

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1535

H.P. 1118

House of Representatives, April 11, 2019

**An Act To Correct Errors and Inconsistencies Related to the Maine
Uniform Probate Code and To Make Other Substantive Changes**

(EMERGENCY)

Reported by Representative BAILEY of Saco for the Joint Standing Committee on
Judiciary pursuant to Public Law 2017, chapter 402, Part G, section 2.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint
Rule 218.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** this Act amends provisions in the Maine Uniform Probate Code, which is
4 effective July 1, 2019; and

5 **Whereas,** the 90-day period may not expire until after July 1, 2019; and

6 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
7 the meaning of the Constitution of Maine and require the following legislation as
8 immediately necessary for the preservation of the public peace, health and safety; now,
9 therefore,

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

11 **Sec. 1. 18-C MRSA §1-108, sub-§2,** as enacted by PL 2017, c. 402, Pt. A, §2
12 and affected by Pt. F, §1, is amended to read:

13 **2. Automatic adjustment of amounts for inflation.** The dollar amounts stated in
14 sections 2-102, 2-402, 2-403 ~~and~~ 2-405 and 3-1201 apply to the estate of a decedent who
15 died in or after 2017, but for the estate of a decedent who died after 2018, these dollar
16 amounts must be increased or decreased if the Consumer Price Index for the calendar
17 year immediately preceding the year of death exceeds or is less than the reference base
18 index. The amount of any increase or decrease is computed by multiplying each dollar
19 amount by the percentage by which the Consumer Price Index for the calendar year
20 immediately preceding the year of death exceeds or is less than the reference base index.
21 If any increase or decrease produced by the computation is not a multiple of \$100, the
22 increase or decrease is rounded down, if an increase, or up, if a decrease, to the next
23 multiple of \$100, but for the purpose of section 2-405, the periodic installment amount is
24 the lump-sum amount divided by 12. If the Consumer Price Index for 2018 is changed by
25 the United States Department of Labor, Bureau of Labor Statistics, the reference base
26 index must be revised using the rebasing factor reported by the Bureau of Labor Statistics
27 or other comparable data if a rebasing factor is not reported.

28 **Sec. 2. 18-C MRSA §2-807, sub-§2,** as enacted by PL 2017, c. 402, Pt. A, §2
29 and affected by Pt. F, §1, is amended to read:

30 **2. Wrongful death action; damages; limitations.** Every wrongful death action
31 must be brought by and in the name of the personal representative or special
32 administrator of the deceased person, and is distributable, after payment for funeral
33 expenses and the costs of recovery including attorney's fees, directly to the decedent's
34 heirs without becoming part of the probate estate, except as may be specifically provided
35 in this subsection. The amount recovered in every wrongful death action, except as
36 specifically provided in this subsection, is for the exclusive benefit of the deceased's heirs
37 to be distributed to the individuals and in the proportions as provided ~~in~~ under the
38 intestacy laws of this State in sections ~~2-102 and 2-103~~ 2-101 to 2-113. The jury may
39 give damages as it determines a fair and just compensation with reference to the
40 pecuniary injuries resulting from the death. Damages are payable to the estate of the

1 deceased person only if the jury specifically makes an award payable to the estate for
2 reasonable expenses of medical, surgical and hospital care and treatment and for
3 reasonable funeral expenses or, in the case of a settlement, the settlement documents
4 specifically provide for such an allocation to the estate for the same. In addition, the jury
5 may give damages not exceeding \$500,000 for the loss of comfort, society and
6 companionship of the deceased, including any damages for emotional distress arising
7 from the same facts as those constituting the underlying claim, to the persons for whose
8 benefit the action is brought. The jury may also give punitive damages not exceeding
9 \$250,000. An action under this section must be commenced within 2 years after the
10 decedent's death, except that if the decedent's death is caused by a homicide, the action
11 may be commenced within 6 years of the date the personal representative or special
12 administrator of the decedent discovers that there is a just cause of action against the
13 person who caused the homicide. If a claim under this section is settled without an action
14 having been commenced, the amount paid in settlement must be distributed as provided
15 in this subsection. A settlement on behalf of minor children is not valid unless approved
16 by the court, as provided in Title 14, section 1605.

17 **Sec. 3. 18-C MRSA §3-108, sub-§1, ¶¶D and E**, as enacted by PL 2017, c.
18 402, Pt. A, §2 and affected by Pt. F, §1, are amended to read:

19 D. An informal appointment or a formal testacy or appointment proceeding may be
20 commenced more than 3 years after the decedent's death if no proceeding concerning
21 the succession or estate administration has occurred within the 3-year period after the
22 decedent's death, but the personal representative has no right to possess estate assets
23 as provided in section 3-709 beyond that necessary to confirm title in the successors
24 to the estate, and claims other than expenses of administration may not be presented
25 against the estate; ~~and~~

26 E. A formal testacy proceeding may be commenced at any time after 3 years from
27 the decedent's death for the purpose of establishing an instrument to direct or control
28 the ownership of property passing or distributable after the decedent's death from a
29 person other than the decedent when the property is to be appointed by the terms of
30 the decedent's will or is to pass or be distributed as a part of the decedent's estate or
31 its transfer is otherwise to be controlled by the terms of the decedent's will; and

32 **Sec. 4. 18-C MRSA §3-108, sub-§1, ¶F** is enacted to read:

33 F. Appropriate probate, appointment or testacy proceedings may be commenced in
34 relation to a claim for personal injury made against the decedent by a person without
35 actual notice of the death of the decedent at any time within 6 years after the cause of
36 action accrues. If the proceedings are commenced more than 3 years after the
37 decedent's death, any recovery is limited to applicable insurance.

38 **Sec. 5. 18-C MRSA §3-916, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2
39 and affected by Pt. F, §1, is amended to read:

40 **1. Short title.** This section may be known and cited as "the Uniform Estate Tax
41 Apportionment Act."

1 **Sec. 6. 18-C MRSA §5-101**, as enacted by PL 2017, c. 402, Pt. A, §2 and affected
2 by Pt. F, §1, is amended to read:

3 **§5-101. Short title**

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

6 **Sec. 7. 18-C MRSA §5-103, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2
7 and affected by Pt. F, §1, is amended to read:

8 **1. Transfer of money or personal property to minor.** Unless a person required to
9 transfer money or personal property to a minor knows that a conservator has been
10 appointed or that a proceeding for appointment of a conservator of the estate of the minor
11 is pending, the person may do so, as to an amount or value not exceeding ~~\$10,000 a year~~
12 the annual gift tax exclusion pursuant to 26 United States Code, Section 2503, by
13 transferring it to:

14 A. A person who has the care and custody of the minor and with whom the minor
15 resides;

16 B. A guardian of the minor;

17 C. A custodian under the Maine Uniform Transfers to Minors Act;

18 C-1. A qualified tuition program or a qualified ABLE program in the State, or both,
19 under Sections 529 and 529A, respectively, of the federal Internal Revenue Code of
20 1986;

21 D. A financial institution as a deposit in an interest-bearing account or certificate in
22 the sole name of the minor and giving notice of the deposit to the minor; or

23 E. The minor, if married or emancipated.

24 **Sec. 8. 18-C MRSA §5-113, sub-§2**, as enacted by PL 2017, c. 402, Pt. A, §2
25 and affected by Pt. F, §1, is amended to read:

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

28 **Sec. 9. 18-C MRSA §5-114, sub-§2**, as enacted by PL 2017, c. 402, Pt. A, §2
29 and affected by Pt. F, §1, is amended to read:

30 **2. Waiver prohibited.** ~~—A—~~ Unless represented by an attorney, a respondent, an
31 individual subject to guardianship, an individual subject to conservatorship, an individual
32 subject to a protective arrangement instead of guardianship or conservatorship, an
33 appointed guardian or an appointed conservator may not waive notice under this Act.

34 **Sec. 10. 18-C MRSA §5-116**, as enacted by PL 2017, c. 402, Pt. A, §2 and
35 affected by Pt. F, §1, is amended to read:

1 **§5-116. Request for notice**

2 A person that is interested in the welfare of a respondent, individual subject to
3 guardianship or conservatorship or individual subject to a protective arrangement instead
4 of guardianship or conservatorship and that is not otherwise entitled to notice under this
5 Act may file a request with the court for notice. The court shall send or deliver a copy of
6 the request to the guardian, to the ~~eustodian~~ conservator if one has been appointed and to
7 the individual who is subject to the guardianship, conservatorship or protective
8 arrangement. ~~The recipient of the notice~~ guardian, conservator and the individual who is
9 subject to the guardianship, conservatorship or other protective arrangement may file an
10 objection to the demand for notice within 60 days. If an objection is filed, the court shall
11 hold a hearing on the request. If the court approves the request, the court shall give
12 notice of the approval to the guardian or conservator if one has been appointed or to the
13 respondent if no guardian or conservator has been appointed. The request must include a
14 statement showing the interest of the person making it and the address of the person or an
15 attorney for the person to whom notice is to be given. If the court approves the request or
16 if no objection is filed within 60 days then the requesting party is entitled to notice.

17 **Sec. 11. 18-C MRSA §5-117, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2
18 and affected by Pt. F, §1, is amended to read:

19 **1. Disclosure; petition.** As part of the petition to be appointed a guardian or
20 conservator, ~~a person~~ the petitioner shall disclose to the court whether the ~~person~~
21 proposed guardian or conservator:

22 A. Is or has been a debtor in a bankruptcy, insolvency or receivership proceeding; or

23 B. Has been convicted of:

24 (1) A felony;

25 (2) A crime involving dishonesty, neglect, violence or use of physical force; or

26 (3) Any other crime relevant to the functions the individual would assume as
27 guardian or conservator.

28 **Sec. 12. 18-C MRSA §5-119**, as enacted by PL 2017, c. 402, Pt. A, §2 and
29 affected by Pt. F, §1, is amended to read:

30 **§5-119. Compensation and expenses; in general**

31 **1. Attorney for respondent.** ~~Unless otherwise compensated for services rendered~~
32 the court has made a finding that the respondent is indigent and has appointed an attorney
33 for the respondent on that basis, an attorney for a respondent in a proceeding under this
34 Act is entitled to reasonable compensation and reimbursement of reasonable expenses
35 from the property of the respondent.

36 **2. Attorney or other person.** ~~Unless otherwise compensated for services rendered~~
37 the court has made a finding that the respondent is indigent, an attorney or other person
38 whose services resulted in an order beneficial to an individual subject to guardianship or
39 conservatorship or beneficial to an individual for whom a protective arrangement instead

1 of guardianship or conservatorship was ordered is entitled to reasonable compensation
2 and reimbursement of reasonable expenses from the property of the individual.

3 **3. Court review.** After notice to all interested persons, on petition of an interested
4 person, the propriety of employment of any person by a conservator or guardian,
5 including any attorney, accountant, investment advisor or other specialized agent or
6 assistant, and the reasonableness of the compensation of any person so employed, and the
7 propriety of employment and the reasonableness of compensation for an attorney for a
8 respondent under subsection 1 and an attorney or other person under subsection 2, may be
9 reviewed by the court. Any person who has received excessive compensation or
10 reimbursement of inappropriate expenses for services rendered may be ordered to make
11 appropriate refunds. The factors set forth in section 3-721, subsection 2 must be
12 considered as guides in determining the reasonableness of compensation under this
13 section.

