exclude one or more adult children from the receipt of exempt property. If
30 encumbered chattels are selected and the value in excess of security interests, plus that of
31 other exempt property, is less than \$15,000, or if there is not \$15,000 worth of exempt
32 property in the estate, the spouse or children are entitled to other assets of the estate, if
33 any, to the extent necessary to make up the \$15,000 value. Rights to exempt property and
34 assets needed to make up a deficiency of exempt property have priority over all claims
35 against the estate, except that the right to any assets to make up a deficiency of exempt
36 property abates as necessary to permit earlier payment of homestead allowance and
37 family allowance. These rights are in addition to any benefit or share passing to the
38 surviving spouse or children by the decedent's will unless otherwise provided by intestate
39 succession or by way of elective share.'

40 Amend the bill in Part A in section 2 in §2-513 by striking out all of the first indented
41 paragraph (page 56, lines 2 and 3 in L.D.) and inserting the following:

42 'A contract to make a will or devise, or not to revoke a will or devise, or to die
43 intestate, if executed after July 1, 2019, can be established only by:'

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Amend the bill in Part A in section 2 by striking out all of §2-705 (page 71, lines 1 to 38 and page 72, lines 1 to 18 in L.D.) and inserting the following:

§2-705. Class gifts construed to accord with intestate succession; exceptions

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Distribution date" means the date when an immediate or postponed class gift takes effect in possession or enjoyment.

B. "Relative" means a grandparent or the descendant of a grandparent.

2. Terms of relationship. A class gift that uses a term of relationship to identify the class members includes in the class a child of parents regardless of their marital status, and their respective descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships.

3. Relatives by marriage. Terms of relationship in a governing instrument that do not differentiate relationships by parentage, including relatives of parents, from those by marriage, such as uncles, aunts, nieces or nephews, are construed to exclude relatives by marriage, unless:

A. When the governing instrument was executed, the class was then and foreseeably would be empty; or

B. The language or circumstances otherwise establish that relatives by marriage were intended to be included.

4. Relatives of shared parentage. Terms of relationship in a governing instrument that do not differentiate relationships by whether all parents are shared, such as brothers, sisters, nieces or nephews, are construed to include all types of relationships regardless of whether relatives share all parents.

5. Transferor not parent. In construing a dispositive provision of a transferor who is not the parent, the transferor or a relative of the transferor must have established a parent-child relationship with the child before the child reached 18 years of age.

6. Class-closing rules. The following provisions apply for purposes of the class-closing rules.

A. A child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.

B. If the distribution date is the date of the deceased parent's death, a child in utero not later than 36 months after the deceased parent's death or born not later than 45 months after the deceased parent's death is treated as living at that time if the child lives 120 hours after birth.

C. An individual who is in the process of being adopted when the class closes is treated as a child of the parent when the class closes if the adoption is subsequently granted.'

Amend the bill in Part A in section 2 by striking out all of §2-916 (page 94, lines 30 to 34 in L.D.) and inserting the following:

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'§2-916. Application to existing relationships

Except as otherwise provided in section 2-913, an interest in or power over property existing on July 1, 2019 as to which the time for delivering or filing a disclaimer under law superseded by this Part has not expired may be disclaimed after July 1, 2019.'

Amend the bill in Part A section 2 by striking out all of §3-604 (page 126, lines 19 to 34 in L.D.) and inserting the following:

'§3-604. Bond amount; security; procedure; reduction

If bond is required and the provisions of the will or order do not specify the amount, unless stated in the application or petition, the person qualifying shall file a statement under oath with the register indicating that person's best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and that person shall execute and file a bond with the register, or give other suitable security, in an amount not less than the estimate. The register shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The register may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in section 6-201, subsection 4, in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties or permit the substitution of another bond with the same or different sureties.'

Amend the bill in Part A in section 2 by striking out all of §3-607 (page 127, lines 30 to 38 in L.D.) and inserting the following:

'§3-607. Order restraining personal representative

1. Order. On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercise of any powers or discharge of any duties of the personal representative's office, or make any other order to secure proper performance of the personal representative's duty, if it appears to the court that the personal representative otherwise may take some action that would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

2. Hearing. The matter under subsection 1 must be set for hearing as soon as practicable unless the parties otherwise agree. Notice as the court directs must be given to the personal representative and the personal representative's attorney of record, if any, and to any other parties named as defendants in the petition.'

Amend the bill in Part A in section 2 by striking out all of §3-711 (page 136, lines 3 to 7 in L.D.) and inserting the following:

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§3-711. Powers of personal representatives; in general

Until termination of the personal representative's appointment, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing or order of court, except as limited by this section. The personal representative may not sell or transfer any interest in real property of the estate without giving notice at least 10 days prior to that sale or transfer to any person succeeding to an interest in that property, unless the personal representative is authorized under the will to sell or transfer real estate without this notice.'

Amend the bill in Part A in section 2 in §3-804 by striking out all of subsection 1 (page 143, lines 3 to 12 in L.D.) and inserting the following:

'1. Written statement of claim. The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the register. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim with the court. If a claim is not yet due, the date when it will become due must be stated. If the claim is contingent or unliquidated, the nature of the uncertainty must be stated. If the claim is secured, the security must be described. Failure to describe correctly the security, the nature of any uncertainty and the due date of a claim not yet due does not invalidate the presentation made.'

Amend the bill in Part A in section 2 in §3-804 by striking out all of subsection 4 (page 143, lines 26 to 30 in L.D.) and inserting the following:

'4. Presenting claims before administration. When a decedent's estate has not been commenced at the time a claimant wishes to present a claim, a claim is deemed presented when the claimant files with the register a written statement of claim meeting the requirements of subsection 1 and a demand for notice pursuant to section 3-204. The provisions of subsection 3 apply upon the appointment of a personal representative.'

Amend the bill in Part A in section 2 in §3-806 by striking out all of subsection 3 (page 144, lines 32 to 37 in L.D.) and inserting the following:

'3. Allowance by court. Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the register in due time and not barred by subsection 1. Notice in this proceeding must be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.'

Amend the bill in Part A in section 2 in §3-916 by striking out all of subsection 12 (page 160, lines 4 to 12 in L.D.) and inserting the following:

'12. Delayed application. The applicability of subsections 3 to 7 is governed by this subsection.

A. Subsections 3 to 7 do not apply to the estate of a decedent who dies on or within 3 years after July 1, 2019 nor to the estate of a decedent who dies more than 3 years

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after July 1, 2019 if the decedent continuously lacked testamentary capacity from the expiration of the 3-year period until the date of death.

B. For the estate of a decedent who dies on or after July 1, 2019 to which subsections 3 to 7 do not apply, estate taxes must be apportioned pursuant to the law in effect immediately before July 1, 2019.'

Amend the bill in Part A in section 2 in §3-1201 in subsection 1 by striking out all of paragraph A (page 164, lines 11 and 12 in L.D.) and inserting the following:

'A. The value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$40,000;'

Amend the bill in Part A in section 2 by striking out all of §4-204 (page 179, lines 27 to 32 in L.D.) and inserting the following:

§4-204. Proof of authority; bond

If no local administration or application or petition for local administration is pending in this State, a domiciliary foreign personal representative may file with a court in this State in a county in which property belonging to the decedent is located authenticated copies of the foreign personal representative's appointment, of any official bond the foreign personal representative has given and a certificate, dated within 60 days, proving the foreign personal representative's current authority.'

Amend the bill in Part A in section 2 by striking out all of Article 5 and inserting the following:

ARTICLE 5

UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

PART 1

GENERAL PROVISIONS

§5-101. Short title

Parts 1, 2, 3, 4 and 5 of this Article may be known and cited as "the Uniform Guardianship and Protective Proceedings Act."

§5-102. Definitions

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

1. Adult. "Adult" means an individual at least 18 years of age or an emancipated individual under 18 years of age.

2. Adult subject to conservatorship. "Adult subject to conservatorship" means an adult for whom a conservator has been appointed under this Act.

3. Adult subject to guardianship. "Adult subject to guardianship" means an adult for whom a guardian has been appointed under this Act.

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- 1 **4. Best interest of the minor.** "Best interest of the minor" means the standard of the
2 best interest of the child according to the factors set forth in Title 19-A, section 1653,
3 subsection 3.
- 4 **5. Claim.** "Claim" includes a claim against an individual or conservatorship estate,
5 whether arising in contract, tort or otherwise.
- 6 **6. Conservator.** "Conservator" means a person appointed by a court to make
7 decisions with respect to the property or financial affairs of an individual subject to
8 conservatorship. "Conservator" includes a coconservator.
- 9 **7. Conservatorship estate.** "Conservatorship estate" means the property subject to
10 conservatorship under this Act.
- 11 **8. Full conservatorship.** "Full conservatorship" means a conservatorship that grants
12 the conservator all powers available under this Act.
- 13 **9. Full guardianship.** "Full guardianship" means a guardianship that grants the
14 guardian all powers available under this Act.
- 15 **10. Guardian.** "Guardian" means a person appointed by a court to make decisions
16 with respect to the personal affairs of an individual. "Guardian" includes a coguardian
17 but does not include a guardian ad litem.
- 18 **11. Guardian ad litem.** "Guardian ad litem" means a person appointed to inform
19 the court about, and to represent, the needs and best interest of an individual.
- 20 **12. Individual subject to conservatorship.** "Individual subject to conservatorship"
21 means an adult or minor for whom a conservator has been appointed.
- 22 **13. Individual subject to guardianship.** "Individual subject to guardianship"
23 means an adult or minor for whom a guardian has been appointed.
- 24 **14. Less restrictive alternative.** "Less restrictive alternative" means an approach to
25 meeting an individual's needs that restricts fewer rights than would the appointment of a
26 guardian or conservator. "Less restrictive alternative" includes supported decision
27 making, appropriate technological assistance, appointment of an agent by the individual,
28 including appointment under a power of attorney for health care or power of attorney for
29 finances, or appointment of a representative payee.
- 30 **15. Letters of office.** "Letters of office" means judicial certification of guardianship
31 or conservatorship.
- 32 **16. Limited conservatorship.** "Limited conservatorship" means a conservatorship
33 that grants the conservator less than all powers available under this Act, grants powers
34 over only certain property or otherwise restricts the powers of the conservator.
- 35 **17. Limited guardianship.** "Limited guardianship" means a guardianship that
36 grants the guardian less than all powers available under this Act or otherwise restricts the
37 powers of the guardian.
- 38 **18. Minor.** "Minor" means an unemancipated individual who is under 18 years of
39 age.

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19. Minor subject to conservatorship. "Minor subject to conservatorship" means a minor for whom a conservator has been appointed under this Act.

20. Minor subject to guardianship. "Minor subject to guardianship" means a minor for whom a guardian has been appointed under this Act.

21. Parent. "Parent" means a person who has established a parent-child relationship with the child under Title 19-A, chapter 61 and whose parental rights have not been terminated.

22. Person. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.

23. Property. "Property" means anything that may be the subject of ownership and includes both real and personal property, tangible and intangible, or any interest therein.

24. Protective arrangement instead of conservatorship. "Protective arrangement instead of conservatorship" means a court order entered under section 5-503.

25. Protective arrangement instead of guardianship. "Protective arrangement instead of guardianship" means a court order entered under section 5-502.

26. Protective arrangement instead of guardianship or conservatorship. "Protective arrangement instead of guardianship or conservatorship" means a court order entered under Part 5, including an order authorizing a single transaction or more than one related transaction.

27. Record. "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

28. Respondent. "Respondent" means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought.

29. Sign. "Sign" means, with present intent to authenticate or adopt a record:

A. To execute or adopt a tangible symbol; or

B. To attach to or logically associate with the record an electronic symbol, sound or process.

30. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

31. Suitable. "Suitable," with respect to a guardian for a minor, means that the guardian can provide a safe and appropriate residence for the minor, understands and is prepared to follow the terms of the appointment and understands and can address the minor's needs and protect the minor from harm.

32. Supported decision making. "Supported decision making" means assistance from one or more persons of an individual's choosing;

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A. In understanding the nature and consequences of potential personal and financial decisions that enables the individual to make the decisions; and

B. When consistent with the individual's wishes, in communicating a decision once it is made.

§5-103. Facility of transfer

1. Transfer of money or personal property to minor. Unless a person required to transfer money or personal property to a minor knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the estate of the minor is pending, the person may do so, as to an amount or value not exceeding \$10,000 a year, by transferring it to:

- A. A person who has the care and custody of the minor and with whom the minor resides;
- B. A guardian of the minor;
- C. A custodian under the Maine Uniform Transfers to Minors Act;
- D. A financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor; or
- E. The minor, if married or emancipated.

2. Responsibility for proper application. A person who transfers money or property in compliance with this section is not responsible for its proper application.

3. For benefit of minor; no personal financial benefit. A guardian or other person who receives money or property for a minor under subsection 1, paragraph A or B may apply it only to the support, care, education, health and welfare of the minor and may not derive a personal financial benefit, but may be reimbursed for necessary expenses for the benefit of the minor. Any excess must be preserved for the future support, care, education, health and welfare of the minor, and any balance must be transferred to the minor when the minor becomes an adult or is otherwise emancipated.

§5-104. Subject matter jurisdiction

1. Jurisdiction; minors. Except to the extent that jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act and Title 4, section 152, subsection 5-A, the court has jurisdiction over a guardianship for a minor domiciled or present in this State. The court has jurisdiction over a conservatorship or protective arrangement instead of conservatorship for a minor domiciled in or having property located in this State.

2. Jurisdiction; adults. The court has jurisdiction over a guardianship, a conservatorship and an order for a protective arrangement instead of guardianship or conservatorship for an adult as provided in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Part 6.

3. Exclusive or concurrent jurisdiction. After service of notice in a proceeding seeking a guardianship, conservatorship or protective arrangement instead of

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guardianship or conservatorship and until termination of the proceeding, the court in which the petition is filed has:

A. Exclusive jurisdiction to determine the need for a guardianship, conservatorship or protective arrangement;

B. Exclusive jurisdiction to determine how property of the respondent that is subject to the law of this State must be managed, expended or distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent or other claimant;

C. Concurrent jurisdiction to determine the validity of a claim against the respondent or property of the respondent or a question of title concerning the property; and

D. If a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration of the guardianship or conservatorship.

4. Exclusive and continuing jurisdiction. A court that appoints a guardian or conservator, or authorizes a protective arrangement instead of guardianship or conservatorship, has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding or the appointment or protective arrangement expires by its terms.

§5-105. Transfer of proceeding

1. Guardianship or conservatorship subject to transfer provisions. This section does not apply to a guardianship or conservatorship for an adult that is subject to the transfer provisions of Part 6, subpart 3.

2. Transfer if serves best interest of individual. After the appointment of a guardian or conservator, the court that made the appointment may transfer the proceeding to a court in another county in this State or to another state if transfer will serve the best interest of the individual subject to the guardianship or conservatorship.

3. Proceeding pending in another state or foreign country. If a proceeding for a guardianship or conservatorship is pending in another state or a foreign country and a petition for guardianship or conservatorship is filed in a court in this State, the court shall notify the court in the other state or foreign country and, after consultation with that court, assume or decline jurisdiction, whichever is in the best interest of the respondent.

4. Petition for appointment in this State. A guardian or conservator appointed in another state or country may petition the court for appointment as a guardian or conservator in this State if jurisdiction in this State is or will be established. The appointment may be made on proof of appointment in the other state or foreign country and presentation of a certified copy of the part of the court record in the other state or country specified by the court in this State.

5. Notice; appointment unless not in best interest of respondent. Notice of hearing on a petition under subsection 4, together with a copy of the petition, must be given to the respondent, if the respondent is 14 years of age or older at the time of the hearing, and to the persons that would be entitled to notice if the procedures for appointment of a guardian or conservator under this Act were applicable. The court shall

1 make the appointment in this State unless it determines that the appointment would not be
2 in the best interest of the respondent.

3 6. Copy of order of appointment. Not later than 14 days after appointment under
4 subsection 5, the guardian or conservator shall give a copy of the order of appointment to
5 the individual subject to guardianship or conservatorship, if the individual is 14 years of
6 age or older, and to all persons given notice of the hearing on the petition.

7 **§5-106. Venue**

8 1. Guardianship proceeding for minor. Venue for a guardianship proceeding for a
9 minor is in:

10 A. The county or division of this State in which the minor, the petitioner or a parent
11 or guardian of the child resides or is present at the time the proceeding commences;
12 or

13 B. The county or division of this State where another proceeding concerning the
14 custody and parental rights of the minor is pending.

15 2. Guardianship proceeding or protective arrangement for adult. Venue for a
16 guardianship proceeding or protective arrangement instead of guardianship for an adult is
17 in:

18 A. The county of this State in which the respondent resides;

19 B. If the respondent has been admitted to an institution by order of a court of
20 competent jurisdiction, the county in which the court is located; or

21 C. In a proceeding for appointment of an emergency guardian of an adult, the county
22 in which the respondent is present.

23 3. Conservatorship proceeding or protective arrangement. Venue for a
24 conservatorship proceeding or protective arrangement instead of conservatorship is in:

25 A. The county of this State in which the respondent resides, whether or not a
26 guardian has been appointed in another county or another jurisdiction; or

27 B. If the respondent does not reside in this State, any county of this State in which
28 property of the respondent is located.

29 4. Proceedings in more than one county. If proceedings under this Act are brought
30 in more than one county in this State, the court of the county in which the first proceeding
31 is brought has the exclusive right to proceed unless the court determines venue is properly
32 in another court or the interest of justice otherwise requires transfer of the proceeding.

33 **§5-107. Practice in court**

34 1. Rules. Except as otherwise provided in this Act, the Maine Rules of Probate
35 Procedure, the Maine Rules of Civil Procedure and the Maine Rules of Evidence,
36 including rules concerning appellate review, govern a proceeding under this Act.

37 2. Consolidation. If proceedings under this Act for the same individual are
38 commenced or pending in the same court, the proceedings may be consolidated.

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1 **§5-108. Letters of office**

2 **1. Guardian; letters of office.** On a guardian's filing of an acceptance of
3 appointment, the court shall issue appropriate letters of office.

4 **2. Conservator; letters of office.** On a conservator's filing of an acceptance of
5 appointment and filing of any required bond or compliance with any other asset-
6 protection arrangement required by the court, the court shall issue appropriate letters of
7 office.

8 **3. Limitations stated.** Limitations on the powers of the guardian or conservator or
9 on the property subject to conservatorship must be stated in the letters of office.

10 **4. Limitations at any time; new letters of office; notice.** Upon request or sua
11 sponte, the court at any time may limit the powers conferred on the guardian or
12 conservator. The court shall issue new letters of office to reflect the limitation. The court
13 shall give notice of the limitation to the guardian or conservator, the individual subject to
14 guardianship or conservatorship, each parent of a minor subject to guardianship or
15 conservatorship and any other person as the court determines.

16 **§5-109. Effect of acceptance of appointment**

17 A guardian or conservator that accepts appointment submits personally to the
18 jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.

19 **§5-110. Coguardian; coconservator**

20 **1. Appointment at any time.** The court at any time may appoint a coguardian or
21 coconservator to serve immediately or when a designated future event occurs.

22 **2. Acceptance of appointment.** A coguardian or coconservator appointed to serve
23 immediately may act when the coguardian or coconservator files an acceptance of
24 appointment.

25 **3. Service upon designated future event.** A coguardian or coconservator appointed
26 to serve when a designated future event occurs may act when:

27 A. The designated event occurs; and

28 B. The coguardian or coconservator files an acceptance of appointment.

29 **4. Joint decisions.** Unless an order of appointment under subsection 1 or subsequent
30 order states otherwise, coguardians or coconservators shall make decisions jointly.

31 **§5-111. Judicial appointment of successor guardian or successor conservator**

32 **1. Appointment of successor by court.** The court at any time may appoint a
33 successor guardian or successor conservator to serve immediately or when a designated
34 future event occurs.

35 **2. Petition to appoint successor.** A person entitled under section 5-202 or 5-302 to
36 petition the court to appoint a guardian may petition the court to appoint a successor
37 guardian. A person entitled under section 5-402 to petition the court to appoint a
38 conservator may petition the court to appoint a successor conservator.

1 3. Service upon designated future event. A successor guardian or successor
2 conservator appointed to serve when a designated future event occurs may act as guardian
3 or conservator if:

4 A. The designated event occurs; and

5 B. The successor guardian or successor conservator files an acceptance of
6 appointment.

7 4. Succeeds to powers. A successor guardian or successor conservator succeeds to
8 the predecessor's powers unless otherwise provided by the court.

9 **§5-112. Effect of death, removal or resignation of guardian or conservator**

10 1. Termination. Appointment of a guardian or conservator terminates on the death
11 or removal of the guardian or conservator or when the court approves a resignation of the
12 guardian or conservator under subsection 2.

13 2. Petition to resign; approval. A guardian or conservator must petition the court
14 to resign. The petition may include a request that the court appoint a successor.
15 Resignation of a guardian or conservator is effective on the date the resignation is
16 approved by the court.

17 3. Liability. Death, removal or resignation of a guardian or conservator does not
18 affect liability for a previous act or the obligation to account for an action taken on behalf
19 of the individual subject to guardianship or conservatorship or to account for the
20 individual's money or other property.

21 **§5-113. Notice of hearing**

22 1. Notice by movant. If notice of a hearing under this Act is required, the movant
23 shall give notice of the date, time and place of the hearing to the person to be notified
24 unless otherwise ordered by the court for good cause. Except as otherwise provided in
25 this Act, notice must be given in compliance with the Maine Rules of Probate Procedure,
26 Rule 4 or the Maine Rules of Civil Procedure, Rule 4 at least 14 days before the hearing.

27 2. Proof of notice. Proof of notice of a hearing under this Act must be made before
28 or at the hearing and filed in the proceeding.

29 3. Type size; plain language. Notice of a hearing under this Act must be in at least
30 16-point type, in plain language and, to the extent feasible, in a language in which the
31 recipient is proficient.

32 **§5-114. Waiver of notice**

33 1. Waiver by person. Except as otherwise provided in subsection 2, a person may
34 waive notice under this Act in a record signed by the person or the person's attorney and
35 filed in the proceeding.

36 2. Waiver prohibited. A respondent, an individual subject to guardianship, an
37 individual subject to conservatorship, an individual subject to a protective arrangement
38 instead of guardianship or conservatorship, an appointed guardian or an appointed
39 conservator may not waive notice under this Act.

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§5-115. Guardian ad litem

At any stage of a proceeding under this Act, the court may appoint a guardian ad litem for an individual to identify and represent the individual's best interest or perform other duties if the court determines the individual's interest otherwise would not be adequately represented. If a conflict of interest or potential conflict of interest does not exist, a guardian ad litem may be appointed to represent multiple individuals or interests. The guardian ad litem may not be the same individual as the attorney representing the respondent. The court shall state on the record the duties of the guardian ad litem and the reasons for the appointment, as well as responsibility for payment of the guardian ad litem fees.

§5-116. Request for notice

A person that is interested in the welfare of a respondent, individual subject to guardianship or conservatorship or individual subject to a protective arrangement instead of guardianship or conservatorship and that is not otherwise entitled to notice under this Act may file a request with the court for notice. The court shall send or deliver a copy of the request to the guardian, to the custodian if one has been appointed and to the individual who is subject to the guardianship, conservatorship or protective arrangement. The recipient of the notice may file an objection within 60 days. If an objection is filed, the court shall hold a hearing on the request. If the court approves the request, the court shall give notice of the approval to the guardian or conservator if one has been appointed or to the respondent if no guardian or conservator has been appointed. The request must include a statement showing the interest of the person making it and the address of the person or an attorney for the person to whom notice is to be given.

§5-117. Disclosure of bankruptcy or criminal history

1. Disclosure; petition. As part of the petition to be appointed a guardian or conservator, a person shall disclose to the court whether the person:

- A. Is or has been a debtor in a bankruptcy, insolvency or receivership proceeding; or
- B. Has been convicted of:
 - (1) A felony;
 - (2) A crime involving dishonesty, neglect, violence or use of physical force; or
 - (3) Any other crime relevant to the functions the individual would assume as guardian or conservator.

2. Agent; convictions; approval. A guardian or conservator may not engage an agent the guardian or conservator knows has been convicted of a felony, a crime involving dishonesty, neglect, violence or use of physical force or any other crime relevant to the functions the agent is being engaged to perform promptly without prior approval of the court.

3. Finances manager agent; debtor; disclosure. If a conservator engages or anticipates engaging an agent to manage finances of the individual subject to conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency

1 or receivership proceeding, the conservator promptly shall disclose that knowledge to the
2 court.

3 **§5-118. Multiple appointments or nominations**

4 If a respondent or other person makes more than one appointment or nomination of a
5 guardian or a conservator, the latest in time governs.

6 **§5-119. Compensation and expenses; in general**

7 **1. Attorney for respondent.** Unless otherwise compensated for services rendered,
8 an attorney for a respondent in a proceeding under this Act is entitled to reasonable
9 compensation and reimbursement of reasonable expenses from the property of the
10 respondent.

11 **2. Attorney or other person.** Unless otherwise compensated for services rendered,
12 an attorney or other person whose services resulted in an order beneficial to an individual
13 subject to guardianship or conservatorship or beneficial to an individual for whom a
14 protective arrangement instead of guardianship or conservatorship was ordered is entitled
15 to reasonable compensation and reimbursement of reasonable expenses from the property
16 of the individual.

17 **3. Court review.** After notice to all interested persons, on petition of an interested
18 person, the propriety of employment of any person by a conservator or guardian,
19 including any attorney, accountant, investment advisor or other specialized agent or
20 assistant, and the reasonableness of the compensation of any person so employed may be
21 reviewed by the court. Any person who has received excessive compensation or
22 reimbursement of inappropriate expenses for services rendered may be ordered to make
23 appropriate refunds. The factors set forth in section 3-721, subsection 2 must be
24 considered as guides in determining the reasonableness of compensation under this
25 section.

26 **4. Costs assessed against petitioner.** If the court dismisses a petition under this Act
27 and determines the petition was filed in bad faith, the court may assess the cost of any
28 court-ordered professional evaluation or visitor against the petitioner.

29 **§5-120. Liability of guardian or conservator for act of individual subject to**
30 **guardianship or conservatorship**

31 A guardian or conservator is not personally liable to a 3rd person for the act of an
32 individual subject to guardianship or conservatorship solely by reason of the guardianship
33 or conservatorship.

34 **§5-121. Petition after appointment for instructions or ratification**

35 **1. Petition.** A guardian or conservator may petition the court for instruction
36 concerning fiduciary responsibility or ratification of a particular act.

37 **2. Instruction or order.** On notice and hearing on a petition under subsection 1, the
38 court may give an appropriate instruction and enter any appropriate order.

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§5-122. Third-party acceptance of authority of guardian or conservator

1. Refusal to recognize authority required. A person must refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

A. The person has actual knowledge or a reasonable belief that the guardian's or conservator's letters of office are invalid or that the guardian or conservator is exceeding or improperly exercising authority granted by the court; or

B. The person has actual knowledge that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

2. Refusal to recognize authority discretionary. A person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

A. The guardian's or conservator's proposed action would be inconsistent with this Act; or

B. The person makes, or has actual knowledge that another person has made, a report to adult protective services or child protective services stating a good faith belief that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

3. Report refusal to court. A person that refuses to accept the authority of a guardian or conservator in accordance with subsection 2 shall report the refusal and the reason for refusal to the court. The court on receiving a report shall consider whether removal of the guardian or conservator or other action is appropriate.

4. Petition to require acceptance. A guardian or conservator may petition the court to require a 3rd party to accept a decision made by the guardian or conservator on behalf of the individual subject to guardianship or conservatorship.

§5-123. Use of agent by guardian or conservator

1. Delegation consistent with plan and fiduciary duty. Except as otherwise provided in subsection 3, a guardian or conservator may delegate a power to an agent that a prudent guardian or conservator of comparable skills could prudently delegate under the circumstances if the delegation is consistent with the guardian's or conservator's plan and fiduciary duty.

2. Delegating a power. In delegating a power under subsection 1, the guardian or conservator shall exercise reasonable care, skill and caution in:

A. Selecting the agent;

B. Establishing the scope and terms of the agent's work in accordance with the guardian's or conservator's plan;

C. Monitoring the agent's performance and compliance with the delegation; and

1. D. Redressing action or inaction of the agent that would constitute a breach of the
2. guardian's or conservator's duties if performed by the guardian or conservator.

3. **3. Delegation limitation.** A guardian or conservator may not delegate all powers to
4. an agent.

5. **4. Agent performing a delegated power.** In performing a power delegated under
6. this section, an agent shall:

7. A. Exercise reasonable care to comply with the terms of the delegation and use
8. reasonable care in the performance of the delegated power; and

9. B. If the agent has been delegated the power to make a decision on behalf of the
10. individual subject to guardianship or conservatorship, in making the decision use the
11. same decision-making standard the guardian or conservator would be required to use
12. in making the decision.

13. **5. Jurisdiction of court.** By accepting a delegation of a power from a guardian or
14. conservator under this section, an agent submits to the jurisdiction of the courts of this
15. State in an action involving the agent's performance as agent.

16. **6. Liability.** A guardian or conservator that delegates and monitors a power in
17. compliance with this section is not liable for the decisions or actions of the agent.

18. **§5-124. Temporary substitute guardian or conservator**

19. **1. Temporary substitute guardian.** The court may appoint a temporary substitute
20. guardian for a period not longer than 6 months for an individual subject to guardianship
21. if:

22. A. A proceeding to remove an existing guardian is pending; or

23. B. The court finds an existing guardian is not effectively performing the guardian's
24. duties and the welfare of the individual requires immediate action.

25. **2. Temporary substitute conservator.** The court may appoint a temporary
26. substitute conservator for a period not longer than 6 months for an individual subject to
27. conservatorship if:

28. A. A proceeding to remove an existing conservator is pending; or

29. B. The court finds that an existing conservator is not effectively performing the
30. conservator's duties and the welfare of the individual or the conservatorship estate
31. requires immediate action.

32. **3. Powers.** Except as otherwise ordered by the court, a temporary substitute
33. guardian or temporary substitute conservator appointed under this section has the powers
34. stated in the order of appointment of the guardian or conservator. The authority of an
35. existing guardian or conservator is suspended for as long as the temporary substitute
36. guardian or conservator has authority.

37. **4. Notice.** The court shall give notice of appointment of a temporary substitute
38. guardian or temporary substitute conservator under this section not later than 5 days after
39. the appointment to:

40. A. The individual subject to guardianship or conservatorship;

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B. The affected guardian or conservator; and

C. In the case of a minor, each parent of the minor and any person currently having custody or care of the minor.

5. Removal. The court may remove a temporary substitute guardian or temporary substitute conservator appointed under this section at any time. The temporary substitute guardian or temporary substitute conservator shall make any report the court requires.

6. Application. Except as otherwise provided in this section, the provisions of this Act:

A. Concerning a guardian for a minor apply to a temporary substitute guardian for a minor;

B. Concerning a guardian for an adult apply to a temporary substitute guardian for an adult; and

C. Concerning a conservator apply to a temporary substitute conservator.

§5-125. Registration of order; effect

1. Registration of guardianship order. If a guardian has been appointed for an individual in another state and a petition for guardianship of the individual is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court, may register the guardianship order in this State by filing as a foreign judgment, in a court of an appropriate county of this State, certified copies of the order and letters of office.

2. Registration of conservatorship order. If a conservator is appointed in another state and a petition for conservatorship is not pending in this State, the conservator appointed in the other state, after giving notice to the appointing court, may register the conservatorship in this State by filing as a foreign judgment, in a court of a county in which property belonging to the individual subject to conservatorship is located, certified copies of the order of conservatorship, letters of office and any bond or other asset-protection arrangement required by the court.

3. Exercise of powers. On registration of a guardianship or conservatorship order from another state, the guardian or conservator may exercise in this State all powers authorized in the order except as prohibited by the law of this State other than this Act. If the guardian or conservator is not a resident of this State, the guardian or conservator may maintain an action or proceeding in this State subject to any condition imposed by this State on a nonresident party.

4. Enforcement of registered order. The court may grant any relief available under this Act and law of this State other than this Act to enforce a registered order.

§5-126. Grievance against guardian or conservator

1. File a grievance with the court. An individual who is subject to guardianship or conservatorship, or a person interested in the welfare of an individual subject to guardianship or conservatorship, who reasonably believes a guardian or conservator is breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner

1 inconsistent with this Act may file a grievance with the court. The grievance must be in
2 writing or another record.

3 **2. Procedure upon receiving grievance.** Subject to subsection 3, after receiving a
4 grievance under subsection 1, the court:

5 A. Shall review the grievance and, if necessary to determine the appropriate response
6 to the grievance, court records related to the guardianship or conservatorship;

7 B. Shall schedule a hearing if the individual subject to guardianship or
8 conservatorship is an adult and the grievance supports a reasonable belief that:

9 (1) Removal of the guardian and appointment of a successor may be appropriate
10 in accordance with section 5-318;

11 (2) Termination or modification of the guardianship may be appropriate under
12 section 5-319;

13 (3) Removal of the conservator and appointment of a successor may be
14 appropriate under section 5-430;

15 (4) Termination or modification of the conservatorship may be appropriate under
16 section 5-431; and

17 C. May take any action supported by the grievance and record, including:

18 (1) Ordering the guardian or conservator to provide to the court a report,
19 accounting, inventory, updated plan or other information;

20 (2) Appointing a guardian ad litem;

21 (3) Appointing an attorney for the individual subject to guardianship or
22 conservatorship; or

23 (4) Scheduling a hearing.

24 **3. Similar grievance filed within 6 months.** The court may decline to proceed
25 under subsection 2 if a similar grievance was made within the preceding 6 months and the
26 court followed the procedures of subsection 2 in considering the grievance.

27 **§5-127. Delegation by parent or guardian**

28 **1. Delegation; power of attorney.** A parent or a guardian of a minor or individual
29 subject to guardianship, by a power of attorney, may delegate to another person, for a
30 period not exceeding 12 months, any power regarding care, custody or property of the
31 minor or individual subject to guardianship, except the power to consent to marriage,
32 adoption or termination of parental rights to the minor. A delegation of powers by a
33 court-appointed guardian becomes effective only when the power of attorney is filed with
34 the court. A delegation of powers under this section does not deprive the parent or
35 guardian of any parental or legal authority regarding the care and custody of the minor or
36 individual subject to guardianship. A delegation of powers under this section is subject to
37 the same court supervision that applies to temporary substitute guardians as described in
38 section 5-124, subsection 5. Any delegation under this section may be revoked or

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amended by the appointing parent or guardian in writing and delivered to the person to whom the powers were delegated and to other interested persons.

2. National Guard or Reserves; extension. Notwithstanding subsection 1, unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under that active duty order or until an order of the court so provides.

This subsection applies only if the parent's or guardian's service is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or

B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President of the United States or the United States Congress.

3. Temporary care of minor. This subsection applies when a parent or guardian executes a power of attorney under subsection 1 for the purpose of providing for the temporary care of a minor.

A. The execution of a power of attorney under subsection 1, without other evidence, does not constitute abandonment, abuse or neglect. A parent or guardian of a minor may not execute a power of attorney with the intention of permanently avoiding or divesting the parent or guardian of parental and legal responsibility for the care of the minor. Upon the expiration or termination of the power of attorney, the minor must be returned to the custody of the parent or guardian as soon as reasonably possible unless otherwise ordered by the court.

B. Unless the power of attorney is terminated, the agent named in the power of attorney shall exercise parental or legal authority on a continuous basis without compensation from the State for the duration of the power of attorney authorized by subsection 1. Nothing in this subsection disqualifies the agent from applying for and receiving benefits from any state or federal program of assistance for the minor or the agent. Nothing in this subsection prevents individuals or religious, community or other charitable organizations from voluntarily providing the agent with support related to the care of the minor while the minor is in the temporary care of the agent.

C. A minor may not be considered placed in foster care or in any way a ward of the State by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection 1. The agent named in the power of attorney may not be considered a family foster home by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection 1 and is not subject to any laws regarding the licensure or regulation of family foster homes unless licensed as a family foster home. Nothing in this subsection disqualifies the agent from being or becoming a family foster home licensed by the State or prevents the placement of the minor in the agent's care if the minor enters state custody.

4. Background check. An organization, other than an organization whose primary purpose is to provide free legal services or to provide hospital services, that is exempt

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COMMITTEE AMENDMENT "A" to H.P. 91, L.D. 123

1 from federal income taxation under Section 501(a) of the United States Internal Revenue
2 Code of 1986 as an organization described by Section 501(c)(3) and that assists parents or
3 guardians with the process of executing a power of attorney for the temporary care of a
4 minor shall ensure that a background check is conducted for the agent and any adult
5 members of the agent's household, whether by completing the background check directly
6 or by verifying that a current background check has already been conducted. The
7 background check must include the following sources, and the results must be shared
8 with the parent or guardian and the proposed agent:

9 A. A screening for child and adult abuse, neglect or exploitation cases in the records
10 of the Department of Health and Human Services; and

11 B. A criminal history record check that includes information obtained from the
12 Federal Bureau of Investigation.

13 The organization shall maintain records on the training and background checks of agents,
14 including the content and dates of training and full transcripts of background checks, for a
15 period of not less than 5 years after the minor attains 18 years of age. The organization
16 shall make the records available to a parent or guardian executing a power of attorney
17 under this section and to the ombudsman under Title 22, section 4087-A and any local,
18 state or federal authority conducting an investigation involving the agent, the parent or
19 guardian or the minor.

20 Without regard to whether an organization is included or excluded by the terms of this
21 subsection, nothing in this section changes the restrictions on the unauthorized practice of
22 law as provided in Title 4, section 807 with regard to the preparation of powers of
23 attorney.

24 **5. Disqualification of agent.** An employee or volunteer for an organization
25 described in subsection 4 may not further assist with a process that results in the
26 completion of a power of attorney for the temporary care of a minor if the background
27 checks conducted pursuant to subsection 4, paragraphs A and B disclose any
28 substantiated allegations of child abuse, neglect or exploitation or any crimes that would
29 disqualify the agent from becoming a licensed family foster home in the State.

30 **6. Penalties.** The following penalties apply to violations of this section.

31 A. An organization that knowingly fails to perform or verify the background checks
32 or fails to share the background check information as required by subsection 4 is
33 subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in
34 a civil action.

35 B. An organization or an employee or volunteer of an organization that continues to
36 assist a parent, guardian or agent in completing a power of attorney under subsection
37 4 if the background checks conducted pursuant to subsection 4 disclose any
38 substantiated allegations of child abuse, neglect or exploitation or any crimes that
39 would disqualify the agent from becoming a licensed family foster home is subject to
40 a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil
41 action.

42 C. An organization or an employee or volunteer of an organization that knowingly
43 fails to maintain records or to disclose information as required by subsection 4 is

COMMITTEE AMENDMENT

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subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action.

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PART 2

4

GUARDIANSHIP OF MINOR

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§5-201. Appointment and status of guardian

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A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location of the guardian or the minor. This section does not apply to permanency guardians appointed in District Court child protective proceedings under Title 22, section 4038-C. If a minor has a permanency guardian, the court may not appoint another guardian without leave of the District Court in which the child protective proceeding is pending.

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§5-202. Parental appointment of guardian

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1. Appointment by parent. A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has or may have in the future. The appointment may specify the desired limitations on the powers to be given to the guardian. The appointing parent may revoke or amend the appointment before confirmation by the court.

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2. Petition to confirm selection, terminate right to object. Upon petition of an appointing parent and a finding that the appointing parent will likely become unable to care for the child within 2 years, and after notice as provided in section 5-205, subsection 1, the court, before the appointment becomes effective, may confirm the parent's selection of a guardian and terminate the rights of others to object.

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3. Appointment effective. Subject to section 5-203, the appointment of a guardian becomes effective upon the appointing parent's death, an adjudication that the parent is an incapacitated person or a written determination by a physician who has examined the parent that the parent is no longer able to care for the child, whichever first occurs.

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4. Acceptance of appointment. The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days after the guardian's appointment becomes effective. The guardian shall:

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A. File the acceptance of appointment and a copy of the will with the court of the county in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court of the county in which the minor resides or is present; and

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B. Give written notice of the acceptance of appointment to every parent, if living, the minor, if the minor has attained 14 years of age, and a person other than the parent having care and custody of the minor.

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5. Notice of right to object. Unless the appointment was previously confirmed by the court, the notice given under subsection 4, paragraph B must include a statement of the right of those notified to terminate the appointment by filing a written objection in the court as provided in section 5-203.

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6. Petition to confirm appointment. Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment, giving notice in the manner provided in section 5-205, subsection 1.

7. Parental rights not superseded; priority. The appointment of a guardian by a parent does not supersede the parental rights of any parent. If all parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who died or was adjudged incapacitated has priority. An appointment by a parent that is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this State.

8. Relation back of powers. The powers of a guardian who timely complies with the requirements of subsections 4 and 6 relate back to give acts by the guardian that are of benefit to the minor and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of the appointment.

9. Termination of authority. The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to section 5-203.

§5-203. Objection by minor or others to parental appointment

Until the court has confirmed an appointee under section 5-202, a minor who is the subject of an appointment by a parent and who has attained 14 years of age, the other parent or a person other than a parent or guardian having care or custody of the minor may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn and if withdrawn is of no effect. The objection does not preclude judicial appointment of the person selected by the parent if all other requirements for appointment, including appointment over the objection of a parent, are met. The court may treat the filing of an objection as a petition for the appointment of an emergency or interim guardian under section 5-204 and proceed accordingly.

§5-204. Judicial appointment of guardian; conditions for appointment

1. Petition. A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.

2. Appointment. The court may appoint a guardian for a minor if the court finds the appointment is in the best interest of the minor, finds the proposed guardian is suitable and finds:

- A. That the parents consent;
- B. That all parental rights have been terminated; or
- C. By clear and convincing evidence that the parents are unwilling or unable to exercise their parental rights, including but not limited to:

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(1) The parent is currently unwilling or unable to meet the minor's needs and that will have a substantial adverse effect on the minor's well-being if the minor lives with the parent; or

(2) The parent has failed, without good cause, to maintain a parental relationship with the minor, including but not limited to failing to maintain regular contact with the minor for a length of time that evidences an intent to abandon the minor.

3. Priority for appointment. If a guardian is appointed by a parent pursuant to section 5-202 and the appointment has not been prevented or terminated under section 5-203, that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under section 5-202 has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

4. Appointment of a guardian on an emergency basis. If the court finds that following the procedures of this Part will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the guardian's authority may not exceed 90 days, and the guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of the hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained 14 years of age, to each living parent of the minor and a person having care or custody of the minor, if other than a parent. The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the guardian is appointed without notice, notice of the appointment must be given within 48 hours after the appointment. The court shall schedule a hearing on the appointment of the guardian within 14 days but not less than 7 days after issuance of the order appointing the guardian, except that a parent may request that the hearing take place sooner. The petitioner bears the burden of proof on the appropriateness of the appointment pursuant to this section.

5. Child support. When appointing a guardian, including on an emergency or interim basis, the court's order must indicate whether there are any support orders involving the child presently in effect through judicial or administrative proceedings and the effect of the guardianship appointment on the orders. The court shall consider whether to order a parent to pay child support to the guardian in accordance with Title 19-A, Part 3. A guardian must be treated as a caretaker relative for computation of a parental support obligation pursuant to Title 19-A, section 2006, subsection 4. The court may reserve the question of support or decline to issue an order if it determines that an order for support is not warranted at the time of the appointment. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this subsection.

COMMITTEE AMENDMENT

1 **§5-205. Judicial appointment of guardian; procedure**

2 **1. Petition; notice of hearing.** After a petition for appointment of a guardian is
3 filed, the court shall schedule a hearing, and the petitioner shall give notice of the time
4 and place of the hearing, together with a copy of the petition, to:

5 A. The minor, if the minor has attained 14 years of age and is not the petitioner;

6 B. Any person alleged to have had the primary care and custody of the minor during
7 the 60 days before the filing of the petition;

8 C. Each living parent of the minor or, if there is none, the adult nearest in kinship
9 who can be found;

10 D. Any person nominated as guardian by the minor if the minor has attained 14 years
11 of age;

12 E. Any appointee of a parent whose appointment has not been prevented or
13 terminated under section 5-203; and

14 F. Any guardian or conservator currently acting for the minor in this State or
15 elsewhere.

16 If the court finds that receiving information from the Department of Health and Human
17 Services may be necessary for the determination of any issue before the court, it may
18 order a Department of Health and Human Services employee to attend the hearing and to
19 provide information relevant to the proceeding. When receiving information by oral
20 testimony that is confidential pursuant to Title 22, section 4008, the court shall close the
21 proceeding and ensure that it is recorded. When receiving information contained in
22 written or media records that is confidential pursuant to Title 22, section 4008, the court
23 shall review those records in camera, weighing the confidentiality of such records against
24 the necessity for counsel and the parties to have access to them, and enter an appropriate
25 order regarding the scope and manner of access. The court, in its discretion, may take
26 other measures necessary to preserve the confidentiality of the information received.

27 **2. Appointment; other disposition.** The court, after the hearing scheduled pursuant
28 to subsection 1, shall make the appointment of a guardian if the court finds that venue is
29 proper, the required notices have been given, the conditions of section 5-204, subsection
30 2 have been met and the best interest of the minor will be served by the appointment. In
31 other cases, the court may dismiss the proceeding or make any other disposition of the
32 matter that will serve the best interest of the minor.

33 **3. Priority of minor's nominee.** The court shall appoint a person or persons
34 nominated by the minor, if the minor has attained 14 years of age, in accordance with the
35 requirements of section 5-204.

36 **4. Appointment of counsel.** A nonconsenting parent whose parental rights have not
37 been terminated is entitled to court-appointed legal counsel if indigent. In a contested
38 action, the court may also appoint counsel for any indigent guardian or petitioner when a
39 parent or legal custodian has counsel.

40 **5. Attorney for a minor; notice to minor.** If the court determines at any stage of
41 the proceeding, before or after appointment, that the interests of the minor are or may be
42 inadequately represented, the court may appoint an attorney to represent the minor, giving

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1 consideration to the choice of the minor if the minor has attained 14 years of age. A
2 minor may appear with or through counsel, but the court is not restricted from requiring
3 the minor to be present for some or all of a hearing or other proceeding. A minor 14
4 years of age or older must receive notice of any proceeding subsequent to the
5 appointment of a guardian through the same means as required for any other party, and
6 the minor may consent, object or otherwise participate in the proceeding.

7 **6. Informed consent of parent.** If the petition for guardianship is filed by or with
8 the consent of a parent, the petition must include a consent signed by the parent verifying
9 that the parent understands the nature of the guardianship and knowingly and voluntarily
10 consents to the guardianship. If a parent informs the court after the petition has been filed
11 that the parent wishes to consent to the guardianship, the court shall require the parent to
12 sign the consent form at that time. The consent required by this section must be on a
13 court form or substantially similar document.

14 **7. Term or duration of order.** The court may specify the term of the appointment
15 based on the parties' agreement or the court's findings. The term may be extended or
16 otherwise modified by agreement of the parties or after a hearing. If no term is specified,
17 the appointment remains in place until modified or the occurrence of an event resulting in
18 termination set forth in section 5-210.

19 If one of the parents of a minor is a member of the National Guard or the Reserves of the
20 United States Armed Forces under an order to active duty for a period of more than 30
21 days, a guardianship that would otherwise expire is automatically extended until 30 days
22 after the parent is no longer under those active duty orders or until an order of the court so
23 provides as long as the parent's service is in support of:

24 A. An operational mission for which members of the reserve components have been
25 ordered to active duty without their consent; or

26 B. Forces activated during a period of war declared by the United States Congress or
27 a period of national emergency declared by the President of the United States or the
28 United States Congress.

29 **8. Interim order.** Upon motion by a party or the court's initiative, and pursuant to
30 an agreement of the parties or findings made after a hearing, the court may enter an
31 interim order appointing a guardian for a period of time up to 6 months or pending the
32 court's order after the scheduled final hearing on a petition for appointment, if such an
33 order is necessary to provide for the minor's housing, health, education, medical or other
34 essential needs prior to the hearing. Any interim order must meet the requirements of
35 section 5-204 and this section, including notice, and may be extended or modified
36 pursuant to an agreement of the parties or findings made after a hearing.

37 **9. Mediation.** The court may refer the parties to mediation at any time after a
38 petition or motion is filed, if meditation services are available at a reasonable fee or no
39 cost, and may require that the parties have made a good faith effort to mediate the issue
40 before holding a hearing. If the court finds that any party failed to make a good faith
41 effort to mediate, the court may order the parties to submit to mediation, dismiss the
42 action or any part of the action, render a decision or judgment by default, assess attorney's
43 fees and costs or impose any other sanction that is appropriate in the circumstances. The
44 court may also impose an appropriate sanction upon a party's failure without good cause

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1 to appear for mediation after receiving notice of the scheduled time for mediation. An
2 agreement reached by the parties through mediation on an issue must be reduced to
3 writing, signed by the parties and presented to the court for approval as a court order.

4 **10. Identifying information sealed.** If a party alleges in an affidavit or a pleading
5 under oath that the health, safety or liberty of a party or the minor would be jeopardized
6 by disclosure of identifying information, including but not limited to the address of a
7 party or the minor, the information must be sealed by the register or clerk and not
8 disclosed to any other party or to the public unless the court orders the disclosure to be
9 made after a hearing in which the court takes into consideration the health, safety or
10 liberty of the party or minor and determines that the disclosure is in the interest of justice.

11 **§5-206. Terms of order appointing guardian**

12 **1. Terms of order.** An order appointing a guardian of a minor must include the
13 following:

14 A. The reasons for the appointment of the guardian, including whether there was any
15 agreement by the parties or findings after a hearing;

16 B. The powers and duties granted to the guardian, including those set forth in section
17 5-207;

18 C. The rights and responsibilities retained by the parent, as described in subsection 3;

19 D. The anticipated duration of the appointment, including whether it remains in place
20 until a petition to modify or terminate and whether the parties agree to termination
21 after a particular event, such as return from deployment;

22 E. A description of the process and standards for modification and termination; and

23 F. Notice of the court's authority to hold a hearing and find that a party has violated a
24 part of the order and is in contempt and to order relief to the other party for the
25 violations or contempt.

26 **2. Other orders concerning minor.** If any orders regarding custody or other
27 parental rights with respect to a minor are in effect at the time of the appointment of a
28 guardian of the minor, the order must refer to the orders and indicate the effect of the
29 appointment on the rights and responsibilities set forth in the orders.

30 **3. Rights and responsibilities retained by parent.** An order appointing a guardian
31 of a minor must specify whether the minor's parent retains any of the following rights and
32 responsibilities after the appointment and, if any such rights or responsibilities are not
33 retained, the reasons they are not retained.

34 A. A schedule of parent-child contact or a determination by the court that denial of
35 parent-child contact is necessary to protect the physical safety or emotional well-
36 being of the minor. The court may determine the reasonable frequency and duration
37 of parent-child contact and may set conditions for parent-child contact that are in the
38 best interest of the minor. Any schedule of contact must reflect any existing parent-
39 child contact order in effect to the extent reasonably practicable and consistent with
40 the court's findings or the agreement of the parties. The court may set forth specific
41 conditions that must be satisfied by the parent prior to the start of some or all aspects
42 of the contact schedule;

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1 B. Access to records and information regarding the minor as provided under Title
2 19-A, section 1653, subsection 2, paragraph D, subparagraph (4);

3 C. Parental rights and responsibilities as described under Title 19-A, section 1501,
4 subsection 5; and

5 D. Child support as defined in Title 19-A, section 1501, subsection 2.

6 **4. Parent as coguardian.** A parent may copetition and be appointed as a coguardian
7 of the parent's minor child if the court determines a joint appointment with a nonparent is
8 in the best interest of the minor and is made with the parent's consent.

9 **§5-207. Duties of guardian**

10 **1. Guardian has duties and responsibilities of a parent.** Except as otherwise
11 limited by the court, a guardian of a minor has the duties and responsibilities of a parent
12 regarding the minor's support, care, education, health and welfare. A guardian shall act at
13 all times in the best interest of the minor and exercise reasonable care, diligence and
14 prudence.

15 **2. Specific duties and responsibilities.** A guardian shall:

16 A. Become or remain personally acquainted with the minor and maintain sufficient
17 contact with the minor to know of the minor's capacities, limitations, needs,
18 opportunities and physical and mental health;

19 B. Take reasonable care of the minor's personal effects and bring a protective
20 proceeding if necessary to protect other property of the minor;

21 C. Expend money of the minor that has been received by the guardian for the minor's
22 current needs for support, care, education, health and welfare;

23 D. Conserve any excess money of the minor for the minor's future needs, but if a
24 conservator has been appointed for the estate of the minor, the guardian shall pay the
25 money at least quarterly to the conservator to be conserved for the minor's future
26 needs;

27 E. Report the condition of the minor and account for money and other assets in the
28 guardian's possession or subject to the guardian's control, as ordered by the court on
29 application of any person interested in the minor's welfare or as required by court
30 rule; and

31 F. Inform the court of any change in the minor's custodial dwelling or address.

32 **3. Reporting on the status of the minor.** The court may require the guardian of a
33 minor to submit regular status reports about the minor, to be submitted under oath or
34 affirmation to the court and served on the parent and guardian ad litem, if still active, on
35 an annual basis or under other conditions set by the court.

36 A. The court may require the status report to include specific information, including
37 but not limited to the following to the extent applicable to the guardianship:

38 (1) The current address of the minor and each parent;

39 (2) The minor's health care and health needs, including any medical and mental
40 health services the child received;

1 (3) The minor's educational needs and progress, including the name of the
2 minor's school, day care or other early education program, the minor's grade level
3 and the minor's educational achievements;

4 (4) Contact between the minor and the minor's parents, including the frequency
5 and duration of the contact and whether it was supervised;

6 (5) How the parents have been involved in decision making for the minor;

7 (6) Whether the parents have provided any financial support for the minor;

8 (7) How the guardian has carried out the guardian's responsibilities and duties
9 under the order of appointment;

10 (8) An accounting of any funds received on the minor's behalf;

11 (9) The minor's strengths, challenges and any other areas of concern; and

12 (10) Recommendations with supporting reasons as to whether the guardianship
13 order should be continued, modified or terminated.

14 B. Before deciding whether to require status reports, the court shall consider whether
15 reporting would create a substantial likelihood of harm to the health, safety or liberty
16 of the minor.

17 C. The contents of status reports are confidential and may not be released to any
18 nonparty except by court order.

19 D. A parent may petition the court to seek a status report from the guardian if one is
20 not otherwise required. A person who is not a parent but is interested in the minor's
21 welfare may petition the court to seek a status report based upon specific concerns
22 about the minor's care.

23 E. Nothing in this subsection limits a court's authority to otherwise supervise the
24 guardianship, including scheduling a status conference to address matters raised in a
25 status report or to be held at a specified time after the entry of the order or appointing
26 a guardian ad litem or visitor to conduct an investigation. The court shall accept any
27 information submitted by a minor 14 years of age or older regarding the
28 guardianship.

29 **§5-208. Powers of guardian**

30 1. Guardian has powers of a parent. Except as otherwise limited by the court, a
31 guardian of a minor has the powers of a parent regarding the minor's support, care,
32 education, health and welfare.

33 2. Specific powers. A guardian may:

34 A. Apply for and receive money for the support of the minor otherwise payable to
35 the minor's parent, guardian or custodian under the terms of any statutory system of
36 benefits or insurance or any private contract, devise, trust, conservatorship or
37 custodianship;

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B. If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the minor, take custody of the minor and establish the minor's place of custodial dwelling, but may establish or move the minor's custodial dwelling outside the State only upon express authorization of the court;

C. If a conservator for the estate of a minor has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the minor or to pay money for the benefit of the minor;

D. Except as limited by section 5-807, consent to medical or other care, treatment or service for the minor;

E. Consent to the marriage of the minor; and

F. If reasonable under all of the circumstances, delegate to the minor certain responsibilities for decisions affecting the minor's well-being.

3. Consent to adoption. The court may specifically authorize the guardian to consent to the adoption of the minor.

4. Powers of coguardians. If coguardians are appointed, the powers of the guardians are joint and several, unless limited by the appointing document.

§5-209. Rights and immunities of guardian

1. Reasonable compensation and reimbursement. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing provided by the guardian to the minor, but only as approved by the court. If a conservator, other than the guardian or a person who is affiliated with the guardian, has been appointed for the estate of the minor, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

2. Personal liability. A guardian need not use the guardian's personal funds for the minor's expenses. A guardian is not liable to a 3rd person for acts of the minor solely by reason of the guardianship. A guardian is not liable for injury to the minor resulting from the negligence or act of a 3rd person providing medical or other care, treatment or service for the minor except to the extent that a parent would be liable under the circumstances.

§5-210. Modification or termination of guardianship; other proceedings after appointment

1. Modification of guardianship order. A guardian of a minor, a parent of a minor, a person interested in the welfare of a minor or the minor, if 14 years of age or older, may file a motion asking the court to modify the terms of an order appointing a guardian or to take other action in the best interest of the minor as circumstances require. The motion must be filed with the court and served on all parties entitled to notice. Unless the motion specifies that is it filed with the consent of all parties entitled to notice, the matter must be set for hearing to determine whether there has been a substantial change in circumstances necessitating modification of the order and how the court should modify the order in furtherance of the best interest of the minor and the parent's rights. The court may identify certain requirements that must be met before specific provisions of the order are

1 modified. A court may modify a term of a guardianship order as needed to grant relief to
2 a party to address contempt or other failure to follow the order.

3 **2. Termination of guardianship.** A guardianship of a minor terminates upon the
4 minor's death, adoption, emancipation, marriage or attainment of majority or as ordered
5 by the court pursuant to this section.

6 **3. Termination of appointment.** The appointment of a guardian or conservator
7 terminates upon the death, resignation or removal of the guardian or conservator or upon
8 termination of the guardianship or conservatorship. A resignation of a guardian or
9 conservator is effective when approved by the court. A parental or spousal appointment
10 as guardian under an informally probated will terminates if the will is later denied probate
11 in a formal proceeding. Termination of the appointment of a guardian or conservator
12 does not affect the liability of either for previous acts or the obligation to account for
13 money and other assets of the minor or protected person.

14 **4. Petition for removal or permission to resign.** A minor, if 14 years of age or
15 older, a parent of the minor or a person interested in the welfare of the minor may petition
16 for removal of a guardian on the ground that removal would be in the best interest of the
17 minor or for other good cause. A guardian may petition for permission to resign. A
18 petition for removal or permission to resign may include a request for appointment of a
19 successor guardian.

20 **5. Appointment of additional or successor guardian.** The court may appoint an
21 additional guardian at any time, to serve immediately or upon some other designated
22 event, and may appoint a successor guardian in the event of a vacancy or make the
23 appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional
24 or successor guardian may file an acceptance of appointment at any time after the
25 appointment, but not later than 30 days after the occurrence of the vacancy or other
26 designated event. The additional or successor guardian becomes eligible to act on the
27 occurrence of the vacancy or designated event or the filing of the acceptance of
28 appointment, whichever last occurs. A successor guardian succeeds to the predecessor's
29 powers.

30 **6. Termination without consent; best interest; subsequent petitions.** The court
31 may not terminate the guardianship of a minor in the absence of the guardian's consent
32 unless the court finds by a preponderance of the evidence that the termination is in the
33 best interest of the minor. The petitioner has the burden of showing by a preponderance
34 of the evidence that termination of the guardianship is in the best interest of the minor. If
35 the court does not terminate the guardianship, the court may dismiss subsequent petitions
36 for termination of the guardianship unless there has been a substantial change of
37 circumstances.

