

MAINE STATE LEGISLATURE

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R&S

L.D. 1579

DATE: 3-17-04

(Filing No. H-775)

REPORT "C"
JUDICIARY

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

COMMITTEE AMENDMENT "B" 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 former spouses, long-standing domestic partners or former long-standing 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."

Sec. 2. 18-A MRSA §3-203, sub-§(a), ¶(4-A) is enacted to read:

(4-A) The surviving long-standing domestic partner of the decedent;

Sec. 3. 18-A MRSA §5-309, sub-§(a), ¶(1), as enacted by PL 1979, c. 540, §1, is amended to read:

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2 (1) The ward or the person alleged to be incapacitated and
his the ward's or person's spouse, parents and, adult
4 children and any long-standing domestic partner known to the
court;

6 **Sec. 4. 18-A MRSA §5-309, sub-§(c),** as repealed and replaced by
PL 1985, c. 656, §2, is amended to read:

8 (c) Notice to the spouse, adult children, long-standing
10 domestic partner and parents required by subsection (a) shall
must be served by certified mail, with restricted delivery and
12 return receipt requested, at least 14 days before the date of the
hearing.

14 If the certified mail to the spouse or long-standing domestic
16 partner is not delivered and ~~the spouse~~ that person can be found
within the State, notice shall must be served personally on the
18 ~~spouse~~ that person.

20 If the certified mail to the spouse or long-standing domestic
22 partner is not 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
24 an adult child who can be found within the State.

26 If the certified mail to the spouse or long-standing domestic
28 partner and adult children is not delivered, the spouse or
long-standing domestic partner and all adult children ~~cannot~~ can
30 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.

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

48 Notice required by subsection (a) to any person serving as a
guardian, or conservator or who has a person's care and custody

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shall ~~must~~ be served by certified mail, with restricted delivery and return receipt requested.

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

Sec. 5. 18-A MRSA §5-311, sub-§(b), ¶(2-A) is enacted to read:

(2-A) The long-standing domestic partner of the incapacitated person;

Sec. 6. 18-A MRSA §5-311, sub-§(c), ¶(1-A) is enacted to read:

(1-A) The long-standing domestic partner of the incapacitated person;

Sec. 7. 18-A MRSA §5-404, sub-§(a), as enacted by PL 1979, c. 540, §1, is amended to read:

(a) The person to be protected, any person who is interested in ~~his~~ the estate, affairs or welfare of the person to be protected including ~~his~~ the parent, guardian, ~~or~~ or ~~custodian,~~ or ~~or~~ long-standing domestic partner of the person to be protected or any person who would be adversely affected by lack of effective management of ~~his~~ the property and affairs of the person to be protected may petition for the appointment of a conservator or for other appropriate protective order.

Sec. 8. 18-A MRSA §5-405, sub-§(a-1), as enacted by PL 1985, c. 656, §4, is amended to read:

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

If the certified mail to the spouse or long-standing domestic partner is not delivered and ~~the spouse~~ that person can be found within the State, notice shall ~~must~~ be served personally on ~~the spouse~~ that person.

If the certified mail to the spouse or long-standing domestic partner is not delivered, ~~the spouse cannot~~ that person can not be found within the State and the certified mail is not delivered

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2 to any adult children, notice shall must be served personally on an adult child who can be found within the State.

4 If notice is served on the person's parents or closest adult relative and the certified mail is not delivered, notice shall must be served personally on a parent or the adult relative if a parent or adult relative can be found within the State.

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

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

16 **Sec. 9. 18-A MRSA §5-410, sub-§(a), ¶(3-A)** is enacted to read:

18 (3-A) The long-standing domestic partner of the protected person;

22 **Sec. 10. 19-A MRSA §4002, sub-§4**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

24 **4. Family or household members.** "Family or household members" means spouses or former spouses, individuals presently or formerly living together as spouses, long-standing domestic partners or former long-standing domestic partners, natural parents of the same child, 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 only, includes individuals presently or formerly living together and individuals who are or were sexual partners. Holding oneself out to be a spouse is not necessary to constitute "living as spouses."

36 **Sec. 11. 22 MRSA §2843, sub-§2**, as repealed and replaced by PL 1985, c. 602, is amended to read:

40 **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 that he that person is the closest surviving known relative and, where any other family members member of equal or greater legal or blood relationship or a long-standing domestic partner of the decedent also survive survives, that they all such persons are aware of, and do not

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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.

Sec. 12. 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;

(1-A) The long-standing domestic partner of the deceased;

(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. 13. 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 long-standing 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

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2 wishes to assume the responsibility, or by the long-standing
3 domestic partner of the deceased if the domestic partner does not
4 wish to assume the responsibility or, in the absence of immediate
5 family or a known long-standing domestic partner, a person
6 authorized in writing by the deceased.

7 **Sec. 14. Mandate payment schedule.** The Judicial Department
8 shall develop a mandate payment schedule and distribute funds
9 allocated in this Act to registers of probate within the State.

10 **Sec. 15. Acceptance of gifts and donations.** The State Court
11 Administrator is authorized to accept gifts and donations from
12 any source for the purpose of offsetting the costs of funding the
13 local mandate created by this Act.

14 **Sec. 16. Appropriations and allocations.** The following
15 appropriations and allocations are made.

16 **JUDICIAL DEPARTMENT**

17 **State Mandate - Probate Form Replacement**

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

21 Other Special Revenue Funds	22 2003-04	23 2004-05
24 All Other	\$0	\$8,550
25 Other Special Revenue Funds Total	<u>\$0</u>	<u>\$8,550'</u>

26 **SUMMARY**

27 This amendment strikes and replaces the bill, removing the
28 part of the bill that authorizes a statewide domestic partnership
29 registry and the part that affects intestate succession. At the
30 same time, the amendment clarifies that a long-standing domestic
31 partner is a person entitled to have priority for appointment as
32 a personal representative, guardian or conservator for an estate
33 or as custodian of the remains of a deceased individual.

34 It is the intent of the Legislature that, if there is an
35 issue of fact as to whether an individual is a "long-standing
36 domestic partner," the Probate Court or other fact finder may
37 look to the criteria and methods of proof contained in the Maine
38 Revised Statutes, Title 24, section 2319-A and Title 24-A,
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2 sections 2741-A, 2832-A and 4249 or to any other reasonable
evidence of such long-term relationship as would demonstrate
4 affection, concern and commitment towards the decedent or the
incapacitated person.

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

14

FISCAL NOTE REQUIRED
(See attached)

16

**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(03)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Judiciary

Fiscal Note Required: Yes

Minority Report

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.