14 **4. Costs assessed against petitioner.** If the court dismisses a petition under this Act
15 and determines the petition was filed in bad faith, the court may assess the cost of any
16 court-ordered professional evaluation or visitor, and any attorney's fees or other costs
17 incurred by the respondent, against the petitioner.

18 **Sec. 13. 18-C MRSA §5-122, sub-§4,** as enacted by PL 2017, c. 402, Pt. A, §2
19 and affected by Pt. F, §1, is amended to read:

20 **4. Petition to require recognition or acceptance.** A guardian or conservator may
21 petition the court to require a 3rd party to recognize the authority of a guardian or
22 conservator or accept a decision made by the guardian or conservator on behalf of the
23 individual subject to guardianship or conservatorship, and if the court finds that the
24 refusal of a 3rd party to recognize the authority of a guardian or conservator or accept the
25 decision made by the guardian or conservator was in bad faith and without adequate
26 justification, the court may charge the person who refuses to recognize the authority of a
27 guardian or conservator or accept the decision of the guardian or conservator for
28 attorney's fees and costs. Notice of the petition must be given to the adult subject to
29 guardianship or conservatorship and to all persons entitled to notice under section 5-310,
30 subsection 5, section 5-411, subsection 5 or a subsequent order.

31 **Sec. 14. 18-C MRSA §5-210, sub-§1,** as enacted by PL 2017, c. 402, Pt. A, §2
32 and affected by Pt. F, §1, is amended to read:

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

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

3 **Sec. 15. 18-C MRSA §5-210, sub-§7**, as enacted by PL 2017, c. 402, Pt. A, §2
4 and affected by Pt. F, §1, is amended to read:

5 **7. Parent's petition to terminate guardianship; burden of proof.** A parent may
6 bring a petition to terminate the guardianship of a minor. A parent's notification to the
7 court of the revocation of prior consent for a guardianship must be considered a petition
8 to terminate the guardianship. Before the court may apply the termination requirements
9 in subsection 6, a party opposing a parent's petition to terminate a guardianship bears the
10 burden of proving by ~~a preponderance of the~~ clear and convincing evidence that the
11 parent seeking to terminate the guardianship is currently unfit to regain custody of the
12 minor, in accordance with the standard set forth in section 5-204, subsection 2, paragraph
13 C. If the party opposing termination of the guardianship fails to meet its burden of proof
14 on the question of the parent's fitness to regain custody, the court shall terminate the
15 guardianship and make any further order that may be appropriate. In a contested action,
16 the court may appoint counsel for the minor or for any indigent guardian or parent. In
17 ruling on a petition to terminate a guardianship, the court may modify the terms of the
18 guardianship or order transitional arrangements pursuant to section 5-211.

19 **Sec. 16. 18-C MRSA §5-301**, as enacted by PL 2017, c. 402, Pt. A, §2 and
20 affected by Pt. F, §1, is amended to read:

21 **§5-301. Basis for appointment of guardian for adult**

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

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

26 (1) The respondent is unable to receive and evaluate information or make or
27 communicate decisions, even with appropriate supportive services, technological
28 assistance or supported decision making that provides adequate protection for the
29 respondent;

30 (2) The respondent's identified needs cannot be met by a protective arrangement
31 instead of guardianship or other less restrictive alternatives that provide adequate
32 protection for the respondent; and

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

36 B. With appropriate findings, and additional notice to persons the court determines
37 are entitled to notice, treat the petition as one for a conservatorship under Part 4 or a
38 protective arrangement instead of guardianship or conservatorship under Part 5, enter
39 any other appropriate order or dismiss the proceeding.

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

8 **Sec. 17. 18-C MRSA §5-302, sub-§2, ¶C,** as enacted by PL 2017, c. 402, Pt. A,
9 §2 and affected by Pt. F, §1, is amended to read:

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

- 11 (1) A person responsible for care or custody of the respondent;
- 12 (2) Any attorney currently representing the respondent;
- 13 (3) The representative payee appointed by the United States Social Security
14 Administration for the respondent;
- 15 (4) A guardian or conservator acting for the respondent in this State or in another
16 jurisdiction;
- 17 (5) A trustee or custodian of a trust or custodianship of which the respondent is a
18 beneficiary;
- 19 (6) The United States Department of Veterans Affairs fiduciary for the
20 respondent;
- 21 (7) An agent designated under a power of attorney for health care in which the
22 respondent is identified as the principal;
- 23 (8) An agent designated under a power of attorney for finances in which the
24 respondent is identified as the principal;
- 25 (9) A person nominated as guardian by the respondent;
- 26 (10) A person nominated as guardian by the respondent's parent, spouse or
27 domestic partner in a will or other signed record;
- 28 (11) A proposed guardian and the reason the proposed guardian should be
29 selected; and
- 30 (12) A person known to have routinely assisted the respondent with decision
31 making within the 6 months before the filing of the petition;

32 **Sec. 18. 18-C MRSA §5-304, sub-§2, ¶B,** as enacted by PL 2017, c. 402, Pt. A,
33 §2 and affected by Pt. F, §1, is amended to read:

34 B. Determine the respondent's views about the appointment, including views about a
35 proposed guardian, the guardian's proposed powers and duties and the scope and
36 duration of the proposed guardianship, and general preferences and values;

37 **Sec. 19. 18-C MRSA §5-304, sub-§3,** as enacted by PL 2017, c. 402, Pt. A, §2
38 and affected by Pt. F, §1, is amended to read:

1 **3. Additional duties.** In addition to the duties imposed by subsection 2, the visitor
2 shall perform any duties that the court directs, which may include:

3 A. ~~Interview~~ Interviewing the petitioner and proposed guardian, if any;

4 B. ~~Visit~~ Visiting the respondent's present dwelling and any dwelling in which it is
5 reasonably believed the respondent will live if the appointment is made;

6 C. ~~Obtain~~ Obtaining information from any physician or other person known to have
7 treated, advised or assessed the respondent's relevant physical or mental condition;
8 and

9 D. ~~Investigate~~ Investigating the allegations in the petition and any other matter
10 relating to the petition as the court directs.

11 **Sec. 20. 18-C MRSA §5-304, sub-§4, ¶C**, as enacted by PL 2017, c. 402, Pt. A,
12 §2 and affected by Pt. F, §1, is amended to read:

13 C. A summary of the respondent's medical conditions, cognitive functioning,
14 everyday functioning, preferences and values and a summary of self-care and
15 independent living tasks the respondent can manage without assistance or with
16 existing supports, could manage with the assistance of appropriate supportive
17 services, technological assistance or supported decision making and cannot manage;

18 **Sec. 21. 18-C MRSA §5-304, sub-§4, ¶H-1** is enacted to read:

19 H-1. A statement whether the respondent wishes to attend the hearing under
20 paragraph H after being informed of the right to attend the hearing, the purposes of
21 the hearing and the potential consequences of failing to attend;

22 **Sec. 22. 18-C MRSA §5-306, sub-§2**, as enacted by PL 2017, c. 402, Pt. A, §2
23 and affected by Pt. F, §1, is amended to read:

24 **2. Right to decline.** The respondent has the right to decline to participate in an
25 evaluation ordered under subsection 1. If the respondent declines to participate in an
26 evaluation ordered under subsection 1 or the respondent refuses to provide medical
27 reports, the court may enter an order of guardianship or other protective arrangement
28 without the report of a licensed physician or psychologist or supporting medical reports if
29 the court otherwise finds that there is a basis for such an order in accordance with section
30 5-301.

31 **Sec. 23. 18-C MRSA §5-307, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2
32 and affected by Pt. F, §1, is amended to read:

33 **1. Attendance by respondent.** Except as otherwise provided in subsection 2, a
34 hearing under section 5-303 may proceed only if the respondent attends the hearing. If it
35 is not reasonably feasible for the respondent to attend a hearing at the location court
36 proceedings typically are conducted, the court shall make reasonable efforts to hold the
37 hearing at an alternative location convenient to the respondent or allow the respondent to
38 attend the hearing using real-time audiovisual technology or by telephone if real-time
39 audiovisual technology is not available.

1 **Sec. 24. 18-C MRSA §5-307, sub-§6**, as enacted by PL 2017, c. 402, Pt. A, §2
2 and affected by Pt. F, §1, is amended to read:

3 **6. Attendance by proposed guardian required.** Unless excused by the court for
4 good cause, the proposed guardian shall attend a hearing under section 5-303 in person,
5 using real-time audiovisual technology or by telephone if real-time audiovisual
6 technology is not available.

7 **Sec. 25. 18-C MRSA §5-308, sub-§4** is enacted to read:

8 **4. Effective date.** This section takes effect January 1, 2021.

9 **Sec. 26. 18-C MRSA §5-309, sub-§1, ¶D**, as enacted by PL 2017, c. 402, Pt. A,
10 §2 and affected by Pt. F, §1, is amended to read:

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

12 **Sec. 27. 18-C MRSA §5-309, sub-§1, ¶E**, as enacted by PL 2017, c. 402, Pt. A,
13 §2 and affected by Pt. F, §1, is repealed.

14 **Sec. 28. 18-C MRSA §5-309, sub-§1, ¶¶F to I** are enacted to read:

15 F. An adult child of the respondent;

16 G. A parent of the respondent, including a person nominated by will or other writing
17 signed by a deceased parent;

18 H. Any relative of the respondent with whom the respondent resided for more than 6
19 months within the 12 months prior to the filing of the petition under section 5-302;
20 and

21 I. A family member or other individual who has exhibited special care and concern
22 for the respondent.

23 **Sec. 29. 18-C MRSA §5-309, sub-§3**, as enacted by PL 2017, c. 402, Pt. A, §2
24 and affected by Pt. F, §1, is amended to read:

25 **3. Appointment based on best interest of respondent.** The court, acting in the best
26 interest of the respondent, may decline to appoint as guardian a person having priority
27 under subsection 1 and appoint a person having a lower priority or no priority. In its
28 determination, the court may evaluate whatever factors the court determines appropriate,
29 including comparing the following factors for the person having priority and the potential
30 guardian who has a lower or no priority: relationships with the respondent, the higher
31 priority person's and the potential guardian's skills, the expressed wishes of the
32 respondent and the extent to which the person with higher priority and the potential
33 guardian with lower or no priority have similar values and preferences as the respondent
34 and the likelihood that the potential guardian will be able to satisfy the duties of a
35 guardian successfully.

36 **Sec. 30. 18-C MRSA §5-310, sub-§§1 and 2**, as enacted by PL 2017, c. 402, Pt.
37 A, §2 and affected by Pt. F, §1, are amended to read:

- 1 **1. Order contents.** A court order appointing a guardian for an adult must clearly:
- 2 A. Include a finding that clear and convincing evidence has established that the
- 3 ~~identified needs of the respondent cannot be met by a protective arrangement instead~~
- 4 ~~of guardianship or other less restrictive alternatives, including use of appropriate~~
- 5 ~~supportive services, technological assistance or supported decision making basis for~~
- 6 ~~an appointment of a guardian, as required under section 5-301, has been met; and~~
- 7 B. Include a finding that clear and convincing evidence established that the
- 8 respondent was given proper notice of the hearing on the petition;
- 9 C. ~~State whether the adult subject to guardianship retains the right to vote and, if the~~
- 10 ~~adult does not retain the right to vote, include findings that support removing that~~
- 11 ~~right, which must include a finding that the adult cannot communicate, with or~~
- 12 ~~without support, a specific desire to participate in the voting process; and~~
- 13 D. ~~State whether the adult subject to guardianship retains the right to marry and, if~~
- 14 ~~the adult's right to marry is subject to conditions or if the adult does not retain the~~
- 15 ~~right to marry, include findings that support the conditions on that right or the~~
- 16 ~~removal of that right.~~

17 **2. Rights retained.** An adult subject to guardianship retains the right to vote and the

18 right to marry unless the order under subsection 1 includes the findings required by

19 subsection 1, paragraph C court orders otherwise. An adult subject to guardianship

20 retains the right to marry unless the order under subsection 1 includes the findings

21 required by subsection 1, paragraph D. A court order removing the right to vote must

22 include a finding that the adult cannot communicate, with or without support, a specific

23 desire to participate in the voting process. A court order removing the right to marry or

24 placing conditions on the right to marry must include findings that support the removal of

25 the right to marry or support conditions on the right to marry.

