

MAINE STATE LEGISLATURE

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CRIMINAL JUSTICE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1214, L.D. 1714, Bill, "An Act to Implement the Recommendations of the Department of Human Services Study Group on Prosecution of Crimes against the Elderly"

Amend the bill by striking out all of section 2 and inserting in its place the following:

'Sec. 2. 18-A MRSA §5-411, as amended by PL 1995, c. 291, §2, is repealed and the following enacted in its place:

§5-411. Bond

The following provisions govern bonds for conservators.

(a) The Probate Court shall require a conservator of an estate of \$25,000 or more to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it specifies, unless the court makes a specific finding as to why a bond should not be required. With respect to estates of less than \$25,000, the court may in its discretion require a bond or other surety. In making a finding as to why a bond is not required, the court shall consider the person's creditworthiness, financial solvency or past financial management.

(b) A conservator who moves out of State while serving as conservator shall notify the Probate Court regarding the change of residence. The court may require a conservator who moves or locates out of State while serving as conservator to furnish a bond at that time. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control plus one year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value

COMMITTEE AMENDMENT

2 of any land that the fiduciary, by express limitation of power,
3 lacks power to sell or convey without court authorization. In
4 lieu of sureties on a bond, the court may accept other security
5 for the performance of the bond, including a pledge of securities
6 or a mortgage of land.

7 (c) The following persons wishing to serve as conservators
8 are exempt from the bonding requirements of this section:

10 (1) Spouses;

12 (2) Financial institutions authorized to do business in the
13 State under Title 9-B, section 131, subsection 12-A, or
14 their employees; and

16 (3) Persons who are already bonded in their course of
17 business if the bond is sufficient to cover the duties of
18 conservator.'

20 Further amend the bill in section 3 in that part designated
21 "§5-507." in subsection (a) in the 8th line (page 1, line 46 in
22 L.D.) by striking out the following: "and shall act with utmost
23 faith and loyalty"

24 Further amend the bill in section 3 in that part designated
25 "§5-507." by striking out all of subsection (b) (page 2, lines 1
26 to 4 in L.D.) and inserting in its place the following:

27 '(b) A durable financial power of attorney must be
28 notarized by a notary public or an attorney at law.'

30 Further amend the bill in section 3 in that part designated
31 "§5-507." in subsection (c) in the first blocked paragraph in the
32 11th to 14th lines (page 2, lines 19 to 22 in L.D.) by striking
33 out the following: "As the Agent, your authority under this form
34 will end when the Principal dies and you will not have the
35 authority to administer the estate unless so named in the
36 Principal's will."

37 Further amend the bill in section 3 in that part designated
38 "§5-507." in subsection (c) in the 2nd blocked paragraph in the
39 9th and 10th lines (page 2, lines 39 to 40 in L.D.) by striking
40 out the following: "and to act with utmost faith and loyalty"

41 Further amend the bill in section 3 in that part designated
42 "§5-507." by inserting after subsection (c) the following:

43 '(d) These requirements do not render ineffective a durable
44 financial power of attorney validly executed prior to the
45 effective date of this section.'

2 Further amend the bill in section 4 by striking out all of
3 subsection 1 (page 3, lines 9 to 33 in L.D.) and inserting in its
4 place the following:

6 '1. Reasonable cause to suspect. When, while acting in a
7 professional capacity, an allopathic or osteopathic physician,
8 medical intern, medical examiner, physician's assistant, dentist,
9 chiropractor, podiatrist, registered or licensed practical nurse,
10 certified nursing assistant, ~~Christian--Science--practitioner,~~
11 social worker, psychologist, pharmacist, physical therapist,
12 speech therapist, occupational therapist, mental health
13 professional, law enforcement official, coroner, emergency room
14 personnel, ambulance attendant ~~or~~ emergency medical technician
15 or unlicensed assistive personnel suspects that an adult has been
16 abused, neglected or exploited, and has reasonable cause to
17 suspect that the adult is incapacitated, then the professional
18 shall immediately report or cause a report to be made to the
19 department.

20
21 Whenever a person is required to report as a member of the staff
22 of a medical, public or private institution, agency or facility,
23 the staff person shall immediately make a report directly to the
24 department.'

26 Further amend the bill by inserting at the end before the
27 summary the following:

30 **FISCAL NOTE**

32 This bill may increase the number of cases reported. If the
33 Legislature wants the Department of the Attorney General to
34 pursue and prosecute these cases, additional General Fund
35 appropriations will be required. LD 647, pending before the
36 Legislature, provides funds to establish the Elder Abuse and
37 Fraud Unit within the Department of the Attorney General to
38 prosecute these types of cases.

40 This bill may increase prosecutions for Class E crimes. If
41 a jail sentence is imposed, the additional costs to the counties
42 are estimated to be \$83.78 per day per prisoner. These costs are
43 not reimbursed by the State. The number of prosecutions that may
44 result in a jail sentence and the resulting costs to the county
45 jail system are expected to be insignificant.

46
47 The additional workload and administrative costs associated
48 with the minimal number of new cases filed in the court system
can be absorbed within the budgeted resources of the Judicial

Department. The collection of additional fines may increase
General Fund revenue by minor amounts.'

SUMMARY

This amendment amends the Maine Revised Statutes, Title 18-A, section 5-411 to require that court-appointed conservators of estates in excess of \$25,000 provide a bond to protect the estate against the possibility of loss and mismanagement. The amendment establishes the following standards for Probate Courts to consider when determining whether a bond should be furnished: creditworthiness, financial solvency or past financial management. The amendment also exempts from bonding requirements spouses, financial institutions and those persons who are already bonded in the course of their business if the bond is sufficient to cover the duties of conservator.

The amendment removes language directing a person acting under a durable financial power of attorney to act with the utmost faith and loyalty.

The amendment removes from the mandatory reporting law under the Maine Revised Statutes, Title 22, section 3477 Christian Science practitioners, employees and representatives of financial institutions, financial planners and stockbrokers and credit union employees.

The amendment also adds a fiscal note to the bill.