

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1250
6

7 S.P. 447

In Senate, April 4, 1985

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

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Trafton of Androscoggin.

Cosponsored by Senator Chalmers of Knox, Representative Warren of
11 Scarborough and Representative Bell of Paris.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Transfer Probate Jurisdiction to
18 the Superior and District Courts.
19

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

22 Sec. 1. 4 MRSA §9-A, first ¶, as enacted by PL
23 1973, c. 675, is amended to read:

24 The Supreme Judicial Court shall have the power
25 and authority to prescribe, repeal, add to, amend or
26 modify rules of evidence with respect to any and all
27 civil actions or other proceedings, and any and all
28 proceedings in criminal cases before complaint jus-
29 tices, District Courts, ~~Probate Courts~~, Superior
30 Courts and the Supreme Judicial Court.

31 Sec. 2. 4 MRSA §57, first ¶, as amended by PL
32 1979, c. 540, §2, is further amended to read:

33 The following cases only come before the court as
34 a court of law: Cases on appeal from the Superior

1 Court or a single Justice of the Supreme Judicial
2 Court ~~or from the probate courts~~; questions of law
3 arising on reports of cases, including interlocutory
4 orders or rulings of such importance as to require,
5 in the opinion of the justice, review by the Law
6 Court before any further proceedings in the action;
7 agreed statement of facts; cases presenting a ques-
8 tion of law; all questions arising in cases in which
9 equitable relief is sought; motions to dissolve in-
10 junctions issued after notice and hearing or contin-
11 ued after a hearing; questions arising on habeas cor-
12 pus, mandamus and certiorari and questions of state
13 law certified by the federal courts. They shall be
14 marked "law" on the docket of the county where they
15 are pending, and there continued until their determi-
16 nation is certified by the clerk of the Law Court to
17 the clerk of courts of the county and the court shall
18 immediately after the decision of the question sub-
19 mitted to it make such order, direction, judgment or
20 decree as is fit and proper for the disposal of the
21 case, and cause a rescript in all civil actions,
22 briefly stating the points therein decided, to be
23 filed therein, which rescript shall be certified by
24 the clerk of the Law Court to the clerk of courts of
25 the county where the action is pending and to the Re-
26 porter of Decisions. If no further opinion is written
27 out, the reporter shall publish in the next volume of
28 reports thereafter issued the case, together with
29 such rescript, if the reporter deems the same of suf-
30 ficient importance for ~~publicaition~~ publication.

31 Sec. 3. 4 MRSA §101, as amended by PL 1983, c.
32 688, §2, and c. 825, §1, is repealed and the follow-
33 ing enacted in its place:

34 §101. Constitution of court

35 The Superior Court, as established, shall consist
36 of 17 justices and such Active Retired Justices as
37 may be appointed and serving on that court, learned
38 in the law and of sobriety of manners. The Chief
39 Justice of the Superior Court shall assign the Jus-
40 tices of the Superior Court to preside at various lo-
41 cations of the court. Whenever in the opinion of the
42 Chief Justice of the Supreme Judicial Court it be-
43 comes necessary, he may designate a Justice of the
44 Supreme Judicial Court or any Active Retired Justice

1 of the Supreme Judicial Court or of the Superior
2 Court to hold a term of that Superior Court, or may
3 designate any of such justices or a Justice of the
4 Superior Court to hold one or more sessions of the
5 court, separate from the session presided over by the
6 justice holding the regular trial term.

7 Sec. 4. 4 MRSAs §105, as amended by PL 1979, c.
8 540, §3, is further amended to read:

9 §105. Jurisdiction; powers

10 The Superior Court, exclusive of the Supreme Ju-
11 dicial Court, shall have and exercise jurisdiction
12 and have and exercise all of the powers, duties and
13 authority necessary for exercising the jurisdiction
14 in any and all matters either original or appellate,
15 which were, prior to January 1, 1930, within the ju-
16 risdiction of the Supreme Judicial Court or any of
17 the Superior Courts, whether cognizable at law or in
18 equity, except as concurrent or exclusive jurisdic-
19 tion is vested in the District Court, and except as
20 provided in Title 14, section 5301, provided that it
21 shall have and exercise none of the jurisdiction,
22 powers, duties and authority of the Supreme Judicial
23 Court sitting as a Law Court. The Superior Court
24 shall have and exercise the jurisdiction vested in it
25 by Title 18-A, section 1-302, and shall have and ex-
26 ercise jurisdiction and have and exercise all the
27 powers, duties and authority necessary for exercising
28 the jurisdiction in any and all matters which were,
29 prior to January 1, 1987, within the jurisdiction of
30 the courts of probate, except those matters vested
31 exclusively in the District Court by Title 4, section
32 152, subsection 4. A single Justice of the Supreme
33 Judicial Court shall have and exercise jurisdiction,
34 and have and exercise all of the powers, duties and
35 authority necessary for exercising the same jurisdic-
36 tion as the Superior Court, to hear and determine,
37 with his consent, any issue in a civil action in the
38 Superior Court as to which the parties have no right
39 to trial by jury or in which the right to trial by
40 jury has been waived, except actions for divorce, an-
41 nulment or separation.

42 Sec. 5. 4 MRSAs §118, as enacted by PL 1975, c.
43 383, §4, is amended by adding at the end a new para-
44 graph to read:

1 The counties shall continue to make available the
2 space and facilities provided for the Probate Court
3 and registry that they provided on December 31, 1986,
4 as needed pursuant to the determination of the Chief
5 Justice of the Superior Court.

6 Sec. 6. 4 MRSA §152, sub-§4, as repealed and re-
7 placed by PL 1983, c. 796, §1, is repealed and the
8 following enacted in its place:

9 4. Exclusive jurisdiction. Original jurisdic-
10 tion, not concurrent with that of the Superior Court,
11 of:

12 A. Mental health commitment hearings under Title
13 34-B, chapter 3, subchapter IV;

14 B. Mental retardation certification hearings un-
15 der Title 34-B, chapter 5, subchapter III;

16 C. Small claims actions under Title 14, chapter
17 738;

18 D. Adoptions under Title 19, section 531;

19 E. Name changes under Title 19, section 781;

20 F. Child protection proceedings under Title 22,
21 section 4031;

22 G. Support proceedings under Title 19, section
23 301;

24 H. Waivers of requirement of premarital medical
25 examinations under Title 22, section 1182; and

26 I. Approval of agreements for personal restraint
27 under Title 22, section 1354;

28 Sec. 7. 4 MRSA §157, sub-§1, ¶A, as repealed and
29 replaced by PL 1983, c. 863, Pt. B, §§7 and 45, is
30 amended to read:

31 A. The Governor, subject to review by the joint
32 standing committee of the Legislature having ju-
33 risdiction over judiciary and to confirmation by
34 the Legislature, shall appoint to the District

1 Court 7 9 judges at large and 15 judges. At
2 least one judge shall be appointed in each dis-
3 trict who shall be a resident of the district,
4 except that in District 3 there shall be 2 judges
5 appointed who shall be residents of the district
6 and in District 9 there shall be 2 judges ap-
7 pointed who shall be residents of the district.
8 Each District Court Judge shall have a term of
9 office of 7 years.

10 To be eligible for appointment as a District
11 Judge, a person shall be a member of the bar of
12 the State. The term "District Judge" shall in-
13 clude the Chief Judge, Deputy Chief Judge, the
14 judges appointed from the districts and the
15 judges at large.

16 Sec. 8. 4 MRSA §157-C, first ¶, as amended by PL
17 1983, c. 112, is further amended to read:

18 A Judge or an Active Retired Judge of the Dis-
19 trict Court or Administrative Court may be assigned
20 by the Chief Justice of the Supreme Judicial Court to
21 sit in the Superior Court in any county, and when so
22 directed he shall have authority and jurisdiction
23 therein as if he were a regular Justice of the Supe-
24 rior Court; and whenever the Chief Justice of the Su-
25 preme Judicial Court so directs, he may hear all mat-
26 ters and issue all orders, notices, decrees and judg-
27 ments that any Justice of the Superior Court is au-
28 thorized to hear and issue. He may also, without any
29 such direction, hear and determine any pending mat-
30 ters within the jurisdiction of the Superior Court
31 arising under Title 18-A, sections 5-102 and 5-402,
32 having in such matters authority and jurisdiction as
33 if he were a regular Justice of the Superior Court.

