

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1994

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Legislative Document

No. 1657

S.P. 598

In Senate, January 11, 1994

**An Act to Amend the Probate Code with Respect to Powers of  
Fiduciaries.**

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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.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator CONLEY of Cumberland.  
Cosponsored by Representative: COTE of Auburn.

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

2  
4 Sec. 1. 18-A MRS §3-711, as repealed and replaced by PL  
1983, c. 583, §9, is repealed and the following enacted in its  
place:

6  
8 §3-711. Powers of personal representatives; in  
general

10 (a) Until termination of appointment, a personal  
12 representative has the same power over the title to property of  
14 the estate that an absolute owner would have, in trust, for the  
16 benefit of the creditors and others interested in the estate.  
18 This power may be exercised without notice, hearing or order of  
20 court, except as limited by this section. The personal  
22 representative may not sell or transfer any interest in real  
property of the estate without giving notice at least 10 days  
prior to that sale or transfer to any person succeeding to an  
interest in that property, unless the personal representative is  
authorized under the will to sell or transfer real estate without  
this notice.

24 (b) In addition to the other powers conferred by law, a  
26 personal representative, at the personal representative's  
28 discretion, has the following powers:

30 (1) To inspect and monitor real and personal property of  
32 the estate, including, without limitation, interests in sole  
34 proprietorships, partnerships or corporations and any assets  
36 owned by those business enterprises or over which a personal  
38 representative may exercise control, for the purpose of  
40 determining compliance with environmental laws affecting the  
42 property, and to respond to actual or threatened violation  
44 of environmental laws affecting the property held or  
46 controlled by the personal representative;

48 (2) To take, on behalf of the estate, trust, person or  
50 business, any action necessary to prevent, abate or  
52 otherwise remedy an actual or threatened release of  
hazardous substances or a violation of environmental laws  
affecting property held or controlled by the personal  
representative, either before or after the initiation of an  
enforcement action by a governmental body;

(3) To refuse to accept property in trust if:

48 (i) The property is or may be contaminated by a  
50 hazardous substance or the property is being used or  
52 has been used for activities directly or indirectly  
involving hazardous substances that could impair the  
value of the assets held or controlled; or

2                   (ii) The property may be in violation of environmental  
3                   laws;

4                   (4) To settle or compromise all claims against the estate,  
5                   trust, person or business that may be asserted by a  
6                   governmental body or private party involving the alleged  
7                   release or threatened release of hazardous substances or the  
8                   alleged violation of environmental laws affecting property  
9                   held by the estate or trust or owned by the person or  
10                   business;

11                   (5) To release or disclaim a power granted by a document,  
12                   statute or rule that, in the sole discretion of the personal  
13                   representative, may expose the personal representative to  
14                   liability under environmental laws or impair the value of  
15                   the assets retained or controlled by the personal  
16                   representative; and

17                   (6) To charge the reasonable cost of abatement, cleanup,  
18                   inspection, assessment, insurance, database review or any  
19                   other response or remedial action, as authorized by this  
20                   subsection, against the income or principal of the estate,  
21                   trust, personal estate or business assets. The personal  
22                   representative is not personally responsible for the cost of  
23                   abatement, cleanup, inspection, assessment, insurance,  
24                   database review or any other response or remedial action and  
25                   is not personally liable to a beneficiary or any other party  
26                   for a decrease in value or an exhaustion of assets by reason  
27                   of the personal representative's reasonable compliance with  
28                   environmental laws, including reporting requirements under  
29                   those laws.

30                   For the purposes of this subsection, "environmental law" means a  
31                   federal, state, or local law, rule, regulation or ordinance  
32                   relating to protection of the environment or human health.

33                   For the purposes of this subsection, "hazardous substance" means  
34                   a substance defined as hazardous or toxic or otherwise regulated  
35                   by environmental laws.

36                   For the purposes of this subsection, "personal representative"  
37                   means an individual, partnership, corporation, bank, trust  
38                   company, firm or other entity who is an officer, employee or  
39                   agent of a fiduciary and who holds legal title to, controls or  
40                   manages, directly or indirectly, a site or vessel as a fiduciary  
41                   for purposes of administering an estate or trust of which the  
42                   site or vessel is a part.

