

MAINE STATE LEGISLATURE

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L.D. 2204

(Filing No. S-386)

STATE OF MAINE
SENATE
113TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 848, L.D. 2204,
Bill, "AN ACT to Protect Elderly, Infirm Persons from
Improvident Transfer of Title to Property."

Amend the bill by striking out everything after
the enacting clause and inserting in its place the
following:

'Sec. 1. 33 MRSA c. 20 is enacted to read:

CHAPTER 20

IMPROVIDENT TRANSFERS OF TITLE

§1021. Definitions

As used in this chapter, unless the context
otherwise indicates, the following terms have the
following meanings.

1. Dependent. "Dependent," with respect to an
elderly person, means wholly or partially dependent
upon one or more other persons for care or support,
either emotional or physical, because the elderly
person:

A. Suffers from a significant limitation in
mobility, vision, hearing, emotional or mental
functioning or the ability to read or write; or

1 B. Is suffering or recovering from a major
2 illness or is facing or recovering from major
3 surgery.

4 2. Elderly person. "Elderly person" means a
5 person who is 60 years of age or older.

6 3. Independent counsel. "Independent counsel"
7 means an attorney retained by the elderly dependent
8 person to represent only that person's interests in
9 the transfer.

10 4. Less than full consideration. "Less than full
11 consideration," with respect to a transfer of
12 property, means the transferee pays less than fair
13 market value for the property or the transfer is
14 supported by past consideration.

15 5. Major transfer of personal property or money.
16 "Major transfer of personal property or money" means a
17 transfer of money or items of personal property which
18 represent 10% or more of the elderly dependent
19 person's estate.

20 §1022. Undue influence

21 1. Presumption. In any transfer of real estate
22 or major transfer of personal property or money for
23 less than full consideration by an elderly person who
24 is dependent on others to a person with whom the
25 elderly dependent person has a confidential or
26 fiduciary relationship, it shall be presumed that the
27 transfer was the result of undue influence, unless the
28 elderly dependent person was represented in the
29 transfer by independent counsel. When the elderly
30 dependent person successfully raises the presumption
31 of undue influence by a preponderance of the evidence
32 and when the transferee fails to rebut the
33 presumption, the elderly dependent person shall be
34 entitled to avoid the transfer and be entitled to the
35 relief set forth in section 1024.

36 2. Confidential or fiduciary relationship. For
37 the purpose of this section, the transfer of property
38 is deemed to have been made in the context of a

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1 confidential or fiduciary relationship if the
2 transferee had a close relationship with the elderly
3 dependent person prior to the transfer. Confidential
4 or fiduciary relationships include the following:

5 A. A family relationship between the elderly
6 dependent person and the transferee, including
7 relationships by marriage and adoption;

8 B. A fiduciary relationship between the elderly
9 dependent person and the transferee, such as with
10 a guardian, conservator, trustee, accountant,
11 broker or financial advisor;

12 C. A relationship between an elderly dependent
13 person and a physician, nurse or other medical or
14 health care provider;

15 D. A relationship between the elderly dependent
16 person and a psychologist, social worker or
17 counselor;

18 E. A relationship between the elderly dependent
19 person and an attorney;

20 F. A relationship between the elderly dependent
21 person and a priest, minister, rabbi or spiritual
22 advisor;

23 G. A relationship between the elderly dependent
24 person and a person who provides care or services
25 to that person whether or not care or services are
26 paid for by the elderly person;

27 H. A relationship between an elderly dependent
28 person and a friend or neighbor; or

29 I. A relationship between an elderly dependent
30 person and a person sharing the same living
31 quarters.

32 When any of these relationships exist and when a
33 transfer is made to a corporation or organization
34 primarily on account of the membership, ownership or
35 employment interest of the fiduciary or confidante, a
36 fiduciary or confidential relationship with the
37 corporation or organization is deemed to exist.

1 §1023. Civil action; relief available

2 1. Civil action. A civil action may be brought
3 to obtain relief under this chapter.

4 2. Relief available; protected transfers. When a
5 court finds that a transfer of property was the result
6 of undue influence, it shall grant appropriate relief
7 enabling the elderly dependent person to avoid the
8 transfer, including the rescission or reformation of a
9 deed or other instrument, the imposition of a
10 constructive trust on property or an order enjoining
11 use of or entry on property or commanding the return
12 of property. When the court finds that undue
13 influence is a good and valid defense to a
14 transferee's suit on a contract to transfer the
15 property, the court shall refuse to enforce the
16 transfer.

17 No relief obtained or granted under this section may
18 in any way affect or limit the rights of good faith
19 purchasers, mortgagees, holders of security interests
20 or other 3rd parties who obtain an interest in the
21 transferred property for value after its transfer from
22 the elderly dependent person. No relief obtained or
23 granted under this section may affect any mortgage
24 deed to the extent of value given by the mortgagee.

25 3. Statute of limitations. The limitations
26 imposed by Title 14, section 752, apply to all actions
27 brought under this chapter.

28 §1024. Other common law and statutory causes of action
29 and relief still available

30 Nothing in this chapter may be construed to
31 abrogate any other causes of action or relief at law
32 or equity to which elderly dependent persons are
33 entitled under other laws or at common law.

34 Sec. 2. Application. This Act shall apply only
35 to transfers of property that occur on or after the
36 effective date of this Act.'

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STATEMENT OF FACT

2 This amendment retains the basic protections that
3 the original bill offered to elderly persons who
4 transfer their real property or make major transfers
5 of their personal property. Under the amendment,
6 certain property transfers by elderly persons to other
7 persons who are in a confidential or fiduciary
8 relationship with the elderly person are presumed to
9 have been made under undue influence and may be voided
10 by a court. A transfer may be voided if it is made
11 for less than full consideration by a person over 60
12 years of age who is dependent upon others for
13 emotional or physical care or support and who was not
14 represented by his own attorney during the transfer of
15 property.

16 This amendment makes the following changes in the
17 original bill.

18 1. It replaces the original concept of an
19 "impaired" elderly person with the concept of
20 dependency. The concept of dependency is more closely
21 linked to a person's susceptibility to being
22 manipulated for another's financial advantage.

23 2. It eliminates those provisions of the bill
24 dealing with the avoidance of transfers of property
25 based on mistake of fact or law; this area is
26 adequately protected by the common law.

27 3. It clarifies the nature of the civil action
28 under which an elderly person may assert their rights
29 under this amendment.

30 4. It provides exemptions for innocent 3rd
31 parties and for holders of mortgage deeds, to the
32 extent that value is given in consideration for the
33 mortgage deed.