34 Sec. 9. 4 MRSA c. 7, sub-c.c. I and II, as
35 amended, are repealed.

36 Sec. 10. 4 MRSA §§301 to 310, as amended, are
37 repealed.

38 Sec. 11. 4 MRSA §311, as enacted by PL 1969, c.
39 434, is amended to read:

40 §311. Contracts for support

1 All contracts for support for life shall be ap-
2 proved by the Probate Superior Court in the county in
3 which the support for life is to be rendered. The
4 Probate Superior Court shall grant approval after
5 such reasonable notice as the court shall determine
6 to be appropriate, if the court shall find, after
7 hearing, that the contract is just and equitable un-
8 der all of the circumstances.

9 A contract or agreement for support for life
10 without such Probate Superior Court approval shall
11 not be received in evidence unless the person offer-
12 ing the contract or agreement shall establish by a
13 preponderance of the evidence that the contract or
14 agreement is just and equitable under all of the cir-
15 cumstances.

16 This section shall not apply to such contracts or
17 agreements between persons related within the 3rd de-
18 gree.

19 **Sec. 12. 4 MRSA §352 is repealed.**

20 **Sec. 13. 4 MRSA §451, as amended by PL 1983, c.**
21 **631, and c. 812, §10, are repealed and the following**
22 **enacted in its place:**

23 §451. Establishment

24 A Judicial Council, as established by Title 5,
25 section 12004, subsection 10, shall make a continuous
26 study of the organization, rules and methods of pro-
27 cedure and practice of the judicial system of the
28 State, the work accomplished and the results produced
29 by that system and its various parts. The council
30 shall be composed of the Chief Justice of the Supreme
31 Judicial Court, who shall also serve as chairman, the
32 Attorney General, the Chief Justice of the Superior
33 Court, the Chief Judge of the District Court, and the
34 Dean of the University of Maine School of Law, each
35 to serve ex officio, and an Active or Retired Justice
36 of the Supreme Judicial Court, one Justice of the Su-
37 perior Court, one Judge of the District Court, one
38 clerk of the judicial courts, 2 members of the bar
39 and 6 laymen, to be appointed by the Governor. The
40 appointments by the Governor shall be for such peri-
41 ods, not exceeding 4 years, as he shall determine.

1 Sec. 14. 4 MRSA §555, as repealed and replaced
2 by PL 1979, c. 663, §10, is repealed and the follow-
3 ing enacted in its place:

4 §555. Fee schedule

5 The Supreme Judicial Court may prescribe rules
6 establishing the fees of clerks of the judicial
7 courts and registers of probate.

8 Sec. 15. 4 MRSA §§751 to 756 are repealed.

9 Sec. 16. 9-B MRSA §624, as enacted by PL 1975,
10 c. 500, §1, is amended to read:

11 §624. Deposits by fiduciaries and other officials

12 An administrator, executor, assignee, guardian,
13 conservator, receiver or trustee; any court, includ-
14 ing courts of ~~probate~~ and insolvency; officers and
15 treasurers of towns, cities, counties; and savings
16 banks of this State may deposit any moneys, bonds,
17 stocks, evidences of debt or of ownership in property
18 or any personal property with a trust company; and
19 any of said courts may direct any person deriving au-
20 thority therefrom to so deposit the same.

21 Sec. 17. 13 MRSA §3062, last ¶ is amended to
22 read:

23 No transfer of such funds or conveyance of any
24 other kind of property ~~shall~~ may be made without the
25 approval of a Justice of a Superior Court ~~or the~~
26 ~~judge of probate~~ for the county in which the donor
27 resides or resided at the time of his decease, if the
28 property was acquired by gift or under any trust
29 agreement or testamentary provision.

30 Sec. 18. 14 MRSA §1211, as amended by PL 1983,
31 c. 202, §2, is further amended to read:

32 §1211. Disqualifications and exemptions from jury
33 service

34 A prospective juror is disqualified to serve on a
35 jury if he is not a citizen of the United States, 18
36 years old and a resident of the county, or is unable

1 to read, speak and understand the English language.
2 The following persons are exempt from serving as ju-
3 rors: The Governor, judges, clerks and assistant
4 clerks of courts, Secretary and Treasurer of State,
5 all officers of the United States, ~~judges of probate,~~
6 physicians and surgeons, dentists, sheriffs, counsel-
7 ors, attorneys-at-law and all persons exempt under
8 Title 37-A, section 1117.

9 Sec. 19. 14 MRSA §7561 is amended to read:

10 §7561. Liability of executors or administrators

11 If such executor or administrator, being heir or
12 devisee, commits such trespass or waste, on proof
13 thereof before the ~~judge of probate~~ Superior Court,
14 he shall be liable to the same extent as the heirs or
15 devisees. In both cases, the damages, when recovered
16 by the executor or administrator or adjudged against
17 him by the ~~judge of probate~~ Superior Court, shall be
18 accounted for in the administration account.

19 Sec. 20. 16 MRSA §551 is amended to read:

20 §551. Use of depositions

21 In trials before ~~Probate Courts,~~ arbitrators,
22 referees under Title 14, chapter 303, and county com-
23 missioners, depositions may, upon order of the tribu-
24 nal before which the matter is pending and on good
25 cause shown, be taken and used in the manner provided
26 by rule for depositions in the Superior Court. Depo-
27 sitions or affidavits may be taken in applications
28 for pensions, bounties or arrears of pay under any
29 law of the United States.

30 Sec. 21. 16 MRSA §651, as amended by PL 1979, c.
31 540, §24-B, is further amended to read:

32 §651. Rules of evidence

33 The rules of evidence in special proceedings of a
34 civil nature, such as before referees, auditors and
35 county commissioners, are the same as provided for
36 civil actions. ~~The rules of evidence in courts of~~
37 ~~probate are as provided in Title 18-A, section 1-107-~~

1 Sec. 22. 18-A MRSA §1-107, first ¶, as enacted
2 by PL 1979, c. 540, §1, is amended to read:

3 In proceedings under this Code, the rules of evi-
4 dence ~~in courts of general jurisdiction~~ applicable in
5 civil actions generally, including any relating to
6 simultaneous deaths, are applicable unless specifi-
7 cally displaced by the Code or by rules promulgated
8 under section 1-304. In addition, notwithstanding Ti-
9 tle 22, section 2707, the following rules relating to
10 determination of death and status are applicable:

11 Sec. 23. 18-A MRSA §1-201, sub-§§(5), (6) and
12 (21-A), as enacted by PL 1979, c. 540, §1, are
13 amended to read:

14 (5) "Court" means any one of the several courts
15 of probate of this State established as provided in
16 Title 4, sections 201 and 202 the Superior Court.

17 (6) "Conservator" means a person who is ap-
18 pointed by a the Court to manage the estate of a pro-
19 tected person.

20 (21-A) "Judge" means the judge of any one of the
21 several courts of probate as defined in paragraph (5)
22 a Justice of the Superior Court.

23 Sec. 24. 18-A MRSA §1-201, sub-§(36), as enacted
24 by PL 1979, c. 540, §1, is amended to read:

25 (36) "Register" means the official of the court
26 elected as provided in the Constitution of Maine or
27 appointed as provided in section 1-501, or any other
28 person performing the functions of register as pro-
29 vided in section 1-307.

30 Sec. 25. 18-A MRSA §1-303, sub-§(a), as enacted
31 by PL 1979, c. 540, §1, is amended to read:

32 (a) Where a proceeding under this Code could be
33 maintained in more than one ~~place~~ county in this
34 State, the court in which the proceeding is first
35 commenced has the exclusive right to proceed.

36 Sec. 26. 18-A MRSA §1-305, as enacted by PL
37 1979, c. 540, §1, is amended to read:

1 §1-305. Records and certified copies; judicial su-
2 pervision

3 The register shall maintain records and files and
4 provide copies of documents as provided in sections
5 1-501 through 1-511 and such further records and
6 copies as the Supreme Judicial Court may by rule pro-
7 vide. The register shall be subject to the supervi-
8 sion and authority of the judge of the court in which
9 such register serves Chief Justice of the Superior
10 Court.

11 Sec. 27. 18-A MRSA §1-306, as enacted by PL
12 1979, c. 540, §1, is repealed.

13 Sec. 28. 18-A MRSA §1-306-A is enacted to read:

14 §1-306-A. Jury trial

15 There is no right to trial by jury in any pro-
16 ceeding under this Code, except as provided by the
17 Constitution of Maine and the laws of this State and
18 the United States.