26 **Sec. 31. 18-C MRSA §5-310, sub-§5, ¶D,** as enacted by PL 2017, c. 402, Pt. A,

27 §2 and affected by Pt. F, §1, is amended to read:

28 D. Notice that the guardian will be ~~unavailable to visit the adult subject to~~

29 ~~guardianship for more than 2 months or unable to perform the guardian's duties for~~

30 ~~more than one month;~~

31 **Sec. 32. 18-C MRSA §5-312, sub-§3, ¶C,** as enacted by PL 2017, c. 402, Pt. A,

32 §2 and affected by Pt. F, §1, is amended to read:

33 C. The petitioner shall state in an affidavit the date, time, location and method of

34 providing the required notice under paragraph A and to whom the notice was

35 provided. The court shall make a determination as to the adequacy of the method of

36 providing notice and whether the petitioner complied with the notice requirements of

37 this subsection. The requirements of section ~~5-309~~ 5-303 do not apply to this section.

38 **Sec. 33. 18-C MRSA §5-313, sub-§3, ¶C,** as enacted by PL 2017, c. 402, Pt. A,

39 §2 and affected by Pt. F, §1, is amended to read:

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

41 \$10,000 or less;

1 **Sec. 34. 18-C MRSA §5-314, sub-§1, ¶A**, as enacted by PL 2017, c. 402, Pt. A,
2 §2 and affected by Pt. F, §1, is amended to read:

3 A. Apply for or receive money, personal effects or benefits for the support of the
4 adult and apply the money for support, care and education of the adult, unless a
5 conservator has been appointed for the adult and the application or receipt is within
6 the powers of the conservator, but the guardian may not use money from the adult's
7 estate for room and board that the guardian or the guardian's spouse, parent or child
8 has furnished to the adult unless a charge for the services is approved by order of the
9 court;

10 **Sec. 35. 18-C MRSA §5-314, sub-§5, ¶¶D and F**, as enacted by PL 2017, c.
11 402, Pt. A, §2 and affected by Pt. F, §1, are amended to read:

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

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

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

17 (3) ~~Notice~~ Absent a compelling reason, notice of the establishment or move is
18 given at least 14 days before the establishment or move to the adult subject to
19 guardianship and all persons entitled to the notice under section 5-310, subsection
20 5 or a subsequent order ~~and no objection has been filed~~. The notice must be
21 given orally and in writing to the adult subject to guardianship, and in writing to
22 all persons entitled to notice under section 5-310, subsection 5 and must include
23 the address of the current place of dwelling, the address and type of new
24 permanent place of dwelling, the reason for the establishment or move to the new
25 permanent place of dwelling and the right to object to the new place of dwelling;

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

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

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

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

34 **Sec. 36. 18-C MRSA §5-314, sub-§7** is enacted to read:

35 7. Application to existing guardianships. For guardianships established prior to
36 July 1, 2019, the guardian is not subject to the duties of notice and restrictions of power
37 set forth in subsection 5, paragraphs C, D and F until so ordered by the court.

38 **Sec. 37. 18-C MRSA §5-315, sub-§3, ¶C**, as enacted by PL 2017, c. 402, Pt. A,
39 §2 and affected by Pt. F, §1, is amended to read:

1 C. The guardian has good cause to believe restriction is necessary because
2 interaction with the person poses a risk of significant physical, psychological or
3 financial harm to the adult ~~and the restriction is:~~ The guardian shall provide a notice,
4 orally and in writing, of the restriction to the adult subject to guardianship
5 immediately upon imposition of the restriction and shall provide written notice of the
6 restriction to all other persons entitled to notice under section 5-310, subsection 5
7 within 7 days of imposition of the restriction. Notice must include a description of
8 the restriction, contact information of the court and the right to object to the
9 restriction.

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

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

14 **Sec. 38. 18-C MRSA §5-315, sub-§4** is enacted to read:

15 **4. Application to existing guardianships.** For guardianships established prior to
16 July 1, 2019, the guardian is not subject to the duties of notice and restrictions of power
17 set forth in subsection 3 until so ordered by the court.

18 **Sec. 39. 18-C MRSA §5-316, sub-§1, ¶A-1** is enacted to read:

19 A-1. The adult's medical conditions, cognitive functioning, everyday functioning and
20 levels of supervision needed;

21 **Sec. 40. 18-C MRSA §5-316, sub-§§3 and 4,** as enacted by PL 2017, c. 402, Pt.
22 A, §2 and affected by Pt. F, §1, are amended to read:

23 **3. Objection to revised plan.** An adult subject to guardianship and any person
24 entitled under subsection 2 to receive notice and a copy of the guardian's plan may object
25 to the revised plan within 14 days of receipt of notice of the revised plan.

26 **4. Court review of plan or revised plan; approval.** The court shall review a
27 guardian's plan or revised plan filed under subsection 1. In deciding whether to approve
28 the plan or the revised plan the court shall consider an objection under subsection 3 and
29 whether the plan or revised plan is consistent with the guardian's duties and powers under
30 sections 5-313 and 5-314. The court may schedule a hearing on any revised plan
31 submitted and may not approve any revised plan until 30 days after its filing. The
32 guardian may implement the revised plan 30 days after filing unless the court orders
33 otherwise.

34 **Sec. 41. 18-C MRSA §5-316, sub-§6** is enacted to read:

35 **6. Application to existing guardianship.** For guardianships established prior to
36 July 1, 2019, the guardian is not subject to the requirement for filing a revised plan until
37 so ordered by the court.

38 **Sec. 42. 18-C MRSA §5-317, sub-§1, ¶D,** as enacted by PL 2017, c. 402, Pt. A,
39 §2 and affected by Pt. F, §1, is amended to read:

1 D. A summary of the guardian's visits with the adult, including the dates of the visits
2 and the visits of agents designated by the guardian to visit on behalf of the guardian;

3 **Sec. 43. 18-C MRSA §5-317, sub-§1, ¶¶M and N**, as enacted by PL 2017, c.
4 402, Pt. A, §2 and affected by Pt. F, §1, are amended to read:

5 M. A recommendation as to the need for continued guardianship and any
6 recommended change in the scope of the guardianship; ~~and~~

7 N. Whether any coguardian or successor guardian appointed to serve when a
8 designated future event occurs is alive and able to serve; ~~and~~

9 **Sec. 44. 18-C MRSA §5-317, sub-§1, ¶O** is enacted to read:

10 O. The fees that are paid to the guardian for the year or still outstanding.

11 **Sec. 45. 18-C MRSA §5-317, sub-§8** is enacted to read:

12 **8. Application to existing guardianship.** For guardianships established prior to
13 July 1, 2019, in which there is no existing order to file an annual report, the guardian is
14 not subject to the requirements for filing an annual report until so ordered by the court.

15 **Sec. 46. 18-C MRSA §5-401, sub-§2, ¶A**, as enacted by PL 2017, c. 402, Pt. A,
16 §2 and affected by Pt. F, §1, is amended to read:

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

18 (1) Of a limitation in the ability to receive and evaluate information or make or
19 communicate decisions even with the use of appropriate supportive services,
20 technological assistance and supported decision making that provide adequate
21 protection for the respondent; or

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

23 **Sec. 47. 18-C MRSA §5-401, sub-§3**, as enacted by PL 2017, c. 402, Pt. A, §2
24 and affected by Pt. F, §1, is amended to read:

25 **3. Powers.** The court shall grant a conservator only those powers necessitated by
26 demonstrated limitations and needs of the respondent and enter orders that encourage the
27 development of the respondent's maximum self-determination and independence. The
28 court may not establish a full conservatorship if a limited conservatorship, protective
29 arrangement instead of conservatorship or other less restrictive alternatives would meet
30 the needs of and provide adequate protection for the respondent.

31 **Sec. 48. 18-C MRSA §5-402, sub-§2, ¶E**, as enacted by PL 2017, c. 402, Pt. A,
32 §2 and affected by Pt. F, §1, is amended to read:

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

34 (1) The nature and extent of the respondent's alleged need based on the
35 respondent's medical conditions, cognitive functioning and everyday financial
36 functioning and levels of supervision needed;

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

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

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

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

13 **Sec. 49. 18-C MRSA §5-404**, as enacted by PL 2017, c. 402, Pt. A, §2 and
14 affected by Pt. F, §1, is repealed.

15 **Sec. 50. 18-C MRSA §5-404-A** is enacted to read:

16 **§5-404-A. Order to preserve or apply property while proceeding pending**

17 While a petition under section 5-402 is pending, after preliminary hearing and
18 without notice to others, the court may issue an order to preserve and apply property of
19 the respondent as required for the support of the respondent or an individual who is in
20 fact dependent on the respondent.

21 **Sec. 51. 18-C MRSA §5-405, sub-§§3 and 4**, as enacted by PL 2017, c. 402, Pt.
22 A, §2 and affected by Pt. F, §1, are amended to read:

23 **3. Interview with adult respondent.** A visitor appointed for an adult under
24 subsection 2 shall interview the respondent in person and, in a manner the respondent is
25 best able to understand:

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

29 B. Determine the respondent's views about the appointment sought by the petitioner,
30 including views about a proposed conservator, the conservator's proposed powers and
31 duties and the scope and duration of the proposed conservatorship, and general
32 financial preferences and values;

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

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

1 **4. Additional duties.** In addition to the duties imposed by subsection 3, the visitor
2 appointed for an adult under subsection 2 shall perform any duties that the court directs,
3 which may include:

- 4 A. ~~Interview~~ Interviewing the petitioner and proposed conservator, if any;
5 B. ~~Review~~ Reviewing financial records of the respondent, if relevant to the visitor's
6 recommendation under subsection 5, paragraph B;
7 C. ~~State~~ Stating whether the respondent's needs could be met by a less restrictive
8 alternative, including a protective arrangement instead of conservatorship and, if so,
9 identify ~~identifying~~ the less restrictive alternative; and
10 D. ~~Investigate~~ Investigating the allegations in the petition and any other matter
11 relating to the petition as the court directs.

12 **Sec. 52. 18-C MRSA §5-405, sub-§5, ¶A-1** is enacted to read:

13 A-1. A summary of the respondent's financial functioning, financial preferences and
14 independent financial tasks the respondent can manage without assistance or with
15 existing supports or could manage with the assistance of appropriate supportive
16 services, technological assistance or supported decision making;

17 **Sec. 53. 18-C MRSA §5-405, sub-§5, ¶F-1** is enacted to read:

18 F-1. A statement whether the respondent wishes to attend the hearing under
19 paragraph F after being informed of the right to attend the hearing, the purposes of
20 the hearing and the potential consequences of failing to attend;

21 **Sec. 54. 18-C MRSA §5-407, sub-§2,** as enacted by PL 2017, c. 402, Pt. A, §2
22 and affected by Pt. F, §1, is amended to read:

23 **2. Right to decline.** The respondent has the right to decline to participate in an
24 evaluation ordered under subsection 1. If the respondent declines to participate in an
25 evaluation ordered under subsection 1 or the respondent refuses to provide medical
26 reports, the court may enter an order of conservatorship or other protective arrangement
27 without the report of a licensed physician or psychologist or supporting medical reports if
28 the court otherwise finds that there is a basis for such an order in accordance with section
29 5-401.

