

MAINE STATE LEGISLATURE

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EMERGENCY
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 280

H. P. 246

House of Representatives, January 19, 1981

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

EDWIN H. PERT, Clerk

Presented by Mr. Hobbins of Saco.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Clarify Appellate Procedure in Adoption Cases and Provide Transition Provisions for Certain Guardians under the Probate Code.

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

Whereas, 2 oversights in the adoption of the Probate Code have created certain problems in application and administration of the laws relating to appellate procedures in adoption cases and the powers of guardians appointed prior to February 1, 1981; and

Whereas, one of these oversights is a provision in the adoption law which states that adoptions are still said to be appealable to the Supreme Court of Probate after that court was abolished by the Probate Code; and

Whereas, a 2nd oversight involves several thousand guardians appointed prior to January 1, 1981, whose powers have been placed in doubt by the absence of a specific transition provision in the Probate Code; and

Whereas, it is necessary in the interest of justice and in order to insure proper administration and application of these laws that these oversights be corrected immediately; 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), ¶¶'s (5) and (6), as enacted by PL 1979, c. 540, § 1, are amended to read:

(5) Any rule of construction or presumption provided in this Code applies to instruments executed and multiple party accounts opened before the effective date unless there is a clear indication of a contrary intent; ~~and~~

(6) For an adoption decree entered before the effective date and not amended after the effective date, the child shall be the child of both the natural and adopting parents for purposes of intestate succession, notwithstanding section 2-109, subsection (1), unless the decree provides otherwise; ~~and~~

Sec. 2. 18-A MRSA § 8-401, sub-§(b), ¶ (7) is enacted to read:

(7) Guardians 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.

Sec. 3. 19 MRSA § 532-C, last ¶, as amended by PL 1975, c. 293, § 4, is further 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. 4. 19 MRSA § 536 is amended to read:

§ 536. Appeal to Supreme Judicial Court

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 bill is set out in the emergency preamble.