19 Sec. 29. 18-A MRSA §1-309, as enacted by PL
20 1979, c. 540, §1, is repealed.

21 Sec. 30. 18-A MRSA §1-311 is enacted to read:

22 §1-311. Oaths and acknowledgments

23 All oaths required to be taken by personal repre-
24 sentatives, trustees, guardians, conservators or by
25 any other persons in relation to any proceeding under
26 this code, or to perpetuate the evidence of the pub-
27 lication of any order of notice, may be administered
28 by the judge, register of probate or any notary pub-
29 lic. A certificate thereof, when taken out of court,
30 shall be returned into the registry of probate and
31 there filed. When any person of whom an oath is re-
32 quired, including any parent acknowledging consent to
33 an adoption, resides temporarily or permanently with-
34 out the State, the oath or acknowledgment may be
35 taken before and be certified by a notary public
36 without the State, a commissioner for the State of
37 Maine or a United States Consul.

1 Sec. 31. 18-A MRSA §1-501, as enacted by PL
2 1979, c. 540, §1, is repealed and the following en-
3 acted in its place:

4 §1-501. Appointment; salaries; copies

5 For each county, the Chief Justice of the Superi-
6 or Court shall appoint a suitable person to act as
7 register of probate for that county. If the business
8 of any county does not require the full-time service
9 of a register of probate, the Chief Justice may ap-
10 point a part-time register of probate for that coun-
11 ty.

12 Registers of probate in the several counties
13 shall receive annual salaries as determined by the
14 Chief Justice.

15 The salaries of the registers of probate shall be
16 in full compensation for the performance of all du-
17 ties required of registers of probate. They may make
18 copies of wills, accounts, inventories, petitions and
19 decrees and furnish them to persons calling for them
20 and may charge a reasonable fee for that service,
21 which shall be deemed a fee for the use of the State.
22 Exemplified copies of the record of the probate of
23 wills and the granting of administrations, guardian-
24 ships and conservatorships, copies of petitions and
25 orders of notice thereon for personal service, appeal
26 copies and the fees for abstracts and copies of the
27 waiver of wills and other copies required to be re-
28 corded in the registry of deeds shall be deemed to be
29 official fees for the use of the State.

30 Nothing in this section may be construed to
31 change or repeal any provisions of law requiring the
32 furnishing of certain copies without charge.

33 Sec. 32. 18-A MRSA §1-502, as amended by PL
34 1981, c. 40, §2, is repealed and the following en-
35 acted in its place:

36 §1-502. Duties of the register

37 The register of probate shall faithfully perform
38 all the duties of his office, pay over all money and
39 safely keep and immediately deliver all records,

1 files, papers, muniments in that office and property
2 of the county or State as required by law. Subject
3 to modification by rule or administrative order is-
4 ssued by the Supreme Judicial Court, all papers and
5 documents in any matters formerly within the juris-
6 isdiction of the courts of probate shall be filed with
7 the register.

8 **Sec. 33.** 18-A MRSA §1-503, first ¶, as enacted
9 by PL 1979, c. 540, §1, is amended to read:

10 Registers of probate shall have the care and cus-
11 tody of all files, papers and books belonging to the
12 probate office; and shall duly record all wills
13 proved, letters of administration or guardianship
14 granted, bonds approved, accounts allowed, all peti-
15 tions for distribution and decrees thereon and all
16 petitions, and decrees and licenses relating to the
17 sale, exchange, lease or mortgage of real estate, ~~all~~
18 ~~petitions and decrees relating to adoption and change~~
19 ~~of name~~; and such orders and decrees of the judge,
20 and other matters, as he directs. They shall keep a
21 docket of all probate cases and shall, under the ap-
22 propriate heading of each case, make entries of each
23 motion, order, decree and proceeding so that at all
24 times the docket will show the exact condition of
25 each case. Any register may act as an auditor of ac-
26 counts when requested to do so by the judge and his
27 decision shall be final unless appeal is taken in the
28 same manner as other probate appeals. The records may
29 be attested by the volume, and it shall be deemed to
30 be a sufficient attestation of such records, when
31 each volume thereof bears the attest with the written
32 signature of the register or other person authorized
33 by law to attest such records. The registers of pro-
34 bate may bind in volumes of convenient size original
35 inventories and accounts filed in their respective
36 offices, and when so bound and indexed, such invento-
37 ries and accounts shall be deemed to be recorded in
38 all cases where the law requires a record to be made,
39 and no further record shall be required.

40 **Sec. 34.** 18-A MRSA §1-506, as amended by PL
41 1981, c. 394, §1, is further amended to read:

42 §1-506. Deputy register of probate

1 Any register of probate in this State The Chief
2 Justice of the Superior Court may appoint a deputy
3 register of probate for the county, subject to the
4 requirements of Title 30, section 64-A. The deputy
5 may perform any of the duties prescribed by law to be
6 performed by the register of probate. His signature
7 as the deputy shall have the same force and effect as
8 the signature of the register. The deputy shall give
9 bond to the county for the faithful discharge of his
10 duties in such sum and in the same manner as the reg-
11 ister of probate. The deputy register shall act as
12 register in the event of a vacancy or absence of the
13 register, until the register resumes his duties or
14 another is qualified as register. The deputy register
15 shall receive an annual salary as established by the
16 register and approved by the county commissioners de-
17 termined by the Chief Justice.

18 In case of the absence of the register in any
19 county where no deputy has been appointed as above
20 authorized, or a vacancy in the office of register of
21 probate due to death, resignation or any other cause,
22 the judge Chief Justice shall appoint a suitable per-
23 son to act as register pro tempore until the register
24 resumes his duties or another is qualified as regis-
25 ter. He shall be sworn and, if the judge requires it,
26 give bond as in the case of the register.

27 Sec. 35. 18-A MRSA §1-508, as enacted by PL
28 1979, c. 540, §1, is amended to read:

29 §1-508. Register incapable or neglects duties

30 When a register is unable to perform his duties
31 or neglects them, the judge shall certify such that
32 inability or neglect to the county treasurer Chief
33 Justice of the Superior Court, the time of its com-
34 mencement and termination, and what person has per-
35 formed the duties for the time. Such person shall be
36 paid by the treasurer in proportion to the time that
37 he has served and the amount shall be deducted from
38 the register's salary.

39 Sec. 36. 18-A MRSA §1-510, as amended by PL
40 1981, c. 470, Pt. A, §42, is repealed.

41 Sec. 37. 18-A MRSA §1-510-A is enacted to read:

1 §1-510-A. Counseling; conflict of interest

2 (a) No register or deputy register of probate
3 may engage in the practice of law, nor shall he act
4 as a counselor in or out of court in the drafting of
5 any document or paper which he is by law required to
6 record; provided that nothing in this section may be
7 deemed to preclude any register or deputy register of
8 probate from rendering assistance of a general nature
9 to the bar or public in the ordinary course of his
10 duties.

11 (b) No register or deputy register of probate
12 may serve as personal representative, guardian, or
13 conservator of the estate, person or property of any
14 person unless that person is a member of his family;
15 nor may he commence or conduct, either personally or
16 by an agent, any matter in, or serve as trustee of
17 any trust which comes before, the court in the county
18 where he is register or deputy register. The phrase
19 "member of his family," as used in this subsection,
20 includes a spouse, child, grandchild, parent, grand-
21 parent or other relative with whom the register or
22 deputy register maintains a close personal relation-
23 ship. Whenever a register or deputy register serves
24 as personal representative, guardian or conservator
25 for a member of his family, or as a trustee of any
26 trust which comes or might come before the court in
27 the county where he is register or deputy register,
28 the matter shall be transferred to, or brought in,
29 the court in any county other than the county where
30 he is register or deputy register.

31 (c) If any register or deputy register of pro-
32 bate has or may have any beneficial interest in any
33 estate or other matter instituted in the court in the
34 county in which he is register or deputy register,
35 the proceedings shall be conducted in the Superior
36 Court in any adjoining county.

37 Sec. 38. 18-A MRSA §1-511, as enacted by PL
38 1979, c. 540, §1, is amended to read:

39 §1-511. Fees for approved blanks and forms

40 For all approved blanks, forms or schedule paper
41 required in probate ~~court~~ proceedings, the register

1 shall charge fees which shall be set by the register
2 and approved by the county commissioners, so as not
3 to incur a loss to the county for such services in an
4 amount determined under rules prescribed by the Su-
5 preme Judicial Court. Such These fees shall be pay-
6 able by the register to the county treasurer Treasur-
7 er of State for the use and benefit of the county
8 State.