38 **7. Parent's petition to terminate guardianship; burden of proof.** A parent may
39 bring a petition to terminate the guardianship of a minor. A parent's notification to the
40 court of the revocation of prior consent for a guardianship must be considered a petition
41 to terminate the guardianship. Before the court may apply the termination requirements
42 in subsection 6, a party opposing a parent's petition to terminate a guardianship bears the
43 burden of proving by a preponderance of the evidence that the parent seeking to terminate
44 the guardianship is currently unfit to regain custody of the minor, in accordance with the
45 standard set forth in section 5-204, subsection 2, paragraph C. If the party opposing

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1 termination of the guardianship fails to meet its burden of proof on the question of the
2 parent's fitness to regain custody, the court shall terminate the guardianship and make any
3 further order that may be appropriate. In a contested action, the court may appoint
4 counsel for the minor or for any indigent guardian or parent. In ruling on a petition to
5 terminate a guardianship, the court may modify the terms of the guardianship or order
6 transitional arrangements pursuant to section 5-211.

7 **§5-211. Transitional arrangement for minors**

8 In issuing, modifying or terminating an order of guardianship for a minor, the court
9 may enter an order providing for transitional arrangements for the minor if the court
10 determines that such arrangements will assist the minor with a transition of custody and
11 are in the best interest of the minor. Orders providing for transitional arrangements may
12 include, but are not limited to, rights of contact, housing, counseling or rehabilitation. In
13 determining the best interest of the minor, a court may consider the minor's relationship
14 with the guardian and need for stability.

15 **§5-212. Appointment of guardian ad litem for minor**

16 In any proceeding under this Part, including for issuing, modifying or terminating an
17 order of guardianship for a minor, the court may appoint a guardian ad litem for the
18 minor. The appointment may be made at any time, but the court shall make every effort
19 to make the appointment as soon as possible after the commencement of the proceeding.
20 The court shall follow the requirements of section 1-111 and other applicable law or court
21 rules in making the appointment.

22 **PART 3**

23 **GUARDIANSHIP OF ADULT**

24 **§5-301. Basis for appointment of guardian for adult**

25 **1. Appointment.** On petition and after notice and hearing, the court may:

26 A. Appoint a guardian for a respondent who is an adult if it finds by clear and
27 convincing evidence that the respondent lacks the ability to meet essential
28 requirements for physical health, safety or self-care because:

29 (1) The respondent is unable to receive and evaluate information or make or
30 communicate decisions, even with appropriate supportive services, technological
31 assistance or supported decision making;

32 (2) The respondent's identified needs cannot be met by a protective arrangement
33 instead of guardianship or other less restrictive alternatives; and

34 (3) The appointment is necessary or desirable as a means of enabling the
35 respondent to meet essential requirements for physical health, safety or self-care;
36 or

37 B. With appropriate findings, treat the petition as one for a conservatorship under
38 Part 4 or a protective arrangement instead of guardianship or conservatorship under
39 Part 5, enter any other appropriate order or dismiss the proceeding.

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2. Powers. The court shall grant to a guardian appointed under subsection 1 only those powers necessitated by the limitations and demonstrated needs of the respondent and enter orders that will encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship or other less restrictive alternatives would meet the needs of the respondent.

§5-302. Petition for appointment of guardian for adult

1. Petition for appointment. A person interested in an adult's welfare, including the adult for whom the order is sought, may petition for the appointment of a guardian for the adult.

2. Contents of petition. A petition under subsection 1 must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the appointment and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the respondent will reside if the petition is granted;

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before the filing of the petition;

C. The name and current address of each of the following, if applicable:

(1) A person responsible for care of the respondent;

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for the respondent in this State or in another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

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COMMITTEE AMENDMENT "A" to H.P. 91, L.D. 123

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(7) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person nominated as guardian by the respondent;

(10) A person nominated as guardian by the respondent's parent, spouse or domestic partner in a will or other signed record;

(11) A proposed guardian and the reason the proposed guardian should be selected; and

(12) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition;

D. The reason a guardianship is necessary, including a brief description of:

(1) The nature and extent of the respondent's alleged need;

(2) Any protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented;

(3) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(4) The reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's alleged need;

E. Whether the petitioner seeks a limited guardianship or full guardianship;

F. If the petitioner seeks a full guardianship, the reason limited guardianship or a protective arrangement instead of guardianship is inappropriate;

G. If a limited guardianship is requested, the powers to be granted to the guardian;

H. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

I. If the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts; and

J. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings.

3. Attorney for petitioner. A petition under subsection 1 must state the name, address, telephone number and bar registration number of an attorney representing the petitioner, if any.

COMMITTEE AMENDMENT

1 **§5-303. Notice and hearing**

2 **1. Date, time and place for hearing.** On receipt of a petition under section 5-302
3 for appointment of a guardian for a respondent who is an adult, the court shall set a date,
4 time and place for hearing the petition.

5 **2. Notice to respondent.** A copy of a petition under section 5-302 and notice of a
6 hearing on the petition must be served personally on the respondent. The notice must
7 inform the respondent of the respondent's rights at the hearing, including the right to an
8 attorney and to attend the hearing. The notice must also include a description of the
9 nature, purpose and consequences of granting the petition. Failure to serve the
10 respondent with notice substantially complying with this subsection precludes the court
11 from granting the petition.

12 **3. Notice to other persons.** In a proceeding on a petition under section 5-302,
13 notice of the hearing also must be given to any person required to be listed in the petition
14 under section 5-302, subsection 2, paragraphs A to C and any other person the court
15 determines is entitled to notice. Failure to give notice under this subsection does not
16 preclude the court from appointing a guardian.

17 **4. Notice of petition after appointment.** Notice of a hearing on a petition that is
18 filed after the appointment of a guardian and that seeks an order under this Part, together
19 with a copy of the petition, must be given to the adult subject to guardianship, the
20 guardian and any other person as the court determines.

21 **§5-304. Appointment of visitor**

22 **1. Appointment of visitor.** On receipt of a petition for appointment of a guardian
23 for a respondent who is an adult under section 5-302, the court shall appoint a visitor.
24 The visitor must be an individual having training or experience in the type of abilities,
25 limitations and needs alleged in the petition.

26 **2. Interview with respondent.** A visitor appointed under subsection 1 shall
27 interview the respondent in person and, in a manner the respondent is best able to
28 understand:

29 A. Explain to the respondent the substance of the petition, the nature, purpose and
30 effect of the proceeding, the respondent's rights at the hearing and the general powers
31 and duties of a guardian;

32 B. Determine the respondent's views about the appointment, including views about a
33 proposed guardian, the guardian's proposed powers and duties and the scope and
34 duration of the proposed guardianship;

35 C. Inform the respondent of the respondent's right to employ and consult with an
36 attorney at the respondent's expense and the right to request a court-appointed
37 attorney; and

38 D. Inform the respondent that all costs and expenses of the proceeding, including the
39 respondent's attorney's fees, may be paid from the respondent's assets.

40 **3. Additional duties.** In addition to the duties imposed by subsection 2, the visitor
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- A. Interview the petitioner and proposed guardian, if any;
- B. Visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the appointment is made;
- C. Obtain information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition; and
- D. Investigate the allegations in the petition and any other matter relating to the petition as the court directs.
- 4. Report of visitor.** A visitor under this section shall file a report in a record with the court at least 10 days before any hearing on the petition. The report must include:
 - A. Whether or not the respondent wishes to contest any aspect of the proceedings or to seek any limitation on the proposed guardian's powers;
 - B. A recommendation whether an attorney should be appointed to represent the respondent;
 - C. A summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance or supported decision making and cannot manage;
 - D. Recommendations regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's needs are available and, if a guardianship is recommended, whether it should be full or limited and, if a limited guardianship, the powers to be granted to the guardian;
 - E. A statement of the qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian;
 - F. A statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence;
 - G. A recommendation whether a further professional evaluation under section 5-306 is necessary;
 - H. A statement whether the respondent is able to attend a hearing at the location court proceedings typically are conducted;
 - I. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and
 - J. Any other matter as the court directs.

§5-305. Appointment and role of attorney for adult

- 1. Appointment of attorney required.** The court shall appoint an attorney to represent the respondent in a proceeding on a petition under section 5-302 if:
 - A. Requested by the respondent;
 - B. Recommended by the visitor;

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- 1 C. The court determines that the respondent needs representation; or
- 2 D. It comes to the court's attention that the respondent wishes to contest any aspect
- 3 of the proceeding or to seek any limitation on the proposed guardian's powers.
- 4 **2. Duties of attorney.** An attorney representing the respondent in a proceeding on a
- 5 petition under section 5-302 shall:
- 6 A. Make reasonable efforts to ascertain the respondent's wishes;
- 7 B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and
- 8 C. If the respondent's wishes are not reasonably ascertainable, advocate for the result
- 9 that is the least restrictive option in type, duration and scope, consistent with the
- 10 respondent's interests.

11 **§5-306. Professional evaluation**

- 12 **1. Evaluation; report.** In every adult guardianship matter, the respondent must be
- 13 examined by a licensed physician or psychologist who is acceptable to the court and who
- 14 is qualified to evaluate the respondent's alleged cognitive and functional abilities. The
- 15 individual conducting the evaluation shall file a report in a record with the court at least
- 16 10 days before any hearing on the petition. Unless otherwise directed by the court, the
- 17 report must contain:
- 18 A. A description of the nature, type and extent of the respondent's cognitive and
- 19 functional abilities and limitations;
- 20 B. An evaluation of the respondent's mental and physical condition and, if
- 21 appropriate, educational potential, adaptive behavior and social skills;
- 22 C. A prognosis for improvement and recommendation for the appropriate treatment,
- 23 support or habilitation plan; and
- 24 D. The date of the examination on which the report is based.
- 25 **2. Right to decline.** The respondent has the right to decline to participate in an
- 26 evaluation ordered under subsection 1.

27 **§5-307. Attendance and rights at hearing**

- 28 **1. Attendance by respondent.** Except as otherwise provided in subsection 2, a
- 29 hearing under section 5-303 may proceed only if the respondent attends the hearing. If it
- 30 is not reasonably feasible for the respondent to attend a hearing at the location court
- 31 proceedings typically are conducted, the court shall make reasonable efforts to hold the
- 32 hearing at an alternative location convenient to the respondent or allow the respondent to
- 33 attend the hearing using real-time audiovisual technology.
- 34 **2. Hearing without respondent in attendance.** A hearing under section 5-303 may
- 35 proceed without the respondent in attendance if the court finds by clear and convincing
- 36 evidence that:
- 37 A. The respondent consistently and repeatedly has refused to attend the hearing after
- 38 having been fully informed of the right to attend the hearing and the potential
- 39 consequences of failing to do so; or

1 B. There is no practicable way for the respondent to attend and participate in the
2 hearing even with appropriate supportive services and technological assistance.

3 3. Assistance to respondent. The respondent may be assisted in a hearing under
4 section 5-303 by a person or persons of the respondent's choosing, assistive technology or
5 an interpreter or translator, or a combination of these supports. If assistance would
6 facilitate the respondent's participation in the hearing but is not otherwise available to the
7 respondent, the court shall make reasonable efforts to provide it.

8 4. Attorney for respondent. The respondent has a right to choose an attorney to
9 represent the respondent at a hearing under section 5-303.

10 5. Rights of respondent at hearing. For or at a hearing under section 5-303, the
11 respondent may:

12 A. Present evidence and subpoena witnesses and documents;

13 B. Examine witnesses, including any court-appointed evaluator and the visitor; and

14 C. Otherwise participate in the hearing.

15 6. Attendance by proposed guardian required. Unless excused by the court for
16 good cause, the proposed guardian shall attend a hearing under section 5-303.

17 7. Closed upon request; good cause. A hearing under section 5-303 must be closed
18 on request of the respondent and a showing of good cause.

19 8. Participation; best interest of respondent. Any person may request to
20 participate in a hearing under section 5-303. The court may grant the request, with or
21 without hearing, on determining that the best interest of the respondent will be served.
22 The court may attach appropriate conditions to the person's participation.

23 **§5-308. Confidentiality of records**

24 1. Matter of public record; exception. The existence of a proceeding for or the
25 existence of a guardianship for an adult is a matter of public record unless the court seals
26 the records after:

27 A. The respondent or individual subject to guardianship requests the records be
28 sealed; and

29 B. Either:

30 (1) The petition for guardianship is dismissed; or

31 (2) The guardianship is terminated.

32 2. Access to court records. An adult subject of a proceeding for a guardianship,
33 whether or not a guardian is appointed, any attorney designated by the adult and a person
34 entitled to notice under section 5-310, subsection 5 are entitled to access court records of
35 the proceeding and resulting guardianship, including a guardian's report or plan. In
36 addition, a person for good cause may petition the court for access to court records of the
37 guardianship, including an annual report or guardian's plan. The court shall grant access
38 if access is in the best interest of the respondent or adult subject to guardianship or

1 further the public interest and does not endanger the welfare or financial interest of the
2 adult.

3 **3. Reports confidential; availability.** A report under section 5-304 of a visitor or a
4 professional evaluation under section 5-306 is confidential and must be sealed on filing
5 but is available to:

6 A. The court;

7 B. The individual who is the subject of the report or evaluation, without limitation as
8 to use;

9 C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of
10 the proceeding;

11 D. An agent appointed under a power of attorney for health care or advance health
12 care directive, or power of attorney for finances in which the respondent is identified
13 as the principal, unless the court orders otherwise; and

14 E. Other persons when it is in the public interest or for a purpose the court orders for
15 good cause.

16 **§5-309. Who may be guardian of adult; priorities**

17 **1. Priority for appointment.** Except as otherwise provided in subsection 3, the
18 court in appointing a guardian for an adult shall consider persons otherwise qualified in
19 the following order of priority:

20 A. A guardian, other than a temporary or emergency guardian, currently acting for
21 the respondent in another jurisdiction;

22 B. A person nominated as guardian by the respondent, including the respondent's
23 most recent nomination made in a power of attorney;

24 C. An agent appointed by the respondent under a power of attorney for health care or
25 an advance health care directive;

26 D. A spouse or domestic partner of the respondent; and

27 E. A family member or other individual who has exhibited special care and concern
28 for the respondent.

29 **2. Equal priority.** With respect to persons having equal priority under subsection 1,
30 the court shall select as guardian the person the court considers best qualified. In
31 determining the best qualified person, the court shall consider the potential guardian's
32 relationship with the respondent, the potential guardian's skills, the expressed wishes of
33 the respondent, the extent to which the potential guardian and the respondent have similar
34 values and preferences and the likelihood the potential guardian will be able to satisfy the
35 duties of a guardian successfully.

36 **3. Appointment based on best interest of respondent.** The court, acting in the best
37 interest of the respondent, may decline to appoint as guardian a person having priority
38 under subsection 1 and appoint a person having a lower priority or no priority.

39 **4. Appointment prohibited; exceptions.** A person that provides paid services to
40 the respondent, or an individual who is employed by a person that provides paid services

1 to the respondent or is the spouse, domestic partner, parent or child of an individual who
2 provides or is employed to provide paid services to the respondent, may not be appointed
3 as guardian unless:

4 A. The individual is related to the respondent by blood, marriage or adoption; or

5 B. The court finds by clear and convincing evidence that the person is the best
6 qualified person available for appointment and the appointment is in the best interest
7 of the respondent.

8 **5. Long-term care institution; exceptions.** An owner, operator or employee of a
9 long-term care institution at which the respondent is receiving care may not be appointed
10 as guardian unless the owner, operator or employee is related to the respondent by blood,
11 marriage or adoption.

12 **§5-310. Order of appointment**

13 **1. Order contents.** A court order appointing a guardian for an adult must clearly:

14 A. Include a finding that clear and convincing evidence has established that the
15 identified needs of the respondent cannot be met by a protective arrangement instead
16 of guardianship or other less restrictive alternatives, including use of appropriate
17 supportive services, technological assistance or supported decision making;

18 B. Include a finding that clear and convincing evidence established that the
19 respondent was given proper notice of the hearing on the petition;

20 C. State whether the adult subject to guardianship retains the right to vote and, if the
21 adult does not retain the right to vote, include findings that support removing that
22 right, which must include a finding that the adult cannot communicate, with or
23 without support, a specific desire to participate in the voting process; and

24 D. State whether the adult subject to guardianship retains the right to marry and, if
25 the adult's right to marry is subject to conditions or if the adult does not retain the
26 right to marry, include findings that support the conditions on that right or the
27 removal of that right.

28 **2. Rights retained.** An adult subject to guardianship retains the right to vote unless
29 the order under subsection 1 includes the findings required by subsection 1, paragraph C.
30 An adult subject to guardianship retains the right to marry unless the order under
31 subsection 1 includes the findings required by subsection 1, paragraph D.

32 **3. Basis for full guardianship.** A court order establishing a full guardianship for an
33 adult clearly must state the basis for granting a full guardianship and include specific
34 findings that support the conclusion that a limited guardianship would not meet the
35 functional needs of the adult subject to guardianship.

36 **4. Limited guardianship; powers granted to guardian.** A court order establishing
37 a limited guardianship for an adult must state clearly the powers granted to the guardian.

38 **5. Notice; access to reports and plans.** The court shall, as part of any order
39 establishing a guardianship for an adult, identify any person that subsequently is entitled
40 to:

41 A. Notice of the rights of the adult subject to guardianship;

1 B. Notice of a change in the primary dwelling of the adult subject to guardianship;

2 C. Notice that the guardian has delegated:

3 (1) The power to manage the care of the adult subject to guardianship;

4 (2) The power to make decisions about where the adult subject to guardianship
5 lives;

6 (3) The power to make major medical decisions on behalf of the adult subject to
7 guardianship;

8 (4) Any power that requires court approval under section 5-315; or

9 (5) Substantially all powers of the guardian.

10 D. Notice that the guardian will be unavailable to visit the adult subject to
11 guardianship for more than 2 months or unable to perform the guardian's duties for
12 more than one month;

13 E. A copy of the guardian's report and plan;

14 F. Access to court records pertaining to the guardianship;

15 G. Notice of the death or significant change in the condition of the adult subject to
16 guardianship;

17 H. Notice that the court has limited or modified the powers of the guardian; and

18 I. Notice of the guardian's removal.

19 **6. Entitled to notice; exceptions.** A spouse, a domestic partner and the adult
20 children of the adult subject to guardianship are entitled to notice under subsection 5
21 unless the court determines notice would be contrary to the preferences or prior directions
22 of the adult subject to guardianship or not in the best interest of the adult.

23 **§5-311. Notice of order of appointment; rights**

24 A guardian appointed under section 5-309 shall give to the adult subject to
25 guardianship and to all other persons given notice under section 5-303 a copy of the order
26 of appointment, together with a notice of the right to request termination or modification.
27 The order and notice must be given not later than 14 days after the appointment.

28 **§5-312. Emergency guardian**

29 **1. Basis for emergency guardianship.** On petition by a person interested in an
30 adult's welfare or on its own after a petition has been filed under section 5-302, the court
31 may appoint an emergency guardian for the adult if the court finds:

32 A. Appointment of an emergency guardian is likely to prevent substantial harm to
33 the adult's physical health, safety or welfare;

34 B. No other person appears to have authority and willingness to act in the
35 circumstances; and

36 C. There is reason to believe that a basis for appointment of a guardian under section
37 5-301 may exist.

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2. Limited time and powers. The duration of authority of an emergency guardian for an adult may not exceed 60 days and the emergency guardian may exercise only the powers specified in the order. The emergency guardian's authority may be extended once for not more than 120 days if the court finds that the conditions for appointment of an emergency guardian in subsection 1 continue.

3. Notice before petition. Prior to filing a petition under this section, notice must be provided as follows.

A. The petitioner shall provide notice orally or in writing to the following:

(1) The respondent and the respondent's spouse, parents, adult children and any domestic partner known to the court;

(2) Any person who is serving as guardian or conservator or who has care and custody of the respondent; and

(3) In case no other person is notified under subparagraph (1), at least one of the closest adult relatives of the respondent or, if there are none, an adult friend, if any can be found.

B. Notice under paragraph A must include the following information:

(1) The temporary authority that the petitioner is requesting;

(2) The location and telephone number of the court in which the petition is being filed; and

(3) The name of the petitioner and the intended date of filing.

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-309 do not apply to this section.

D. Notice is not required under this subsection in the following circumstances:

(1) Giving notice would place the respondent at substantial risk of abuse, neglect or exploitation;

(2) Notice, if provided, would not be effective; or

(3) The court determines that there is good cause not to provide notice.

E. If, prior to filing the petition, the petitioner does not provide notice as required under this subsection, the petitioner must state in the affidavit under paragraph C the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.

4. Appointment without notice and hearing. The court may appoint an emergency guardian for an adult without notice and a hearing only if the court finds from an affidavit or testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice and

1 a hearing, the court shall, not later than 48 hours after the appointment, notify the
2 respondent, the respondent's attorney and any other person as the court determines of the
3 appointment. If the respondent objects to the appointment, the court shall hold a hearing
4 within 14 days of the appointment.

5 **5. Not a determination.** Appointment of an emergency guardian under this section
6 is not a determination that the conditions required for appointment of a guardian under
7 section 5-301 have been satisfied.

8 **6. Removal; report; application.** The court may remove an emergency guardian
9 appointed under this section at any time. The emergency guardian shall make any report
10 the court requires. In other respects, the provisions of this Act concerning guardians
11 apply to an emergency guardian appointed under this section.

12 **§5-313. Duties of guardian for adult**

13 **1. Fiduciary.** A guardian for an adult is a fiduciary. Except as otherwise limited by
14 the court, a guardian for an adult shall make decisions regarding the support, care,
15 education, health and welfare of the adult subject to guardianship to the extent
16 necessitated by the adult's limitations.

17 **2. Promote self-determination.** A guardian for an adult shall promote the self-
18 determination of the adult subject to guardianship and, to the extent reasonably feasible,
19 encourage the adult to participate in decisions, act on the adult's own behalf and develop
20 or regain the capacity to manage the adult's personal affairs. In furtherance of this duty,
21 the guardian shall:

22 A. Become or remain personally acquainted with the adult subject to guardianship
23 and maintain sufficient contact with the adult, including through regular visitation, to
24 know of the adult's abilities, limitations, needs, opportunities and physical and mental
25 health;

26 B. To the extent reasonably feasible, identify the values and preferences of the adult
27 subject to guardianship and involve the adult in decisions affecting the adult,
28 including decisions about the adult's care, dwelling, activities and social interactions;
29 and

30 C. Make reasonable efforts to identify and facilitate supportive relationships and
31 services for the adult subject to guardianship.

32 **3. Reasonable care, diligence and prudence.** A guardian for an adult at all times
33 shall exercise reasonable care, diligence and prudence when acting on behalf of or
34 making decisions for the adult subject to guardianship. In furtherance of this duty, the
35 guardian shall:

36 A. Take reasonable care of the personal effects, pets and service or support animals
37 of the adult subject to guardianship and bring a proceeding for a conservatorship or
38 protective arrangement instead of conservatorship if necessary to protect the adult's
39 property;

40 B. Expend money of the adult subject to guardianship that has been received by the
41 guardian for the adult's current needs for support, care, education, health and welfare;

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C. Administer assets of the adult subject to guardianship having a value of \$5,000 or less;

D. Conserve any excess money of the adult subject to guardianship for the adult's future needs, but if a conservator has been appointed for the adult, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the adult's future needs; and

E. Monitor the quality of services, including long-term care services, provided to the adult subject to guardianship.

4. Decision of the adult. In making a decision for an adult subject to guardianship, the guardian shall make the decision the guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the adult subject to guardianship would make if able, the guardian shall consider the adult's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable by the guardian.

5. Decision in best interest of the adult. If a guardian for an adult cannot make a decision under subsection 4 because the guardian does not know and cannot reasonably determine the decision that the adult probably would make if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall act in accordance with the best interest of the adult. In determining the best interest of the adult, the guardian shall consider:

A. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult;

B. Other information the guardian believes the adult would have considered if the adult were able to act; and

C. Other factors that a reasonable person in the circumstances of the adult would consider, including consequences for others.

6. Notice to court. A guardian for an adult immediately shall notify the court if the condition of the adult subject to guardianship has changed so that the adult is capable of exercising rights previously removed.

§5-314. Powers of guardian for adult

1. Powers. Except as otherwise limited by the court, a guardian for an adult may:

A. Apply for or receive money or benefits for the support of the adult, unless a conservator has been appointed for the adult and the application or receipt is within the powers of the conservator;

B. If otherwise consistent with an order by a court with jurisdiction relating to the dwelling of the adult, establish the adult's place of dwelling;

C. Consent to medical or other care, treatment or service for the adult;

1 D. If a conservator for the adult has not been appointed, commence a proceeding,
2 including an administrative proceeding, or take other appropriate action to compel
3 another person to support the adult or pay funds for the adult's benefit;

4 E. To the extent reasonable, delegate to the adult certain responsibility for decisions
5 affecting the adult's well-being; and

6 F. Receive personally identifiable health care information concerning the adult.

7 **2. Adoption.** The court may by specific order authorize a guardian for an adult to
8 consent to the adoption of the adult.

9 **3. Specific order of court required.** The court may by specific order authorize a
10 guardian for an adult to:

11 A. Consent or withhold consent to the marriage of the adult if the adult's right to
12 marry has been removed or made subject to conditions under section 5-310;

13 B. Petition for divorce, dissolution or annulment of marriage of the adult or for a
14 declaration of invalidity of the adult's marriage; or

15 C. Support or oppose a petition for divorce, dissolution or annulment of marriage of
16 the adult or for a declaration of invalidity of the adult's marriage.

17 **4. Court's consideration.** In determining whether to authorize a power under
18 subsection 2 or 3, the court shall consider whether the underlying act would be in
19 accordance with the adult's preferences, values and prior directions and whether the
20 underlying act would be in the best interest of the adult.

21 **5. Duties with respect to dwelling.** In exercising the guardian's power under
22 subsection 1, paragraph B to establish the dwelling of the adult subject to guardianship, a
23 guardian shall:

24 A. Select a residential setting the guardian believes the adult would select if the adult
25 were able, in accordance with the decision-making standard in section 5-313,
26 subsections 4 and 5. If the guardian does not know and cannot reasonably determine
27 what setting the adult subject to guardianship probably would choose if able, or the
28 guardian reasonably believes the decision the adult would make would unreasonably
29 harm or endanger the welfare or personal or financial interests of the adult, the
30 guardian shall choose in accordance with section 5-313, subsection 5 a residential
31 setting that is consistent with the best interest of the adult;

32 B. In selecting among residential settings, give priority to a residential setting that is
33 in a location that will allow the adult subject to guardianship to interact with persons
34 important to the adult and meet the adult's needs in the least restrictive manner
35 reasonably feasible unless doing so would be inconsistent with the decision-making
36 standard in section 5-313, subsections 4 and 5;

37 C. Not later than 30 days after a change in the dwelling of the adult subject to
38 guardianship, give notice of the change to the court, the adult subject to guardianship
39 and any person identified as entitled to the notice in the court order appointing the
40 guardian or a subsequent order. The notice must include the address and nature of
41 the new dwelling and state whether the adult subject to guardianship received
42 advance notice of the change and whether the adult objected to the change;

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D. Establish or move the permanent place of dwelling of an adult subject to guardianship to a nursing home, mental health facility or other facility that places restrictions on the individual's ability to leave or have visitors only if:

(1) The establishment or move is set forth in the guardian's plan;

(2) The court authorizes the establishment or move; or

(3) Notice of the establishment or move is given at least 14 days before the establishment or move to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order and no objection has been filed;

E. Establish or move the place of dwelling of an adult subject to guardianship outside this State only if consistent with the guardian's plan and authorized by the court by specific order; and

F. Take action that would result in the sale of or surrender the lease to the primary dwelling of the adult subject to guardianship only if:

(1) The action is specifically set forth in the guardian's plan;

(2) The court authorizes the action by specific order; or

(3) Notice of the action is given at least 14 days before the action to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order and no objection has been filed.

6. Duties with respect to health care. In exercising the guardian's power under subsection 1, paragraph C to make health care decisions, a guardian shall:

A. Involve the adult in decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the adult in understanding the risks and benefits of health care options;

B. Defer to a decision by an agent under a power of attorney for health care or an advance health care directive executed by the adult and cooperate to the extent feasible with the agent making the decision; and

C. Take into account:

(1) The risks and benefits of treatment options; and

(2) The current and previous wishes and values of the adult, if known or reasonably ascertainable by the guardian.

§5-315. Special limitations on guardian's power

1. Limitations; health care; finances. Unless authorized by the court by specific order, a guardian for an adult does not have the power to revoke or amend a power of attorney for health care or an advance health care directive or power of attorney for finances executed by the adult. If a power of attorney for health care or an advance health care directive is in effect, unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of the guardian and the guardian shall

1 cooperate with the agent to the extent feasible. If a power of attorney for finances is in
2 effect, unless there is a court order to the contrary, a decision by the agent that the agent
3 is authorized to make under the power of attorney for finances takes precedence over that
4 of the guardian and the guardian shall cooperate with the agent to the extent feasible.

5 **2. Commitment to mental health facility.** A guardian for an adult may not initiate
6 the commitment of the adult to a mental health facility except in accordance with the
7 State's procedure for involuntary civil commitment under Title 34-B, chapter 3,
8 subchapter 4, article 3.

9 **3. Restrictions on contact.** A guardian for an adult may not restrict the ability of
10 the adult to communicate, visit or interact with others, including receiving visitors or
11 making or receiving telephone calls, personal mail or electronic communications,
12 including through social media, or participating in social activities, unless:

13 A. Authorized by the court by specific order;

14 B. A protective order or a protective arrangement instead of guardianship is in effect
15 that limits contact between the adult and a person; or

16 C. The guardian has good cause to believe restriction is necessary because
17 interaction with the person poses a risk of significant physical, psychological or
18 financial harm to the adult and the restriction is:

19 (1) For a period of not more than 7 business days if the person has a family or
20 preexisting social relationship with the adult; or

21 (2) For a period of not more than 60 days if the person does not have a family or
22 preexisting social relationship with the adult.

23 **§5-316. Guardian's plan**

24 **1. Plan; revision.** The petitioner for appointment of a guardian for an adult shall file
25 with the petition a plan for the care of the adult. When there is a subsequent change in
26 circumstances, or the guardian seeks to deviate significantly from the plan previously
27 filed, the guardian shall file with the court a revised plan for the care of the adult. The
28 plan must be based on the needs of the adult and take into account the best interest of the
29 adult as well as the adult's preferences, values and prior directions, to the extent known to
30 or reasonably ascertainable by the guardian. The plan must identify:

31 A. The living arrangement, services and supports the guardian expects to arrange,
32 facilitate or continue for the adult;

33 B. Social and educational activities the guardian expects to facilitate on behalf of the
34 adult;

35 C. Any person with whom the adult has a relationship and any plan the guardian has
36 for facilitating visits with the person;

37 D. The anticipated nature and frequency of the guardian's visits and communication
38 with the adult;

39 E. Goals for the adult including any goal related to the restoration of the adult's rights
40 and how the guardian anticipates achieving the goals;

1 F. Whether the adult already has a plan in place and, if so, whether the guardian's
2 plan is consistent with the adult's plan; and

3 G. A statement or list of the amount the guardian proposes to charge for each service
4 the guardian anticipates providing to the adult.

5 **2. Notice of revised plan.** A guardian shall give notice of the filing of a revised plan
6 under subsection 1, along with a copy of the plan, to the adult subject to guardianship, all
7 persons entitled to notice under section 5-310, subsection 5 or a subsequent order and
8 other persons as the court determines. The notice must include a statement of the right to
9 object to the revised plan and be given not later than 14 days after the filing.

10 **3. Objection to revised plan.** An adult subject to guardianship and any person
11 entitled under subsection 2 to receive notice and a copy of the guardian's plan may object
12 to the revised plan.

13 **4. Court review of plan or revised plan; approval.** The court shall review a
14 guardian's plan or revised plan filed under subsection 1. In deciding whether to approve
15 the plan or the revised plan the court shall consider an objection under subsection 3 and
16 whether the plan or revised plan is consistent with the guardian's duties and powers under
17 sections 5-313 and 5-314. The court may schedule a hearing on any revised plan
18 submitted and may not approve any revised plan until 30 days after its filing.

19 **5. Copy of approved plan.** After a guardian's plan under this section is approved by
20 the court, the guardian shall provide a copy of the plan to the adult subject to
21 guardianship, all persons entitled to notice under section 5-310, subsection 5 or a
22 subsequent order and other persons as the court determines.

23 **§5-317. Guardian's report; monitoring of guardianship**

24 **1. Report; contents.** A guardian for an adult at least annually shall submit to the
25 court a report in a record regarding the condition of the adult and accounting for money
26 and other property in the guardian's possession or subject to the guardian's control. Each
27 report must state or contain:

28 A. The mental, physical and social condition of the adult;

29 B. The living arrangements of the adult during the reporting period;

30 C. A summary of the supported decision making, technological assistance, medical
31 services, educational and vocational services and other supports and services
32 provided to the adult and the guardian's opinion as to the adequacy of the adult's care;

33 D. A summary of the guardian's visits with the adult, including the dates of the visits;

34 E. Action taken on behalf of the adult;

35 F. The extent to which the adult has participated in decision making;

36 G. If the adult is living in a mental health facility or living in a facility that provides
37 the adult with health care or other personal services, whether the guardian considers
38 the facility's current plan for support, care, treatment or habilitation consistent with
39 the adult's preferences, values, prior directions and best interest;

1 H. Anything of more than de minimis value that the guardian, any individual who
2 resides with the guardian or the spouse, domestic partner, parent, child or sibling of
3 the guardian has received from an individual providing goods or services to the adult;

4 I. If the guardian has delegated powers to an agent, the powers delegated and the
5 reason for the delegation;

6 J. Any business relation the guardian has with a person the guardian has paid or a
7 person that has benefited from the property of the adult;

8 K. A copy of the guardian's most recent plan and a statement whether the guardian
9 has deviated from the plan and, if so, how the guardian has deviated and why;

10 L. Plans for future care and support;

11 M. A recommendation as to the need for continued guardianship and any
12 recommended change in the scope of the guardianship; and

13 N. Whether any coguardian or successor guardian appointed to serve when a
14 designated future event occurs is alive and able to serve.

15 **2. Appointment of visitor.** The court may appoint a visitor to review a report
16 submitted under this section, interview the guardian or adult subject to guardianship or
17 investigate any other matter involving the guardianship.

18 **3. Notice of filing of report; copy.** Notice of the filing of a guardian's report under
19 this section, together with a copy of the report, must be given to the adult subject to
20 guardianship, all persons entitled to notice under section 5-310, subsection 5 or a
21 subsequent order and any other person as the court determines. The notice and report
22 must be given not later than 14 days after the filing of the report.

23 **4. System to monitor reports.** The court shall establish a system for monitoring
24 reports submitted under this section and review each report at least annually to determine
25 whether:

26 A. The report provides sufficient information to establish the guardian has complied
27 with the guardian's duties;

28 B. The guardianship should continue; and

29 C. The guardian's requested fees, if any, should be approved.

30 **5. Noncompliance; modification or termination.** If the court determines there is
31 reason to believe a guardian for an adult has not complied with the guardian's duties or
32 the guardianship should be modified or terminated, the court:

33 A. Shall notify the adult, the guardian and all persons entitled to notice under section
34 5-310, subsection 5 or a subsequent order;

35 B. May require additional information from the guardian;

36 C. May appoint a visitor to interview the adult or guardian or investigate any matter
37 involving the guardianship; and

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D. May consider removing the guardian under section 5-318 or terminating the guardianship or changing the powers of the guardian or other terms of the guardianship under section 5-319.

6. Fees not reasonable. If the court has reason to believe that fees requested by a guardian for an adult are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

7. Approval of report. A guardian for an adult may petition the court for approval of a report filed under this section. The court after review may approve the report. If, after notice and hearing, the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

§5-318. Removal of guardian for adult; appointment of successor

1. Removal; successor. The court may remove a guardian for an adult for failure to perform the guardian's duties or for other good cause and appoint a successor guardian to assume the duties of guardian.

2. Hearing. The court shall conduct a hearing to determine whether to remove a guardian for an adult and appoint a successor on:

A. Petition of the adult, the guardian or a person interested in the welfare of the adult that contains allegations that, if true, would support a reasonable belief that removal of the guardian and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. Communication from the adult, the guardian or a person interested in the welfare of the adult that supports a reasonable belief that removal of the guardian and appointment of a successor may be appropriate; or

C. Determination by the court that a hearing would be in the best interest of the adult.

3. Notice. Notice of a petition under subsection 2, paragraph A must be given to the adult subject to guardianship, the guardian and such other persons as the court determines.

4. Attorney for the adult. An adult subject to guardianship who seeks to remove the guardian and have a successor appointed has a right to choose an attorney to represent the adult. If the adult subject to guardianship is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-305. The court shall award reasonable attorney's fees to the attorney for the adult as provided in section 5-119.

5. Procedure to select successor. In selecting a successor guardian of an adult subject to guardianship, the court shall follow the procedures under section 5-309.

6. Notice of appointment of successor. Not later than 30 days after appointing a successor guardian, the court shall give notice of the appointment to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order.

1 **§5-319. Termination or modification of guardianship for adult**

2 **1. Petition for termination or modification.** An adult subject to guardianship, the
3 guardian for the adult or a person interested in the welfare of the adult may petition for:

4 A. Termination of the guardianship on the ground that a basis for appointment under
5 section 5-301 does not exist or termination would be in the best interest of the adult,
6 or for other good cause; or

7 B. Modification of the guardianship on the ground that the extent of protection or
8 assistance granted is not appropriate, or for other good cause.

9 **2. Hearing.** The court shall conduct a hearing to determine whether termination or
10 modification of a guardianship of an adult is appropriate on:

11 A. Petition under subsection 1 that contains allegations that, if true, would support a
12 reasonable belief that termination or modification of the guardianship may be
13 appropriate, but the court may decline to hold a hearing if a petition based on the
14 same or substantially similar facts was filed within the preceding 6 months;

15 B. Communication from the adult, the guardian or a person interested in the welfare
16 of the adult that supports a reasonable belief that termination or modification of the
17 guardianship may be appropriate, including because of a change in the functional
18 needs of the adult or supports or services available to the adult;

19 C. A report from a guardian or conservator that indicates that termination or
20 modification may be appropriate because the functional needs of the adult or supports
21 or services available to the adult have changed or a protective arrangement instead of
22 guardianship or other less restrictive alternatives for meeting the adult's needs are
23 available; or

24 D. A determination by the court that a hearing would be in the best interest of the
25 adult.

26 **3. Notice.** Notice of a petition under subsection 2, paragraph A must be given to the
27 adult subject to guardianship, the guardian and such other persons as the court
28 determines.

29 **4. Termination.** On presentation of prima facie evidence for termination of a
30 guardianship for an adult, the court shall order termination unless it is proven that the
31 basis for appointment of a guardian under section 5-301 is satisfied.

32 **5. Modification.** The court shall modify the powers granted to a guardian for an
33 adult if the powers are excessive or inadequate due to a change in the abilities or
34 limitations of the adult, the adult's supports or services or other circumstances.

35 **6. Procedure.** Unless the court otherwise orders for good cause, before terminating
36 or modifying a guardianship for an adult, the court shall follow the same procedures to
37 safeguard the rights of the adult that apply to a petition for guardianship.

38 **7. Attorney for the adult.** An adult subject to guardianship who seeks to terminate
39 or modify the terms of the guardianship has a right to choose an attorney to represent the
40 adult in this matter. If the adult is not represented by an attorney, the court shall appoint

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an attorney under the same conditions as in section 5-305. The court shall award reasonable attorney's fees to the attorney for the adult as provided in section 5-119.

PART 4

CONSERVATORSHIP

§5-401. Basis for appointment of conservator

1. Conservator for minor; findings. On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of a minor, if the court finds by a preponderance of evidence that:

A. The minor owns money or property requiring management or protection that otherwise cannot be provided; or

B. Appointment of a conservator is in the best interest of the minor and:

(1) If the minor has a parent, the court gives weight to any recommendation of the minor's parent whether an appointment is in the best interest of the minor; and

(2) Either:

(a) The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(b) Appointment is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor.

2. Conservator for adult; findings. On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of an adult if the court determines by clear and convincing evidence that:

A. The adult is unable to manage property or financial affairs because:

(1) Of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of appropriate supportive services, technological assistance and supported decision making; or

(2) The adult is missing, detained or unable to return to the United States;

B. Appointment is necessary to:

(1) Avoid harm to the adult or significant dissipation of the property of the adult; or

(2) Obtain or provide money needed for the support, care, education, health or welfare of the adult, or of an individual entitled to the adult's support, and protection is necessary or desirable to obtain or provide money for the purpose; and

C. The respondent's identified needs cannot be met by less restrictive alternatives.

3. Powers. The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and enter orders that encourage the

1 development of the respondent's maximum self-determination and independence. The
2 court may not establish a full conservatorship if a limited conservatorship, protective
3 arrangement instead of conservatorship or other less restrictive alternatives would meet
4 the needs of the respondent.

5 **§5-402. Petition for appointment of conservator**

6 **1. Petitioner.** The following may petition for the appointment of a conservator:

7 A. The individual for whom the order is sought;

8 B. A person interested in the estate, financial affairs or welfare of the individual,
9 including a person that would be adversely affected by lack of effective management
10 of property and financial affairs of the individual; or

11 C. The guardian of the individual.

12 **2. Contents.** A petition under subsection 1 must set forth the petitioner's name,
13 principal residence, current street address, if different, relationship to the respondent and
14 interest in the appointment and state or contain the following to the extent known:

15 A. The respondent's name, age, principal residence, current street address, if
16 different, and, if different, address of the dwelling in which it is proposed the
17 respondent will reside if the petition is granted;

18 B. The name and address of the respondent's:

19 (1) Spouse or domestic partner or, if the respondent has none, any adult with
20 whom the respondent has shared household responsibilities for more than 6
21 months in the 12-month period before the filing of the petition;

22 (2) Adult children or, if the respondent has none, each parent and adult sibling of
23 the respondent or, if the respondent has none, at least one adult nearest in kinship
24 to the respondent who can be found with reasonable diligence; and

25 (3) Adult stepchildren whom the respondent actively parented during the
26 stepchildren's minor years and with whom the respondent had an ongoing
27 relationship within 2 years before filing of the petition;

28 C. The name and current address of each of the following, if applicable:

29 (1) A person responsible for the care or custody of the respondent;

30 (2) Any attorney currently representing the respondent;

31 (3) The representative payee appointed by the United States Social Security
32 Administration for the respondent;

33 (4) A guardian or conservator acting for a respondent in this State or another
34 jurisdiction;

35 (5) A trustee or custodian of a trust or custodianship of which the respondent is a
36 beneficiary;

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(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care or an advance health directive in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition;

(10) Any proposed conservator, including a person nominated by the respondent if the respondent is 14 years of age or older; and

(11) If the individual for whom a conservator is sought is a minor:

(a) An adult with whom the minor resides if not otherwise listed; and

(b) Any person not otherwise listed that had the care or custody of the minor for 60 or more days during the 2 years preceding the filing of the petition or any person that had the primary care or custody of the minor for at least 730 days during the 5 years preceding the filing of the petition;

D. A general statement of the respondent's property with an estimate of its value, and the source and amount of other anticipated income or receipts;

E. The reason conservatorship is necessary, including a brief description of:

(1) The nature and extent of the respondent's alleged need;

(2) If the petition alleges the respondent is missing, detained or unable to return to the United States, the relevant circumstances, including the time and nature of the disappearance or detention and any search or inquiry concerning the respondent's whereabouts;

(3) Any protective arrangement instead of conservatorship or other less restrictive alternatives for meeting the respondent's alleged need which have been considered or implemented;

(4) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(5) The reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's need;

F. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings;

G. Whether the petitioner seeks a limited conservatorship or a full conservatorship;

H. If the petitioner seeks a full conservatorship, the reason a limited conservatorship or protective arrangement instead of conservatorship is not appropriate;

1 I. If the petition includes the name of a proposed conservator, the reason the
2 proposed conservator should be appointed; and

3 J. If the petition is for a limited conservatorship, a description of the property to be
4 placed under the conservator's control and any other requested limitation on the
5 authority of the conservator.

6 3. Attorney for petitioner. A petition under subsection 1 must state the name,
7 address, telephone number and bar registration number of an attorney representing the
8 petitioner, if any.

9 **§5-403. Notice and hearing**

10 1. Date, time and place for hearing. On receipt of a petition for appointment of a
11 conservator under section 5-402, the court shall set a date, time and place for hearing the
12 petition.

13 2. Notice to respondent. A copy of a petition under section 5-402 and notice of a
14 hearing on the petition must be served personally on the respondent at least 14 days
15 before the hearing. If the respondent's whereabouts are unknown or personal service
16 cannot be made, service on the respondent must be made by substituted service or
17 publication. The notice must inform the respondent of the respondent's rights at the
18 hearing, including the right to an attorney and to attend the hearing. The notice must also
19 include a description of the nature, purpose and consequences of granting the petition.
20 Failure to serve the respondent with notice substantially complying with this subsection
21 precludes the court from granting the petition.

22 3. Notice to others. In a proceeding on a petition under section 5-402, notice of the
23 hearing also must be given to the persons required to be listed in the petition under
24 section 5-402, subsection 3, paragraphs A to C and any other person interested in the
25 respondent's welfare as the court determines at least 14 days prior to the hearing. Failure
26 to give notice under this subsection does not preclude the court from appointing a
27 conservator.

28 4. Notice of petition after order. Notice of a hearing on a petition that is filed after
29 the appointment of a conservator and that seeks an order under this Part, together with a
30 copy of the petition, must be given to the individual subject to conservatorship if the
31 individual is 14 years of age or older and is not missing, detained or unable to return to
32 the United States, the conservator and any other person as the court determines.

33 **§5-404. Petition for protective order**

34 1. Petition. The person to be protected, any person who is interested in the estate,
35 affairs or welfare of the person to be protected, including the parent, guardian, custodian
36 or domestic partner of the person to be protected, or any person who would be adversely
37 affected by lack of effective management of the property and affairs of the person to be
38 protected may petition for a protective order.

39 2. Contents of petition. A petition under subsection 1 must contain such
40 information and be in such form as the Supreme Judicial Court by rule provides.

41 3. Purpose; priority scheduling. A petition for a protective order made under oath
42 may be used to initiate court consideration, accounting and remediation of the actions of

1 any individual responsible for the management of the property or affairs of another. In
2 the case of an emergency, the petition must be given priority scheduling by the court.

3 A. The petition must include the following information and may include other
4 information required by rule:

5 (1) Name, address and telephone number of the petitioner;

6 (2) Name, address and telephone number of the principal;

7 (3) Name, address and telephone number of the person with actual or apparent
8 authority to manage the property or affairs of the principal;

9 (4) Facts concerning the extent and nature of the principal's inability to manage
10 the principal's property or affairs effectively and any facts supporting an
11 allegation that an emergency exists;

12 (5) Facts concerning the extent and nature of the actual or apparent agent's lack
13 of management of the principal's property or affairs. If applicable, facts
14 describing how the petitioner has already been adversely affected by the lack of
15 management of the principal's property or affairs; and

16 (6) Names, addresses and relationships of all persons who are required to receive
17 notice of the petition.

18 B. This subsection does not limit any other purpose for the use of a petition for a
19 protective order or any other remedy available to the court.

20 **§5-405. Appointment and role of visitor**

21 **1. Visitor for minor respondent.** If the respondent in a proceeding to appoint a
22 conservator is a minor, the court may appoint a visitor to investigate a matter related to
23 the petition or to inform the minor or a parent of the minor about the petition or a related
24 matter.

25 **2. Visitor for adult respondent.** If the respondent in a proceeding to appoint a
26 conservator is an adult, the court shall appoint a visitor unless the adult is represented by
27 an attorney. The duties and reporting requirements of the visitor are limited to the relief
28 requested in the petition. The visitor must be an individual having training or experience
29 in the type of abilities, limitations and needs alleged in the petition.

30 **3. Duties of visitor for adult respondent.** A visitor appointed for an adult under
31 subsection 2 shall interview the respondent in person and, in a manner the respondent is
32 best able to understand:

33 A. Explain to the respondent the substance of the petition, the nature, purpose and
34 effect of the proceeding, the respondent's rights at the hearing and the general powers
35 and duties of a conservator;

36 B. Determine the respondent's views about the appointment sought by the petitioner,
37 including views about a proposed conservator, the conservator's proposed powers and
38 duties and the scope and duration of the proposed conservatorship;

1 C. Inform the respondent of the respondent's right to employ and consult with an
2 attorney at the respondent's expense and the right to request a court-appointed
3 attorney; and

4 D. Inform the respondent that all costs and expenses of the proceeding, including the
5 respondent's attorney's fees, may be paid from the respondent's assets.

6 **4. Additional duties.** In addition to the duties imposed by subsection 3, the visitor
7 appointed for an adult under subsection 2 shall:

8 A. Interview the petitioner and proposed conservator, if any;

9 B. Review financial records of the respondent, if relevant to the visitor's
10 recommendation under subsection 5, paragraph B;

11 C. State whether the respondent's needs could be met by a less restrictive alternative,
12 including a protective arrangement instead of conservatorship and, if so, identify the
13 less restrictive alternative; and

14 D. Investigate the allegations in the petition and any other matter relating to the
15 petition as the court directs.

16 **5. Report.** A visitor appointed for an adult under subsection 2 shall file a report in a
17 record with the court at least 10 days before any hearing on the petition. The report must
18 include:

19 A. Whether or not the respondent wants to challenge any aspect of the proceeding or
20 to seek any limitation on the conservator's powers;

21 B. A recommendation whether an attorney should be appointed to represent the
22 respondent;

23 C. A recommendation:

24 (1) Regarding the appropriateness of conservatorship, or whether a protective
25 arrangement instead of conservatorship or other less restrictive alternatives for
26 meeting the respondent's needs are available;

27 (2) If a conservatorship is recommended, whether it should be full or limited;
28 and

29 (3) If a limited conservatorship is recommended, the powers to be granted to the
30 conservator and the property that should be placed under the conservator's
31 control;

32 D. A statement of the qualifications of the proposed conservator and whether the
33 respondent approves or disapproves of the proposed conservator;

34 E. A recommendation whether a further professional evaluation under section 5-407
35 is necessary;

36 F. A statement whether the respondent is able to attend a hearing at the location court
37 proceedings are typically conducted;

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G. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and

H. Any other matter as the court directs.

§5-406. Appointment and role of attorney

1. Attorney for respondent. The court shall appoint an attorney to represent a respondent in a proceeding on a petition under section 5-402 if:

A. Requested by the respondent;

B. Recommended by the visitor;

C. The court determines that the respondent needs representation; or

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed conservator's powers.

2. Duties of attorney. The attorney representing the respondent in a proceeding on a petition under section 5-402 shall:

A. Make reasonable efforts to ascertain the respondent's wishes;

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests.

3. Attorney for parent of minor. The court may appoint an attorney to represent a parent of a minor who is the subject of a proceeding on a petition under section 5-402 if:

A. The parent objects to appointment of a conservator;

B. The court determines that counsel is needed to ensure that consent to appointment of a conservator is informed; or

C. The court otherwise determines the parent needs representation.

§5-407. Professional evaluation

1. Evaluation; report. The respondent must be examined by a licensed physician or psychologist who is acceptable to the court, who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and who will not be advantaged or disadvantaged by a decision to grant the petition and does not otherwise have a conflict of interest. The individual conducting the evaluation shall file a report in a record with the court at least 10 days before any hearing on the petition. Unless otherwise directed by the court, the report must contain:

A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations with regard to the management of the respondent's property and financial affairs;

B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;

1 C. A prognosis for improvement with regard to the ability to manage the
2 respondent's property and financial affairs; and

3 D. The date of the examination on which the report is based.

4 2. Right to decline. The respondent has the right to decline to participate in an
5 evaluation ordered under subsection 1.

6 **§5-408. Attendance and rights at hearing**

7 1. Attendance by respondent required. Except as otherwise provided in
8 subsection 2, a hearing under section 5-403 may proceed only if the respondent attends
9 the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the
10 location court proceedings typically are conducted, the court shall make reasonable
11 efforts to hold the hearing at an alternative location convenient to the respondent or allow
12 the respondent to attend the hearing using real-time audiovisual technology.

13 2. Hearing without respondent; findings. A hearing under section 5-403 may
14 proceed without the respondent in attendance if the court finds by clear and convincing
15 evidence that:

16 A. The respondent consistently and repeatedly has refused to attend the hearing after
17 having been fully informed of the right to attend the hearing and the potential
18 consequences of failing to do so;

19 B. There is no practicable way for the respondent to attend and participate in the
20 hearing even with appropriate supportive services and technological assistance; or

21 C. The respondent is a minor who has received proper notice and attendance would
22 be harmful to the minor.

23 3. Assistance to respondent. The respondent may be assisted in a hearing under
24 section 5-403 by a person or persons of the respondent's choosing, assistive technology or
25 an interpreter or translator, or a combination of these supports. If assistance would
26 facilitate the respondent's participation in the hearing but is not otherwise available to the
27 respondent, the court shall make reasonable efforts to provide it.

28 4. Attorney for respondent. The respondent has a right to choose an attorney to
29 represent the respondent at a hearing under section 5-403.

30 5. Rights of respondent at hearing. At a hearing under section 5-403, the
31 respondent may:

32 A. Present evidence and subpoena witnesses and documents;

33 B. Examine witnesses, including any court-appointed evaluator and the visitor; and

34 C. Otherwise participate in the hearing.

35 6. Attendance by proposed conservator required. Unless excused by the court for
36 good cause, the proposed conservator shall attend a hearing under section 5-403.

37 7. Closed upon request; good cause. A hearing under section 5-403 must be closed
38 on request of the respondent and a showing of good cause.

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1 **8. Participation; best interest of respondent.** Any person may request to
2 participate in a hearing under section 5-403. The court may grant the request, with or
3 without hearing, on determining that the best interest of the respondent will be served.
4 The court may attach appropriate conditions to the person's participation.

5 **§5-409. Confidentiality of records**

6 **1. Matter of public record; exceptions.** The existence of a proceeding for or the
7 existence of conservatorship is a matter of public record unless the court seals the record
8 after:

9 A. The respondent, the individual subject to conservatorship or the parent of a minor
10 subject to conservatorship requests the record be sealed; and

11 B. Either:

12 (1) The petition for conservatorship is dismissed; or

13 (2) The conservatorship is terminated.

14 **2. Access to records.** An individual subject to a proceeding for a conservatorship,
15 whether or not a conservator is appointed, an attorney designated by the individual and a
16 person entitled to notice under section 5-411 or a subsequent order are entitled to access
17 court records of the proceeding and resulting conservatorship, including the conservator's
18 plan and report. In addition, a person for good cause may petition the court for access to
19 court records of the conservatorship, including the conservator's plan and report. The
20 court shall grant access if access is in the best interest of the respondent or individual
21 subject to conservatorship or furthers the public interest and does not endanger the
22 welfare or financial interests of the respondent or individual.

23 **3. Reports; availability.** A report under section 5-405 of a visitor or professional
24 evaluation under section 5-407 is confidential and must be sealed on filing but is
25 available to:

26 A. The court;

27 B. The individual who is the subject of the report or evaluation, without limitation as
28 to use;

29 C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of
30 the proceeding;

31 D. An agent appointed under a power of attorney for finances in which the
32 respondent is identified as the principal, unless the court orders otherwise; and

33 E. Other persons when it is in the public interest or for a purpose the court orders for
34 good cause.

35 **§5-410. Who may be conservator; priorities**

36 **1. Priority for appointment.** Except as otherwise provided in subsection 3, the
37 court in appointing a conservator shall consider persons otherwise qualified in the
38 following order of priority:

1 A. A conservator, other than a temporary or emergency conservator, currently acting
2 for the respondent in another jurisdiction;

3 B. A person nominated as conservator by the respondent, including the respondent's
4 most recent nomination made in a power of attorney for finances;

5 C. An agent appointed by the respondent to manage the respondent's property under
6 a power of attorney for finances;

7 D. A spouse or domestic partner of the respondent; and

8 E. A family member or other individual who has exhibited special care and concern
9 for the respondent.

10 **2. Equal priority.** With respect to persons having equal priority under subsection 1,
11 the court shall select as conservator the person the court considers best qualified. In
12 determining the best qualified person, the court shall consider the potential conservator's
13 relationship with the respondent, the potential conservator's skills, the expressed wishes
14 of the respondent, the extent to which the potential conservator and the respondent have
15 similar values and preferences and the likelihood that the potential conservator will be
16 able to satisfy the duties of a conservator successfully.

17 **3. Appointment based on best interest of respondent.** The court, acting in the best
18 interest of the respondent, may decline to appoint as conservator a person having priority
19 under subsection 1 and appoint a person having a lower priority or no priority.

20 **4. Appointment prohibited; exceptions.** A person that provides paid services to
21 the respondent, or an individual who is employed by a person that provides paid services
22 to the respondent or is the spouse, domestic partner, parent or child of an individual who
23 provides or is employed to provide paid services to the respondent, may not be appointed
24 as conservator unless:

25 A. The individual is related to the respondent by blood, marriage or adoption; or

26 B. The court finds by clear and convincing evidence that the person is the best
27 qualified person available for appointment and the appointment is in the best interest
28 of the respondent.

29 **5. Long-term health care institution; exceptions.** An owner, operator or employee
30 of a long-term health care institution at which the respondent is receiving care may not be
31 appointed as conservator unless the owner, operator or employee is related to the
32 respondent by blood, marriage or adoption.

33 **§5-411. Order of appointment**

34 **1. Conservator for minor; findings.** A court order appointing a conservator for a
35 minor must include findings to support appointment of a conservator and, if a full
36 conservatorship is granted, the reason a limited conservatorship would not meet the
37 identified needs of the minor.

38 **2. Conservator for adult; findings.** A court order appointing a conservator for an
39 adult must include a clear finding that:

40 A. The identified needs of the respondent cannot be met by a protective arrangement
41 instead of conservatorship or other less restrictive alternatives, including use of

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appropriate supportive services, technological assistance or supported decision making; and

B. Clear and convincing evidence established the respondent was given proper notice of the hearing on the petition.

3. Basis for full conservatorship. A court order establishing a full conservatorship for an adult clearly must state the basis for granting a full conservatorship and include specific findings to support the conclusion that a limited conservatorship would not meet the functional needs of the adult.

4. Limited conservatorship; powers granted to conservator. A court order establishing a limited conservatorship must state clearly the property placed under the control of the conservator and the powers granted to the conservator.

5. Notice; access to reports and plans. The court shall, as part of an order establishing a conservatorship, identify any person that subsequently is entitled to:

- A. Notice of the rights of the individual subject to conservatorship;
- B. Notice of a sale of or surrender of a lease to the primary dwelling of the individual subject to conservatorship;
- C. Notice that the conservator has delegated any power that requires court approval under section 5-414 or substantially all powers of the conservator;
- D. Notice that the conservator will be unavailable to perform the conservator's duties for more than one month;
- E. Copies of the conservator's plan and report;
- F. Access to court records pertaining to the conservatorship;
- G. A transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;
- H. Notice of the death or significant change in the condition of the individual subject to conservatorship;
- I. Notice that the court has limited or modified the powers of the conservator; and
- J. Notice of the conservator's removal.

6. Entitled to notice; exceptions. If an individual subject to conservatorship is an adult, the spouse, domestic partner and adult children of the adult subject to conservatorship are entitled under subsection 5 to notice unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to conservatorship or not in the best interest of the adult subject to conservatorship.

7. Notice when minor is subject to conservatorship. If an individual subject to conservatorship is a minor, each parent and adult sibling of the minor is entitled under subsection 5 to notice unless the court determines notice would not be in the best interest of the minor.

