

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 (After Deadline)  
3 SECOND REGULAR SESSION  
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5 ONE HUNDRED AND TWELFTH LEGISLATURE  
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7 Legislative Document

No. 1923

8 S.P. 759

In Senate, January 21, 1986

9 Approved for introduction by a majority of the Legislative Council  
10 pursuant to Joint Rule 27.

11 Reference to the Committee on Judiciary suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

12 Presented by Senator Carpenter of Aroostook.

Cosponsored by Representative Kane of So. Portland, Representative  
MacBride of Presque Isle and Representative Lebowitz of Bangor.

13  
14 STATE OF MAINE  
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16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-SIX  
18

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19 AN ACT to Amend the Requirements for Personal  
20 Service in an Action for a  
21 Guardianship or Conservatorship.  
22

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23 Emergency preamble. Whereas, Acts of the Legis-  
24 lature do not become effective until 90 days after  
25 adjournment unless enacted as emergencies; and

26 Whereas, changes in the Probate Code, enacted  
27 during the First Regular Session of the 112th Legis-  
28 lature, become effective on January 1, 1986; and

29 Whereas, these changes include provisions requir-  
30 ing, in actions for conservatorships and guardian-  
31 ships, personal notice of the action to be served on  
32 relatives and friends of the person to be protected;  
33 and

34 Whereas, the expense and difficulty of this per-  
35 sonal service was not appreciated when the require-  
36 ments were enacted; and

1       Whereas, in the judgment of the Legislature,  
2 these facts create an emergency within the meaning of  
3 the Constitution of Maine and require the following  
4 legislation as immediately necessary for the preser-  
5 vation of the public peace, health and safety; now,  
6 therefore,

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

9       Sec. 1. 18-A MRSA §5-309, sub-§(c), as enacted  
10 by PL 1985, c. 440, §§5 and 13, is repealed and the  
11 following enacted in its place:

12       (c) Notice to the spouse, adult children, parent  
13 or adult relative or friend required by subsection  
14 (a), paragraph (3), shall be given as provided by  
15 court rule under section 1-401.

16       Sec. 2. 18-A MRSA §5-405, sub-§(a), as amended  
17 by PL 1985, c. 440, §§7 and 13, is repealed and the  
18 following enacted in its place:

19       (a) On a petition for appointment of a conserva-  
20 tor or other protective order, the person to be pro-  
21 ected must be served personally with notice of the  
22 proceeding at least 14 days before the date of the  
23 hearing. The spouse and all adult children of the  
24 person to be protected or, if none, the person's par-  
25 ents or closest adult relative or, if none, friend  
26 must be given notice as prescribed by court rule un-  
27 der section 1-401. Waiver by the person to be pro-  
28 ected is not effective unless he attends the hearing  
29 or, unless minority is the reason for the proceeding,  
30 waiver is confirmed in an interview with the visitor.  
31 The court may order that the petition and hearing no-  
32 tice be served by the visitor on the protected per-  
33 son.

34       Emergency clause. In view of the emergency cited  
35 in the preamble, this Act shall take effect when ap-  
36 proved.

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STATEMENT OF FACT

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Changes made in the First Regular Session of the 112th Legislature in notice requirements for guardianship and conservatorship provisions provide for personal service on the person to be protected and on relatives and friends. This personal service on relatives and friends will generate unwarranted difficulties and expense.

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This bill amends the notice requirements to maintain the provision for personal service on the person to be protected, while requiring service by certified mail, as provided by Probate Court rule, on relatives and friends.

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