9 Sec. 39. 18-A MRSA §1-601, as enacted by PL
10 1979, c. 540, §1, is amended to read:

11 §1-601. Costs in contested cases

12 In contested cases ~~in the original or appellate~~
13 ~~court of probate~~ under this Code, costs may be al-
14 lowed to either party, including reasonable witness
15 fees, cost of depositions, hospital records or medi-
16 cal reports and attorney's fees, to be paid to either
17 or both parties, out of the estate in controversy, as
18 justice requires. In those cases where a will is be-
19 ing contested on the grounds of undue influence or
20 mental capacity, attorney's fees and costs shall not
21 be allowed to the party contesting the will if he is
22 unsuccessful.

23 Sec. 40. 18-A MRSA §1-602, as amended by PL
24 1983, c. 262, §1, is repealed.

25 Sec. 41. 18-A MRSA §1-603, as amended by PL
26 1981, c. 40, §3, is repealed and the following en-
27 acted in its place:

28 §1-603. Registers to account monthly for fees

29 Registers of probate shall account monthly under
30 oath to the Treasurer of State for all fees received
31 by them or payable to them by virtue of the office,
32 specifying the items, and shall pay the whole amount
33 of the fees to the Treasurer of State at such times
34 and in such manner as the Chief Justice of the Supe-
35 rior Court or his designee shall from time to time
36 specify.

37 Sec. 42. 18-A MRSA §1-604, as enacted by PL
38 1979, c. 540, §1, is amended to read:

1 §1-604. Expenses of partition

2 When a partition of real estate is made by order
3 of a judge of probate, the expenses thereof shall be
4 paid by the parties interested in proportion to their
5 interests; but when such expenses accrue prior to the
6 closing order or statement of the personal representa-
7 tive of the deceased owner of such real estate,
8 having in his hands sufficient assets for the pur-
9 pose, he may pay such expenses and allow the same in
10 his account. In case of neglect or refusal of any
11 person liable to pay such expenses, the judge may is-
12 sue a warrant of distress against such delinquent for
13 the amount due from him and costs of process.

14 Sec. 43. 18-A MRSa §§1-605 and 1-606, as enacted
15 by PL 1979, c. 540, §1, are repealed.

16 Sec. 44. 18-A MRSa §3-106, as enacted by PL
17 1979, c. 540, §1, is amended to read:

18 §3-106. Proceedings within the jurisdiction of
19 court; service; jurisdiction over persons

20 In proceedings ~~within the exclusive jurisdiction~~
21 ~~of the court~~ under this Code where notice is required
22 by this Code or by rule, and in proceedings to
23 contrue probated wills or determine heirs which con-
24 cern estates that have not been and cannot now be
25 opened for administration, interested persons may be
26 bound by the orders of the court in respect to prop-
27 erty in or subject to the laws of this State by no-
28 tice in conformity with section 10401. An order is
29 binding as to all who are given notice of the pro-
30 ceeding though less than all interested persons are
31 notified.

32 Sec. 45. 18-A MRSa §5-403, as enacted by PL
33 1979, c. 540, §1, is amended to read:

34 §5-403. Venue

35 Venue for proceedings under this Part is:

36 (1) In the ~~place~~ county in this State where the
37 person to be protected resides whether or not a
38 guardian has been appointed in another place; or

1 (2) If the person to be protected does not re-
2 side in this State, in any ~~place~~ county where he
3 has property.

4 Sec. 46. 18-A MRSA §5-611, as enacted by PL
5 1979, c. 540, §1, is amended to read:

6 §5-611. Bond

7 The public guardian or conservator shall not be
8 required to file bonds in individual guardianships or
9 conservatorships, but shall give a surety bond for
10 the joint benefit of the wards or protected persons
11 placed under the responsibility of the public guardi-
12 an or conservator and the State of Maine, with a
13 surety company or companies authorized to do business
14 within the State, in an amount not less than the to-
15 tal value of all assets held by the public guardian
16 or conservator, which amount shall be computed at the
17 end of each state fiscal year and approved by the
18 judge of the probate court for Kennebec County Chief
19 Justice of the Superior Court. At no time shall the
20 bond of each of the public guardians or conservators
21 be less than \$500 respectively.

22 Sec. 47. 18-A MRSA §5-612, sub-§(b), as enacted
23 by PL 1979, c. 540, §1, is amended to read:

24 (b) The public guardian or conservator of an in-
25 capacitated person in need of protective services
26 shall not receive any compensation, profit or benefit
27 from a ward or protected person or from any other
28 source for service as public guardian or conservator.
29 Any personal expenditures made on the ward's or pro-
30 tected person's behalf by the public guardian or con-
31 servator shall, when properly evidenced, be reim-
32 bursed out of the ward's or protected person's es-
33 tate. Claims for services rendered by state agencies
34 shall be submitted to the ~~probate~~ judge for approval
35 before payment.

36 Sec. 48. 18-A MRSA §7-101, as enacted by PL
37 1979, c. 540, §1, is amended to read:

38 §7-101. Registration of trusts

1 The trustee of a trust having its principal place
2 of administration in this State may register the
3 trust in the court of ~~this State at~~ the county of the
4 principal place of administration. Unless otherwise
5 designated in the trust instrument, the principal
6 place of administration of a trust is the trustee's
7 usual place of business where the records pertaining
8 to the trust are kept, or at the trustee's residence
9 if he has no such place of business. In the case of
10 cotrustees, the principal place of administration, if
11 not otherwise designated in the trust instrument, is
12 (1) the usual place of business of the corporate
13 trustee if there is but one corporate cotrustee, or
14 (2) the usual place of business or residence of the
15 individual trustee who is a professional fiduciary if
16 there is but one such person and no corporate co-
17 trustee, and otherwise (3) the usual place of busi-
18 ness or residence of any of the cotrustees as agreed
19 upon by them. The right to register under this Part
20 does not apply to the trustee of a trust if registra-
21 tion would be inconsistent with the retained juris-
22 diction of a foreign court from which the trustee
23 cannot obtain release.

24 Sec. 49. 18-A MRSA §7-201, sub-§(a), as enacted
25 by PL 1979, c. 540, §1, is amended to read:

26 (a) The court has jurisdiction ~~concurrent with~~
27 ~~the Superior Court~~ of proceedings initiated by inter-
28 ested parties concerning the internal affairs of
29 trusts. Proceedings which may be maintained under
30 this section are those concerning the administration
31 and distribution of trusts, the declaration of rights
32 and the determination of other matters involving
33 trustees and beneficiaries of trusts. These include,
34 but are not limited to, proceedings to:

35 (1) Appoint or remove a trustee including a suc-
36 cessor trustee, and to vest property held in
37 trust by a trustee in a successor trustee;

38 (2) Review trustees' fees and to review and set-
39 tle interim or final accounts;

40 (3) Ascertain beneficiaries, determine any ques-
41 tion arising in the administration or distribu-
42 tion of any trust including questions of con-

1 instruction of trust instruments, to instruct
2 trustees, and determine the existence or nonexist-
3 ence of any immunity, power, privilege, duty or
4 right; and

5 (4) Release registration of a trust.

6 §7-202. Trust proceedings; venue

7 Venue for proceedings under section 7-201 involv-
8 ing registered trusts is in the county of the place
9 of registration. Venue for proceedings under section
10 7-201 involving trusts not registered in this State
11 is in any place where the trust properly could have
12 been registered, and otherwise by the rules of civil
13 procedure.

14 Sec. 50. 18-A MRSA §7-204, as enacted by PL
15 1979, c. 540, §1, is amended to read:

16 §7-204. Court; jurisdiction of litigation involving
17 trusts and 3rd parties

18 The court of the place in which the trust is reg-
19 istered has ~~concurrent~~ jurisdiction with other courts
20 of this State of actions and proceedings to determine
21 the existence or nonexistence of trusts created other
22 than by will, of actions by or against creditors or
23 debtors of trusts, and of other actions and proceed-
24 ings involving trustees and 3rd parties. Venue is de-
25 termined by the rules generally applicable to civil
26 actions.