1 **§5-412. Notice of order of appointment; rights**

2 **1. Notice of appointment, order; rights.** A conservator appointed under section
3 5-401 shall give to the individual subject to conservatorship and to all other persons given
4 notice under section 5-403 a copy of the order of appointment, together with a notice of
5 the right to request termination or modification. The order and notice must be given not
6 later than 14 days after the appointment.

7 **2. Notice if person missing.** If a conservator is appointed under section 5-401,
8 subsection 2, paragraph A, subparagraph (2) and the individual subject to conservatorship
9 is missing, notice under subsection 1 to the individual is not required.

10 **§5-413. Emergency conservator**

11 **1. Appointment; findings.** On petition by a person interested in an individual's
12 welfare or on its own after a petition has been filed under section 5-402, the court may
13 appoint an emergency conservator for the individual if the court finds:

14 A. Appointment of an emergency conservator is likely to prevent substantial and
15 irreparable harm to the respondent's property or financial interests;

16 B. No other person appears to have authority and willingness to act in the
17 circumstances; and

18 C. There is reason to believe that a basis for appointment of a conservator under
19 section 5-401 may exist.

20 **2. Duration of emergency conservatorship.** The duration of authority of an
21 emergency conservator may not exceed 60 days and the emergency conservator may
22 exercise only the powers specified in the order. The emergency conservator's authority
23 may be extended once for not more than 120 days if the court finds that the conditions for
24 appointment of an emergency conservator in subsection 1 continue.

25 **3. Notice before petition.** Prior to filing a petition under this section, notice must be
26 provided as follows.

27 A. The petitioner shall provide notice orally or in writing to the following:

28 (1) The respondent and the respondent's spouse, parents, adult children and any
29 domestic partner known to the court;

30 (2) Any person who is serving as guardian or conservator or who has care and
31 custody of the respondent; and

32 (3) In case no other person is notified under subparagraph (1), at least one of the
33 closest adult relatives of the respondent or, if there are none, an adult friend, if
34 any can be found.

35 B. Notice under paragraph A must include the following information:

36 (1) The temporary authority that the petitioner is requesting;

37 (2) The location and telephone number of the court in which the petition is being
38 filed; and

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(3) The name of the petitioner and the intended date of filing.

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-410 do not apply to this section.

D. Notice is not required under this subsection in the following circumstances:

(1) Giving notice would place the respondent at substantial risk of abuse, neglect or exploitation;

(2) Notice, if provided, would not be effective; or

(3) The court determines that there is good cause not to provide notice.

E. If, prior to filing the petition, the petitioner does not provide notice as required under this subsection, the petitioner must state in the affidavit under paragraph C the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.

4. Appointment without notice and hearing. The court may appoint an emergency conservator without notice and a hearing only if the court finds from an affidavit or testimony that the respondent's property or financial interests will be substantially and irreparably harmed before a hearing on the appointment can be held. If the court appoints an emergency conservator without notice and a hearing, the court shall, not later than 48 hours after the appointment, notify the respondent, the respondent's attorney and other persons as the court determines of the appointment. If a person objects to the appointment, the court shall hold a hearing within 14 days.

5. Not a determination. Appointment of an emergency conservator under this section is not a determination that the conditions required for appointment of a conservator under section 5-401 have been satisfied.

6. Removal; report; application. The court may remove an emergency conservator appointed under this section at any time. The emergency conservator shall make any report the court requires. In other respects, the provisions of this Part concerning conservators apply to an emergency conservator appointed under this section.

§5-414. Powers of conservator requiring court approval

1. Powers requiring specific authorization; notice. Except as otherwise ordered by the court, a conservator must give notice to persons entitled to notice under section 5-403, subsection 4 and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

A. Make gifts, except those of de minimis value;

B. Sell, encumber an interest in or surrender a lease to the primary dwelling of the individual subject to conservatorship;

1 C. Convey, release or disclaim contingent or expectant interests in property,
2 including marital property and any right of survivorship incident to joint tenancy;

3 D. Exercise or release a power of appointment;

4 E. Create a revocable or irrevocable trust of property of the conservatorship estate,
5 whether or not the trust extends beyond the duration of the conservatorship, or revoke
6 or amend a trust revocable by the individual subject to conservatorship;

7 F. Exercise a right to elect an option or change a beneficiary under an insurance
8 policy or annuity or surrender the policy or annuity for its cash value;

9 G. Exercise a right to an elective share in the estate of a deceased spouse or domestic
10 partner of the individual subject to conservatorship or to renounce or disclaim a
11 property interest;

12 H. Grant a creditor a priority for payment over creditors of the same or higher class
13 if the creditor is providing property or services used to meet the basic living and care
14 needs of the individual subject to conservatorship and preferential treatment
15 otherwise would be impermissible under section 5-428, subsection 5; and

16 I. Make, modify, amend or revoke the will of the individual subject to
17 conservatorship in compliance with the laws of the State governing executing wills.

18 **2. Approval based on decision of individual.** In approving a conservator's exercise
19 of the powers listed in subsection 1, the court shall consider primarily the decision the
20 individual subject to conservatorship would make if able, to the extent the decision can be
21 ascertained.

22 **3. To determine decision of individual.** To determine under subsection 2 the
23 decision the individual subject to conservatorship would make if able, the court shall
24 consider the individual's prior or current directions, preferences, opinions, values and
25 actions, to the extent actually known or reasonably ascertainable. The court also shall
26 consider:

27 A. The financial needs of the individual subject to conservatorship and individuals
28 who are in fact dependent on the individual subject to conservatorship for support,
29 and the interest of creditors;

30 B. Possible reduction of income, estate, inheritance or other tax liabilities;

31 C. Eligibility for governmental assistance;

32 D. The previous pattern of giving or level of support provided by the individual
33 subject to conservatorship;

34 E. Any existing estate plan or lack of estate plan of the individual subject to
35 conservatorship;

36 F. The life expectancy of the individual subject to conservatorship and the
37 probability that the conservatorship will terminate before the individual's death; and

38 G. Any other relevant factors.

39 **4. Power of attorney for finances.** A conservator may not revoke or amend a
40 power of attorney for finances executed by the individual subject to conservatorship. If a

1 power of attorney for finances is in effect, a decision of the agent takes precedence over
2 that of the conservator, unless there is a court order to the contrary.

3 **§5-415. Petition for order subsequent to appointment**

4 An individual subject to conservatorship or a person interested in the welfare of the
5 individual may file a petition in the court for an order:

6 **1. Bond or collateral.** Requiring the conservator to furnish bond or collateral or
7 additional bond or collateral or allowing a reduction in a bond or collateral previously
8 furnished;

9 **2. Accounting.** Requiring an accounting for the administration of the
10 conservatorship estate;

11 **3. Distribution.** Directing distribution;

12 **4. Removal; temporary or successor.** Removing the conservator and appointing a
13 temporary or successor conservator;

14 **5. Modification.** Modifying the type of appointment or powers granted to the
15 conservator, if the extent of protection or management previously granted is currently
16 excessive or insufficient to meet the individual's needs, including because the individual's
17 abilities or supports have changed;

18 **6. Inventory, plan or report.** Rejecting or modifying the conservator's inventory,
19 plan or report; or

20 **7. Other relief.** Granting other appropriate relief.

21 **§5-416. Bond or alternative asset-protection arrangement**

22 **1. Bond or alternative asset-protection arrangement required.** The court shall
23 require a conservator to furnish a bond with a surety the court specifies, or require an
24 alternative asset-protection arrangement, conditioned on faithful discharge of all duties of
25 the conservator. The court may waive the requirement only if the court finds that a bond
26 or other asset-protection arrangement is not necessary to protect the interests of the
27 individual subject to conservatorship. The court may not waive the requirement if the
28 conservator is in the business of serving as a conservator and is being paid for the
29 conservator's service except as provided by subsection 3.

30 **2. Amount of bond; collateral.** Unless the court directs otherwise, the bond
31 required under this section must be in the amount of the aggregate capital value of the
32 conservatorship estate, plus one year's estimated income, less the value of property
33 deposited under arrangement requiring a court order for its removal and real property the
34 conservator lacks power to sell or convey without specific court authorization. The court,
35 in place of surety on a bond, may accept collateral for the performance of the bond,
36 including a pledge of securities or a mortgage of real property.

37 **3. Bond not required.** A regulated financial service institution qualified to do trust
38 business in this State need not give a bond.

1 **§5-417. Terms and requirements of bond**

2 **1. Bond requirements.** The following rules apply to the bond required under
3 section 5-416.

4 A. Except as otherwise provided by the bond, the surety and the conservator are
5 jointly and severally liable.

6 B. By executing a bond provided by a conservator, a surety submits to the
7 jurisdiction of the court that issued letters of office to the conservator in a proceeding
8 pertaining to the duties of the conservator in which the surety is named as a party.
9 Notice of the proceeding must be given to the surety at the address shown in the court
10 records at the place where the bond is filed and any other address of the surety then
11 known to the person required to provide the notice.

12 C. On petition of a successor conservator or any person affected by a breach of the
13 obligation of the bond, a proceeding may be brought against a surety for breach of the
14 obligation of the bond.

15 D. A proceeding against the bond may be brought until liability under the bond is
16 exhausted.

17 **2. Proceeding against surety.** A proceeding may not be brought against a surety of
18 a bond under this section on a matter as to which a proceeding against the conservator is
19 barred.

20 **3. Notice of nonrenewal.** The surety or sureties of the bond must immediately serve
21 notice to the court and to the individual under conservatorship if the bond is not renewed
22 by the conservator.

23 **§5-418. Duties of conservator**

24 **1. Duties as fiduciary.** A conservator is a fiduciary and has a duty of prudence and
25 duty of loyalty to the individual subject to conservatorship.

26 **2. Promote self-determination.** A conservator shall promote the self-determination
27 of the individual subject to conservatorship and, to the extent feasible, encourage the
28 individual to participate in decisions, act on the individual's own behalf and develop or
29 regain the capacity to manage the individual's personal affairs.

30 **3. Decision of individual.** In making a decision on behalf of the individual subject
31 to conservatorship, the conservator shall make the decision the conservator reasonably
32 believes the individual would make if able, unless doing so would fail to preserve the
33 resources needed to maintain the individual's well-being and lifestyle or otherwise
34 unreasonably harm or endanger the welfare or personal or financial interests of the
35 individual. To determine the decision the individual would make if able, the conservator
36 shall consider the individual's prior or current directions, preferences, opinions, values
37 and actions to the extent actually known or reasonably ascertainable by the conservator.

38 **4. Best interest of individual.** If a conservator cannot make a decision under
39 subsection 3 because the conservator does not know and cannot reasonably determine the
40 decision that the individual subject to conservatorship probably would make if able, or
41 the conservator reasonably believes the decision the conservator believes the individual

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would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or otherwise would unreasonably harm or endanger the welfare of the individual, the conservator shall act in accordance with the best interest of the individual. In determining the best interest of the individual, the conservator shall consider:

A. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the individual;

B. Other information the conservator believes the individual would have considered if the individual were able to act; and

C. Other factors a reasonable person in the circumstances of the individual would consider, including consequences for others.

5. Prudent investor standard. Except when inconsistent with the conservator's duties under subsections 1 to 4, a conservator shall invest and manage the conservatorship estate as a prudent investor would, by considering:

A. The circumstances of the individual subject to conservatorship and the conservatorship estate;

B. General economic conditions;

C. The possible effect of inflation or deflation;

D. The expected tax consequences of an investment decision or strategy;

E. The role of each investment or course of action in relation to the conservatorship estate as a whole;

F. The expected total return from income and appreciation of capital;

G. The need for liquidity, regularity of income and preservation or appreciation of capital; and

H. The special relationship or value, if any, of specific property to the individual subject to conservatorship.

6. Propriety of investment and management. The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.

7. Reasonable effort to verify facts. A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

8. Special skills or expertise. A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

9. Consistent with estate plan and other instrument. In investing, selecting specific property for distribution and invoking a power of revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the

1 conservator and may examine the will or other donative, nominative or other appointive
2 instrument of the individual.

3 **10. Insurance.** A conservator shall maintain insurance on the insurable real and
4 personal property of the individual subject to conservatorship, unless the conservatorship
5 estate lacks sufficient funds to pay for insurance or a court issues an order finding:

6 A. The property lacks sufficient equity; or

7 B. Insuring the property would unreasonably dissipate the conservatorship estate or
8 otherwise not be in the best interest of the individual subject to conservatorship.

9 **11. Cooperation, power of attorney for finances.** If a power of attorney for
10 finances is in effect, a conservator shall cooperate with the agent to the extent feasible.

11 **12. Digital assets.** A conservator has access to and authority over a digital asset of
12 the individual subject to conservatorship to the extent provided by the Revised Uniform
13 Fiduciary Access to Digital Assets Act or by court order.

14 **13. Adult becomes capable.** A conservator of an adult shall notify the court if the
15 condition of the adult subject to conservatorship has changed so that the adult is capable
16 of exercising rights previously removed immediately upon learning of the change.

17 **§5-419. Conservator's plan**

18 **1. Plan; revision.** The petitioner for appointment as conservator for an adult shall
19 file with the petition a plan for protecting, managing, expending and distributing the
20 assets of the conservatorship estate. When there is a change in circumstances or when the
21 conservator seeks to deviate significantly from the conservator's plan previously filed, the
22 conservator shall file with the court a revised plan for protecting, managing, expending
23 and distributing the assets of the conservatorship estate. The plan must be based on the
24 needs of the individual subject to conservatorship and take into account the best interest
25 of the individual as well as the individual's preferences, values and prior directions, to the
26 extent known to or reasonably ascertainable by the conservator. The conservator shall
27 include in the plan:

28 A. A budget setting forth projected expenses and resources, including an estimate of
29 the total amount of fees the conservator anticipates charging per year and a statement
30 or list of the amount the conservator proposes to charge for each service the
31 conservator anticipates providing to the individual subject to conservatorship;

32 B. How the conservator will involve the individual subject to conservatorship in
33 decisions about management of the conservatorship estate;

34 C. Any step the conservator plans to take to develop or restore the ability of the
35 individual subject to conservatorship to manage the conservatorship estate; and

36 D. An estimate of the duration of the conservatorship.

37 **2. Notice of revised plan.** A conservator shall give notice of the filing of a revised
38 plan under subsection 1, along with a copy of the revised plan, to the individual subject to
39 conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a
40 subsequent order and other persons as the court determines. The notice must be given not
41 later than 14 days after the filing.

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3. Objection to revised plan. An individual subject to conservatorship and any person entitled under subsection 2 to receive notice and a copy of the conservator's revised plan may object to the revised plan.

4. Court review of plan or revised plan; approval. The court shall review a conservator's plan or revised plan filed under subsection 1. In deciding whether to approve the plan or revised plan, the court shall consider any objection under subsection 3 and whether the plan or revised plan is consistent with the conservator's duties and powers. The court may not approve the plan or revised plan until 30 days after its filing.

5. Copy of approved plan. After a conservator's plan or revised plan under this section is approved by the court, the conservator shall provide a copy of the plan or revised plan to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines.

§5-420. Inventory; records

1. Inventory. Not later than 60 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the conservatorship estate, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

2. Notice of filing of inventory. A conservator shall give notice of the filing of an inventory to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines. The notice must be given not later than 14 days after the filing.

3. Records. A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian of the individual or any person as the conservator or the court determines.

§5-421. Administrative powers of conservator not requiring court approval

1. Powers unless limited; powers of trustee. Except as otherwise provided in section 5-414 or qualified or limited in the court's order of appointment and stated in the letters of office, a conservator has all powers granted in this section and any additional powers granted to a trustee by law of this State other than this Part.

2. Powers of conservator. A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the purpose of the appointment, without specific court authorization or confirmation, may:

- A. Collect, hold and retain property included in the conservatorship estate, including property in which the conservator has a personal interest and real property in another state, until the conservator determines disposition of the property should be made;
- B. Receive additions to the conservatorship estate;
- C. Continue or participate in the operation of a business or other enterprise;
- D. Acquire an undivided interest in property included in the conservatorship estate in which the conservator, in a fiduciary capacity, holds an undivided interest;

- 1 E. Invest assets of the conservatorship estate;
- 2 F. Deposit money of the conservatorship estate in a financial institution, including
- 3 one operated by the conservator;
- 4 G. Acquire or dispose of property of the conservatorship estate, including real
- 5 property in another state, for cash or on credit, at public or private sale, and manage,
- 6 develop, improve, exchange, partition, change the character of or abandon property
- 7 included in the conservatorship estate;
- 8 H. Make ordinary or extraordinary repairs or alterations in a building or other
- 9 structure, demolish any improvement, or raze existing or erect a new party wall or
- 10 building;
- 11 I. Subdivide, develop or dedicate land to public use, make or obtain the vacation of a
- 12 plat and adjust a boundary, adjust a difference in valuation, exchange or partition land
- 13 by giving or receiving consideration and dedicate an easement to public use without
- 14 consideration;
- 15 J. Enter for any purpose into a lease of property as lessor or lessee, with or without
- 16 an option to purchase or renew, for a term within or extending beyond the term of the
- 17 conservatorship;
- 18 K. Enter into a lease or arrangement for exploration and removal of minerals or other
- 19 natural resources or a pooling or unitization agreement;
- 20 L. Grant an option involving disposition of property included in the conservatorship
- 21 estate or accept or exercise an option for the acquisition of property;
- 22 M. Vote a security, in person or by general or limited proxy;
- 23 N. Pay a call, assessment or other sum chargeable or accruing against or on account
- 24 of a security;
- 25 O. Sell or exercise a stock subscription or conversion right;
- 26 P. Consent, directly or through a committee or agent, to the reorganization,
- 27 consolidation, merger, dissolution or liquidation of a corporation or other business
- 28 enterprise;
- 29 Q. Hold a security in the name of a nominee or in other form without disclosure of
- 30 the conservatorship so that title to the security may pass by delivery;
- 31 R. Insure the conservatorship estate against damage or loss in accordance with
- 32 section 5-418, subsection 10 and the conservator against liability with respect to a 3rd
- 33 party;
- 34 S. Borrow money, with or without security, to be repaid from the conservatorship
- 35 estate or otherwise;
- 36 T. Advance money for the protection of the conservatorship estate or the individual
- 37 subject to conservatorship and all expenses, losses and liability sustained in the
- 38 administration of the conservatorship estate or because of holding any property for
- 39 which the conservator has a lien on the conservatorship estate as against the
- 40 individual subject to conservatorship for the advances;

- 1 U. Pay or contest a claim, settle a claim by or against the conservatorship estate or
2 the individual subject to conservatorship by compromise, arbitration or otherwise, or
3 release, in whole or in part, a claim belonging to the conservatorship estate to the
4 extent the claim is uncollectible;
- 5 V. Pay a tax, assessment, compensation of the conservator or any guardian, and other
6 expense incurred in the collection, care, administration and protection of the
7 conservatorship estate;
- 8 W. Pay a sum distributable to an individual subject to conservatorship or individual
9 who is in fact dependent on the individual subject to conservatorship by paying the
10 sum to the distributee or for the use of the distributee:
- 11 (1) To the guardian of the distributee;
- 12 (2) To a distributee's custodian under the Maine Uniform Transfers to Minors
13 Act or custodial trustee under the Uniform Custodial Trust Act of any state; or
- 14 (3) If there is no guardian, custodian or custodial trustee, to a relative or other
15 person having physical custody of the distributee;
- 16 X. Prosecute or defend an action, claim or proceeding in any jurisdiction for the
17 protection of the conservatorship estate or of the conservator in the performance of
18 the conservator's duties;
- 19 Y. Structure the finances of the individual subject to conservatorship to establish
20 eligibility for a public benefit, including by making gifts consistent with the
21 individual's preferences, values and prior directions, if the conservator's action does
22 not jeopardize the individual's welfare and otherwise is consistent with the
23 conservator's duties; and
- 24 Z. Execute and deliver any instrument that will accomplish or facilitate the exercise
25 of a power vested in the conservator.

26 **§5-422. Distribution from conservatorship estate**

27 Except as otherwise provided in section 5-414 or qualified or limited in the court's
28 order of appointment and stated in the letters of office, and unless contrary to a
29 conservator's plan filed under section 5-419, a conservator may expend or distribute
30 income or principal of the conservatorship estate without specific court authorization or
31 confirmation for the support, care, education, health or welfare of the individual subject
32 to conservatorship or an individual who is in fact dependent on the individual subject to
33 conservatorship, including the payment of child or spousal support, in accordance with
34 the following rules.

35 1. **Appropriate standard.** A conservator shall consider a recommendation relating
36 to the appropriate standard of support, care, education, health or welfare for the individual
37 subject to conservatorship, or an individual who is in fact dependent on the individual
38 subject to conservatorship, made by a guardian of the individual subject to
39 conservatorship, if any, and, if the individual subject to conservatorship is a minor, a
40 recommendation made by a guardian or parent of the minor.

1 2. Liability for distribution. A conservator acting in compliance with the
2 conservator's duties under section 5-418 is not liable for a distribution made based on a
3 recommendation under subsection 1 unless the conservator knows the distribution is not
4 in the best interest of the individual subject to conservatorship.

5 3. Considerations for expenditure, distribution. In making an expenditure or
6 distribution under this subsection, the conservator shall consider:

7 A. The size of the conservatorship estate, the estimated duration of the
8 conservatorship and the likelihood the individual subject to conservatorship, at some
9 future time, may be fully self-sufficient and able to manage the individual's financial
10 affairs and the conservatorship estate;

11 B. The accustomed standard of living of the individual subject to conservatorship
12 and an individual who is in fact dependent on the individual subject to
13 conservatorship;

14 C. Other money or source used for the support of the individual subject to
15 conservatorship; and

16 D. The preferences, values and prior directions of the individual subject to
17 conservatorship.

18 4. Compensation or reimbursement. Money expended or distributed under this
19 subsection may be paid by the conservator to any person, including the individual subject
20 to conservatorship, as reimbursement for expenditures the conservator might have made,
21 or in advance for services to be rendered to the individual subject to conservatorship if it
22 is reasonable to expect the services will be performed and advance payment is customary
23 or reasonably necessary under the circumstances.

24 **§5-423. Conservator's report and accounting; monitoring**

25 1. Report. A conservator shall file a report in a record with the court regarding the
26 administration of the conservatorship estate annually unless the court otherwise directs,
27 on resignation or removal, on termination of the conservatorship and at any other time as
28 the court directs.

29 2. Contents. A report under subsection 1 must state or contain:

30 A. An accounting that contains a list of property included in the conservatorship
31 estate and of the receipts, disbursements, liabilities and distributions during the period
32 for which the report is made;

33 B. A list of the services provided to the individual subject to conservatorship;

34 C. A copy of the conservator's most recently approved plan and a statement whether
35 the conservator has deviated from the plan and, if so, how and why the conservator
36 has deviated;

37 D. Any recommended change in the conservatorship, including its scope and
38 whether the conservatorship needs to continue;

39 E. Annual credit report of the individual subject to conservatorship and to the extent
40 feasible, a copy of the most recent reasonably available financial statements
41 evidencing the status of bank accounts, investment accounts and mortgages or other

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debts of the individual subject to conservatorship, along with, with all but the last 4 digits of the account numbers and the individual's social security number redacted;

F. Anything of more than de minimis value that the conservator, any individual who resides with the conservator or the spouse, domestic partner, parent, child or sibling of the conservator has received from a person providing goods or services to the individual subject to conservatorship;

G. Any business relation the conservator has with a person providing goods or services to the individual subject to conservatorship;

H. Any business relation the conservator has with a person the conservator has paid or a person that has benefited from the property of the individual subject to conservatorship; and

I. Whether any coconservator or successor conservator appointed to serve when a designated future event occurs is alive and able to serve.

3. Visitor. The court may appoint a visitor to review a report under this section or conservator's plan under section 5-419, interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

4. Notice of report; copy. Notice of the filing under this section of a conservator's report, together with a copy of the report, must be provided to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order, and a person the court determines is entitled to the report. Notwithstanding section 5-409, the credit report provided pursuant to subsection 2, paragraph E is confidential and may not be provided with the rest of the conservator's report except to the individual subject to conservatorship. The notice and report must be given not later than 14 days after filing.

5. Monitoring; frequency of report. The court shall establish procedures for monitoring a conservator's plan and report and review the plan and report not less than annually to determine whether:

A. The plan and report provide sufficient information to establish the conservator has complied with the conservator's duties;

B. The conservatorship should continue; and

C. The conservator's requested fees, if any, should be approved.

6. Noncompliance. If the court determines there is reason to believe the conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:

A. Shall notify the conservator, the individual subject to conservatorship and all persons entitled to notice under section 5-411, subsection 5 or a subsequent order;

B. May require additional information from the conservator;

1 C. May appoint a visitor to interview the individual subject to conservatorship or
2 conservator and investigate any matter involving the conservatorship as the court
3 directs; and

4 D. May, consistent with sections 5-430 and 5-431, hold a hearing to consider
5 removal of the conservator, termination of the conservatorship or a change in the
6 powers granted to the conservator or terms of the conservatorship.

7 7. Unreasonable fees. If the court determines there is reason to believe a
8 conservator's requested fees are not reasonable, the court shall hold a hearing to adjust the
9 fees.

10 8. Approval of report or accounting. A conservator may petition the court for
11 approval of a report or accounting filed under this section. The court after review may
12 approve the report or accounting. An order, after notice and hearing, approving a final
13 report or accounting discharges the conservator from all liabilities, claims and causes of
14 action by a person given notice of the report or accounting and the hearing as to a matter
15 adequately disclosed in the report or accounting.

16 **§5-424. Attempted transfer of property by individual subject to conservatorship**

17 1. Interest not transferable or assignable; not subject to claims. The interest of
18 an individual subject to conservatorship in property included in the conservatorship estate
19 is not transferable or assignable by the individual and is not subject to levy, garnishment
20 or similar process for claims against the individual unless allowed under section 5-428.

21 2. Contract void against individual and property. If an individual subject to
22 conservatorship enters into a contract after having the right to enter the contract removed
23 by the court, the contract is void against the individual and the individual's property but is
24 enforceable against the person that contracted with the individual.

25 3. Protection of 3rd parties. A 3rd party that deals with an individual subject to
26 conservatorship with respect to property included in the conservatorship estate is entitled
27 to protection provided by law of this State other than this Act.

28 **§5-425. Transaction involving conflict of interest**

29 A transaction involving a conservatorship estate that is affected by a substantial
30 conflict between the conservator's fiduciary duties and personal interests is voidable
31 unless the transaction is authorized by the court by specific order after notice to all
32 persons entitled to notice under section 5-411, subsection 5 or a subsequent order. A
33 transaction affected by a substantial conflict between fiduciary duties and personal
34 interests includes a sale, encumbrance or other transaction involving the conservatorship
35 estate entered into by the conservator, an individual with whom the conservator resides,
36 the spouse, domestic partner, descendant, sibling, agent or attorney of the conservator, or
37 a corporation or other enterprise in which the conservator has a substantial beneficial
38 interest.

39 **§5-426. Protection of person dealing with conservator**

40 1. Protection of 3rd party. A person that assists or deals with a conservator in good
41 faith and for value in any transaction, other than one requiring a court order under section

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1 5-414, is protected as though the conservator properly exercised the power in question.
2 Knowledge by a person that the person is dealing with a conservator does not alone
3 require the person to inquire into the existence of the authority of the conservator or the
4 propriety of the conservator's exercise of authority, but restrictions on authority that are
5 stated in letters of office, or as otherwise provided by law, are effective as to the person.
6 A person that pays or delivers property to a conservator is not responsible for proper
7 application of the property.

8 **2. Application of protection.** Protection under subsection 1 extends to a procedural
9 irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of
10 office and is not a substitute for protection provided to a person that assists or deals with
11 a conservator by comparable provisions in law of this State other than this Act relating to
12 commercial transactions or simplifying transfers of securities by fiduciaries.

13 **§5-427. Death of individual subject to conservatorship**

14 **1. Delivery of will.** If an individual subject to conservatorship dies, the conservator
15 shall deliver to the court for safekeeping any will of the individual in the conservator's
16 possession and inform the personal representative named in the will if feasible, or if not
17 feasible a beneficiary named in the will, of the delivery.

18 **2. Powers and duties of personal representative; notice.** If 40 days after the death
19 of an individual subject to conservatorship no personal representative has been appointed
20 and an application or petition for appointment is not before the court, the conservator may
21 apply to exercise the powers and duties of a personal representative to administer and
22 distribute the decedent's estate. The conservator shall give notice to a person nominated
23 as personal representative by a will of the decedent of which the conservator is aware and
24 to all of the decedent's heirs and all devisees of the will, if any. The court may grant the
25 application if there is no objection and endorse the letters of office to note that the
26 individual formerly subject to conservatorship is deceased and the conservator has
27 acquired the powers and duties of a personal representative.

28 **3. Effect of appointment as personal representative.** Issuance of an order under
29 this section has the effect of an order of appointment of a personal representative under
30 section 3-308 and Article 3, Parts 6 to 10.

31 **4. Distribution; discharge.** On the death of an individual subject to
32 conservatorship, the conservator shall conclude the administration of the conservatorship
33 estate by distributing property subject to conservatorship to the individual's successors.
34 Not later than 30 days after distribution, the conservator shall file a final report and
35 petition for discharge.

36 **§5-428. Presentation and allowance of claim**

37 **1. Claims against estate or protected person.** A conservator may pay, or secure by
38 encumbering property included in the conservatorship estate, a claim against the
39 conservatorship estate or the individual subject to conservatorship arising before or
40 during the conservatorship on presentation and allowance in accordance with the
41 priorities under subsection 4. A claimant may present a claim by:

42 A. Sending or delivering to the conservator a statement in a record of the claim,
43 indicating its basis, the name and address of the claimant and the amount claimed; or

1 B. Filing with the court a record of the claim, in a form acceptable to the court, and
2 sending or delivering a copy of the statement to the conservator.

3 **2. Presented claim; allowance; disallowance.** A claim under subsection 1 is
4 presented on receipt by the conservator of the statement of claim by the conservator or
5 the filing with the court of the claim, whichever first occurs. A presented claim is
6 allowed if it is not disallowed by the conservator in a record sent or delivered to the
7 claimant not later than 60 days after its presentation. Before payment the conservator
8 may change an allowance of the claim to a disallowance in whole or in part, but not after
9 allowance under a court order or order directing payment of the claim. Presentation of a
10 claim tolls the running of a statute of limitations that has not expired relating to the claim
11 until 30 days after its disallowance.

12 **3. Unpaid claim.** A claimant whose claim under subsection 1 has not been paid may
13 petition the court to determine the claim at any time before it is barred by a statute of
14 limitations, and the court may order its allowance, payment or security by encumbering
15 property included in the conservatorship estate. If a proceeding is pending against the
16 individual subject to conservatorship at the time of appointment of the conservator or is
17 initiated thereafter, the moving party shall give the conservator notice of the proceeding if
18 it could result in creating a claim against the conservatorship estate.

19 **4. Distribution; order.** If a conservatorship estate is likely to be exhausted before
20 all existing claims are paid, the conservator shall distribute the estate in money or in kind
21 in payment of claims in the following order:

- 22 A. Costs and expenses of administration;
- 23 B. A claim of the Federal Government or State Government having priority under
24 law other than this Act;
- 25 C. A claim incurred by the conservator for support, care, education, health or welfare
26 previously provided to the individual subject to conservatorship or an individual who
27 is in fact dependent on the individual subject to conservatorship;
- 28 D. A claim arising before the conservatorship; and
- 29 E. All other claims.

30 **5. Preference of claims.** Preference may not be given in the payment of a claim
31 under subsection 4 over another claim of the same class. A claim due and payable may
32 not be preferred over a claim not due unless:

- 33 A. Doing so would leave the conservatorship estate without sufficient funds to pay
34 the basic living and health care expenses of the individual subject to conservatorship;
35 and
- 36 B. The court authorizes the preference under section 5-414, subsection 1, paragraph
37 H.

38 **6. Security interest in conservatorship estate.** If assets of a conservatorship estate
39 are adequate to meet all existing claims, the court, acting in the best interest of the
40 individual subject to conservatorship, may order the conservator to grant a security
41 interest in the conservatorship estate for payment of a claim at a future date.

1 **§5-429. Personal liability of conservator**

2 **1. Not personally liable.** Except as otherwise agreed by a conservator, the
3 conservator is not personally liable on a contract properly entered into in a fiduciary
4 capacity in the course of administration of the conservatorship estate unless the
5 conservator fails to reveal in the contract or before entering into the contract the
6 conservator's representative capacity.

7 **2. Personally liable.** A conservator is personally liable for an obligation arising
8 from control of property of the conservatorship estate or an act or omission occurring in
9 the course of administration of the conservatorship estate only if the conservator is
10 personally at fault.

11 **3. Claims asserted against conservator.** A claim based on a contract entered into
12 by a conservator in a fiduciary capacity, an obligation arising from control of property
13 included in the conservatorship estate or a claim based on a tort committed in the course
14 of administration of the conservatorship estate may be asserted against the
15 conservatorship estate in a proceeding against the conservator in a fiduciary capacity,
16 whether or not the conservator is personally liable for the claim.

17 **4. Determination of liability.** A question of liability between a conservatorship
18 estate and the conservator personally may be determined in a proceeding for accounting,
19 surcharge or indemnification or another appropriate proceeding or action.

20 **§5-430. Removal of conservator; appointment of successor**

21 **1. Removal by court.** The court may remove a conservator for failure to perform
22 the conservator's duties or other good cause and appoint a successor conservator to
23 assume the duties of the conservator.

24 **2. Hearing upon petition, communication or determination.** The court shall
25 conduct a hearing to determine whether to remove a conservator and appoint a successor
26 on:

27 **A. Petition of the individual subject to conservatorship, conservator or person**
28 **interested in the welfare of the individual that contains allegations that, if true, would**
29 **support a reasonable belief that removal of the conservator and appointment of a**
30 **successor may be appropriate, but the court may decline to hold a hearing if a petition**
31 **based on the same or substantially similar facts was filed within the preceding 6**
32 **months;**

33 **B. Communication from the individual subject to conservatorship, conservator or**
34 **person interested in the welfare of the individual that supports a reasonable belief that**
35 **removal of the conservator and appointment of a successor may be appropriate; or**

36 **C. Determination by the court that a hearing would be in the best interest of the**
37 **individual subject to conservatorship.**

38 **3. Notice of petition.** Notice of a petition under subsection 2, paragraph A must be
39 given to the individual subject to conservatorship, the conservator and such other persons
40 as the court determines.

1 4. Attorney for individual subject to conservatorship. If an individual subject to
2 conservatorship who seeks to remove the conservator and have a successor appointed is
3 not represented by an attorney, the court shall appoint an attorney under the same
4 conditions as in section 5-406. The court shall award reasonable attorney's fees to the
5 attorney for the individual as provided in section 5-119.

6 5. Selection of successor conservator. In selecting a successor conservator, the
7 court shall follow the procedures under section 5-410.

8 6. Notice of appointment of successor conservator. Not later than 30 days after
9 appointing a successor conservator, the court shall give notice of the appointment to the
10 individual subject to conservatorship and all persons entitled to the notice under section
11 5-411, subsection 5 or a subsequent order.

12 **§5-431. Termination or modification of conservatorship**

13 1. Conservatorship for a minor. A conservatorship for a minor terminates on the
14 earlier of:

15 A. An order of the court;

16 B. The minor becoming an adult or, if the minor consents or the court finds by clear
17 and convincing evidence that substantial harm to the minor's interests is otherwise
18 likely, attaining 21 years of age;

19 C. Emancipation of the minor; and

20 D. Death of the minor.

21 2. Conservatorship for an adult. A conservatorship for an adult terminates on
22 order of the court or when the adult dies.

23 3. Petition for termination or modification. An individual subject to
24 conservatorship, the conservator or a person interested in the welfare of the individual
25 may petition for:

26 A. Termination of the conservatorship on the ground that a basis for appointment
27 under section 5-401 does not exist or termination would be in the best interest of the
28 individual, or for other good cause; or

29 B. Modification of the conservatorship on the ground that the extent of protection or
30 assistance granted is not appropriate, or for other good cause.

31 4. Hearing. The court shall conduct a hearing to determine whether termination or
32 modification of a conservatorship is appropriate on:

33 A. Petition under subsection 3 that contains allegations that, if true, would support a
34 reasonable belief that termination or modification of the conservatorship may be
35 appropriate, but the court may decline to hold a hearing if a petition based on the
36 same or substantially similar facts was filed within the preceding 6 months;

37 B. A communication from the individual subject to conservatorship, the conservator
38 or a person interested in the welfare of the individual that supports a reasonable belief
39 that termination or modification of the conservatorship may be appropriate, including

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because of a change in the functional needs of the individual or in the supports or services available to the individual;

C. A report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs or supports or services available to the individual subject to conservatorship have changed or a protective arrangement of conservatorship or other less restrictive alternatives are available; or

D. A determination by the court that a hearing would be in the best interest of the individual.

5. Notice of petition. Notice of a petition under subsection 3 must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines.

6. Termination. On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless a basis for appointment of a conservator under section 5-401 is satisfied.

7. Modification. The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports or other circumstances.

8. Safeguard rights of individual. Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to conservatorship that apply to a petition for conservatorship.

9. Attorney for individual subject to conservatorship. If an individual subject to conservatorship who seeks to terminate or modify the terms of the conservatorship is not represented by an attorney, the court shall appoint an attorney under the same conditions in section 5-406. The court shall award reasonable attorney's fees to the individual's attorney as provided in section 5-119.

10. Property; report; petition for discharge. On termination of a conservatorship and whether or not formally distributed by the conservator, property of the conservatorship estate passes to the individual formerly subject to conservatorship or the individual's heirs, successors or assigns. The order of termination must provide for expenses of administration and direct the conservator to file a final report and petition for discharge on approval of the final report.

11. Discharge. The court shall enter a final order of discharge on the approval of the final report and satisfaction by the conservator of any other condition placed by the court on the conservator's discharge.

12. Distribution. On the death of an individual subject to conservatorship or other event terminating or partially terminating the conservatorship, the conservator shall proceed expeditiously to distribute the conservatorship estate to the individual or other persons entitled to it. The conservator may take reasonable measures necessary to preserve the conservatorship estate until distribution can be effected.

PART 5

OTHER PROTECTIVE ARRANGEMENTS

§5-501. Authority for protective arrangements

1. Order protective arrangement. Under this Part, a court:

A. Upon receiving a petition for a guardianship for an adult may order one or more protective arrangements instead of guardianship as a less restrictive alternative to guardianship; and

B. Upon receiving a petition for a conservatorship for an individual may order one or more protective arrangements instead of conservatorship as a less restrictive alternative to conservatorship.

2. Protective arrangement instead of guardianship. A person interested in an adult's welfare, including the adult or a conservator for the adult, may petition under this Part for one or more protective arrangements instead of guardianship.

3. Protective arrangement instead of conservatorship. The following persons may petition under this Part for one or more protective arrangements instead of conservatorship:

A. The individual for whom the protective arrangements are sought;

B. A person interested in the property, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual; and

C. The guardian of the individual.

§5-502. Basis for protective arrangements instead of guardianship for adult

1. Findings. After the hearing conducted on a petition for guardianship under section 5-302 or one or more protective arrangements instead of guardianship under section 5-501, subsection 1, the court may enter an order for one or more protective arrangements instead of guardianship under subsection 2 if the court finds by clear and convincing evidence that:

A. The respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making; and

B. The respondent's identified needs cannot be met by less restrictive alternatives.

2. Orders other than guardianship. If the court makes the findings under subsection 1, the court, instead of appointing a guardian, may:

A. Authorize or direct one or more transactions necessary to meet the respondent's need for health, safety or care, including but not limited to:

(1) One or more particular medical treatments or refusals of particular medical treatments;

(2) A move to a specified place of dwelling; or

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(3) Visitation or supervised visitation between the respondent and another person;

B. Restrict access to the respondent by a person whose access places the respondent at serious risk of physical or psychological harm; and

C. Order other arrangements on a limited basis that are appropriate.

3. Factors. In deciding whether to enter an order under this section, the court shall consider the factors under sections 5-313 and 5-314 that a guardian must consider when making a decision on behalf of an adult subject to guardianship.

§5-503. Basis for protective arrangements instead of conservatorship for adult or minor

1. Findings. After the hearing conducted on a petition for conservatorship for an adult under section 5-402 or one or more protective arrangements instead of conservatorship for an adult under section 5-501, subsection 3, the court may enter an order for one or more protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds:

A. By clear and convincing evidence that the respondent is unable to manage property or financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making, or the adult is missing, detained or unable to return to the United States;

B. By a preponderance of the evidence that:

(1) The respondent has property likely to be wasted or dissipated unless management is provided; or

(2) The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the adult or an individual who is entitled to the respondent's support and protection; and

C. The respondent's identified needs cannot be met by less restrictive alternatives.

2. Protective arrangements for minors. After the hearing conducted on a petition for conservatorship for a minor under section 5-402 or a protective arrangement instead of conservatorship for a minor under section 5-501, subsection 3, the court may enter an order for a protective arrangement or protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds by a preponderance of the evidence that the minor owns money or property requiring management or protection that cannot be provided otherwise and:

A. The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

B. The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor.

3. Orders other than conservatorship. If the court makes the findings under subsection 1 or 2, the court, instead of appointing a conservator, may:

1 A. Authorize or direct a transaction necessary to protect the financial interest or
2 property of the respondent, including but not limited to:

- 3 (1) An action to establish eligibility for benefits;
4 (2) Payment, delivery, deposit or retention of funds or property;
5 (3) Sale, mortgage, lease or other transfer of property;
6 (4) Purchase of an annuity;
7 (5) Entry into a contractual relationship, including a contract to provide for
8 personal care, supportive services, education, training or employment;
9 (6) Addition to or establishment of a trust;
10 (7) Ratification or invalidation of a contract, trust, will or other transaction,
11 including a transaction related to the property or business affairs of the
12 respondent; or
13 (8) Settlement of a claim; or

14 B. Restrict access to the respondent's property by a person whose access to the
15 property places the respondent at serious risk of financial harm.

16 **4. Order to restrict access.** If, after the hearing conducted under section 5-505 on a
17 petition under section 5-501, subsection 1, paragraph B or section 5-501, subsection 3, a
18 court may enter an order to restrict access to the respondent or the respondent's property
19 by a person that the court finds by clear and convincing evidence:

20 A. Through fraud, coercion, duress or the use of deception and control, caused or
21 attempted to cause an action that would have resulted in financial harm to the
22 respondent or the respondent's property; and

23 B. Poses a serious risk of substantial financial harm to the respondent or the
24 respondent's property.

25 **5. Factors.** In deciding whether to enter an order under subsection 3 or 4, the court
26 shall consider the factors under section 5-418 a conservator must consider when making a
27 decision on behalf of an individual subject to conservatorship.

28 **6. Minors; factors.** In deciding whether to enter an order under subsection 3 or 4
29 for a respondent who is a minor, the court also shall consider the best interest of the
30 respondent, the preference of the parents of the respondent and the preference of the
31 respondent if the minor is 14 years of age or older.

32 **§5-504. Petition**

33 **1. Petition contents.** A petition for one or more protective arrangements instead of
34 guardianship or conservatorship must set forth the petitioner's name, principal residence,
35 current street address, if different, relationship to the respondent and interest in the
36 protective arrangements and state or contain the following to the extent known:

- 1 A. The respondent's name, age, principal residence, current street address, if
2 different, and, if different, address of the dwelling in which it is proposed that the
3 respondent will reside if the petition is granted;
- 4 B. The name and address of the respondent's:
- 5 (1) Spouse or domestic partner or, if the respondent has none, any adult with
6 whom the respondent has shared household responsibilities for more than 6
7 months in the 12-month period before the filing of the petition;
- 8 (2) Adult children or, if the respondent has none, each parent and adult sibling of
9 the respondent or, if the respondent has none, at least one adult nearest in kinship
10 to the respondent who can be found with reasonable diligence; and
- 11 (3) Adult stepchildren whom the respondent actively parented during the
12 stepchildren's minor years and with whom the respondent had an ongoing
13 relationship within 2 years before the filing of the petition;
- 14 C. The name and current address of each of the following, if applicable:
- 15 (1) A person responsible for care or custody of the respondent;
- 16 (2) Any attorney currently representing the respondent;
- 17 (3) The representative payee appointed by the United States Social Security
18 Administration for the respondent;
- 19 (4) A guardian or conservator acting for the respondent in this State or in another
20 jurisdiction;
- 21 (5) A trustee or custodian of a trust or custodianship of which the respondent is a
22 beneficiary;
- 23 (6) The United States Department of Veterans Affairs fiduciary for the
24 respondent;
- 25 (7) An agent designated under a power of attorney for health care in which the
26 respondent is identified as the principal;
- 27 (8) An agent designated under a power of attorney for finances in which the
28 respondent is identified as the principal;
- 29 (9) A person nominated as guardian or conservator by the respondent;
- 30 (10) A person nominated as guardian by the respondent's parent or spouse or
31 domestic partner in a will or other signed record;
- 32 (11) A proposed guardian and the reason the proposed guardian should be
33 selected;
- 34 (12) A person known to have routinely assisted the respondent with decision
35 making within the 6 months before the filing of the petition; and
- 36 (13) If the respondent is a minor;

1 (a) An adult with whom the respondent resides if not otherwise listed; and

2 (b) Any person not otherwise listed that had primary care or custody of the
3 respondent for 60 or more days during the 2 years immediately preceding the
4 filing of the petition or any person that had primary care or custody of the
5 respondent for at least 730 days during the 5 years immediately preceding the
6 filing of the petition;

7 D. The nature of the protective arrangement or protective arrangements sought;

8 E. The reason a protective arrangement sought is necessary, including a brief
9 description of;

10 (1) The nature and extent of the respondent's alleged need;

11 (2) Any less restrictive alternatives for meeting the respondent's alleged need
12 that have been considered or implemented and, if there are none, the reason they
13 have not been considered or implemented; and

14 (3) The reason other less restrictive alternatives are insufficient to meet the
15 respondent's alleged need;

16 F. The name and current address, if known, of any person with whom the petitioner
17 seeks to limit the respondent's contact;

18 G. Whether the respondent needs an interpreter, translator or other form of support to
19 communicate effectively with the court or understand court proceedings;

20 H. If one or more protective arrangements instead of conservatorship are sought, a
21 general statement of the respondent's property with an estimate of its value, including
22 any insurance or pension, and the source and amount of other anticipated income or
23 receipts; and

24 I. If one or more protective arrangements instead of guardianship are sought and the
25 respondent has property other than personal effects, a general statement of the
26 respondent's property with an estimate of its value, including any insurance or
27 pension, and the source and amount of any other anticipated income or receipts.

28 2. Attorney for petitioner. A petition under subsection 1 must state the name and
29 address of an attorney representing the petitioner, if any.

30 **§5-505. Notice and hearing**

31 1. Date, time and place for hearing. On receipt of a petition under section 5-501,
32 the court shall set a date, time and place for hearing on the petition.

33 2. Notice to respondent. A copy of a petition under section 5-501 and notice of the
34 hearing under subsection 1 must be served personally on the respondent. The notice must
35 inform the respondent of the respondent's rights at the hearing including the right to an
36 attorney and to attend the hearing. The notice must also include a description of the
37 nature, purpose and consequences of granting the petition. Failure to serve the
38 respondent with notice substantially complying with this subsection precludes the court
39 from granting the petition.

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3. Notice to others. In a hearing under subsection 1, notice of the hearing also must be given to the persons listed in the petition and any other person interested in the respondent's welfare as the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.

4. Notice of petition after order. Notice of a hearing on a petition filed under this Act after the court has ordered a protective arrangement or protective arrangements under this Part, together with a copy of the petition, must be given to the respondent and any other person as the court determines.

§5-506. Appointment of visitor

1. Petition for protective arrangement. On receipt of a petition for one or more protective arrangements instead of guardianship under section 5-501, the court shall appoint a visitor. A visitor appointed under this subsection must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

2. Protective order for minor. On receipt of a petition for a protective order instead of conservatorship for a minor under section 5-501, the court may appoint a visitor to investigate a matter related to the petition or to inform the respondent or a parent of the respondent about the petition or a related matter.

3. Protective order for adult. On receipt of a petition for a protective order instead of conservatorship for an adult under section 5-501, the court shall appoint a visitor unless the respondent is represented by an attorney.

4. Visitor's duties. A visitor appointed under subsection 1 or 3 shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, and the respondent's rights at the hearing;

B. Determine the respondent's views with respect to the order sought;

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney;

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets;

E. If the petitioner seeks an order related to the dwelling of the respondent, visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted;

F. If one or more protective arrangements instead of guardianship are sought, obtain information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition;

G. If one or more protective arrangements instead of conservatorship are sought, review financial records of the respondent if relevant to the visitor's recommendation under subsection 5, paragraph C; and

H. Investigate the allegations in the petition and any other matter relating to the petition as the court directs.

1 5. Report. A visitor under this section promptly shall file a report in a record with
2 the court, which must include:

3 A. A recommendation whether an attorney should be appointed to represent the
4 respondent;

5 B. To the extent relevant to the order sought, a summary of self-care, independent
6 living tasks and financial management tasks the respondent can manage without
7 assistance or with existing supports, could manage with the assistance of appropriate
8 supportive services, technological assistance or supported decision making and
9 cannot manage;

10 C. Recommendations regarding the appropriateness of the protective arrangement
11 sought and whether less restrictive alternatives for meeting the respondent's needs are
12 available;

13 D. If the petition seeks to change the physical location of the dwelling of the
14 respondent, a statement whether the proposed dwelling meets the respondent's needs
15 and whether the respondent has expressed a preference as to the respondent's
16 dwelling;

17 E. A recommendation whether a professional evaluation under section 5-508 is
18 necessary;

19 F. A statement whether the respondent is able to attend a hearing at the location court
20 proceedings typically are conducted;

21 G. A statement whether the respondent is able to participate in a hearing and that
22 identifies any technology or other form of support that would enhance the
23 respondent's ability to participate; and

24 H. Any other matter as the court directs.

25 **§5-507. Appointment and role of attorney**

26 **1. Appointment of attorney.** The court shall appoint an attorney to represent the
27 respondent in a proceeding under this Part if:

28 A. Requested by the respondent;

29 B. Recommended by the visitor;

30 C. The court determines that the respondent needs representation; or

31 D. It comes to the court's attention that the respondent wishes to contest any aspect
32 of the proceeding or to seek any limitations on the protective arrangement.

33 **2. Attorney's duties.** An attorney representing the respondent in a proceeding under
34 this Part shall:

35 A. Make reasonable efforts to ascertain the respondent's wishes;

36 B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and

37 C. If the respondent's wishes are not reasonably ascertainable, advocate for the result
38 that is the least restrictive option in type, duration and scope, consistent with the
39 respondent's interests.

1 3. Attorney for parent of minor. The court shall appoint an attorney to represent a
2 parent of a minor who is the subject of a proceeding under this Part if:

3 A. The parent objects to the entry of an order for a protective arrangement or
4 protective arrangements instead of guardianship or conservatorship;

5 B. The court determines that counsel is needed to ensure that consent to the entry of
6 an order for one or more protective arrangements is informed; or

7 C. The court otherwise determines the parent needs representation.

8 **§5-508. Professional evaluation**

9 1. Order professional evaluation. At or before a hearing on a petition under this
10 Part for a protective arrangement, the court shall order a professional evaluation of the
11 respondent:

12 A. If the respondent requests the evaluation; or

13 B. Unless the court finds that it has sufficient information to determine the
14 respondent's needs and abilities without the evaluation.

15 2. Examination; report. If the court orders an evaluation under subsection 1, the
16 respondent must be examined by a licensed physician or psychologist approved by the
17 court who is qualified to evaluate the respondent's alleged cognitive and functional
18 abilities and limitations and will not be advantaged or disadvantaged by a decision to
19 grant the petition or otherwise have a conflict of interest. The individual conducting the
20 evaluation promptly shall file a report in a record with the court. Unless otherwise
21 directed by the court, the report must contain:

22 A. A description of the nature, type and extent of the respondent's cognitive and
23 functional abilities and limitations;

24 B. An evaluation of the respondent's mental and physical condition and, if
25 appropriate, educational potential, adaptive behavior and social skills;

26 C. A prognosis for improvement, including with regard to the ability to manage the
27 respondent's property and financial affairs if a limitation in that ability is alleged, and
28 recommendation for the appropriate treatment, support or habilitation plan; and

29 D. The date of the examination on which the report is based.

30 3. Right to decline. The respondent has the right to decline to participate in an
31 evaluation ordered under subsection 1.

32 **§5-509. Attendance and rights at hearing**

33 1. Attendance by respondent required. Except as otherwise provided in
34 subsection 2, a hearing under this Part may proceed only if the respondent attends the
35 hearing. If it is not reasonably feasible for the respondent to attend a hearing at the
36 location court proceedings typically are conducted, the court shall make reasonable
37 efforts to hold the hearing at an alternative location convenient to the respondent or allow
38 the respondent to attend the hearing using real-time audiovisual technology.

1 **2. Hearing without respondent; findings.** A hearing under this Part may proceed
2 without the respondent in attendance if the court finds by clear and convincing evidence
3 that:

4 A. The respondent consistently and repeatedly has refused to attend the hearing after
5 having been fully informed of the right to attend the hearing and the potential
6 consequences of failing to do so;

7 B. There is no practicable way for the respondent to attend and participate in the
8 hearing even with appropriate supportive services and technological assistance;

9 C. The respondent is represented by an attorney and the attorney represents that the
10 respondent does not want to attend the hearing;

11 D. The visitor has confirmed with the respondent that the respondent has no
12 objection to the protective arrangements and that the respondent does not wish to
13 attend the hearing; or

14 E. The respondent is a minor who has received proper notice and attendance would
15 be harmful to the minor.

16 **3. Assistance to respondent.** The respondent may be assisted in a hearing under
17 this Part by a person or persons of the respondent's choosing, assistive technology or an
18 interpreter or translator, or a combination of these supports. If assistance would facilitate
19 the respondent's participation in the hearing but is not otherwise available to the
20 respondent, the court shall make reasonable efforts to provide it.

21 **4. Attorney for respondent.** The respondent has a right to choose an attorney to
22 represent the respondent at a hearing under this Part.

23 **5. Rights of respondent at hearing.** At a hearing under this Part, the respondent
24 may:

25 A. Present evidence and subpoena witnesses and documents;

26 B. Examine witnesses, including any court-appointed evaluator and the visitor; and

27 C. Otherwise participate in the hearing.

28 **6. Closed upon request; good cause.** A hearing under this Part must be closed on
29 request of the respondent and a showing of good cause.

30 **7. Participation; best interest of respondent.** Any person may request to
31 participate in a hearing under this Part. The court may grant the request, with or without
32 hearing, on determining that the best interest of the respondent will be served. The court
33 may attach appropriate conditions to the person's participation.

34 **§5-510. Notice of order**

35 The court shall give notice of an order under this Part to the individual who is the
36 subject of the protective arrangements instead of guardianship or conservatorship, a
37 person whose access to the respondent is restricted by the order and any other person as
38 the court determines.

1 **§5-511. Confidentiality of records**

2 **1. Matter of public record; exceptions.** The existence of a proceeding for or the
3 existence of one or more protective arrangements instead of a guardianship or
4 conservatorship is a matter of public record unless the court seals the record after:

5 A. The respondent, the individual subject to the protective arrangements or the
6 parent of a minor subject to the protective arrangements requests the record be sealed;
7 and

8 B. Either:

9 (1) The proceeding is dismissed;

10 (2) The protective arrangement is no longer in effect; or

11 (3) Any act authorized by the order granting the protective arrangement has been
12 completed.

13 **2. Access to records.** A respondent, an individual subject to a proceeding for one or
14 more protective arrangements instead of guardianship or conservatorship, an attorney
15 designated by the respondent or individual, a parent of a minor subject to one or more
16 protective arrangements and any other person the court determines are entitled to access
17 court records of the proceeding and resulting protective arrangement. A person not
18 otherwise entitled to access to court records under this subsection may petition the court
19 for access. The court shall grant access if access is in the best interest of the respondent
20 or individual subject to the protective arrangements or furthers the public interest and
21 does not endanger the welfare or financial interests of the respondent or individual.

22 **3. Reports sealed; availability.** A report of a visitor or professional evaluation
23 generated in the course of a proceeding under this Part must be sealed on filing but is
24 available to:

25 A. The court;

26 B. The individual who is the subject of the report or evaluation, without limitation as
27 to use;

28 C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of
29 the proceeding;

30 D. Unless the court directs otherwise, an agent appointed under a power of attorney
31 for finances in which the respondent is identified as the principal;

32 E. If the order is for one or more protective arrangements instead of guardianship
33 and unless the court directs otherwise, an agent appointed under a power of attorney
34 for health care in which the respondent is identified as the principal; and

35 F. Other persons when it is in the public interest or for a purpose the court orders for
36 good cause.

37 **PART 6**

38 **UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS**
39 **JURISDICTION ACT**

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SUBPART 1

GENERAL PROVISIONS

§5-601. Short title

This Part may be known and cited as "the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

§5-602. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

1. Adult. "Adult" means an individual who has attained 18 years of age.

2. Conservator. "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Part 4.

3. Guardian. "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Part 3.

4. Guardianship proceeding. "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

5. Individual subject to guardianship. "Individual subject to guardianship" means an adult for whom a guardian has been appointed.

6. Party. "Party" means an interested person within the meaning of section 1-201, subsection 26, including the respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or protective proceeding.

7. Person. "Person," except in the term "protected person," means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; public corporation; government or governmental subdivision, agency or instrumentality; or any other legal or commercial entity.

8. Protected person. "Protected person" means an adult for whom a protective order has been issued.

9. Protective order. "Protective order" means an order appointing a conservator or other order related to management or disposition of an adult's property.

10. Protective proceeding. "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

11. Respondent. "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

§5-603. International application of Part

A court of this State may treat a foreign country as if it were a state for the purpose of applying this Part.

1 **§5-604. Communication between courts**

2 **1. Communication between courts; participation; record.** A court of this State
3 may communicate with a court in another state concerning a proceeding arising under this
4 Part. The court may allow the parties to participate in the communication. Except as
5 otherwise provided in subsection 2, the court shall make a record of the communication.
6 The record may be limited to the fact that the communication occurred.

7 **2. No record required.** Courts may communicate concerning schedules, calendars,
8 court records and other administrative matters without making a record.

9 **§5-605. Cooperation between courts**

10 **1. Request of court of another state.** In a guardianship proceeding or protective
11 proceeding in this State, a court of this State may request the appropriate court of another
12 state to do any of the following:

13 A. Hold an evidentiary hearing;

14 B. Order a person in that state to produce evidence or give testimony pursuant to
15 procedures of that state;

16 C. Order that an evaluation or assessment be made of the respondent;

17 D. Order any appropriate investigation of a person involved in a proceeding;

18 E. Forward to the court a certified copy of the transcript or other record of a hearing
19 under paragraph A or any other proceeding, any evidence otherwise produced under
20 paragraph B and any evaluation or assessment prepared in compliance with an order
21 under paragraph C or D;

22 F. Issue any order necessary to ensure the appearance in the proceeding of a person
23 whose presence is necessary for the court to make a determination, including the
24 respondent or the individual subject to guardianship or protected person; and

25 G. Issue an order authorizing the release of medical, financial, criminal or other
26 relevant information in that state, including protected health information as defined in
27 45 Code of Federal Regulations, Section 160.103, as amended.

28 **2. Jurisdiction to comply with request.** If a court of another state in which a
29 guardianship proceeding or protective proceeding is pending requests assistance of the
30 kind provided in subsection 1, a court of this State has jurisdiction for the limited purpose
31 of granting the request or making reasonable efforts to comply with the request.

