

MAINE STATE LEGISLATURE

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RS

L.D. 1579

DATE: 3-17-04

(Filing No. H-774)

REPORT "A"
JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
SECOND SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1152, L.D. 1579, Bill, "An Act To Promote the Financial Security of Maine's Families and Children"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 15 MRSA §321, sub-§1, as amended by PL 1995, c. 469, §1, is further amended to read:

1. Definition. For purposes of this section, "family or household members" means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living as spouses, natural parents of the same child, adult household members related by consanguinity or affinity or minor children of any household member when the offender is an adult household member. Holding oneself out to be a spouse is not necessary to constitute "living as spouses." For purposes of this subsection, "domestic partners" are persons that bear the same relationship to each other as do persons meeting the requirements set forth in Title 24, section 2319-A, subsection 1.

Sec. 2. 18-A MRSA §1-201, sub-§(17), as enacted by PL 1979, c. 540, §1, is amended to read:

(17) "Heirs" means those persons, including the surviving spouse or surviving domestic partner, who are entitled under the statutes of intestate succession to the property of a decedent. For purposes of this subsection, "domestic partner" means a person that bears the same relationship to the decedent as a person meeting the requirements in Title 24, section 2319-A, subsection 1 bears to a subscriber or member.

COMMITTEE AMENDMENT

2 **Sec. 3. 18-A MRSA §1-201, sub-§(20)**, as amended by PL 1979, c.
690, §3, is further amended to read:

4 (20) "Interested person" includes heirs, devisees,
6 children, spouses, domestic partners, creditors, beneficiaries
8 and any others having a property right in or claim against a
trust estate or the estate of a decedent, ward or protected
10 person ~~which~~ that may be affected by the proceeding. It also
includes persons having priority for appointment as personal
12 representative, and other fiduciaries representing interested
persons. For purposes of this subsection, "domestic partners"
14 are persons that bear the same relationship to each other as do
persons meeting the requirements set forth in Title 24, section
16 2319-A, subsection 1. In any proceeding or hearing under Article
V, 5 affecting a trust estate or estate, when the ward or
protected person has received benefits from the Veterans
18 Administration within 3 years, the ~~Administratoe~~ administrator of
Veterans Affairs of the United States ~~shall-be~~ is an "interested
20 person." The meaning as it relates to particular persons may vary
from time to time and must be determined according to the
22 particular purposes of, and matter involved in, any proceeding.

24 **Sec. 4. 18-A MRSA §2-102**, as enacted by PL 1979, c. 540, §1,
is amended to read:

26 **§2-102. Share of spouse or domestic partner**

28 The intestate share of the surviving spouse or surviving
30 domestic partner is:

32 (1) If there is no surviving issue or parent of the
decedent, the entire intestate estate;

34 (2) If there is no surviving issue but the decedent is
36 survived by a parent or parents, the first \$50,000, plus 1/2 of
the balance of the intestate estate;

38 (3) If there are surviving issue all of whom are issue of
40 the surviving spouse or surviving domestic partner also, the
first \$50,000, plus 1/2 of the balance of the intestate estate; or

42 (4) If there are surviving issue one or more of whom are
44 not issue of the surviving spouse or surviving domestic partner,
1/2 of the intestate estate.

46 For purposes of this section, "domestic partner" means a
48 person that bears the same relationship to the decedent as a
person meeting the requirements in Title 24, section 2319-A,
50 subsection 1 bears to a subscriber or member.

