

# MAINE STATE LEGISLATURE

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L.D. 577

(Filing No. H- 361)

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
112TH LEGISLATURE  
FIRST REGULAR SESSION

7 HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A"  
8 to S.P. 218, L.D. 577, Bill, "AN ACT to Amend the  
9 Probate Code to Improve Guardianship and Conservator-  
10 ship Proceedings."

11 Amend the amendment in section 1, in that part  
12 designated "§5-503." in subsection (b), in the 4th  
13 line (page 1, line 34 in amendment) by inserting be-  
14 fore the underlined words "the court" the following:  
15 'unless it is indicated on the petition that the al-  
16 legedly incapacitated person will attend the hearing  
17 or unless it is demonstrated that the appointment  
18 will serve no useful purpose,' and in the 10th line  
19 (page 1, line 37 in amendment) by inserting before  
20 the words "The person" the following: 'The cost of  
21 this appointment shall be paid from the estate of the  
22 allegedly incapacitated person if the court is satis-  
23 fied sufficient funds are available.'

24 Further amend the amendment in section 1 in that  
25 part designated "§5-503." in subsection (c), in the  
26 9th and 10th lines (page 2, line 29 and 30 in amend-  
27 ment) by striking out the following: "including,  
28 but not limited to, those enumerated in section  
29 5-312," and in the 11th and 12th lines (page 2, lines  
30 31 and 32 in amendment) by striking out the follow-  
31 ing: "determine if he wishes to and inserting in its  
32 place the following: 'inquire if he wishes to attend  
33 the hearing, to' and in the 13th line (page 2, line  
34 33 in amendment) by inserting after the underlined  
35 word "or" the underlined word 'to'

36 Further amend the amendment in section 2 in that  
37 part designated "§5-304." in subsection (b), in the  
38 3rd line (page 3, line 23 in amendment) by striking  
39 out the following: "incapacitated and" and inserting  
40 in its place the following: 'incapacitated,' and in

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to S.P. 218  
L.D. 577

1 the 5th line (page 3, line 25 in amendment) by in-  
2 serting after the underlined words "and supervision"  
3 the underlined words 'of the person' and in the 3rd  
4 line from the end (page 3, line 26 in amendment) by  
5 inserting after the underlined word "person" the fol-  
6 lowing: 'and, if the allegedly incapacitated person  
7 has not attended the hearing, that an inquiry has  
8 been made as to whether he wished to attend the  
9 hearing'

10 Further amend the amendment in section 2 in that  
11 part designated "§5-304." by striking out all of sub-  
12 section (c)

13 Further amend the amendment in section 2 in that  
14 part designated "§5-304." by renumbering subsection  
15 (d) to be subsection (c)

16 Further amend the amendment in section 3, in par-  
17 agraph 3, in the last line (page 4, line 8 in amend-  
18 ment) by striking out the following: "or adult  
19 friends" and inserting in its place the following:  
20 'or, if none, an adult friend'

21 Further amend the amendment in section 4, by  
22 striking out all of subsection (b) and inserting in  
23 its place the following:

24 (b) Notice shall be served personally on the  
25 ~~alleged allegedly~~ incapacitated person, ~~and, if they~~  
26 ~~can be found within the State, on the spouse of the~~  
27 ~~alleged incapacitated person, or on an adult child of~~  
28 ~~the alleged incapacitated person if no spouse can be~~  
29 ~~found within the State, or on a parent of the inea-~~  
30 ~~pacitated person if no spouse or adult child can be~~  
31 ~~found within the State. Notice to the spouse, adult~~  
32 ~~child, or parent, if they cannot be found within the~~  
33 ~~State, shall be given as provided by court rule under~~  
34 ~~section 4-401. Waiver of notice by the person al-~~  
35 ~~leged to be incapacitated is not effective unless he~~  
36 ~~attends the hearing or his waiver of notice is con-~~

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to S.P. 218  
L.D. 577

1       firmed in an interview with the visitor. Representa-  
2       tion of the ~~alleged~~ allegedly incapacitated person by  
3       a guardian ad litem is not mandatory. The court may  
4       order that the petition and hearing notice be served  
5       by the visitor.

6       Further amend the amendment in section 5, in sub-  
7       section (c), in the 5th line (page 5, line 2 in  
8       amendment) by striking out the underlined words "the  
9       parents" and inserting in their place the following:  
10      'a parent' and in the 6th and 7th lines (page 5,  
11      lines 3 and 4 in amendment) by inserting after the  
12      underlined words "relative or" the following: ', if  
13      none,'

14      Further amend the amendment in section 6, in par-  
15      agraph (5), in the 5th line (page 5, line 15 in  
16      amendment) by striking out the following: "the or-  
17      der." and inserting in its place the following: 'the  
18      initial order or at the time of a subsequent order or  
19      as provided by court rule.'

