

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1959 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES  
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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1959

state from the estate of the deceased with interest thereon. An action for the recovery of inheritance and estate taxes and interest shall lie on either of said bonds without the authority of the judge of probate. (R. S. c. 142, § 20. 1955, c. 173.)

**Effect of amendment.**—The 1955 amendment substituted, in the third sentence, the words “unless he shall find that any inheritance or estate tax due and to become due the state is reasonably secured by the

lien upon real estate” for the words “if in his judgment the amount of any bequest or distributive share of the estate may be subject to a tax as.”

**Sec. 22. Administrator appointed within 6 months.**—If, upon the decease of a person leaving an estate which may be liable to pay an inheritance tax, a will is not offered for probate or an application for administration is not made within 6 months after the date of death, or if the executor or administrator does not qualify within said period, the probate court, upon application by the state tax assessor, may appoint an administrator. Nothing shall prevent the tax assessor from petitioning for appointment within 6 months after the date of death, if in the opinion of the tax assessor such action is necessary. (R. S. c. 142, § 21. 1947, c. 354, § 7. 1959, c. 224, § 1.)

**Effect of amendment.**—The 1959 amendment added “or if the executor or administrator does not qualify within said period” after “death” in the first sentence, substi-

tuted “may” for “shall” near the end of that sentence and added the second sentence.

### Appraisal and Valuation.

#### Sec. 30. Deductions of nonresidents.

**VIII.** The federal estate tax, if any, multiplied by a fraction, the numerator of which is the value of the real and tangible personal property in Maine, subject to the federal estate tax, and the denominator the value of the gross estate, wherever situated, subject to the federal estate tax; (1959, c. 224, § 2.)

**Effect of amendment.**—The 1959 amendment substituted “subject to the federal estate tax” for “undiminished by mortgage or pledge,” added “value of the” before

“gross” and “subject to the federal estate tax” at the end of subsection VIII.

As the rest of the section was not affected by the amendment, it is not set out.

#### Sec. 33. Petition for abatement.

Applied in *Boston Safe Deposit & Trust Co. v. Johnson*, 151 Me. 152, 116 A. (2d) 656.

### Definitions and Limitations.

#### Sec. 43. Definitions.

**“Property.”**—The present definition of property in this section was enacted in like language in 1893, and is almost identical in language with the Massachusetts

Act of 1891. *Boston Safe Deposit & Trust Co. v. Johnson*, 151 Me. 152, 116 A. (2d) 656.

## Chapter 158.

### Guardians. Adoption of Persons. Change of Name.

#### Guardians for Minors.

**Cross reference.**—See c. 158-A, §§ 1-10, re Uniform Gifts to Minors Act.

**Sec. 3. Power over minor's persons and property.**

**Petition insufficient.**—A probate petition for custody of a minor child alleging merely that there is "occasion" for the ap- pointment of a guardian is insufficient under this section. *Legault v. Levesque*, 150 Me. 192, 107 A. (2d) 493.

**Guardians and Conservators for Adults.**

**Sec. 4. Appointment of guardians for adults.**—The judge of probate may appoint guardians to the following persons resident in his county, or resident out of the state, and having estate in his county, although over 21 years of age, on written application of any of their friends, relatives or creditors or of the municipal officers or overseers of the poor of the town where they reside; but when the judge is interested, either in his own right, in trust or in any other manner, or is within the 6th degree of kindred, said application shall be made to and such appointment shall be made by the judge in any adjoining county and the record of said appointment shall show why it was so made:

**I.** All persons, including those insane or of unsound mind and married women who, by reason of infirmity or mental incapacity, are incompetent to manage their own estates or to protect their rights;

**II.** Persons who, by excessive drinking, gambling, idleness or debauchery of any kind, have become incapable of managing their own affairs, or who so spend or waste their estate as to expose themselves or families to want or suffering or their towns to expense;

**III.** Convicts committed to the state prison for a term less than for life.

The judge may, on said application, appoint the husband or wife of such a person to be his or her guardian. (R. S. c. 145, § 4. 1953, c. 218, § 1. 1957, c. 216.)