2 **Sec. 5. 18-A MRSA §2-103**, as amended by PL 1981, c. 94, is
4 further amended to read:

6 **§2-103. Share of heirs other than surviving spouse or surviving
8 domestic partner**

8 The part of the intestate estate not passing to the
10 surviving spouse or surviving domestic partner under section
12 2-102, or the entire estate if there is no surviving spouse or
14 surviving domestic partner, passes as follows:

16 (1) To the issue of the decedent; to be distributed per
18 capita at each generation as defined in section 2-106;

20 (2) If there is no surviving issue, to the decedent's
22 parent or parents equally;

24 (3) If there is no surviving issue or parent, to the issue
26 of the parents or either of them to be distributed per capita at
28 each generation as defined in section 2-106;

30 (4) If there is no surviving issue, parent or issue of a
32 parent, but the decedent is survived by one or more grandparents
34 or issue of grandparents, half of the estate passes to the
36 paternal grandparents if both survive, or to the surviving
38 paternal grandparent, or to the issue of the paternal
40 grandparents if both are deceased to be distributed per capita at
42 each generation as defined in section 2-106; and the other half
44 passes to the maternal relatives in the same manner; but if there
46 be is no surviving grandparent or issue of grandparents on either
48 the paternal or maternal side, the entire estate passes to the
relatives on the other side in the same manner as the half; or

 (5) If there is no surviving issue, parent or issue of a
parent, grandparent or issue of a grandparent, but the decedent
is survived by one or more ~~great-grandparents~~ great-grandparents
or issue of ~~great-grandparents~~ great-grandparents, half of the
estate passes to the paternal ~~great---~~ great-grandparents
great-grandparents who survive, or to the issue of the paternal
~~great-grandparents~~ great-grandparents if all are deceased, to be
distributed per capita at each generation as defined in section
2-106; and the other half passes to the maternal relatives in the
same manner; but if there is no surviving ~~great--grandparent~~
great-grandparent or issue of a ~~great---~~ great-grandparent
great-grandparent on either the paternal or maternal side, the
entire estate passes to the relatives on the other side in the
same manner as the half.

2 For purposes of this section, "domestic partner" means a
3 person that bears the same relationship to the decedent as a
4 person meeting the requirements in Title 24, section 2319-A,
5 subsection 1 bears to a subscriber or member.

6 **Sec. 6. 18-A MRSA §3-203, sub-§(a), ¶¶(2) and (4),** as enacted by
7 PL 1979, c. 540, §1, are amended to read:

8
9 (2) The surviving spouse or surviving domestic partner of
10 the decedent who is a devisee of the decedent+. For
11 purposes of this paragraph, "domestic partner" means a
12 person that bears the same relationship to the decedent as a
13 person meeting the requirements in Title 24, section 2319-A,
14 subsection 1 bears to a subscriber or member;

15 (4) The surviving spouse or surviving domestic partner of
16 the decedent+. For purposes of this paragraph, "domestic
17 partner" means a person that bears the same relationship to
18 the decedent as a person meeting the requirements in Title
19 24, section 2319-A, subsection 1 bears to a subscriber or
20 member;

21
22 **Sec. 7. 18-A MRSA §5-309, sub-§(a), ¶(1),** as enacted by PL 1979,
23 c. 540, §1, is amended to read:

24
25 (1) The ward or the person alleged to be incapacitated and
26 his the ward's or person's spouse, parents and, adult
27 children+ and any domestic partner known to the court. For
28 purposes of this paragraph, "domestic partner" means a
29 person that bears the same relationship to the ward or
30 person alleged to be incapacitated as a person meeting the
31 requirements in Title 24, section 2319-A, subsection 1 bears
32 to a subscriber or member;

33
34 **Sec. 8. 18-A MRSA §5-309, sub-§(c),** as repealed and replaced by
35 PL 1985, c. 656, §2, is amended to read:

36
37 (c) Notice to the spouse or domestic partner, adult
38 children and parents required by subsection (a) shall must be
39 served by certified mail, with restricted delivery and return
40 receipt requested, at least 14 days before the date of the
41 hearing.

42
43 If the certified mail to the spouse or domestic partner is not
44 delivered and the--spouse that person can be found within the
45 State, notice shall must be served personally on the--spouse that
46 person.

47
48 If the certified mail to the spouse or domestic partner is not
49 delivered, the--spouse--cannot that person can not be found within

the State and the certified mail is not delivered to any adult children, notice shall must be served personally on an adult child who can be found within the State.