32 **§5-606. Taking testimony in another state**

33 **1. Testimony of witness in another state.** In a guardianship proceeding or
34 protective proceeding, in addition to other procedures that may be available, testimony of
35 a witness who is located in another state may be offered by deposition or other means
36 allowable in this State for testimony taken in another state. The court on its own motion
37 may order that the testimony of a witness be taken in another state and may prescribe the
38 manner in which and the terms upon which the testimony is to be taken.

39 **2. Deposition or testimony by electronic means.** In a guardianship proceeding or
40 protective proceeding, a court in this State may permit a witness located in another state

1 to be deposed or to testify by telephone or audiovisual or other electronic means. A court
2 of this State shall cooperate with the court of the other state in designating an appropriate
3 location for the deposition or testimony.

4 **3. Documentary evidence transmitted, no original writing.** Documentary
5 evidence transmitted from another state to a court of this State by technological means
6 that do not produce an original writing may not be excluded from evidence on an
7 objection based on the best evidence rule.

8 **SUBPART 2**

9 **JURISDICTION**

10 **§5-621. Definitions; significant-connection factors**

11 **1. Definitions.** As used in this subpart, unless the context otherwise indicates, the
12 following terms have the following meanings.

13 A. "Emergency" means a circumstance that likely will result in substantial harm to a
14 respondent's health, safety or welfare and for which the appointment of a guardian is
15 necessary.

16 B. "Home state" means the state in which the respondent was physically present,
17 including any period of temporary absence, for at least 6 consecutive months
18 immediately before the filing of a petition for a protective order or the appointment of
19 a guardian or, if the respondent was not physically present in a single state for the 6
20 months immediately preceding the filing of the petition, the state in which the
21 respondent was physically present, including any period of temporary absence, for at
22 least 6 consecutive months ending within the 6 months prior to the filing of the
23 petition.

24 C. "Significant-connection state" means a state, other than the home state, with
25 which a respondent has a significant connection other than mere physical presence
26 and in which substantial evidence concerning the respondent is available.

27 **2. Significant-connection factors.** In determining under section 5-623 and section
28 5-631, subsection 5 whether a respondent has a significant connection with a particular
29 state, the court shall consider:

30 A. The location of the respondent's family and other persons required to be notified
31 of the guardianship proceeding or protective proceeding;

32 B. The length of time the respondent at any time was physically present in the state
33 and the duration of any absence;

34 C. The location of the respondent's property; and

35 D. The extent to which the respondent has ties to the state such as voting registration,
36 state or local tax return filing, vehicle registration, driver's license, social relationship
37 and receipt of services.

1 **§5-622. Exclusive basis**

2 This subpart provides the exclusive jurisdictional basis for a court of this State to
3 appoint a guardian or issue a protective order for an adult.

4 **§5-623. Jurisdiction**

5 A court of this State has jurisdiction to appoint a guardian or issue a protective order
6 for a respondent if:

7 **1. Respondent's home state.** This State is the respondent's home state; or

8 **2. Significant-connection state and other factors.** On the date the petition is filed,
9 this State is a significant-connection state and:

10 A. The respondent does not have a home state or a court of the respondent's home
11 state has declined to exercise jurisdiction because this State is a more appropriate
12 forum;

13 B. The respondent has a home state, a petition for an appointment or order is not
14 pending in a court of that state or another significant-connection state and, before the
15 court makes the appointment or issues the order;

16 (1) A petition for an appointment or order is not filed in the respondent's home
17 state;

18 (2) An objection to the court's jurisdiction is not filed by a person required to be
19 notified of the proceeding; and

20 (3) The court in this State concludes that it is an appropriate forum under the
21 factors set forth in section 5-626;

22 C. This State does not have jurisdiction under either paragraph A or B, the
23 respondent's home state and all significant-connection states have declined to
24 exercise jurisdiction because this State is the more appropriate forum and jurisdiction
25 in this State is consistent with the Constitution of Maine and the United States
26 Constitution; or

27 D. The requirements for special jurisdiction under section 5-624 are met.

28 **§5-624. Special jurisdiction**

29 **1. Special jurisdiction.** If this State is not the respondent's home state and not a
30 significant-connection state, a court of this State has special jurisdiction to do any of the
31 following:

32 A. Appoint a guardian in an emergency for a term not exceeding 6 months for a
33 respondent who is physically present in this State;

34 B. Issue a protective order with respect to real or tangible personal property located
35 in this State; or

36 C. Appoint a guardian or conservator for an individual subject to guardianship or
37 protected person for whom a provisional order to transfer the proceeding from
38 another state has been issued under procedures similar to those in section 5-631.

1 **2. Emergency appointment.** If a petition for the appointment of a guardian in an
2 emergency is brought in this State and this State was not the respondent's home state on
3 the date the petition was filed, the court shall dismiss the proceeding at the request of the
4 court of the home state, if any, whether dismissal is requested before or after the
5 emergency appointment.

6 **§5-625. Exclusive and continuing jurisdiction**

7 Except as otherwise provided in section 5-624, a court that has appointed a guardian
8 or issued a protective order consistent with this Part has exclusive and continuing
9 jurisdiction over the proceeding until it is terminated by the court or the appointment or
10 order expires by its own terms.

11 **§5-626. Appropriate forum**

12 **1. Decline jurisdiction.** A court of this State having jurisdiction under section 5-623
13 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if
14 it determines at any time that a court of another state is a more appropriate forum.

15 **2. Actions by court that declines jurisdiction.** If a court of this State declines to
16 exercise its jurisdiction under subsection 1, it shall either:

17 A. Dismiss or stay the proceeding; or

18 B. Impose any condition the court considers just and proper, including the condition
19 that a petition for the appointment of a guardian or issuance of a protective order be
20 filed promptly in another state.

21 **3. Appropriate forum factors.** In determining whether it is an appropriate forum,
22 the court shall consider all relevant factors, which may include:

23 A. Any expressed preference of the respondent;

24 B. Whether abuse, neglect or exploitation of the respondent has occurred or is likely
25 to occur and which state could best protect the respondent from the abuse, neglect or
26 exploitation;

27 C. The length of time the respondent was physically present in or was a legal
28 resident of this State or another state;

29 D. The distance of the respondent from the court in each state;

30 E. The financial circumstances of the respondent's estate;

31 F. The nature and location of the evidence;

32 G. The ability of the court in each state to decide the issue expeditiously and the
33 procedures necessary to present evidence;

34 H. The familiarity of the court of each state with the facts and issues in the
35 proceeding; and

36 I. If an appointment were made, the court's ability to monitor the conduct of the
37 guardian or conservator.

1 **§5-627. Jurisdiction declined by reason of conduct**

2 **1. Jurisdiction because of unjustifiable conduct.** If at any time a court of this
3 State determines that it acquired jurisdiction to appoint a guardian or issue a protective
4 order because of unjustifiable conduct, the court may:

5 A. Decline to exercise jurisdiction;

6 B. Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy
7 to ensure the health, safety and welfare of the respondent or the protection of the
8 respondent's property or prevent a repetition of the unjustifiable conduct, including
9 staying the proceeding until a petition for the appointment of a guardian or issuance
10 of a protective order is filed in a court of another state having jurisdiction; or

11 C. Continue to exercise jurisdiction after considering:

12 (1) The extent to which the respondent and all persons required to be notified of
13 the proceedings have acquiesced in the exercise of the court's jurisdiction;

14 (2) Whether it is a more appropriate forum than the court of any other state under
15 the factors set forth in section 5-626, subsection 3; and

16 (3) Whether the court of any other state would have jurisdiction under factual
17 circumstances in substantial conformity with the jurisdictional standards of
18 section 5-623.

19 **2. Assessment of expenses.** If a court of this State determines that it acquired
20 jurisdiction to appoint a guardian or issue a protective order because a party seeking to
21 invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party
22 necessary and reasonable expenses, including attorney's fees, investigative fees, court
23 costs, communication expenses, witness fees and expenses and travel expenses. The
24 court may not assess fees, costs or expenses of any kind against this State or a
25 governmental subdivision, agency or instrumentality of this State unless authorized by
26 law other than this Part.

27 **§5-628. Notice of proceeding**

28 If a petition for the appointment of a guardian or issuance of a protective order is
29 brought in this State and this State was not the respondent's home state on the date the
30 petition was filed, in addition to complying with the notice requirements of this State,
31 notice of the petition must be given to those persons who would be entitled to notice of
32 the petition if a proceeding were brought in the respondent's home state. The notice must
33 be given in the same manner as notice is required to be given in this State.

34 **§5-629. Proceedings in more than one state**

35 Except for a petition for the appointment of a guardian in an emergency or issuance
36 of a protective order limited to property located in this State under section 5-624,
37 subsection 1, paragraph A or B, if a petition for the appointment of a guardian or issuance
38 of a protective order is filed in this State and in another state and neither petition has been
39 dismissed or withdrawn, the following apply.

1 1. Jurisdiction proper; proceed with case. If the court in this State has jurisdiction
2 under section 5-623, it may proceed with the case unless a court in another state acquires
3 jurisdiction under provisions similar to section 5-623 before the appointment or issuance
4 of the order.

5 2. Lack of jurisdiction; communication with court. If the court in this State does
6 not have jurisdiction under section 5-623, whether at the time the petition is filed or at
7 any time before the appointment or issuance of the order, the court shall stay the
8 proceeding and communicate with the court in the other state. If the court in the other
9 state has jurisdiction, the court in this State shall dismiss the petition unless the court in
10 the other state determines that the court in this State is a more appropriate forum.

11 **SUBPART 3**

12 **TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP**

13 **§5-631. Transfer of guardianship or conservatorship to another state**

14 1. Petition. A guardian or conservator appointed in this State may petition the court
15 to transfer the guardianship or conservatorship to another state.

16 2. Notice. Notice of a petition under subsection 1 must be given to the persons that
17 would be entitled to notice of a petition in this State for the appointment of a guardian or
18 conservator.

19 3. Hearing or opportunity for hearing. On the court's own motion or on request of
20 the guardian or conservator, the individual subject to guardianship or protected person or
21 other person required to be notified of the petition, the court shall hold a hearing or
22 provide an opportunity for a hearing to be held on a petition filed pursuant to subsection
23 1.

24 4. Provisional order; guardianship. The court shall issue an order provisionally
25 granting a petition to transfer a guardianship and shall direct the guardian to petition for
26 guardianship in the other state if the court is satisfied that the guardianship will be
27 accepted by the court in the other state and the court finds that:

28 A. The individual subject to guardianship is physically present in or is reasonably
29 expected to move permanently to the other state;

30 B. An objection to the transfer has not been made or, if an objection has been made,
31 the objector has not established by a preponderance of the evidence that the transfer
32 would be contrary to the best interest of the individual subject to guardianship; and

33 C. Plans for care and services for the individual subject to guardianship in the other
34 state are reasonable and sufficient.

35 5. Provisional order; conservatorship. The court shall issue a provisional order
36 granting a petition to transfer a conservatorship and shall direct the conservator to petition
37 for conservatorship in the other state if the court is satisfied that the conservatorship will
38 be accepted by the court of the other state and the court finds that:

1 A. The protected person is physically present in or is reasonably expected to move
2 permanently to the other state or the protected person has a significant connection to
3 the other state considering the factors in section 5-621, subsection 2;

4 B. An objection to the transfer has not been made or, if an objection has been made,
5 the objector has not established by a preponderance of the evidence that the transfer
6 would be contrary to the best interest of the protected person; and

7 C. Adequate arrangements will be made for management or disposition of the
8 protected person's property.

9 6. Final order. The court shall issue a final order confirming the transfer and
10 terminating the guardianship or conservatorship upon its receipt of:

11 A. A provisional order accepting the proceeding from the court to which the
12 proceeding is to be transferred that is issued under provisions similar to section
13 5-632; and

14 B. The documents required to terminate a guardianship or conservatorship in this
15 State.

16 **§5-632. Accepting guardianship or conservatorship transferred from another state**

17 1. Petition. To confirm transfer of a guardianship or conservatorship transferred to
18 this State under provisions similar to section 5-631, the guardian or conservator must
19 petition the court in this State to accept the guardianship or conservatorship. The petition
20 must include a certified copy of the other state's provisional order of transfer.

21 2. Notice. Notice of a petition under subsection 1 must be given to those persons
22 who would be entitled to notice if the petition were a petition for the appointment of a
23 guardian or issuance of a protective order in both the transferring state and this State.
24 The notice must be given in the same manner as notice is required to be given in this
25 State.

26 3. Hearing. On the court's own motion or on request of the guardian or conservator,
27 the individual subject to guardianship or protected person or other person required to be
28 notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to
29 subsection 1.

30 4. Provisional order. The court shall issue an order provisionally granting a petition
31 filed under subsection 1 unless:

32 A. An objection is made and the objector establishes by a preponderance of the
33 evidence that transfer of the proceeding would be contrary to the best interest of the
34 individual subject to guardianship or protected person; or

35 B. The guardian or conservator is ineligible for appointment in this State.

36 5. Final order. The court shall issue a final order accepting the proceeding and
37 appointing the guardian or conservator as guardian or conservator in this State upon its
38 receipt from the court from which the proceeding is being transferred of a final order
39 issued under provisions similar to section 5-631 transferring the proceeding to this State.

40 6. Recognition of order from other state. In granting a petition under this section,
41 the court shall recognize a guardianship or conservatorship order from the other state.

1 including the determination of the individual subject to guardianship's or protected
2 person's need for guardianship or protective order and the appointment of the guardian or
3 conservator.

4 **7. Denial; other proceedings unaffected.** The denial by a court of this State of a
5 petition to accept a guardianship or conservatorship transferred from another state does
6 not affect the ability of the guardian or conservator to seek appointment as guardian or
7 conservator in this State under Part 3 or 4 if the court has jurisdiction to make an
8 appointment other than by reason of the provisional order of transfer.

9 **SUBPART 4**

10 **MISCELLANEOUS PROVISIONS**

11 **§5-641. Uniformity of application and construction**

12 In applying and construing this Part, consideration must be given to the need to
13 promote uniformity of the law with respect to its subject matter among states that enact it.

14 **§5-642. Relation to Electronic Signatures in Global and National Commerce Act**

15 This Part modifies, limits and supersedes the federal Electronic Signatures in Global
16 and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not
17 modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic
18 delivery of any of the notices described in 15 United States Code, Section 7003(b).

19 **§5-643. Transitional provisions**

20 **1. Proceedings on or after July 1, 2019.** This Part applies to guardianship and
21 protective proceedings begun on or after July 1, 2019.

22 **2. Proceedings before July 1, 2019.** Subparts 1 and 3 and sections 5-641 and 5-642
23 apply to proceedings begun before July 1, 2019, regardless of whether a guardianship or
24 protective order has been issued.

25 **PART 7**

26 **PUBLIC GUARDIAN AND CONSERVATOR**

27 **§5-701. Public guardians and conservators; general**

28 **1. Appointment of public guardian or conservator.** In any case in which a
29 guardian or conservator may be appointed by the court under this Article, the court may
30 appoint a public guardian or conservator as provided in this Part for persons who are in
31 need of protective services.

32 **2. Department of Health and Human Services.** The Department of Health and
33 Human Services shall act as the public guardian or conservator for persons in need of
34 protective services.

35 **3. Article applies to public guardians and conservators.** Except as otherwise
36 provided in this Part, the appointment, termination, rights and duties and other provisions
37 for guardians and conservators in this Article apply to public guardians and conservators.

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1 **§5-702. Priority of private guardian or conservator**

2 A public guardian or conservator may not be appointed if the court determines that a
3 suitable private guardian or conservator is available and willing to assume the
4 responsibilities of a guardian or conservator.

5 **§5-703. Exclusiveness of public guardian or conservator**

6 When the court has appointed a public guardian or conservator under this Part, no
7 coguardian or coconservator may be appointed for the same individual subject to
8 guardianship or protected person during the continuation of the public guardianship or
9 public conservatorship.

10 **§5-704. Nomination of public guardian or conservator**

11 1. Nomination of public guardian. Any person who is eligible to petition for
12 appointment of a guardian under section 5-302, subsection 1, including the commissioner
13 of any state department, the head of any state institution, the overseers of the poor and the
14 welfare director or health officer of any municipality, may nominate the public guardian.

15 2. Nomination of public conservator. Any person who is eligible to petition for
16 appointment of a conservator under section 5-402, subsection 1, including the
17 commissioner of any state department, the head of any state institution, the overseer of
18 the poor and the welfare director or health officer of any municipality, may nominate the
19 public conservator.

20 3. Article applies to proceedings for determining appointment. Except as
21 supplemented by section 5-705, the proceedings for determining the appointment of a
22 public guardian or conservator are governed by the provisions of this Article for the
23 appointment of guardians and conservators generally.

24 **§5-705. Acceptance by public guardian or conservator; plan**

25 Prior to the appointment of a public guardian or conservator, the appropriate agency
26 nominated shall accept or reject the nomination in writing within 30 days of its receipt of
27 notification that it has been nominated and if the nomination is accepted shall file a
28 detailed plan that, as relevant, must include but is not limited to the type of proposed
29 living arrangement for the individual subject to guardianship, how the individual's
30 financial needs will be met, how the individual's medical and other remedial needs will be
31 met, how the individual's social needs will be met and a plan for the individual's
32 continuing contact with relatives and friends, as well as a plan for the management of the
33 individual's or protected person's estate in the case of a public conservatorship.

34 **§5-706. Officials authorized to act as public guardian or conservator**

35 1. Commissioner of Health and Human Services. When the Department of Health
36 and Human Services is appointed public guardian or conservator of a person, the
37 authority of the public guardian or conservator must be exercised by the Commissioner of
38 Health and Human Services and by any persons duly delegated by the commissioner to
39 exercise such authority.

1 **2. Delegation of authority.** Persons duly delegated by the officials authorized to act
2 under subsection 1 may include a staff of competent social workers or competent social
3 workers assigned to the public guardian or conservator by the Department of Health and
4 Human Services. In the event that the delegation is to an individual, such individual must
5 be qualified by reason of education or experience, or both, in administering to the needs
6 of the individual or individuals over whom the individual is to exercise administrative or
7 supervisory authority under the public guardian.

8 **§5-707. Duties and powers of a public guardian or conservator**

9 A public guardian or conservator has the same powers, rights and duties respecting
10 the individual subject to guardianship or the protected person as provided for guardians
11 and conservators by the other Parts of this Article except as otherwise specifically
12 provided in this Part, including the following particular provisions.

13 **1. Placement in licensed facility; removal.** A public guardian may place an
14 individual subject to guardianship in a facility described in Title 22, section 1811 only if
15 the facility is duly licensed. In the event that the license of any such facility is suspended
16 or revoked, the public guardian having any individual subject to guardianship placed in
17 that facility shall remove the individual and effect an appropriate placement of the
18 individual as soon as practicable after knowledge of the suspension or revocation of the
19 license.

20 **2. Examination and evaluation; report to court.** A public guardian or conservator
21 at least annually, and at any time when ordered by the court, shall review the case of
22 every person for whom the public guardian or conservator is acting under this Part. A
23 report of each review must be filed with the court. Each review must contain an
24 examination and evaluation of the plan created under section 5-705 for the individual
25 subject to guardianship or protected person and recommendations for a modification of
26 the plan, as appropriate or necessary.

27 **3. Records.** A public guardian or conservator shall keep books of account or other
28 records showing separately the principal amount received, increments thereto and
29 disbursements therefrom for the benefit of the individual subject to guardianship or
30 protected person, and such other records as are appropriate for the particular situation,
31 together with the name of the individual subject to guardianship or protected person, the
32 source from which the money was received and the purpose for which the money was
33 expended.

34 **4. In absence of kin, autopsy and burial.** A public guardian, in the absence of
35 available next of kin, may authorize the performance of an autopsy upon the body of a
36 deceased individual subject to guardianship. The public guardian, in the absence of
37 available next of kin, or in the event that next of kin refuses to assume responsibility for
38 the deceased individual subject to guardianship, shall cause any deceased individual
39 subject to guardianship to be suitably buried and has authority to expend funds of the
40 individual for that purpose, and in the event the individual is without funds at the time of
41 death, the public guardian shall cause the individual to be suitably buried at public
42 expense, as in the case of the burial of any other deceased indigent person.

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§5-708. No change in rights to services

7 The appointment of a public guardian or conservator in no way enlarges or
8 diminishes the individual subject to guardianship's or protected person's right to services
9 made available to all persons in need of service or protection in the State except for the
10 provision of guardianship or conservatorship services as provided under this Article.

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§5-709. No change in powers and duties of agency heads and trustees

22 Nothing in this Article abrogates any other powers or duties vested by law in the head
23 of any public institution, or vested by the settlor of a trust in the trustee thereof, for the
24 benefit of any individual subject to guardianship or protected person for whom the public
25 guardian or conservator is appointed.

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§5-710. Bond

38 The public guardian or conservator is not required to file bonds in individual
39 guardianships or conservatorships, but shall give a surety bond for the joint benefit of the
40 individuals subject to guardianship or protected persons placed under the responsibility of
41 the public guardian or conservator and the State, with a surety company or companies
42 authorized to do business within the State, in an amount not less than the total value of all
43 assets held by the public guardian or conservator, which amount must be computed at the
44 end of each state fiscal year and approved by the Probate Court for Kennebec County. At
45 no time may the bond of each of the public guardians or conservators be less than \$500
46 respectively.

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§5-711. Compensation

59 **1. Reasonable expenses; account for costs.** The public guardian or conservator
60 may receive such reasonable amounts for its expenses as guardian or conservator as the
61 Probate Court may allow. The amounts so allowed must be allocated to an account from
62 which may be drawn expenses for filing fees, bond premiums, court costs and other
63 expenses required in the administration of the functions of the public guardian or
64 conservator. No amounts thus received may inure to the benefit of any employee of the
65 public guardian or conservator. Any balance in the account at the end of a fiscal year
66 does not lapse but is carried forward from year to year and used for the purposes provided
67 for in this subsection.

68 **2. Reimbursement of personal expenditures.** Any personal expenditures made on
69 the individual subject to guardianship's or protected person's behalf by the public
70 guardian or conservator must, when properly evidenced, be reimbursed out of the
71 individual subject to guardianship's or protected person's estate. Claims for services
72 rendered by state agencies must be submitted to the Probate Court for approval before
73 payment.

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§5-712. Individuals subject to guardianship; guardian ad litem costs

86 **1. Guardian ad litem, other special costs.** The costs of the guardian ad litem or
87 any other special costs may be paid by the Department of Health and Human Services,
88 within the limits of the department's budget, when:

89 A. A person is in need of protective services and;

1 (1) A guardian ad litem is appointed under the provisions of this Code; or

2 (2) A court incurs special costs in a proceeding concerning the person; and

3 B. Appointment of a public guardian or conservator is sought or the person, within 3
4 months prior to the filing of the petition;

5 (1) Is or has been a client of the Department of Health and Human Services; or

6 (2) Has received services from a worker from the Department of Health and
7 Human Services.

8 2. Payment of costs. The Department of Health and Human Services is not liable
9 for the costs set out in subsection 1 if the department can demonstrate that the person has
10 assets against which the costs may be assessed or that another more appropriate funding
11 source is available and subject to the court's jurisdiction.

12 **§5-713. Limited public guardianships**

13 The provisions of Parts 2 and 3 regarding limited guardianships apply to the
14 appointment of public guardians.

15 **PART 8**

16 **UNIFORM HEALTH CARE DECISIONS ACT**

17 **§5-801. Short title**

18 This Part may be known and cited as "the Uniform Health Care Decisions Act."

19 **§5-802. Definitions**

20 As used in this Part, unless the context otherwise indicates, the following terms have
21 the following meanings.

22 1. Advance health care directive. "Advance health care directive" means an
23 individual instruction from, or a power of attorney for health care by, an individual with
24 capacity.

25 2. Agent. "Agent" means an individual with capacity designated in a power of
26 attorney for health care to make a health care decision for the individual granting the
27 power.

28 3. Capacity. "Capacity" means the ability to have a basic understanding of the
29 diagnosed condition and to understand the significant benefits, risks and alternatives to
30 the proposed health care and the consequences of forgoing the proposed treatment, the
31 ability to make and communicate a health care decision and the ability to understand the
32 consequences of designating an agent or surrogate to make health care decisions.

33 4. Guardian. "Guardian" means a judicially appointed guardian or conservator
34 having authority to make a health care decision for an individual.

35 5. Health care. "Health care" means any care, treatment, service or procedure to
36 maintain, diagnose or otherwise affect an individual's physical or mental condition.

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6. Health care decision. "Health care decision" means a decision made by an individual with capacity or by the individual's agent, guardian or surrogate regarding the individual's health care, including:

A. Selection and discharge of health care providers and institutions;

B. Approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and

C. Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment.

7. Health care institution. "Health care institution" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

8. Health care provider. "Health care provider" means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

9. Individual instruction. "Individual instruction" means a direction from an individual with capacity concerning a health care decision for the individual.

10. Life-sustaining treatment. "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a person without capacity and in either a terminal condition or a persistent vegetative state, will serve only to prolong the process of dying. "Life-sustaining treatment" may include artificially administered nutrition and hydration, which is the provision of nutrients and liquids through the use of tubes, intravenous procedures or similar medical interventions.

11. Persistent vegetative state. "Persistent vegetative state" means a state that occurs after coma in which the patient totally lacks higher cortical and cognitive function, but maintains vegetative brain stem processes, with no realistic possibility of recovery, as diagnosed in accordance with acceptable medical standards.

12. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

13. Physician. "Physician" means an individual authorized to practice medicine under Title 32.

14. Power of attorney for health care. "Power of attorney for health care" means the designation of an agent with capacity to make health care decisions for the individual granting the power.

15. Primary physician. "Primary physician" means a physician designated by an individual with capacity or by the individual's agent, guardian or surrogate to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

1 **16. Reasonably available.** "Reasonably available" means readily able to be
2 contacted without undue effort and willing and able to act in a timely manner considering
3 the urgency of the patient's health care needs.

4 **17. Supervising health care provider.** "Supervising health care provider" means
5 the primary physician or, if there is no primary physician or the primary physician is not
6 reasonably available, the health care provider who has undertaken primary responsibility
7 for a patient's health care.

8 **18. Surrogate.** "Surrogate" means an individual with capacity, other than a patient's
9 agent or guardian, authorized under this Part to make health care decisions as provided in
10 section 5-806.

11 **19. Terminal condition.** "Terminal condition" means an incurable and irreversible
12 condition that, without the administration of life-sustaining treatment, in the opinion of
13 the primary physician, will result in death within a relatively short time.

14 **§5-803. Advance health care directives**

15 **1. Individual instruction.** An adult or emancipated minor with capacity may give
16 an individual instruction. The instruction may be oral or written. The instruction may be
17 limited to take effect only if a specified condition arises. An oral instruction is valid only
18 if made to a health care provider or to an individual who may serve as a surrogate under
19 section 5-806, subsection 2.

20 **2. Power of attorney for health care.** An adult or emancipated minor with capacity
21 may execute a power of attorney for health care, which may authorize the agent to make
22 any health care decision the principal could have made while having capacity. The power
23 must be in writing and signed by the principal and 2 witnesses. Notwithstanding any law
24 validating electronic or digital signatures, signatures of the principal and witnesses must
25 be made in person and not by electronic means. The power remains in effect
26 notwithstanding the principal's later incapacity and may include individual instructions.
27 Unless related to the principal by blood, marriage or adoption, an agent may not be an
28 owner, operator or employee of a residential long-term health care institution at which the
29 principal is receiving care.

30 **3. Effective upon determination that principal lacks capacity.** Unless otherwise
31 specified in a power of attorney for health care, the authority of an agent becomes
32 effective only upon a determination that the principal lacks capacity and ceases to be
33 effective upon a determination that the principal has recovered capacity.

34 **4. Determination.** Unless otherwise specified in a written advance health care
35 directive, a determination that an individual lacks or has recovered capacity or that
36 another condition exists that affects an individual instruction, the authority of an agent or
37 the validity of an advance health care directive must be made by the primary physician,
38 by a court of competent jurisdiction or, for an individual who has included a directive
39 authorizing mental health treatment in an advance health care directive, by a person
40 qualified to conduct an examination pursuant to Title 34-B, section 3863.

41 **5. Decision in accordance with instructions, wishes, best interest.** An agent shall
42 make a health care decision in accordance with the principal's individual instructions, if
43 any, and other wishes to the extent known to the agent. Otherwise, the agent shall make

1 the decision in accordance with the agent's determination of the principal's best interest.
2 In determining the principal's best interest, the agent shall consider the principal's
3 personal values to the extent known to the agent.

4 **6. Effective without judicial approval.** A health care decision made by an agent
5 for a principal is effective without judicial approval.

6 **7. Nomination of guardian.** A written advance health care directive may include
7 the individual's nomination of a guardian of the person.

8 **8. Validity of advance health care directive.** An advance health care directive is
9 valid for purposes of this Part if it complies with this Part, regardless of when or where
10 executed or communicated, or if it is valid under the laws of the state in which it was
11 executed. An advance health care directive that is valid where executed or communicated
12 is valid for the purposes of this Part.

13 **9. Directing mental health treatment.** An advance health care directive is valid for
14 purposes of directing mental health treatment. The terms of the directive must be
15 construed in accordance with this Part and Title 34-B, sections 3831 and 3862.

16 **10. Personal representative for purposes of federal law.** A surrogate or an agent
17 named in an advance health care directive has the power and authority to serve as the
18 personal representative of the patient who executed the health care directive for all
19 purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42
20 United States Code, Section 1320d et seq. and its regulations, 45 Code of Federal
21 Regulations, Parts 160-164. The surrogate or agent has all the rights of the patient with
22 respect to the use and disclosure of the individually identifiable health information and
23 other medical records of the patient.

24 **§5-804. Revocation of advance health care directive**

25 **1. Revocation of designation of agent.** An individual with capacity may revoke the
26 designation of an agent only by a signed writing or by personally informing the
27 supervising health care provider.

28 **2. Revocation of advance health care directive.** An individual with capacity may
29 revoke all or part of an advance health care directive, other than the designation of an
30 agent, at any time and in any manner that communicates an intent to revoke.

31 **3. Communication of revocation.** A health care provider, agent, guardian or
32 surrogate who is informed of a revocation by an individual with capacity shall promptly
33 communicate the fact of the revocation to the supervising health care provider and to any
34 health care institution at which the patient is receiving care.

35 **4. Revocation of spouse as agent.** A decree of annulment, divorce, dissolution of
36 marriage or legal separation revokes a previous designation of a spouse as agent unless
37 otherwise specified in the decree or in a power of attorney for health care.

38 **5. Revocation of earlier advance health care directive in conflict.** An advance
39 health care directive that conflicts with an earlier advance health care directive revokes
40 the earlier directive to the extent of the conflict.

1 **§5-805. Optional form**

2 The following form may, but need not, be used to create an advance health care
3 directive. The other sections of this Part govern the effect of this or any other writing
4 used to create an advance health care directive. An individual with capacity may
5 complete or modify all or any part of the following form.

6 **ADVANCE HEALTH CARE DIRECTIVE**

7 **Explanation**

8 You have the right to give instructions about your own health care. You also have
9 the right to name someone else to make health care decisions for you. This form lets you
10 do either or both of these things. It also lets you express your wishes regarding donation
11 of organs and the designation of your primary physician. If you use this form, you may
12 complete or modify all or any part of it. You are free to use a different form.

13 Part 1 of this form is a power of attorney for health care. Part 1 lets you name
14 another individual as agent to make health care decisions for you if you become incapable
15 of making your own decisions or if you want someone else to make those decisions for
16 you now even though you are still capable. You may also name an alternate agent to act
17 for you if your first choice is not willing, able or reasonably available to make decisions
18 for you. Unless related to you, your agent may not be an owner, operator or employee of
19 a residential long-term health care institution at which you are receiving care.

20 Unless the form you sign limits the authority of your agent, your agent may make all
21 health care decisions for you. This form has a place for you to limit the authority of your
22 agent. You need not limit the authority of your agent if you wish to rely on your agent
23 for all health care decisions that may have to be made. If you choose not to limit the
24 authority of your agent, your agent will have the right to:

25 (1) Consent or refuse consent to any care, treatment, service or procedure to
26 maintain, diagnose or otherwise affect a physical or mental condition;

27 (2) Select or discharge health care providers and institutions;

28 (3) Approve or disapprove diagnostic tests, surgical procedures, programs of
29 medication and orders not to resuscitate; and

30 (4) Direct the provision, withholding or withdrawal of artificial nutrition and
31 hydration and all other forms of health care, including life-sustaining treatment.

32 Part 2 of this form lets you give specific instructions about any aspect of your health
33 care. Choices are provided for you to express your wishes regarding the provision,
34 withholding or withdrawal of treatment to keep you alive, including the provision of
35 artificial nutrition and hydration, as well as the provision of pain relief. Space is also
36 provided for you to add to the choices you have made or for you to write out any
37 additional wishes.

38 Part 3 of this form lets you express an intention to donate your bodily organs and
39 tissues following your death.

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Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

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After completing this form, sign and date the form at the end. You must have 2 other individuals sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care and to any health care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

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You have the right to revoke this advance health care directive or replace this form at any time.

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PART 1

13

POWER OF ATTORNEY FOR HEALTH CARE

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(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health care decisions for me:

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.....

17

(name of individual you choose as agent)

18

.....

19

(address) (city) (state) (zip code)

20

.....

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(home phone) (work phone)

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OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health care decision for me, I designate as my first alternate agent:

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.....

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(name of individual you choose as first alternate agent)

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.....

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(address) (city) (state) (zip code)

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.....

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(home phone) (work phone)

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OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health care decision for me, I designate as my second alternate agent:

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(name of individual you choose as second alternate agent)

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(address) (city) (state) (zip code)
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(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

.....
.....
.....

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box [], my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have marked below:

(a) Choice Not To Prolong Life

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COMMITTEE AMENDMENT "A" to H.P. 91, L.D. 123

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I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

(b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box. If I mark this box , artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

.....
.....

(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

.....
.....

(Add additional sheets if needed)

PART 3
DONATION OF ORGANS AT DEATH

(OPTIONAL)

(10) UPON MY DEATH: (mark applicable box)

(a) I give any needed organs, tissues or parts, OR

(b) I give the following organs, tissues or parts only:

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(c) My gift is for the following purposes: (strike any of the following you do not want)

(i) Transplant

(ii) Therapy

COMMITTEE AMENDMENT

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- (iii) Research
- (iv) Education

PART 4
PRIMARY PHYSICIAN

(OPTIONAL)
DESIGNATION OF PRIMARY PHYSICIAN

(11) I designate the following physician as my primary physician:

.....

(name of physician)

.....

(address) _____ (city) _____ (state) _____ (zip code)

.....

(phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

.....

(name of physician)

.....

(address) _____ (city) _____ (state) _____ (zip code)

.....

(phone)

(12) EFFECT OF COPY: A copy of this form has the same effect as the original.

(13) SIGNATURES: Sign and date the form here:

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(date) _____ (sign your name)

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(address) _____ (print your name)

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(city) _____ (state)

SIGNATURES OF WITNESSES:

First witness _____ 2nd witness _____

.....
(print name) _____ (print name)

.....
(address) _____ (address)

.....
(city) _____ (state) _____ (city) _____ (state)

.....
(signature of witness) _____ (signature of witness)

.....
(date) _____ (date)

§5-806. Decisions by surrogate

1. Decisions by surrogate. A surrogate may make a decision to withhold or withdraw life-sustaining treatment for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity, no agent or guardian has been appointed or the agent or guardian is not reasonably available and the patient is in a terminal condition or a persistent vegetative state as determined by the primary physician.

A surrogate also is authorized to make any other health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian exists, except that a surrogate may not deny surgery, procedures or other interventions that are lifesaving and medically necessary.

A medically necessary procedure is one providing the most patient-appropriate intervention or procedure that can be safely and effectively given.

2. Priority of who may act as surrogate. Any member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

A. The spouse, unless legally separated;

B. An adult who shares an emotional, physical and financial relationship with the patient similar to that of a spouse;

C. An adult child;

1 D. A parent;

2 E. An adult brother or sister;

3 F. An adult grandchild;

4 G. An adult niece or nephew, related by blood or adoption;

5 H. An adult aunt or uncle, related by blood or adoption; or

6 I. Any adult relative of the patient, related by blood or adoption, who is familiar with
7 the patient's personal values and is reasonably available for consultation.

8 **3. Adult who has exhibited special concern.** If none of the individuals eligible to
9 act as surrogate under subsection 2 is reasonably available, an adult who has exhibited
10 special concern for the patient, who is familiar with the patient's personal values and who
11 is reasonably available may act as surrogate.

12 **4. Communication of assumption of authority.** A surrogate shall communicate the
13 surrogate's assumption of authority as promptly as practicable to the members of the
14 patient's family specified in subsection 2 who can be readily contacted.

15 **5. Conflict among potential surrogates; neutral 3rd party or court.** If more than
16 one member of a class assumes authority to act as surrogate and they, or members of
17 different classes who are reasonably available, do not agree on a health care decision and
18 the supervising health care provider is so informed, the supervising health care provider
19 may comply with the decision of the class having priority or a majority of the members of
20 that class who have communicated their views to the provider. The health care provider
21 may refer the members of the class or classes to a neutral 3rd party for assistance in
22 resolving the dispute or to a court of competent jurisdiction. If the class is evenly divided
23 concerning the health care decision and the supervising health care provider is so
24 informed, that class and all individuals having lower priority are disqualified from
25 making the decision.

26 **6. Decision in accordance with instructions, wishes, best interest.** A surrogate
27 shall make a health care decision in accordance with the patient's individual instructions,
28 if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate
29 shall make the decision in accordance with the surrogate's determination of the patient's
30 best interest and in good faith. In determining the patient's best interest, the surrogate
31 shall consider the patient's personal values to the extent known to the surrogate. A
32 consent is not valid if it conflicts with the intention of the patient previously expressed to
33 the surrogate.

34 **7. Effective without judicial approval.** A health care decision made by a surrogate
35 for a patient lacking capacity is effective without judicial approval.

36 **8. Disqualification.** An individual with capacity at any time may disqualify another,
37 including a member of the individual's family, from acting as the individual's surrogate
38 by a signed writing or by personally informing the supervising health care provider of the
39 disqualification.

40 **9. Conflict of interest.** A surrogate may not be an owner, operator or employee of a
41 residential long-term health care institution at which the patient is receiving care unless
42 the surrogate is one of the following:

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- 1 A. The spouse of the patient;
- 2 B. An adult child of the patient;
- 3 C. A parent of the patient; or
- 4 D. A relative of the patient with whom the patient has resided for more than 6
- 5 months prior to the decision.

6 **10. Written declaration supporting authority.** A supervising health care provider
7 may require an individual claiming the right to act as surrogate for a patient to provide a
8 written declaration under penalty of perjury stating facts and circumstances reasonably
9 sufficient to establish the claimed authority.

10 **§5-807. Decisions by guardian**

11 **1. Compliance with expressed wishes; cannot revoke advance health care**
12 **directive.** Except as authorized by a court of competent jurisdiction, a guardian shall
13 comply with the individual subject to guardianship's individual instructions and other
14 wishes, if any, expressed while the individual subject to guardianship had capacity and to
15 the extent known to the guardian and may not revoke the individual subject to
16 guardianship's advance health care directive unless the appointing court expressly so
17 authorizes.

18 **2. Agent's decision takes precedence.** Absent a court order to the contrary, a health
19 care decision of an agent takes precedence over that of a guardian.

20 **3. Effective without judicial approval; exceptions.** A health care decision made
21 by a guardian for the individual subject to guardianship is effective without judicial
22 approval, except under the following circumstances:

23 A. The guardian's decision is contrary to the individual subject to guardianship's
24 individual instructions and other wishes, expressed while the individual subject to
25 guardianship had capacity; or

26 B. The guardian seeks to withhold or withdraw life-sustaining treatment from the
27 individual subject to guardianship, against the advice of the individual subject to
28 guardianship's primary physician and in the absence of instructions from the
29 individual subject to guardianship, made while the individual subject to guardianship
30 had capacity.

31 **§5-808. Obligations of health care provider**

32 **1. Communicate to patient.** Before implementing a health care decision made for a
33 patient, a supervising health care provider, if possible, shall promptly communicate to the
34 patient the decision made and the identity of the person making the decision.

35 **2. Include in record advance health care directive, surrogate, revocation,**
36 **disqualification.** A supervising health care provider who knows of the existence of an
37 advance health care directive, a revocation of an advance health care directive or a
38 designation or disqualification of a surrogate shall promptly record its existence in the
39 patient's health care record and, if it is in writing, shall request a copy and if one is
40 furnished shall arrange for its maintenance in the health care record.

1 **3. Include in record determinations on capacity; communicate.** A primary
2 physician who makes or is informed of a determination that a patient lacks or has
3 recovered capacity or that another condition exists that affects an individual instruction or
4 the authority of an agent, guardian or surrogate or the validity of an advance health care
5 directive shall promptly record the determination in the patient's health care record and
6 communicate the determination to the patient, if possible, and to any person then
7 authorized to make health care decisions for the patient.

8 **4. Compliance.** Except as provided in subsections 5 and 6, a health care provider or
9 health care institution providing care to a patient shall:

10 A. Comply with an individual instruction of the patient and with a reasonable
11 interpretation of that instruction made by a person then authorized to make health
12 care decisions for the patient; and

13 B. Comply with a health care decision for the patient made by a person then
14 authorized to make health care decisions for the patient to the same extent as if the
15 decision had been made by the patient while having capacity.

16 **5. Decline to comply; not in compliance; reasons of conscience; contrary to**
17 **policy.** A health care provider may decline to comply with an individual instruction or
18 health care decision if the instruction or decision appears not to be in compliance with
19 this Part or for reasons of conscience. A health care institution may decline to comply
20 with an individual instruction or health care decision if the instruction or decision appears
21 not to be in compliance with this Part or if the instruction or decision is contrary to a
22 policy of the institution that is expressly based on reasons of conscience and the policy
23 was timely communicated to the patient or to a person then authorized to make health
24 care decisions for the patient.

25 **6. Decline to comply; ineffective health care; contrary to generally accepted**
26 **standards.** A health care provider or health care institution may decline to comply with
27 an individual instruction or health care decision that requires medically ineffective health
28 care or health care contrary to generally accepted health care standards applicable to the
29 health care provider or institution.

30 **7. Duties if decline to comply.** A health care provider or health care institution that
31 declines to comply with an individual instruction or health care decision shall:

32 A. Promptly so inform the patient, if possible, and any person then authorized to
33 make health care decisions for the patient;

34 B. Provide continuing care to the patient until a transfer can be effected or a court of
35 competent jurisdiction issues a final order regarding the decision; and

36 C. Unless the patient or person then authorized to make health care decisions for the
37 patient refuses assistance, immediately make all reasonable efforts to assist in the
38 transfer of the patient to another health care provider or institution that is willing to
39 comply with the instruction or decision.

40 **8. Not as a condition for providing health care.** A health care provider or health
41 care institution may not require or prohibit the execution or revocation of an advance
42 health care directive as a condition for providing health care.

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§5-809. Health care information

7 Unless otherwise specified in an advance health care directive, a person then
8 authorized to make health care decisions for a patient has the same rights as the patient to
9 request, receive, examine, copy and consent to the disclosure of medical or any other
10 health care information.

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§5-810. Immunities

17 **1. Health care provider or institution.** A health care provider or health care
18 institution acting in good faith and in accordance with generally accepted health care
19 standards applicable to the health care provider or health care institution is not subject to
20 civil or criminal liability or to discipline for unprofessional conduct for:

21 A. Complying with a health care decision of a person apparently having authority
22 and capacity to make a health care decision for a patient, including a decision to
23 withhold or withdraw health care;

24 B. Declining to comply with a health care decision of a person based on a belief that
25 the person then lacked authority or capacity or that the decision otherwise does not
26 comply with this Part;

27 C. Complying with an advance health care directive and assuming that the directive
28 was valid when made and has not been revoked or terminated; or

29 D. Seeking judicial relief from a court of competent jurisdiction.

30 **2. Agent, guardian or surrogate.** An individual acting as agent, guardian or
31 surrogate under this Part is not subject to civil or criminal liability or to discipline for
32 unprofessional conduct for health care decisions made in good faith.

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§5-811. Statutory damages

36 **1. Health care provider or institution; intentional violation.** A health care
37 provider or health care institution that intentionally violates this Part is subject to liability
38 to the aggrieved individual for damages of \$500 or actual damages resulting from the
39 violation, whichever is greater, plus reasonable attorney's fees.

40 **2. Interference with autonomy to make health care decisions.** A person who
41 intentionally falsifies, forges, conceals, defaces or obliterates an individual's advance
42 health care directive or a revocation of an advance health care directive without the
43 individual's consent, or who coerces or fraudulently induces an individual to give, revoke
44 or not to give an advance health care directive, is subject to liability to that individual for
45 damages of \$2,500 or actual damages resulting from the action, whichever is greater, plus
46 reasonable attorney's fees.

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§5-812. Capacity

50 **1. Right to make health care decisions while having capacity.** This Part does not
51 affect the right of an individual to make health care decisions while having capacity to do
52 so.

53 **2. Presumed to have capacity; rebuttal.** An individual is presumed to have
54 capacity to make a health care decision, to give or revoke an advance health care directive

1 and to designate or disqualify a surrogate. This presumption may be rebutted by a
2 determination by the individual's primary physician or by a court of competent
3 jurisdiction.

4 **§5-813. Effect of copy**

5 A copy of a written advance health care directive, revocation of an advance health
6 care directive or designation or disqualification of a surrogate has the same effect as the
7 original.

8 **§5-814. Effect of Part**

9 **1. No presumption concerning intention if no advance health care directive or if**
10 **revoked.** This Part does not create a presumption concerning the intention of an
11 individual who has not made or who has revoked an advance health care directive.

12 **2. Death resulting from withholding or withdrawing health care.** Death resulting
13 from the withholding or withdrawal of health care in accordance with this Part does not
14 for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of
15 insurance or an annuity providing a death benefit, notwithstanding any term of the policy
16 or annuity to the contrary.

17 **3. Prohibited by other statutes.** This Part does not authorize mercy killing, assisted
18 suicide, euthanasia or the provision, withholding or withdrawal of health care to the
19 extent prohibited by other statutes of this State.

20 **4. Health care contrary to generally accepted health care standards.** This Part
21 does not authorize or require a health care provider or health care institution to provide
22 health care contrary to generally accepted health care standards applicable to the health
23 care provider or health care institution.

24 **5. Admission to a mental health institution.** This Part does not authorize an agent
25 or surrogate to consent to the admission of an individual to a mental health institution
26 unless the individual's written advance health care directive expressly so provides.

27 **6. Other statutes governing treatment for mental illness.** This Part does not
28 affect other statutes of this State governing treatment for mental illness of an individual
29 involuntarily committed to a mental health institution.

30 **§5-815. Judicial relief**

31 On petition of a patient, the patient's agent, guardian or surrogate, a health care or
32 social services provider or health care institution involved with the patient's care, a state
33 agency mandated to provide adult protective services pursuant to Title 22, chapter 958-A,
34 or an adult relative or adult friend of the patient, the court may enjoin or direct a health
35 care decision or other equitable relief.

36 **§5-816. Uniformity of application and construction**

37 This Part must be applied and construed to effectuate its general purpose to make
38 uniform the law with respect to the subject matter of this Part among states enacting it.

1 **§5-817. Military advanced medical directives**

2 A military advanced medical directive executed in accordance with 10 United States
3 Code, Section 1044c is valid in this State.

4 **PART 9**

5 **MAINE UNIFORM POWER OF ATTORNEY ACT**

6 **SUBPART 1**

7 **GENERAL PROVISIONS AND DEFINITIONS**

8 **§5-901. Short title**

9 This Part may be known and cited as "the Maine Uniform Power of Attorney Act."

10 **§5-902. Definitions**

11 As used in this Part, unless the context otherwise indicates, the following terms have
12 the following meanings.

13 1. Agent. "Agent" means a person granted authority to act for a principal under a
14 power of attorney, whether denominated an agent, attorney-in-fact or otherwise. "Agent"
15 includes an original agent, coagent, successor agent and a person to whom an agent's
16 authority is delegated.

17 2. Durable. "Durable," with respect to a power of attorney, means not terminated by
18 the principal's incapacity.

19 3. Electronic. "Electronic" means relating to technology having electrical, digital,
20 magnetic, wireless, optical, electromagnetic or similar capabilities.

21 4. Good faith. "Good faith" means honesty in fact.

22 5. Incapacity. "Incapacity" means inability of an individual to effectively manage
23 property or business affairs because the individual:

24 A. Is impaired by reason of mental illness, mental deficiency, physical illness or
25 disability, chronic use of drugs, chronic intoxication or other cause to the extent that
26 the individual lacks sufficient understanding, capacity or ability to receive and
27 evaluate information or make or communicate decisions regarding the individual's
28 property or business affairs; or

29 B. Is:

30 (1) Missing;

31 (2) Detained, including incarcerated in a penal system; or

32 (3) Outside the United States and unable to return.

33 6. Person. "Person" means an individual, corporation, business trust, estate, trust,
34 partnership, limited liability company, association, joint venture, public corporation,
35 government or governmental subdivision, agency or instrumentality or any other legal or
36 commercial entity.

1 **7. Power of attorney.** "Power of attorney" means a writing or other record that
2 grants authority to an agent to act in the place of the principal, whether or not the term
3 "power of attorney" is used.

4 **8. Presently exercisable general power of appointment.** "Presently exercisable
5 general power of appointment," with respect to property or a property interest subject to a
6 power of appointment, means power exercisable at the time in question to vest absolute
7 ownership in the principal individually, the principal's estate, the principal's creditors or
8 the creditors of the principal's estate. "Presently exercisable general power of
9 appointment" includes a power of appointment not exercisable until the occurrence of a
10 specified event, the satisfaction of an ascertainable standard or the passage of a specified
11 period only after the occurrence of the specified event, the satisfaction of the
12 ascertainable standard or the passage of the specified period. "Presently exercisable
13 general power of appointment" does not include a power exercisable in a fiduciary
14 capacity or only by will.

15 **9. Principal.** "Principal" means an individual who grants authority to an agent in a
16 power of attorney.

17 **10. Property.** "Property" means anything that may be the subject of ownership,
18 whether real or personal or legal or equitable, or any interest or right therein.

19 **11. Sign.** "Sign" means, with present intent to authenticate or adopt a record:

20 A. To execute or adopt a tangible symbol; or

21 B. To attach to or logically associate with the record an electronic sound, symbol or
22 process.

23 **12. Stocks and bonds.** "Stocks and bonds" means stocks, bonds, mutual funds and
24 all other types of securities and financial instruments, whether held directly, indirectly or
25 in any other manner. "Stocks and bonds" does not include commodity futures contracts
26 and call or put options on stocks or stock indexes.

27 **§5-903. Applicability**

28 This Part applies to all powers of attorney except:

29 **1. Coupled with an interest in the subject of the power.** A power to the extent it
30 is coupled with an interest in the subject of the power, including a power given to or for
31 the benefit of a creditor in connection with a credit transaction;

32 **2. Health care decisions.** A power to make health care decisions;

33 **3. Proxy or other delegation to exercise rights.** A proxy or other delegation to
34 exercise voting rights or management rights with respect to an entity; and

35 **4. Governmental purpose.** A power created on a form prescribed by a government
36 or governmental subdivision, agency or instrumentality for a governmental purpose.

37 **§5-904. Power of attorney is durable**

38 A power of attorney created under this Part is durable unless it expressly provides
39 that it is terminated by the incapacity of the principal.

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§5-905. Execution of power of attorney; notices

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1. Signed by principal; acknowledged. A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. A power of attorney under this Part is not valid unless it is acknowledged before a notary public or other individual authorized by law to take acknowledgments.

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2. Notices for durable power of attorney. A durable power of attorney under this Part is not valid unless it contains the following notices substantially in the following form:

"Notice to the Principal: As the "Principal" you are using this power of attorney to grant power to another person (called the Agent) to make decisions about your property and to use your property on your behalf. Under this power of attorney you give your Agent broad and sweeping powers to sell or otherwise dispose of your property without notice to you. Under this document your Agent will continue to have these powers after you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-C, Article 5, Part 9. You have the right to revoke this power of attorney at any time as long as you are not incapacitated. If there is anything about this power of attorney that you do not understand, you should ask an attorney to explain it to you.

Notice to the Agent: As the "Agent" you are given power under this power of attorney to make decisions about the property belonging to the Principal and to dispose of the Principal's property on the Principal's behalf in accordance with the terms of this power of attorney. This power of attorney is valid only if the Principal is of sound mind when the Principal signs it. When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the Principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. The duties are more fully explained in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-C, Article 5, Part 9 and Title 18-B, sections 802 to 807 and Title 18-B, chapter 9. As the Agent, you are generally not entitled to use the Principal's property for your own benefit or to make gifts to yourself or others unless the power of attorney gives you such authority. If you violate your duty under this power of attorney, you may be liable for damages and may be subject to criminal prosecution. You must stop acting on behalf of the Principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events of termination are more fully explained in the Maine Uniform Power of Attorney Act and include, but are not limited to, revocation of your authority or of the power of attorney by the Principal, the death of the Principal or the commencement of divorce proceedings between you and the Principal. If there is anything about this power of attorney or your duties under it that you do not understand, you should ask an attorney to explain it to you."

1 **§5-906. Validity of power of attorney**

2 **1. Executed on or after July 1, 2019.** A power of attorney executed in this State on
3 or after July 1, 2019 is valid if its execution complies with section 5-905.

4 **2. Executed on or after July 1, 2010 but before July 1, 2019.** A power of attorney
5 executed on or after July 1, 2010 but before July 1, 2019 is valid if its execution complied
6 with former Title 18-A, section 5-906.

7 **3. Executed before July 1, 2010.** A power of attorney executed in this State before
8 July 1, 2010 is valid if its execution complied with the law of this State as it existed at the
9 time of execution.

10 **4. Executed other than in this State.** A power of attorney executed other than in
11 this State is valid in this State if, when the power of attorney was executed, the execution
12 complied with:

13 **A. The law of the jurisdiction that determines the meaning and effect of the power of**
14 **attorney pursuant to section 5-907; or**

15 **B. The requirements for a military power of attorney pursuant to 10 United States**
16 **Code, Section 1044b, as amended.**

17 **5. Defective notice.** A power of attorney executed in this State is valid and
18 enforceable 2 years after execution if the notice required by section 5-905, subsection 2 is
19 included but is incomplete or defective in any respect.

20 **6. Copy.** Except as otherwise provided by statute other than this Part, a photocopy
21 or electronically transmitted copy of an original power of attorney has the same effect as
22 the original.

23 **§5-907. Meaning and effect of power of attorney**

24 **The meaning and effect of a power of attorney are determined by the law of the**
25 **jurisdiction indicated in the power of attorney and, in the absence of an indication of**
26 **jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.**

27 **§5-908. Nomination of conservator or guardian; relation of agent to court-**
28 **appointed fiduciary**

29 **1. Nomination of conservator or guardian.** In a power of attorney, a principal may
30 nominate a conservator of the principal's estate or guardian of the principal's person for
31 consideration by the court if protective proceedings for the principal's estate or person are
32 begun after the principal executes the power of attorney. Except for good cause shown or
33 disqualification, the court shall make its appointment in accordance with the principal's
34 most recent nomination.

35 **2. Relation of agent to court-appointed fiduciary.** If, after a principal executes a
36 power of attorney, a court appoints a conservator of the principal's estate or other
37 fiduciary charged with the management of some or all of the principal's property, the
38 agent is accountable to the fiduciary as well as to the principal. The power of attorney is
39 not terminated and the agent's authority continues unless limited, suspended or terminated
40 by the court.

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§5-909. When power of attorney effective

1. Effective when executed unless otherwise provided. A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

2. Future event or contingency; determination. If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

3. Incapacity; determination. If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

A. A physician that the principal is incapacitated within the meaning of section 5-902, subsection 5, paragraph A; or

B. An attorney, a judge or an appropriate governmental official that the principal is incapacitated within the meaning of section 5-902, subsection 5, paragraph B.

4. Personal representative pursuant to federal law. A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq., as amended, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

§5-910. Termination of power of attorney or agent's authority

1. Termination of power of attorney. A power of attorney terminates when:

A. The principal dies;

B. The principal becomes incapacitated, if the power of attorney is not durable;

C. The principal revokes the power of attorney;

D. The power of attorney provides that it terminates;

E. The purpose of the power of attorney is accomplished; or

F. The principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns and the power of attorney does not provide for another agent to act under the power of attorney.

2. Termination of agent's authority. An agent's authority terminates:

A. When the principal revokes the authority;

B. When the agent dies, becomes incapacitated or resigns;

1 C. When an action is filed for the termination or annulment of the agent's marriage to
2 the principal or their legal separation, unless the power of attorney otherwise
3 provides;

4 D. Upon the sooner to occur of either:

5 (1) The marriage of the principal to a person other than the agent if upon or after
6 execution of the power of attorney the principal and the agent are or became
7 registered domestic partners, the filing with the domestic partner registry, in
8 accordance with Title 22, section 2710, subsection 4, of a notice consenting to the
9 termination of a registered domestic partnership of the principal and the agent; or

10 (2) Upon service, in accordance with Title 22, section 2710, subsection 4, of a
11 notice of intent to terminate the registered domestic partnership of the principal
12 and the agent; or

13 E. When the power of attorney terminates.

14 **3. Agent's authority until termination.** Unless the power of attorney otherwise
15 provides, an agent's authority is exercisable until the authority terminates under
16 subsection 2, notwithstanding a lapse of time since the execution of the power of
17 attorney.

18 **4. Termination of authority not effective without actual knowledge.** Termination
19 of an agent's authority or of a power of attorney is not effective as to the agent or another
20 person that, without actual knowledge of the termination, acts in good faith under the
21 power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds
22 the principal and the principal's successors in interest.

23 **5. Incapacity does not revoke or terminate nondurable power of attorney**
24 **without actual knowledge.** Incapacity of the principal of a power of attorney that is not
25 durable does not revoke or terminate the power of attorney as to an agent or other person
26 that, without actual knowledge of the incapacity, acts in good faith under the power of
27 attorney. An act so performed, unless otherwise invalid or unenforceable, binds the
28 principal and the principal's successors in interest.

29 **6. Previously executed power of attorney not revoked unless provided.** The
30 execution of a power of attorney does not revoke a power of attorney previously executed
31 by the principal unless the subsequent power of attorney provides that the previous power
32 of attorney is revoked or that all other powers of attorney are revoked.

33 **§5-911. Coagents and successor agents**

34 **1. Coagents.** A principal may designate 2 or more persons to act as coagents.
35 Unless the power of attorney otherwise provides, each coagent may exercise its authority
36 independently.

37 **2. Successor agents.** A principal may designate one or more successor agents to act
38 if an agent resigns, dies, becomes incapacitated, is not qualified to serve or declines to
39 serve. A principal may grant authority to designate one or more successor agents to an
40 agent or other person designated by name, office or function. Unless the power of
41 attorney otherwise provides, a successor agent:

- 1 A. Has the same authority as that granted to the original agent; and
2 B. May not act until all predecessor agents have resigned, died, become
3 incapacitated, are no longer qualified to serve or have declined to serve.

4 **3. Not liable for actions of other agent.** Except as otherwise provided in the power
5 of attorney and subsection 4, an agent that does not participate in or conceal a breach of
6 fiduciary duty committed by another agent, including a predecessor agent, is not liable for
7 the actions of the other agent.

