

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 783

S.P. 218

In Senate, February 13, 2001

**An Act to Update the Probate Code.**

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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 SAWYER of Penobscot.  
Cosponsored by Representative MENDROS of Lewiston and  
Senators: FERGUSON of Oxford, McALEVEY of York.

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

2  
4       **Sec. 1. 18-A MRSA §2-401**, as enacted by PL 1979, c. 540, §1,  
is amended to read:

6       **§2-401. Homestead allowance**

8       A surviving spouse of a decedent who was domiciled in this  
State is entitled to a homestead allowance of ~~\$5,000~~ \$10,000. If  
10 there is no surviving spouse, each minor child and each dependent  
child of the decedent is entitled to a homestead allowance  
12 amounting to ~~\$5,000~~ \$10,000 divided by the number of minor and  
dependent children of the decedent. The homestead allowance is  
14 exempt from and has priority over all claims against the estate.  
Homestead allowance is in addition to any share passing to the  
16 surviving spouse or minor or dependent child by the will of the  
decedent unless otherwise provided, by intestate succession or by  
18 way of elective share.

20       **Sec. 2. 18-A MRSA §2-402**, as repealed and replaced by PL  
1985, c. 506, Pt. A, §19, is amended to read:

22       **§2-402. Exempt property**

24       In addition to the homestead allowance, the surviving spouse  
of a decedent who was domiciled in this State is entitled from  
26 the estate to value not exceeding ~~\$3,500~~ \$7,000 in excess of any  
security interests therein in the estate in property exempt under  
28 Title 14, chapter 507, subchapter II, Article 7, on the date of  
death of the decedent. If there is no surviving spouse, children  
of the decedent are entitled jointly to the same value. If  
32 encumbered chattels are selected and if the value in excess of  
security interests, plus that of other exempt property, is less  
34 than ~~\$3,500~~ \$7,000, or if there is not ~~\$3,500~~ \$7,000 worth of  
exempt property in the estate, the spouse or children are  
36 entitled to other assets of the estate, if any, to the extent  
necessary to make up the ~~\$3,500~~ \$7,000 value. Rights to exempt  
38 property and assets needed to make up a deficiency of exempt  
property have priority over all claims against the estate, except  
40 that the right to any assets to make up a deficiency of exempt  
property shall must abate as necessary to permit prior payment of  
42 homestead allowance and family allowance. These rights are in  
addition to any benefit or share passing to the surviving spouse  
44 or children by the will of the decedent unless otherwise  
provided, by intestate succession, or by way of elective share.

46       **Sec. 3. 18-A MRSA §2-404**, as enacted by PL 1979, c. 540, §1,  
48 is amended to read:

50       **§2-404. Source, determination and documentation**

2 If the estate is otherwise sufficient, property specifically  
4 devised is not used to satisfy rights to homestead and exempt  
6 property. Subject to this restriction, the surviving spouse, the  
8 guardians of the minor children, or children who are adults may  
10 select property of the estate as homestead allowance and exempt  
12 property. The personal representative may make these selections  
14 if the surviving spouse, the children or the guardians of the  
16 minor children are unable or fail to do so within a reasonable  
18 time or if there are no guardians of the minor children. The  
20 personal representative may execute an instrument or deed of  
22 distribution to establish the ownership of property taken as  
24 homestead allowance or exempt property. ~~He~~ The personal  
representative may determine the family allowance in a lump sum  
not exceeding \$6,000 or periodic installments not exceeding \$500  
\$1,000 per month for one year, and may disburse funds of the  
estate in payment of the family allowance and any part of the  
homestead allowance payable in cash. The personal representative  
or any interested person aggrieved by any selection,  
determination, payment, proposed payment, or failure to act under  
this section may petition the court for appropriate relief, which  
relief may provide a family allowance larger or smaller than that  
which the personal representative determined or could have  
determined.

## 26 SUMMARY

28 This bill increases the homestead allowance from \$5,000 to  
30 \$10,000. The bill also increases the exempt property from an  
32 estate allowed to a surviving spouse from \$3,500 to \$7,000. The  
bill also increases the spouse or family allowance from periodic  
installments of \$500 a month to \$1,000 a month.