If the certified mail to the spouse or domestic partner and adult children is not delivered, the spouse or domestic partner and all adult children ~~cannot~~ can not be found within the State and the certified mail is not delivered to any parent, notice shall must be served personally on a parent who can be found within the State.

If no spouse or domestic partner, adult child or parent is served by certified mail or personally, notice to the closest adult relative required by subsection (a) shall must be served by certified mail, with restricted delivery and return receipt requested. If the certified mail to the adult relative is not delivered and the adult relative can be found within the State, notice shall must be served personally on the adult relative. If no adult relative is served by certified mail or personally, notice to an adult friend required by subsection (a) shall must be served by certified mail, with restricted delivery and return receipt requested. If the certified mail to the adult friend is not delivered and the adult friend can be found within the State, notice shall must be served personally on the adult friend.

Notice required by subsection (a) to any person serving as a guardian, or conservator or who has a person's care and custody shall must be served by certified mail, with restricted delivery and return receipt requested.

For purposes of this subsection, "domestic partner" means a person that bears the same relationship to the ward or person alleged to be incapacitated as a person meeting the requirements in Title 24, section 2319-A, subsection 1 bears to a subscriber or member.

Except as otherwise provided in this section, notice shall must be given as prescribed by court rule under section 1-401.

Sec. 9. 18-A MRSA §5-311, sub-§(b), ¶(2), as enacted by PL 1979, c. 540, §1, is amended to read:

(2) The spouse or domestic partner of the incapacitated person, For purposes of this paragraph, "domestic partner" means a person that bears the same relationship to the incapacitated person as a person meeting the requirements in Title 24, section 2319-A, subsection 1 bears to a subscriber or member;

2 **Sec. 10. 18-A MRSA §5-311, sub-§(c), ¶(1)**, as enacted by PL 1995,
c. 51, §1, is amended to read:

4 (1) The spouse or domestic partner of the incapacitated
6 person~~r~~. For purposes of this paragraph, "domestic partner"
8 means a person that bears the same relationship to the
9 incapacitated person as a person meeting the requirements in
10 Title 24, section 2319-A, subsection 1 bears to a subscriber
11 or member;

12 **Sec. 11. 18-A MRSA §5-404, sub-§(a)**, as enacted by PL 1979, c.
13 540, §1, is amended to read:

14 (a) The person to be protected, any person who is
15 interested in his the estate, affairs or welfare of the person to
16 be protected including his the parent, guardian, ~~ex~~ custodian, or
17 domestic partner of the person to be protected or any person who
18 would be adversely affected by lack of effective management of
19 his the property and affairs of the person to be protected may
20 petition for the appointment of a conservator or for other
21 appropriate protective order. For purposes of this subsection,
22 "domestic partner" means a person that bears the same
23 relationship to the person to be protected as a person meeting
24 the requirements in Title 24, section 2319-A, subsection 1 bears
25 to a subscriber or member.

26 **Sec. 12. 18-A MRSA §5-405, sub-§(a-1)**, as enacted by PL 1985,
27 c. 656, §4, is amended to read:

28 (a-1) The spouse or domestic partner and all adult children
29 of the person to be protected or the protected person or, if
30 none, the person's parents or closest adult relative or, if none,
31 a friend must be given notice of the proceeding. Notice under
32 this subsection ~~shall~~ must be served by certified mail,
33 restricted delivery and return receipt requested, at least 14
34 days before the date of the hearing.

35 If the certified mail to the spouse or domestic partner is not
36 delivered and the spouse or domestic partner can be found within
37 the State, notice ~~shall~~ must be served personally on the spouse
38 or domestic partner.

39 If the certified mail to the spouse or domestic partner is not
40 delivered, the spouse ~~cannot~~ or domestic partner can not be found
41 within the State and the certified mail is not delivered to any
42 adult children, notice ~~shall~~ must be served personally on an
43 adult child who can be found within the State.

