

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 1010

H.P. 733

House of Representatives, April 3, 1989

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

Reference to the Committee on Judiciary suggested and ordered printed.

*Ed Pert*

EDWIN H. PERT, Clerk

Presented by Representative PARADIS of Augusta.  
Cosponsored by Speaker MARTIN of Eagle Lake.

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STATE OF MAINE

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

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An Act Concerning the Right to Die.

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(AFTER DEADLINE)

(EMERGENCY)



1           **Emergency preamble.** Whereas, Acts of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted  
3 as emergencies; and

4           Whereas, Probate Courts have been ruling on the rights of  
5 guardians to consent to the termination or withholding of medical  
6 treatment, hydration or nourishment for the wards of the  
7 guardians; and

8           Whereas, Probate Courts do not have the resources to handle  
9 cases of this magnitude; and

10           Whereas, the Superior Court is a more appropriate forum for  
11 such actions to be heard and decided; and

12           Whereas, the rights of wards who are patients may not be  
13 adequately protected under the current law; and

14           Whereas, in the Legislature, these facts create an emergency  
15 within the meaning of the Constitution of Maine and require the  
16 following legislation as immediately necessary for the  
17 preservation of the public peace, health and safety; now,  
18 therefore,

19           **Be it enacted by the People of the State of Maine as follows:**

20           **Sec. 1. 18-A MRSA §5-102, sub-§(c) is enacted to read:**

21           (c) The Superior Court has exclusive jurisdiction over  
22 proceedings concerning a guardian's request for or consent to  
23 termination or withholding of medical treatment, hydration or  
24 nourishment for the guardian's ward.

25           **Sec. 2. 18-A MRSA §5-209, sub-§(c), as enacted by PL 1979, c.**  
26 **540, §1, is amended to read:**

27           (c) The guardian is empowered to facilitate the ward's  
28 education, social, or other activities and to authorize medical  
29 or other professional care, treatment, or advice. A guardian is  
30 not liable by reason of this consent for injury to the ward  
31 resulting from the negligence or acts of 3rd persons unless it  
32 would have been illegal for a parent to have consented. A  
33 guardian may consent to the marriage or adoption of his the  
34 ward. A guardian may not request or consent to the termination  
35 or withholding of medical treatment, hydration or nourishment  
36 until the Superior Court has determined that the guardian may do  
37 so.

38           **Sec. 3. 18-A MRSA §5-312, sub-§(a), as enacted by PL 1979, c.**  
39 **540, §1, is amended to read:**

1 (a) A guardian of an incapacitated person has the same  
2 powers, rights and duties respecting his that guardian's ward  
3 that a parent has respecting his that parent's unemancipated  
4 minor child, except that a guardian is not legally obligated to  
5 provide from his the guardian's own funds for the ward and is not  
6 liable to 3rd persons for acts of the ward solely by reason of  
7 the parental relationship. In particular, and without qualifying  
8 the foregoing, a guardian has the following powers and duties,  
9 except as modified by order of the court: .

11 (1) To the extent that it is consistent with the terms of  
12 any order by a court of competent jurisdiction relating to  
13 detention or commitment of the ward, he the guardian is  
14 entitled to custody of the person of his the ward and may  
15 establish the ward's place of abode within or without this  
16 State, and may place the ward in any hospital or other  
17 institution for care in the same manner as otherwise  
18 provided by law.

19 (2) If entitled to custody of his the ward, he the guardian  
20 shall make provision for the care, comfort and maintenance  
21 of his the ward and, whenever appropriate, arrange for his  
22 the ward's training and education. Without regard to  
23 custodial rights of the ward's person, he the guardian shall  
24 take reasonable care of his the ward's clothing, furniture,  
25 vehicles and other personal effects and commence protective  
26 proceedings if other property of his the ward is in need of  
27 protection.

28 (3) A guardian may give any consents or approvals that may  
29 be necessary to enable the ward to receive medical or other  
30 professional care, counsel, treatment or service. A  
31 guardian may not request or consent to the termination or  
32 withholding of medical treatment, hydration or nourishment  
33 until the Superior Court has determined that the guardian  
34 may do so.

35 (4) If no conservator for the estate of the ward has been  
36 appointed, he the guardian may:

37 (i) Institute proceedings to compel any person under a  
38 duty to support the ward or to pay sums for the welfare  
39 of the ward to perform his that duty;

40 (ii) Receive money and tangible property deliverable  
41 to the ward and apply the money and property for  
42 support, care and education of the ward; but, he the  
43 guardian may not use funds from his the ward's estate  
44 for room and board which he the guardian, his the  
45 guardian's spouse, parent, or child have furnished the  
46 ward unless a charge for the service is approved by  
47 order of the court made upon notice to at least one of  
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50  
51

1 the next of kin of the ward, if notice is possible. He  
3 The guardian must exercise care to conserve any excess  
for the ward's needs.

5 (5) A guardian is required to report the condition of his  
7 the ward and of the estate which has been subject to his the  
guardian's possession or control, as specified by the court  
9 at the time of the initial order or at the time of a  
subsequent order or as provided by court rule.

11 The court on its own motion, or on the petition of any  
13 interested person, may appoint a visitor to review the  
guardian's report and determine if appropriate provisions  
15 for the care, comfort and maintenance of his the ward and  
for the care and protection of his the ward's property have  
17 been made. The visitor shall report his the visitor's  
findings to the court in writing.

19 (6) If a conservator has been appointed, all of the ward's  
21 estate received by the guardian in excess of those funds  
expended to meet current expenses for support, care, and  
23 education of the ward must be paid to the conservator for  
management as provided in this code, and the guardian must  
25 account to the conservator for funds expended.

27 **Emergency clause.** In view of the emergency cited in the  
preamble, this Act shall take effect when approved.

29  
31 **STATEMENT OF FACT**

33 This bill provides that only the Superior Court, not the  
Probate Court, has jurisdiction to determine whether a guardian  
35 may request or consent to the termination or withholding of  
medical services, hydration or nourishment of a minor or other  
ward of the guardian.  
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