8 **4. Actual knowledge of breach or imminent breach; damages.** An agent that has
9 actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall
10 notify the principal and, if the principal is incapacitated, take any action reasonably
11 appropriate in the circumstances to safeguard the principal's interests. An agent that fails
12 to notify the principal or take action as required by this subsection is liable for the
13 reasonably foreseeable damages that could have been avoided if the agent had notified
14 the principal or taken such action.

15 **§5-912. Reimbursement and compensation of agent**

16 Unless the power of attorney otherwise provides, an agent is entitled to
17 reimbursement of expenses reasonably incurred on behalf of the principal and to
18 compensation that is reasonable under the circumstances. The factors set forth in section
19 3-721, subsection 2 should be considered as guides in determining the reasonableness of
20 compensation under this section.

21 **§5-913. Agent's acceptance**

22 Except as otherwise provided in the power of attorney, a person accepts appointment
23 as an agent under a power of attorney by exercising authority or performing duties as an
24 agent or by any other assertion or conduct indicating acceptance.

25 **§5-914. Agent's duties**

26 **1. Minimum mandatory duties.** Notwithstanding provisions in the power of
27 attorney, an agent that has accepted appointment shall:

28 A. Act in accordance with the principal's reasonable expectations to the extent
29 actually known by the agent and otherwise act as a fiduciary under the standards of
30 care applicable to trustees as described under Title 18-B, sections 802 to 807 and
31 Title 18-B, chapter 9;

32 B. Act in good faith; and

33 C. Act only within the scope of authority granted in the power of attorney.

34 **2. Default duties.** Except as otherwise provided in the power of attorney, an agent
35 that has accepted appointment shall:

36 A. Act loyally for the principal's benefit;

37 B. Act so as not to create a conflict of interest that impairs the agent's ability to act
38 impartially;

- 1 C. Act with the care, competence and diligence ordinarily exercised by agents in
2 similar circumstances;
- 3 D. Keep a record of all receipts, disbursements and transactions made on behalf of
4 the principal;
- 5 E. Cooperate with a person that has authority to make health care decisions for the
6 principal to carry out such decisions; and
- 7 F. Attempt to preserve the principal's estate plan, to the extent actually known by the
8 agent, based on all relevant factors, including:
- 9 (1) The value and nature of the principal's property;
- 10 (2) The principal's foreseeable obligations and need for maintenance;
- 11 (3) Minimization of taxes, including income, estate, inheritance, generation-
12 skipping transfer and gift taxes; and
- 13 (4) Eligibility for a benefit, a program or assistance under a statute, rule or
14 regulation.
- 15 **3. Failure to preserve estate plan; good faith.** An agent that acts in good faith is
16 not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.
- 17 **4. Agent also benefits.** An agent that acts with care, competence and diligence for
18 the sole interest of the principal is not liable solely because the agent also benefits from
19 the act or has an individual or conflicting interest in relation to the property or affairs of
20 the principal.
- 21 **5. Special skills or expertise.** If an agent is selected by the principal because of
22 special skills or expertise possessed by the agent or in reliance on the agent's
23 representation that the agent has special skills or expertise, the special skills or expertise
24 must be considered in determining whether the agent has acted with care, competence and
25 diligence under the circumstances.
- 26 **6. Value of property declines.** Absent a breach of duty to the principal, an agent is
27 not liable if the value of the principal's property declines.
- 28 **7. Delegation of authority.** An agent that exercises authority to delegate to another
29 person the authority granted by the principal or that engages another person on behalf of
30 the principal is not liable for an act, error of judgment or default of that person if the
31 agent exercises care, competence and diligence in selecting and monitoring the person.
- 32 **8. Disclosure upon request.** Except as otherwise provided in the power of attorney,
33 an agent is not required to disclose receipts, disbursements or transactions conducted on
34 behalf of the principal unless ordered by a court or requested by the principal, a guardian,
35 a conservator, another fiduciary acting for the principal, a governmental agency having
36 authority to protect the welfare of the principal or, upon the death of the principal, by the
37 personal representative or successor in interest of the principal's estate. If so requested,
38 within 30 days the agent shall comply with the request or provide a writing or other
39 record substantiating why additional time is needed and shall comply with the request
40 within an additional 30 days.

1 **§5-915. Exoneration of agent**

2 A provision in a power of attorney relieving an agent of liability for breach of duty is
3 binding on the principal and the principal's successors in interest except to the extent the
4 provision:

5 **1. Dishonesty, improper motive, reckless indifference.** Relieves the agent of
6 liability for breach of duty committed dishonestly, with an improper motive or with
7 reckless indifference to the purposes of the power of attorney; or

8 **2. Abuse of relationship.** Was inserted as a result of an abuse of a confidential or
9 fiduciary relationship with the principal.

10 **§5-916. Judicial relief**

11 **1. Petition.** The following persons may petition the Probate Court or the Superior
12 Court for the county in which either the principal or the agent resides to construe a power
13 of attorney or review the agent's conduct and grant appropriate relief:

14 A. The principal or the agent;

15 B. A guardian, conservator or other fiduciary acting for the principal;

16 C. A person authorized to make health care decisions for the principal;

17 D. The principal's spouse, registered domestic partner, parent or descendant;

18 E. An individual who would qualify as a presumptive heir of the principal;

19 F. A person named as a beneficiary to receive any property, benefit or contractual
20 right on the principal's death or as a beneficiary of a trust created by or for the
21 principal that has a financial interest in the principal's estate;

22 G. A governmental agency having regulatory authority to protect the welfare of the
23 principal;

24 H. The principal's caregiver or another person that demonstrates sufficient interest in
25 the principal's welfare; and

26 I. A person asked to accept the power of attorney.

27 **2. Motion by principal to dismiss; lack of capacity.** Upon motion by the principal,
28 the court shall dismiss a petition filed under this section, unless the court finds that the
29 principal lacks capacity to revoke the agent's authority or the power of attorney.

30 **§5-917. Agent's liability**

31 An agent that violates this Part is liable to the principal or the principal's successors in
32 interest for the amount required to:

33 **1. Restore property.** Restore the value of the principal's property to what it would
34 have been had the violation not occurred; and

35 **2. Reimburse fees and costs.** Reimburse the principal or the principal's successors
36 in interest for the attorney's fees and costs paid on the agent's behalf.

1 **§5-918. Agent's resignation; notice**

2 Unless the power of attorney provides a different method for an agent's resignation,
3 an agent may resign by giving notice to the principal and, if the principal is incapacitated:

4 **1. Conservator, guardian, coagent, successor agent.** To the conservator or
5 guardian, if one has been appointed for the principal, and a coagent or successor agent; or

6 **2. Caregiver, interested person, governmental agency.** If there is no person
7 described in subsection 1, to:

8 A. The principal's caregiver;

9 B. Another person reasonably believed by the agent to have sufficient interest in the
10 principal's welfare; or

11 C. A governmental agency having authority to protect the welfare of the principal.

12 **§5-919. Acceptance of and reliance upon acknowledged power of attorney**

13 **1. Acknowledged.** For purposes of this section and section 5-920, "acknowledged"
14 means purportedly verified before a notary public or other individual authorized to take
15 acknowledgments.

16 **2. Signature not genuine.** A person that in good faith accepts an acknowledged
17 power of attorney without actual knowledge that the signature is not genuine may rely
18 upon the presumption under section 5-905 that the signature is genuine.

19 **3. Void, invalid or terminated; exceeding or improper authority.** A person that
20 in good faith accepts an acknowledged power of attorney without actual knowledge that
21 the power of attorney is void, invalid or terminated, that the purported agent's authority is
22 void, invalid or terminated or that the agent is exceeding or improperly exercising the
23 agent's authority may rely upon the power of attorney as if the power of attorney were
24 genuine, valid and still in effect, the agent's authority were genuine, valid and still in
25 effect and the agent had not exceeded and had properly exercised the authority.

26 **4. Request and rely upon.** A person that is asked to accept an acknowledged power
27 of attorney may request, and rely upon, without further investigation:

28 A. An agent's certification under penalty of perjury of any factual matter concerning
29 the principal, agent or power of attorney;

30 B. An English translation of the power of attorney if the power of attorney contains,
31 in whole or in part, language other than English; and

32 C. An opinion of counsel as to any matter of law concerning the power of attorney if
33 the person making the request provides in a writing or other record the reason for the
34 request.

35 **5. Expense of translation or opinion of counsel.** An English translation or an
36 opinion of counsel requested under this section must be provided at the principal's
37 expense unless the request is made more than 7 business days after the power of attorney
38 is presented for acceptance.

1 **6. Employee without actual knowledge.** For purposes of this section and section
2 5-920, a person that conducts activities through employees is without actual knowledge
3 of a fact relating to a power of attorney, a principal or an agent if the employee
4 conducting the transaction involving the power of attorney is without actual knowledge of
5 the fact.

6 **§5-920. Liability for refusal to accept acknowledged power of attorney**

7 **1. Request within 7 days; accept within 5 days of receipt.** Except as otherwise
8 provided in subsection 2:

9 A. A person shall either accept an acknowledged power of attorney or request a
10 certification, a translation or an opinion of counsel under section 5-919, subsection 4
11 no later than 7 business days after presentation of the power of attorney for
12 acceptance;

13 B. If a person requests a certification, a translation or an opinion of counsel under
14 section 5-919, subsection 4, the person shall accept the power of attorney no later
15 than 5 business days after receipt of the certification, translation or opinion of
16 counsel; and

17 C. A person may not require an additional or different form of power of attorney for
18 authority granted in the power of attorney presented.

19 **2. Acceptance not required.** A person is not required to accept an acknowledged
20 power of attorney if:

21 A. The person is not otherwise required to engage in a transaction with the principal
22 in the same circumstances;

23 B. Engaging in a transaction with the agent or the principal in the same
24 circumstances would be inconsistent with federal law;

25 C. The person has actual knowledge of the termination of the agent's authority or of
26 the power of attorney before exercise of the power;

27 D. A request for a certification, a translation or an opinion of counsel under section
28 5-919, subsection 4 is refused;

29 E. The person in good faith believes that the power is not valid or that the agent does
30 not have the authority to perform the act requested, whether or not a certification, a
31 translation or an opinion of counsel under section 5-919, subsection 4 has been
32 requested or provided; or

33 F. The person has a good faith belief that the principal may be subject to physical or
34 financial abuse, neglect, exploitation or abandonment by the agent or a person acting
35 for or with the agent and the person makes, or has actual knowledge that another
36 person has made, a report to the Department of Health and Human Services regarding
37 such beliefs.

38 **3. Consequences of refusal.** A person that refuses in violation of this section to
39 accept an acknowledged power of attorney is subject to:

40 A. A court order mandating acceptance of the power of attorney; and

1 B. Liability for reasonable attorney's fees and costs incurred in any action or
2 proceeding that confirms the validity of the power of attorney or mandates
3 acceptance of the power of attorney.

4 **§5-921. Principles of law and equity**

5 Unless displaced by a provision of this Part, the principles of law and equity
6 supplement this Part.

7 **§5-922. Laws applicable to financial institutions and entities**

8 This Part does not supersede any other law applicable to financial institutions or other
9 entities, and the other law controls if inconsistent with this Part.

10 **§5-923. Remedies under other law**

11 The remedies under this Part are not exclusive and do not abrogate any right or
12 remedy under the law of this State other than this Part.

13 **SUBPART 2**

14 **AUTHORITY**

15 **§5-931. Authority that requires specific grant; grant of general authority**

16 1. **Specific grant of authority required.** An agent under a power of attorney may
17 do the following on behalf of the principal or with the principal's property only if the
18 power of attorney expressly grants the agent the authority and exercise of the authority is
19 not otherwise prohibited by another agreement or instrument to which the authority or
20 property is subject:

- 21 A. Create, amend, revoke or terminate an inter vivos trust;
- 22 B. Make a gift;
- 23 C. Create or change rights of survivorship;
- 24 D. Create or change a beneficiary designation;
- 25 E. Delegate authority granted under the power of attorney;
- 26 F. Waive the principal's right to be a beneficiary of a joint and survivor annuity,
27 including a survivor benefit under a retirement plan;
- 28 G. Exercise fiduciary powers that the principal has authority to delegate; and
- 29 H. Disclaim property, including a power of appointment.

30 2. **Limitation on creating interest in principal's property.** Notwithstanding a
31 grant of authority to do an act described in subsection 1, unless the power of attorney
32 otherwise provides, an agent that is not an ancestor, spouse, registered domestic partner
33 or descendant of the principal may not exercise authority under a power of attorney to
34 create in the agent, or in an individual to whom the agent owes a legal obligation of
35 support, an interest in the principal's property, whether by gift, right of survivorship,
36 beneficiary designation, disclaimer or otherwise.

1 3. General authority. Subject to subsections 1, 2, 4 and 5, if a power of attorney
2 grants to an agent authority to do all acts that a principal could do, the agent has the
3 general authority described in sections 5-934 to 5-946.

4 4. Authority to make a gift. Unless the power of attorney otherwise provides, a
5 grant of authority to make a gift is subject to section 5-947.

6 5. Overlapping subjects. Subject to subsections 1, 2 and 4, if the subjects over
7 which authority is granted in a power of attorney are similar or overlap, the broadest
8 authority controls.

9 6. Authority with respect to principal's property. Authority granted in a power of
10 attorney is exercisable with respect to property that the principal has when the power of
11 attorney is executed or acquires later, whether or not the property is located in this State
12 and whether or not the authority is exercised or the power of attorney is executed in this
13 State.

14 7. Act pursuant to power of attorney. An act performed by an agent pursuant to a
15 power of attorney has the same effect and inures to the benefit of and binds the principal
16 and the principal's successors in interest as if the principal had performed the act.

17 **§5-932. Incorporation of authority**

18 1. Reference to subject. An agent has authority described in this subpart if the
19 power of attorney refers to general authority with respect to the descriptive term for the
20 subjects stated in sections 5-934 to 5-947 or cites the section in which the authority is
21 described.

22 2. Reference to section number. A reference in a power of attorney to general
23 authority with respect to the descriptive term for a subject in sections 5-934 to 5-947 or a
24 citation to a section of sections 5-934 to 5-947 incorporates the entire section as if it were
25 set out in full in the power of attorney.

26 3. Modify incorporated authority. A principal may modify authority incorporated
27 by reference.

28 **§5-933. Construction of authority generally**

29 Except as otherwise provided in the power of attorney, by executing a power of
30 attorney that incorporates by reference a subject described in sections 5-934 to 5-947 or
31 that grants to an agent authority to do all acts that a principal could do pursuant to section
32 5-931, subsection 3, a principal authorizes the agent, with respect to that subject, to:

33 1. Money or another thing of value. Demand, receive and obtain, by litigation or
34 otherwise, money or another thing of value to which the principal is, may become or
35 claims to be entitled and conserve, invest, disburse or use anything so received or
36 obtained for the purposes intended;

37 2. Contracts. Contract in any manner with any person, on terms agreeable to the
38 agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate,
39 reform, restate, release or modify the contract or another contract made by or on behalf of
40 the principal;

1 **3. Instrument or communication.** Execute, acknowledge, seal, deliver, file or
2 record any instrument or communication the agent considers desirable to accomplish a
3 purpose of a transaction, including creating at any time a schedule listing some or all of
4 the principal's property and attaching it to the power of attorney;

5 **4. Claim in favor of or against principal; intervene.** Initiate, participate in, submit
6 to alternative dispute resolution, settle, oppose or propose or accept a compromise with
7 respect to a claim existing in favor of or against the principal or intervene in litigation
8 relating to the claim;

9 **5. Assistance of court or governmental agency.** Seek on the principal's behalf the
10 assistance of a court or other governmental agency to carry out an act authorized in the
11 power of attorney;

12 **6. Advisors.** Engage, compensate and discharge an attorney, accountant,
13 discretionary investment manager, expert witness or other advisor;

14 **7. Record, report or other document.** Prepare, execute and file a record, report or
15 other document to safeguard or promote the principal's interest under a statute, rule or
16 regulation;

17 **8. Communication with government or instrumentality.** Communicate with any
18 representative or employee of a government or governmental subdivision, agency or
19 instrumentality on behalf of the principal;

20 **9. Access communications.** Access communications intended for and communicate
21 on behalf of the principal, whether by mail, electronic transmission, telephone or other
22 means; and

23 **10. Any lawful act.** Do any lawful act with respect to the subject and all property
24 related to the subject.

25 **§5-934. Real property**

26 Unless the power of attorney otherwise provides, language in a power of attorney
27 granting general authority with respect to real property authorizes the agent to:

28 **1. Acquire or reject an interest in real property.** Demand, buy, lease, receive,
29 accept as a gift or as security for an extension of credit or otherwise acquire or reject an
30 interest in real property or a right incident to real property;

31 **2. Grant or dispose of an interest in real property.** Sell; exchange; convey with
32 or without covenants, representations or warranties; quitclaim; release; surrender; retain
33 title for security; encumber; partition; consent to partitioning; subject to an easement or
34 covenant; subdivide; apply for zoning or other governmental permits; plat or consent to
35 platting; develop; grant an option concerning; lease; sublease; contribute to an entity in
36 exchange for an interest in that entity; or otherwise grant or dispose of an interest in real
37 property or a right incident to real property;

38 **3. Interest in real property as security.** Pledge or mortgage an interest in real
39 property or right incident to real property as security to borrow money or pay, renew or
40 extend the time of payment of a debt of the principal or a debt guaranteed by the
41 principal;

1 4. Claim to real property. Release, assign, satisfy or enforce by litigation or
2 otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien or other
3 claim to real property that exists or is asserted;

4 5. Manage or conserve interest in real property. Manage or conserve an interest
5 in real property or a right incident to real property owned or claimed to be owned by the
6 principal, including:

7 A. Insuring against liability or casualty or other loss;

8 B. Obtaining or regaining possession of or protecting the interest or right by
9 litigation or otherwise;

10 C. Paying, assessing, compromising or contesting taxes or assessments or applying
11 for and receiving refunds in connection with them; and

12 D. Purchasing supplies, hiring assistance or labor and making repairs or alterations to
13 the real property;

14 6. Structures or other improvements. Use, develop, alter, replace, remove, erect
15 or install structures or other improvements upon real property in or incident to which the
16 principal has, or claims to have, an interest or right;

17 7. Reorganization with respect to real property. Participate in a reorganization
18 with respect to real property or an entity that owns an interest in or right incident to real
19 property and receive, hold and act with respect to stocks and bonds or other property
20 received in a plan of reorganization, including:

21 A. Selling or otherwise disposing of them;

22 B. Exercising or selling an option, right of conversion or similar right with respect to
23 them; and

24 C. Exercising any voting rights in person or by proxy;

25 8. Form of title. Change the form of title of an interest in or right incident to real
26 property; and

27 9. Public use. Dedicate to public use, with or without consideration, easements or
28 other real property in which the principal has, or claims to have, an interest.

29 §5-935. Tangible personal property

30 Unless the power of attorney otherwise provides, language in a power of attorney
31 granting general authority with respect to tangible personal property authorizes the agent
32 to:

33 1. Acquire or reject interest in tangible personal property. Demand, buy,
34 receive, accept as a gift or as security for an extension of credit or otherwise acquire or
35 reject ownership or possession of tangible personal property or an interest in tangible
36 personal property;

37 2. Grant or otherwise dispose of interest in tangible personal property. Sell;
38 exchange; convey with or without covenants, representations or warranties; quitclaim;
39 release; surrender; create a security interest in; grant options concerning; lease; sublease;

1 or otherwise dispose of tangible personal property or an interest in tangible personal
2 property;

3 **3. Security interest in tangible personal property.** Grant a security interest in
4 tangible personal property or an interest in tangible personal property as security to
5 borrow money or pay, renew or extend the time of payment of a debt of the principal or a
6 debt guaranteed by the principal;

7 **4. Claim to tangible personal property.** Release, assign, satisfy or enforce by
8 litigation or otherwise a security interest, lien or other claim on behalf of the principal
9 with respect to tangible personal property or an interest in tangible personal property; and

10 **5. Manage or conserve tangible personal property.** Manage or conserve tangible
11 personal property or an interest in tangible personal property on behalf of the principal,
12 including:

13 A. Insuring against liability or casualty or other loss;

14 B. Obtaining or regaining possession of or protecting the property or interest by
15 litigation or otherwise;

16 C. Paying, assessing, compromising or contesting taxes or assessments or applying
17 for and receiving refunds in connection with them;

18 D. Moving the property from place to place;

19 E. Storing the property for hire or on a gratuitous bailment;

20 F. Using and making repairs, alterations or improvements to the property; and

21 G. Changing the form of title of an interest in tangible personal property.

22 **§5-936. Stocks and bonds**

23 Unless the power of attorney otherwise provides, language in a power of attorney
24 granting general authority with respect to stocks and bonds authorizes the agent to:

25 **1. Buy, sell and exchange.** Buy, sell and exchange stocks and bonds;

26 **2. Stocks and bonds account.** Establish, continue, modify or terminate an account
27 with respect to stocks and bonds;

28 **3. Security.** Pledge stocks and bonds as security to borrow, pay, renew or extend the
29 time of payment of a debt of the principal;

30 **4. Evidences of ownership.** Receive certificates and other evidences of ownership
31 with respect to stocks and bonds; and

32 **5. Voting rights.** Exercise voting rights with respect to stocks and bonds in person
33 or by proxy, enter into voting trusts and consent to limitations on the right to vote.

34 **§5-937. Commodities and options**

35 Unless the power of attorney otherwise provides, language in a power of attorney
36 granting general authority with respect to commodities and options authorizes the agent
37 to:

1 1. Commodity futures, stock options. Buy, sell, exchange, assign, settle and
2 exercise commodity futures contracts and call or put options on stocks or stock indexes
3 traded on a regulated option exchange; and

4 2. Option accounts. Establish, continue, modify and terminate option accounts.

5 **§5-938. Banks and other financial institutions**

6 Unless the power of attorney otherwise provides, language in a power of attorney
7 granting general authority with respect to banks and other financial institutions authorizes
8 the agent to:

9 1. Banking arrangement by principal. Continue, modify and terminate an account
10 or other banking arrangement made by or on behalf of the principal;

11 2. Banking arrangement selected by agent. Establish, modify and terminate an
12 account or other banking arrangement with a bank, trust company, savings and loan
13 association, credit union, thrift company, brokerage firm or other financial institution
14 selected by the agent;

15 3. Contract for services. Contract for services available from a financial institution,
16 including renting a safe deposit box or space in a vault;

17 4. Withdraw property of principal. Withdraw, by check, order, electronic funds
18 transfer or otherwise, money or property of the principal deposited with or left in the
19 custody of a financial institution;

20 5. Receive and act on documents. Receive statements of account, vouchers, notices
21 and similar documents from a financial institution and act with respect to them;

22 6. Safe deposit box or vault. Enter a safe deposit box or vault and withdraw or add
23 to the contents;

24 7. Borrow and pledge as security. Borrow money and pledge as security personal
25 property of the principal necessary to borrow money or pay, renew or extend the time of
26 payment of a debt of the principal or a debt guaranteed by the principal;

27 8. Negotiable and nonnegotiable paper of the principal. Make, assign, draw,
28 endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other
29 negotiable or nonnegotiable paper of the principal or payable to the principal or the
30 principal's order; transfer money; receive the cash or other proceeds of those transactions;
31 and accept a draft drawn by a person upon the principal and pay it when due;

32 9. Receive and act on negotiable and nonnegotiable instruments. Receive for the
33 principal and act upon a sight draft, warehouse receipt or other document of title, whether
34 tangible or electronic, or other negotiable or nonnegotiable instrument;

35 10. Letters of credit. Apply for, receive and use letters of credit, credit and debit
36 cards, electronic transaction authorizations and traveler's checks from a financial
37 institution and give an indemnity or other agreement in connection with letters of credit;
38 and

39 11. Extension of time of payment. Consent to an extension of the time of payment
40 with respect to commercial paper or a financial transaction with a financial institution.

1 **§5-939. Operation of entity or business**

2 Subject to the terms of a document or an agreement governing an entity or an entity
3 ownership interest, and unless the power of attorney otherwise provides, language in a
4 power of attorney granting general authority with respect to operation of an entity or
5 business authorizes the agent to:

6 **1. Ownership interest.** Operate, buy, sell, enlarge, reduce or terminate an
7 ownership interest;

8 **2. Duty, liability, right, power, privilege or option.** Perform a duty or discharge a
9 liability and exercise in person or by proxy a right, power, privilege or option that the
10 principal has, may have or claims to have;

11 **3. Ownership agreement.** Enforce the terms of an ownership agreement;

12 **4. Ownership interest litigation.** Initiate, participate in, submit to alternative
13 dispute resolution, settle, oppose or propose or accept a compromise with respect to
14 litigation to which the principal is a party because of an ownership interest;

15 **5. Stocks and bonds.** Exercise in person or by proxy, or enforce by litigation or
16 otherwise, a right, power, privilege or option the principal has or claims to have as the
17 holder of stocks and bonds;

18 **6. Stocks and bonds litigation.** Initiate, participate in, submit to alternative dispute
19 resolution, settle, oppose or propose or accept a compromise with respect to litigation to
20 which the principal is a party concerning stocks and bonds;

21 **7. Sole ownership.** With respect to an entity or business owned solely by the
22 principal:

23 A. Continue, modify, renegotiate, extend and terminate a contract made by or on
24 behalf of the principal with respect to the entity or business before execution of the
25 power of attorney;

26 B. Determine:

27 (1) The location of its operation;

28 (2) The nature and extent of its business;

29 (3) The methods of manufacturing, selling, merchandising, financing, accounting
30 and advertising employed in its operation;

31 (4) The amount and types of insurance carried; and

32 (5) The mode of engaging, compensating and dealing with its employees and
33 accountants, attorneys or other advisors;

34 C. Change the name or form of organization under which the entity or business is
35 operated and enter into an ownership agreement with other persons to take over all or
36 part of the operation of the entity or business; and

37 D. Demand and receive money due or claimed by the principal or on the principal's
38 behalf in the operation of the entity or business and control and disburse the money in
39 the operation of the entity or business;

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8. Additional capital. Put additional capital into an entity or business in which the principal has an interest;

9. Reorganization, consolidation, conversion, domestication or merger. Join in a plan of reorganization, consolidation, conversion, domestication or merger of the entity or business in which the principal has an interest;

10. Sell or liquidate. Sell or liquidate all or part of an entity or business in which the principal has an interest;

11. Buy-out agreement value. Establish the value of an entity or business under a buy-out agreement to which the principal is a party;

12. Reports and other papers; payments. Prepare, sign, file and deliver reports, compilations of information, returns or other papers with respect to an entity or business and make related payments; and

13. Taxes, assessments, fines and penalties. Pay, compromise or contest taxes, assessments, fines or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

§5-940. Insurance and annuities

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

1. Insurance or annuity contract procured by principal. Continue, pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

2. New insurance or annuity contract for principal and family. Procure new, different and additional contracts of insurance and annuities for the principal and the principal's spouse, registered domestic partner, children and other dependents and select the amount, type of insurance or annuity and mode of payment;

3. Insurance or annuity contract procured by agent. Pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract of insurance or annuity procured by the agent;

4. Loan secured by insurance or annuity contract. Apply for and receive a loan secured by a contract of insurance or annuity;

5. Surrender, cash on insurance or annuity contract. Surrender and receive the cash surrender value on a contract of insurance or annuity;

6. Election. Exercise an election;

7. Investment powers. Exercise investment powers available under a contract of insurance or annuity;

1 **8. Manner of paying premiums.** Change the manner of paying premiums on a
2 contract of insurance or annuity;

3 **9. Change or convert type.** Change or convert the type of insurance or annuity with
4 respect to which the principal has or claims to have authority described in this section;

5 **10. Benefit or assistance to guarantee or pay premiums.** Apply for and procure a
6 benefit or assistance under a statute or regulation to guarantee or pay premiums of a
7 contract of insurance on the life of the principal;

8 **11. Interest of principal in contract.** Collect, sell, assign, hypothecate, borrow
9 against or pledge the interest of the principal in a contract of insurance or annuity;

10 **12. Form and timing of payment of proceeds.** Select the form and timing of the
11 payment of proceeds from a contract of insurance or annuity; and

12 **13. Tax or assessment.** Pay, from proceeds or otherwise, compromise or contest,
13 and apply for refunds in connection with, a tax or assessment levied by a taxing authority
14 with respect to a contract of insurance or annuity or its proceeds or liability accruing by
15 reason of the tax or assessment.

16 **§5-941. Estate, trust and other beneficial interest**

17 **1. Definition.** As used in this section, "estate, trust and other beneficial interest"
18 means a trust, probate estate, guardianship, conservatorship, escrow or custodianship or a
19 fund from which the principal is, may become or claims to be entitled to a share or
20 payment.

21 **2. General authority.** Unless the power of attorney otherwise provides, language in
22 a power of attorney granting general authority with respect to an estate, trust and other
23 beneficial interest authorizes the agent to:

24 **A. Accept, receive, receipt for, sell, assign, pledge or exchange a share in or payment**
25 **from the fund;**

26 **B. Demand or obtain money or another thing of value to which the principal is, may**
27 **become or claims to be entitled by reason of the fund, by litigation or otherwise;**

28 **C. Exercise for the benefit of the principal a presently exercisable general power of**
29 **appointment held by the principal;**

30 **D. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or**
31 **propose or accept a compromise with respect to litigation to ascertain the meaning,**
32 **validity or effect of a deed, will, declaration of trust or other instrument or transaction**
33 **affecting the interest of the principal;**

34 **E. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or**
35 **propose or accept a compromise with respect to litigation to remove, substitute or**
36 **surcharge a fiduciary;**

37 **F. Conserve, invest, disburse or use anything received for an authorized purpose; and**

38 **G. Transfer an interest of the principal in real property, stocks and bonds, accounts**
39 **with financial institutions or securities intermediaries, insurance, annuities and other**
40 **property to the trustee of a revocable trust created by the principal as settlor.**

1 **§5-942. Claims and litigation**

2 Unless the power of attorney otherwise provides, language in a power of attorney
3 granting general authority with respect to claims and litigation authorizes the agent to:

4 **1. Assert and maintain claim.** Assert and maintain before a court or administrative
5 agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment or
6 defense, including an action to recover property or other thing of value, or recover
7 damages sustained by the principal; eliminate or modify tax liability; or seek an
8 injunction, specific performance or other relief;

9 **2. Participate in litigation.** Bring an action to determine adverse claims or
10 intervene or otherwise participate in litigation;

11 **3. Effect or satisfy judgment, order or decree.** Seek an attachment, garnishment,
12 order of arrest or other preliminary, provisional or intermediate relief and use an available
13 procedure to effect or satisfy a judgment, order or decree;

14 **4. Offer of judgment or admission of facts; bind principal.** Make or accept a
15 tender, offer of judgment or admission of facts, submit a controversy on an agreed
16 statement of facts, consent to examination and bind the principal in litigation;

17 **5. Alternative dispute resolution, settle and compromise.** Submit to alternative
18 dispute resolution, settle and propose or accept a compromise;

19 **6. Service of process; procedure.** Waive the issuance and service of process upon
20 the principal; accept service of process; appear for the principal; designate persons upon
21 which process directed to the principal may be served; execute and file or deliver
22 stipulations on the principal's behalf; verify pleadings; seek appellate review; procure and
23 give surety and indemnity bonds; contract and pay for the preparation and printing of
24 records and briefs; and receive, execute and file or deliver a consent, waiver, release,
25 confession of judgment, satisfaction of judgment, notice, agreement or other instrument
26 in connection with the prosecution, settlement or defense of a claim or litigation;

27 **7. Bankruptcy or insolvency; reorganization, receivership or appointment of**
28 **receiver or trustee.** Act for the principal with respect to bankruptcy or insolvency,
29 whether voluntary or involuntary, concerning the principal or some other person, or with
30 respect to a reorganization, receivership or application for the appointment of a receiver
31 or trustee that affects an interest of the principal in property or other thing of value;

32 **8. Pay claim or litigation.** Pay a judgment, award or order against the principal or a
33 settlement made in connection with a claim or litigation; and

34 **9. Receive settlement of or proceeds of claim or litigation.** Receive money or
35 other thing of value paid in settlement of or as proceeds of a claim or litigation.

36 **§5-943. Personal and family maintenance**

37 **1. General authority.** Unless the power of attorney otherwise provides, language in
38 a power of attorney granting general authority with respect to personal and family
39 maintenance authorizes the agent to:

40 **A.** Perform the acts necessary to maintain the customary standard of living of the
41 principal, the principal's spouse or the principal's registered domestic partner and the

1 following individuals, whether living when the power of attorney is executed or later
2 born:

3 (1) Individuals legally entitled to be supported by the principal; and

4 (2) Individuals whom the principal has customarily supported or indicated the
5 intent to support;

6 B. Make periodic payments of child support and other family maintenance required
7 by a court or governmental agency or an agreement to which the principal is a party;

8 C. Provide living quarters for the individuals described in paragraph A by:

9 (1) Purchase, lease or other contract; or

10 (2) Paying the operating costs, including interest, amortization payments, repairs,
11 improvements and taxes, for premises owned by the principal or occupied by
12 those individuals;

13 D. Provide normal domestic help, usual vacations and travel expenses and funds for
14 shelter, clothing, food, appropriate education, including postsecondary and vocational
15 education, and other current living costs for the individuals described in paragraph A;

16 E. Pay expenses for necessary health care and custodial care on behalf of the
17 individuals described in paragraph A;

18 F. Act as the principal's personal representative pursuant to the federal Health
19 Insurance Portability and Accountability Act of 1996, 42 United States Code, Section
20 1320d et seq., as amended, and applicable regulations, in making decisions related to
21 the past, present or future payment for the provision of health care consented to by
22 the principal or anyone authorized under the law of this State to consent to health care
23 on behalf of the principal;

24 G. Continue any provision made by the principal for automobiles or other means of
25 transportation, including registering, licensing, insuring and replacing them, for the
26 individuals described in paragraph A;

27 H. Maintain credit and debit accounts for the convenience of the individuals
28 described in paragraph A and open new accounts; and

29 I. Continue payments incidental to the membership or affiliation of the principal in a
30 religious institution, club, society, order or other organization or to continue
31 contributions to those organizations.

32 2. Authority with respect to gifts. Authority with respect to personal and family
33 maintenance is neither dependent upon, nor limited by, authority that an agent may or
34 may not have with respect to gifts under this Part.

35 **§5-944. Benefits from governmental programs or civil or military service**

36 1. Definition. As used in this section, "benefits from governmental programs or
37 civil or military service" means any benefit, program or assistance provided under a
38 statute, rule or regulation including Social Security, Medicare and Medicaid.

1 **2. General authority.** Unless the power of attorney otherwise provides, language in
2 a power of attorney granting general authority with respect to benefits from governmental
3 programs or civil or military service authorizes the agent to:

4 A. Execute vouchers in the name of the principal for allowances and reimbursements
5 payable by the United States or a foreign government or by a state or subdivision of a
6 state to the principal, including allowances and reimbursements for transportation of
7 the individuals described in section 5-943, subsection 1, paragraph A and for
8 shipment of their household effects;

9 B. Take possession and order the removal and shipment of property of the principal
10 from a post, warehouse, depot, dock or other place of storage or safekeeping, either
11 governmental or private, and execute and deliver a release, voucher, receipt, bill of
12 lading, shipping ticket, certificate or other instrument for that purpose;

13 C. Enroll in, apply for, select, reject, change, amend or discontinue, on the
14 principal's behalf, a benefit or program;

15 D. Prepare, file and maintain a claim of the principal for a benefit or assistance,
16 financial or otherwise, to which the principal may be entitled under a statute, rule or
17 regulation;

18 E. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or
19 propose or accept a compromise with respect to litigation concerning any benefit or
20 assistance the principal may be entitled to receive under a statute, rule or regulation;
21 and

22 F. Receive the financial proceeds of a claim described in paragraph D and conserve,
23 invest, disburse or use for a lawful purpose anything so received.

24 **§5-945. Retirement plans**

25 **1. Definition.** As used in this section, "retirement plan" means a plan or account
26 created by an employer, the principal or another individual to provide retirement benefits
27 or deferred compensation of which the principal is a participant, beneficiary or owner,
28 including a plan or account under the following sections of the federal Internal Revenue
29 Code:

30 A. An individual retirement account under 26 United States Code, Section 408, as
31 amended;

32 B. A Roth individual retirement account under 26 United States Code, Section 408A,
33 as amended;

34 C. A deemed individual retirement account under 26 United States Code, Section
35 408(q), as amended;

36 D. An annuity or mutual fund custodial account under 26 United States Code,
37 Section 403(b), as amended;

38 E. A pension, profit-sharing, stock bonus or other retirement plan qualified under 26
39 United States Code, Section 401(a), as amended;

40 F. A plan under 26 United States Code, Section 457(b), as amended; and

1 G. A nonqualified deferred compensation plan under 26 United States Code, Section
2 409A, as amended.

3 **2. General authority.** Unless the power of attorney otherwise provides, language in
4 a power of attorney granting general authority with respect to retirement plans authorizes
5 the agent to:

6 A. Select the form and timing of payments under a retirement plan and withdraw
7 benefits from a plan;

8 B. Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one
9 retirement plan to another;

10 C. Establish a retirement plan in the principal's name;

11 D. Make contributions to a retirement plan;

12 E. Exercise investment powers available under a retirement plan; and

13 F. Borrow from, sell assets to or purchase assets from a retirement plan.

14 **§5-946. Taxes**

15 Unless the power of attorney otherwise provides, language in a power of attorney
16 granting general authority with respect to taxes authorizes the agent to:

17 **1. Prepare, sign and file returns and other documents.** Prepare, sign and file
18 federal, state, local and foreign income, gift, payroll, property, Federal Insurance
19 Contributions Act and other tax returns, claims for refunds, requests for extension of
20 time, petitions regarding tax matters and any other tax-related documents, including
21 receipts, offers, waivers, consents, including consents and agreements under 26 United
22 States Code, Section 2032A, as amended, closing agreements and any power of attorney
23 required by the federal Internal Revenue Service or other taxing authority with respect to
24 a tax year upon which the statute of limitations has not run and the following 25 tax
25 years;

26 **2. Taxes due, refunds, bonds, confidential information and deficiencies.** Pay
27 taxes due, collect refunds, post bonds, receive confidential information and contest
28 deficiencies determined by the federal Internal Revenue Service or other taxing authority;

29 **3. Election under tax law.** Exercise any election available to the principal under
30 federal, state, local or foreign tax law; and

31 **4. Act for principal in all tax matters.** Act for the principal in all tax matters for all
32 periods before the federal Internal Revenue Service or other taxing authority.

33 **§5-947. Gifts**

34 **1. Gift.** For the purposes of this section, a gift for the benefit of a person includes a
35 gift to a trust, an account under the Maine Uniform Transfers to Minors Act and a tuition
36 savings account or prepaid tuition plan as defined under 26 United States Code, Section
37 529, as amended.

38 **2. Consistent with principal's objectives.** An agent may make a gift of the
39 principal's property only as the agent determines is consistent with the principal's

1 objectives if known by the agent and, if unknown, as the agent determines is consistent
2 with the principal's objectives based on all relevant factors, including:

- 3 A. The value and nature of the principal's property;
- 4 B. The principal's foreseeable obligations and need for maintenance;
- 5 C. Minimization of taxes, including income, estate, inheritance, generation-skipping
6 transfer and gift taxes;
- 7 D. Eligibility for a benefit, a program or assistance under a statute, rule or regulation;
8 and
- 9 E. The principal's personal history of making or joining in making gifts.

10 **SUBPART 3**

11 **STATUTORY FORMS**

12 **§5-951. Agent's certification**

13 The following optional form may be used by an agent to certify facts concerning a
14 power of attorney.

15 AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF
16 ATTORNEY AND AGENT'S AUTHORITY

17 State of

18 County of

19 I, (Name of Agent), certify under penalty
20 of perjury that (Name of Principal) granted me
21 authority as an agent or successor agent in a power of attorney dated
22

23 I further certify that to my knowledge:

24 (1) The Principal is alive and has not revoked the Power of Attorney or my authority
25 to act under the Power of Attorney and the Power of Attorney and my authority to act
26 under the Power of Attorney have not terminated;

27 (2) If the Power of Attorney was drafted to become effective upon the happening of
28 an event or contingency, the event or contingency has occurred;

29 (3) If I was named as a successor agent, the prior agent is no longer able or willing to
30 serve; and

31 (4)

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36 (Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

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Agent's Signature Date

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Agent's Name Printed

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Agent's Address

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Agent's Telephone Number

This document was acknowledged before me on (Date)

by

(Name of Agent)

..... (Seal, if any)

Signature of Notary/Attorney

My commission expires:

This document prepared by:

.....

SUBPART 4

MISCELLANEOUS PROVISIONS

§5-961. Uniformity of application and construction

In applying and construing this Part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

§5-962. Relation to Electronic Signatures in Global and National Commerce Act

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b).

§5-963. Effect on existing powers of attorney

Except as otherwise provided in this Part:

1. Application to powers of attorney. This Part applies to a power of attorney created before, on or after July 1, 2019;

1 **2. Application to judicial proceedings commenced on or after July 1, 2019.** This
2 Part applies to a judicial proceeding concerning a power of attorney commenced on or
3 after July 1, 2019; and

4 **3. Application to judicial proceedings commenced before July 1, 2019.** This Part
5 applies to a judicial proceeding concerning a power of attorney commenced before July 1,
6 2019, unless the court finds that application of a provision of this Part would substantially
7 interfere with the effective conduct of the judicial proceeding or prejudice the rights of a
8 party, in which case that provision does not apply and the superseded law applies.

9 An act done before July 1, 2019 is not affected by this Part.'

10 Amend the bill in Part A in section 2 in §6-203 by striking out all of subsection 2
11 (page 301, lines 20 to 24 in L.D.) and inserting the following:

12 **'2. Accounts governed by this Part.** An account established before, on or after the
13 July 1, 2019, whether in the form prescribed in section 6-204 or in any other form, is
14 either a single-party account or a multiple-party account, with or without right of
15 survivorship and with or without a POD designation or an agency designation, within the
16 meaning of this Part and is governed by this Part.'

17 Amend the bill in Part A in section 2 by striking out all of §6-311 (page 310, lines 26
18 to 28 in L.D.) and inserting the following:

19 **'§6-311. Application of Part**

20 This Part applies to registrations of securities in beneficiary form made before, on or
21 after July 1, 2019 by decedents dying on or after July 1, 2019.'

22 Amend the bill in Part A in section 2 in Article 6 by inserting at the end the
23 following:

24 **'PART 4**

25 **UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

26 **§6-401. Short title**

27 This Part may be known and cited as "the Uniform Real Property Transfer on Death
28 Act."

29 **§6-402. Definitions**

30 As used in this Part, unless the context otherwise indicates, the following terms have
31 the following meanings.

32 **1. Beneficiary.** "Beneficiary" means a person that receives property under a transfer
33 on death deed.

34 **2. Designated beneficiary.** "Designated beneficiary" means a person designated to
35 receive property in a transfer on death deed.

36 **3. Joint owner.** "Joint owner" means an individual who owns property concurrently
37 with one or more other individuals with a right of survivorship. "Joint owner" includes a

1 joint tenant. "Joint owner" does not include a tenant in common without a right of
2 survivorship.

3 **4. Person.** "Person" means an individual, corporation, estate, trustee, partnership,
4 limited liability company, association, joint venture, public corporation, government or
5 governmental subdivision, agency or instrumentality or any other legal or commercial
6 entity.

7 **5. Property.** "Property" means an interest in real property located in this State that
8 is transferable on the death of the owner.

9 **6. Transfer on death deed.** "Transfer on death deed" means a deed authorized
10 under this Part.

11 **7. Transferor.** "Transferor" means an individual who makes a transfer on death
12 deed.

13 **§6-403. Applicability**

14 This Part applies to a transfer on death deed made before, on or after July 1, 2019 by
15 a transferor dying on or after July 1, 2019.

16 **§6-404. Nonexclusivity**

17 This Part does not affect any method of transferring property otherwise permitted
18 under the law of this State.

19 **§6-405. Transfer on death deed authorized**

20 An individual may transfer for no consideration property to one or more beneficiaries
21 effective at the transferor's death by a transfer on death deed.

22 **§6-406. Transfer on death deed revocable**

23 A transfer on death deed is revocable even if the deed or another instrument contains
24 a contrary provision.

25 **§6-407. Transfer on death deed nontestamentary**

26 A transfer on death deed is nontestamentary.

27 **§6-408. Capacity of transferor; undue influence of transferor**

28 **1. Capacity.** The capacity required to make or revoke a transfer on death deed is the
29 same as the capacity required to make a will.

30 **2. Undue influence.** In addition to any other criminal or civil causes of action or
31 relief at law or equity, Title 33, chapter 20 applies to transfers under this Part.

32 **§6-409. Requirements**

33 A transfer on death deed:

34 **1. Essential elements and formalities.** Except as otherwise provided in subsection
35 2, must contain the essential elements and formalities of a properly recordable inter vivos
36 deed;

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2. Death of transferor. Must state that the transfer to the designated beneficiary is to occur at the transferor's death; and

3. Recorded before transferor's death. Must be recorded before the transferor's death in the public records in the registry of deeds in the county where the property is located.

§6-410. Notice, delivery, acceptance, consideration not required

A transfer on death deed is effective without:

1. Notice, delivery or acceptance. Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

2. Consideration. Consideration.

§6-411. Revocation by instrument authorized; revocation by act not permitted

1. Revocation by instrument. Subject to subsection 2, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

A. Is one of the following:

(1) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(2) An instrument of revocation that expressly revokes the deed or part of the deed; or

(3) An inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

B. Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the registry of deeds in the county where the deed is recorded.

2. More than one transferor. If a transfer on death deed is made by more than one transferor:

A. Revocation by a transferor does not affect the deed as to the interest of another transferor; and

B. A deed of joint owners is revoked only if it is revoked by all of the living joint owners.

3. Revocation after recorded. After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

4. Inter vivos transfer. As described in section 6-412, this section does not limit the effect of an inter vivos transfer of the property.

§6-412. Effect of transfer on death deed during transferor's life

During a transferor's life, a transfer on death deed does not:

1 1. Affect interest or right of transferor or other owner. Affect an interest or right
2 of the transferor or any other owner, including the right to transfer or encumber the
3 property;

4 2. Affect interest or right of transferee. Affect an interest or right of a transferee,
5 even if the transferee has actual or constructive notice of the deed;

6 3. Affect interest or right of creditor. Affect an interest or right of a secured or
7 unsecured creditor or future creditor of the transferor, even if the creditor has actual or
8 constructive notice of the deed;

9 4. Affect eligibility or public assistance. Affect the transferor's or designated
10 beneficiary's eligibility for any form of public assistance;

11 5. Create legal or equitable interest. Create a legal or equitable interest in favor of
12 the designated beneficiary; or

13 6. Subject the property to claims or process. Subject the property to claims or
14 process of a creditor of the designated beneficiary.

15 **§6-413. Effect of transfer on death deed at transferor's death**

16 1. Upon death of transferor. Except as otherwise provided in the transfer on death
17 deed, in this section or in section 2-507, 2-603, 2-802 or 2-805 or in Article 2, Part 2, on
18 the death of the transferor, the following rules apply to property that is the subject of a
19 transfer on death deed and owned by the transferor at death.

20 A. Subject to paragraph B, the interest in the property is transferred to the designated
21 beneficiary in accordance with the deed.

22 B. The interest of a designated beneficiary is contingent on the designated
23 beneficiary surviving the transferor. The interest of a designated beneficiary that fails
24 to survive the transferor lapses.

25 C. Subject to paragraph D, concurrent interests are transferred to the beneficiaries in
26 equal and undivided shares with no right of survivorship.

27 D. If the transferor has identified 2 or more designated beneficiaries to receive
28 concurrent interests in the property, the share of one that lapses or fails for any reason
29 is transferred to the other or to the others in proportion to the interest of each in the
30 remaining part of the property held concurrently.

31 2. Subject to all interests. Subject to Title 33, section 201, a beneficiary takes the
32 property subject to all conveyances, encumbrances, assignments, contracts, mortgages,
33 liens and other interests to which the property is subject at the transferor's death. For
34 purposes of this subsection and Title 33, section 201, the recording of the transfer on
35 death deed is deemed to have occurred at the transferor's death.

36 3. Joint owner. If a transferor is a joint owner and is:

37 A. Survived by one or more other joint owners, the property that is the subject of a
38 transfer on death deed belongs to the surviving joint owner or owners with right of
39 survivorship; or

40 B. The last surviving joint owner, the transfer on death deed is effective.

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4. No covenant or warranty of title. A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

§6-414. Notice of death affidavit

A beneficiary who takes under a transfer on death deed may file for recording in the registry of deeds in the county where the real property is located a notice of death affidavit to confirm title following the death of the transferor. The notice of death affidavit must contain the name and address, if known, of each beneficiary taking under the transfer on death deed, the street address of the property, the date of the transfer on death deed, the book and page number at which the transfer on death deed was recorded prior to the transferor's death, the name of the deceased transferor, the date and place of death and the name and address to which all future tax bills should be mailed. The affidavit must be notarized.

After recording the notice of death affidavit, the register of deeds shall return the original affidavit to the person who filed it and mail a copy of the affidavit to the tax assessor of the municipality where the property is located.

The filing of the notice of death affidavit is not a condition to the transfer of title.

§6-415. Disclaimer

A beneficiary may disclaim all or part of the beneficiary's interest as provided by Article 2, Part 9.

§6-416. Liability for creditor claims and statutory allowances

A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in section 6-102.

§6-417. Optional form of transfer on death deed

The following form may be used to create a transfer on death deed. The other sections of this Part govern the effect of this or any other instrument used to create a transfer on death deed.

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. YOU MAY WANT TO CONSULT A LAWYER BEFORE USING THIS FORM.

This form must be recorded before your death, or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

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Printed name.....Mailing address

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Printed name.....Mailing address

Legal description of the property:

.....

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

.....

.....

Printed name.....Mailing address, if available

ALTERNATE BENEFICIARY - Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

.....

.....

Printed name.....Mailing address, if available

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

.....

(SEAL, if any).....

Signature.....Date.....

.....

(SEAL, if any).....

Signature.....Date.....

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you

1 die. You can revoke it at any time. You are also free to transfer the property to someone
2 else during your lifetime. If you do not own any interest in the property when you die,
3 this deed will have no effect.

4 How do I make a TOD deed? Complete this form. Have it acknowledged before a
5 notary public or other individual authorized by law to take acknowledgments. Record the
6 form in each county where any part of the property is located. The form has no effect
7 unless it is acknowledged and recorded before your death.

8 Is the "legal description" of the property necessary? Yes.

9 How do I find the "legal description" of the property? This information may be on the
10 deed you received when you became an owner of the property. This information may
11 also be available in the registry of deeds for the county where the property is located. If
12 you are not absolutely sure, consult a lawyer.

13 Can I change my mind before I record the TOD deed? Yes. If you have not yet
14 recorded the deed and want to change your mind, simply tear up or otherwise destroy the
15 deed.

16 How do I "record" the TOD deed? Take the completed and acknowledged form to the
17 registry of deeds of the county where the property is located. Follow the instructions
18 given by the register of deeds to make the form part of the official property records. If
19 the property is in more than one county, you should record the deed in each county.

20 Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the
21 TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

22 How do I revoke the TOD deed after it is recorded? There are three ways to revoke a
23 recorded TOD deed: (1) Complete and acknowledge a revocation form, and record it in
24 each county where the property is located. (2) Complete and acknowledge a new TOD
25 deed that disposes of the same property, and record it in each county where the property
26 is located. (3) Transfer the property to someone else during your lifetime by a recorded
27 deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

28 I am being pressured to complete this form. What should I do? Do not complete this
29 form under pressure. Seek help from a trusted family member, friend, or lawyer.

30 Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended.
31 Secrecy can cause later complications and might make it easier for others to commit
32 fraud.

33 I have other questions about this form. What should I do? This form is designed to fit
34 some but not all situations. If you have other questions, you are encouraged to consult a
35 lawyer.

36 **§6-418. Optional form of revocation**

37 The following form may be used to create an instrument of revocation under this Part.
38 The other sections of this Part govern the effect of this or any other instrument used to
39 revoke a transfer on death deed.

40 (front of form)

41 **REVOCATION OF TRANSFER ON DEATH DEED**

1 NOTICE TO OWNER

2 This revocation must be recorded before you die or it will not be effective. This
3 revocation is effective only as to the interests in the property of owners who sign this
4 revocation.

5 IDENTIFYING INFORMATION

6 Owner or Owners of Property Making This Revocation:

7
8

9 Printed name.....Mailing address

10

11 Printed name.....Mailing address

12 Legal description of the property:

13

14 REVOCATION

15 I revoke all my previous transfers of this property by transfer on death deed.

16 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

17

18 (SEAL, if any).....

19 Signature.....Date.....

20

21 (SEAL, if any).....

22 Signature.....Date.....

23 ACKNOWLEDGMENT

24 (insert acknowledgment)

25 (back of form)

26 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

27 How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this
28 form. Have it acknowledged before a notary public or other individual authorized to take
29 acknowledgments. Record the form in the public records in the registry of deeds of each
30 county where the property is located. The form must be acknowledged and recorded
31 before your death or it has no effect.

32 How do I find the "legal description" of the property? This information may be on the
33 TOD deed. It may also be available in the registry of deeds for the county where the
34 property is located. If you are not absolutely sure, consult a lawyer.

1 How do I "record" the form? Take the completed and acknowledged form to the
2 registry of deeds of the county where the property is located. Follow the instructions
3 given by the register of deeds to make the form part of the official property records. If
4 the property is located in more than one county, you should record the form in each of
5 those counties.

6 I am being pressured to complete this form. What should I do? Do not complete this
7 form under pressure. Seek help from a trusted family member, friend, or lawyer.

8 I have other questions about this form. What should I do? This form is designed to fit
9 some but not all situations. If you have other questions, consult a lawyer.

10 **§6-419. Uniformity of application and construction**

11 In applying and construing this uniform act, consideration must be given to the need
12 to promote uniformity of the law with respect to its subject matter among the states that
13 enact it.

14 **§6-420. Relation to Electronic Signatures in Global and National Commerce Act**

15 This Part modifies, limits and supersedes the federal Electronic Signatures in Global
16 and National Commerce Act, 15 United States Code, Section 7001, et seq., but does not
17 modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section
18 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b)
19 of that Act, 15 United States Code, Section 7003(b).

20 **§6-421. Effective date**

21 This Part takes effect July 1, 2019.'

22 Amend the bill in Part A in section 2 by striking out all of §7-203 (page 317, lines 33
23 to 35 in L.D.) and inserting the following:

24 **'§7-203. Application of Part**

25 This Part applies to fiduciary relationships in existence on July 1, 2019 or established
26 after that date.'

27 Amend the bill in Part A in section 2 by striking out all of §7-472 (page 341, lines 34
28 to 38 in L.D.) and inserting the following:

29 **'§7-472. Application of Part to all trusts and estates**

30 This Part applies to every trust or decedent's estate, including those in existence on
31 July 1, 2019, beginning with the first fiscal year of the trust or decedent's estate that
32 begins on or after July 1, 2019, except as otherwise expressly provided in the will or
33 terms of the trust or in this Part.'

34 Amend the bill in Part A in section 2 by striking out all of §7-473 (page 342, lines 1
35 to 8 in L.D.)

36 Amend the bill in Part A in section 2 by striking out all of §8-204 (page 346, lines 4
37 to 8 in L.D.) and inserting the following:

1 **§8-204. Approval of bond by judge**

2 Except as otherwise provided by sections 3-603 to 3-606, 4-204, 4-207, 5-125, 5-415
3 and 5-416 and Title 18-B, section 702, a bond required to be given to the State of Maine
4 or the court or to be filed in the probate office is insufficient until it has been examined by
5 the court and approved by the court in writing.'

6 Amend the bill in Part A in section 2 by striking out all of §8-213 (page 347, lines 20
7 to 27 in L.D.) and inserting the following:

8 **§8-213. Judicial authorization of actions**

9 The court may expressly authorize or instruct a personal representative or other
10 fiduciary, on the court's own initiative or on the complaint of any interested person, to
11 commence an action on the bond for the benefit of the estate. Nothing in this section may
12 be deemed to limit the power or duty of a successor fiduciary to bring proceedings the
13 fiduciary is authorized to bring without express court authorization under section 3-606,
14 subsection 1, paragraph D; section 5-417, subsection 1, paragraph C; Title 18-B, section
15 702; or any other provision of law.'

16 Amend the bill in Part A in section 2 by striking out all of §8-301 (page 348, lines 2
17 to 31 in L.D.) and inserting the following:

18 **§8-301. Time of taking effect; provisions for transition**

19 **1. Effective date.** This Code takes effect on July 1, 2019.

20 **2. Applicability.** Except as provided elsewhere in this Code, on the effective date of
21 this Code:

22 A. The Code applies to any wills of decedents who die after the effective date;

23 B. The Code applies to any proceedings in court pending on the effective date or
24 commenced after the effective date regardless of the time of the death of the decedent
25 except to the extent that in the opinion of the court the former procedure should be
26 made applicable in a particular case in the interest of justice or because of
27 infeasibility of application of the procedure of this Code;

28 C. Every personal representative appointed prior to July 1, 2019 continues to hold
29 the appointment but has only the powers conferred by this Code and is subject to the
30 duties imposed with respect to any act occurring or done after the effective date, and
31 a guardian or conservator appointed prior to July 1, 2019 has the powers conferred by
32 this Code on guardians and conservators, unless otherwise limited by the original
33 order of appointment or subsequent court order under this Code;

34 D. An act done before July 1, 2019 in any proceeding and any accrued right is not
35 impaired by this Code. If a right is acquired, extinguished or barred upon the
36 expiration of a prescribed period of time that has commenced to run by the provisions
37 of any statute before July 1, 2019, the provisions remain in force with respect to that
38 right;

39 E. Any rule of construction or presumption provided in this Code applies to
40 instruments executed and multiple party accounts opened before July 1, 2019 unless
41 there is a clear indication of a contrary intent; and

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F. For an adoption decree entered before July 1, 2019 and not amended after July 1, 2019, the child is the child of both the former and adopting parents for purposes of intestate succession, notwithstanding section 2-117, unless the decree provides otherwise.'

Amend the bill in Part A in section 2 by striking out all of Article 9 and inserting the following:

'ARTICLE 9

ADOPTION

PART 1

GENERAL PROVISIONS

§9-101. Short title

This Article may be known and cited as "the Adoption Act."

§9-102. Definitions

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

1. Adoptee. "Adoptee" means a person who will be or who has been adopted, regardless of whether the person is a child or an adult.

2. Adult. "Adult" means a person who is 18 years of age or older.

3. Child. "Child" means a person who is under 18 years of age.

4. Consent. "Consent," used as a noun, means a voluntary agreement to an adoption by a specific petitioner that is executed by a parent or custodian of the adoptee.

5. Department. "Department" means the Department of Health and Human Services.

6. Licensed child-placing agency. "Licensed child-placing agency" means an agency, person, group of persons, organization, association or society licensed to operate in this State pursuant to Title 22, chapter 1671.

7. Parent. "Parent" means a person who, with respect to a child:

A. Has established parentage pursuant to Title 19-A, chapter 61; or

B. When no person described in paragraph A exists, is the legal guardian of the child.

8. Petitioner. "Petitioner" means a person filing a petition to adopt an adult or a child, and includes both petitioners under a joint petition, except as otherwise provided in this Article.

1 **9. Putative parent.** "Putative parent" means a person who is the alleged parent of a
2 child but whose parentage has not been but may be legally determined in accordance with
3 Title 19-A, chapter 61.

4 **10. Surrender and release.** "Surrender and release," used as a noun, means a
5 voluntary relinquishment of all parental rights to a child to the department or a licensed
6 child-placing agency for the purpose of placement for adoption.