44 If notice is served on the person's parents or closest adult
45 relative and the certified mail is not delivered, notice ~~shall~~

2 must be served personally on a parent or the adult relative if a
parent or adult relative can be found within the State.

4 If notice is served on the person's friend and the certified mail
is not delivered, notice shall must be served personally on the
6 friend if the friend can be found within the State.

8 For purposes of this subsection, "domestic partner" means a
10 person that bears the same relationship to the person to be
protected or the protected person as a person meeting the
12 requirements in Title 24, section 2319-A, subsection 1 bears to a
subscriber or member.

14 Except as otherwise provided in this subsection and subsection
16 (a), notice shall must be given as prescribed by court rule under
section 1-401.

18 **Sec. 13. 18-A MRSA §5-410, sub-§(a), ¶(3),** as enacted by PL
20 1979, c. 540, §1, is amended to read:

22 (3) The spouse or domestic partner of the protected
person. For purposes of this paragraph, "domestic partner"
24 means a person that bears the same relationship to the
protected person as a person meeting the requirements in
26 Title 24, section 2319-A, subsection 1 bears to a subscriber
or member;

28 **Sec. 14. 19-A MRSA §4002, sub-§4,** as enacted by PL 1995, c.
30 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

32 **4. Family or household members.** "Family or household
members" means spouses or domestic partners or former spouses or
34 former domestic partners, individuals presently or formerly
living together as spouses, natural parents of the same child,
36 adult household members related by consanguinity or affinity or
minor children of a household member when the defendant is an
adult household member and, for the purposes of this chapter
38 only, includes individuals presently or formerly living together
and individuals who are or were sexual partners. Holding oneself
40 out to be a spouse is not necessary to constitute "living as
spouses." For purposes of this subsection, "domestic partners"
42 are persons that bear the same relationship to each other as do
persons meeting the requirements set forth in Title 24, section
44 2319-A, subsection 1.

46 **Sec. 15. 22 MRSA §2843, sub-§2,** as repealed and replaced by PL
48 1985, c. 602, is amended to read:

50 **2. Permit for disinterment or removal.** No dead human body
may be disinterred or removed from any vault or tomb until the

person in charge of the disinterment or removal has obtained a permit from the clerk of the municipality where the dead human body is buried or entombed. The permit shall must be issued upon receipt of a notarized application signed by the next of kin of the deceased who ~~shall-verify~~ verifies that he the signer is the closest surviving known relative and, where any other family ~~members~~ member of equal or greater legal or blood relationship or a domestic partner of the decedent also ~~survive~~ survives, that they all such persons are aware of, and do not object to, the disinterment or removal. Nothing contained in this subsection precludes a court of competent jurisdiction from ordering or enjoining disinterment or removal pursuant to section 3029 or in other appropriate circumstances. For purposes of this subsection, "domestic partner" means a person that bears the same relationship to the decedent as a person meeting the requirements in Title 24, section 2319-A, subsection 1 bears to a subscriber or member.

Sec. 16. 22 MRSA §2843-A, sub-§1, ¶D, as enacted by PL 1993, c. 609, §1, is amended to read:

D. "Next of kin" means a person having the following relationship to the subject, in the following order of priority:

(1) The spouse, or domestic partner. For purposes of this paragraph, "domestic partner" means a person that bears the same relationship to the subject as a person meeting the requirements in Title 24, section 2319-A, subsection 1 bears to a subscriber or member;

(2) An adult son or daughter;

(3) A parent;

(4) An adult brother or sister;

(5) An adult grandchild;

(6) An adult niece or nephew who is the child of a brother or sister;

(7) A maternal grandparent;

(8) A paternal grandparent;

(9) An adult aunt or uncle;

(10) An adult first cousin; or

(11) Any other adult relative in descending order of blood relationship.

