

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIRST LEGISLATURE

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Legislative Document

No. 788

S. P. 274

In Senate, January 29, 1963

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary.

Presented by Senator Farris of Kennebec.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-THREE

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AN ACT Amending the Rules of Descent.

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

**Sec. 1. R. S., c. 170, § 1, amended.** Section 1 of chapter 170 of the Revised Statutes, as amended by section 1 of chapter 290 of the public laws of 1957, is further amended to read as follows:

**Sec. 1. Rules of descent.** The real estate of a person deceased intestate, being subject to the payment of debts, including a woodlot or other land used with the farm or dwelling house although not cleared and also including wild lands of which he dies seized, but excepting wild lands conveyed by him, though afterwards cleared, descends according to the following rules:

**I. Widow and issue; no issue.** If he leaves a widow and issue,  $\frac{1}{3}$  to the widow. If the deceased leaves no issue,  $\frac{1}{2}$  the whole to the widow ~~if the deceased leaves no issue, and if it appears on determination as provided in section 20-A that he and the surviving widow were living together at the time of his decease~~

**A.** And the residue of the estate determined as provided in section 20-A is \$10,000, or less, all of the real estate to the widow; or

**B.** If the residue of the estate determined as provided in section 20-A is more than \$10,000, of the real estate,  $\frac{2}{3}$  to the widow and  $\frac{1}{3}$  to the next of kin of equal degree, not beyond kin in the 2nd degree

If no kindred within the 2nd degree, the whole to the widow; and to the widower shall descend the same shares in his wife's real estate. There shall likewise descend to the widow or widower the same share in all such

real estate of which the deceased was seized during coverture, and which has not been barred or released as herein provided. In any event,  $\frac{1}{3}$  shall descend to the widow or widower free from payment of debts, except as provided in ~~section 22 of~~ chapter 163, **section 22.**

**II. Remainder, if no widow or widower.** The remainder of which he dies seized, and if no widow or widower, the whole shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation. If no child is living at the time of his death, to all his lineal descendants; equally, if all are of the same degree of kindred; if not, according to the right of representation.

**III. If no widow, widower or issue.** If no such **widow, widower or issue,** ~~the~~ **the whole** descends to his father and mother in equal shares.

**IV. If no widow, widower or issue or father; or no mother; remainder.** If no such **widow, widower or issue or father,** it descends  $\frac{1}{2}$  to his mother. If no such **widow, widower or issue or mother,** it descends  $\frac{1}{2}$  to his father. In either case, the remainder, or, if no such **widow, widower,** issue, father or mother, the whole descends in equal shares to his brothers and sisters, and when a brother or sister has died, to his or her children or grandchildren by right of representation.

**V. If no widow, widower or issue, father, brother or sister; or no mother, etc.** If no such **widow, widower or issue, father, brother or sister,** it descends to his mother. If no such **widow, widower,** issue, mother, brother or sister, it descends to his father. In either case, to the exclusion of the issue of deceased brothers and sisters.

**VI. If no widow, widower, issue, father, mother, brother or sister.** If no such **widow, widower,** issue, father, mother, brother or sister, it descends to his next of kin in equal degree; when they claim through different ancestors, to those claiming through a nearer ancestor in preference to those claiming through an ancestor more remote.

**VII. Unmarried minor.** When a minor dies unmarried, leaving property inherited from either of his parents, it descends to the other children of the same parent and the issue of those deceased; in equal shares if all are of the same degree of kindred; otherwise, according to the right of representation.

**VIII. Escheat.** If the intestate leaves no widower, widow or kindred, it escheats to the State.'

**Sec. 2. R. S., c. 170, § 14, amended.** Section 14 of chapter 170 of the Revised Statutes is amended to read as follows:

'**Sec. 14. Share of estate to which widow or widower waiving provisions of will, or when no provision made in will, entitled.** When a provision is made in a will for the widow of a testator who died after the 26th day of April, 1897, or for the widower of a testatrix who died after the first day of June, 1903, and such provision is waived ~~as aforesaid,~~ such widow or widower shall have and receive the same share of the real estate and the same distributive share of

the real and personal estate of such testator or testatrix as is provided by law in intestate estates, except that if such testator or testatrix died leaving no ~~kindred issue~~, such widow or widower shall have and receive, **by intestacy**,  $\frac{1}{2}$  the ~~same~~ share of the real estate and ~~the same~~  $\frac{1}{2}$  the distributive share of the real and personal estate of such testator or testatrix ~~as is provided by law in intestate estates of persons deceased who die leaving kindred~~. When no provision is made for his widow in the will of a testator who died after the 26th day of April, 1897, or for her widower in the will of a testatrix who died after the first day of June, 1903, such widow or widower shall likewise have and receive the same share of the real estate and the same distributive share of the real and personal estate of such testator or testatrix as is provided by law in intestate estates, except that if such testator or testatrix died leaving no ~~kindred issue~~, such widow or widower shall have and receive, **by intestacy**,  $\frac{1}{2}$  the ~~same~~ share of the real estate and ~~the same~~  $\frac{1}{2}$  the distributive share of the real and personal estate of such testator or testatrix ~~as is provided by law in intestate estates of persons deceased who die leaving kindred~~, provided such widow or widower shall within 6 months after the probate of such will file in the registry of probate written notice that she or he claims such share of the real and personal estate of such testator or testatrix. Such notice may be filed by ~~an insane~~ **a mentally ill** widow or widower by his or her guardian, or by a guardian ad litem appointed for the purpose. Any notice filed under ~~the provisions of this section or the preceding section 13~~ shall be recorded by the register of probate in the record books of the probate court where such notice is filed, but a failure to record such notice shall not in any way affect the rights of any widow or widower.'

**Sec. 3. R. S., c. 170, § 20, amended.** Section 20 of chapter 170 of the Revised Statutes, as amended by section 2 of chapter 290 of the public laws of 1957, is further amended to read as follows:

**'Sec. 20. Personal estate distributed.** The personal estate of an intestate, except that portion assigned to his widow by law and by the judge of probate, shall be applied first to the payment of his debts, funeral charges and charges of settlement; ~~and the~~. The residue shall be distributed or shall escheat by the rules provided for the distribution of real estate ~~except that in intestate estates and it having been determined by the probate court that the deceased and the surviving widow were living together at the time of his decease and that he left no issue, there shall be distributed to the widow~~

A. If the residue found by the Probate Court as provided in section 20-A, was \$10,000 or less, all of the remaining personal property, or

B. If the residue found by the Probate Court was more than \$10,000, the sum of \$10,000, and of the remaining personal property,  $\frac{1}{2}$  to the widow and  $\frac{1}{2}$  to the next of kin of equal degree, not beyond kin in the 2nd degree. If no such kindred, the whole of the remaining personal property to the widow. If the personal property is insufficient to pay said \$10,000, the deficiency shall, upon the petition of any party in interest, be paid from the sale or mortgage, in the manner provided for the payments of debts or legacies, of any interest of the deceased in real property not descending

~~to the widow as provided in section 1 which he could have conveyed at the time of his death; and the surviving husband or wife shall be permitted, subject to the approval of the court, to purchase at any such sale, notwithstanding the fact that he or she is the administrator of the estate of the deceased person. And; and to the widower shall be distributed the same share in his wife's personal property.'~~

**Sec. 4. R. S., c. 170, § 20-A repealed.** Section 20-A of chapter 170 of the Revised Statutes, as enacted by section 3 of chapter 290 of the public laws of 1957, is repealed.