7 **§9-103. Jurisdiction**

8 **1. Probate Court jurisdiction.** Subject to Title 4, section 152, subsection 5-A, the
9 Probate Court has exclusive jurisdiction over the following:

10 A. Petitions for adoption;

11 B. Consents and reviews of withholdings of consent by persons other than a parent;

12 C. Surrenders and releases;

13 D. Termination of parental rights proceedings brought pursuant to section 9-204;

14 E. Proceedings to determine the rights of putative parents of children whose
15 adoptions or surrenders and releases are pending before the Probate Court; and

16 F. Reviews conducted pursuant to section 9-205.

17 **2. District Court jurisdiction.** The District Court has jurisdiction to conduct
18 hearings pursuant to section 9-205. The District Court has jurisdiction over any matter
19 described in subsection 1 if the proceeding concerns a child over whom the District Court
20 has exclusive jurisdiction pursuant to Title 4, section 152, subsection 5-A.

21 **§9-104. Venue; transfer**

22 **1. Venue if adoptee placed by agency or department.** If an adoptee is placed by a
23 licensed child-placing agency or the department, the petition for adoption must be filed in
24 the court in the county or division where:

25 A. The petitioner resides;

26 B. The adoptee resides or was born;

27 C. An office of the agency that placed the adoptee for adoption is located; or

28 D. Parental rights of the minor adoptee's parents have been terminated.

29 **2. Venue if agency or department not involved in placement.** If an adoptee is not
30 placed by a licensed child-placing agency or the department, the petition for adoption
31 must be filed in the county or division where the adoptee resides or where the petitioners
32 reside.

33 **3. Transfer.** If, in the interests of justice or for the convenience of the parties, the
34 court finds that the matter should be heard in another court, the court may transfer, stay or
35 dismiss the proceeding, subject to any further conditions imposed by the court.

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§9-105. Rights of adopted persons

Except as otherwise provided by law, an adopted person has all the same rights, including inheritance rights, that a child born to the adoptive parents would have. An adoptee also retains the right to inherit from the adoptee's former parents if the adoption decree so provides, as specified in section 2-117.

§9-106. Legal representation

1. Attorney for parents. The parents are entitled to an attorney for any hearing held pursuant to this Article. If a parent or putative parent wants an attorney but is unable to afford one, the parent or the putative parent may request the court to appoint an attorney. If the court finds the requesting party indigent, the court shall appoint and pay the reasonable costs and expenses of the attorney of the indigent party. The attorney may not be the attorney for the adoptive parents.

2. Attorney for minor indigent parent. When the adoptee is unrelated to the petitioner, the court shall appoint an attorney who is not the attorney for the adoptive parents to represent a minor indigent parent at every stage of the proceedings unless the minor indigent parent refuses representation or the court determines that representation is unnecessary.

§9-107. Indian Child Welfare Act of 1978

The federal Indian Child Welfare Act of 1978, United States Code, Title 25, Section 1901 et seq. governs all proceedings under this Article that pertain to an Indian child as defined in that Act.

§9-108. Application of prior laws

The laws in effect on June 30, 2019 apply to proceedings for which any of the following occurred before July 1, 2019:

- 1. Consent.** The filing of a consent;
- 2. Surrender and release.** The filing of a surrender and release;
- 3. Waiver of notice.** The filing of a waiver of notice by a parent or putative parent under former Title 19, section 532-C;
- 4. Order terminating parental rights.** The issuance of an order terminating parental rights; or
- 5. Adoption petition.** The filing of a petition for adoption.

§9-109. Mediation

The court may refer the parties to mediation at any time after a petition is filed if mediation services are available at a reasonable fee or no cost, and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

PART 2

DETERMINATION OF PARENTAGE AND TERMINATION OF PARENTAL RIGHTS

§9-201. Determination of parentage

1. Affidavit of parentage. When a parent of a child wishes to consent to the adoption of the child or to execute a surrender and release for the purpose of adoption of the child and a putative parent has not consented to the adoption of the child or joined in a surrender and release for the purpose of adoption of the child or waived the right to notice, the parent must file an affidavit of parentage with the court so that the court may determine how to give notice of the proceedings to the putative parent.

2. Notice of intent to consent or execute surrender and release. If a court finds from the affidavit of the parent submitted pursuant to subsection 1 that the putative parent's whereabouts are known, the court shall order that notice of the parent's intent to consent to adoption or to execute a surrender and release, or the parent's actual consent or surrender and release, for the purpose of adoption of the child, be served upon the putative parent. If the court finds that the putative parent's whereabouts are unknown, the court shall order notice by publication in accordance with the applicable rules of procedure. If the parent does not know or refuses to tell the court who a putative parent is, the court may order publication in accordance with the applicable rules of procedure in a newspaper of general circulation in the area where the petition is filed, where the child was conceived or where the putative parent is most likely to be located. The notice must specify the names of the parent and the child.

3. Waiver of notice. A putative parent may waive the right to notice under this section in a document acknowledged before a notary public or a judge. The notary public may not be an attorney who represents either the parent or any person who is likely to become the legal guardian, custodian or parent of the child.

A. The waiver of notice must indicate that the putative parent understands that the waiver of notice operates as a consent to adoption or a surrender and release for the purposes of adoption for any adoption of the child and that by signing the waiver of notice the putative parent voluntarily gives up any rights to the child.

B. The waiver of notice may state that the putative parent neither admits nor denies parentage.

4. Determination of parentage of putative parent. If, after notice, the putative parent of the child wishes to establish parentage of the child, the putative parent must, within 20 days after notice has been given or within a longer period of time as ordered by the court, petition the court to initiate proceedings to establish parentage under Title 19-A, chapter 61.

5. Hearing date. Upon receipt of a petition under subsection 4, the court shall fix a date for a hearing to determine the putative parent's parentage of the child.

6. Appointment of attorneys. The court shall appoint an attorney who is not the attorney for the putative parent, the parent or the potential transferee agency or a potential adoptive parent to represent the child and to protect the child's interests in the proceedings under this section.

1 7. Notice of hearing. Notice of a hearing under this section must be given to a
2 parent, a putative parent, the attorney for the child and any other parties the court
3 determines appropriate. Notice need not be given to a putative parent who has waived the
4 right to notice as provided in subsection 3.

5 8. Studies and reports. Upon order of the court, the department or licensed child-
6 placing agency shall furnish studies and reports relevant to the proceedings under this
7 section.

8 9. Findings; effect of parent not waiving notice. If the putative parent is
9 determined to be the child's parent pursuant to one or more of the means of establishing
10 parentage under Title 19-A, chapter 61, and does not execute a waiver of notice pursuant
11 to subsection 3, then a petitioner must bring a petition to terminate the parent's parental
12 rights pursuant to section 9-204 if the petitioner proceeds with the adoption.

13 10. Findings; putative parent does not seek to establish or establish parentage of
14 the child. If the putative parent does not bring a petition to establish parentage under
15 subsection 4 or does not establish parentage of the child under Title 19-A, chapter 61, the
16 court shall rule that the putative parent's consent or surrender and release is not needed
17 for the adoption.

18 §9-202. Surrender and release; consent

19 1. Surrender and release or consent; presence of judge. With the approval of the
20 court of any county within the State and after a determination by the court that a
21 surrender and release or a consent is in the best interest of the child, the parents or
22 surviving parent of a child may at any time at least 72 hours after the child's birth:

23 A. Surrender and release all parental rights to the child and the custody and control
24 of the child to a licensed child-placing agency or the department to enable the
25 licensed child-placing agency or the department to have the child adopted by a
26 suitable person; or

27 B. Consent to have the child adopted by a specified petitioner.

28 The parents or the surviving parent must execute the surrender and release or the consent
29 in the presence of the judge. The adoptee, if 14 years of age or older, must execute the
30 consent in the presence of the judge. The waiver of notice by the putative parent is
31 governed by section 9-201, subsection 3.

32 2. Approval of surrender and release or consent. The court may approve a
33 surrender and release or a consent only if:

34 A. A licensed child-placing agency or the department certifies to the court that
35 counseling was provided or was offered and refused. This requirement does not
36 apply if:

37 (1) One of the petitioners is a blood relative; or

38 (2) The adoptee is an adult;

39 B. The court has explained the individual's parental rights and responsibilities, the
40 effects of the surrender and release or the consent, that in all but specific situations
41 the individual has the right to revoke the surrender and release or consent within 5

1 working days and the existence of the adoption registry and the services available
2 under Title 22, section 2706-A. The individual does not have the right to revoke the
3 consent when the individual is a consenting party and also a petitioner;

4 C. The court determines that the surrender and release or the consent has been duly
5 executed and was given freely after the parent was informed of the parent's rights;
6 and

7 D. Except when a consenting party is also a petitioner, at least 5 working days have
8 elapsed since the parents or parent executed the surrender and release or the consent
9 and the parents or parent did not withdraw or revoke the surrender and release or
10 consent before the judge or, if the judge was not available, before the register.

11 **3. Original; copies.** The original surrender and release or consent must be filed in
12 the court where the surrender and release or the consent is executed. An attested copy of
13 the surrender and release or consent must be filed in the court in which the petition is
14 filed. The court in which the surrender and release or the consent is executed shall
15 provide an attested copy to each surrendering or consenting party and an attested copy to
16 the transferring agency. The copy given to the surrendering or consenting party must
17 contain a statement explaining the importance of keeping the court informed of a current
18 name and address.

19 **4. Valid after 5 days; exception.** A surrender and release or a consent is not valid
20 until 5 working days after it has been executed, except that consent by a parent
21 petitioning to adopt that parent's own child with that parent's spouse is valid upon
22 signature.

23 **5. Consent acknowledged.** Consent may be acknowledged before a notary public
24 who is not an attorney for the adopting parents or a partner, associate or employee of an
25 attorney for the adopting parents when consent is given by:

26 A. The department or a licensed child-placing agency; or

27 B. A public agency or a duly licensed private agency to which parental rights have
28 been transferred under the law of another state or country.

29 **6. Final and irrevocable; exceptions.** Except as provided in subsection 7 and
30 section 9-205, subsection 2, a surrender and release or a consent is final and irrevocable
31 when duly executed.

32 **7. Consent; limitations.** A consent is final only for the adoption consented to, and if
33 that petition for adoption is withdrawn or dismissed or if the adoption is not finalized
34 within 18 months of the execution of the consent, a review must be held pursuant to
35 section 9-205.

36 **8. Surrender and release or consent from another state.** The court shall accept a
37 surrender and release or a consent by a court of comparable jurisdiction in another state if
38 the court receives an affidavit from a member of that state's bar or a certificate from that
39 court of comparable jurisdiction stating that:

40 A. The party executing the surrender and release or the consent followed the
41 procedure required to make a surrender and release or a consent valid in the state in
42 which it was executed; and

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B. The court of comparable jurisdiction advised the person executing the surrender and release or the consent of the consequences of the surrender and release or the consent under the laws of the state in which the surrender and release or the consent was executed.

The court shall accept a waiver of notice by a putative parent that meets the requirements of section 9-201, subsection 3.

§9-203. Duties and responsibilities subsequent to surrender and release

Without notice to the parent or parents, the surrender and release authorized pursuant to section 9-202 may be transferred together with all rights under section 9-202 from the transferee agency to the department or from the department as original transferee to any licensed child-placing agency. If the licensed child-placing agency or the department is unable to find a suitable adoptive home for a child surrendered and released by a parent or parents, the licensed child-placing agency or the department to whom custody and control of that child have been surrendered and released or transferred shall request a review pursuant to section 9-205.

§9-204. Termination of parental rights

1. Petition for termination; adoption petition brought solely by parent. A petition for termination of parental rights may be brought in the court in which a petition for adoption is properly filed as part of that petition for adoption. A petition for termination of parental rights may not be included as part of a petition for adoption brought solely by another parent of the child unless the adoption is sought to confirm the parentage status of the petitioning parent.

2. Title 22, chapter 1071, subchapter 6 applies. Except as otherwise provided by this section, a termination of parental rights petition is subject to the provisions of Title 22, chapter 1071, subchapter 6.

3. Grounds for Termination. The court may order termination of parental rights if:

A. The parent consents to the termination. Consent must be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of a termination order; or

B. The court finds, based on clear and convincing evidence, that:

(1) Termination is in the best interest of the child; and

(2) Either:

(a) The parent is unwilling or unable to protect the child from jeopardy, as defined by Title 22, section 4002, subsection 6, and these circumstances are unlikely to change within a time that is reasonably calculated to meet the child's needs;

(b) The parent has been unwilling or unable to take responsibility for the child within a time that is reasonably calculated to meet the child's needs; or

(c) The parent has abandoned the child, as described in Title 22, section 4002, subsection 1-A;

1 In making findings pursuant to this paragraph, the court may consider the extent to
2 which the parent had opportunities to rehabilitate and to reunify with the child,
3 including actions by the child's other parent to foster or to interfere with a
4 relationship between the parent and child or services provided by public or nonprofit
5 agencies.

6 **4. Guardian ad litem for child.** The court may appoint a guardian ad litem for a
7 child who is the subject of a petition for termination of parental rights under subsection 1.
8 The appointment must be made as soon as possible after the petition for termination of
9 parental rights is initiated.

10 A. The court shall pay reasonable costs and expenses for the guardian ad litem.

11 B. In general, the guardian ad litem shall act in pursuit of the best interest of the
12 child. The guardian ad litem must be given access to all reports and records relevant
13 to the case and investigate to ascertain the facts. The investigation must include,
14 when possible and appropriate:

15 (1) Reviewing records of psychiatric, psychological or physical examinations of
16 the child, parents or other persons having or seeking care or custody of the child;

17 (2) Review of relevant school records and other pertinent materials;

18 (3) Interviewing the child with or without other persons present; and

19 (4) Interviews with parents, guardians, teachers and other persons who have been
20 involved in caring for or treating the child.

21 The guardian ad litem may subpoena, examine and cross-examine witnesses and shall
22 make recommendations to the court.

23 **§9-205. Review**

24 **1. Judicial review required; 18 months.** The court shall conduct a judicial review
25 if:

26 A. A child is not adopted within 18 months of the execution of a surrender and
27 release;

28 B. The adoption is not finalized within 18 months of the consent to an adoption by a
29 parent or parents; or

30 C. A petition for adoption is not finalized within 18 months.

31 **2. Determination whether adoption viable plan; review; plan; District Court.** If,
32 after judicial review under subsection 1, the court determines that adoption is still a viable
33 plan for the child, the court shall schedule another judicial review within 2 years. If the
34 court determines that adoption is no longer a viable plan, the court shall attempt to notify
35 the parents, who must be given an opportunity to present an acceptable plan for the child.
36 If either or both parents are able and willing to assume physical custody of the child, the
37 court shall declare the surrender and release or the consent void.

38 If the parents are not notified or are unable or unwilling to assume physical custody of the
39 child or if the court determines that placement of the child with the parents would

1 constitute jeopardy as defined by Title 22, section 4002, subsection 6, the case must be
2 transferred to the District Court for a hearing pursuant to Title 22, section 4038-A.

3 **PART 3**

4 **ADOPTION PROCEDURES**

5 **§9-301. Petition for adoption and change of name; filing fee**

6 Spouses or unmarried persons jointly or an unmarried person, whether resident or
7 nonresident of the State, may petition the court to adopt a person, regardless of age, and
8 to change that person's name. The fee for filing the petition is \$65 plus:

9 **1. National criminal history record check fee.** The fee for a national criminal
10 history record check for noncriminal justice purposes set by the Federal Bureau of
11 Investigation for each prospective adoptive parent who is not a parent of the child; and

12 **2. State criminal history record check fee.** The fee for a state criminal history
13 record check for noncriminal justice purposes established pursuant to Title 25, section
14 1541, subsection 6 for each prospective adoptive parent who is not a parent of the child.

15 **§9-302. Consent for adoption**

16 **1. Written consent.** Before an adoption is granted, written consent to the adoption
17 must be given by:

18 A. The adoptee, if the adoptee is 14 years of age or older;

19 B. Each of the adoptee's living parents, except as provided in subsection 2;

20 C. A person or agency having legal custody or guardianship of the adoptee if the
21 adoptee is a child or to whom the child has been surrendered and released, except that
22 the person's or agency's lack of consent, if adjudged unreasonable by a court, may be
23 overruled by the court. In order for the court to find that the person or agency acted
24 unreasonably in withholding consent, the petitioner must prove, by a preponderance
25 of the evidence, that the person or agency acted unreasonably. The court may hold a
26 pretrial conference to determine who will proceed. The court may determine that
27 even though the burden of proof is on the petitioner, the person or agency should
28 proceed if the person or agency has important facts necessary to the petitioner in
29 presenting the petitioner's case. The court shall consider the following:

30 (1) Whether the person or agency determined the needs and interests of the child;

31 (2) Whether the person or agency determined the ability of the petitioner and
32 other prospective families to meet the child's needs;

33 (3) Whether the person or agency made the decision consistent with the facts;

34 (4) Whether the harm of removing the child from the child's current placement
35 outweighs any inadequacies of that placement; and

36 (5) All other factors that have a bearing on a determination of the reasonableness
37 of the person's or agency's decision in withholding consent; and

1 D. A guardian appointed by the court, if the adoptee is a child, when the child has no
2 living parent, guardian or legal custodian who may consent.

3 A petition for adoption must be pending before a consent is executed.

4 **2. Consent not required.** Consent to adoption is not required of:

5 A. A putative parent if the putative parent:

6 (1) Received notice and failed to respond to the notice within the prescribed time
7 period;

8 (2) Waived the right to notice under section 9-201, subsection 3;

9 (3) Does not establish parentage of the child under section 9-201, subsection 9;
10 or

11 (4) Holds no parental rights regarding the adoptee under the laws of the foreign
12 country in which the adoptee was born;

13 B. A parent whose parental rights have been terminated under Title 22, chapter 1071,
14 subchapter 6;

15 C. A parent who has executed a surrender and release pursuant to section 9-202;

16 D. A parent whose parental rights have been voluntarily or judicially terminated and
17 transferred to a public agency or a duly licensed private agency pursuant to the laws
18 of another state or country; or

19 E. A parent of an adoptee who is 18 years of age or older.

20 **3. Consent by department; notice.** When the department consents to the adoption
21 of a child in its custody, the department shall immediately notify:

22 A. The District Court in which the action under Title 22, chapter 1071 is pending;
23 and

24 B. The guardian ad litem for the child.

25 **§9-303. Petition**

26 **1. Sworn; contents.** A petition for adoption must be sworn to by the petitioner and
27 must include:

28 A. The full name, age and place of residence of the petitioner and, if married, the
29 place and date of marriage;

30 B. The date and place of birth of the adoptee, if known;

31 C. The birth name of the adoptee, any other names by which the adoptee has been
32 known and the adoptee's proposed new name, if any;

33 D. The residence of the adoptee at the time of the filing of the petition;

34 E. A statement of the petitioner's intention to establish a parent-child relationship
35 between the petitioner and the adoptee and a statement that the petitioner is a fit and
36 proper person able to care and provide for the adoptee's welfare;

1 F. The names and addresses of all persons or agencies known to the petitioner that
2 affect the custody of, visitation with or access to the adoptee;

3 G. The relationship, if any, of the petitioner to the adoptee;

4 H. The names and addresses of the department and the licensed child-placing
5 agency, if any;

6 I. The names and addresses of all persons known to the petitioner at the time of filing
7 from whom consent to the adoption is required; and

8 J. If the petition is for the adoption of a minor child, a statement that the petitioner
9 acknowledges that after the adoption is finalized, the transfer of the long-term care
10 and custody of the adoptee without a court order is prohibited under Title 17-A,
11 section 553, subsection 1, paragraphs C and D.

12 **2. Information to be shared and updated.** A petitioner shall indicate to the court
13 what information the petitioner is willing to share with the parents and under what
14 circumstances and shall provide a mechanism for updating that information.

15 **3. Caption.** The caption of a petition for adoption may be styled "In the Matter of
16 the Adoption Petition of (name of adoptee)." The petitioner must also be designated in
17 the caption.

18 **§9-304. Investigation; guardian ad litem; registry**

19 **1. Background check; study and report.** Upon the filing of a petition for adoption
20 of a minor child, the court shall request a background check and shall direct the
21 department or a licensed child-placing agency to conduct a study and make a report to the
22 court.

23 A. The study must include an investigation of the conditions and antecedents of the
24 child to determine whether the child is a proper subject for adoption and whether the
25 proposed home is suitable for the child. The department or licensed child-placing
26 agency shall submit the report to the court within 60 days.

27 (1) If the court has a report that provides sufficient, current information, the
28 court may waive the requirement of a study and report.

29 (2) If the petitioner is a relative of the child or the spouse or domestic partner of
30 the child's parent, the court may waive the requirement of a study and report.

31 B. The court shall request a background check for each prospective adoptive parent
32 who is not a parent of the child. The background check must include a screening for
33 child abuse cases in the records of the department and criminal history record
34 information obtained from the Maine Criminal Justice Information System and the
35 Federal Bureau of Investigation.

36 (1) The criminal history record information obtained from the Maine Criminal
37 Justice Information System must include a record of public criminal history
38 record information as defined in Title 16, section 703, subsection 8.

1 (2) The criminal history record information obtained from the Federal Bureau of
2 Investigation must include other state and national criminal history record
3 information.

4 (3) Each prospective parent who is not a parent of the child shall submit to
5 having fingerprints taken. The State Police, upon receipt of the fingerprint card,
6 may charge the court for the expenses incurred in processing state and national
7 criminal history record checks. The State Police shall take or cause to be taken
8 the applicant's fingerprints and shall forward the fingerprints to the State Bureau
9 of Identification so that the bureau can conduct state and national criminal history
10 record checks. Except for the portion of the payment, if any, that constitutes the
11 processing fee charged by the Federal Bureau of Investigation, all money
12 received by the State Police for purposes of this paragraph must be paid over to
13 the Treasurer of State. The money must be applied to the expenses of
14 administration incurred by the Department of Public Safety.

15 (4) The subject of a Federal Bureau of Investigation criminal history record
16 check may obtain a copy of the criminal history record check by following the
17 procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.
18 The subject of a state criminal history record check may inspect and review the
19 criminal history record information pursuant to Title 16, section 709.

20 (5) State and federal criminal history record information may be used by the
21 court for the purpose of screening prospective adoptive parents in determining
22 whether the adoption is in the best interest of the child.

23 (6) Information obtained pursuant to this paragraph is confidential. The results
24 of background checks received by the court are for official use only and may not
25 be disseminated outside the court except as required under Title 22, section
26 4011-A.

27 (7) The expense of obtaining the information required by this paragraph is
28 incorporated in the adoption filing fee established in section 9-301. The court
29 shall collect the total fee and transfer the appropriate funds to the Department of
30 Public Safety and the department.

31 The court may waive the background check of a prospective adoptive parent if a previous
32 background check was completed by a court or by the department under this subsection
33 within a reasonable period of time and the court is satisfied that nothing new that would
34 be included in the background check has transpired since the last background check.

35 This subsection does not authorize the court to request a background check for a
36 petitioner who is also the current legal parent of the child.

37 **2. Background checks by department.** The department may, pursuant to rules
38 adopted by the department, at any time before the filing of the petition for adoption,
39 conduct background checks for each prospective adoptive parent of a minor child in its
40 custody.

41 A. The department may request a background check for each prospective adoptive
42 parent who is not a parent of the child. The background check must include criminal

1 history record information obtained from the Maine Criminal Justice Information
2 System and the Federal Bureau of Investigation.

3 (1) The criminal history record information obtained from the Maine Criminal
4 Justice Information System must include a record of public criminal history
5 record information as defined in Title 16, section 703, subsection 8.

6 (2) The criminal history record information obtained from the Federal Bureau of
7 Investigation must include other state and national criminal history record
8 information.

9 (3) Each prospective parent who is not a parent of the child shall submit to
10 having fingerprints taken. The State Police, upon receipt of the fingerprint card,
11 may charge the department for the expenses incurred in processing state and
12 national criminal history record checks. The State Police shall take or cause to be
13 taken the applicant's fingerprints and shall forward the fingerprints to the State
14 Bureau of Identification so that the bureau can conduct state and national
15 criminal history record checks. Except for the portion of the payment, if any, that
16 constitutes the processing fee charged by the Federal Bureau of Investigation, all
17 money received by the State Police for purposes of this paragraph must be paid
18 over to the Treasurer of State. The money must be applied to the expenses of
19 administration incurred by the Department of Public Safety.

20 (4) The subject of a Federal Bureau of Investigation criminal history record
21 check may obtain a copy of the criminal history record check by following the
22 procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.
23 The subject of a state criminal history record check may inspect and review the
24 criminal history record information pursuant to Title 16, section 709.

25 (5) State and federal criminal history record information may be used by the
26 department for the purpose of screening prospective adoptive parents in
27 determining whether the adoption is in the best interest of the child.

28 (6) Information obtained pursuant to this paragraph is confidential. The results
29 of background checks received by the department are for official use only and
30 may not be disseminated outside the department except to a court considering a
31 petition for adoption under subsection 1.

32 B. Rules adopted by the department pursuant to this subsection are routine technical
33 rules as defined in Title 5, chapter 375, subchapter 2-A.

34 **3. Child's background.** This subsection governs the collection and disclosure of
35 information about the background of a child subject to a petition for adoption under
36 subsection 1.

37 A. The department, the licensed child-placing agency or any other person who acts
38 to place or assist in placing a child for adoption shall make reasonable efforts to
39 obtain medical and genetic information about the child, the parent who gave birth to
40 the child and a parent who was a source of the gametes used in the child's
41 conception. Specifically, the department, the licensed child-placing agency or any

1 other person who acts to place or assist in placing the child for adoption shall attempt
2 to obtain from the child's parents any information concerning:

3 (1) A current medical, psychological and developmental history of the child,
4 including an account of the child's prenatal care and medical condition at birth,
5 results of newborn screening, any drug or medication taken during pregnancy by
6 the parent who gave birth to the child, any subsequent medical, psychological or
7 psychiatric examination and diagnosis, any physical, sexual or emotional abuse
8 suffered by the child and a record of any immunizations and health care received
9 since birth; and

10 (2) Relevant information concerning the medical, psychological and social
11 history of a parent who was the source of the gametes used in the child's
12 conception, including any known disease or hereditary disposition to disease, the
13 history of use of drugs and alcohol, the health during pregnancy of the parent
14 who gave birth to the child and the health of a parent who was the source of the
15 gametes used in the child's conception at the time of the child's birth.

16 B. The department, the licensed child-placing agency or any other person who acts to
17 place or assist in placing the child for adoption may request from donors or
18 gestational carriers, as defined in Title 19-A, section 1832, their medical or genetic
19 information identical to that described in paragraph A, subparagraphs (1) and (2) and
20 shall make reasonable efforts to obtain any medical and genetic information
21 concerning such individuals that is in the possession of the child's parent or parents.

22 C. Prior to the child being placed for adoption, the department, the licensed child-
23 placing agency or any other person who acts to place or assist in placing the child for
24 adoption shall provide the information described in paragraph A to the prospective
25 adoptive parents.

26 D. If the department, the licensed child-placing agency or any other person who acts
27 to place or assists in placing the child for adoption has specific, articulable reasons to
28 question the truth or accuracy of any of the information obtained, those reasons must
29 be disclosed in writing to the prospective adoptive parents.

30 E. The prospective adoptive parents must be informed in writing if any of the
31 information described in this subsection cannot be obtained, either because the
32 records are unavailable or because the parents are unable or unwilling to consent to
33 its disclosure or to be interviewed.

34 F. If after a child is placed for adoption and either before or after the adoption is final
35 the child suffers a serious medical or mental illness for which the specific medical,
36 psychological or social history of the child's parents, donors or gestational carriers or
37 the child may be useful in diagnosis or treatment, the prospective adoptive or
38 adoptive parents may request that the department, the licensed child-placing agency
39 or any other person who placed or assisted to place the child attempt to obtain
40 additional information. The department, licensed child-placing agency or other
41 person shall attempt to obtain the information promptly and shall disclose any
42 information collected to the prospective adoptive or adoptive parents as soon as
43 reasonably possible. The department, licensed child-placing agency or other person
44 may charge a fee to the prospective adoptive or adoptive parents to cover the cost of

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1 obtaining and providing the additional information. Fees collected by the department
2 must be dedicated to defray the costs of obtaining and providing the additional
3 information. Fees may be reduced or waived for low-income prospective adoptive or
4 adoptive parents.

5 G. The department, the licensed child-placing agency or any other person who acts
6 to place or assist in placing the child for adoption shall file the information collected
7 with the court and, if it appears that the adoption will be granted and this information
8 has not previously been made available to the adoptive parents pursuant to Title 22,
9 section 4008, subsection 3, paragraph G or Title 22, section 8205, the court shall
10 make the information available to the adoptive parents, prior to issuing the decree
11 pursuant to subsection 8, with protection for the identity of persons other than the
12 child.

13 H. If the child to be placed for adoption is from a foreign country that has
14 jurisdiction over the child and the prospective adoptive parents are United States
15 citizens, compliance with federal and international adoption laws is deemed to be in
16 compliance with this subsection.

17 **4. Rebuttable presumption; sexual offenses.** There is a rebuttable presumption
18 that the petitioner would create a situation of jeopardy for the child if the adoption were
19 granted and that the adoption is not in the best interest of the child if the court finds that
20 the petitioner for the adoption of a minor child:

21 A. Has been convicted of an offense listed in Title 19-A, section 1653, subsection
22 6-A, paragraph A in which the victim was a minor at the time of the offense and the
23 petitioner was at least 5 years older than the minor at the time of the offense, except
24 that, if the offense was gross sexual assault under Title 17-A, section 253, subsection
25 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is
26 substantially similar to that contained in Title 17-A, section 253, subsection 1,
27 paragraph B or C, and the minor victim submitted as a result of compulsion, the
28 presumption applies regardless of the ages of the petitioner and the minor victim at
29 the time of the offense; or

30 B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually
31 abusing a person who was a minor at the time of the abuse.

32 The petitioner may present evidence to rebut the presumption.

33 **5. Probationary period.** The court may require that a minor child subject to a
34 petition for adoption under this section live for one year in the home of the petitioner
35 before the petition is granted and that the child, during all or part of this probationary
36 period, be under the supervision of the department or a licensed adoption agency.

37 **6. Guardian ad litem.** The court may appoint a guardian ad litem for a minor child
38 subject to a petition for adoption under this section at any time during the proceedings.

39 **7. Adoption registry and services.** Before the adoption of a minor child is decreed,
40 the court shall ensure that the petitioners are informed of the existence of the adoption
41 registry and the services available under Title 22, section 2706-A.

42 **8. Declaration; name change.** If the court is satisfied with the identity and relations
43 of the parties to a petition for adoption under this section, with the ability of the petitioner

1 to bring up and educate the child properly, considering the condition of the child's
2 parents, and with the fitness and propriety of the adoption, the court shall make a decree
3 setting forth the facts and declaring that from that date the child is the child of the
4 petitioner and that the child's name is changed, without requiring public notice of that
5 change.

6 **9. Certified copy of birth certificate; certificate of adoption.** A certified copy of
7 the birth certificate of the child proposed for adoption must be presented with the petition
8 for adoption if the certified copy can be obtained or made available by filing a delayed
9 birth registration. After the adoption has been decreed, the register shall file a certificate
10 of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished
11 by the state registrar.

12 **10. Transfer of long-term care or custody without court order.** Before the
13 adoption is decreed under subsection 8, the court shall ensure that the petitioners are
14 informed that the transfer of the long-term care and custody of the child without a court
15 order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D.

16 **§9-305. Evidence; procedure**

17 The court may proceed as follows in considering a petition for adoption.

18 **1. Adoptee interview.** The court may interview any adoptee, and shall interview an
19 adoptee who is 12 years of age or older, outside the presence of the prospective adoptive
20 parents, to determine the adoptee's attitudes and desires about the adoption and other
21 relevant issues.

22 **2. Inspection of records; disclosure.** The court may conduct an inspection in
23 camera of records of relevant child protective proceedings and may disclose only that
24 information necessary for the determination of any issue before the court. Any disclosure
25 of information must be done pursuant to Title 22, section 4008, subsection 3.

26 **3. Recording; expenses.** The parties may request a recording of the proceedings.
27 The requesting party shall pay the expense of the recording.

28 **§9-306. Allowable payments; expenses**

29 **1. Allowable payments by or on behalf of petitioner.** Except when one of the
30 petitioners is a blood relative of the adoptee or the adoptee is an adult, only the following
31 expenses may be paid by or on behalf of a petitioner in any proceeding under this Article:

32 A. The actual cost of legal services related to the surrender and release or the consent
33 and to the adoption process;

34 B. Prenatal and postnatal counseling expenses for the person giving birth to the
35 child;

36 C. Prenatal, birthing and other related medical expenses for the person giving birth to
37 the child;

38 D. Necessary transportation expenses to obtain the services listed in paragraphs A, B
39 and C;

40 E. Foster care expenses for the child;

1 F. Necessary living expenses for the person giving birth to the child and the child;

2 G. For a putative parent, legal and counseling expenses related to the surrender and
3 release, the consent and the adoption process; and

4 H. Fees to a licensed child-placing agency providing services in connection with the
5 pending adoption.

6 2. Full accounting of disbursements by petitioner. Prior to the dispositional
7 hearing pursuant to section 9-308, the petitioner shall file a full accounting of all
8 disbursements of anything of value made or agreed to be made by or on behalf of the
9 petitioner in connection with the adoption. The accounting report must be signed under
10 penalty of perjury and must be submitted to the court on or before the date the final
11 decree is granted. The accounting report must be itemized and show the services related
12 to the adoption or to the placement of the adoptee for adoption that were received by the
13 adoptee's parents, by the adoptee or on behalf of the petitioner. The accounting must
14 include the dates of each payment and the names and addresses of each attorney,
15 physician, hospital, licensed child-placing agency or other person or organization who
16 received funds or anything of value from the petitioner in connection with the adoption or
17 the placement of the adoptee with the petitioner or participated in any way in the handling
18 of the funds, either directly or indirectly. This subsection does not apply when one of the
19 petitioners is a blood relative or the adoptee is an adult.

20 3. Payments not contingent; other expenses and payments prohibited. Payment
21 for expenses allowable under subsection 1 may not be contingent upon any future
22 decision a parent might make pertaining to the child. Other expenses or payments to
23 parents are not authorized.

24 §9-307. Adoption not granted

25 If the court determines that it is unable to finalize an adoption to which parents have
26 consented, the court shall notify the parents that the court has not granted the adoption
27 and shall conduct a review pursuant to section 9-205.

28 §9-308. Final decree; dispositional hearing; effect of adoption

29 1. Final decree of adoption; requirements. The court shall grant a final decree of
30 adoption if the petitioner who filed the petition has been heard or has waived hearing and
31 the court is satisfied from the hearing or record that:

32 A. All necessary consents, relinquishments or terminations of parental rights have
33 been duly executed and filed with the court;

34 B. An adoption study, when required by section 9-304, has been filed with the court;

35 C. A list of all disbursements as required by section 9-306 has been filed with the
36 court;

37 D. The petitioner is a suitable adopting parent and desires to establish a parent-child
38 relationship with the adoptee;

39 E. The best interest of the adoptee, described in subsection 2, are served by the
40 adoption;

1 F. The petitioner has acknowledged that the petitioner understands that the transfer
2 of the long-term care and custody of an adoptee who is a minor child without a court
3 order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D;
4 and

5 G. All requirements of this Article have been met.

6 **2. Best interest of adoptee.** In determining the best interest of an adoptee, the court
7 shall consider and evaluate the following factors to give the adoptee a permanent home at
8 the earliest possible date:

9 A. The love, affection and other emotional ties existing between the adoptee and the
10 adopting person or persons, a parent or a putative parent;

11 B. The capacity and disposition of the adopting person or persons, the parent or
12 parents or the putative parent to educate and give the adoptee love, affection and
13 guidance and to meet the needs of the adoptee. An adoption may not be delayed or
14 denied because the adoptive parent and the adoptee do not share the same race, color
15 or national origin; and

16 C. The capacity and disposition of the adopting person or persons, the parent or
17 parents or the putative parent to provide the adoptee with food, clothing and other
18 material needs, education, permanence and medical care or other remedial care
19 recognized and permitted in place of medical care under the laws of this State.

20 **3. Findings; decree; confidentiality.** The court shall enter its findings in a written
21 final decree that includes the new name of the adoptee. The final decree must further
22 order that from the date of the decree the adoptee is the child of the petitioner and must be
23 accorded the status set forth in section 9-105. If the court determines that it is in the best
24 interest of the adoptee, the court may require that the names of the adoptee and of the
25 petitioner be kept confidential.

26 **4. Notice to parents.** Upon completion of an adoption proceeding, the parents who
27 consented to an adoption or who executed a surrender and release must be notified by the
28 court of the completion by regular mail at their last known address. Notice under this
29 subsection is not required to a parent who is also a petitioner. When the parents' rights
30 have been terminated pursuant to Title 22, section 4055, the notice must be given to the
31 department and the department shall notify the parents of the completion by regular mail
32 at their last known address. Actual receipt of the notice is not a precondition of
33 completion and does not affect the rights or responsibilities of adoptees or adoptive
34 parents.

35 **5. Notice to grandparents.** The department shall notify the grandparents of a child
36 when the child is placed for adoption if the department has received notice that the
37 grandparents were granted reasonable rights of visitation or access under Title 19-A,
38 chapter 59 or Title 22, section 4005-E.

39 **6. Effect of adoption.** An order granting the adoption has the following effect:

40 A. An order granting the adoption of the child by the petitioner divests the parent and
41 child of all legal rights, powers, privileges, immunities, duties and obligations to each
42 other as parent and child, except an adoptee inherits from the adoptee's former
43 parents if provided in the adoption decree.

1 B. An adoption order may not disentitle a child to benefits due the child from any
2 3rd person, agency or state or the United States and may not affect the rights and
3 benefits that a Native American derives from descent from a member of a federally
4 recognized Indian tribe.

5 **§9-309. Appeals**

6 **1. Appeal; bond not required of child or next friend.** Any party may appeal from
7 any order entered under this Article to the Supreme Judicial Court sitting as the Law
8 Court, as in other civil actions, but a bond to prosecute an appeal is not required of a child
9 or next friend and costs may not be awarded against either.

10 **2. Appeal expedited.** An appeal from any order under this Article must be
11 expedited.

12 **3. Attorney, guardian ad litem continues.** An attorney or guardian ad litem
13 appointed to represent a party in an adoption proceeding continues to represent the
14 interests of that party in any appeal unless otherwise ordered by the court.

15 **§9-310. Records confidential**

16 Notwithstanding any other provision of law and except as provided in Title 22,
17 section 2768, all court records relating to an adoption decreed on or after August 8, 1953
18 are confidential. The court shall keep records of those adoptions segregated from all
19 other court records. If a court determines that examination of records pertaining to a
20 particular adoption is proper, the court may authorize that examination by specified
21 persons, authorize the register to disclose to specified persons any information contained
22 in the records by letter, certificate or copy of the record or authorize a combination of
23 both examination and disclosure.

24 Any medical or genetic information in the court records relating to an adoption must
25 be made available to the adopted child when the adopted child attains 18 years of age and
26 to the adopted child's descendants, adoptive parents or legal guardian on petition of the
27 court.

28 **§9-311. Interstate placements**

29 **1. Certificate of compliance; bring child to this State.** A person or agency who
30 intends to bring a child to this State from another state for the purpose of adoption must
31 provide to the court the certification of compliance as required by the department
32 pursuant to Title 22, chapter 1153 or 1154, as applicable.

33 **2. Certificate of compliance; remove child from this State.** A person or agency
34 who intends to remove a child from this State for the purpose of adoption in another state
35 must obtain from the department certification of compliance with Title 22, chapter 1153
36 or 1154, as applicable, prior to the removal of the child from this State.

37 **3. Department certification required.** The court may not grant a petition to adopt a
38 child who has been brought to or will be removed from this State for the purpose of
39 adoption without department certification of compliance with Title 22, chapter 1153 or
40 1154, as applicable.

1 4. Civil violation. An agency or person who fails to comply with this section
2 commits a civil violation for which a fine of not less than \$100 and not more than \$5,000
3 may be adjudged.

4 **§9-312. Foreign adoptions**

5 If an adoption in a foreign country has been finalized and the adopting parents are
6 seeking an adoption under the laws of this State to give recognition to the foreign
7 adoption, a court may enter a decree of adoption based solely upon a judgment of
8 adoption in a foreign country and may order a change of name if requested by the
9 adopting parents. The fee for filing the petition is \$55.

10 **§9-313. Advertisement**

11 1. Definitions. As used in this section, the following terms have the following
12 meanings.

13 A. "Advertise" means to communicate by any public medium that originates within
14 this State, including by newspaper, periodical, telephone book listing, outdoor
15 advertising sign, radio or television, or by any computerized communication system,
16 including by e-mail, website, Internet account or any similar medium of
17 communication provided via the Internet.

18 B. "Internet account" means an account created within a bounded system established
19 by an Internet-based service that requires a user to input or store access information
20 in an electronic device in order to view, create, use or edit the user's account
21 information, profile, display, communications or stored data.

22 **2. Advertising prohibited.** A person may not:

23 A. Advertise for the purpose of finding a child to adopt or to otherwise take into
24 permanent physical custody;

25 B. Advertise that the person will find an adoptive home or any other permanent
26 physical placement for a child or arrange for or assist in the adoption, adoptive
27 placement or any other permanent physical placement of a child;

28 C. Advertise that the person will place a child for adoption or in any other permanent
29 physical placement; or

30 D. Advertise for the purpose of finding a person to adopt or otherwise take into
31 permanent custody a particular child.

32 **3. Exceptions.** This section does not prohibit:

33 A. The department or a child-placing agency from advertising in accordance with
34 rules adopted by the department; or

35 B. An attorney licensed to practice in this State from advertising the attorney's
36 availability to practice or provide services relating to the adoption of children.

37 **4. Violation.** A person who violates subsection 2 commits a civil violation for
38 which a fine of not more than \$5,000 may be adjudged.

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§9-314. Immunity from liability for good faith reporting; proceedings

A person, including an agent of the department, who participates in good faith in reporting violations of this Article or participates in a related child protection investigation or proceeding is immune from any criminal or civil liability for reporting or participating in the investigation or proceeding. For purposes of this section, "good faith" does not include instances when a false report is made and the person knows the report is false.

§9-315. Annulment of the adoption decree

1. Annulment; reasons and limitations. A court may, on petition filed within one year of the decree of adoption and after notice and hearing, reverse and annul an adoption decree based on findings by clear and convincing evidence that the adoption was obtained as a result of fraud, duress or illegal procedures.

A. If the adoptee is a minor, the court shall appoint a guardian ad litem on behalf of the minor adoptee and shall consider the best interest of the child, taking into account the factors set forth in Title 19-A, section 1653, subsection 3. The court shall sustain the decree unless there is clear and convincing evidence of one or more bases for annulment and that the decree is not in the best interest of the child.

The court may allocate the costs of the guardian ad litem to one or more of the parties and may appoint counsel for a minor adoptee or a party to the annulment proceedings. A minor adoptee may appear and be represented by counsel.

B. Subject to the disposition of an appeal, upon the expiration of one year after an adoption decree is issued, the decree may not be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice or lack of jurisdiction of the parties or of the subject matter.

2. Notice. Notice of a petition to annul must be given to the parents, except those whose parental rights were terminated through a proceeding pursuant to Title 22, section 4055, subsection 1, paragraph B, subparagraph (2), and to all parties to the adoption including the adoptive parents, an adoptee who is 14 years of age or older and the agency involved in the adoption.

3. Certified copy of annulment. After the court annuls a decree of adoption, the register shall transmit immediately a certified copy of the annulment to the State Registrar of Vital Statistics.

PART 4

ADOPTION ASSISTANCE PROGRAM

§9-401. Authorization; special needs children

1. Program. There is established in the Department of Health and Human Services the Adoption Assistance Program, referred to in this Part as "the program."

2. Adoption assistance for special needs children. Subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, the

1 department may provide through the program adoption assistance for special needs
2 children in its care or custody or in the custody of a nonprofit private licensed child-
3 placing agency in this State if those children are legally eligible for adoption and, when
4 reasonable but unsuccessful efforts have been made to place them without adoption
5 assistance, would not otherwise be adopted without the assistance of this program.

6 **3. One-time adoption expenses.** The department shall, subject to rules and
7 regulations adopted by the department and the federal Department of Health and Human
8 Services, reimburse adoptive parents of a special needs child for one-time adoption
9 expenses when reasonable but unsuccessful efforts have been made to place the child
10 without such assistance.

11 **4. "Special needs child" defined.** As used in this Part, "special needs child" means
12 a child who:

13 A. Has a physical, mental or emotional handicap that makes placement difficult;

14 B. Has a medical condition that makes placement difficult;

15 C. Is a member of a sibling group that includes at least one member who is difficult
16 to place;

17 D. Is difficult to place because of age or race;

18 E. Has been a victim of physical, emotional or sexual abuse or neglect that places the
19 child at risk for future emotional difficulties; or

20 F. Has in that child's family background factors such as severe mental illness,
21 substance abuse, prostitution, genetic or medical conditions or illnesses that place the
22 child at risk for future problems.

23 **5. Funds.** For the purposes of this section, the department is authorized to use funds
24 that are appropriated for child welfare services and funds provided under the United
25 States Social Security Act, Titles IV-B and IV-E.

26 **6. Amount of adoption assistance.** The amount of adoption assistance under the
27 program may vary depending upon the resources of the adoptive parents and the special
28 needs of the child, as well as the availability of other resources, but may not exceed the
29 total cost of caring for the child if the child were to remain in the care or custody of the
30 department, without regard to the source of the funds.

31 **7. Duration of assistance.** The duration of assistance under the program may
32 continue until the cessation of legal parental responsibility or until the parents are no
33 longer supporting the child, at which time the adoption assistance ceases. However, if the
34 child has need of educational benefits or has a physical, mental or emotional handicap,
35 adoption assistance may continue until the adoptee has attained 21 years of age if the
36 adoptee, the parents and the department agree that the need for care and support exists.

37 **8. Children from another state.** Children who are in the custody of a person or
38 agency in another state who are brought to this State for the purpose of adoption are not
39 eligible for adoption assistance through the program except for reimbursement of
40 nonrecurring expenses if the child meets the requirements of the United States Social
41 Security Act, 42 United States Code, Section 673(c).

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§9-402. Adoption assistance

1. Eligible applicants. An application for the program may be submitted by the following persons:

A. A foster parent interested in adopting an eligible child in the foster parent's care;

B. A person interested in adopting an eligible child; or

C. An adoptive parent who was not informed of the program or of facts relevant to a child's eligibility when adopting a child who was at the time of adoption eligible for participation in the program.

2. Standards for adoption apply. All applicants for the program must meet department standards for adoption except for financial eligibility.

3. Assistance based on special needs. Assistance under the program may be provided for special needs only and may be varied based on the special needs of the child. Assistance may be provided for a period of time based on the special needs of the child.

§9-403. Administration

1. Written agreement before final decree; exceptions; reduction in payments. A written agreement between an applicant entering into the program and the department must precede the final decree of adoption, except that an application may be filed subsequent to the finalization of the adoption if there were facts relevant to the child's eligibility that were not presented at the time of the request for assistance or if the child was eligible for participation in the program at the time of placement and the adoptive parents were not informed of the program.

Except as provided by section 9-401, subsection 8, once an adoption assistance payment is agreed upon and the agreement signed by the prospective adoptive parents, the department may not reduce the adoption assistance payment amounts.

2. Annual determination. If assistance under the program continues for more than one year, the need for assistance must be annually redetermined. Adoption assistance continues regardless of the state in which the adoptive parents reside, or the state to which the adoptive parents move, as long as the adoptive parents continue to be eligible based on the annual redetermination of need.

3. Transfer to legal guardian; new agreement. Upon the death of all adoptive parents, adoption assistance under the program may be transferred to the legal guardian as long as the child continues to be eligible for adoption assistance pursuant to the terms of the most recent adoption assistance agreement with the adoptive parents. The department shall enter into a new assistance agreement with the legal guardian.

§9-404. Rules

The department shall adopt rules for the program consistent with this Part.'

Amend the bill in Part B in section 2 in §114 by striking out all of subsection 7 (page 374, lines 11 to 19 in L.D.) and inserting the following:

7. Trusts to which rule does not apply. A trust in which the governing instrument provides that the rule against perpetuities does not apply to the trust and under which the

1 trustee or other individual to whom the power is properly granted or delegated has the
2 power under the governing instrument, applicable statute or common law to sell,
3 mortgage or lease property for any period of time beyond the period that is required for
4 an interest created under the governing instrument to vest. This subsection applies to all
5 trusts created by will or inter vivos instrument executed or amended on or after July 1,
6 2019 and to all trusts created by exercise of power of appointment granted under
7 instruments executed or amended on or after July 1, 2019.'

8 Amend the bill in Part B in section 2 by striking out all of §115 (page 374, lines 20 to
9 42 and page 375, lines 1 to 8 in L.D.) and inserting the following:

10 **§115. Application**

11 **1. Nonvested property interest or a power of appointment created prior to**
12 **effective date of this chapter. This subsection governs nonvested property interests and**
13 **powers of appointment created prior to July 1, 2019.**

14 A. Except as provided in section 116, subsection 1, this chapter may not be
15 construed to invalidate or modify the terms of any limitation that would have been
16 valid prior to August 20, 1955.

17 B. This chapter applies only to inter vivos instruments taking effect after August 20,
18 1955, to wills if the testator dies after August 20, 1955 and to appointments made
19 after August 20, 1955, including appointments by inter vivos instruments or wills
20 under powers created before August 20, 1955.

21 C. Section 114, subsection 7 applies to all trusts created by will or inter vivos
22 instrument executed or amended on or after July 1, 2019 and to all trusts created by
23 exercise of power of appointment granted under instruments executed or amended on
24 or after July 1, 2019.

25 D. If a nonvested property interest or a power of appointment was created before
26 July 1, 2019 and is determined in a judicial proceeding, commenced on or after July
27 1, 2019, to violate this State's rule against perpetuities as that rule existed before July
28 1, 2019, a court upon the petition of an interested person may reform the disposition
29 in the manner that most closely approximates the transferor's manifested plan of
30 distribution and so that the reformed disposition is within the limits of the rule against
31 perpetuities applicable when the nonvested property interest or power of appointment
32 was created.

33 **2. Nonvested property interest or a power of appointment created on or after**
34 **July 1, 2019. Except as provided by subsection 1, paragraph D, this chapter applies to a**
35 **nonvested property interest or a power of appointment that is created on or after July 1,**
36 **2019.**

37 **3. Creation by exercise of a power of appointment. For purposes of this section, a**
38 **nonvested property interest or a power of appointment created by the exercise of a power**
39 **of appointment is created when the power is irrevocably exercised or when a revocable**
40 **exercise becomes irrevocable.'**

41 Amend the bill by striking out all of Part C and inserting the following:

'PART C

Sec. C-1. 1 MRSA §433, sub-§2-A, ¶D, as enacted by PL 2015, c. 250, Pt. D, §2, is amended to read:

D. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2023:

- (1) Title 13;
- (2) Title 13-B;
- (3) Title 13-C;
- (4) Title 14;
- (5) Title 15;
- (6) Title 16;
- (7) Title 17;
- (8) Title 17-A;
- (9) Title ~~18-A~~ 18-C;
- (10) Title 18-B;
- (11) Title 19-A;
- (12) Title 20-A; and
- (13) Title 21-A;

Sec. C-2. 3 MRSA §704, as enacted by PL 1985, c. 507, §1, is amended to read:

§704. Beneficiaries under disability

Any beneficiary who is entitled to make an election of benefits under subchapter ~~¶ 5~~, but is not lawfully qualified to make that election, shall have that election made in ~~his~~ the beneficiary's behalf by the person authorized to do so by Title ~~18-A~~ 18-C, Article ~~¶ 5~~.

Sec. C-3. 4 MRSA §152, sub-§5-A, as enacted by PL 2015, c. 460, §1, is amended to read:

5-A. Actions involving minors under Title 18-C. Exclusive jurisdiction of actions for guardianship, adoption, change of name or other matters involving custody or other parental rights brought under Title ~~18-A~~ 18-C if proceedings involving custody or other parental rights with respect to a minor child, including but not limited to adoption, divorce, parental rights and responsibilities, grandparents' rights, protective custody, change of name, guardianship, paternity, termination of parental rights and protection from abuse or harassment, are pending in the District Court.

1 A. The District Court presiding over any matter involving custody or other parental
2 rights with respect to a minor child shall require all parties to disclose whether they
3 have knowledge of:

4 (1) Any interim or final order then in effect concerning custody or other parental
5 rights with respect to the minor child;

6 (2) Any proceeding involving custody or other parental rights with respect to the
7 minor child currently filed or pending before any court of this State or another
8 state, including before a probate court in this State; or

9 (3) Any other related action currently filed or pending before any court of this
10 State or another state, including before a probate court in this State.

11 B. If the District Court presiding over any matter involving custody or other parental
12 rights with respect to a minor child becomes aware that a proceeding for
13 guardianship, adoption or change of name or another matter involving custody or
14 other parental rights with respect to the minor child is pending in a probate court in
15 this State, the District Court shall notify the Probate Court and take appropriate action
16 to facilitate a transfer of the matter from the Probate Court;

17 **Sec. C-4. 4 MRSA §253**, as amended by PL 1979, c. 540, §7, is further amended
18 to read:

19 **§253. Jurisdiction in court where proceedings originate**

20 Subject to Title ~~18-A~~ 18-C, sections 1-303 and 3-201, and except as otherwise
21 provided in Title ~~18-A~~ 18-C, ~~sections 5-211 and 5-313~~ section 5-105, when a case is
22 ~~originally~~ originally within the jurisdiction of the probate court in 2 or more counties, the
23 one ~~which~~ that first commences proceedings therein retains the same exclusively
24 throughout. The jurisdiction assumed in any case, except in cases of fraud, so far as it
25 depends on the residence of any person or the locality or amount of property, ~~shall~~ may
26 not be contested in any proceeding whatever, except on an appeal or removal from the
27 probate court in the original case or when the want of jurisdiction appears on the same
28 record.

29 **Sec. C-5. 4 MRSA §807, sub-§3, ¶I**, as amended by PL 2001, c. 554, §1 and PL
30 2003, c. 689, Pt. B, §6, is further amended to read:

31 I. A person who is not an attorney, but is representing the Department of Health and
32 Human Services in a child support enforcement matter as provided by Title 14,
33 section 3128-A, subsection 7; Title ~~18-A~~ 18-C, section 5-204; and Title 19-A, section
34 2361, subsection 10;

35 **Sec. C-6. 4 MRSA §807, sub-§3, ¶S**, as amended by PL 2015, c. 195, §1, is
36 further amended to read:

37 S. An individual who is the sole member of a limited liability company or is a
38 member of a limited liability company that is owned by a married couple, registered
39 domestic partners or an individual and that individual's issue as defined in Title ~~18-A~~
40 18-C, section 1-201, subsection ~~(21)~~ 27 who is not an attorney but is appearing for

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1 that company in an action for forcible entry and detainer pursuant to Title 14, chapter
2 709.

3 **Sec. C-7. 4 MRSA §1204**, as enacted by PL 1983, c. 853, Pt. C, §§15 and 18, is
4 amended to read:

5 **§1204. Beneficiaries under disability**

6 Any beneficiary who is entitled to make an election of benefits under ~~Subchapter V~~
7 ~~subchapter 5~~, but is not lawfully qualified to make that election, shall have that election
8 made in ~~his~~ the beneficiary's behalf by the person authorized to do so by Title ~~18-A~~ 18-C,
9 Article ~~V~~ 5.

10 **Sec. C-8. 4 MRSA §1551, sub-§2**, as enacted by PL 2013, c. 406, §1, is amended
11 to read:

12 **2. Guardian ad litem.** "Guardian ad litem" means a person appointed as the court's
13 agent to represent the best interests of one or more children pursuant to Title ~~18-A~~ 18-C,
14 section ~~1-112~~ 1-111, Title 19-A, section 1507 or Title 22, section 4005.

15 **Sec. C-9. 4 MRSA §1551, sub-§3**, as enacted by PL 2013, c. 406, §1, is amended
16 to read:

17 **3. Best interests of the child.** "Best interests of the child" means an outcome that
18 serves or otherwise furthers the health, safety, well-being, education and growth of the
19 child. In applying the standard of best interests of the child in Title ~~18-A~~ 18-C and Title
20 19-A cases, the relevant factors set forth in Title 19-A, section 1653, subsection 3 must be
21 considered.

22 **Sec. C-10. 4 MRSA §1554, sub-§1**, as enacted by PL 2013, c. 406, §1, is
23 amended to read:

24 **1. Role of guardian ad litem.** The court may appoint a guardian ad litem to provide
25 information to assist the court in determining the best interests of the child involved in the
26 determination of parental rights and responsibilities and guardianship of a minor under
27 Title ~~18-A~~ 18-C, in the determination of parental rights and responsibilities under Title
28 19-A, section 904 or 1653 and in the determination of contact with grandparents under
29 Title 19-A, section 1803. The court shall appoint a guardian ad litem in a child protection
30 case under Title 22, chapter 1071.

31 **Sec. C-11. 4 MRSA §1555, sub-§1**, as enacted by PL 2013, c. 406, §1, is
32 amended to read:

33 **1. Appointment of guardian ad litem.** In proceedings to determine parental rights
34 and responsibilities and guardianship of a minor under Title ~~18-A~~ 18-C and in contested
35 proceedings pursuant to Title 19-A, section 904, 1653 or 1803 in which a minor child is
36 involved, the court may appoint a guardian ad litem for the child when the court has
37 reason for special concern as to the welfare of the child. The court may appoint a
38 guardian ad litem on the court's own motion, on the motion of one of the parties or upon
39 agreement of the parties.

40 A. A court may appoint, without any findings, any person listed on the roster. In
41 addition, when a suitable guardian ad litem included on the roster is not available for

1 appointment, a court may, for good cause shown and after consultation with the
2 parties, appoint an attorney admitted to practice in this State who, after consideration
3 by the court of all of the circumstances of the particular case, in the opinion of the
4 appointing court has the necessary skills and experience to serve as a guardian ad
5 litem. For the purposes of this paragraph, good cause may include the appointment
6 of a guardian ad litem on a pro bono basis.

7 B. In determining whether to make an appointment, the court shall consider:

- 8 (1) The wishes of the parties;
- 9 (2) The age of the child;
- 10 (3) The nature of the proceeding, including the contentiousness of the hearing;
- 11 (4) The financial resources of the parties;
- 12 (5) The extent to which a guardian ad litem may assist in providing information
13 concerning the best interests of the child;
- 14 (6) Whether the family has experienced a history of domestic abuse;
- 15 (7) Abuse of the child by one of the parties; and
- 16 (8) Other factors the court determines relevant.

17 **Sec. C-12. 4 MRSA §1557, sub-§1**, as enacted by PL 2013, c. 406, §1, is
18 amended to read:

19 **1. Rules.** The Supreme Judicial Court shall provide by rule for a complaint process
20 concerning guardians ad litem appointed under Title ~~18-A~~ 18-C, Title 19-A and Title 22
21 that provides for at least the following:

- 22 A. The ability of a party to make a complaint before the final judgment as well as
23 after the final judgment is issued;
- 24 B. Written instructions on how to make a complaint;
- 25 C. Clear criteria for making a complaint;
- 26 D. Transparent policies and procedures concerning the investigation of complaints
27 and the provision of information to complainants;
- 28 E. A central database to log and track complaints; and
- 29 F. Policies and procedures for using complaints and investigations for
30 recommending the removal of a guardian ad litem from a particular case or other
31 consequences or discipline.