20      Further amend the amendment in section 7, in sub-  
21      section (a), in the 7th line (page 5, line 32 in  
22      amendment) by inserting after the underlined word  
23      "or" the following: ', if none,' and in the last line  
24      (page 6, line 4 in amendment) by inserting after the  
25      following: "visitor." the following: 'The court may  
26      order that the petition and hearing notice be served  
27      by the visitor on the protected person.'

28      Further amend the amendment by striking out all  
29      of section 8

30      Further amend the amendment, in section 9, in  
31      subsection (b), in the 5th line (page 6, line 19 in  
32      amendment) by inserting after the following:  
33      "choice," the following: 'unless it is indicated on  
34      the petition that the person to be protected will at-  
35      tend the hearing or unless it is demonstrated that  
36      the appointment will serve no useful purpose,' and in

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to S.P. 218  
L.D. 577

1 the 9th line (page 6, line 23 in amendment) by in-  
2 serting after the following: "proceedings." the fol-  
3 lowing: 'The cost of this appointment shall be paid  
4 from the estate of the person to be protected if the  
5 court is satisfied sufficient funds are available.'

6 Further amend the amendment in section 10, in  
7 subsection (b-1), in the 3rd, 4th and 5th lines (page  
8 7, lines 10 to 12 in amendment) by striking out the  
9 following: "including, but not limited to, those  
10 enumerated in sections 5-424 and 5-425," and in the  
11 6th line (page 7, line 13 in amendment) by striking  
12 out the underlined word "determine" and inserting in  
13 its place the underlined word 'inquire' and in the  
14 7th line (page 7, line 14 in amendment) by inserting  
15 before the underlined word "contest" the following:  
16 'attend the hearing, to' and in the 7th line (page 7,  
17 line 14 in amendment) by inserting after the under-  
18 lined word "or" the underlined word 'to'

19 Further amend the amendment in section 10, in  
20 subsection (b-2), in the 2nd line (page 7, line 29 in  
21 amendment) by inserting after the underlined word  
22 "relevant" the following: 'and to the extent perti-  
23 nent information is reasonably available to the  
24 nominee'

25 Further amend the amendment by striking out all  
26 of section 11

27 Further amend the amendment in section 14 in that  
28 part designated "§5-419." in subsection (a), in the  
29 3rd line (page 8, line 34 in amendment) by striking  
30 out the following: "the order" and inserting in its  
31 place the following: 'the initial order or at the  
32 time of a subsequent order or as provided by court  
33 rule'

34 Further amend the amendment in section 14 in that  
35 part designated "§5-419." in subsection (b), in the  
36 first line (page 9, line 5 in amendment) by striking

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to S.P. 218  
L.D. 577

1 out the following: "vacation," and inserting in its  
2 place the following: 'vacation' and in the 2nd and  
3 3rd lines (page 9, lines 6 and 7 in amendment) by  
4 striking out the following: "hearing" and inserting  
5 in its place the following: 'hearing,' and in the 3rd  
6 line (page 9, line 7 in amendment) by striking out  
7 the following: "of the" and inserting in its place  
8 the following: 'of a' and in the next to the last  
9 line (page 9, line 16 in amendment) by striking out  
10 the following: "he has controlled" and inserting in  
11 its place the following: 'in his control'

12 Further amend the amendment by renumbering the  
13 sections to read consecutively

14 STATEMENT OF FACT

15 This amendment does the following:

16 1. Where the allegedly incapacitated person in a  
17 guardianship proceeding, or a person to be protected  
18 in a conservatorship proceeding does not have counsel  
19 of his own choice, the Probate Court need only ap-  
20 point a visitor, guardian ad litem or a counsel if  
21 the court finds that the petition does not indicate  
22 that the person will attend the hearing and that ap-  
23 pointment will serve a useful purpose. The cost of  
24 the appointment is to be paid from the estate of the  
25 person if sufficient funds exist in the estate;

26 2. A visitor, if appointed, will ask the alleg-  
27 edly incapacitated person or person to be protected  
28 if he wishes to attend the hearing;

29 3. Before appointing a guardian the Probate  
30 Court will, among other things, have to be satisfied  
31 that the allegedly incapacitated person was asked if  
32 he wished to attend the hearing if he has not at-  
33 tended;

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to S.P. 218  
L.D. 577

1           4. Notice of guardianship or conservator peti-  
2       tions must be served on a friend of the person who is  
3       the subject of the petition only if no relative of  
4       the person exists to whom notice may be given;

5           5. A guardian or conservator may be required to  
6 report back to the Probate Court at the time of the  
7 initial order, at the time of a subsequent order or  
8 as provided by court rule; and

9           6. A person nominated to serve as a conservator  
10 must file a plan with the Probate Court to show how  
11 the estate and finances of the person to be protected  
12 will be dealt with, but the plan need only include  
13 pertinent information reasonably available to the  
14 nominee.

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