**Effect of amendment.**—The 1957 amendment deleted the words "being under foreign guardianship or conservator- ship" which formerly appeared preceding the words "and having estate in his county" in the introductory paragraph.

**Powers and Duties.**

**Sec. 29. Disability of adults under guardianship; dismissal of guardian.**

Quoted in *Wattrich v. Blakney*, 151 Me. 289, 118 A. (2d) 332.

**Adoption of Persons.**

**Sec. 36. Who may adopt person.**

Cited in *Jones v. Thompson*, 151 Me. 462, 121 A. (2d) 366.

**Sec. 38. Proceedings.**

A certified copy of the birth record of the child proposed for adoption shall be presented with the petition for adoption, provided such a certified copy can be obtained or can be made available by filing a delayed birth registration. After the adoption has been decreed the register of probate shall forthwith file a certificate of adoption with the state registrar of vital statistics on a form prescribed and furnished by the state registrar of vital statistics.

The petitioners shall furnish with the petition such information as the state registrar shall require, on a form prescribed and furnished by the state registrar, and shall certify to the truth of such information.

The register of probate shall furnish such information from the official court record as the state registrar shall require and shall certify to the court action under the seal of his court.

When the state registrar shall receive a certificate of adoption, or an annulment or revocation of adoption or amendment thereof from a court for a person born outside this state he shall forward such certificate, annulment, revocation or amendment to the appropriate registration authority in the state of birth. (R. S. c. 145, § 37. 1953, c. 341. 1959, c. 291, § 11.)

**Effect of amendment.**—The 1959 amendment rewrote the second paragraph and added the third, fourth and fifth para-

graphs.

As the rest of the section was not affected by the amendment, it is not set out.

#### **Sec. 40. Legal effect of adoption of child; descent of property.**

**But this section places child, etc.**

This section by its terms makes the adopted child in relation to his adopting parents the same as a child of blood. *New England Trust Co. v. Sanger*, 151 Me. 295, 118 A. (2d) 760.

**And statute in force at time of death, etc.**

The law is settled in this state that the right to inherit property from or by an adopted person is determined by the law of descent in effect at the time of the death of the intestate. *In re Williams*, 154 Me. 88, 144 A. (2d) 116.

**But status of adoption and right of inheritance are distinguishable.**

The status of the adopted child is fixed by the law of the adoption but the adopted child's rights of inheritance shall be determined by the law of the state of inheritance. *New England Trust Co. v. Sanger*, 151 Me. 295, 118 A. (2d) 760.

**Law governing right of inheritance.**—The question whether an adopted child (irrespective of where he is adopted) can inherit and the extent of such right of inheritance will be determined, not by the law of the state where the adoption took place, but by the law of the state where the property is located, or by the law of the domicile of the decedent, as the case may be. *New England Trust Co. v. Sanger*, 151 Me. 295, 118 A. (2d) 760.

**Sec. 43. Decree of adoption annulled.** — Any judge of probate may, on petition of 2 or more persons, after notice and hearing and for good cause shown, reverse and annul any decree of the probate court in his county, whereby any child has been adopted under this chapter.

After any decree of adoption has been annulled, the register of probate shall forthwith transmit a certified copy of the annulment to the state registrar of vital statistics. (R. S. c. 145, § 41. 1959, c. 291, § 12.)

**Effect of amendment.**—The 1959 amendment deleted the words "the provisions of", formerly appearing after the word "under"

and before the word "this" in the first paragraph. It also added the second paragraph.

## **Chapter 158-A.**

### **Uniform Gifts to Minors Act.**

**Sec. 1. Definitions.**—In this chapter, unless the context otherwise requires: An "adult" is a person who has attained the age of 21 years.