

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2204

S.P. 848 In Senate, February 5, 1988
Approved for Introduction by a Majority of the Legislative
Council pursuant to Joint Rule 26.

Reference to the Committee on Judiciary suggested and
ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator BRANNIGAN of Cumberland.

Cosponsored by Representative CONLEY of Portland,
Representative THISTLE of Dover-Foxcroft, Representative COTE
of Auburn.

STATE OF MAINE

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

1 AN ACT to Protect Elderly, Infirm Persons
2 from Improvident Transfer of Title to
3 Property.
4

5 Be it enacted by the People of the State of Maine as
6 follows:

7 33 MRSA c. 20 is enacted to read:

8 CHAPTER 20

1 IMPROVIDENT TRANSFERS OF TITLE

2 §1021. Definitions

3 For the purposes of this chapter, unless the
4 context otherwise indicates, the following terms have
5 the following meanings.

6 1. Elderly person. "Elderly person" means a
7 person who is 60 years of age or older.

8 2. Impaired. "Impaired" means physically or
9 mentally impaired.

10 3. Independent counsel. "Independent counsel"
11 means an attorney retained by the elderly, impaired
12 person to represent only that person's interests in
13 the transfer.

14 4. Less than full consideration. "Less than full
15 consideration," with respect to a transfer of
16 property, means the transferee pays less than fair
17 market value for the property or the transfer is
18 supported by past consideration.

19 5. Major transfer of personal property or money.
20 "Major transfer of personal property or money" means a
21 transfer of money or items of personal property which
22 represent 10% or more of the elderly, impaired
23 person's estate.

24 6. Physically or mentally impaired. "Physically
25 or mentally impaired," with respect to an elderly
26 person, means that person is significantly limited in
27 mobility, vision, hearing, emotional or mental
28 functioning, or ability to read or write, or is
29 suffering or recovering from a major illness or facing
30 or recovering from major surgery.

31 §1022. Undue influence

32 1. Presumption. In any transfer of real estate
33 or major transfer of personal property or money for
34 less than full consideration by an elderly person who
35 is physically or mentally impaired to a person with
36 whom the elderly, impaired person has a confidential
37 or fiduciary relationship, it shall be presumed that
38 the transfer was the result of undue influence, unless

1 the elderly, impaired person was represented in the
2 transfer by independent counsel. Where the elderly,
3 impaired person successfully raises the presumption of
4 undue influence by a preponderance of the evidence and
5 where the transferee fails to rebut the presumption,
6 the elderly, impaired person shall be entitled to
7 avoid the transfer and shall be entitled to the relief
8 set forth in section 1024.

9 2. Confidential or fiduciary relationship. For
10 the purpose of this section, the transfer of property
11 shall be considered to have been made in the context
12 of a confidential or fiduciary relationship if the
13 transferee had a close relationship with the elderly,
14 impaired person prior to the transfer. Confidential
15 or fiduciary relationships include the following:

16 A. A family relationship between the elderly,
17 impaired person and the transferee, including
18 relationships by marriage and adoption;

19 B. A fiduciary relationship between the elderly,
20 impaired person and the transferee, such as with a
21 guardian, conservator, trustee, accountant,
22 broker, banker or financial advisor;

23 C. A relationship between an elderly, impaired
24 person and a physician, nurse or other medical or
25 health care provider;

26 D. A relationship between the elderly, impaired
27 person and a psychologist, social worker or
28 counselor;

29 E. A relationship between the elderly, impaired
30 person and an attorney;

31 F. A relationship between the elderly, impaired
32 person and a priest, minister, rabbi or spiritual
33 advisor;

34 G. A relationship between the elderly impaired
35 person and a person who provides care or services
36 to that person whether or not care or services are
37 paid for by the elderly person;

1 H. A relationship between an elderly, impaired
2 person and a friend or neighbor; or

3 I. A relationship between an elderly, impaired
4 person and a person sharing the same living
5 quarters.

6 When any of the these relationships exist and when a
7 transfer is made to a corporation or organization
8 primarily on account of the membership, ownership or
9 employment interest of the fiduciary or confidante, a
10 fiduciary or confidential relationship with the
11 corporation or organization shall be deemed to exist.

12 §1023. Transfers based on mistakes of fact or law

13 When an elderly, impaired person transfers real
14 estate or makes a major transfer of personal property
15 or money for less than full consideration based on the
16 mistaken belief that such a transfer was necessary in
17 order to become or remain eligible for Medicaid or
18 other public assistance, the elderly, impaired person
19 is entitled to avoid the transfer and is entitled to
20 the relief set forth in section 1024.

21 §1024. Relief available

22 When a court finds that a transfer of property was
23 the result of undue influence or was based on a
24 mistake of fact or law, it shall grant appropriate
25 relief enabling the elderly, impaired person to avoid
26 the transfer, including the rescission or reformation
27 of a deed or other instrument, the imposition of a
28 constructive trust on property or an order enjoining
29 use of or entry on property or commanding the return
30 of property. When the court finds that undue
31 influence or mistake of law or fact is a good and
32 valid defense to a transferee's suit on a contract to
33 transfer the property, the court shall refuse to
34 enforce the transfer.

35 §1025. Other common law and statutory causes of action
36 and relief still available