27 Sec. 51. 18-A MRSA §7-502, as enacted by PL
28 1979, c. 540, §1, is amended to read:

29 §7-502. Court accountings

30 Unless ordered by decree of the ~~Superior Court~~
31 court, the bank or trust company operating such com-
32 mon trust funds is not required to render a court ac-
33 counting with regard to such funds; but it, as ac-
34 countant, may by petition to the ~~Superior Court or~~
35 the probate court, in the county where the accountant
36 has its principal place of business, secure approval
37 of such accounting on such conditions as the court

1 may establish. Whenever a petition for the allowance
2 of such an account is presented, the court having ju-
3 risdiction thereof shall assign a time and place for
4 hearing and shall cause public notice thereof to be
5 given, meaning thereby notice published 3 weeks suc-
6 cessively in a newspaper published in the county
7 whose court has jurisdiction. In addition thereto
8 said court shall, except to such extent as the sever-
9 al instruments creating the trusts participating in
10 such common trust fund provide otherwise, order per-
11 sonal notice upon all known beneficiaries of the par-
12 ticipating trust estates who have a place of resi-
13 dence known to the accountant. Personal notice to
14 known beneficiaries having a place of residence known
15 to the accountant shall denote service by a written
16 notice deposited in the mails addressed to each such
17 known beneficiary at such known place of residence at
18 least 14 days before the time of hearing, or by a
19 written notice either in hand or left at such known
20 place of residence 14 days at least before the time
21 of hearing. The method of service and the form of
22 such notice shall be as the court shall order. "Place
23 of residence known to the accountant" as used in this
24 section shall include only places of residence actu-
25 ally known to the accountant, and shall not include
26 residences which could be discovered upon investiga-
27 tion but which do not in the due course of business
28 come to the actual knowledge of the accountant. The
29 allowance of such an account shall be conclusive as
30 to all matters shown therein upon all persons then or
31 thereafter interested in the funds invested in said
32 common trust funds.

33 Sec. 52. 18-A MRSA §8-101, as enacted by PL
34 1979, c. 540, §1, is amended to read:

35 §8-101. Estates of absentees

36 If a person entitled to or having an interest in
37 property within the jurisdiction of the State has
38 disappeared or absconded from the place within or
39 without the State where he was last known to be, and
40 has no agent in the State, and it is not known where
41 he is, or if such person, having a spouse or minor
42 child dependent to any extent upon him for support,
43 has thus disappeared or absconded without making suf-
44 ficient provision for such support, and it is not

1 known where he is, or, if it is known that he is
2 without the State, anyone who would under the law of
3 the State be entitled to administer upon the estate
4 of such absentee if he were deceased, may file a pe-
5 tition under oath in the probate court ~~for~~ in the
6 county where such property is situated or found,
7 stating the name, age, occupation and last known res-
8 idence or address of such absentee, the date and cir-
9 cumstances of the disappearing or absconding, and the
10 names and residences of other persons, whether mem-
11 bers of such absentee's family or otherwise, of whom
12 inquiry may be made, and containing a schedule of the
13 property, real and personal so far as known, and its
14 location within the State, and praying that such
15 property may be taken possession of, and a receiver
16 thereof appointed under this Part.

17 Sec. 53. 18-A MRSA §8-304, as enacted by PL
18 1979, c. 540, §1, is amended to read:

19 §8-304. Approval of bond by judge

20 Except as otherwise provided by ~~section~~ sections
21 3-603 ~~through~~ to 3-606, 4-204, 4-207, 5-411, 5-412,
22 5-432 and 7-304, no bond required to be given to the
23 judge ~~of probate~~ or to be filed ~~in the probate office~~
24 with the register is sufficient until it has been ex-
25 amined by the judge and his approval written thereon.

26 Sec. 54. 18-A MRSA §8-308, as enacted by PL
27 1979, c. 540, §1, is amended to read:

28 §8-308. Reduction of penal sum where signed by sure-
29 ty company

30 If a surety company becomes surety on a bond
31 given to a judge ~~of probate~~, the court may, upon pe-
32 tition of any party in interest and after due notice
33 to all parties interested, reduce the penal sum in
34 which the principal and surety shall be liable for a
35 violation thereafter of the conditions of ~~said~~ that
36 bond.

37 Sec. 55. 18-A MRSA §8-309, as enacted by PL
38 1979, c. 540, §1, is amended to read:

39 §8-309. Actions on bonds

1 Actions or proceedings on probate bonds of any
2 kind payable to the judge may be commenced by any
3 person interested in the estate or other matter for
4 which the bond was given, ~~either in the probate court~~
5 ~~in which the bond was filed or in the Superior Court~~
6 ~~of in~~ that county.

7 Sec. 56. 18-A MRSA §8-313, as enacted by PL
8 1979, c. 540, §1, is amended to read:

9 §8-313. Judicial authorization of actions

10 The judge ~~of probate~~ may expressly authorize or
11 instruct a personal representative or other fiduciary,
12 on the complaint of himself or any interested
13 person, to commence an action on the bond for the
14 benefit of the estate. Nothing herein shall be deemed
15 to limit the power or duty of a successor fiduciary
16 to bring such proceedings as they are authorized to
17 bring without express court authorization under section
18 3-606, subsection (a), paragraph (4); section
19 5-412, subsection (a), paragraph (3); section 7-304
20 or as otherwise provided by law.

21 Sec. 57. 19 MRSA §301, sub-§1, as enacted by PL
22 1979, c. 668, §3, is amended to read:

23 1. Petition. If a parent, spouse or child ~~reside~~
24 resides in this State, the parent or spouse, a guardian
25 or a municipality providing maintenance may petition
26 the ~~Superior~~, District ~~or Probate~~ Court to order
27 a nonsupporting parent or spouse to contribute to the
28 support of his spouse or child. The petition may be
29 brought in the court in the county or district where
30 the parent, spouse or child ~~reside~~ resides or in the
31 county or district in which the nonsupporting parent
32 or spouse may be found.

33 Sec. 58. 19 MRSA §531, as amended by PL 1983, c.
34 262, §3, is further amended to read:

35 §531. Persons who may adopt

36 Any husband and wife jointly, or any unmarried
37 person, resident or nonresident of the State, may petition
38 the ~~Probate~~ District Court to adopt a person,
39 regardless of age, and for a change of his name. The

1 fee for filing the petition shall be ~~10~~ determined
2 by rules prescribed by the Supreme Judicial Court.
3 Jurisdiction to grant the adoption and change of name
4 shall be in the county where the person to be adopted
5 lives or the county where the petitioner resides or
6 the petitioners reside or in the county in which the
7 placing agency having custody of the child is lo-
8 cated.

9 Sec. 59. 19 MRSA §532, sub-~~§~~4, as enacted by PL
10 1979, c. 391, is amended to read:

11 4. Consent given before a Judge of the District
12 Court. Except as provided in subsection 5, consent
13 shall be given in front of a judge of probate Judge
14 of the District Court. Before consent is given, the
15 judge shall fully explain the effect of that consent,
16 and shall make a determination that the consent is
17 freely the knowledgeably given.

18 Sec. 60. 19 MRSA §532-A, as amended by PL 1979,
19 c. 325, §2, is further amended to read:

20 §532-A. Surrender and release

21 The parents or surviving parent of a child, or,
22 if the child is illegitimate, the mother or the moth-
23 er and putative father if the judge so requires under
24 section 532-C, with the approval of ~~the judge of~~
25 probate a Judge of the District Court of any county
26 within the State and after a determination by ~~such~~
27 that judge of probate that a surrender and release is
28 for the best interest of all parties, may surrender
29 and release all parental rights or interests in and
30 to such child and the custody and control thereof to
31 a child placing agency duly licensed in Maine or to
32 the State Department of Human Services for the pur-
33 pose of enabling such licensed child placing agency
34 or State Department of Human Services to have such
35 child adopted by some suitable person, and its name
36 changed when a change is desirable, and the child
37 made an heir at law under this chapter. The effect
38 of this surrender and release shall be fully ex-
39 plained by the judge ~~of probate~~ to the parent or par-
40 ents executing the same. The surrender and release
41 approved as aforesaid shall be filed with the peti-
42 tion of adoption of the child in the ~~probate court~~

1 District Court. The surrender and release shall be
2 executed in triplicate; one of the copies shall be
3 filed in the court in which it is executed and the
4 original and other copy shall be given to the trans-
5 feree thereunder.