32 **Sec. C-13. 5 MRSA §12004-I, sub-§73-B**, as enacted by PL 2009, c. 262, §1, is
33 amended to read:

34 **73-B.**

35	Probate and Trust	Probate and Trust	Not Authorized	18-A <u>18-C</u> MRSA
36	Law	Law Advisory		§1-801
37		Commission		

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Sec. C-14. 5 MRSA §17055, sub-§§1 and 2, as enacted by PL 1985, c. 801, §§5 and 7, are amended to read:

1. Election of benefit. If a beneficiary is not lawfully qualified to make an election, the election ~~shall~~ must be made for ~~him~~ the beneficiary by the person authorized to do so by Title ~~18-A 18-C, article V~~ Article 5; and

2. Payment of benefit. Payment of any benefit to an ~~incapacitated person~~ individual subject to guardianship, as defined in Title ~~18-A 18-C, section 5-101~~ 5-102, or a minor ~~shall~~ must be made in accordance with Title ~~18-A 18-C, article V~~ Article 5.

Sec. C-15. 5 MRSA §17953, sub-§4, ¶B, as amended by PL 1991, c. 469, §2, is further amended to read:

B. The benefits begin the first month after the death of the qualifying member and are payable to each dependent child, in accordance with Title ~~18-A 18-C, article V~~ Article 5, until the end of the month in which the child no longer meets the definition of "dependent child" in section 17001, subsection 12.

Sec. C-16. 5 MRSA §18553, sub-§4, ¶B, as amended by PL 1991, c. 469, §5, is further amended to read:

B. The benefits begin the first month after the death of the qualifying member and are payable to each dependent child, in accordance with Title ~~18-A 18-C, article V~~ Article 5, until the end of the month in which the child no longer meets the definition of "dependent child" in section 17001, subsection 12.

Sec. C-17. 5 MRSA §19507, sub-§4, ¶D, as enacted by PL 1989, c. 837, §1, is amended to read:

D. If the public guardian established under Title ~~18-A 18-C, article V~~ Article 5, objects under paragraph B, the agency may petition the Probate Court that established the guardianship for permission to represent the person.

Sec. C-18. 9-B MRSA §427, sub-§2, ¶C, as amended by PL 1979, c. 540, §9, is further amended to read:

C. Subject to the provisions of Title ~~18-A 18-C, section 6-111~~ 6-222, upon the death or disability of any fiduciary, the value of such deposit or account may be paid, at the option of the institution, and in the absence of notice of the existence and terms of a trust, either to the executor, administrator, conservator or guardian of such fiduciary, or to any substituted fiduciary, or to the person, if any, who is designated on the records of the institution as the beneficiary of such deposit, if of the age of 15 years or upwards, or to the guardian or parent or person standing in loci parentis to such person if under the age of 15 years. Subject to the provisions of Title ~~18-A 18-C, section 6-112~~ 6-226, the receipt or acquittance of any such person ~~shall~~ fully exonerate ~~exonerates~~ and discharge ~~discharges~~ the institution from all liability to any person having any interest in such deposit, and the institution ~~shall~~ is not ~~be~~ under any duty to see to the proper application of the trust property.

1 **Sec. C-19. 9-B MRSA §427, sub-§4, ¶A**, as amended by PL 1979, c. 540, §10,
2 is further amended to read:

3 A. When a deposit has been made or ~~shall hereafter be~~ is made in any financial
4 institution authorized to do business in this State in the names of 2 or more persons,
5 payable to either, or payable to either or the survivor, such deposit, or any part
6 thereof, or the interest or dividends thereon may be paid to any or either of said
7 persons, whether the other or others be living or not, or to the legal representative of
8 the survivor of said persons if proofs of death are presented to the financial institution
9 showing that the decedent was the last surviving party or if there is clear and
10 convincing evidence that no right of survivorship was intended at the time the
11 account was created. Subject to the provisions of Title ~~18-A 18-C~~, section ~~6-112~~
12 6-226, the receipt or acquittance of the persons to whom said payment is so made
13 ~~shall be~~ is a valid and sufficient release and discharge to such financial institution for
14 any payment so made.

15 **Sec. C-20. 9-B MRSA §427, sub-§4, ¶B**, as amended by PL 1979, c. 540, §11,
16 is further amended to read:

17 B. All such deposits or accounts, whenever opened or issued, payable to either or the
18 survivor including interest and dividends, in the name of the same persons in any
19 financial institution within this State ~~shall~~, in the absence of fraud or undue influence,
20 upon the death of one of such persons, become the property of the parties as provided
21 in Title ~~18-A 18-C~~, section ~~6-104 6-212~~.

22 **Sec. C-21. 9-B MRSA §427, sub-§8, ¶B**, as enacted by PL 1979, c. 540, §12, is
23 amended to read:

24 B. Notwithstanding the provisions of paragraph A, upon presentation of an affidavit
25 under Title ~~18-A 18-C~~, section 3-1201, a financial institution shall pay the balance of
26 any deposit or account left by a deceased depositor to the depositor's successor under
27 the provisions of Title ~~18-A 18-C~~, sections 3-1201 and 3-1202. Such payments under
28 this paragraph ~~shall~~ take precedence over payments under paragraph A to the extent
29 of the balance of the deposits or accounts of the deceased depositor at the time the
30 affidavit is presented.

31 **Sec. C-22. 9-B MRSA §427, sub-§10**, as repealed and replaced by PL 2007, c.
32 88, §1, is amended to read:

33 **10. Adverse claim to deposit or account.** Except as provided in Title 11, section
34 4-405, in Title 14, section 4751 and in Title ~~18-A 18-C~~, sections ~~6-107 6-102~~ and ~~6-112~~
35 6-226, notice to a financial institution authorized to do business in this State of an adverse
36 claim to a deposit or account standing on its books to the credit of any person is not
37 effectual to cause that institution to recognize the adverse claimant, unless the adverse
38 claimant either procures a restraining order, injunction or other appropriate process
39 against the institution from a court of competent jurisdiction in a civil action to which the
40 person to whose credit the deposit or account stands is made a party or executes to that
41 institution, in a form and with sureties acceptable to the institution, a bond indemnifying
42 the institution from all liability, loss, damage, costs and expenses for and on account of
43 the payment of such adverse claim or the dishonor of checks or other orders of the person
44 to whose credit the deposit or account stands on the books of the institution.

1 This subsection does not apply to the creation, perfection or enforcement of a security
2 interest in a deposit or account other than an assignment of a deposit or account in a
3 consumer transaction as defined in Title 11, section 9-1102, subsection 26.

4 **Sec. C-23. 9-B MRSA §427, sub-§13**, as enacted by PL 1979, c. 540, §13-A, is
5 amended to read:

6 **13. Notice on opening certain accounts.** A signature card or other document
7 establishing a multiple-party account, as defined in Title ~~18-A~~ 18-C, section ~~6-101~~ 6-201,
8 ~~shall~~ must contain a clear and conspicuous printed notice to the depositor that on ~~his~~ the
9 depositor's death the balance in the account will belong to the surviving party.

10 **Sec. C-24. 9-B MRSA §473, sub-§2, ¶C**, as enacted by PL 1997, c. 398, Pt. I,
11 §41, is amended to read:

12 C. Assets held by a trustee, executor, administrator, guardian or other fiduciary may
13 be invested in a common trust fund established under Title ~~18-A~~ 18-C, section ~~7-501~~
14 7-201;

15 **Sec. C-25. 9-B MRSA §476, sub-§1, ¶D**, as enacted by PL 1997, c. 398, Pt. I,
16 §41, is amended to read:

17 D. The court may appoint one or more guardians ad litem to represent the interests of
18 a person:

19 (1) Entitled to receive notice pursuant to paragraph C, who is a minor or who is
20 known by the petitioner or any transferor affiliate to be subject to any other
21 disability, including confinement in a penal institution, and for whom no
22 guardian, other than a transferor affiliate, has been appointed;

23 (2) Of whose estate a transferor affiliate is conservator and for whom no
24 guardian, other than a transferor affiliate, has been appointed; and

25 (3) Whose identity or whereabouts is unknown.

26 Title ~~18-A~~ 18-C, section 1-403 governs in determining the propriety of any such
27 appointments.

28 **Sec. C-26. 13 MRSA §732, sub-§5**, as amended by PL 2015, c. 429, §3, is
29 further amended to read:

30 **5. Legal guardian or personal representative of deceased or incapacitated**
31 **dentist.** For the purposes of this chapter, the legal guardian or personal representative of
32 a dentist licensed under Title 32, chapter 143 may contract with another dentist to
33 continue the operations of the practice of the deceased or incapacitated dentist for a
34 period of up to 24 months after the death or incapacitation of the dentist or until the
35 practice is sold, whichever occurs first. For purposes of this subsection, "personal
36 representative" has the same meaning as in Title ~~18-A~~ 18-C, section 1-201, subsection ~~30~~
37 40.

38 **Sec. C-27. 13 MRSA §732, sub-§6**, as enacted by PL 2013, c. 46, §1, is amended
39 to read:

1 **6. Legal guardian or personal representative of deceased or incapacitated**
2 **veterinarian.** For the purposes of this chapter, the legal guardian or personal
3 representative of a veterinarian licensed under Title 32, chapter 71-A may contract with
4 another veterinarian to continue the operations of the practice of the deceased or
5 incapacitated veterinarian for a period of up to 24 months after the death or incapacitation
6 of the veterinarian or until the practice is sold, whichever occurs first. For purposes of
7 this subsection, "personal representative" has the same meaning as in Title ~~18-A~~ 18-C,
8 section 1-201, subsection ~~30~~ 40.

9 **Sec. C-28. 13-C MRSA §1501, sub-§2, ¶L**, as enacted by PL 2001, c. 640, Pt.
10 A, §2 and affected by Pt. B, §7, is amended to read:

11 L. Engaging as a trustee in those actions defined by Title ~~18-A~~ 18-C, section ~~7-105~~
12 7-103 as not in themselves requiring local qualification of a foreign corporate trustee;
13 or

14 **Sec. C-29. 14 MRSA §6303**, as amended by PL 1979, c. 540, §24, is further
15 amended to read:

16 **§6303. Death of mortgagor or successor**

17 If a person entitled to redeem a mortgaged estate or an equity of redemption ~~which~~
18 ~~that~~ has been sold on execution, or the right to redeem such right, or the right to redeem
19 lands set off on execution, dies without having made a tender for that purpose, a tender
20 may be made and an action for redemption commenced and prosecuted by ~~his~~ the
21 person's personal representative, or by ~~his~~ the person's heirs or devisees subject to the
22 authority of the personal representative over the administration of the estate under Title
23 ~~18-A~~ 18-C, sections 3-709 and 3-711. If the plaintiff in such action dies pending the
24 action, it may be prosecuted to final judgment by ~~his~~ the plaintiff's personal
25 representative, or by ~~his~~ the plaintiff's heirs or devisees subject to the same authority of
26 the personal representative. When a mortgagor resides out of the State, any person may,
27 in ~~his~~ the mortgagor's behalf, tender to the holder of the mortgage the amount due
28 thereon. The tender ~~shall be~~ is as effectual as if made by the mortgagor.

29 **Sec. C-30. 14 MRSA §8104-C**, as enacted by PL 1987, c. 740, §4, is amended to
30 read:

31 **§8104-C. Wrongful death action**

32 Subject to any immunity provided by this chapter or otherwise provided by law,
33 actions for the death of a person brought by the personal representatives of the deceased
34 person against a governmental entity or employee ~~shall~~ must be brought in the same
35 manner that is provided for similar actions in Title ~~18-A~~ 18-C, section ~~2-804~~ 2-807, and
36 amounts recovered ~~shall~~ must be disposed of as required in that section; ~~provided, except~~
37 that the limitations of sections 8104-D and 8105 ~~shall~~ apply.

38 **Sec. C-31. 15 MRSA §321, sub-§1**, as amended by PL 2003, c. 672, §1, is
39 further amended to read:

40 **1. Definition.** For purposes of this section, "family or household members" means
41 spouses or domestic partners or former spouses or former domestic partners, individuals
42 presently or formerly living as spouses, natural parents of the same child, adult household

1 members related by consanguinity or affinity or minor children of any household member
2 when the offender is an adult household member. Holding oneself out to be a spouse is
3 not necessary to constitute "living as spouses." For purposes of this subsection,
4 "domestic partners" has the same meaning as in Title ~~18-A~~ 18-C, section 1-201,
5 subsection ~~(10-A)~~ 14.

6 **Sec. C-32. 16 MRSA §651**, as amended by PL 1979, c. 540, §24-B, is further
7 amended to read:

8 **§651. Rules of evidence**

9 The rules of evidence in special proceedings of a civil nature, such as before referees,
10 auditors and county commissioners, are the same as provided for civil actions. The rules
11 of evidence in courts of probate are as provided in Title ~~18-A~~ 18-C, section ~~1-107~~ 1-106.

12 **Sec. C-33. 17-A MRSA §553-A, sub-§1, ¶¶A and B**, as enacted by PL 2015,
13 c. 233, §1, are amended to read:

14 A. Is the parent of a child or is a person whose consent is required pursuant to Title
15 ~~18-A~~ 18-C, section 9-302 and, in return for placing that child for adoption,
16 intentionally or knowingly solicits or receives monetary payment or other valuable
17 consideration that is not authorized by Title ~~18-A~~ 18-C, section 9-306; or

18 B. With the intent of adopting a child, intentionally or knowingly provides, or offers
19 to provide, the parent of that child or the person whose consent is required pursuant
20 to Title ~~18-A~~ 18-C, section 9-302 with monetary payment or other valuable
21 consideration that is not authorized by Title ~~18-A~~ 18-C, section 9-306.

22 **Sec. C-34. 18 MRSA §4163-A**, as corrected by RR 2001, c. 2, Pt. B, §37 and
23 affected by §58, is amended to read:

24 **§4163-A. Corporation; application**

25 Nothing in sections 4161 to 4163 or this section requires any corporation to file an
26 application pursuant to sections 4161 to 4163 or this section if the corporation is deemed
27 not to be doing business in this State under Title 13-C, section 1501 and Title ~~18-A~~ 18-C,
28 section ~~7-105~~ 7-103.

29 **Sec. C-35. 19-A MRSA §701, sub-§3**, as amended by PL 2011, c. 542, Pt. A,
30 §20, is further amended to read:

31 **3. Persons subject to guardianship.** A person ~~who has been found to be an~~
32 ~~incapacitated person, as defined in Title 18-A, section 5-101, subsection (1), by a court of~~
33 ~~competent jurisdiction and for whom a guardian or limited guardian has been appointed~~
34 ~~under Title 18-C, section 5-301~~ may not contract marriage without the approval of the
35 appointed guardian. For persons under limited guardianship, this subsection applies only
36 if the court has granted the specific power to contract for marriage to the guardian.

37 **Sec. C-36. 19-A MRSA §902, sub-§1, ¶J**, as enacted by PL 2005, c. 594, §3, is
38 amended to read:

39 J. A ~~judicial determination has been made that one of the parties is an incapacitated~~
40 ~~person, as defined in Title 18-A, section 5-101, for whom~~ court has appointed for one

1 of the parties a guardian with full powers ~~has been appointed under Title 18-C,~~
2 section 5-301, other than a temporary an emergency guardian appointed pursuant to
3 Title 18-A 18-C, section 5-310-A 5-312.

4 **Sec. C-37. 19-A MRSA §1802, sub-§1**, as amended by PL 2015, c. 296, Pt. C,
5 §19 and affected by Pt. D, §1, is further amended to read:

6 **1. Grandparent.** "Grandparent" is a parent of a child's parent. "Grandparent"
7 includes a parent of a child's parent whose parental rights have been terminated pursuant
8 to Title ~~18-A 18-C~~, section 9-204 or Title 22, chapter 1071, subchapter 6, but only until
9 the child's adoption.

10 **Sec. C-38. 19-A MRSA §1851, sub-§2**, as enacted by PL 2015, c. 296, Pt. A, §1
11 and affected by Pt. D, §1, is amended to read:

12 **2. Adoption.** Adoption of the child pursuant to Title ~~18-A 18-C~~, Article 9;

13 **Sec. C-39. 19-A MRSA §2002**, as amended by PL 1999, c. 46, §2, is further
14 amended to read:

15 **§2002. Application**

16 Notwithstanding any other provisions of law, this chapter applies to a court action or
17 administrative proceeding in which a child support order is issued or modified under Title
18 ~~18-A 18-C~~, section 5-204, this Title or Title 22 and to any court action or administrative
19 proceeding in which past support is awarded.

20 **Sec. C-40. 21-A MRSA §601, sub-§2, ¶B-1**, as enacted by PL 2007, c. 455,
21 §18, is amended to read:

22 B-1. The candidate's name listed on the ballot must be the one approved by the
23 Probate Court, pursuant to Title ~~18-A 18-C~~, section 1-701, or, in the absence of an
24 applicable court order, the name consistently used by the candidate during the past 2
25 years in filings with governmental agencies and in the transaction of public business,
26 including without limitation transactions relating to voter registration; motor vehicle
27 registrations; driver licenses; a passport; professional licenses; local, state or federal
28 permits of any kind; public benefit programs; and veterans' benefits and social
29 security. If requested by the Secretary of State when there is a question concerning
30 which name should be listed on the ballot, it is the obligation of the candidate to
31 provide documentation to demonstrate consistent use of a particular name.

32 **Sec. C-41. 22 MRSA §14, sub-§2-I, ¶B**, as amended by PL 2003, c. 20, Pt. K,
33 §2, is further amended to read:

34 B. The amount of MaineCare benefits paid and recoverable under this subsection is a
35 claim against the estate of the deceased recipient.

36 (1) As to assets of the recipient included in the probated estate, this claim may be
37 enforced pursuant to Title ~~18-A 18-C~~, Article 3, Part 8.

38 (2) As to assets of the recipient not included in the probated estate, this claim
39 may be enforced by filing a claim in any court of competent jurisdiction.

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Sec. C-42. 22 MRSA §14, sub-§2-I, ¶F, as amended by PL 2009, c. 150, §3, is further amended to read:

F. As used in this subsection, unless the context otherwise indicates, the term "estate" means:

(1) All real and personal property and other assets included in the recipient's estate, as defined in Title ~~18-A~~ 18-C, section 1-201; and

(2) Any other real and personal property and other assets in which the recipient had any legal interest at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir or assign of the deceased recipient through tenancy in common, survivorship, life estate, living trust, joint tenancy in personal property or other arrangement but not including joint tenancy in real property.

Sec. C-43. 22 MRSA §1711-B, sub-§3, ¶D, as amended by PL 2015, c. 370, §2, is further amended to read:

D. The agent, guardian or surrogate pursuant to the Uniform ~~Health-care~~ Health Care Decisions Act; or

Sec. C-44. 22 MRSA §1711-C, sub-§1, ¶A, as amended by PL 2009, c. 292, §3 and affected by §6, is further amended to read:

A. "Authorized representative of an individual" or "authorized representative" means an individual's legal guardian; agent pursuant to Title ~~18-A~~ 18-C, section ~~5-802~~ 5-803; agent pursuant to Title ~~18-A~~ 18-C, Article 5, Part 9; or other authorized representative or, after death, that person's personal representative or a person identified in subsection 3-B. For a minor who has not consented to health care treatment in accordance with the provisions of state law, "authorized representative" means the minor's parent, legal guardian or guardian ad litem.

Sec. C-45. 22 MRSA §1711-G, sub-§§2, 3 and 7, as enacted by PL 2015, c. 370, §6, are amended to read:

2. Designation of lay caregiver. In accordance with this subsection, a hospital licensed under chapter 405, but not a private mental hospital as described in chapter 404, shall allow for the designation of a lay caregiver to provide aftercare to a patient.

A. For a patient with capacity to make ~~health-care~~ health care decisions, as described in Title ~~18-A~~ 18-C, Article 5, Part 8, the hospital shall provide the patient with at least one opportunity to designate a lay caregiver following the patient's admission to the hospital, or observation at the hospital for a period that includes midnight of at least one calendar day, and prior to the patient's discharge.

B. For a patient without capacity to make ~~health-care~~ health care decisions, as described in Title ~~18-A~~ 18-C, Article 5, Part 8, the hospital shall provide the patient's legal guardian, agent or surrogate who is reasonably available and acting pursuant to Title ~~18-A~~ 18-C, Article 5, Part 8 with at least one opportunity to designate a lay caregiver following the patient's admission to the hospital, or observation at the hospital for a period that includes midnight of at least one calendar day, and prior to the patient's discharge.

1 C. The hospital shall document the designation of a lay caregiver under this
2 subsection in the patient's medical record, including the lay caregiver's name,
3 relationship to the patient, telephone number, address and any other contact
4 information as provided. If the patient or the patient's legal guardian, agent or
5 surrogate who is reasonably available and acting pursuant to Title ~~18-A~~ 18-C, Article
6 5, Part 8 declines to designate a lay caregiver, the hospital shall document that
7 decision in the patient's medical record and that documentation constitutes
8 compliance by the hospital with the requirements of this section. A designated lay
9 caregiver may be removed or changed by the patient or the patient's legal guardian,
10 agent or surrogate at any time, so long as the change or removal is documented by the
11 hospital in the patient's medical record.

12 D. Designation of a lay caregiver under this subsection by the patient or the patient's
13 legal guardian, agent or surrogate who is reasonably available and acting pursuant to
14 Title ~~18-A~~ 18-C, Article 5, Part 8 is optional. A designated lay caregiver is not
15 obligated under this section to perform any aftercare tasks for the patient.

16 **3. Written consent.** If a lay caregiver is designated under subsection 2, the hospital
17 shall request that the patient or the patient's legal guardian, agent or surrogate who is
18 reasonably available and acting pursuant to Title ~~18-A~~ 18-C, Article 5, Part 8 provide
19 written consent to release medical information regarding the scope of care to the patient's
20 designated lay caregiver to carry out the purposes of this section. Written consent under
21 this subsection must be provided pursuant to the hospital's established procedures for
22 releasing personal health information and in compliance with state and federal law.

23 **7. Noninterference with health care directives.** The provisions of this section may
24 not be construed to interfere with the rights of an agent of a patient operating under a
25 valid health care directive under Title ~~18-A~~ 18-C, Article 5, Part 8.

26 **Sec. C-46. 22 MRSA §1826, sub-§2, ¶I,** as amended by PL 2017, c. 288, Pt. A,
27 §29, is further amended to read:

28 I. No contract or agreement may contain a provision that provides for the payment of
29 attorney's fees or any other cost of collecting payments from the resident, except that
30 attorney's fees and costs may be collected against any agent under a power of
31 attorney who breaches the agent's duties as set forth in Title ~~18-A~~ 18-C, section 5-914
32 or against a conservator appointed under Title ~~18-A~~ 18-C, section 5-404 for breach of
33 the conservator's duties.

34 **Sec. C-47. 22 MRSA §2765, sub-§1, ¶A,** as amended by PL 1995, c. 694, Pt. D,
35 §30 and affected by Pt. E, §2, is further amended to read:

36 A. A certificate of adoption as provided in Title ~~18-A~~ 18-C, section 9-304, or a
37 certified copy of the decree of adoption along with the information necessary to
38 identify the original certificate and establish the new certificate of birth, except that a
39 new certificate may not be established if so requested by the adopting parents or the
40 adopted person if the adopted person is at least 18 years of age;

41 **Sec. C-48. 22 MRSA §2765, sub-§1-A, ¶A,** as amended by PL 1995, c. 694, Pt.
42 D, §31 and affected by Pt. E, §2, is further amended to read:

43 A. A certificate of adoption as provided in Title ~~18-A~~ 18-C, section 9-304; and

1 **Sec. C-49. 22 MRSA §2843-A, sub-§9**, as enacted by PL 1993, c. 609, §1, is
2 amended to read:

3 **9. Application.** This section does not apply to the disposition of the remains of a
4 deceased person under chapter 709. This section does not diminish or otherwise alter the
5 authority of a medical examiner or other official authorized under chapter 711. This
6 section does not alter the rights and obligations of the decedent's next of kin under Title
7 ~~18-A~~ 18-C.

8 **Sec. C-50. 22 MRSA §2848, first ¶**, as enacted by PL 2015, c. 193, §2, is
9 amended to read:

10 When a death is presumed to have occurred in the State but the body has not been
11 located, the State Registrar of Vital Statistics shall register a death in accordance with this
12 section upon receipt of a certified copy of an order of a court issued in accordance with
13 Title ~~18-A~~ 18-C, section ~~1-107~~ 1-106, subsection ~~(3)~~ 5.

14 **Sec. C-51. 22 MRSA §3173-E**, as enacted by PL 1993, c. 410, Pt. FF, §9, is
15 amended to read:

16 **§3173-E. Treatment of joint bank accounts in Medicaid eligibility determinations**

17 When determining eligibility for Medicaid, the department shall establish ownership
18 of joint bank accounts in accordance with Title ~~18-A~~ 18-C, section ~~6-103~~ 6-211,
19 subsection ~~(a)~~ 2. If the department determines that funds were withdrawn from a joint
20 account without the consent of the applicant and the applicant owned the funds, the
21 person to whom the funds were transferred is a liable 3rd party and the department shall
22 pursue recovery of the funds in accordance with section 14. The department shall adopt
23 rules to implement this section.

24 **Sec. C-52. 22 MRSA §3472, sub-§10**, as amended by PL 2003, c. 653, §2, is
25 further amended to read:

26 **10. Incapacitated adult.** "Incapacitated adult" means ~~any an~~ an adult who is ~~impaired~~
27 ~~by reason of mental illness, mental deficiency, physical illness or disability to the extent~~
28 ~~that that individual lacks sufficient understanding or capacity to~~ unable to receive and
29 evaluate information or make or communicate responsible informed decisions concerning
30 ~~that individual's person, or to the extent the adult can not effectively manage or apply that~~
31 ~~individual's estate to necessary ends to such an extent that the adult lacks the ability to~~
32 meet essential requirements for physical health, safety or self-care, even with reasonably
33 available appropriate technological assistance.

34 **Sec. C-53. 22 MRSA §3472, sub-§12**, as amended by PL 2003, c. 653, §2, is
35 further amended to read:

36 **12. Protective services.** "Protective services" means services that separate
37 incapacitated or dependent adults from danger. Protective services include, but are not
38 limited to, social, medical and psychiatric services necessary to preserve the incapacitated
39 or dependent adult's rights and resources and to maintain the incapacitated or dependent
40 adult's physical and mental well-being.

41 Protective services may include seeking guardianship or a protective order under Title
42 ~~18-A~~ 18-C, Article 5.

1 **Sec. C-54. 22 MRSA §3473, sub-§2, ¶C**, as enacted by PL 1981, c. 527, §2, is
2 amended to read:

3 C. Petition for guardianship or a protective order under Title ~~18-A~~ 18-C, Article 5,
4 when all less restrictive alternatives have been tried and have failed to protect the
5 incapacitated adult.

6 **Sec. C-55. 22 MRSA §3481, sub-§2**, as amended by PL 1993, c. 652, §8, is
7 further amended to read:

8 **2. Consent refused.** When a private guardian or conservator of an incapacitated
9 adult who consents to the receipt of protective services refuses to allow those services to
10 be provided to the incapacitated adult, the department may petition the Probate Court for
11 removal of the guardian pursuant to Title ~~18-A~~ 18-C, section ~~5-307, 5-319~~ or for removal
12 of the conservator pursuant to Title ~~18-A~~ 18-C, section ~~5-415 5-430~~. When a caretaker or
13 guardian of an incapacitated adult who consents to the receipt of protective services
14 refuses to allow those services to be provided to the incapacitated adult, the department
15 may petition the Probate Court for temporary guardianship pursuant to Title ~~18-A~~ 18-C,
16 ~~section 5-310-A~~ sections 5-124 and 5-312 or for a protective arrangement pursuant to
17 Title ~~18-A~~ 18-C, section ~~5-409 5-501~~.

18 **Sec. C-56. 22 MRSA §3482**, as enacted by PL 1981, c. 527, §2, is amended to
19 read:

20 **§3482. Providing for protective services to incapacitated adults who lack the**
21 **capacity to consent**

22 If the department reasonably determines that an incapacitated adult is being abused,
23 neglected or exploited and lacks capacity to consent to protective services, the department
24 may petition the Probate Court for guardianship or conservatorship, in accordance with
25 Title ~~18-A~~ 18-C, section ~~5-601 5-701~~. The petition must allege specific facts sufficient to
26 show that the incapacitated adult is in need of protective services and lacks capacity to
27 consent to them.

28 **Sec. C-57. 22 MRSA §3483, sub-§1**, as amended by PL 1993, c. 652, §9, is
29 further amended to read:

30 **1. Action.** When the court has exercised the power of a guardian or has appointed
31 the department temporary guardian pursuant to Title ~~18-A~~ 18-C, ~~section 5-310-A~~ sections
32 5-124 and 5-312, and the ward or a caretaker refuses to relinquish care and custody to the
33 court or to the department, then at the request of the department, a law enforcement
34 officer may take any necessary and reasonable action to obtain physical custody of the
35 ward for the department. Necessary and reasonable action may include entering public or
36 private property with a warrant based on probable cause to believe that the ward is there.

37 **Sec. C-58. 22 MRSA §3765**, as enacted by PL 1997, c. 530, Pt. A, §16, is
38 amended to read:

39 **§3765. Payments to guardian or conservator**

40 When a relative with whom a child is living is found by the department to be
41 incapable of taking care of the child's money, payment may be made only to a legally

1 appointed guardian or conservator and, notwithstanding Title ~~18-A~~ 18-C, Article ~~V~~ 5,
2 Part 4, in the matter of infirmities of age or physical disability to manage the child's estate
3 with prudence and understanding, the Probate Court may appoint any suitable person as a
4 conservator.

5 **Sec. C-59. 22 MRSA §4005-E, sub-§1**, as amended by PL 2007, c. 371, §2, is
6 further amended to read:

7 **1. Grandparent visitation and access.** A grandparent who is designated as an
8 interested person or a participant under section 4005-D or who has been granted
9 intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the
10 court to grant reasonable rights of visitation or access. When a child is placed in a
11 prospective adoptive home and the prospective adoptive parents have signed an adoptive
12 placement agreement, a grandparent's right to contact or have access to the child that was
13 granted pursuant to this chapter is suspended. If the adoption is not final within 18
14 months of adoptive placement, then the grandparent whose rights of contact or access
15 were suspended pursuant to this subsection may resume, as a matter of right and without
16 further court order, contact with the child in accordance with the order granting that
17 contact or access, unless the court determines after a hearing that the contact is not in the
18 child's best interests. A grandparent's rights of visitation or access terminate when the
19 adoption is finalized pursuant to Title ~~18-A~~ 18-C, section 9-308. Nothing in this section
20 prohibits prospective adoptive parents from independently facilitating or permitting
21 contact between a child and a grandparent, especially when a court has previously
22 ordered rights of contact.

23 **Sec. C-60. 22 MRSA §4008, sub-§3, ¶B**, as amended by PL 1995, c. 694, Pt. D,
24 §38 and affected by Pt. E, §2, is further amended to read:

25 B. A court on its finding that access to those records may be necessary for the
26 determination of any issue before the court or a court requesting a home study from
27 the department pursuant to Title ~~18-A~~ 18-C, section 9-304 or Title 19-A, section 905.
28 Access to such a report or record is limited to counsel of record unless otherwise
29 ordered by the court. Access to actual reports or records is limited to in camera
30 inspection, unless the court determines that public disclosure of the information is
31 necessary for the resolution of an issue pending before the court;

32 **Sec. C-61. 22 MRSA §4008, sub-§3, ¶G**, as amended by PL 2003, c. 673, Pt. Z,
33 §2, is further amended to read:

34 G. The prospective adoptive parents. Prior to a child being placed for the purpose of
35 adoption, the department shall comply with the requirements of Title ~~18-A~~ 18-C,
36 section 9-304, subsection (b) 3 and section 8205;

37 **Sec. C-62. 22 MRSA §4031, sub-§1, ¶D**, as amended by PL 1995, c. 694, Pt. D,
38 §40 and affected by Pt. E, §2, is further amended to read:

39 D. The District Court has jurisdiction over judicial reviews transferred to the District
40 Court pursuant to Title ~~18-A~~ 18-C, section 9-205.

41 **Sec. C-63. 22 MRSA §4037, sub-§1**, as enacted by PL 2015, c. 187, §1, is
42 amended to read:

1 **1. Adoption.** Custody does not include the right to initiate adoption proceedings
2 without parental consent, except as provided under Title ~~18-A~~ 18-C, section 9-302.

3 **Sec. C-64. 22 MRSA §4038-A**, as amended by PL 2005, c. 372, §5, is further
4 amended to read:

5 **§4038-A. Transfer to District Court**

6 If a case is transferred to the District Court pursuant to Title ~~18-A~~ 18-C, section
7 9-205, the court shall conduct a hearing and enter a dispositional order using the same
8 standards as set forth in section 4036. The court after the hearing and entering of a
9 dispositional order shall conduct reviews in accordance with section 4038 and
10 permanency planning hearings in accordance with section 4038-B.

11 **Sec. C-65. 22 MRSA §4038-B, sub-§4, ¶A**, as enacted by PL 2005, c. 372, §6,
12 is amended to read:

13 A. The permanency plan must determine whether and when, if applicable, the child
14 will be:

15 (1) Returned to a parent. Before the court may enter an order returning the
16 custody of the child to a parent, the parent must show that the parent has carried
17 out the responsibilities set forth in section 4041, subsection 1-A, paragraph B;
18 that to the court's satisfaction the parent has rectified and resolved the problems
19 that caused the removal of the child from home and any subsequent problems that
20 would interfere with the parent's ability to care for the child and protect the child
21 from jeopardy; and that the parent can protect the child from jeopardy;

22 (2) Placed for adoption, in which case the department shall file a petition for
23 termination of parental rights;

24 (3) Cared for by a permanency guardian, as provided in section 4038-C, or a
25 guardian appointed by the Probate Court pursuant to Title ~~18-A~~ 18-C, sections
26 5-204 to 5-206 and 5-207;

27 (4) Placed with a fit and willing relative; or

28 (5) Placed in another planned permanent living arrangement. The District Court
29 may adopt another planned permanent living arrangement as the permanency
30 plan for the child only after the department has documented to the court a
31 compelling reason for determining that it would not be in the best interests of the
32 child to be returned home, be referred for termination of parental rights or be
33 placed for adoption, be cared for by a permanency guardian or be placed with a
34 fit and willing relative.

35 **Sec. C-66. 22 MRSA §4038-C, sub-§2**, as enacted by PL 2005, c. 372, §6, is
36 amended to read:

37 **2. Powers and duties of permanency guardian.** A permanency guardian has all of
38 the powers and duties of a guardian of a minor pursuant to Title ~~18-A~~ 18-C, ~~section 5-209~~
39 sections 5-207 and 5-208.

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1 **Sec. C-67. 22 MRSA §4038-E, sub-§7, ¶A**, as amended by PL 2013, c. 267, Pt.
2 B, §20, is further amended to read:

3 A. The department may, pursuant to rules adopted pursuant to Title ~~18-A~~ 18-C,
4 section 9-304, subsection (~~a-2~~) 2, request a background check for each permanency
5 guardian. The background check must include criminal history record information
6 obtained from the Maine Criminal Justice Information System and the Federal
7 Bureau of Investigation.

8 (1) The criminal history record information obtained from the Maine Criminal
9 Justice Information System must include a record of public criminal history
10 record information as defined in Title 16, section 703, subsection 8.

11 (2) The criminal history record information obtained from the Federal Bureau of
12 Investigation must include other state and national criminal history record
13 information.

14 (3) Each permanency guardian of the child shall submit to having fingerprints
15 taken. The State Police, upon receipt of the fingerprint card, may charge the
16 department for the expenses incurred in processing state and national criminal
17 history record checks. The State Police shall take or cause to be taken the
18 applicant's fingerprints and shall forward the fingerprints to the State Bureau of
19 Identification so that the bureau can conduct state and national criminal history
20 record checks. Except for the portion of the payment, if any, that constitutes the
21 processing fee charged by the Federal Bureau of Investigation, all money
22 received by the State Police for purposes of this paragraph must be paid over to
23 the Treasurer of State. The money must be applied to the expenses of
24 administration incurred by the Department of Public Safety.

25 (4) The subject of a Federal Bureau of Investigation criminal history record
26 check may obtain a copy of the criminal history record check by following the
27 procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.
28 The subject of a state criminal history record check may inspect and review the
29 criminal history record information pursuant to Title 16, section 709.

30 (5) State and federal criminal history record information may be used by the
31 department for the purpose of screening each permanency guardian in
32 determining whether the adoption is in the best interests of the child.

33 (6) Information obtained pursuant to this paragraph is confidential. The results
34 of background checks received by the department are for official use only and
35 may not be disseminated outside the department except to a court considering an
36 adoption petition under this section.

37 **Sec. C-68. 22 MRSA §4051**, as corrected by RR 1997, c. 2, §48, is amended to
38 read:

39 **§4051. Venue**

40 A petition for termination of parental rights must be brought in the court that issued
41 the final protection order. The court, for the convenience of the parties or other good

1 cause, may transfer the petition to another district or division. A petition for termination
2 of parental rights may also be brought in a Probate Court as part of an adoption
3 proceeding as provided in Title ~~18-A~~ 18-C, ~~article IX~~ Article 9, when a child protective
4 proceeding has not been initiated.

5 **Sec. C-69. 22 MRSA §4055, sub-§1, ¶A**, as amended by PL 2001, c. 696, §35,
6 is further amended to read:

7 A. One of the following conditions has been met:

8 (1) Custody has been removed from the parent under:

9 (a) Section 4035 or 4038;

10 (b) Title 19-A, section 1502 or 1653;

11 (c) Section 3792 prior to the effective date of this chapter; or

12 (d) Title 15, section 3314, subsection 1, paragraph C-1; or

13 (2) The petition has been filed as part of an adoption proceeding in Title ~~18-A~~
14 18-C, ~~article IX~~ Article 9; and

15 **Sec. C-70. 22 MRSA §4065**, as amended by PL 1981, c. 470, Pt. A, §102, is
16 further amended to read:

17 **§4065. Department's responsibility after death of committed child**

18 If a child in the custody of the department dies, the department shall arrange and pay
19 for a decent burial for the child. If administration of the deceased child's estate is not
20 commenced, within 60 days after the date of death, by an heir or a creditor, then the
21 department may petition the Probate Court to appoint an administrator and settle the
22 estate of the deceased child pursuant to Title ~~18-A~~ 18-C.

23 **Sec. C-71. 22 MRSA §4171, sub-§1, ¶A**, as amended by PL 1995, c. 694, Pt. D,
24 §49 and affected by Pt. E, §2, is further amended to read:

25 A. Finding adoptive families for children for whom state assistance is desirable,
26 pursuant to the Adoption Assistance Program established in Title ~~18-A~~ 18-C, ~~article~~
27 ~~IX~~ Article 9, Part 4, and assuring the protection of the interests of the children
28 affected during the entire assistance period, require special measures when the
29 adoptive parents move to other states or are residents of another state; and

30 **Sec. C-72. 22 MRSA §5106, sub-§2, ¶E**, as amended by PL 2011, c. 657, Pt.
31 BB, §9, is further amended to read:

32 E. Conducting a continuous evaluation of the impact, quality and value of facilities,
33 programs and services, including their administrative adequacy and capacity.
34 Activities operated by or with the assistance of the State and the Federal Government
35 must be evaluated. Activities to be included, but to which the department is not
36 limited, are those relating to education, employment and vocational services, income,
37 health, housing, transportation, community, social, rehabilitation, protective services
38 and public guardianship or conservatorship for older people and incapacitated and
39 dependent adults and programs such as the supplemental security income program,

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1 Medicare, Medicaid, property tax refunds and the setting of standards for the
2 licensing of nursing, intermediate care and boarding homes. Included are activities as
3 authorized by this and so much of the several Acts and amendments to them enacted
4 by the people of the State and those authorized by United States Acts and
5 amendments to them such as the:

- 6 (1) Elderly Householders Tax and Rent Refund Act of 1971;
- 7 (2) Priority Social Services Act of 1973;
- 8 (3) Chapter 470 of the public laws of 1969 creating the State Housing Authority;
- 9 (4) United States Social Security Act of 1935;
- 10 (5) United States Housing Act of 1937;
- 11 (6) United States Older Americans Act of 1965;
- 12 (7) United States Age Discrimination Act of 1967;
- 13 (8) Home Based Care Act of 1981;
- 14 (9) Congregate Housing Act of 1979;
- 15 (10) Adult Day Care Services Act of 1983;
- 16 (11) Adult Day Care Licensing Act of 1987;
- 17 (12) Adult Protective Services Act of 1981;
- 18 (13) The Maine Uniform Probate Code, Title ~~18-A~~ 18-C;
- 19 (14) The Americans with Disabilities Act of 1990;
- 20 (15) The Developmental Disabilities Assistance and Bill of Rights Act of 2000;
- 21 and
- 22 (16) The ADA Amendments Act of 2008;

23 **Sec. C-73. 22 MRSA §8621, sub-§6**, as amended by PL 2009, c. 292, §4 and
24 affected by §6, is further amended to read:

25 **6. Durable health care power of attorney.** "Durable health care power of attorney"
26 has the same meaning as "power of attorney for health care" contained in Title ~~18-A~~
27 18-C, section ~~5-801~~ 5-802.

28 **Sec. C-74. 23 MRSA §3655**, as amended by PL 1979, c. 663, §138, is further
29 amended to read:

30 **§3655. Personal injury actions; limitations; damages; notice**

31 ~~Whoever~~ A person who receives any bodily injury or suffers damage in his the
32 person's property through any defect or want of repair or sufficient railing in any
33 highway, town way, causeway or bridge may recover for the same in a civil action, to be
34 commenced within one year from the date of receiving such injury or suffering damage,
35 of the county or town obliged by law to repair the same, if the commissioners of such

1 county or the municipal officers or road commissioners of such town or any person
2 authorized by any commissioner of such county or any municipal officer or road
3 commissioner of such town to act as a substitute for either of them had 24 hours' actual
4 notice of the defect or want of repair, but not exceeding \$6,000 in case of a town. If the
5 sufferer had notice of the condition of such way previous to the time of the injury, ~~he~~ the
6 sufferer cannot recover of a town unless ~~he~~ the sufferer has previously notified one of the
7 municipal officers of the defective condition of such way. Any person who sustains
8 injury or damage or some person in ~~his~~ the person's behalf shall, within 180 days
9 thereafter, notify one of the county commissioners of such county or of the municipal
10 officers of such town by letter or otherwise, in writing, setting forth ~~his~~ the person's claim
11 for damages and specifying the nature of ~~his~~ the person's injuries and the nature and
12 location of the defect ~~which~~ that caused such injury. If the life of any person is lost
13 through such deficiency, ~~his~~ the person's executors or administrators may recover of such
14 county or town liable to keep the same in repair, in a civil action, brought for the benefit
15 of the estate of the deceased, such sum as the jury may ~~deem~~ determine reasonable as
16 damages, if the parties liable had said notice of the deficiency ~~which~~ that caused the loss
17 of life. In any action against a town for damages for loss of life permitted under this
18 section, the claim for and award of damages, including costs, against a town and its
19 employees ~~shall~~ must be disposed of as provided under Title ~~18-A~~ 18-C, section ~~2-804~~
20 2-807, but ~~shall~~ may not exceed \$25,000 for each claim and \$300,000 for any and all
21 claims arising out of a single occurrence. No damages for the loss of comfort, society
22 and companionship of the deceased ~~shall~~ may be allowed in an action under this section.
23 At the trial of any such action the court may, on motion of either party, order a view of
24 the premises where the defect or want of repair is alleged when it would materially aid in
25 a clear understanding of the case.

26 **Sec. C-75. 24-A MRSA §2208, sub-§1, ¶A**, as enacted by PL 1997, c. 677, §3
27 and affected by §5, is amended to read:

28 A. A consumer's spouse, family member or other authorized individual may sign the
29 disclosure authorization form if:

30 (1) The individual is acting under a valid written power of attorney or acting
31 pursuant to the Uniform ~~Health-care~~ Health Care Decisions Act; or

32 (2) The individual is the consumer's parent or legal guardian, in which case the
33 authorization is valid only insofar as that parent or legal guardian has the
34 exclusive authority to consent for the health care services received by a minor for
35 which the authorization for payment is sought and only as to those disclosures
36 when the holder of the information can reasonably infer that the parent's or legal
37 guardian's interest in disclosure is not adverse to the consumer's; or

38 **Sec. C-76. 24-A MRSA §4313, sub-§14**, as enacted by PL 1999, c. 742, §19, is
39 amended to read:

40 **14. Wrongful death action.** Notwithstanding subsection 13, an enrollee or an
41 enrollee's authorized representative may bring a cause of action against a carrier for its
42 health care treatment decisions to seek a remedy under either this section or under Title
43 ~~18-A~~ 18-C, section ~~2-804~~ 2-807, but may not seek remedies under both this section and
44 Title ~~18-A~~ 18-C, section ~~2-804~~ 2-807.

1 **Sec. C-77. 25 MRSA §1542-A, sub-§1, ¶I**, as amended by PL 2015, c. 300, Pt.
2 B, §1, is further amended to read:

3 I. Who is a prospective adoptive parent not the biological parent as required under
4 Title ~~18-A~~ 18-C, section 9-304, subsection (~~a-1~~) 1;

5 **Sec. C-78. 25 MRSA §1542-A, sub-§3, ¶H**, as enacted by PL 2001, c. 52, §7, is
6 amended to read:

7 H. The State Police shall take or cause to be taken the fingerprints of the person
8 named in subsection 1, paragraph I, at the request of that person and upon payment of
9 the expenses specified under Title ~~18-A~~ 18-C, section 9-304, subsection (~~a-1~~) 1,
10 paragraph (~~2~~) B, subparagraph (~~iii~~) (3).

11 **Sec. C-79. 25 MRSA §2003, sub-§1, ¶D**, as amended by PL 2011, c. 298, §7, is
12 further amended to read:

13 D. Submits an application that contains the following:

- 14 (1) Full name;
- 15 (2) Full current address and addresses for the prior 5 years;
- 16 (3) The date and place of birth, height, weight, color of eyes, color of hair, sex
17 and race;
- 18 (4) A record of previous issuances of, refusals to issue and revocations of a
19 permit to carry concealed firearms, handguns or other concealed weapons by any
20 issuing authority in the State or any other jurisdiction. The record of previous
21 refusals alone does not constitute cause for refusal and the record of previous
22 revocations alone constitutes cause for refusal only as provided in section 2005;
23 and
- 24 (5) Answers to the following questions:
- 25 (a) Are you less than 18 years of age?
- 26 (b) Is there a formal charging instrument now pending against you in this
27 State for a crime under the laws of this State that is punishable by
28 imprisonment for a term of one year or more?
- 29 (c) Is there a formal charging instrument now pending against you in any
30 federal court for a crime under the laws of the United States that is
31 punishable by imprisonment for a term exceeding one year?
- 32 (d) Is there a formal charging instrument now pending against you in another
33 state for a crime that, under the laws of that state, is punishable by a term of
34 imprisonment exceeding one year?
- 35 (e) If your answer to the question in division (d) is "yes," is that charged
36 crime classified under the laws of that state as a misdemeanor punishable by
37 a term of imprisonment of 2 years or less?

- 1 (f) Is there a formal charging instrument pending against you in another state
2 for a crime punishable in that state by a term of imprisonment of 2 years or
3 less and classified by that state as a misdemeanor, but that is substantially
4 similar to a crime that under the laws of this State is punishable by
5 imprisonment for a term of one year or more?
- 6 (g) Is there a formal charging instrument now pending against you under the
7 laws of the United States, this State or any other state or the Passamaquoddy
8 Tribe or Penobscot Nation in a proceeding in which the prosecuting authority
9 has pleaded that you committed the crime with the use of a firearm against a
10 person or with the use of a dangerous weapon as defined in Title 17-A,
11 section 2, subsection 9, paragraph A?
- 12 (h) Is there a formal charging instrument now pending against you in this or
13 any other jurisdiction for a juvenile offense that, if committed by an adult,
14 would be a crime described in division (b), (c), (d) or (f) and involves bodily
15 injury or threatened bodily injury against another person?
- 16 (i) Is there a formal charging instrument now pending against you in this or
17 any other jurisdiction for a juvenile offense that, if committed by an adult,
18 would be a crime described in division (g)?
- 19 (j) Is there a formal charging instrument now pending against you in this or
20 any other jurisdiction for a juvenile offense that, if committed by an adult,
21 would be a crime described in division (b), (c), (d) or (f), but does not
22 involve bodily injury or threatened bodily injury against another person?
- 23 (k) Have you ever been convicted of committing or found not criminally
24 responsible by reason of mental disease or defect of committing a crime
25 described in division (b), (c), (f) or (g)?
- 26 (l) Have you ever been convicted of committing or found not criminally
27 responsible by reason of mental disease or defect of committing a crime
28 described in division (d)?
- 29 (m) If your answer to the question in division (l) is "yes," was that crime
30 classified under the laws of that state as a misdemeanor punishable by a term
31 of imprisonment of 2 years or less?
- 32 (n) Have you ever been adjudicated as having committed a juvenile offense
33 described in division (h) or (i)?
- 34 (o) Have you ever been adjudicated as having committed a juvenile offense
35 described in division (j)?
- 36 (p) Are you currently subject to an order of a Maine court or an order of a
37 court of the United States or another state, territory, commonwealth or tribe
38 that restrains you from harassing, stalking or threatening your intimate
39 partner, as defined in 18 United States Code, Section 921(a), or a child of
40 your intimate partner, or from engaging in other conduct that would place

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- your intimate partner in reasonable fear of bodily injury to that intimate partner or the child?
- (q) Are you a fugitive from justice?
- (r) Are you a drug abuser, drug addict or drug dependent person?
- (s) Do you have a mental disorder that causes you to be potentially dangerous to yourself or others?
- (t) ~~Have you been adjudicated to be an incapacitated person pursuant to Title 18-A, Article 5, Parts 3 and 4 and not had that designation removed by an order~~ Do you currently have a guardian or conservator who was appointed for you under Title 18-A 18-C, section 5-307, subsection (b) Article 5, Part 3 or 4?
- (u) Have you been dishonorably discharged from the military forces within the past 5 years?
- (v) Are you an illegal alien?
- (w) Have you been convicted in a Maine court of a violation of Title 17-A, section 1057 within the past 5 years?
- (x) Have you been adjudicated in a Maine court within the past 5 years as having committed a juvenile offense involving conduct that, if committed by an adult, would be a violation of Title 17-A, section 1057?
- (y) To your knowledge, have you been the subject of an investigation by any law enforcement agency within the past 5 years regarding the alleged abuse by you of family or household members?
- (z) Have you been convicted in any jurisdiction within the past 5 years of 3 or more crimes punishable by a term of imprisonment of less than one year or of crimes classified under the laws of a state as a misdemeanor and punishable by a term of imprisonment of 2 years or less?
- (aa) Have you been adjudicated in any jurisdiction within the past 5 years to have committed 3 or more juvenile offenses described in division (o)?
- (bb) To your knowledge, have you engaged within the past 5 years in reckless or negligent conduct that has been the subject of an investigation by a governmental entity?
- (cc) Have you been convicted in a Maine court within the past 5 years of any Title 17-A, chapter 45 drug crime?
- (dd) Have you been adjudicated in a Maine court within the past 5 years as having committed a juvenile offense involving conduct that, if committed by an adult, would have been a violation of Title 17-A, chapter 45?

COMMITTEE AMENDMENT

1 (ee) Have you been adjudged in a Maine court to have committed the civil
2 violation of possession of a useable amount of marijuana, butyl nitrite or
3 isobutyl nitrite in violation of Title 22, section 2383 within the past 5 years?

4 (ff) Have you been adjudicated in a Maine court within the past 5 years as
5 having committed the juvenile crime defined in Title 15, section 3103,
6 subsection 1, paragraph B of possession of a useable amount of marijuana, as
7 provided in Title 22, section 2383?; and

8 **Sec. C-80. 26 MRSA §875, sub-§1, ¶E**, as enacted by PL 2005, c. 383, §23, is
9 amended to read:

10 E. The employee is unable to work because the employee is needed to provide care
11 or assistance to one or more of the following individuals: the employee's spouse or
12 domestic partner as defined under Title ~~18-A~~ 18-C, section 1-201, subsection ~~(10-A)~~
13 14; the employee's parent; or the employee's child or child for whom the employee is
14 the legal guardian.

15 **Sec. C-81. 28-A MRSA §2508, sub-§2**, as enacted by PL 1987, c. 45, Pt. A, §4,
16 is amended to read:

17 **2. Damages under wrongful death and survival laws.** Except as otherwise
18 provided in this Act, damages may be recovered under Title ~~18-A~~ 18-C, sections ~~2-804~~
19 2-807 and 3-817, as in other tort actions, subject to the damage limit of section 2509.

20 **Sec. C-82. 29-A MRSA §1402-A, sub-§4, ¶E**, as amended by PL 2007, c. 601,
21 §7 and affected by §9, is further amended to read:

22 E. Notwithstanding Title 22, section 1711-C and any other provision of law to the
23 contrary, a health care provider licensed in this State to provide primary health care
24 shall provide information to a federally designated organ procurement organization
25 regarding a patient who has indicated a willingness to become an organ donor under
26 this section, Title ~~18-A~~ 18-C, Article 5, Part 8 or Title 22, chapter 710-B if such
27 information is provided in accordance with professional standards applicable to organ
28 donation.

29 **Sec. C-83. 29-A MRSA §1402-A, sub-§5**, as amended by PL 2007, c. 601, §8
30 and affected by §9, is further amended to read:

31 **5. Effect.** An expression of willingness to make an anatomical gift under this section
32 has the same effect as a designation under Title ~~18-A~~ 18-C, Article 5, Part 8 or Title 22,
33 chapter 710-B. Revocation or suspension of the right to drive under this chapter does not
34 affect the expressed willingness of a person to make an anatomical gift under this section.

35 **Sec. C-84. 29-A MRSA §1403**, as amended by PL 1995, c. 378, Pt. B, §5, is
36 further amended to read:

37 **§1403. Advance health care directive**

38 Subject to available funding, the Secretary of State shall make advance ~~health care~~
39 health care directive forms available in offices of the Bureau of Motor Vehicles. The
40 form must be in substantially the form provided in Title ~~18-A~~ 18-C, section ~~5-804~~ 5-805

1 and with the addition of the following information at the end: "Completion of this form
2 is optional."

3 **Sec. C-85. 30-A MRSA §183, sub-§1**, as enacted by PL 1987, c. 737, Pt. A, §2
4 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is
5 further amended to read:

6 **1. Unclaimed inheritances.** All sums received under Title 18-A 18-C, section
7 3-914;

8 **Sec. C-86. 32 MRSA §9405, sub-§1-A, ¶F**, as enacted by PL 1987, c. 170, §8,
9 is amended to read:

10 F. Submits an application ~~which~~ that contains the following, to be answered by the
11 applicant:

- 12 (1) Full name;
- 13 (2) Full current address and addresses for the prior 5 years;
- 14 (3) The date and place of birth, height, weight and color of eyes;
- 15 (4) A record of previous issuances of, refusals to issue and renew, suspensions
16 and revocations of a license to be a contract security company. The record of
17 previous refusals to issue alone does not constitute cause for refusal and the
18 record of previous refusals to renew and revocations alone constitutes cause for
19 refusal only as provided in section 9411-A;
- 20 (5) The following questions.
- 21 (a) Is there a formal charging instrument now pending against you in this or
22 any other jurisdiction for a crime ~~which~~ that is punishable by one year or
23 more imprisonment or for any other crime alleged to have been committed by
24 you with the use of a dangerous weapon, as defined in Title 17-A, section 2,
25 subsection 9, or of a firearm against another person?
- 26 (b) Is there a formal charging instrument now pending against you in this or
27 any other jurisdiction for a juvenile offense ~~which~~ that involves conduct
28 ~~which~~ that, if committed by an adult, would be punishable by one year or
29 more of imprisonment or for any other juvenile offense alleged to have been
30 committed by you with the use of a dangerous weapon, as defined in Title
31 17-A, section 2, subsection 9, or of a firearm against another person?
- 32 (c) Have you ever been convicted of a crime described in division (a) or
33 adjudicated as having committed a juvenile offense as described in division
34 (b)?
- 35 (d) Is there a formal charging instrument now pending against you in this
36 jurisdiction for any crime enumerated in section 9412?
- 37 (e) Is there a formal charging instrument now pending against you in this
38 jurisdiction for a juvenile offense ~~which~~ that involves conduct ~~which~~ that, if
39 committed by an adult, would be a crime enumerated in section 9412?

1 (f) Have you within the past 5 years been convicted of a crime described in
2 division (d) or adjudicated as having committed a juvenile offense as
3 described in division (e)?

4 (g) Are you a fugitive from justice?

5 (h) Are you a drug abuser, drug addict or drug-dependent person?

6 (i) Do you have a mental disorder ~~which~~ that causes you to be potentially
7 dangerous to yourself or others?

8 (j) ~~Have you been adjudicated to be an incapacitated person pursuant to Do~~
9 ~~you currently have a guardian or conservator who was appointed for you~~
10 ~~under Title 18-A 18-C, article V Article 5, Parts Part 3 and or 4, and not had~~
11 ~~that designation removed by an order under Title 18 A, section 5 307,~~
12 ~~subsection (b)?~~

13 (k) Have you been dishonorably discharged from the military forces within
14 the past 5 years?

15 (l) Are you an illegal alien?;

16 (6) A list of employees as of the date the applicant signs the application who will
17 perform security guard functions within the State. This list ~~shall~~ must identify
18 each employee by ~~his~~ the employee's full name, full current address and
19 addresses for the prior 5 years and ~~his~~ the employee's date and place of birth,
20 height, weight and color of eyes. For each employee on this list who will
21 perform security guard functions at the site of a labor dispute or strike, the
22 applicant shall have previously investigated the background of the employee to
23 ensure that the employee meets all of the requirements to be a security guard as
24 contained in section 9410-A, subsection 1. If the employee meets all of the
25 requirements to be a security guard, the applicant shall also submit a statement,
26 signed by the applicant, stating that the applicant has conducted this background
27 investigation and that the employee meets the requirements contained in section
28 9410-A, subsection 1; and

29 (7) A photograph of the applicant taken within 6 months of the date the applicant
30 affixes ~~his~~ the applicant's signature to the application; and

31 **Sec. C-87. 32 MRSA §9410-A, sub-§1, ¶J,** as enacted by PL 1987, c. 170, §12,
32 is amended to read:

33 J. ~~Has not been adjudicated to be an incapacitated person had a guardian or~~
34 ~~conservator appointed for that person pursuant to Title 18-A 18-C, article V Article 5,~~
35 ~~Parts Part 3 and or 4, or if so adjudicated, has had that designation removed by an~~
36 ~~order under Title 18 A, section 5 307, subsection (b) a guardian or conservator has~~
37 ~~been appointed for that person, the guardianship or conservatorship has been~~
38 terminated; and

39 **Sec. C-88. 32 MRSA §16202, sub-§12,** as enacted by PL 2005, c. 65, Pt. A, §2,
40 is amended to read:

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12. Personal representative and guardian transactions. A transaction by a personal representative, as defined in Title ~~18-A~~ 18-C, section 1-201, subsection ~~30~~ 40, executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator acting in their official capacities;

Sec. C-89. 33 MRSA §480, sub-§1, as enacted by PL 1983, c. 748, §2, is amended to read:

1. Non-bona fide purchaser. The transfer requires signature pursuant to the Title ~~18-A~~ 18-C, section ~~2-202~~, subsections ~~(1) and (3)~~ section 2-208, subsection 1; or

Sec. C-90. 33 MRSA §1603-116, sub-§(b), as repealed and replaced by PL 1983, c. 816, Pt. A, §40, is amended to read:

(b) A lien under this section is prior to all other liens and encumbrances on a unit except: (1) Liens and encumbrances recorded before the recordation of the declaration; (2) A first mortgage recorded before or after the date on which the assessment sought to be enforced becomes delinquent; and (3) Liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. The lien under this section is not subject to the provisions of Title 14, section 4651 and Title ~~18-A~~ 18-C, Part Article 2, as they or their equivalents may be amended or modified from time to time.

