

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1017, L.D. 1366, Bill, "An Act Concerning Responsibilities of Conservators for Persons With Disability and Minors"

Amend the bill by striking out all of section 1 and inserting in its place the following:

Sec. 1. 18-A MRSA §5-418, as enacted by PL 1979, c. 540, §1, is repealed and the following enacted in its place:

§5-418. Inventory and records

(a) Within 90 days following a conservator's appointment, the conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that it is complete and accurate so far as the conservator is informed. The conservator shall provide a copy of the completed inventory to the protected person if the person can be located, has attained 14 years of age and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides.

(b) A conservator shall keep suitable records of the conservator's administration and exhibit the same on request of any interested person.

(c) If a conservator fails without good cause to file an inventory, the court may require the conservator or the conservator's surety to pay to the protected person's estate a minimum of \$100 and a maximum of the amount the court determines is just to compensate the estate for any damage resulting from

COMMITTEE AMENDMENT

2 the failure to file the inventory. The payments required by this
3 subsection are in addition to any other award or remedy available
4 at law or in equity for fiduciary misconduct of the conservator.

6 **Sec. 2. 18-A MRSA §5-419**, as amended by PL 1995, c. 462, Pt.
A, §39, is further amended to read:

8 **§5-419. Accounts**

10 (a) Every conservator ~~must~~ shall account to the court for
11 the administration of the trust as specified by the court at the
12 time of the initial order or at the time of a subsequent order or
13 as provided by court rule and upon resignation or removal. On
14 termination of the protected person's minority or disability, a
15 conservator may account to the court or may account to the former
16 protected person or that person's personal representative. Prior
17 to the termination of the protected person's minority, the
18 conservator ~~must~~ shall account to the court and the protected
19 person.

20 (b) Subject to appeal or vacation within the time
21 permitted, an order, made upon notice and hearing, allowing an
22 intermediate account of a conservator, adjudicates as to ~~his~~ the
23 conservator's liabilities concerning the matters considered in
24 connection therewith; and an order, made upon notice and hearing,
25 allowing a final account adjudicates as to all previously
26 unsettled liabilities of the conservator to the protected person
27 or ~~his~~ the protected person's successors relating to the
28 conservatorship. In connection with any account, the court may
29 require a conservator to submit to a physical check of the estate
30 in ~~his~~ the conservator's control, to be made in any manner the
31 court may specify.

32 (c) The court may appoint a visitor to review the
33 conservator's accounts and determine if appropriate provision for
34 the use, care and protection of the protected person's property
35 has been made. The visitor shall report ~~his~~ the findings to the
36 court in writing.

37 (d) If the conservator fails without good cause to file the
38 accounting required by the court, the court may require the
39 conservator or the conservator's surety to pay to the protected
40 person's estate a minimum of \$100 and a maximum of the amount the
41 court determines is just to compensate the estate for any damage
42 resulting from the failure to file the accounting. The payments
43 required by this subsection are in addition to any other award or
44 remedy available at law or in equity for fiduciary misconduct of
45 the conservator.'

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SUMMARY

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This amendment replaces the bill. It repeals and replaces the section of the current Probate Code dealing with inventory and records of a conservator of a protected person's estate.

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This amendment updates current law and restructures the format covering the inventory and other records of the conservator. It provides a sanction for failing without good cause to file the inventory. The probate court may order the conservator to pay to the estate a minimum of \$100 and a maximum of the amount the court determines is the damage suffered by the estate because of the failure to file the inventory. These payments are in addition to any other remedy for fiduciary misconduct of the conservator.

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This amendment makes similar changes to the section of the Probate Code dealing with accountings by conservators.

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