30 **Sec. 55. 18-C MRSA §5-408, sub-§1,** as enacted by PL 2017, c. 402, Pt. A, §2
31 and affected by Pt. F, §1, is amended to read:

32 **1. Attendance by respondent required.** Except as otherwise provided in
33 subsection 2, a hearing under section 5-403 may proceed only if the respondent attends
34 the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the
35 location court proceedings typically are conducted, the court shall make reasonable
36 efforts to hold the hearing at an alternative location convenient to the respondent or allow
37 the respondent to attend the hearing using real-time audiovisual technology or by
38 telephone if real-time audiovisual technology is not available.

1 **Sec. 56. 18-C MRSA §5-408, sub-§6**, as enacted by PL 2017, c. 402, Pt. A, §2
2 and affected by Pt. F, §1, is amended to read:

3 **6. Attendance by proposed conservator required.** Unless excused by the court for
4 good cause, the proposed conservator shall attend a hearing under section 5-403 in
5 person, using real-time audiovisual technology or by telephone if real-time audiovisual
6 technology is not available.

7 **Sec. 57. 18-C MRSA §5-409, sub-§4** is enacted to read:

8 **4. Effective date.** This section takes effect January 1, 2021.

9 **Sec. 58. 18-C MRSA §5-410, sub-§1, ¶D**, as enacted by PL 2017, c. 402, Pt. A,
10 §2 and affected by Pt. F, §1, is amended to read:

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

12 **Sec. 59. 18-C MRSA §5-410, sub-§1, ¶E**, as enacted by PL 2017, c. 402, Pt. A,
13 §2 and affected by Pt. F, §1, is repealed.

14 **Sec. 60. 18-C MRSA §5-410, sub-§1, ¶¶F to H** are enacted to read:

15 F. An adult child of the respondent;

16 G. A parent of the respondent or a person nominated in the will of a deceased parent;
17 and

18 H. A family member or other individual who has exhibited special care and concern
19 for the respondent.

20 **Sec. 61. 18-C MRSA §5-410, sub-§3**, as enacted by PL 2017, c. 402, Pt. A, §2
21 and affected by Pt. F, §1, is amended to read:

22 **3. Appointment based on best interest of respondent.** The court, acting in the best
23 interest of the respondent, may decline to appoint as conservator a person having priority
24 under subsection 1 and appoint a person having a lower priority or no priority. In its
25 determination, the court may evaluate whatever factors the court determines appropriate,
26 including comparing the following factors for the person having priority and the potential
27 conservator who has a lower or no priority: relationships with the respondent, the higher
28 priority person's and the potential conservator's skills, the expressed wishes of the
29 respondent and the extent to which the person with higher priority and the potential
30 conservator with lower priority or no priority have similar values and preferences as the
31 respondent and the likelihood that the potential conservator will be able to satisfy the
32 duties of a conservator successfully.

33 **Sec. 62. 18-C MRSA §5-411, sub-§§2 to 4**, as enacted by PL 2017, c. 402, Pt.
34 A, §2 and affected by Pt. F, §1, are amended to read:

35 **2. Conservator for adult; findings.** A court order appointing a conservator for an
36 adult must include a ~~clear~~ finding by clear and convincing evidence that:

1 A. ~~The identified needs of the respondent cannot be met by a protective arrangement~~
2 ~~instead of conservatorship or other less restrictive alternatives, including use of~~
3 ~~appropriate supportive services, technological assistance or supported decision~~
4 ~~making~~ basis for appointment of a conservator as required under section 5-401 has
5 been met; and

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

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

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

15 **Sec. 63. 18-C MRSA §5-414, sub-§1, ¶A,** as enacted by PL 2017, c. 402, Pt. A,
16 §2 and affected by Pt. F, §1, is amended to read:

17 A. ~~Make~~ Except as provided in section 5-421, subsection 2, paragraph Y, make gifts,
18 except those of de minimis value;

19 **Sec. 64. 18-C MRSA §5-414, sub-§1, ¶I,** as enacted by PL 2017, c. 402, Pt. A,
20 §2 and affected by Pt. F, §1, is amended to read:

21 I. Make, modify, amend or revoke the will of the individual subject to
22 conservatorship ~~in compliance with the laws of the State governing executing wills,~~
23 with the conservator treated as the individual making, modifying, amending or
24 revoking the will.

25 **Sec. 65. 18-C MRSA §5-414, sub-§5** is enacted to read:

26 **5. Application to existing conservatorships.** For conservatorships established prior
27 to July 1, 2019, the conservator is not subject to the notice and court authorization
28 requirements under subsection 1, paragraph B until so ordered by the court.

29 **Sec. 66. 18-C MRSA §5-416, sub-§1,** as enacted by PL 2017, c. 402, Pt. A, §2
30 and affected by Pt. F, §1, is amended to read:

31 **1. Bond or alternative asset-protection arrangement required.** The court shall
32 require a conservator of an estate of \$50,000 or more to furnish a bond with a surety the
33 court specifies, or require an alternative asset-protection arrangement, conditioned on
34 faithful discharge of all duties of the conservator. The court may waive the requirement
35 only if the court finds that a bond or other asset-protection arrangement is not necessary
36 to protect the interests of the individual subject to conservatorship. The court may not
37 waive the requirement if the conservator is in the business of serving as a conservator and
38 is being paid for the conservator's service except as provided by subsection 3. With
39 respect to an estate of less than \$50,000, the court in its discretion may require a bond or
40 other surety.

1 **Sec. 67. 18-C MRSA §5-416, sub-§4** is enacted to read:

2 **4. Spouse as conservator.** The court in its discretion may waive the requirement of
3 a bond or other surety for a spouse wishing to serve as conservator.

4 **Sec. 68. 18-C MRSA §5-419, sub-§§2 to 4**, as enacted by PL 2017, c. 402, Pt.
5 A, §2 and affected by Pt. F, §1, are amended to read:

6 **2. Notice of revised plan.** A conservator shall give notice of the filing of a revised
7 plan under subsection 1, along with a copy of the revised plan, to the individual subject to
8 conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a
9 subsequent order and other persons as the court determines. The notice must include a
10 statement of the right to object to the revised plan and be given not later than 14 days
11 after the filing.

12 **3. Objection to revised plan.** An individual subject to conservatorship and any
13 person entitled under subsection 2 to receive notice and a copy of the conservator's
14 revised plan may object to the revised plan within 14 days of receipt of notice of the
15 revised plan.

16 **4. Court review of plan or revised plan; approval.** The court shall review a
17 conservator's plan or revised plan filed under subsection 1. In deciding whether to
18 approve the plan or revised plan, the court shall consider any objection under subsection
19 3 and whether the plan or revised plan is consistent with the conservator's duties and
20 powers. The court may schedule a hearing on any revised plan submitted and may not
21 approve the plan or revised plan until 30 days after its filing. The conservator may
22 implement the revised plan 30 days after filing unless the court orders otherwise.

23 **Sec. 69. 18-C MRSA §5-419, sub-§6** is enacted to read:

24 **6. Application to existing conservatorships.** For conservatorships established prior
25 to July 1, 2019, the conservator is not subject to the requirement for the filing of a revised
26 plan until so ordered by the court.

27 **Sec. 70. 18-C MRSA §5-420, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2
28 and affected by Pt. F, §1, is amended to read:

29 **1. Inventory.** Not later than ~~60~~ 90 days after appointment, a conservator shall
30 prepare and file with the appointing court a detailed inventory of the conservatorship
31 estate, together with an oath or affirmation that the inventory is believed to be complete
32 and accurate as far as information permits.

33 **Sec. 71. 18-C MRSA §5-421, sub-§2, ¶A**, as enacted by PL 2017, c. 402, Pt. A,
34 §2 and affected by Pt. F, §1, is amended to read:

35 A. Collect, hold and retain property included in the conservatorship estate, including
36 property in which the conservator has a personal interest and real property in this
37 State or another state, until the conservator determines disposition of the property
38 should be made;

1 **Sec. 72. 18-C MRSA §5-421, sub-§2, ¶G**, as enacted by PL 2017, c. 402, Pt. A,
2 §2 and affected by Pt. F, §1, is amended to read:

3 G. Acquire or dispose of property of the conservatorship estate, including real
4 property in this State or another state, for cash or on credit, at public or private sale,
5 and manage, develop, improve, exchange, partition, change the character of or
6 abandon property included in the conservatorship estate;

7 **Sec. 73. 18-C MRSA §5-423, sub-§2, ¶E**, as enacted by PL 2017, c. 402, Pt. A,
8 §2 and affected by Pt. F, §1, is amended to read:

9 E. ~~Annual~~ An annual credit report of the individual subject to conservatorship and, to
10 the extent feasible, a copy of the most recent reasonably available financial
11 statements evidencing the status of bank accounts, investment accounts and
12 mortgages or other debts of the individual subject to conservatorship, ~~along with,~~
13 with all but the last 4 digits of the account numbers and the individual's social
14 security number redacted;

15 **Sec. 74. 18-C MRSA §5-423, sub-§9** is enacted to read:

16 **9. Application to existing conservatorships.** For conservatorships established prior
17 to January 1, 2008, the conservator is not subject to the requirement for an annual report
18 and accounting until so ordered by the court.

19 **Sec. 75. 18-C MRSA §5-431, sub-§10**, as enacted by PL 2017, c. 402, Pt. A, §2
20 and affected by Pt. F, §1, is amended to read:

21 **10. Property; report; petition for discharge.** On termination of a conservatorship
22 and whether or not formally distributed by the conservator, property of the
23 conservatorship estate passes to the individual formerly subject to conservatorship or ~~the~~
24 individual's heirs, successors or assigns other persons entitled to the property. The order
25 of termination must provide for expenses of administration and direct the conservator to
26 file a final report and petition for discharge on approval of the final report.

27 **Sec. 76. 18-C MRSA §5-502, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2
28 and affected by Pt. F, §1, is amended to read:

29 **1. Findings.** After the hearing conducted on a petition for guardianship under
30 section 5-302 or one or more protective arrangements instead of guardianship under
31 section 5-501, subsection 4 ~~2~~, the court may enter an order for one or more protective
32 arrangements instead of guardianship under subsection 2 if the court finds by clear and
33 convincing evidence that:

34 A. The respondent lacks the ability to meet essential requirements for physical
35 health, safety or self-care because the respondent is unable to receive and evaluate
36 information or make or communicate decisions, ~~even with~~ after the court's
37 consideration of the respondent's ability to use appropriate supportive services,
38 technological assistance or supported decision making that provides adequate
39 protection for the respondent; and

1 B. The respondent's identified needs cannot be met by less restrictive alternatives
2 that provide adequate protection for the respondent.