Sec. 17. 22 MRSA §2843-A, sub-§3, as enacted by PL 1993, c. 609, §1, is amended to read:

3. Estranged spouse or domestic partner. Notwithstanding subsection 2, if the surviving spouse or surviving domestic partner and the subject were estranged at the time of death, the spouse or domestic partner may not have custody and control of the subject's remains. In these cases, custody and control belong to the next of kin following the spouse or domestic partner. For purposes of this subsection, "domestic partner" means a person that bears the same relationship to the subject as a person meeting the requirements in Title 24, section 2319-A, subsection 1 bears to a subscriber or member.

Sec. 18. 22 MRSA §2846, as amended by PL 1985, c. 17, is further amended to read:

§2846. Authorized person

For the purposes of this chapter, the "authorized person" responsible for obtaining or filing a permit or certificate shall mean means a member of the immediate family of the deceased, the domestic partner of the deceased, a person authorized in writing by a member of the immediate family of the deceased if no member of the immediate family of the deceased wishes to assume the responsibility, or by the domestic partner of the deceased if the domestic partner does not wish to assume the responsibility or, in the absence of immediate family or a known domestic partner, a person authorized in writing by the deceased. For purposes of this section, "domestic partner" means a person that bears the same relationship to the deceased as a person meeting the requirements in Title 24, section 2319-A, subsection 1 bears to a subscriber or member.

Sec. 19. Mandate payment schedule. The Judicial Department shall develop a mandate payment schedule and distribute funds allocated in this Act to registers of probate within the State.

Sec. 20. Acceptance of gifts and donations. The State Court Administrator is authorized to accept gifts and donations from any source for the purpose of offsetting the costs of funding the local mandate created by this Act.

Sec. 21. Appropriations and allocations. The following appropriations and allocations are made.

JUDICIAL DEPARTMENT

State Mandate - Probate Form Replacement

Initiative: Allocates funds on a one-time basis to be distributed to registers of probate for the purpose of complying with the state mandate regarding the replacement of probate forms.

Other Special Revenue Funds	2003-04	2004-05
All Other	\$0	\$8,550
Other Special Revenue Funds Total	\$0	\$8,550

SUMMARY

This amendment amends certain provisions of the Probate Code and laws governing the custody of remains of deceased persons, governing conservators and guardians and governing domestic violence to extend to domestic partners provisions that currently apply to spouses.

This amendment creates a separate account to provide funds for the registers of probate to pay for the reprinting of probate forms necessitated by this amendment. The Judicial Department will establish a mandate payment schedule and administer the account. The State Court Administrator is authorized to accept gifts and donations to the account to offset the costs of funding the local mandate created by this amendment.

FISCAL NOTE REQUIRED
(See attached)

**121st Maine Legislature
Office of Fiscal and Program Review**

**LD 1579**

**An Act To Promote the Financial Security of Maine's Families and
Children**

LR 2058(02)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

	2003-04	2004-05	Projections 2005-06	Projections 2006-07
Appropriations/Allocations				
Other Special Revenue Funds	\$0	\$8,550	\$0	\$0

State Mandate**New or Expanded Activity**

The requirement that Probate Court registers replace probate forms to allow domestic partners to receive notice of certain probate proceedings constitutes an unfunded state mandate. The additional local costs to implement this change are estimated to be no more than \$8,550 statewide. An Other Special Revenue Funds allocation for that purpose has been included.

Unit Affected

Counties

Costs

\$8,550

Correctional and Judicial Impact Statements

Increases the number of civil suits

Fiscal Detail and Notes

This bill includes a one-time Other Special Revenue Funds allocation to the Judicial Department in the amount of \$8,550 in fiscal year 2004-05 to provide funds to be distributed to Probate Court registers for the purpose of complying with the state mandate regarding the replacement of probate forms. This one-time allocation assumes that there will be a gift or donation to the Judicial Department to meet the costs of this state mandate. If the required amounts received are less than \$8,550, a General Fund appropriation will be required for the difference or Probate Court registers will not be required to implement this Act.