6 Sec. 61. 19 MRSA §532-C, as amended by PL 1983,
7 c. 772, §§1 and 2, is further amended to read:

8 §532-C. Notice

9 When the mother of an illegitimate child wishes
10 to consent to the adoption of the child or execute a
11 surrender and release for the purpose of adoption of
12 the child and the putative father has not consented
13 to the adoption of the child or joined in a surrender
14 and release for the purpose of adoption of the child,
15 or waived his right to notice, the mother must first
16 file an affidavit with ~~the judge of probate~~ a Judge
17 of the District Court so that the judge may determine
18 whether the putative father of the child must be
19 given notice of the proceedings.

20 If the judge finds from the affidavit of the
21 mother that the putative father's whereabouts are
22 known and that the putative father is named in the
23 birth record, or that he is currently providing or
24 has attempted to provide support for the child, or
25 that he is currently involved in or has attempted to
26 become involved in a family relationship with the
27 child, the judge shall order that notice of the
28 mother's intent to consent to adoption or to execute
29 a surrender and release for the purpose of adoption
30 of the child be given to the putative father of the
31 child in such manner as the judge deems proper. In
32 all other cases, the mother shall be the only person
33 required to consent or to execute a surrender and re-
34 lease for the purpose of adoption of the child.

35 If the judge finds that the putative father has
36 waived his right to notice in a document acknowledged
37 before a notary public or a ~~judge of probate~~ Judge of
38 the District Court, which document must indicate that
39 the putative father understands the consequences of
40 the waiver of notice, the judge shall rule that only
41 the mother of the illegitimate child must consent to
42 the adoption of the child or execute a surrender and

1 release for the purpose of adoption of the child. The
2 notary public may not be an attorney representing ei-
3 ther the mother or the possible transferee.

4 The mother is entitled to legal counsel for any
5 hearing held pursuant to this section. The putative
6 father, if he is entitled to notice under this sec-
7 tion, is entitled to legal counsel for any hearing
8 held pursuant to this section. If the mother or the
9 putative father wants an attorney but is unable to
10 afford one, he or she may request the court to ap-
11 point legal counsel. The court, if it finds either or
12 both of them indigent, shall appoint and pay the rea-
13 sonable costs and expenses of the legal counsel of
14 either or both of them.

15 If, after notice, the putative father of the
16 child wishes to establish parental rights to the
17 child, he must, within 20 days after notice has been
18 given or within such longer period as the judge may
19 require by order, petition the judge of probate a
20 Judge of the District Court to grant to him the ex-
21 clusive care and custody of the illegitimate child.
22 The petition shall include an allegation that the
23 putative father is in fact the natural father of the
24 child. The judge shall then fix a date for a hearing
25 for the purpose of determining the putative father's
26 parental rights to the child. Counsel, who shall not
27 also represent the putative father, the mother or the
28 potential transferee, shall be appointed to represent
29 the child and to protect the child's interests. No-
30 tice of the hearing shall be given to the putative
31 father, the mother, counsel for the child and to any
32 other parties the judge deems appropriate. Upon order
33 of the court, the Department of Human Services shall,
34 either through its own workers or through a duly li-
35 censed child placing agency, furnish studies and re-
36 ports relevant to proceedings hereunder.

37 If, after a hearing, the judge finds that the
38 putative father is the natural father but that, based
39 on clear and convincing evidence, that parent is un-
40 willing or unable to protect the child from jeopardy
41 and these circumstances are unlikely to change within
42 a time which is reasonably calculated to meet the
43 child's needs, or has abandoned the child, or has
44 been unwilling or unable to take responsibility for

1 the child within a time which is reasonably calcu-
2 lated to meet the child's needs, he shall rule, if it
3 appears to be in the best interest of the child, that
4 the natural father has not established parental
5 rights to that child and has abandoned the child, and
6 that only the mother of the illegitimate child must
7 consent to the adoption of that child or execute a
8 surrender and release for the purpose of adoption of
9 that child.

10 If the judge finds that the putative father is
11 the natural father and that he is willing and able to
12 protect the child from jeopardy, and has not aban-
13 doned the child, and is willing and able to take re-
14 sponsibility for the child, he may rule, if it ap-
15 pears to be in the best interest of the child, that
16 the natural father has established parental rights to
17 that child. The natural father may then either con-
18 sent to the adoption of the child or execute a sur-
19 render and release for the purpose of adoption of the
20 child. If the natural father will not either consent
21 to the adoption of the child or execute a surrender
22 and release for the purpose of adoption of the child,
23 the judge may grant the exclusive care and custody of
24 the child to the natural father.

25 If the judge ~~of probate~~ finds that the putative
26 father of the child has not petitioned or appeared
27 within the required period as set out in this sec-
28 tion, he shall rule that the putative father has no
29 parental rights and that only the mother of the child
30 must consent to the adoption of that child or execute
31 a surrender and release for the purpose of adoption
32 of that child.

33 A record of any decree rendered or order entered
34 pursuant to this section shall be entered into the
35 records of the court, and a copy of such decree or
36 order shall be attached to the petition for adoption
37 filed with the court. All such records shall be sub-
38 ject to the same standards of confidentiality relat-
39 ing to adoption records set out in section 534.

40 An appeal shall lie from any ruling under this
41 section ~~to the Supreme Judicial Court, sitting as the~~
42 ~~Law Court, as in other civil actions as in other civ-~~
43 il cases, and no consent to the adoption of, or sur-

1 render and release for the purpose of adoption of,
2 the illegitimate child shall be approved pending such
3 appeal.

4 Sec. 62. 19 MRSA §534, first ¶ is amended to
5 read:

6 All ~~probate court~~ District Court and Probate
7 Court records relating to any adoption decreed on or
8 after August 8, 1953, are declared to be confidential.
9 The ~~probate courts~~ District Court shall keep
10 the records of ~~such~~ those adoptions segregated from
11 all other court records. ~~Such~~ Those adoption records
12 may be examined only upon authorization by ~~the judge~~
13 of the probate court a Judge of the District Court.
14 In any case where it is considered proper that ~~such~~
15 the examination be authorized, the judge may in lieu
16 of ~~such~~ the examination, or in addition thereto,
17 grant authority to the register of probate to disclose
18 any information contained in ~~such~~ the records
19 by letter, certificate or copy of the record.

20 Sec. 63. 19 MRSA §538, first ¶ is amended to
21 read:

22 Any ~~judge of probate~~ Judge of the District Court
23 may, on petition of 2 or more persons, after notice
24 and hearing and for good cause shown, reverse and annul
25 any decree of the District Court or Probate Court
26 in his county, whereby any child has been adopted under
27 this chapter.

28 Sec. 64. 19 MRSA §781, as amended by PL 1983, c.
29 262, §4, is further amended to read:

30 §781. Petition in District Court

31 If a person desires to have his name changed, he
32 may petition ~~the judge of probate~~ a Judge of the District
33 Court in the county where he resides; or, if he
34 is a minor, his legal custodian may petition in his
35 behalf, and the judge, after due notice, may change
36 the name of the person and shall make and preserve a
37 record thereof. The fee for filing the petition
38 shall be ~~§10~~ determined by rules prescribed by the
39 Supreme Judicial Court.

1 Sec. 65. 22 MRSA §1182, as amended by PL 1971,
2 c. 330, §4, is further amended to read:

3 §1182. Waiver in emergency

4 Because of emergency or other cause shown by af-
5 fidavit or other proof, any ~~Justice of the Superior~~
6 ~~Court, judge of probate or~~ Judge of a District Court,
7 if satisfied that the public health and welfare will
8 not be injuriously affected thereby, may make an or-
9 der, in his discretion, on joint application of both
10 of the parties desiring the marriage license, dis-
11 pensing with the requirements of section 1181 as to
12 either or both of the parties, including the labora-
13 tory statement, or, if the statement or statements
14 provided for by such section have been filed, extend-
15 ing the 30-day period following the examination and
16 test and extending the 60-day period of validity of
17 any certificate to not later than a day specified,
18 which shall be not more than 90 days after the exami-
19 nation and test. Payment of a \$12 application fee
20 shall be made at the time application for such a
21 waiver is made. The order shall be accompanied by a
22 memorandum in writing of the said justice or judge
23 reciting his reasons for granting the order. Applica-
24 tion for such extension may be made before or on the
25 expiration of such 30-day period. The order and the
26 accompanying memorandum shall be filed with the town
27 or city clerk, and he then shall accept and consider
28 application for the marriage license without the pro-
29 duction or filing of any of the physician's state-
30 ments dispensed with by the order, or shall accept
31 and consider the application within any such extended
32 period, as the case may be. The clerk shall hold such
33 memorandum of a judge or justice in absolute confi-
34 dence.