Sec. C-91. 33 MRSA §1669, sub-§1, as enacted by PL 1987, c. 734, §2, is amended to read:

1. Disclaimer; nomination of substitute custodian. A person nominated under section 1654 or designated under section 1660 as custodian may decline to serve by delivering a valid disclaimer, under Title ~~18-A~~ 18-C, section ~~2-801~~ Article 2, Part 9, to the person who made the nomination to or the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nominated under section 1654, the person who made the nomination may nominate a substitute custodian under section 1654; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under section 1660, subsection 1. The custodian so designated has the rights of a successor custodian.

Sec. C-92. 34-A MRSA §1214-A, sub-§3, as enacted by PL 2011, c. 241, §3, is amended to read:

3. Funding. Money collected pursuant to Title ~~18-A~~ 18-C, section 2-105 must be deposited into the fund.

Sec. C-93. 34-A MRSA §3040-A, sub-§1, as amended by PL 2013, c. 80, §8, is further amended to read:

1. Payment. Except as provided in subsection 4, if any client in the custody of the department dies, and no personal representative of the client's estate is appointed, the chief administrative officer may pay the balance of the deposits in the client's general client account and telephone call account, up to a maximum of \$1,000, to the surviving

1 spouse or next of kin in accordance with Title ~~18-A~~ 18-C, sections 2-101 to ~~2-114~~ 2-113,
2 to the funeral director having any bill outstanding for the burial of the decedent or to any
3 other preferred creditor or creditors who may appear to be entitled thereto, and shall
4 deliver personal property in the chief administrative officer's custody to the surviving
5 spouse or next of kin in accordance with Title ~~18-A~~ 18-C, sections 2-101 to ~~2-114~~ 2-113.

6 **Sec. C-94. 34-A MRSA §3040-A, sub-§4**, as amended by PL 2005, c. 506, §9,
7 is further amended to read:

8 **4. Alternative payment.** Notwithstanding subsection 1, upon presentation of an
9 affidavit under Title ~~18-A~~ 18-C, section 3-1201, the chief administrative officer shall pay
10 the balance of any deposit left by a decedent in the department's general client account or
11 telephone call account and deliver the decedent's personal property to the decedent's
12 successor under Title ~~18-A~~ 18-C, sections 3-1201 and 3-1202. The payments under this
13 subsection take precedence over payments under subsection 1 to the extent of the balance
14 of the deposits in the accounts and the personal property remaining in the custody of the
15 chief administrative officer at the time the affidavit is presented.

16 **Sec. C-95. 34-B MRSA §3831, sub-§6**, as amended by PL 2009, c. 651, §10, is
17 further amended to read:

18 **6. Adults with advance health care directives.** An adult with an advance health
19 care directive authorizing psychiatric hospital treatment may be admitted on an informal
20 voluntary basis if the conditions specified in the advance health care directive for the
21 directive to be effective are met in accordance with the method stated in the advance
22 health care directive or, if no such method is stated, as determined by a physician or a
23 psychologist. If no conditions are specified in the advance health care directive as to how
24 the directive becomes effective, the person may be admitted on an informal voluntary
25 basis if the person has been determined to be incapacitated pursuant to Title ~~18-A~~ 18-C,
26 Article 5, Part 8. A person may be admitted only if the person does not at the time object
27 to the admission or, if the person does object, if the person has directed in the advance
28 health care directive that admission to the psychiatric hospital may occur despite that
29 person's objections. The duration of the stay in the psychiatric hospital of a person under
30 this subsection may not exceed 5 working days. If at the end of that time the chief
31 administrative officer of the psychiatric hospital recommends further hospitalization of
32 the person, the chief administrative officer shall proceed in accordance with section 3863,
33 subsection 5-A.

34 This subsection does not create an affirmative obligation of a psychiatric hospital to
35 admit a person consistent with the person's advance health care directive. This subsection
36 does not create an affirmative obligation on the part of the psychiatric hospital or
37 treatment provider to provide the treatment consented to in the person's advance health
38 care directive if the physician or psychologist evaluating or treating the person or the
39 chief administrative officer of the psychiatric hospital determines that the treatment is not
40 in the best interest of the person.

41 **Sec. C-96. 34-B MRSA §3861, sub-§3, ¶A**, as enacted by PL 2007, c. 580, §2,
42 is amended to read:

43 A. If the patient's primary treating physician proposes a treatment that the physician,
44 in the exercise of professional judgment, believes is in the best interest of the patient

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and if the patient lacks clinical capacity to give informed consent to the proposed treatment and the patient is unwilling or unable to comply with the proposed treatment, the patient's primary treating physician shall request in writing a clinical review of the proposed treatment by a clinical review panel. For a patient at a state mental health institute, the request must be made to the superintendent of the institute or the designee of the superintendent. For a patient at a designated nonstate mental health institution, the request must be made to the chief administrative officer or the designee of the chief administrative officer. The request must include the following information:

- (1) The name of the patient, the patient's diagnosis and the unit on which the patient is hospitalized;
- (2) The date that the patient was committed to the institution or institute and the period of the court-ordered commitment;
- (3) A statement by the primary treating physician that the patient lacks capacity to give informed consent to the proposed treatment. The statement must include documentation of a 2nd opinion that the patient lacks that capacity, given by a professional qualified to issue such an opinion who does not provide direct care to the patient but who may work for the institute or institution;
- (4) A description of the proposed course of treatment, including specific medications, routes of administration and dose ranges, proposed alternative medications or routes of administration, if any, and the circumstances under which any proposed alternative would be used;
- (5) A description of how the proposed treatment will benefit the patient and ameliorate identified signs and symptoms of the patient's psychiatric illness;
- (6) A listing of the known or anticipated risks and side effects of the proposed treatment and how the prescribing physician will monitor, manage and minimize the risks and side effects;
- (7) Documentation of consideration of any underlying medical condition of the patient that contraindicates the proposed treatment; and
- (8) Documentation of consideration of any advance ~~health care~~ health care directive given in accordance with Title ~~18-A~~ 18-C, section ~~5-802~~ 5-803 and any declaration regarding medical treatment of psychotic disorders executed in accordance with section 11001.

Sec. C-97. 34-B MRSA §3862, sub-§1, ¶B, as amended by PL 2009, c. 651, §11, is further amended to read:

B. If the law enforcement officer does take the person into protective custody, shall deliver the person immediately for examination by a medical practitioner as provided in section 3863 or, for a person taken into protective custody who has an advance health care directive authorizing mental health treatment, for examination as provided in Title ~~18-A~~ 18-C, section ~~5-802~~ 5-803, subsection ~~(d)~~ 4 to determine the

1 individual's capacity and the existence of conditions specified in the advance health
2 care directive for the directive to be effective.

3 **Sec. C-98. 34-B MRSA §5001, sub-§4, ¶B**, as enacted by PL 1983, c. 459, §7,
4 is amended to read:

5 B. Seeking guardianship or a protective order under Title ~~18-A~~ 18-C, Article 5.

6 **Sec. C-99. 34-B MRSA §5001, sub-§7**, as amended by PL 1995, c. 560, Pt. K,
7 §40, is further amended to read:

8 **7. Ward.** "Ward" means a person for whom the department has been duly appointed
9 guardian under Title ~~18-A~~ 18-C, ~~article V~~ Article 5, Part ~~6~~ 7.

10 **Sec. C-100. 35-A MRSA §4355, sub-§1**, as enacted by PL 1987, c. 141, Pt. A,
11 §6, is amended to read:

12 **1. Trustee.** The decommissioning fund committee shall select a trustee or trustees to
13 execute the policies set by the decommissioning fund committee and manage the money
14 within a decommissioning trust fund in order to ensure that it will be available when
15 needed and, insofar as possible, consistent with protection of the principal, so that it may
16 grow to keep pace with inflation or faster. Preference may be given to financial
17 institutions incorporated in the State if consistent with their fiduciary responsibility, but
18 only if they meet the criteria for trustees established by the decommissioning fund
19 committee. That committee may, by a majority vote of its entire membership, change
20 trustees at any time. Any trustee ~~shall be~~ is subject to the same duties and may exercise
21 the same powers as trustees under Title ~~18-A~~ 18-C, ~~article VII~~ Article 7, and the
22 provisions of the decommissioning trust to the extent that they are not inconsistent with
23 this subchapter. The trustee may appoint subsidiary financial managers, subject to
24 approval by the decommissioning fund committee. Any fees charged by the trustee ~~shall~~
25 be ~~are~~ subject to review by the commission.

26 **Sec. C-101. 35-A MRSA §4391, sub-§5**, as enacted by PL 1987, c. 141, Pt. A,
27 §6, is amended to read:

28 **5. Trustee.** "Trustee" means a fiduciary as defined under Title ~~18-A~~ 18-C, section
29 1-201, which fiduciary shall administer the spent fuel disposal trust funds subject to
30 sections 4392 and 4393 and in accordance with Title ~~18-A~~ 18-C, ~~article VII~~ Article 7.

31 **Sec. C-102. 35-A MRSA §4392, sub-§3**, as enacted by PL 1987, c. 141, Pt. A,
32 §6, is amended to read:

33 **3. Trustee.** The licensee shall select a trustee or trustees to manage the money
34 within the fund to ensure that it will be available when needed. Preference may be given
35 to financial institutions incorporated in the State if such a determination can be made
36 consistent with the fiduciary responsibility of the trustees. The licensee may change
37 trustees at any time upon appropriate notice. Trustees ~~shall be~~ are subject to the same
38 duties and may exercise the same powers as trustees under Title ~~18-A~~ 18-C, ~~article VII~~
39 Article 7, to the extent that they are not inconsistent with this subchapter. The trustee
40 may appoint subsidiary financial managers, subject to the approval of the licensee.

41 **Sec. C-103. 36 MRSA §606**, as amended by PL 2017, c. 288, Pt. A, §39, is
42 further amended to read:

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§606. Tax priority; deceased's personal property

2 If a personal property tax has been assessed upon the estate of a deceased person, or
3 if a person assessed for a personal property tax has died, the personal representative, after
4 the personal representative has satisfied the first 4 priorities set forth in Title ~~18-A~~ 18-C,
5 section 3-805, shall, from any estate that has come to the personal representative's hands
6 in such capacity, if such estate is sufficient therefor, pay the personal property tax so
7 assessed to the personal representative under Title ~~18-A~~ 18-C, section 3-709. In default of
8 such payment the personal representative is personally liable for the tax to the extent of
9 the estate that passed through the personal representative's hands that was not used to
10 satisfy claims or expenses with a higher priority. To the extent that the personal
11 representative is not assessed, the successors to the decedent's taxed property shall pay
12 the tax assessed.

13 **Sec. C-104. 36 MRSA §4079**, as amended by PL 2007, c. 154, §1, is further
14 amended to read:

15 **§4079. Civil action by State; bond**

16 Personal representatives are liable to the State on their administration bonds for all
17 taxes assessable under this chapter and interest on those taxes. Whenever no
18 administration bond is otherwise required, and except as otherwise provided in this
19 section, the ~~Judge of Probate Court~~, notwithstanding any provision of Title ~~18-A~~ 18-C,
20 shall require a bond payable to the ~~judge or the judge's successor~~ court sufficient to
21 secure the payment of all estate taxes and interest conditioned in substance to pay all
22 estate taxes due to the State from the estate of the deceased with interest thereon. A bond
23 to secure the payment of estate taxes is not required when the ~~Judge of Probate Court~~
24 finds that any estate tax due and to become due the State is reasonably secured by the lien
25 upon real estate as provided in this chapter or by any other adequate security. An action
26 for the recovery of estate taxes and interest lies on either of the bonds.

27 **Sec. C-105. 36 MRSA §4118**, as enacted by PL 2011, c. 380, Pt. M, §9, is
28 amended to read:

29 **§4118. Civil action by State; bond**

30 Personal representatives are liable to the State on their administration bonds for all
31 taxes assessable under this chapter and interest on those taxes. If no administration bond
32 is otherwise required and except as otherwise provided in this section, the ~~judge of~~
33 ~~probate~~ Probate Court, notwithstanding any provision of Title ~~18-A~~ 18-C, shall require a
34 bond payable to the ~~judge or the judge's successor~~ court sufficient to secure the payment
35 of all estate taxes and interest conditioned in substance to pay all estate taxes due to the
36 State from the estate of the deceased with interest thereon. A bond to secure the payment
37 of estate taxes is not required when the ~~judge of probate~~ Probate Court finds that any
38 estate tax due and to become due the State is reasonably secured by the lien upon real
39 estate as provided in this chapter or by any other adequate security. An action for the
40 recovery of estate taxes and interest lies on either of the bonds.

41 **Sec. C-106. 36 MRSA §4641-C, sub-§11**, as amended by PL 2005, c. 397, Pt.
42 C, §21 and affected by §22, is further amended to read:

1 **11. Deeds of distribution.** Deeds of distribution made pursuant to Title ~~18-A~~ or
2 Title 18-B or Title 18-C;

3 **Sec. C-107. 36 MRSA §4641-D, sub-§6,** as enacted by PL 1987, c. 568, §2, is
4 amended to read:

5 **6. Deed of distribution.** Any deed of distribution made pursuant to Title ~~18-A~~
6 18-C.

7 **Sec. C-108. 38 MRSA §1362, sub-§1-D, ¶A,** as enacted by PL 1993, c. 355,
8 §59, is amended to read:

9 A. Acting in any of the following capacities: a personal representative as defined in
10 Title ~~18-A~~ 18-C, section 1-201; a voluntary executor or administrator; a guardian; a
11 conservator; a trustee under a will or intervivos instrument creating a trust of a
12 donative type associated with probate practice where the trustee takes title to,
13 otherwise controls or manages, property for the purpose of protecting or conserving
14 that property; a trustee pursuant to an indenture agreement or similar financing
15 agreement; a court-appointed receiver; a trustee appointed in proceedings under
16 federal bankruptcy laws; and an assignee or trustee acting under an assignment made
17 for the benefit of creditors; and

18 **Sec. C-109. 39-A MRSA §104, first ¶,** as amended by PL 1995, c. 297, §1, is
19 further amended to read:

20 An employer who has secured the payment of compensation in conformity with
21 sections 401 to 407 is exempt from civil actions, either at common law or under sections
22 901 to 908; Title 14, sections 8101 to 8118; and Title ~~18-A~~ 18-C, section ~~2-804~~ 2-807,
23 involving personal injuries sustained by an employee arising out of and in the course of
24 employment, or for death resulting from those injuries. An employer that uses a private
25 employment agency for temporary help services is entitled to the same immunity from
26 civil actions by employees of the temporary help service as is granted with respect to the
27 employer's own employees as long as the temporary help service has secured the payment
28 of compensation in conformity with sections 401 to 407. "Temporary help services"
29 means a service where an agency assigns its own employees to a 3rd party to work under
30 the direction and control of the 3rd party to support or supplement the 3rd party's work
31 force in work situations such as employee absences, temporary skill shortages, seasonal
32 work load conditions and special assignments and projects. These exemptions from
33 liability apply to all employees, supervisors, officers and directors of the employer for
34 any personal injuries arising out of and in the course of employment, or for death
35 resulting from those injuries. These exemptions also apply to occupational diseases
36 sustained by an employee or for death resulting from those diseases. These exemptions
37 do not apply to an illegally employed minor as described in section 408, subsection 2.

38 **PART D**

39 **Sec. D-1. 22 MRSA §4038-E, sub-§11, ¶A,** as amended by PL 2011, c. 420, Pt.
40 I, §4 and affected by §5, is further amended to read:

41 A. An order granting the adoption of the child by the permanency guardian divests
42 the consenting parent and child of all legal rights, powers, privileges, immunities,

1 duties and obligations to each other as parent and child, except ~~the inheritance rights~~
2 ~~between the child and the parent~~ an adoptee inherits from the adoptee's former
3 parents if so provided in the adoption decree.

4 **Sec. D-2. 22 MRSA §4056, sub-§1**, as corrected by RR 2009, c. 2, §57, is
5 amended to read:

6 **1. Parent and child divested of rights.** An order terminating parental rights divests
7 the parent and child of all legal rights, powers, privileges, immunities, duties and
8 obligations to each other as parent and child, except ~~the inheritance rights between the~~
9 ~~child and parent~~ child inherits from the child's former parents if so provided in the order.

10 **PART E**

11 **Sec. E-1. 33 MRSA §1021, sub-§6**, as enacted by PL 1989, c. 238, §1, is
12 amended to read:

13 **6. Transfer.** "Transfer" includes, but is not limited to, a transfer under the Uniform
14 Real Property Transfer on Death Act, but does not include testamentary transfers, which
15 are outside the scope of this chapter. For purposes of this chapter, a transfer under the
16 Uniform Real Property Transfer on Death Act occurs when the deed is executed or
17 recorded.

18 **Sec. E-2. 36 MRSA §4641-C, sub-§19**, as amended by PL 2001, c. 559, Pt. I, §7
19 and affected by §15, is further amended to read:

20 **19. Change in identity or form of ownership.** Any transfer of real property,
21 whether accomplished by deed, conversion, merger, consolidation or otherwise, if it
22 consists of a mere change in identity or form of ownership of an entity. This exemption
23 is limited to those transfers when no change in beneficial ownership is made and may
24 include transfers involving corporations, partnerships, limited liability companies, trusts,
25 estates, associations and other entities; ~~and~~

26 **Sec. E-3. 36 MRSA §4641-C, sub-§20**, as enacted by PL 2001, c. 559, Pt. I, §8
27 and affected by §15, is amended to read:

28 **20. Controlling interests.** Transfers of controlling interests in an entity with a fee
29 interest in real property if the transfer of the real property would qualify for exemption if
30 accomplished by deed of the real property between the parties to the transfer of the
31 controlling interest; and

32 **Sec. E-4. 36 MRSA §4641-C, sub-§21** is enacted to read:

33 **21. Transfers pursuant to transfer on death deed.** Any transfer of real property
34 effectuated by a transfer on death deed pursuant to Title 18-C, Article 6, Part 4.

35 **Sec. E-5. 36 MRSA §4641-D, sub-§4**, as amended by PL 2007, c. 437, §14, is
36 further amended to read:

37 **4. Deed affecting previous deed.** Any deed that, without additional consideration,
38 confirms, corrects, modifies or supplements a previously recorded deed; ~~and~~

1 **Sec. E-6. 36 MRSA §4641-D, sub-§6**, as enacted by PL 1987, c. 568, §2, is
2 amended to read:

3 **6. Deed of distribution.** Any deed of distribution made pursuant to Title
4 ~~18-A, 18-C;~~ and

5 **Sec. E-7. 36 MRSA §4641-D, sub-§7** is enacted to read:

6 **7. Transfer on death deed.** Any transfer on death deed under Title 18-C, Article 6,
7 Part 4.

8 **PART F**

9 **Sec. F-1. Effective date.** Parts A to E of this Act take effect July 1, 2019.

10 **PART G**

11 **Sec. G-1. Maine Comments.** The Probate and Trust Law Advisory Commission,
12 in consultation with the Family Law Advisory Commission and other interested parties,
13 shall compose Maine Uniform Probate Code Comments that explain and aid in the
14 interpretation of the Maine Uniform Probate Code as enacted by this Act. The Probate
15 and Trust Law Advisory Commission shall report the recommended Maine Uniform
16 Probate Code Comments to the joint standing committee of the 129th Legislature having
17 jurisdiction over judiciary matters no later than January 15, 2019.

18 **Sec. G-2. Legislation.** The joint standing committee of the 129th Legislature
19 having jurisdiction over judiciary matters may report out legislation to the First Regular
20 Session of the 129th Legislature to correct errors and inconsistencies created by recent
21 legislation and this Act and address any additional issues raised in the recodification and
22 revision of the Maine Probate Code.

23 **Sec. G-3. Effective date.** This Part is effective 90 days after the adjournment of
24 the Second Regular Session of the 128th Legislature.'

25 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
26 section number to read consecutively.

27 **SUMMARY**

28 The bill repeals the Maine Revised Statutes, Title 18-A and replaces it with Title
29 18-C. All references in this summary are to Title 18-C unless otherwise indicated.

30 This amendment does the following.

31 In Article 1, section 1-308, the amendment capitalizes "law court."

32 In Article 2, section 2-106, subsection 3, the amendment inserts "to" to use consistent
33 terminology in describing the nearness of generations for inheritance purposes.

34 In Article 2, section 2-113, the amendment inserts "through intestate succession" to
35 clarify that the section prohibits a parent inheriting from the child in specific
36 circumstances, but does not prohibit inheritance through a will or other instrument.

COMMITTEE AMENDMENT "A" to H.P. 91, L.D. 123

1 In Article 2, Part 1, subpart 2, the amendment replaces language to make the
2 language consistent with how the Maine Parentage Act in the Maine Revised Statutes,
3 Title 19-A, chapter 61 provides for the establishment and determination of parentage.

4 In section 2-208, subsection 1, paragraph B, the amendment inserts "except as
5 provided in paragraph C" to exclude a category of trusts in using the particular procedure
6 to determine the value of property. New paragraph C describes the value of the surviving
7 spouse's beneficial interest in a trust from which distributions of both income and
8 principal to the surviving spouse are subject to the trustee's discretion.

9 In section 2-403, the amendment inserts "of tangible personal property, including but
10 not limited to" to appropriately reference the exemption amounts for the various
11 categories of personal property. The specific amounts of the exemptions are listed in
12 Title 14, section 4422.

13 In section 2-705, the amendment replaces the section to be consistent with the
14 establishment of parent-child relationships under the Maine Parentage Act.

15 In Article 3, section 3-607, the amendment inserts a new subsection 2, which requires
16 the court to set and hold a hearing on a petition filed to restrain the personal
17 representative of an estate from carrying out specific actions. Notice must be given to the
18 personal representative, the personal representative's attorney and any other parties
19 named defendant in the petition.

20 In section 3-711, the amendment inserts "except as limited by this section" and it
21 reinstates current Maine law that prohibits the personal representative from selling or
22 transferring any interest in real property of the estate without giving notice at least 10
23 days prior to the sale or transfer, unless the will authorizes the personal representative to
24 sell or transfer real estate without the notice.

25 In section 3-1201, subsection 1, paragraph A, the amendment changes the maximum
26 value of property for which an affidavit of a small estate may be filed from \$50,000 in the
27 bill to \$40,000. Current law is \$20,000.

28 In Article 4, section 4-204, the amendment retains current law requiring a certificate
29 from another jurisdiction that is no more than 60 days old as evidence of a foreign
30 personal representative's current authority.

31 In Article 5, Parts 1, 2, 3 and 4 of the bill are deleted and replaced with a version of
32 the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act,
33 UGCOPAA, revised by the Probate and Trust Law Advisory Commission, PATLAC, and
34 the Family Law Advisory Commission, FLAC, resulting in new Parts 1, 2, 3, 4 and 5.

35 The bill was carried over to the Second Regular Session of the 128th Legislature to
36 allow PATLAC, with the assistance of FLAC, to review the UGCOPAA, approved by the
37 Uniform Law Commission in July 2017. This amendment is based on the
38 recommendations of PATLAC for Article 5, Parts 1, general provisions; 3, adult
39 guardianship; 4, conservatorship; and 5, other protective arrangements, and FLAC for
40 Parts 1 and 2, minor guardianship.

41 The following is from the Uniform Law Commission's Prefatory Note for the
42 Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

43 The Act has 3 overarching aims.

1 First, it aims to reflect the person-centered philosophy endorsed by the [Third
2 National Guardian Summit] NGS. The person-centered approach is evidenced in the
3 Act's updated terminology. The terms "ward" and "incapacitated person," which
4 were rejected by the NGS as demeaning and even offensive, are eliminated and the
5 more precise terms "adult subject to guardianship," "minor subject to guardianship,"
6 and "individual subject to conservatorship" are used instead. The person-centered
7 approach is also evident in new provisions requiring that individuals subject to
8 guardianship or conservatorship be given meaningful notice of their rights and how to
9 assert them; provisions that require involving individuals subject to guardianship and
10 conservatorship in decisions about their lives; requirements that guardians and
11 conservators create person-centered plans; and provisions to facilitate court
12 monitoring of compliance with those plans.

13 Second, the Act aims to create legal rules that advance key objectives embraced by
14 the NGS, including respecting and protecting the rights and interests of both
15 individuals alleged to need a guardian or conservator and individuals subject to
16 guardianship or conservatorship. These include provisions designed to ensure that
17 the least restrictive means are used to protect an individual alleged to need a
18 guardianship or conservatorship, to provide better guidance to guardians and
19 conservators, and to help courts monitor guardians and conservators.

20 Third, the Act aims to advance rules and systems that make it easier for all persons
21 involved in the process, whether they be petitioners, individuals subject to
22 guardianship or conservatorship, guardians or conservators, or judges, to achieve
23 these objectives. It does this in a number of ways. These include creating new
24 petition requirements to ensure that judges have the information needed to make
25 appropriate decisions; creating an option for courts to enter orders instead of
26 guardianship or conservatorship where such less restrictive alternatives would meet a
27 respondent's need; and offering model forms to make it easier for petitioners to seek
28 limited appointments instead of full ones.

29 With these overarching objectives in mind, a number of more specific changes are
30 likely to be particularly noteworthy to those considering the Act.

31 First, the Act includes clearer guidance to guardians and conservators, many of whom
32 are lay people. Specifically, the Act clarifies how appointees are to make decisions,
33 including decisions about particularly fraught issues such as medical treatment and
34 residential placement. These clarifications are consistent with the person-centered
35 approach embraced by the Act in that appointees are given specific guidance on
36 involving the individual in decisions.

37 Second, the Act recognizes the role of, and encourages the use of, less restrictive
38 alternatives, including supported decision-making and single-issue court orders
39 instead of guardianship and conservatorship. To this end, the Act provides that
40 neither guardianship nor conservatorship is appropriate where an adult's needs can be
41 met with technological assistance or supported decision-making. It also provides for
42 protective arrangements instead of guardianship or conservatorship; the 1997 version,
43 by contrast, only provided for such an arrangement as an alternative to
44 conservatorship. These alternative arrangements have the potential to reduce the
45 extent to which individuals in need of protection are deprived of liberties. They can
46 also reduce the time and cost associated with meeting individuals' needs. Unlike a

1 guardianship or conservatorship, long-term monitoring and reporting will generally
2 be unnecessary.

3 Third, the Act expands the procedural rights for respondents with the aim of ensuring
4 that respondents' rights are fully respected and that guardianships and
5 conservatorships are only imposed when less restrictive alternatives are not feasible.
6 In expanding these protections, the Act strikes a balance between the need to provide
7 meaningful procedural rights for individuals alleged to need a guardian or
8 conservator, and the need to avoid making the appointment process overly complex
9 or expensive. Key revisions include narrowing the exception to the general rule that
10 the respondent must be present at the hearing, a requirement that explicit findings be
11 made before certain fundamental rights are removed, and the elimination of
12 provisions that would have allowed appointment of a guardian for an adult by will or
13 other writing without prior judicial approval.

14 Fourth, the Act provides for enhanced monitoring of guardians and conservators to
15 ensure that such appointees are complying with their fiduciary duties and that
16 individuals subject to guardianship and conservatorship are protected against
17 exploitation. One innovation in the Act is to allow the court to identify people who
18 are to be given notice of certain key changes or suspect actions, and who can
19 therefore serve as an extra set of eyes and ears for the court. Other revisions include
20 a provision that makes bond a default option for conservators and the addition of
21 provisions that clarify factors relevant in determining the reasonableness of fees for
22 guardians and conservators.

23 Fifth, the Act provides enhanced procedural rights for individuals subject to
24 guardianship and conservatorship. Key changes from the 1997 Act include a
25 provision that the court provide such individuals with plain-language notice of key
26 rights, the addition of provisions for attorney representation of individuals subject to
27 guardianship and conservatorship, greater scrutiny of the guardian or conservator's
28 ability to charge fees to oppose the individual's efforts to alter the appointment, and
29 additional triggers for reconsideration of an appointment.

30 Sixth, recognizing that individuals subject to guardianship and conservatorship
31 benefit from visitation and communication with third parties, the Act sets forth
32 specific rights to such interactions. In recent years, some family members of
33 individuals subject to guardianship have raised concerns that guardians have
34 unreasonably restricted the ability of individuals subject to guardianship to receive
35 visitors and communicate with others, and family advocates have encouraged
36 legislative responses to address this concern. The Act includes a variety of
37 provisions addressing this concern. These include a limitation on a guardian's ability
38 to curtail communications, visits, or interactions between an adult subject to
39 guardianship and third parties and a requirement that a guardian prioritize residential
40 settings that allow the individual subject to guardianship to interact with those
41 important to the individual. In a similar vein, it establishes a default that the adult
42 children and spouse of an adult subject to guardianship or conservatorship are entitled
43 to notice of key events, including a change in the adult's primary residence, the adult's
44 death, or a significant change in the adult's condition.

45 Seventh, the Act creates a new mechanism for protecting individuals from
46 exploitation. Section 503 of the Act allows a court, without imposing a guardianship

1 or conservatorship or ruling on the individual's abilities, to restrict access to the
2 respondent or the respondent's property by a specified person that the court finds by
3 clear-and-convincing evidence: (1) through fraud, coercion, duress, or the use of
4 deception and control, caused, or attempted to cause, an action that would have
5 resulted in financial harm to the respondent or the respondent's property; and (2)
6 poses a serious risk of substantial financial harm to the respondent or the respondent's
7 property. This allows courts to create tailored orders to protect vulnerable individuals
8 at risk of substantial exploitation even though the individual might not have the level
9 of limitation in abilities necessary to impose a conservatorship or guardianship. At
10 the same time, it discourages courts from imposing a guardianship or conservatorship
11 if a limited order would meet an individual's needs.

12 Eighth, the Act contains a variety of provisions designed to improve compliance with
13 the Act's prohibition on courts establishing a full guardianship or conservatorship if a
14 limited guardianship or conservatorship would meet the respondent's needs. The
15 [Uniform Law Commission] Drafting Committee recognized that, despite the best
16 efforts of previous Committees, there is a lack of compliance with the prohibition
17 even though it was included in the 1997 Act. In order to facilitate compliance, the
18 Act includes a sample petition which makes it easier for a petitioner to seek a limited
19 order. [This amendment does not include the forms proposed by the ULC.] In
20 addition, the Act requires petitioners seeking a full guardianship or conservatorship to
21 do more to justify that approach, and courts imposing a full guardianship to provide
22 findings to support that imposition.

23 Ninth, the Act modernizes and clarifies provisions related to minors subject to
24 guardianship. [Note that this amendment does not adopt Part 2 of the Uniform
25 Guardianship, Conservatorship and Other Protective Arrangements Act, which
26 pertains to minors. It instead includes the recommendations that both PATLAC and
27 FLAC reported to the Judiciary Committee in January 2017, with some updated
28 provisions.]

29 Tenth, the Act contains updated provisions to govern property management for
30 individuals subject to conservatorship. In updating property management protections,
31 the Drafting Committee looked to the Uniform Prudent Investor Act and the Uniform
32 Trust Code, among other sources of guidance.

33 Finally, the Act has been reorganized with the aim of making it easier to understand.
34 Ease of use is important as many of those who need to comply with its directives are
35 not attorneys, but are family members or friends responding to urgent or unstable
36 circumstances, or are individuals with limited resources and significant functional
37 challenges.

38 The amendment strikes Article 5, Part 1 of the bill, and adopts the UGCOPAA
39 Article 1 with the following changes.

40 The amendment includes 2 additional definitions. "Best interest of the minor" cross-
41 references the meaning of "best interest" as defined in Title 19-A, section 1653,
42 subsection 3. The other additional definition is "suitable" to describe appropriate
43 qualifications for a person to be appointed as a guardian for a minor.

1 The amendment retains from current law provisions governing the facility of transfer
2 of money or personal property to a minor. It is currently Title 18-A, section 5-104, and
3 was not included in the UGCOPAA. The amendment clarifies that a person who receives
4 money or property for a minor may receive reimbursement for necessary expenses that
5 benefit the minor.

6 The amendment addresses concerns raised about whether a guardian or conservator
7 can waive any required notice on behalf of the individual subject to guardianship or
8 conservatorship. This amendment provides that an appointed guardian or an appointed
9 conservator may not waive the right to notice on behalf of an individual subject to
10 guardianship or conservatorship.

11 The amendment makes clear that the role of a guardian ad litem is to identify and
12 represent the individual's best interest or perform other duties the court directs. It
13 provides that the same guardian ad litem may be appointed to represent more than one
14 individual as long as no conflict of interest or potential conflict of interest exists. It also
15 clarifies that the order appointing the guardian ad litem must state the responsibility for
16 paying the guardian ad litem fees.

17 The amendment requires additional notice be given when a person interested in the
18 welfare of a respondent but not otherwise entitled to notice requests to receive notice of
19 proceedings. Notice of the request must be given to the guardian or conservator, as well
20 as the individual subject to the guardianship or conservatorship, and they are provided a
21 60-day window during which to object to giving notice to the person requesting notice. If
22 there is an objection, the court must hold a hearing on the request and make a decision on
23 whether to grant the request after the hearing.

24 The amendment requires the person petitioning to be appointed the guardian or
25 conservator to disclose bankruptcy and criminal background information. In addition, a
26 guardian or conservator is prohibited from engaging an agent who the guardian or
27 conservator knows has been convicted of certain serious crimes without the approval of
28 the court.

29 The amendment provides that the court, after notice to all interested persons, on the
30 petition of an interested person, may review the propriety of the employment of any
31 person by the guardian or conservator, as well as the reasonableness of compensation.
32 The court may order anyone who has received excessive compensation to make
33 appropriate refunds.

34 The amendment requires a person who refuses to recognize the authority of a
35 guardian or conservator to report to the court when the person believes the guardian's or
36 conservator's proposed action would be inconsistent with the statute, or the person
37 believes the person subject to guardianship or conservatorship is subjected to abuse,
38 neglect, exploitation or abandonment by the guardian or conservator or someone acting
39 for or with the guardian or conservator.

40 The amendment establishes a fee for registering a guardianship or conservatorship
41 appointment order from another jurisdiction.

42 The amendment clarifies that an individual subject to guardianship or
43 conservatorship, or a person interested in the individual's welfare, can report a grievance
44 to the court in writing or another record. The report is not required to be formally filed.

COMMITTEE AMENDMENT

1 The Family Law Advisory Commission was charged with reviewing and making
2 recommendations concerning parental rights and responsibilities in the minor
3 guardianship statutes by Resolve 2015, chapter 73, section 3. The provisions of the
4 UGCOPAA pertaining to minor guardianship depart in significant respects from existing
5 Maine law and practice. In addition, the UGCOPAA does not reflect many of the
6 important reforms recommended to the Joint Standing Committee on Judiciary in FLAC's
7 January 15, 2017 report and recommendations, which were based on the findings from its
8 comprehensive review of Maine minor guardianship laws and practice, including
9 valuable contributions from dozens of Maine stakeholders. This amendment incorporates
10 the changes to Article 5, Part 2 contained in the bill recommended by FLAC and does not
11 adopt the UGCOPAA with regard to minor guardianships.

12 The amendment provides that when the court is appointing a guardian of a minor as
13 requested by a parent, the minor, if at least 14 years of age, the other parent or other
14 person who has care or custody of the minor may object or terminate the appointment.
15 The objection does not preclude the court from appointing the guardian if all other
16 requirements for appointment, including appointment over the objection of a parent, are
17 met. The court may treat the filing of an objection as a petition for the appointment of an
18 emergency or an interim guardian and proceed accordingly.

19 The amendment establishes grounds for appointment of a suitable guardian based on
20 the Maine Supreme Judicial Court's rulings pertaining to the fundamental rights of
21 parents. It requires that, before a guardian may be appointed for a minor, the court must
22 find that the parents consent, that all parental rights have been terminated or that by clear
23 and convincing evidence the parents are unwilling or unable to exercise their parental
24 rights. Such evidence includes, but is not limited to, that the parent is currently unwilling
25 or unable to meet the child's needs and that will have a substantial adverse effect on the
26 child's well-being if the child lives with the parent, or that the parent has failed, without
27 good cause, to maintain a parental relationship with the child including, but not limited
28 to, failure to maintain regular contact with the child for a length of time that evidences an
29 intent to abandon the child.

30 The amendment replaces the temporary guardian provisions with the authorization to
31 appoint a guardian on an emergency basis. The duration of the guardian's authority may
32 not exceed 90 days and the guardian may exercise only those powers specified in the
33 order. Reasonable notice of the time and place of the hearing on the petition for
34 appointment must be given unless it could result in substantial harm to the minor. If the
35 guardian is appointed without notice, notice of the appointment must be given within 48
36 hours, and the court must schedule a hearing within 14 days but not less than 7 days after
37 the issuance of the order. Counsel for a parent may request that the hearing take place
38 sooner. The petitioner for the emergency appointment bears the burden of proof on the
39 appropriateness of the appointment.

40 The court's order must indicate whether there are any child support orders currently in
41 effect and the effect of the guardianship order on the child support orders. The court
42 must consider whether a parent is to pay child support to the guardian, and must treat the
43 guardian as a "caretaker relative" for computation of a parental support obligation under
44 Title 19-A, section 2006, subsection 4.

1 The amendment authorizes the court to direct an employee of the Department of
2 Health and Human Services to provide information relevant to a guardianship proceeding.
3 The court must protect the confidentiality of information.

4 The court must appoint a person or persons who are nominated by the minor, if the
5 minor is at least 14 years of age, in accordance with the other appointment requirements.
6 A nonconsenting parent whose parental rights have not been terminated is entitled to
7 court-appointed counsel if indigent. The court may also appoint counsel for any indigent
8 guardian or petitioner if the parent has counsel.

9 A minor who is 14 years of age or older must receive notice of proceedings
10 subsequent to the appointment of a guardian. A minor may appear with or through
11 counsel, but the court may still require the minor to be present for some or all of a hearing
12 or other proceeding.

13 The amendment provides that if the petition for guardianship of a minor is filed by or
14 with the consent of a parent, the written informed consent of the parent is required. A
15 parent who consents to the guardianship after the petition is filed must sign the written
16 consent form when consenting to the appointment.

17 The court may specify the duration of the appointment, and the term may be extended
18 or otherwise modified.

19 The court may enter an interim order appointing a guardian for a period of time of up
20 to 6 months or pending the court's order if necessary to provide for the minor's housing,
21 health, education, medical or other essential needs prior to the hearing. The interim order
22 must meet all the other requirements, including notice, and may be extended or modified.

23 The court may refer the parties to mediation if mediation services are available at
24 reasonable or no cost.

25 If a party alleges in an affidavit or a pleading under oath that the health, safety or
26 liberty of a party or the minor would be jeopardized by disclosure of identifying
27 information, the information must be sealed and not disclosed unless ordered by the court
28 after notice and hearing.

29 The amendment specifies the terms that must be included in the order appointing a
30 guardian for a minor. If any orders concerning custody or other parental rights of the
31 minor are in effect at the time of the appointment of the guardian, the order must refer to
32 such orders and indicate the effect of the appointment on the rights and responsibilities
33 set forth in the other orders.

34 An order appointing a guardian must specify the rights and responsibilities the
35 minor's parent retains. A parent may copetition and be appointed as a coguardian of the
36 minor if the court determines the joint appointment with a non-parent is in the minor's
37 best interest and is made with the parent's consent.

38 The court may require the guardian to submit regular status reports about the minor,
39 to be submitted under oath or affirmation to the court and served on the parent on an
40 annual basis or under other conditions set by the court. The contents of status reports are
41 confidential and may not be released to a nonparty except by order of the court. A parent
42 may petition the court to seek a status report when one is not required. A person who is
43 not a parent who is interested in the minor's welfare may petition the court to seek a status

1 report based upon specific concerns about the minor's care. If there is an active guardian
2 ad litem, the guardian ad litem may also receive the report. The court must accept any
3 information submitted by a minor 14 years of age or older regarding the guardianship.

4 A guardian, a parent of the minor, a person interested in the welfare of the minor or
5 the minor, if 14 years of age or older, may file a motion asking the court to modify the
6 terms of the order or take other action in the best interest of the minor. The court may
7 identify certain requirements that must be met before making modifications.

8 The amendment provides for the termination of the appointment of a guardian or
9 conservator. A minor, if 14 years of age or older, a parent or a person interested in the
10 welfare of the minor may petition for removal of a guardian on the ground the removal
11 would be in the best interest of the minor or for other good cause. A guardian may
12 petition to resign. The court may appoint an additional or successor guardian.

13 Except upon a petition to terminate the guardianship filed by the parent, the court
14 may not terminate the guardianship without the consent of the guardian unless the court
15 finds by a preponderance of the evidence that the termination is in the best interest of the
16 minor. If a parent petitions for the termination of the guardianship, the party opposing
17 the parent's termination bears the burden of proving by a preponderance of the evidence
18 that the parent seeking to terminate the guardianship is currently unfit to regain custody
19 of the minor. If the party fails to prove the parent is unfit, the court must terminate the
20 guardianship and make any further order that may be appropriate. This section cross-
21 references the standard for finding that a parent is unfit.

22 In determining the best interest of the minor in ordering transitional arrangements, the
23 court may consider the minor's relationship with the guardians and the need for stability.

24 In any guardianship proceeding, the court may appoint a guardian ad litem for the
25 minor.

26 This amendment strikes Article 5, Part 3 of the bill and adopts the UGCOPAA
27 Article 3 with the following changes.

28 The amendment provides a 3rd criterion for the appointment of a guardian for an
29 adult: that the appointment is necessary or desirable as a means of enabling the
30 respondent to meet essential requirements for physical health, safety and self-care. This
31 is intended to preclude the appointment of a guardian for an adult when the guardianship
32 would not benefit the adult.

33 The amendment requires that a petition for guardianship include the attorney's
34 telephone number and bar registration number if the petitioner has an attorney.

35 The amendment requires the visitor appointed by the court to include in the report
36 whether or not the respondent wishes to contest any aspect of the proceedings or to seek
37 any limitation on the proposed guardian's powers. This is in addition to a
38 recommendation whether an attorney should be appointed to represent the respondent and
39 several other items that must be included in the report. The visitor must also include
40 whether a further professional evaluation of the respondent is recommended.

41 The UGCOPAA does not require an initial professional evaluation; this amendment
42 requires a professional evaluation in every adult guardianship.

COMMITTEE AMENDMENT

1 The amendment provides that the court is required to appoint an attorney for the
2 respondent, in addition to in the 3 fact situations presented in the UGCOPAA, when it
3 comes to the court's attention that the respondent wishes to contest any aspect of the
4 proceeding or to seek any limitation on the proposed guardian's powers. The other fact
5 situations in which appointment of an attorney is mandatory are: when requested by the
6 respondent, when recommended by the visitor, and when the court determines the
7 respondent needs representation.

8 The amendment revises which professionals are appropriate for conducting an
9 evaluation and limits it to licensed physicians and psychologists approved by the court
10 and qualified to conduct the evaluation.

11 The amendment recognizes that an agent appointed by the respondent in an advance
12 health care directive is, if otherwise qualified, eligible for appointment as the guardian at
13 the 4th level of priority.

14 The amendment continues the disqualification for appointment as a guardian an
15 owner, operator or employee of a long-term care institution in which the respondent is
16 receiving care, unless the owner, operator or employee is related to the respondent.

17 The amendment provides that if the order of appointment does not completely
18 remove the right to marry but allows the adult subject to guardianship to marry if certain
19 conditions are satisfied, the order must state the conditions as well as the findings on
20 which those conditions are based.

21 Consistent with the UGCOPAA, this amendment provides for specific notice
22 requirements for numerous interested parties, but reduces the notice requirements for
23 notice of the appointment from what is required under the UGCOPAA. This amendment
24 retains required notice by the appointed guardian to the adult subject to guardianship and
25 all other persons required to receive notice under section 5-303, rather than duplicating
26 the notice requirements under section 5-310.

27 With regard to the appointment of an emergency guardian, this amendment provides
28 that the initial appointment may not exceed 60 days, but that the emergency appointment
29 may be extended by up to 120 days. This amendment adopts the notice requirements for
30 filing a petition for an emergency guardian that are in the bill, that is, that the petition
31 must notify, orally or in writing, the respondent as well as the respondent's family and
32 any person who is serving as the guardian or conservator or who has care and custody of
33 the respondent. If the petitioner believes giving prior notice would put the respondent at
34 substantial risk of abuse, neglect or exploitation, the petitioner must so state in an
35 affidavit.

36 If the court appoints the emergency guardian without notice and hearing, notice of the
37 emergency appointment must be provided within 48 hours of the appointment. This
38 amendment provides that if any person objects to the appointment of the emergency
39 guardian, the court must hold a hearing within 14 days after the appointment.

40 The amendment modifies the duties of a guardian to include the authority to
41 administer assets of a value of \$5,000 or less.

42 The amendment differs from the UGCOPAA by requiring the person seeking
43 appointment as guardian to file the plan for the care of the adult with the petition for

1 appointment. When there is a subsequent change in circumstances or the guardian seeks
2 to deviate significantly from the plan, the guardian must file with the court a revised plan
3 for the care of the adult. The plan must contain specific elements. The persons required
4 to receive notice of the petition must also receive a copy of the plan and any revised plan.
5 The court is required to review the plan and any revised plan, and consider objections.
6 The court may schedule a hearing on any revised plan and may not approve the revised
7 plan until 30 days after filing.

8 The amendment provides that the guardian must file a report with the court at least
9 annually. After notice and hearing, the court may approve the guardian's report, which
10 creates a rebuttable presumption that the report is accurate as to a matter adequately
11 disclosed in the report.

12 The amendment strikes Article 5, Part 4 of the bill and adopts the UGCOPAA,
13 Article 4 with the following changes.

14 Throughout Part 4, this amendment establishes that the court is required to consider
15 the wishes of a minor who is at least 14 years of age, rather than 12 years of age as
16 provided in the UGCOPAA.

17 The amendment provides that a petition for conservatorship must include, along with
18 other specifically identified information, the name and contact information for an agent
19 designated by the respondent in an advance health care directive. This amendment
20 requires that a petition for conservatorship include the attorney's telephone number and
21 bar registration number if the petitioner has an attorney.

22 The amendment does not include the provisions of the UGCOPAA pertaining to
23 property while a petition for conservatorship is pending, but instead includes the
24 provisions of current law in Title 18-A, section 5-404 authorizing a person to petition for
25 the appointment of a conservator or for any other appropriate protective order when the
26 person is any of the following: the person to be protected; any person who is interested in
27 the estate, affairs or welfare of the person to be protected; and any person who would be
28 adversely affected by lack of effective management of the property and affairs of the
29 person to be protected.

30 The amendment provides that the petition for conservatorship must be personally
31 served on the respondent at least 14 days prior to the hearing on the petition. Notice must
32 also be provided 14 days before the hearing to all the other persons required to receive
33 notice.

34 The amendment requires the court to appoint a visitor when the respondent is an
35 adult, unless the adult is represented by an attorney.

36 The visitor must file a report at least 10 days before any hearing on the petition. The
37 report must include whether or not the respondent wants to challenge any aspect of the
38 proceeding or to seek any limitation on the conservator's powers. The report must also
39 contain a recommendation concerning whether a further professional evaluation is
40 necessary.

41 The amendment requires the court to appoint an attorney, in addition to the
42 circumstances provided in the UGCOPAA, when it comes to the court's attention that the

1 respondent wishes to contest any aspect of the proceeding or to seek any limitation on the
2 proposed conservator's powers.

3 The amendment deviates from the UGCOPAA by not requiring but authorizing the
4 court to appoint an attorney to represent the parent of a minor who is the subject of a
5 conservatorship proceeding.

6 The UGCOPAA does not require an initial professional evaluation; this amendment
7 requires a professional evaluation in every adult conservatorship. This amendment
8 revises which professionals are appropriate for conducting an evaluation, and limits it to
9 licensed physicians and psychologists approved by the court and qualified to conduct the
10 evaluation.

11 The individual conducting the professional evaluation must file the evaluation with
12 the court at least 10 days before any hearing on the petition.

13 The amendment continues the disqualification for appointment as a conservator an
14 owner, operator or employee of a long-term care institution in which the respondent is
15 receiving care, unless the owner, operator or employee is related to the respondent.

16 Consistent with the UGCOPAA, this amendment provides for specific notice
17 requirements for numerous interested parties, but reduces the notice requirements for
18 notice of the appointment from what is required under the UGCOPAA. This amendment
19 retains required notice by the appointed guardian to the adult subject to guardianship and
20 all other persons required to receive notice under section 5-403, rather than duplicating
21 the notice requirements under section 5-411.

22 With regard to the appointment of an emergency conservator, this amendment
23 provides that the initial appointment may not exceed 60 days, but that the emergency
24 appointment may be extended by up to 120 days. This amendment adopts the notice
25 requirements for filing a petition for an emergency guardian that are in the bill, that is,
26 that the petition must notify, orally or in writing, the respondent as well as the
27 respondent's family and any person who is serving as the guardian or conservator or who
28 has care and custody of the respondent. If the petitioner believes giving prior notice
29 would put the respondent at substantial risk of abuse, neglect or exploitation, the
30 petitioner must so state in an affidavit.

31 If the court appoints the emergency conservator without notice and hearing, notice of
32 the emergency appointment must be provided within 48 hours of the appointment. This
33 amendment provides that if any person objects to the appointment of the emergency
34 conservator, the court must hold a hearing within 14 days after the appointment.

35 The amendment differs from the UGCOPAA by requiring the person seeking
36 appointment as conservator to file the plan for protecting, managing, expending and
37 distributing assets of the conservatorship estate with the petition for appointment. When
38 there is a subsequent change in circumstances or the conservator seeks to deviate
39 significantly from the plan, the conservator must file with the court a revised plan for
40 protecting, managing, expending and distributing assets of the conservatorship estate.
41 The plan must contain specific elements. The persons required to receive notice of the
42 petition must also receive a copy of the plan and any revised plan. The court is required
43 to review the plan and any revised plan, and consider objections. The court may schedule

1 a hearing on any revised plan and may not approve the revised plan until 30 days after
2 filing.

3 The amendment requires the conservator to include a credit report of the individual
4 subject to conservatorship in the report and accounting submitted to the court. The credit
5 report must be kept confidential.

6 The conservator may petition the court for approval of the report or accounting filed
7 with the court. An order, after notice and hearing, approving a final report or accounting
8 discharges the conservator from all liabilities, claims and causes of action by a person
9 given notice of the report and the hearing as to a matter adequately disclosed in the report
10 or accounting.

11 The amendment provides that when the individual subject to conservatorship dies,
12 and no personal representative has been appointed for 40 days, the conservator may apply
13 to the court to exercise the powers of a personal representative. The conservator must
14 give notice to any person nominated as personal representative in the will of which the
15 conservator is aware, all of the decedent's heirs and all devisees of the will. This is an
16 expansion from the UGCOPAA.

17 The amendment provides that if the individual who is subject to conservatorship
18 seeks to remove the conservator, the court must appoint an attorney if the individual is
19 not already represented by one.

20 The amendment provides that if the individual who is subject to conservatorship
21 seeks to terminate or modify the terms of the conservatorship, the court must appoint an
22 attorney if the individual is not already represented by one.

23 The amendment adopts Article 5 of the UGCOPAA as Part 5 of Article 5, with the
24 following changes.

25 The amendment clarifies that one or more protective arrangements may be
26 appropriate in any given circumstance.

27 The amendment provides that a petition for one or more protective arrangements
28 must include the name and address of the respondent's spouse or domestic partner, if the
29 respondent has one.

30 The amendment provides that the court must appoint an attorney to represent the
31 respondent, in addition to the 3 circumstances in the UGCOPAA, when it comes to the
32 court's attention that the respondent wishes to contest any aspect of the proceeding or to
33 seek any limitation on the proposed protective arrangement.

34 The UGCOPAA provides that a hearing may proceed without the respondent in
35 attendance only if the court finds by clear and convincing evidence that at least one of
36 several circumstances exist. This amendment adds 2 additional circumstances: if the
37 respondent is represented by an attorney and the attorney represents that the respondent
38 does not want to attend the hearing; and if the visitor has confirmed with the respondent
39 that the respondent has no objection to the protective arrangements and that the
40 respondent does not wish to attend the hearing.

41 Article 5, Part 6 in the amendment is Part 5 of the bill, and Article 5, Part 7 in the
42 amendment is Part 6 in the bill. The only changes from the bill are to renumber and fix

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1 cross-references and to address the changes in the UGCOPAA that delete the use of the
2 concept and the term "incapacitated person." The amendment uses the term "individual
3 subject to guardianship" to be consistent with new Part 3. It also replaces the term
4 "ward" with "individual subject to guardianship."

5 With regard to the Maine Revised Statutes, Title 18-C, section 5-710, the Legislature
6 intends to continue the prior practice that the State is immune from suit on all tort claims
7 seeking recovery of damages as public guardian or public conservator, but that the surety
8 is responsible for all risk of loss for assets managed by the public guardian or public
9 conservator.

10 Article 5, Part 8 in the amendment is Part 7 in the bill. The only changes from the
11 bill are to renumber and fix cross-references.

12 Article 5, Part 9 in the amendment is Part 8 in the bill. The only changes from the
13 bill are to renumber and fix cross-references.

14 Article 6 of the bill adopts the Uniform Probate Code provisions concerning
15 nonprobate transfers, except that it does not include Part 4, the Uniform Real Property
16 Transfer on Death Act. The Uniform Real Property Transfer on Death Act was proposed
17 as part of L.D. 969, "An Act Regarding Nonprobate Transfers on Death."

18 This amendment includes the Uniform Real Property Transfer on Death Act as a new
19 Part 4 to Article 6. The text is based on L.D. 969, with the following amendments.

20 It amends the definition of "joint owner" to remove references to tenancies by the
21 entirety and community property, which are not recognized concepts in Maine.

22 It clarifies that the definition of "person" includes a trustee but not a business trust or
23 other trust.

24 It provides that the transfer on death deed can be used only when the property is
25 transferred for no consideration. This is consistent with exemption from the real estate
26 transfer tax for transfers accomplished by transfer on death deeds.

27 It explicitly applies the protection of the improvident transfers of title law to transfer
28 on death deeds. It provides that a transfer on death deed can be interpreted as a transfer
29 under the improvident transfers of title law when it is executed as well as when it is
30 recorded, as both are opportunities for undue influence. It also confirms that all criminal
31 and civil remedies are available against transfers of property unlawfully obtained through
32 a transfer on death deed.

33 It makes clear that the Maine Revised Statutes, Title 18-C, section 6-412 provides the
34 details about the permissibility of inter vivos transfers of property even after a transfer on
35 death deed is executed.

36 It establishes that the beneficiary of a transfer on death deed may file for recording a
37 notice of death affidavit with the registry of deeds where the transfer on death deed was
38 recorded. This filing clarifies that ownership of the property is now held by the
39 beneficiary. It requires the register of deeds to return the original notice of death affidavit
40 to the person who filed it and mail a copy to the municipality in which the property is
41 located. The filing of the notice of death affidavit is not a condition to the transfer of
42 title.

1 It establishes the effective date of July 1, 2019.

2 The amendment makes no changes to Article 7, except that it corrects application
3 dates and removes unnecessary transition provisions.

4 In Article 8, section 8-301, subsection 2, paragraph F, the amendment changes
5 "natural and adopting parents" to "former and adopting parents" to be consistent with
6 changes to Article 9 and the Maine Parentage Act.

7 The changes to Article 9 are based on the Family Law Advisory Commission's
8 recommendations pursuant to Resolve 2015, chapter 73, section 3. The Family Law
9 Advisory Commission submitted reports to the Joint Standing Committee on Judiciary in
10 January 2017 and January 2018.

11 Several revisions to the Adoption Act are essential to ensure that it is consistent with
12 the Maine Parentage Act, which became effective July 1, 2016. The current Adoption
13 Act reflects a far more limited view of parentage than is now embodied in Maine family
14 law. The proposed revisions include cross-references to the Maine Parentage Act's
15 definition of "parent" and routes to establishing parentage set forth in the Maine
16 Parentage Act, as well as the use of gender-neutral language.

17 The amendment expressly authorizes the court to refer the parties to mediation if
18 mediation services are available at reasonable or no cost.

19 The amendment revises the provisions addressing the establishment of parentage to
20 be consistent with case law regarding the constitutional rights of parents.

21 The amendment prohibits a petition for termination of parental rights as part of a
22 petition for adoption brought solely by another parent of the child unless the adoption is
23 sought to confirm the parentage status of the petitioning parent.

24 The amendment includes the grounds for termination of parental rights based on
25 written, informed, voluntary consent or a finding by the court that termination is in the
26 best interest of the child and the parent is unfit. The amendment also permits a court to
27 consider the extent to which the parent had opportunities to rehabilitate and to reunify
28 with the child in making the determination.

29 The amendment clarifies when consent to adoption is not required of a putative
30 parent.

31 The amendment clarifies that a study and report may be waived in an adoption when
32 the petitioner is a relative of the child or the spouse or domestic partner of the child's
33 parent.

34 The amendment clarifies that the Department of Health and Human Services or a
35 private adoption placement agency is required to make reasonable efforts to collect
36 information pertaining to the background of a child who is the subject of an adoption
37 petition.

38 The adoption laws are amended to include a provision confirming the broad effects of
39 the adoption on the adoptee's legal relationship with the adoptee's former parent,
40 consistent with the amendment to the inheritance provisions in Article 2, Part 1, subpart
41 2. The amendment provides that an adoptee inherits from the adoptee's former parents
42 only if so provided in the adoption decree.

1 The amendment changes the law regarding annulment of adoptions. It prohibits the
2 filing of a petition for annulment after one year. The court may order an annulment of an
3 adoption decree based on findings by clear and convincing evidence that the adoption
4 was obtained as a result of fraud, duress or illegal procedure. If the adoptee is a minor at
5 the time of the petition to annul, the court must appoint a guardian ad litem for the minor
6 and sustain the decree unless the court makes a specific finding that the decree is not in
7 the best interest of the adoptee.

8 Part C updates cross-references found elsewhere in the Maine Revised Statutes to
9 refer to the new Title 18-C provisions.

10 In Part D, the amendment amends the provisions governing inheritance under the
11 child protection laws concerning termination of parental rights and permanency guardian
12 adoption to be consistent with the Maine Parentage Act and the changes in Article 2, Part
13 1, Subpart 2.

14 In Part E, the amendment amends the real estate transfer tax law to explicitly exempt
15 transfer via a transfer on death deed from the application of the tax and exempts the
16 transfer from the requirement that a declaration of value statement be filed.

17 In Part F, the amendment establishes the effective date for Parts A to E of the
18 legislation as July 1, 2019. Other dates throughout the legislation are revised from an
19 original proposed effective date of January 1, 2019 to July 1, 2019.

20 Part G directs the Probate and Trust Law Advisory Commission, in consultation with
21 the Family Law Advisory Commission, to develop Maine Uniform Probate Code
22 Comments to accompany the statutory provisions of this legislation. The recommended
23 comments must be submitted to the joint standing committee of the 129th Legislature
24 having jurisdiction over judiciary matters no later than January 15, 2019. That committee
25 is given authority to report out legislation to fix any errors and inconsistencies created by
26 recent legislation and this legislation and to address other issues related to the
27 recodification and revision of the Maine Probate Code. Part G takes effect 90 days after
28 the Second Regular Session of the 128th Legislature adjourns.