3 **Sec. 77. 18-C MRSA §5-503, sub-§1, ¶A**, as enacted by PL 2017, c. 402, Pt. A,
4 §2 and affected by Pt. F, §1, is amended to read:

5 A. By clear and convincing evidence that the respondent is unable to manage
6 property or financial affairs because of a limitation in the ability to receive and
7 evaluate information or make or communicate decisions, even with appropriate
8 supportive services, technological assistance or supported decision making that
9 provides adequate protection for the respondent, or the adult is missing, detained or
10 unable to return to the United States;

11 **Sec. 78. 18-C MRSA §5-503, sub-§3, ¶A**, as enacted by PL 2017, c. 402, Pt. A,
12 §2 and affected by Pt. F, §1, is amended to read:

13 A. Authorize or direct a transaction necessary to protect the financial interest or
14 property of the respondent, including but not limited to:

- 15 (1) An action to establish eligibility for benefits;
- 16 (2) Payment, delivery, deposit or retention of funds or property;
- 17 (3) Sale, mortgage, lease or other transfer of property;
- 18 (4) Purchase of an annuity;
- 19 (5) Entry into a contractual relationship, including a contract to provide for
20 personal care, supportive services, education, training or employment;
- 21 (6) Addition to or establishment of a trust;
- 22 (6-A) Creation, modification, amendment or revocation of a will or a codicil;
- 23 (7) Ratification or invalidation of a contract, trust, will or other transaction,
24 including a transaction related to the property or business affairs of the
25 respondent; or
- 26 (8) Settlement of a claim; or

27 **Sec. 79. 18-C MRSA §5-503, sub-§4**, as enacted by PL 2017, c. 402, Pt. A, §2
28 and affected by Pt. F, §1, is amended to read:

29 **4. Order to restrict access.** If, after the hearing conducted under section 5-505 on a
30 petition under section 5-501, subsection 1, paragraph B or section 5-501, subsection 3, a
31 court may enter an order to restrict access to the respondent or the respondent's property
32 by a person that the court ~~finds~~ by clear and convincing evidence finds:

33 A. Through fraud, coercion, duress or the use of deception and control, caused or
34 attempted to cause ~~an action that would have resulted in financial harm to the~~
35 respondent or the respondent's property; ~~and~~ or

36 B. Poses a serious significant risk of ~~substantial financial~~ harm to the respondent or
37 the respondent's property.

1 **Sec. 80. 18-C MRSA §5-506, sub-§4, ¶¶B to D**, as enacted by PL 2017, c. 402,
2 Pt. A, §2 and affected by Pt. F, §1, are amended to read:

3 B. Determine the respondent's views, preferences and values with respect to the
4 order sought;

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

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

10 **Sec. 81. 18-C MRSA §5-506, sub-§4, ¶¶E to H**, as enacted by PL 2017, c. 402,
11 Pt. A, §2 and affected by Pt. F, §1, are repealed.

12 **Sec. 82. 18-C MRSA §5-506, sub-§4-A** is enacted to read:

13 **4-A. Additional visitor duties.** In addition to the duties imposed by subsection 4,
14 the visitor shall perform any duties that the court directs, which may include:

15 A. Visiting the respondent's present dwelling and any dwelling in which it is
16 reasonably believed the respondent will live if the order is granted;

17 B. Obtaining information from any physician or other person known to have treated,
18 advised or assessed the respondent's relevant physical or mental condition;

19 C. Reviewing financial records of the respondent if relevant to the visitor's
20 recommendation; and

21 D. Investigating the allegations in the petition and any other matter relating to the
22 petition as the court directs.

23 **Sec. 83. 18-C MRSA §5-506, sub-§5**, as enacted by PL 2017, c. 402, Pt. A, §2
24 and affected by Pt. F, §1, is amended to read:

25 **5. Report.** A visitor under this section promptly shall file a report in a record with
26 the court, which, in addition to reporting on the additional visitor duties directed by the
27 court under subsection 4-A, must include:

28 A. A recommendation whether an attorney should be appointed to represent the
29 respondent;

30 B. To the extent relevant to the order sought, a summary of self-care, independent
31 living tasks and financial management tasks the respondent can manage without
32 assistance or with existing supports, or could manage with the assistance of
33 appropriate supportive services, technological assistance or supported decision
34 making and cannot manage that provides adequate protections for the respondent;

35 B-1. To the extent relevant to the order sought, a summary of the respondent's
36 medical conditions, cognitive functioning, everyday functioning, values and
37 preferences, risks and levels of supervision needed and any means to enhance the
38 respondent's capacity;

1 C. Recommendations regarding the appropriateness of the protective arrangement
2 sought and whether less restrictive alternatives for meeting the respondent's needs are
3 available that provide adequate protections for the respondent;

4 D. If the petition seeks to change the physical location of the dwelling of the
5 respondent, a statement whether the proposed dwelling meets the respondent's needs
6 and whether the respondent has expressed a preference as to the respondent's
7 dwelling;

8 E. A recommendation whether a professional evaluation under section 5-508 is
9 necessary;

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

12 F-1. A statement whether the respondent wishes to attend a hearing under paragraph
13 F, after being informed of the right to attend the hearing, the purposes of the hearing
14 and the potential consequences of failing to attend the hearing;

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

18 H. Any other matter as the court directs.

19 **Sec. 84. 18-C MRSA §5-508, sub-§3**, as enacted by PL 2017, c. 402, Pt. A, §2
20 and affected by Pt. F, §1, is amended to read:

21 **3. Right to decline.** The respondent has the right to decline to participate in an
22 evaluation ordered under subsection 1. If the respondent declines to participate in an
23 evaluation ordered under subsection 1 or the respondent refuses to provide medical
24 reports, the court may enter an order for a protective arrangement without the report of a
25 licensed physician or psychologist or supporting medical reports if the court otherwise
26 finds that there is a basis for such an order in accordance with section 5-401.

27 **Sec. 85. 18-C MRSA §5-509, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2
28 and affected by Pt. F, §1, is amended to read:

29 **1. Attendance by respondent required.** Except as otherwise provided in
30 subsection 2, a hearing under this Part may proceed only if the respondent attends the
31 hearing. If it is not reasonably feasible for the respondent to attend a hearing at the
32 location court proceedings typically are conducted, the court shall make reasonable
33 efforts to hold the hearing at an alternative location convenient to the respondent or allow
34 the respondent to attend the hearing using real-time audiovisual technology or by
35 telephone if real-time audiovisual technology is not available.

36 **Sec. 86. 18-C MRSA §5-511, sub-§4** is enacted to read:

37 **4. Effective date.** This section takes effect January 1, 2021.

38 **Sec. 87. 18-C MRSA §6-203, sub-§2**, as enacted by PL 2017, c. 402, Pt. A, §2
39 and affected by Pt. F, §1, is amended to read:

1 **2. Accounts governed by this Part.** An account established before, on or after the
2 July 1, 2019, whether in the form prescribed in section 6-204 or in any other form, is
3 either a single-party account or a multiple-party account, with or without right of
4 survivorship and with or without a POD designation or an agency designation, within the
5 meaning of this Part and is governed by this Part.

6 **Sec. 88. 18-C MRSA §9-204, sub-§3,** as enacted by PL 2017, c. 402, Pt. A, §2
7 and affected by Pt. F, §1, is amended to read:

8 **3. Grounds for termination.** The court may order termination of parental rights if:

9 A. The parent consents to the termination. Consent must be written and voluntarily
10 and knowingly executed in court before a judge. The judge shall explain the effects
11 of a termination order; or

12 B. The court finds, based on clear and convincing evidence, that:

13 (1) Termination is in the best interest of the child; and

14 (2) Either:

15 (a) The parent is unwilling or unable to protect the child from jeopardy, as
16 defined by Title 22, section 4002, subsection 6, and these circumstances are
17 unlikely to change within a time that is reasonably calculated to meet the
18 child's needs;

19 (b) The parent has been unwilling or unable to take responsibility for the
20 child within a time that is reasonably calculated to meet the child's needs; or

21 (c) The parent has abandoned the child, as described in Title 22, section
22 4002, subsection 1-A;

23 In making findings pursuant to this paragraph, the court may consider the extent to
24 which the parent had opportunities to rehabilitate and to reunify with the child,
25 including actions by the child's other parent to foster or to interfere with a
26 relationship between the parent and child or services provided by public or nonprofit
27 agencies.

28 **Sec. 89. 18-C MRSA §9-401, sub-§4, ¶F,** as enacted by PL 2017, c. 402, Pt. A,
29 §2 and affected by Pt. F, §1, is amended to read:

30 F. Has in that child's family background factors such as severe mental illness,
31 substance abuse ~~use~~ disorder, prostitution, genetic or medical conditions or illnesses
32 that place the child at risk for future problems.

33 **Sec. 90. 18-C MRSA Art. 10** is enacted to read:

34 **ARTICLE 10**

1 MAINE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL
2 ASSETS ACT

3 §10-101. Short title

4 This Article may be known and cited as "the Maine Revised Uniform Fiduciary
5 Access to Digital Assets Act."

6 §10-102. Definitions

7 As used in this Act, unless the context otherwise indicates, the following terms have
8 the following meanings.

9 1. **Account.** "Account" means an arrangement under a terms of service agreement in
10 which a custodian carries, maintains, processes, receives or stores a digital asset of a user
11 or provides goods or services to a user.

12 2. **Agent.** "Agent" means an attorney in fact granted authority under a durable or
13 nondurable power of attorney.

14 3. **Carries.** "Carries" means engages in the transmission of an electronic
15 communication.

16 4. **Catalog of electronic communications.** "Catalog of electronic communications"
17 means information that identifies each person with which a user has had an electronic
18 communication, the time and date of the communication and the electronic address of the
19 person.

20 5. **Conservator.** "Conservator" means a person appointed by a court to manage the
21 estate of a living individual. "Conservator" includes a limited conservator and a guardian
22 exercising the powers of a conservator when a conservator has not been appointed.

23 6. **Content of an electronic communication.** "Content of an electronic
24 communication" means information concerning the substance or meaning of an electronic
25 communication that:

26 A. Has been sent or received by a user;

27 B. Is in electronic storage by a custodian providing an electronic communication
28 service to the public or is carried or maintained by a custodian providing a remote
29 computing service to the public; and

30 C. Is not readily accessible to the public.

31 7. **Custodian.** "Custodian" means a person that carries, maintains, processes,
32 receives or stores a digital asset of a user.

33 8. **Designated recipient.** "Designated recipient" means a person chosen by a user
34 using an online tool to administer digital assets of the user.

1 **9. Digital asset.** "Digital asset" means an electronic record in which an individual
2 has a right or interest. "Digital asset" does not include an underlying asset or liability
3 unless the asset or liability is itself an electronic record.

4 **10. Electronic.** "Electronic" means relating to technology having electrical, digital,
5 magnetic, wireless, optical, electromagnetic or similar capabilities.

6 **11. Electronic communication.** "Electronic communication" has the same meaning
7 as in 18 United States Code, Section 2510(12).

8 **12. Electronic communication service.** "Electronic communication service" means
9 a service that provides to a user the ability to send or receive an electronic
10 communication.

11 **13. Fiduciary.** "Fiduciary" means an original, additional or successor personal
12 representative, conservator, agent or trustee.

13 **14. Information.** "Information" means data, text, images, videos, sounds, codes,
14 computer programs, software and databases or the like.

15 **15. Online tool.** "Online tool" means an electronic service provided by a custodian
16 that allows a user, in an agreement distinct from the terms of service agreement between
17 the custodian and user, to provide directions for disclosure or nondisclosure of digital
18 assets to a 3rd person.

19 **16. Person.** "Person" means an individual, estate, business or nonprofit entity,
20 public corporation, government or governmental subdivision, agency or instrumentality
21 or other legal entity.