35 Sec. 66. 22 MRSA §1354, as amended by PL 1973,
36 c. 582, §5, is further amended to read:

37 §1354. Agreement for personal restraint

38 Before any restraint shall be imposed under the
39 authority of section 1353, a voluntary agreement
40 shall be made in writing by the person suffering from
41 the effects of the use of an opiate, cocaine, chloral
42 hydrate, other narcotic or barbiturate, to the impo-

1 sition of restraint upon his actions, if necessary,
2 and such agreement must be witnessed by the husband,
3 wife or parent of the person aforesaid, or one of the
4 municipal officers of the city or town in which the
5 person, so suffering, is a resident, and approved,
6 after reasonable notice, by a ~~Justice of the Superior~~
7 ~~Court or the judge of probate~~ Judge of the District
8 Court in the county where the patient resides.

9 Sec. 67. 22 MRSA §1355 is amended to read:

10 §1355. Progress investigation

11 Any ~~Justice of the Superior Court or the judge of~~
12 ~~probate~~ Judge of the District Court in the county
13 where the patient resides may, at his discretion, re-
14 quire the department, or one of the county examiners
15 of insane criminals, to investigate as to the
16 progress of any such case, and, upon his or its cer-
17 tificate that further restraint is unnecessary, may
18 annul the agreement and the person restrained shall
19 be immediately released upon the order of ~~said~~
20 justice that judge.

21 Sec. 68. 22 MRSA §1819 is amended to read:

22 §1819. Investment of hospital trust funds

23 Hospitals may treat any 2 or more trust funds as
24 a single fund solely for the purpose of investment,
25 if such investment is not prohibited by the instru-
26 ment, judgment, decree or order creating such trust
27 funds. Unless ordered by decree, the hospital so in-
28 vesting ~~said~~ those funds is not required to render a
29 court accounting with regard to ~~such~~ those funds, but
30 it, as accountant, or any interested person, may by
31 petition to the Superior Court ~~or the Probate Court~~
32 in the county where ~~said~~ that hospital is located se-
33 cure approval of ~~such~~ that accounting on such condi-
34 tions as the court may establish.

35 Sec. 69. 22 MRSA §4031, sub-§1, as enacted by PL
36 1979, c. 733, §18, is repealed and the following en-
37 acted in its place:

38 1. Jurisdiction. The District Court shall have
39 jurisdiction over child protection petitions.

1 Sec. 70. 22 MRSA §4051, as amended by PL 1981,
2 c. 369, §13, is further amended to read:

3 §4051. Venue

4 A petition for termination of parental rights
5 shall be brought in the court that issued the final
6 protection order. The court, for the convenience of
7 the parties or other good cause, may transfer the pe-
8 tition to another district or division. A petition
9 for termination of parental rights may also be
10 brought in a Probate Court as part of an adoption
11 proceeding as provided in Title 19, chapter 9, when a
12 child protective proceeding has not been initiated.

13 Sec. 71. 29 MRSA §1911, first ¶, as amended by
14 PL 1977, c. 564, §108, is further amended to read:

15 The acceptance by a person who is a resident of
16 any other state or country of the rights and privi-
17 leges conferred by this Title as evidenced by the op-
18 eration, by himself or agent, of a motor vehicle
19 thereunder, or the operation by such a person, by
20 himself or his agent, of a motor vehicle on a public
21 way in this State otherwise than under said Title, or
22 the operation by such a person, by himself or his
23 agent, of aircraft in this State, shall be deemed
24 equivalent to an appointment by him of the Secretary
25 of State, or his successor in office, to be his true
26 and lawful attorney upon whom may be served all law-
27 ful processes in any action or proceeding against
28 him, growing out of any accident or collision in
29 which such person or his agent may be involved, while
30 operating a motor vehicle on such a way, or while op-
31 erating aircraft in this State, and said acceptance
32 or operation shall be a signification of his agree-
33 ment that any such process against him which is so
34 served shall be of the same legal force and validity
35 as if served on him personally. Service of this pro-
36 cess shall be made by leaving a copy thereof with a
37 fee of \$2 in the hands of the Secretary of State, or
38 in his office. This service shall be sufficient ser-
39 vice upon such a nonresident, provided that notice of
40 this service and a copy of the process are forthwith
41 sent by registered mail by the plaintiff to the de-
42 fendant and the defendant's receipt for such regis-
43 tered mail and the plaintiff's affidavit of compli-

1 ance herewith are appended to the summons and are
2 filed with the clerk of the court in which the action
3 is pending, or that such notice and copy are served
4 upon the defendant by an officer duly qualified to
5 serve legal process in the jurisdiction where the de-
6 fendant is found and the officer's return showing
7 such service to have been made is filed with the
8 clerk of the court where the action is pending. If
9 the defendant is deceased, service may be made in the
10 same manner upon his personal representative, and if
11 there is no personal representative, upon the public
12 administrator in the county in which the action is
13 pending. When service is made upon the public admin-
14 istrator, he shall forthwith petition the ~~probate~~
15 ~~court of~~ Superior Court in his county for probate of
16 the defendant's estate, any other statutory require-
17 ments for probate of estates notwithstanding. The
18 court in which the action is pending may order such
19 continuance as may be necessary to afford the defend-
20 ant or if the defendant is deceased, his personal
21 representative or the public administrator reasonable
22 opportunity to defend the action.

23 Sec. 72. 30 MRSA §2, sub-§6 is enacted to read:

24 6. Registers of probate. This section applies
25 only to those registers of probate whose elected
26 terms continue beyond December 31, 1986, and then on-
27 ly until the expiration of that term or its earlier
28 termination by death, resignation or other cause.

29 Sec. 73. 30 MRSA §65, sub-§1, as amended by PL
30 1981, c. 279, §11, is further amended to read:

31 1. Publication charges. The county commissioners
32 shall set the amount to be charged by the register of
33 ~~probate deeds~~ for the publication of notices required
34 by law. The amount set shall not be less than the
35 actual cost to the county of providing the publica-
36 tion service, including the actual cost of publica-
37 tion.

38 Sec. 74. 33 MRSA §1001, sub-§4 is amended to
39 read:

40 4. Court. "Court" means the ~~probate court~~ Super-
41 ior Court.

1 Sec. 75. 33 MRSA §1216, as enacted by PL 1973,
2 c. 616, §1, is amended to read:

3 § 1216. Limitation

4 Nothing in this chapter shall may preclude the
5 rights of the State to title to property under Title
6 ~~18~~ 18-A, section ~~1001~~, subsection 8 2-105 or in any
7 action brought to quiet title with respect to island
8 property.

9 Sec. 76. 34-B MRSA §3863, sub-§3, as enacted by
10 PL 1983, c. 459, §7, is amended to read:

11 3. Judicial review. The application and accom-
12 panying certificate shall be reviewed by a Justice of
13 the Superior Court, Judge of the District Court,
14 ~~Judge of Probate~~ or a complaint justice.

15 A. If the judge or justice finds the application
16 and accompanying certificate to be regular and in
17 accordance with the law, he shall endorse them.

18 B. No person may be held against his will in the
19 hospital under this section, whether informally
20 admitted under section 3831 or sought to be in-
21 voluntarily admitted under this section, unless
22 the application and certificate have been en-
23 dorsed by a judge or justice, except that a per-
24 son for whom an examiner has executed the certif-
25 icate under subsection 2 may be detained in a
26 hospital for a reasonable period of time, not to
27 exceed 18 hours, pending endorsement by a judge
28 or justice, if:

29 (1) For a person informally admitted under
30 section 3831, the chief administrative offi-
31 cer of the hospital undertakes to secure the
32 endorsement forthwith upon execution of the
33 certificate by the examiner; and

34 (2) For a person sought to be involuntarily
35 admitted under this section, the person or
36 persons transporting him to the hospital un-
37 dertake to secure the endorsement forthwith
38 upon execution of the certificate by the ex-
39 aminer.

