

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-99)
110TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 246, L.D. 280, Bill,
"AN ACT to Clarify Appellate Procedure in Adoption Cases and
Provide Transition Provisions for Certain Guardians under the
Probate Code."

Amend the Bill by striking out all of the title and
inserting in its place the following: 'AN ACT to Clarify
Transition Provisions for Guardians under the Probate Code
and to Conform Certain Language Concerning Appellate Procedure
in Adoption Cases to the Procedures Adopted in the Probate
Code.'

Further amend the Bill by striking out everything after
the title and inserting in its place the following:

'Emergency preamble. Whereas, Acts of the Legislature
do not become effective until 90 days after adjournment unless
enacted as emergencies; and

Whereas, an oversight in the conforming amendments accompany-
ing the adoption of the Probate Code resulted in the failure
to remove certain language concerning appellate procedures in
adoption cases that was implicitly repealed by PL 1979, chapter 540,
section < > 7-B, so that adoptions are said still to be
appealable to the Supreme Court of Probate even though that
court has been abolished and even though the Probate Code provides
that such appeals are to be made to the Law Court as in other
civil actions; and

Whereas, a question has been raised as to the degree of certainty with which provision has been made that guardians appointed prior to January 1, 1981 continue to have the power to administer the estates of their wards in the dual capacity of both a guardian and a conservator under the Probate Code after January 1, 1981; and

Whereas, this uncertainty concerning the present status of guardians affects the proper and intended implementation of the new Probate Code insofar as it concerns several thousand guardians appointed prior to January 1, 1981; and

Whereas, it is necessary in the interest of justice and in order to assure proper administration and application of these laws that these clarifications be made immediately so as to eliminate any possibility of confusion and establish with certainty the meaning and effect of the Probate Code; and

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

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

Sec. 1. 18-A MRSA §8-401, sub-§(b), ¶(3), as enacted by PL 1979, c. 540, §1, is amended to read:

(3) Every personal representative including a person administering an estate of a minor or incompetent holdi.

an appointment on that date, continues to hold the appointment but has only the powers conferred by this Code and is subject to the duties imposed with respect to any act occurring or done thereafter and a guardian appointed prior to January 1, 1981 shall have the powers conferred by this Code on guardians and conservators, unless otherwise limited by the original order of appointment or subsequent court order under this Code;

Sec. 2. 19 MRSA §532-C, last ¶, as enacted by PL 1973, c. 791, §2, is amended to read:

An appeal shall lie from any ruling under this section to the ~~supreme-court-of-probate~~ Supreme Judicial Court, sitting as the law court, as in other civil actions, and no consent to the adoption of, or surrender and release for the purpose of adoption of, the illegitimate child shall be approved pending such appeal.

Sec. 3. 19 MRSA §536 is amended to read:

§536. Appeal to supreme court of probate

Any petitioner or any such child by his next friend may appeal from such decree to the ~~supreme-court-of-probate,-in-the-same-manner-and-with-the-same-effect-as-in-other-cases~~ Supreme Judicial Court, sitting as the law court, as in other civil actions, but no bond to prosecute his appeal shall be required of such child or next friend, nor costs be awarded against either.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.'

Statement of Fact

The purpose of this ^{amendment} / is set out in the emergency preamble.

Reported by the Committee on Judiciary.
Reproduced and distributed under the direction of the Clerk of the House.

3/16/81

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