43                   **Sec. 2. 18-A MRSA §7-402, sub-§(d) is enacted to read:**

44                   (d) In addition to the other powers conferred in this

2 section, and unless expressly limited by the governing  
3 instrument, a trustee, at the trustee's discretion, has the  
4 following powers:

5 (1) To inspect and monitor real and personal property to  
6 which the trustee takes legal title, including, without  
7 limitation, interests in sole proprietorships, partnerships  
8 or corporations and assets owned by those business  
9 enterprises or over which a trustee may exercise control,  
10 for the purpose of determining compliance with environmental  
11 laws affecting the property, and to respond to actual or  
12 threatened violation of environmental laws affecting the  
13 property held or controlled by the trustee;

14 (2) To take, on behalf of an estate, trust, person or  
15 business, any action necessary to prevent, abate or  
16 otherwise remedy an actual or threatened release of  
17 hazardous substances or a violation of environmental laws  
18 affecting property held or controlled by the trustee, either  
19 before or after the initiation of an enforcement action by a  
20 governmental body;

21 (3) To refuse to accept property in trust if:

22 (i) The property is or may be contaminated by a  
23 hazardous substance or the property is being used or  
24 has been used for activities directly or indirectly  
25 involving hazardous substances that could impair the  
26 value of the assets held or controlled; or

27 (ii) The property may be in violation of environmental  
28 laws;

29 (4) To settle or compromise all claims against the estate,  
30 trust, person or business that may be asserted by a  
31 governmental body or private party involving the alleged  
32 release or threatened release of hazardous substances or the  
33 alleged violation of environmental laws affecting property  
34 held by the estate or trust or owned by the person or  
35 business;

36 (5) To release or disclaim a power granted by a document,  
37 statute or rule that, in the sole discretion of the trustee,  
38 may expose the trustee to liability under environmental laws  
39 or impair the value of the assets retained or controlled by  
40 the trustee; and

41 (6) To charge the reasonable cost of abatement, cleanup,  
42 inspection, assessment, insurance, database review or any  
43 other response or remedial action, as authorized by this  
44 subsection, against the income or principal for the estate,  
45 trust, personal estate or business assets. The trustee is  
46 is

2 not personally responsible for the cost of an abatement,  
3 cleanup, inspection, assessment, insurance, database review,  
4 or any other response or remedial action and is not  
5 personally liable to a beneficiary or any other party for a  
6 decrease in value or an exhaustion of assets by reason of  
7 the trustee's reasonable compliance with environmental laws,  
8 including reporting requirements under those laws.

9  
10 For the purposes of this subsection, "environmental law" means a  
11 federal, state, or local law, rule, regulation or ordinance  
12 relating to protection of the environment or human health.

13  
14 For the purposes of this subsection, "hazardous substance" means  
15 a substance defined as hazardous or toxic or otherwise regulated  
16 by environmental laws.

17  
18 For the purposes of this subsection, "trustee" means an  
19 individual, partnership, corporation, bank, trust company, firm  
20 or other entity who is an officer, employee or agent of the  
21 fiduciary, who holds legal title to, controls or manages,  
22 directly or indirectly, a site or vessel as a fiduciary for  
23 purposes of administering an estate or trust of which the site or  
24 vessel is a part and who is acting in any of the following  
25 capacities: as a trustee under a will or inter vivos instrument  
26 creating a trust under which the trustee takes title to or  
27 otherwise controls or manages property for the purpose of  
28 protecting or conserving the property under the ordinary rules  
29 applied in the courts; as a court-appointed receiver; as a  
30 trustee appointed in proceedings under federal bankruptcy laws;  
31 as an assignee or a trustee acting under an assignment made for  
32 the benefit of creditors; as a guardian or conservator; as a  
33 trustee, pursuant to an indenture agreement or similar financing  
34 agreement, for debt securities or certificates of interest of  
35 participation in any such debt securities; or as a successor of a  
36 trustee acting in the capacities listed in this paragraph.

37  
38 **Sec. 3. Application.** The provisions of the Maine Revised  
39 Statutes, Title 18-A, section 3-711, subsection (b) and section  
40 7-402, subsection (d) apply to all fiduciary relationships  
41 existing, and to fiduciary actions or inactions occurring, on the  
42 effective date of this Act or created or occurring after the  
43 effective date of this Act.

#### 44 **STATEMENT OF FACT**

45  
46 This bill clarifies the authority of a fiduciary, including  
47 a personal representative of an estate, a guardian, a conservator  
48 or a trustee, to take actions it deems necessary to guard against  
49 environmental liability to the trust, the estate or the fiduciary  
50 itself.

2

This document has not yet been reviewed to determine the need for cross-reference, stylistic and other technical amendments to conform existing law to current drafting standards.