

MAINE STATE LEGISLATURE

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DATE: 2/28/94

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HUMAN RESOURCES

Reported by: Senator Paradis of Aroostook

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**STATE OF MAINE
SENATE
116TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 553, L.D. 1577, Bill, "An Act Regarding the Custody of Remains of Deceased Persons"

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

'Sec. 1. 22 MRSA §2843-A is enacted to read:

§2843-A. Custody of remains of deceased persons

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "At-need funeral arrangements" means funeral arrangements made after death.

B. "Custody and control" means the right to make all decisions, consistent with applicable laws, regarding the handling of a dead body, including, but not limited to, possession, at-need funeral arrangements, final disposition and disinterment.

C. "Estranged" means living in separate residences and having a relationship characterized by hostility or indifference.

D. "Next of kin" means a person having the following relationship to the subject, in the following order of priority:

COMMITTEE AMENDMENT

2 (1) The spouse;

4 (2) An adult son or daughter;

6 (3) A parent;

8 (4) An adult brother or sister;

10 (5) An adult grandchild;

12 (6) An adult niece or nephew who is the child of a
brother or sister;

14 (7) A maternal grandparent;

16 (8) A paternal grandparent;

18 (9) An adult aunt or uncle;

20 (10) An adult first cousin; or

22 (11) Any other adult relative in descending order of
blood relationship.

24 E. "Subject" means the person whose remains are placed in
26 the custody and control of another person pursuant to this
section.

28 2. Custody and control generally. The custody and control
30 of the remains of deceased residents of this State are governed
by the following provisions.

32 A. If the subject has designated a person to have custody
34 and control in a written and signed document, custody and
control belong to that person.

36 B. If the subject has not left a written and signed
38 document designating a person to have custody and control,
or if the person designated by the subject refuses custody
40 and control, custody and control belong to the next of kin.

42 C. If the next of kin is 2 or more persons with the same
44 relationship to the subject, the majority of the next of kin
have custody and control. If the next of kin can not, by
46 majority vote, make a decision regarding the subject's
remains, the court shall make the decision upon petition
48 under subsection 4, paragraph D.

50 3. Estranged spouse. Notwithstanding subsection 2, if the
surviving spouse and the subject were estranged at the time of

2 death, the spouse may not have custody and control of the
3 subject's remains. In these cases, custody and control belong to
4 the next of kin following the spouse.

6 4. Court determination. Notwithstanding other provisions
7 of this section, the court of probate for the residence of the
8 deceased may award custody and control to the person determined
9 by the court most fit and appropriate to carry out the
10 responsibilities of custody and control, and may make decisions
11 regarding the subject's remains if those having custody and
12 control can not agree. The following provisions apply to court
13 determinations under this subsection.

14 A. Before the subject's death, the subject or the subject's
15 legal representative may file a petition regarding custody
16 and control of the subject's remains.

18 B. A relative of the subject may file a petition.

20 C. A person who claims that that person has or had a closer
21 personal relationship to the subject than the next of kin
22 may file a petition.

24 D. If the next of kin is 2 or more persons with the same
25 relationship to the subject, and the next of kin can not, by
26 majority vote, make a decision regarding the subject's
27 remains, 2 or more persons who have custody or control or a
28 funeral director may file a petition asking the court to
29 make a determination in the matter. The court shall
30 consider the following in making its determination:

32 (1) The reasonableness and practicality of the
33 proposed arrangements;

34 (2) The degree of the personal relationship between
35 the subject and each of the 2 or more persons with
36 custody and control;

38 (3) The desires of the person or persons who are
39 ready, able and willing to pay the costs of the
40 arrangements;

42 (4) The convenience and needs of other family and
43 friends wishing to pay respect;

44 (5) The expressed written desires of the subject; and

46 (6) The degree to which the arrangements will allow
47 maximum participation by all wishing to pay respect.
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2 5. Wishes of subject. If the subject has left written and
3 signed instructions regarding funeral arrangements and disposal
4 of the subject's remains, the person having custody and control
5 shall abide by those wishes to the extent that the subject paid
6 for those arrangements in advance or left resources for the
7 purpose of carrying out those wishes.

8 6. Effect of payment by others. Except to the degree it
9 must be considered by the court under subsection 4, paragraph D,
10 the fact that a person other than the subject has paid or agreed
11 to pay for all or part of arrangements does not give that person
12 a greater right to custody and control than that person would
13 otherwise have.

14 7. Authority of personal representative. The personal
15 representative of the estate of the subject does not, by virtue
16 of being the personal representative, have a greater right to
17 custody and control than the person would otherwise have.

18 8. Immunity. A party who, in good faith, acts upon the
19 instructions of the party having custody and control is not
20 liable for having carried out those instructions.

21 9. Application. This section does not apply to the
22 disposition of the remains of a deceased person under chapter
23 709. This section does not diminish or otherwise alter the
24 authority of a medical examiner or other official authorized
25 under chapter 711. This section does not alter the rights and
26 obligations of the decedent's next of kin under Title 18-A.'

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STATEMENT OF FACT

36 The original bill addressed custody and control of dead
37 bodies only in the limited instance in which a couple is
38 estranged when the wife or husband dies. The amendment clarifies
39 that provision from the original bill by defining "estranged" and
40 "next of kin." The amendment goes beyond the original bill by
41 establishing a hierarchy among relatives that is used to
42 determine who has custody and control of dead bodies generally.

43 The amendment does not affect custody and control in cases
44 in which no relative or other person assumes responsibility for
45 the body. Current practice would continue in those situations.
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