1 Sec. 77. 36 MRSA §559, sub-§2, as amended by PL
2 1979, c. 540, §42-B, is further amended to read:

3 2. Personal representative. A tax to the person-
4 al representative shall be collected of him the same
5 as a tax assessed against him in his private capaci-
6 ty. ~~Sueh That~~ tax shall be a charge against the es-
7 tate and shall be allowed by the ~~judge of probate Su-~~
8 perior Court; but when the personal representative
9 notifies the assessors that he has no funds of the
10 estate to pay ~~sueh that~~ tax and gives them the names
11 of the heirs or devisees, and the proportions of
12 their interests in the real estate to the best of his
13 knowledge, the real estate shall no longer be taxed
14 to him.

15 Sec. 78. 36 MRSA §943, 8th ¶ is amended to read:

16 Whenever the person against whom the tax is as-
17 sessed shall have died after the tax has been commit-
18 ted and prior to the expiration of the ~~18-months~~
19 18-month period of foreclosure and ~~sueh that~~ person
20 shall have left a will offered for probate, the ~~pre-~~
21 bate judge of Superior Court in the county wherein
22 ~~said that~~ will is offered upon petition of any devi-
23 see of the real estate on which ~~said that~~ tax is un-
24 paid may grant a period of redemption not to exceed
25 60 days following the final allowance or disallowance
26 of ~~said that~~ will. Notice of ~~said that~~ petition shall
27 be given to the tax collector of the town wherein
28 said property is located and a certified copy of the
29 court order shall be filed in the registry of deeds
30 of the county wherein the property is located.

31 Sec. 79. 36 MRSA §3527, as amended by PL 1983,
32 c. 480, Pt. A, §50, is further amended to read:

33 §3527. Appointment of personal representative on
34 probate delay

35 If, upon the decease of a person leaving an es-
36 tate which may be liable to pay an inheritance tax, a
37 will is not offered for probate or an application for
38 administration is not made within 6 months after the
39 date of death, or if the personal representative does
40 not qualify within that period, the ~~Probate Superior~~
41 Court, upon application by the State Tax Assessor,

1 may appoint a personal representative. Notwithstand-
2 ing this section, the State Tax Assessor may petition
3 for appointment within 6 months after the date of
4 death, if in the opinion of the State Tax Assessor
5 that action is necessary.

6 Sec. 80. 36 MRS §3581, as repealed and replaced
7 by PL 1979, c. 663, §222, is repealed and the follow-
8 ing enacted in its place:

9 §3581. Inventory of estate

10 Every personal representative or trustee, in ad-
11 dition to any inventory otherwise required, shall
12 within 3 months of the date of his appointment file
13 with the State Tax Assessor on blanks to be furnished
14 by the State Tax Assessor an inventory upon oath con-
15 taining a complete list of all the property of the
16 estate or trust within his knowledge.

17 Trustees, grantees or donees under conveyances or
18 gifts made during the life of the settlor, grantor or
19 donor and persons to whom beneficial interests shall
20 accrue by survivorship, shall within 6 months of the
21 date of death of the decedent, file with the State
22 Tax Assessor on blanks to be furnished by the State
23 Tax Assessor an inventory upon oath of all property
24 subject to tax within his knowledge.

25 The State Tax Assessor may, for cause, extend the
26 time for filing an inventory. If a person required to
27 file an inventory under this section neglects or re-
28 fuses to file the inventory, he shall be liable to a
29 penalty of not more than \$500. On complaint of the
30 State Tax Assessor, the Superior Court may remove any
31 person appointed by the court from his position as
32 personal representative or trustee for neglect or re-
33 usal to file an inventory.

34 Sec. 81. 36 MRS §3584, first §, as amended by
35 PL 1983, c. 480, Pt. A, §51, is further amended to
36 read:

37 Except as otherwise provided, no account of a
38 personal representative or trustee showing any pay-
39 ment except debts, funeral expenses, expenses of ad-
40 ministration and legacies or distributive shares

1 wholly exempt from inheritance taxes may be allowed
2 by the Probate Superior Court, unless with the consent
3 of the State Tax Assessor or unless that account
4 shows, and ~~the judge of~~ that court finds, that all
5 inheritance taxes already payable have been paid and
6 that all taxes which may become due have been secured
7 as provided. The certificate of the State Tax Assessor
8 and his receipt for the amount of the tax therein
9 certified shall be conclusive as to the payment of
10 the tax, to the extent of that certification.

11 Sec. 82. 36 MRSA §3686, as amended by PL 1981,
12 c. 365, is further amended to read:

13 §3686. Civil action by State; bond

14 Personal representatives shall be liable to the
15 State on their administration bonds for all taxes assessable
16 under said chapters and interest thereon. Whenever no
17 administration bond is otherwise required, ~~the register or judge of probate Superior~~
18 Court, notwithstanding any provisions of Title 18-A,
19 sections 3-603 through 3-606, may, and unless he
20 shall find that any inheritance or estate tax due and
21 to become due the State is reasonably secured by the
22 lien upon real estate hereinbefore provided, shall
23 require a bond payable to the judge or his successor
24 sufficient to secure the payment of all inheritance
25 taxes and interest conditioned in substance to pay
26 all inheritance and estate taxes due to the State
27 from the estate of the deceased with interest thereon.
28 An action for the recovery of inheritance and estate
29 taxes and interest shall lie on either of said
30 bonds.
31

32 Sec. 83. 36 MRSA §3922, as amended by PL 1983,
33 c. 480, Pt. A, §61, is further amended to read:

34 §3922. Compensation and expenses

35 The compensation and expenses of the members of
36 the board and its employees may be agreed upon among
37 the members and the personal representative and if
38 they cannot agree shall be fixed by the ~~Probate Court~~
39 of court having jurisdiction over the probate of decedent estates
40 in the State determined by the board
41 to be the domicile of the decedent. The amounts so

1 agreed upon or fixed shall be deemed an administra-
2 tion expense and shall be payable by the personal
3 representative.

4 **Sec. 84. Transition.** Registers of probate hold-
5 ing office at the time this Act becomes effective
6 shall continue to serve in their respective counties
7 until their terms expire, subject to the direction of
8 the Chief Justice of the Supreme Judicial Court and
9 the provisions of the Maine Revised Statutes, Title
10 18-A.

11 Judges of Probate holding office at the time this
12 Act becomes effective shall continue to serve until
13 their terms expire and shall sit in the Superior
14 Court on probate matters by assignment of the Chief
15 Justice of the Supreme Judicial Court.

16 All matters pending on the docket of any of the
17 Probate Courts, or on appeal therefrom, at the time
18 this Act becomes effective shall be transferred to
19 the appropriate docket of the Superior Court or the
20 District Court.

21 The Supreme Judicial Court shall develop and
22 promulgate on or before June 30, 1986, a plan for the
23 implementation of the transfer of jurisdiction set
24 forth in this Act.

25 **Sec. 85. Effective date.** This Act shall take ef-
26 fect on January 1, 1987.

27 STATEMENT OF FACT

28 The purpose of this bill is to transfer the ju-
29 risdiction of the Probate Courts to the Superior
30 Court and District Court. Under its provisions, all
31 of the probate matters formerly handled in the Pro-
32 bate Courts under the Probate Code, the Revised Stat-
33 utes, Title 18-A, will go to the Superior Court. Cer-
34 tain miscellaneous matters contained in the Maine Re-
35 vised Statutes, Titles 19 and 22 will, in turn, go to
36 the District Court. In addition, District Court
37 Judges would have standing authority to act in Supe-
38 rior Court on probate matters involving protection
39 proceedings for adults and children.

1 The system of probate registers and offices that
2 has administratively served the Probate Courts will
3 be retained without change, except that the registers
4 and offices will be state funded as opposed to county
5 funded and will be supervised by the Supreme Judicial
6 Court and the Chief Justice of the Superior Court.

7 The provisions of the bill represent recommenda-
8 tions made by the Maine Judicial Council based on a
9 report submitted to it by its Court Structure Commit-
10 tee chaired by President William R. Cotter of Colby
11 College.

12 Among its findings, the Court Structure Committee
13 concluded that the present Probate Court system re-
14 quires an inordinate allocation of judicial resources
15 for the size of its caseload. The bill proposes the
16 addition of the 2 Superior Court Justices and 2 Dis-
17 trict Court Judges to take over the workload of the
18 former Probate Court jurisdiction.

19 A transition provision allows elected Judges of
20 Probate and registers to serve out their existing
21 terms.

22

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