22 **17. Personal representative.** "Personal representative" means an executor,
23 administrator, special administrator or person that performs substantially the same
24 function under the laws of this State other than this Act and a person claiming to be a
25 successor of the decedent user who presents an affidavit under section 3-1201.

26 **18. Power of attorney.** "Power of attorney" means a record that grants an agent
27 authority to act in the place of a principal.

28 **19. Principal.** "Principal" means an individual who grants authority to an agent in a
29 power of attorney.

30 **20. Protected person.** "Protected person" means an individual for whom a
31 conservator has been appointed. "Protected person" includes an individual for whom an
32 application for the appointment of a conservator is pending and an individual for whom a
33 guardian has been appointed, when no conservator has been appointed.

34 **21. Record.** "Record" means information that is inscribed on a tangible medium or
35 that is stored in an electronic or other medium and is retrievable in perceivable form.

36 **22. Remote computing service.** "Remote computing service" means a service that
37 provides to a user computer processing services or the storage of digital assets by means

1 of an electronic communications system as defined in 18 United States Code, Section
2 2510(14).

3 **23. Terms of service agreement.** "Terms of service agreement" means an
4 agreement, as defined in Title 11, section 1-1201, subsection (3), that controls the
5 relationship between a user and a custodian.

6 **24. Trustee.** "Trustee" means a fiduciary with legal title to property pursuant to an
7 agreement or declaration that creates a beneficial interest in another person. "Trustee"
8 includes a successor trustee.

9 **25. User.** "User" means a person that has an account with a custodian.

10 **26. Will.** "Will" includes a codicil, a testamentary instrument that only appoints an
11 executor and an instrument that revokes or revises a testamentary instrument.

12 **§10-103. Applicability**

13 **1. Applicable date.** This Act applies to:

14 A. A fiduciary or agent acting under a will or power of attorney executed before, on
15 or after July 1, 2018;

16 B. A personal representative acting for a decedent who died before, on or after July
17 1, 2018;

18 C. A conservatorship proceeding commenced before, on or after July 1, 2018; and

19 D. A trustee acting under a trust created before, on or after July 1, 2018.

20 **2. User resident of this State.** This Act applies to a custodian if the user resides in
21 this State or resided in this State at the time of the user's death.

22 **3. Digital asset of employer.** This Act does not apply to a digital asset of an
23 employer used by an employee in the ordinary course of the employer's business.

24 **§10-104. User direction for disclosure of digital assets**

25 **1. Use of online tool.** A user may use an online tool to direct the custodian to
26 disclose to a designated recipient or not to disclose some or all of the user's digital assets,
27 including the content of electronic communications. If the online tool allows the user to
28 modify or delete a direction at all times, a direction regarding disclosure using an online
29 tool overrides a contrary direction by the user in a will, trust, power of attorney or other
30 record.

31 **2. No online tool used.** If a user has not used an online tool to give direction under
32 subsection 1 or if the custodian has not provided an online tool, the user may allow or
33 prohibit in a will, trust, power of attorney or other record disclosure to a fiduciary of
34 some or all of the user's digital assets, including the content of electronic
35 communications.

1 **3. User direction overrides.** A user's direction under subsection 1 or 2 overrides a
2 contrary provision in a terms of service agreement that does not require the user to act
3 affirmatively and distinctly from the user's assent to the terms of service.

4 **§10-105. Terms of service agreement**

5 **1. Rights of custodian or user not changed or impaired.** This Act does not
6 change or impair a right of a custodian or a user under a terms of service agreement to
7 access and use digital assets of the user.

8 **2. No new or expanded rights to fiduciary or designated recipient.** This Act does
9 not give a fiduciary or designated recipient any new or expanded rights other than those
10 held by the user for whom, or for whose estate, the fiduciary or designated recipient acts
11 or represents.

12 **3. Fiduciary's or designated recipient's access may be modified or eliminated.** A
13 fiduciary's or designated recipient's access to digital assets may be modified or eliminated
14 by a user, by federal law or by a terms of service agreement if the user has not provided
15 direction under section 10-104.

16 **§10-106. Procedure for disclosing digital assets**

17 **1. Disclosure at discretion of custodian.** When disclosing digital assets of a user
18 under this Act, the custodian may at its sole discretion:

19 A. Grant a fiduciary or designated recipient full access to the user's account;

20 B. Grant a fiduciary or designated recipient partial access to the user's account
21 sufficient to perform the tasks with which the fiduciary or designated recipient is
22 charged; or

23 C. Provide a fiduciary or designated recipient a copy in a record of any digital asset
24 that, on the date the custodian received the request for disclosure, the user could have
25 accessed if the user were alive and had full capacity and access to the account.

26 **2. Administrative charge.** A custodian may assess a reasonable administrative
27 charge for the cost of disclosing digital assets under this Act.

28 **3. Deleted digital assets.** A custodian need not disclose under this Act a digital
29 asset deleted by a user.

30 **4. Undue burden on custodian; court order to disclose.** If a user directs or a
31 fiduciary requests a custodian to disclose under this Act some, but not all, of the user's
32 digital assets, the custodian need not disclose the assets if segregation of the assets would
33 impose an undue burden on the custodian. If the custodian believes the direction or
34 request imposes an undue burden, the custodian or fiduciary may seek an order from the
35 court to disclose:

36 A. A subset limited by date of the user's digital assets;

37 B. All of the user's digital assets to the fiduciary or designated recipient;

1 C. None of the user's digital assets; or

2 D. All of the user's digital assets to the court for review in camera.

3 **§10-107. Disclosure of content of electronic communications of deceased user**

4 If a deceased user consented to or a court directs disclosure of the content of
5 electronic communications of the user, the custodian shall disclose to the personal
6 representative of the estate of the user the content of an electronic communication if the
7 representative gives the custodian:

8 **1. Written request.** A written request for disclosure in physical or electronic form;

9 **2. Death certificate.** A copy of the death certificate of the user;

10 **3. Letters of appointment or court order.** A copy of the letters of appointment of
11 the personal representative or court order;

12 **4. Record of consent to disclosure.** Unless the user provided direction using an
13 online tool, a copy of the user's will, trust, power of attorney or other record evidencing
14 the user's consent to disclosure of the content of electronic communications; and

15 **5. Information requested by custodian.** If requested by the custodian:

16 A. A number, username, address or other unique subscriber or account identifier
17 assigned by the custodian to identify the user's account;

18 B. Evidence linking the account to the user; or

19 C. A finding by the court that:

20 (1) The user had a specific account with the custodian, identifiable by the
21 information specified in paragraph A;

22 (2) Disclosure of the content of electronic communications of the user would not
23 violate 18 United States Code, Section 2701 et seq., 47 United States Code,
24 Section 222 or other applicable law;

25 (3) Unless the user provided direction using an online tool, the user consented to
26 disclosure of the content of electronic communications; or

27 (4) Disclosure of the content of electronic communications of the user is
28 reasonably necessary for administration of the estate.

29 **§10-108. Disclosure of other digital assets of deceased user**

30 Unless the user prohibited disclosure of digital assets or the court directs otherwise, a
31 custodian shall disclose to the personal representative of the estate of a deceased user a
32 catalog of electronic communications sent or received by the user and digital assets, other
33 than the content of electronic communications, of the user if the representative gives the
34 custodian:

35 **1. Written request.** A written request for disclosure in physical or electronic form;

1 **2. Death certificate.** A copy of the death certificate of the user;

2 **3. Letters of appointment or court order.** A copy of the letters of appointment of
3 the personal representative or court order; and

4 **4. Information requested by custodian.** If requested by the custodian:

5 A. A number, username, address or other unique subscriber or account identifier
6 assigned by the custodian to identify the user's account;

7 B. Evidence linking the account to the user;

8 C. An affidavit stating that disclosure of the user's digital assets is reasonably
9 necessary for administration of the estate; or

10 D. A finding by the court that:

11 (1) The user had a specific account with the custodian, identifiable by the
12 information specified in paragraph A; or

13 (2) Disclosure of the user's digital assets is reasonably necessary for
14 administration of the estate.

15 **§10-109. Disclosure of content of electronic communications of principal**

16 To the extent a power of attorney expressly grants an agent authority over the content
17 of electronic communications sent or received by the principal and unless directed
18 otherwise by the principal or the court, a custodian shall disclose to the agent the content
19 of electronic communications if the agent gives the custodian:

20 **1. Written request.** A written request for disclosure in physical or electronic form;

21 **2. Power of attorney.** An original or copy of the power of attorney expressly
22 granting the agent authority over the content of electronic communications of the
23 principal;

24 **3. Agent's certificate.** A certification by the agent, under penalty of perjury, that the
25 power of attorney is in effect; and

26 **4. Information requested by custodian.** If requested by the custodian:

27 A. A number, username, address or other unique subscriber or account identifier
28 assigned by the custodian to identify the principal's account; or

29 B. Evidence linking the account to the principal.

30 **§10-110. Disclosure of other digital assets of principal**

31 Unless otherwise ordered by the court, directed by the principal or provided by a
32 power of attorney, a custodian shall disclose to an agent with specific authority over
33 digital assets or general authority to act on behalf of a principal a catalog of electronic
34 communications sent or received by the principal and digital assets, other than the content
35 of electronic communications, of the principal if the agent gives the custodian:

1 **1. Written request.** A written request for disclosure in physical or electronic form;

2 **2. Power of attorney.** An original or a copy of the power of attorney that gives the
3 agent specific authority over digital assets or general authority to act on behalf of the
4 principal;

5 **3. Agent's certificate.** A certification by the agent, under penalty of perjury, that the
6 power of attorney is in effect; and

7 **4. Information requested by custodian.** If requested by the custodian:

8 A. A number, username, address or other unique subscriber or account identifier
9 assigned by the custodian to identify the principal's account; or

10 B. Evidence linking the account to the principal.

11 **§10-111. Disclosure of digital assets held in trust when trustee is original user**

12 Unless otherwise ordered by the court or provided in a trust, a custodian shall
13 disclose to a trustee that is an original user of an account any digital asset of the account
14 held in trust, including a catalog of electronic communications of the trustee and the
15 content of those electronic communications.

16 **§10-112. Disclosure of content of electronic communications held in trust when**
17 **trustee is not original user**

18 Unless otherwise ordered by the court, directed by the user or provided in a trust, a
19 custodian shall disclose to a trustee that is not an original user of an account the content
20 of an electronic communication sent or received by an original or successor user and
21 carried, maintained, processed, received or stored by the custodian in the account of the
22 trust if the trustee gives the custodian:

23 **1. Written request.** A written request for disclosure in physical or electronic form;

24 **2. Trust instrument or certification of trust.** A certified copy of the trust
25 instrument or a certification of the trust under Title 18-B, section 1013 that includes
26 consent to disclosure of the content of electronic communications to the trustee;

27 **3. Trustee's certification.** A certification by the trustee, under penalty of perjury,
28 that the trust exists and the trustee is a currently acting trustee of the trust; and

29 **4. Information requested by custodian.** If requested by the custodian:

30 A. A number, username, address or other unique subscriber or account identifier
31 assigned by the custodian to identify the trust's account; or

32 B. Evidence linking the account to the trust.

1 **§10-113. Disclosure of other digital assets held in trust when trustee is not original**
2 **user**

3 Unless otherwise ordered by the court, directed by the user or provided in a trust, a
4 custodian shall disclose to a trustee that is not an original user of an account a catalog of
5 electronic communications sent or received by an original or successor user and stored,
6 carried or maintained by the custodian in an account of the trust and any digital assets,
7 other than the content of electronic communications, in which the trust has a right or
8 interest if the trustee gives the custodian:

9 **1. Written request.** A written request for disclosure in physical or electronic form;

10 **2. Trust instrument or certification of trust.** A certified copy of the trust
11 instrument or a certification of the trust under Title 18-B, section 1013;

12 **3. Trustee's certification.** A certification by the trustee, under penalty of perjury,
13 that the trust exists and the trustee is a currently acting trustee of the trust; and

14 **4. Information requested by custodian.** If requested by the custodian:

15 A. A number, username, address or other unique subscriber or account identifier
16 assigned by the custodian to identify the trust's account; or

17 B. Evidence linking the account to the trust.

18 **§10-114. Disclosure of digital assets to conservator of protected person**

19 **1. Court order granting access.** After an opportunity for a hearing under Article 5,
20 Part 4, the court may grant a conservator access to the digital assets of a protected person.

