## MAINE STATE LEGISLATURE

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## 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

Legislative Document

No. 840

H.P. 617

House of Representatives, February 20, 2003

An Act To Clarify the Duties of Conservators

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. Macfarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FLETCHER of Winslow. Cosponsored by Representatives: BERRY of Belmont, CANAVAN of Waterville, SHERMAN of Hodgdon.

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	Sec. 1. 18-A MRSA §5-418, sub-§(d) is enacted to read:
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	(d) If a conservator fails to file an inventory or fails to
6	include in the inventory property that the court determines
	should have been in the inventory, the court, in determining the
8	value of the uninventoried or missing property, may rely on the
• 0	opinion of qualified appraisers or owners of similar property who
10	have not seen the uninventoried property. Any doubt about the
1.0	value of the uninventoried or missing property created by the
12	absence of the property must be resolved in favor of the highest
14	reasonable estimated offer. When an inventory has not been filed
14	and interested persons allege under oath or affirmation that
16	property should have been inventoried but is now missing, the conservator has the burden of proving that property was not
10	required to be inventoried.
18	required to be inventoried.
10	Sec. 2. 18-A MRSA §5-429, sub-§§(e) and (f) are enacted to read:
20	occ. 2. 10-A Mixon 33-425, sub-33(c) and (i) are enacted to read.
20	(e) Grounds for imposition of surcharge include, but are
22	not limited to:
-	
24	(1) Failure to timely file an inventory as required by
	section 5-418;
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	(2) Failure to timely file an account as required by
28	section 5-419;
30	(3) Unexplained loss of property from the estate;
32	(4) Bad faith management of the estate;
34	(5) Failure to maintain adequate insurance on estate assets;
2.6	
36	(6) Filing of false documents relating to the estate;
2.0	(7) Taking an unreasonable fee for managing the estate; and
38	(7) Taking an unreasonable fee for managing the estate; and
40	(8) Inducing or attempting to induce the protected person
10	to give the conservator special benefits.
42	<u> </u>
	(f) A surcharge may include, without limitation, the
44	following:
46	(1) An amount determined adequate to make the estate whole
	for any losses of property or value or other losses
48	including costs and reasonable attorney's fees incurred by
	the estate in any proceeding for surcharge;

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

- 2 (2) Costs, including reasonable attorney's fees, incurred by any party whose activities bring to the court's attention the need to impose a surcharge; and
  - (3) Punitive and exemplary damages in an amount not to exceed 15% of the actual losses of the estate as described in paragraphs (1) and (2); except when the conservator is found to have acted in bad faith or with deceit or to be guilty of willful malfeasance, in which case, the punitive and exemplary damages may be imposed in an amount not to exceed 3 times the losses described in paragraphs (1) and (2).

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## 16 SUMMARY

This bill amends the Probate Code governing conservators of the estates of minors or disabled persons in the following manner.

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- 1. Current law requires the conservator to file with the court a complete inventory of the estate. This bill allows the court, in the event that an inventory is not filed or the inventory that is filed is incomplete, to rely on the opinion of an appraiser or owner of similar property, even if the person has not seen the missing property. The burden of proving that the property was not required to be inventoried is placed on the conservator.
- 2. Current law allows a party to bring a proceeding for surcharge to determine liability of the conservator for malfeasance committed in the course of administration of the estate. This bill clarifies what constitutes malfeasance or improper management of the estate and allows the court to award damages and costs.