21 **2. Disclosure by custodian.** Unless otherwise ordered by the court or directed by
22 the user, a custodian shall disclose to a conservator the catalog of electronic
23 communications sent or received by a protected person and any digital assets, other than
24 the content of electronic communications, in which the protected person has a right or
25 interest if the conservator gives the custodian:

26 A. A written request for disclosure in physical or electronic form;

27 B. A certified copy of the court order that gives the conservator authority over the
28 digital assets of the protected person; and

29 C. If requested by the custodian:

30 (1) A number, username, address or other unique subscriber or account identifier
31 assigned by the custodian to identify the account of the protected person; or

32 (2) Evidence linking the account to the protected person.

33 **3. Request to suspend or terminate account.** A conservator with general authority
34 to manage the assets of a protected person may request a custodian of the digital assets of
35 the protected person to suspend or terminate an account of the protected person for good
36 cause. A request made under this subsection must be accompanied by a copy of the court
37 order giving the conservator authority over the protected person's property.

1 **§10-115. Fiduciary duty and authority**

2 **1. Fiduciary's legal duties.** The legal duties imposed on a fiduciary charged with
3 managing tangible property apply to the management of digital assets, including:

- 4 A. The duty of care;
5 B. The duty of loyalty; and
6 C. The duty of confidentiality.

7 **2. Limitations on fiduciary's or designated recipient's authority.** A fiduciary's or
8 designated recipient's authority with respect to a digital asset of a user:

- 9 A. Except as otherwise provided in section 10-104, is subject to the applicable terms
10 of service agreement;
11 B. Is subject to other applicable law, including copyright law;
12 C. In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
13 D. May not be used to impersonate the user.

14 **3. Right to access.** A fiduciary with authority over the property of a decedent,
15 protected person, principal or settlor has the right to access any digital asset in which the
16 decedent, protected person, principal or settlor had a right or interest and that is not held
17 by a custodian or subject to a terms of service agreement.

18 **4. Authorized user.** A fiduciary acting within the scope of the fiduciary's duties is
19 an authorized user of the property of the decedent, protected person, principal or settlor
20 for the purpose of applicable computer fraud and unauthorized computer access laws,
21 including Title 17-A, chapter 18.

22 **5. Fiduciary's authority to access; authorized user.** A fiduciary with authority
23 over the tangible, personal property of a decedent, protected person, principal or settlor:

- 24 A. Has the right to access the property and any digital asset stored in it; and
25 B. Is an authorized user for the purpose of computer fraud and unauthorized
26 computer access laws, including Title 17-A, chapter 18.

27 **6. Disclosure of information to terminate account.** A custodian may disclose
28 information in an account to a fiduciary of a user when the information is required to
29 terminate an account used to access digital assets licensed to the user.

30 **7. Request for termination.** A fiduciary of a user may request a custodian to
31 terminate the user's account. A request for termination must be in writing, in either
32 physical or electronic form, and accompanied by:

- 33 A. If the user is deceased, a copy of the death certificate of the user;
34 B. A copy of the letters of appointment of the personal representative or court order,
35 power of attorney or trust giving the fiduciary authority over the account; and
36 C. If requested by the custodian:

1 (1) A number, username, address or other unique subscriber or account identifier
2 assigned by the custodian to identify the user's account;

3 (2) Evidence linking the account to the user; or

4 (3) A finding by the court that the user had a specific account with the custodian,
5 identifiable by the information specified in subparagraph (1).

6 **§10-116. Custodian compliance and immunity**

7 **1. Disclose or terminate upon request; court order.** Not later than 60 days after
8 receipt of the information required under sections 10-107 to 10-115, a custodian shall
9 comply with a request under this Act from a fiduciary or designated recipient to disclose
10 digital assets or terminate an account. If the custodian fails to comply, the fiduciary or
11 designated recipient may apply to the court for an order directing compliance.

12 **2. Finding that compliance not in violation.** An order under subsection 1 directing
13 compliance must contain a finding that compliance is not in violation of 18 United States
14 Code, Section 2702.

15 **3. Notification to user.** A custodian may notify the user that a request for disclosure
16 or to terminate an account was made under this Act.

17 **4. Denial of request if subsequent lawful access.** A custodian may deny a request
18 under this Act from a fiduciary or designated recipient for disclosure of digital assets or
19 to terminate an account if the custodian is aware of any lawful access to the account
20 following the receipt of the fiduciary's request.

21 **5. Court order.** This Act does not limit a custodian's ability to obtain or require a
22 fiduciary or designated recipient requesting disclosure or termination under this Act to
23 obtain a court order that:

24 A. Specifies that an account belongs to the protected person or principal;

25 B. Specifies that there is sufficient consent from the protected person or principal to
26 support the requested disclosure; and

27 C. Contains a finding required by law other than this Act.

28 **6. Immunity.** A custodian and its officers, employees and agents are immune from
29 liability for an act or omission done in good faith in compliance with this Act.

30 **§10-117. Uniformity of application and construction**

31 In applying and construing this Act, consideration must be given to the need to
32 promote uniformity of the law with respect to its subject matter among states that enact it.

33 **§10-118. Relation to Electronic Signatures in Global and National Commerce Act**

34 This Act modifies, limits or supersedes the federal Electronic Signatures in Global
35 and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not
36 modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section

1 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b)
2 of that Act, 15 United States Code, Section 7003(b).

3 **Sec. 91. 22 MRSA §1826, sub-§2, ¶I**, as amended by PL 2017, c. 402, Pt. C, §46
4 and affected by Pt. F, §1, is further amended to read:

5 I. No contract or agreement may contain a provision that provides for the payment of
6 attorney's fees or any other cost of collecting payments from the resident, except that
7 attorney's fees and costs may be collected against any agent under a power of
8 attorney who breaches the agent's duties as set forth in Title 18-C, section 5-914 or
9 against a conservator appointed under Title 18-C, section 5-404 5-404-A for breach
10 of the conservator's duties.

11 **Sec. 92. 32 MRSA §9405, sub-§1-A, ¶F**, as amended by PL 2017, c. 402, Pt. C,
12 §86 and affected by Pt. F, §1 and amended by c. 407, Pt. A, §142, is repealed and the
13 following enacted in its place:

14 F. Submits an application that contains the following, to be answered by the
15 applicant:

16 (1) Full name;

17 (2) Full current address and addresses for the prior 5 years;

18 (3) The date and place of birth, height, weight and color of eyes;

19 (4) A record of previous issuances of, refusals to issue and renew, suspensions
20 and revocations of a license to be a contract security company. The record of
21 previous refusals to issue alone does not constitute cause for refusal and the
22 record of previous refusals to renew and revocations alone constitutes cause for
23 refusal only as provided in section 9411-A;

24 (5) The following questions.

25 (a) Is there a formal charging instrument now pending against you in this or
26 any other jurisdiction for a crime that is punishable by one year or more of
27 imprisonment or for any other crime alleged to have been committed by you
28 with the use of a dangerous weapon, as defined in Title 17-A, section 2,
29 subsection 9, or of a firearm against another person?

30 (b) Is there a formal charging instrument now pending against you in this or
31 any other jurisdiction for a juvenile offense that involves conduct that, if
32 committed by an adult, would be punishable by one year or more of
33 imprisonment or for any other juvenile offense alleged to have been
34 committed by you with the use of a dangerous weapon, as defined in Title
35 17-A, section 2, subsection 9, or of a firearm against another person?

36 (c) Have you ever been convicted of a crime described in division (a) or
37 adjudicated as having committed a juvenile offense as described in division
38 (b)?

39 (d) Is there a formal charging instrument now pending against you in this
40 jurisdiction for any crime enumerated in section 9412?

1 (e) Is there a formal charging instrument now pending against you in this
2 jurisdiction for a juvenile offense that involves conduct that, if committed by
3 an adult, would be a crime enumerated in section 9412?

4 (f) Have you within the past 5 years been convicted of a crime described in
5 division (d) or adjudicated as having committed a juvenile offense as
6 described in division (e)?

7 (g) Are you a fugitive from justice?

8 (h) Are you a drug user or a person with substance use disorder?

9 (i) Do you have a mental disorder that causes you to be potentially
10 dangerous to yourself or others?

11 (j) Do you currently have a guardian or conservator who was appointed for
12 you under Title 18-C, Article 5, Part 3 or 4?

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 must identify each
18 employee by the employee's full name, full current address and addresses for the
19 prior 5 years and the employee's date and place of birth, height, weight and color
20 of eyes. For each employee on this list who will perform security guard
21 functions at the site of a labor dispute or strike, the applicant shall have
22 previously investigated the background of the employee to ensure that the
23 employee meets all of the requirements to be a security guard as contained in
24 section 9410-A, subsection 1. If the employee meets all of the requirements to be
25 a security guard, the applicant shall also submit a statement, signed by the
26 applicant, stating that the applicant has conducted this background investigation
27 and that the employee meets the requirements contained in section 9410-A,
28 subsection 1; and

29 (7) A photograph of the applicant taken within 6 months of the date the applicant
30 affixes the applicant's signature to the application; and

31 **Sec. 93. 36 MRSA §4641-D, sub-§6**, as amended by PL 2017, c. 402, Pt. C,
32 §107 and Pt. E, §6 and affected by Pt. F, §1, is repealed and the following enacted in its
33 place:

34 **6. Deed of distribution.** Any deed of distribution made pursuant to Title 18-C; and

35 **Sec. 94. Maine Revised Statutes headnote amended; revision clause.** In
36 the Maine Revised Statutes, Title 18-C, Article 5, in the article headnote, the words
37 "uniform guardianship and protective proceedings" are amended to read "Maine uniform
38 guardianship, conservatorship and protective proceedings" and the Revisor of Statutes
39 shall implement this revision when updating, publishing or republishing the statutes.

1 6. In the general provisions applicable to guardianships and conservatorships, it
2 requires that proof of notice must be filed before a hearing.

3 7. It allows a respondent, an individual subject to guardianship, conservatorship or
4 other protective arrangement or an appointed guardian or conservator to waive notice if
5 represented by an attorney.

6 8. It allows the guardian, the conservator and the individual subject to guardianship,
7 conservatorship or other protective arrangement to object to any person's request for
8 notice.

9 9. It provides that an attorney or other person providing beneficial services to the
10 respondent or individual subject to guardianship, conservatorship or other protective
11 arrangement is entitled to reasonable compensation, unless the court has made a finding
12 that the respondent is indigent.

13 10. It authorizes the court to review the reasonableness of compensation and the
14 appropriateness of services provided by an attorney for the respondent or an individual
15 subject to guardianship, conservatorship or other protective arrangement. It also
16 authorizes the court to assess attorney's fees or other costs incurred by the respondent
17 against the petitioner if the petition is dismissed and was filed in bad faith.

18 11. It provides that a guardian or conservator can petition the court to require a 3rd
19 party to recognize the authority of the guardian or conservator, as well as accept a
20 decision of the guardian or conservator. If the court finds that the refusal of a 3rd party
21 was made in bad faith and without justification, the court may charge the 3rd party for
22 attorney's fees and costs. Notice of the petition for an order to recognize the authority or
23 accept the decision of the guardian or conservator must be provided to the adult subject to
24 guardianship or conservatorship and everyone else entitled to notice.

25 12. It addresses an inconsistency and a potential constitutional infirmity in the minor
26 guardianship termination provision in Title 18-C, section 5-210, subsection 7 identified
27 by the Family Law Advisory Commission. Subsection 7 establishes the standards and
28 burdens of proof applicable to a parent's petition to terminate a minor guardianship when
29 the termination is opposed by the guardian. This bill provides that the guardian has the
30 burden of proving by clear and convincing evidence that the parent seeking to terminate
31 the guardianship is currently unfit to regain custody of the minor.

32 13. It requires the court, in determining whether to appoint a guardian, to find that
33 any appropriate supportive services, technological assistance or supportive decision
34 making provides adequate protection for the particular respondent. It adds that a less
35 restrictive alternative to guardianship must provide adequate protection for the
36 respondent.

37 14. It gives the court discretion as to whether to require the visitor to carry out
38 additional duties that are mandatory under the uniform act: interviewing the petitioner
39 and proposed guardian, visiting the respondent's present and proposed future dwelling,
40 obtaining information from health care providers and investigating allegations in the
41 petition. The visitor must report on the respondent's medical conditions, cognitive

1 functioning, everyday functioning, preferences and values. The report must also include
2 a statement as to whether the respondent wishes to attend the hearing.

3 15. It provides that if the respondent exercises the right to decline to participate in a
4 professional evaluation or refuses to provide medical reports, the court may enter an order
5 of guardianship or other protective arrangement if the court otherwise finds that there is a
6 basis for the order.

7 16. Throughout Article 5, Parts 3, 4 and 5, it provides that participation in a hearing
8 by telephone, rather than real-time audiovisual technology, is permitted only if real-time
9 audiovisual technology is not available.

10 17. In the provisions governing confidentiality of records regarding adult
11 guardianship, conservatorship and other protective arrangements, it establishes an
12 effective date of January 1, 2021 to provide sufficient time for the Supreme Judicial
13 Court to adopt rules governing the confidentiality of all court records.

14 18. It adds as potential guardians, in higher priority than another family member or
15 other individual who has exhibited special care or concern for the respondent, the
16 following categories of people, in order of priority: an adult child of the respondent; a
17 parent of the respondent, including a person nominated by will or other writing signed by
18 a deceased parent; and a relative of the respondent with whom the respondent resided for
19 more than 6 months within the 12 months prior to the filing of the petition. It also
20 provides factors for the court to consider in determining the best interest of the
21 respondent when appointing a guardian who is of lower priority or no priority, including
22 the likelihood that the potential guardian will be able to satisfy the duties of a guardian
23 successfully.

24 19. It provides that the right to vote and the right marry are automatically preserved
25 when a guardian is appointed, unless the court orders otherwise.

26 20. It deletes the requirement that the guardian give notice when the guardian is
27 unavailable to visit the person subject to guardianship for more than 2 months.

28 21. It revises the authority of a guardian to administer the assets of the individual
29 subject to guardianship from \$5,000 to \$10,000, which is consistent with the MaineCare
30 limit for countable assets.

31 22. It authorizes a guardian to receive personal effects. It specifically provides that
32 the guardian may not use funds from the estate of the adult subject to guardianship for
33 room and board that the guardian or the guardian's spouse, parent or child has furnished
34 to the adult unless a charge for the services is approved by order of the court. It expands
35 the authority of a guardian to establish or move the permanent dwelling of the adult to
36 permit such a move if it is generally set forth in the guardian's plan. It also gives a
37 guardian the authority to establish or move the permanent place of dwelling without the
38 otherwise required advance notice if the guardian has a compelling reason and subsequent
39 prompt notice is provided to the adult and persons entitled to notice. The authority of a
40 guardian to sell or surrender the lease to the primary dwelling is expanded to permit such
41 action if it is generally set forth in the guardian's plan or if notice of the proposed action is

1 given as required and no objection is filed within 14 days of the notice. It creates an
2 exception, for guardianships established prior to the July 1, 2019 effective date of Title
3 18-C, to the imposition of certain duties and restrictions of powers until an express order
4 of the court so directs the guardian.

5 23. It authorizes a guardian to restrict the access of any person upon good cause but
6 the guardian must provide immediate oral and written notice to the adult subject to
7 guardianship and notice to all others entitled to notice within 7 days of the imposition of
8 the restriction. It creates an exception, for guardianships established prior to the July 1,
9 2019 effective date of Title 18-C, to the imposition of certain duties of notice and
10 restrictions of powers until an express order of the court so directs the guardian.

11 24. It adds a requirement that the guardian's plan identify the adult's medical
12 conditions, cognitive functioning, everyday functioning and levels of supervision needed
13 for the adult subject to guardianship. With regard to revised plans, it creates a right to
14 object for all appropriate parties within 14 days of receipt of notice of the revised plan.
15 Although the court may elect to schedule a hearing on a revised plan, a revised plan may
16 be implemented without hearing 30 days after filing unless the court orders otherwise. It
17 creates an exception, for guardianships established prior to the July 1, 2019 effective date
18 of Title 18-C, to the requirement to file a revised plan until an express order of the court
19 so directs the guardian.

20 25. It gives statutory recognition of the guardian's authority to hire an agent to visit
21 on behalf of the guardian. It adds a requirement that the guardian's report include a
22 statement of fees paid to the guardian during the report year and fees still outstanding for
23 the report year. Unless there is an existing order to file annual reports, it creates an
24 exception, for guardianships established prior to the July 1, 2019 effective date of Title
25 18-C, to the requirement to file an annual report until an express order of the court so
26 directs the guardian.

27 26. It requires the court to find that any appropriate supportive services,
28 technological assistance or supported decision making provides adequate protection for
29 the particular respondent and that a less restrictive alternative to conservatorship provides
30 adequate protection for the respondent.

31 27. It revises the petition for appointment of a conservator to require a brief
32 description of the respondent's needs based on medical condition, cognitive functioning,
33 everyday financial functioning and needed levels of supervision.

34 28. It repeals Title 18-C, section 5-404, which was carried over from the former Title
35 18-A, section 5-404, and enacts Title 18-C, section 5-404-A. Section 5-404-A is derived
36 from section 404 of the Uniform Guardianship, Conservatorship and Other Protective
37 Arrangements Act and concerns an order to preserve property while a petition for
38 appointment of a conservator is pending.

39 29. It revises the duties of a visitor appointed when a petition is filed for the
40 appointment of a conservator to give the court discretion to tailor the duties in each case.
41 It also provides for the visitor to report on whether or not the respondent wishes to attend
42 the hearing after the respondent has been fully informed by the visitor.

1 30. It provides that if the respondent exercises the right to decline to participate in a
2 professional evaluation or refuses to provide medical reports, the court may enter an order
3 of conservatorship or other protective arrangement if the court otherwise finds that there
4 is a basis for the order.

5 31. It revises the priority of who may be appointed as a conservator to include an
6 adult child of the respondent, then a parent of the respondent or a person nominated in the
7 will of a deceased parent before a family member or other individual who has exhibited
8 special care and concern for the respondent. It also provides factors for the court to
9 consider in determining the best interest of the respondent when appointing a conservator
10 who is of lower priority or no priority, including the likelihood that the potential
11 conservator will be able to satisfy the duties of a conservator successfully.

12 32. It creates an exception, for conservatorships established prior to the July 1, 2019
13 effective date of Title 18-C, to the imposition of certain notice and court authorization
14 requirements until an express order of the court so directs the conservator.

15 33. It requires a bond only for estates of \$50,000 or more, although the court may
16 require a bond for an estate of less than \$50,000. It also preserves the discretionary
17 waiver of the bond requirement for a spouse in the former Title 18-A, section 5-411.

18 34. It requires that notice of any conservator's revised plan must include a statement
19 of the right of any party to object within 14 days of the receipt of notice. It gives the
20 court discretion to approve a revised plan with or without a hearing 30 days after filing
21 and authorizes a conservator to implement the revised plan 30 days after filing unless the
22 court orders otherwise. It also creates an exception, for conservatorships established prior
23 to the July 1, 2019 effective date of Title 18-C, to the requirement to file a revised plan
24 until an express order of the court so directs the conservator.

25 35. It changes the inventory provisions for conservatorship estates to a 90-day filing
26 requirement, replacing the 60-day filing requirement in the Code as enacted.

27 36. It creates an exception for conservatorships established prior to January 1, 2008
28 to the requirement to file an annual report and accounting until an express order of the
29 court so directs. The January 1, 2008 date is consistent with the provisions of former
30 Title 18-A, section 5-419, which required a private conservator appointed after January 1,
31 2008 to file an annual account with the court.

32 37. It provides that when a conservatorship terminates, property of the estate passes
33 to the individual formerly subject to conservatorship or other persons entitled to the
34 property.

35 38. It clarifies that when ordering other protective arrangements for a respondent, the
36 court must find that the respondent needs more assistance than available through
37 appropriate supportive services, technological assistance or supported decision making
38 that provides adequate protection for the respondent and that the respondent's needs
39 cannot be met by less restrictive alternatives.

1 39. It provides that the court, instead of appointing a conservator, may authorize the
2 creation, modification, amendment or revocation of a will or codicil. It also revises the
3 court's authority to restrict access to the respondent or the respondent's property by a
4 person by providing that the court must find by clear and convincing evidence that the
5 person poses a significant risk of harm to the respondent or the respondent's property.

6 40. It revises the required duties of a visitor to give the court discretion as to whether
7 to require the visitor to carry out additional duties that are mandatory under the uniform
8 act. The visitor must report on the respondent's medical conditions, cognitive
9 functioning, everyday functioning, preferences and values, risks and levels of supervision
10 needed and any means to enhance the respondent's capacity. The report must also include
11 a statement as to whether the respondent wishes to attend a hearing.

12 41. It provides that if the respondent exercises the right to decline to participate in a
13 professional evaluation or refuses to provide medical reports, the court may enter an order
14 for a protective arrangement if the court otherwise finds that there is a basis for the order.

15 42. It directs the Family Law Advisory Commission to study and provide
16 recommendations on the following matters related to the Maine Uniform Probate Code:
17 petitions for termination of parental rights in the context of adoption; competing adoption
18 petitions; and rights of contact between a minor and the former guardian when the
19 guardianship is terminated. The Family Law Advisory Commission is required to submit
20 a report, including specific recommendations for amendments to the Maine Uniform
21 Probate Code and other family law statutes, to the Joint Standing Committee on Judiciary
22 by December 1, 2019.

23 43. It enacts as new Article 10 the Maine Revised Uniform Fiduciary Access to
24 Digital Assets Act, originally enacted by Public Law 2017, chapter 359, which was
25 enacted as Article 10 of former Title 18-A.