

MAINE STATE LEGISLATURE

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Legislative Document

No. 515

S.P. 170

February 2, 2007

An Act To Amend Laws Relating to Persons Serving as Permanency Guardians or Receiving Permanency Guardianship Subsidies

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator ROSEN of Hancock.
Cosponsored by Representative PINGREE of North Haven.

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

2 **Sec. 1. 18-A MRSA §5-311, sub-§(b), ¶(3-A)** is enacted to read:

3 (3-A). A person who served as guardian, permanency guardian or legal custodian of
4 the incapacitated person when the incapacitated person was a child, if the person was
5 actively serving in that capacity immediately before the incapacitated person's 18th
6 birthday;

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

9 (5). Any relative of the incapacitated person with whom ~~he~~ the incapacitated person
10 resided for more than 6 months prior to the filing of the petition; or

11 **Sec. 3. 18-A MRSA §5-311, sub-§(b), ¶(6)**, as enacted by PL 1979, c. 540, §1,
12 is amended to read:

13 (6). A person nominated by the person who is caring for ~~him~~ the incapacitated
14 person or paying benefits to ~~him~~ the incapacitated person.

15 **Sec. 4. 18-A MRSA §5-311, sub-§(c)**, as amended by PL 2003, c. 672, §12, is
16 further amended to read:

17 (c). ~~No~~ An owner, proprietor, administrator, employee or other person with a
18 substantial financial interest in a facility or institution licensed under Title 22, sections
19 1817 and 7801; may not act as guardian of an incapacitated person who is a resident, as
20 defined in Title 22, section 7852, subsection 13, unless the person requesting to be
21 appointed guardian is one of the following:

22 (1). The spouse of the incapacitated person;

23 (1-A). The domestic partner of the incapacitated person;

24 (2). An adult child of the incapacitated person;

25 (2-A). A person who served as guardian, permanency guardian or legal custodian of
26 the incapacitated person when the incapacitated person was a child, if the person was
27 actively serving in that capacity immediately before the incapacitated person's 18th
28 birthday;

29 (3). A parent of the incapacitated person or a person nominated by the will of a
30 deceased parent; or

31 (4). A relative of the incapacitated person with whom the incapacitated person has
32 resided for more than 6 months prior to the filing of the petition for appointment.

33 **Sec. 5. 19-A MRSA §2001, sub-§5, ¶A**, as amended by PL 2003, c. 123, §1, is
34 further amended to read:

35 A. Gross income includes income from an ongoing source, including, but not
36 limited to, salaries, wages, commissions, royalties, bonuses, dividends, severance
37 pay, pensions, interest, trust funds, annuities, capital gains, social security benefits,

1 disability insurance benefits, prizes, workers' compensation benefits, spousal support
2 actually received pursuant to a preexisting order from a spouse who is not the parent
3 of the child for whom support is being determined; and educational grants,
4 fellowships or subsidies that are available for personal living expenses. Gross
5 income does not include child support or permanency guardianship subsidies
6 received by either party for children other than the child for whom support is being
7 determined.

8 **Sec. 6. 22 MRSA §4038, sub-§1-A**, as amended by PL 2003, c. 408, §§2 to 5, is
9 further amended to read:

10 **1-A. No mandated review.** Notwithstanding subsection 1, no subsequent judicial
11 review is required unless petitioned for by any party or unless specifically ordered by the
12 court:

13 A. When custody has been granted to a person other than a parent or the
14 department; ~~or~~

15 B. When custody has been granted to a parent who did not have custody at the time
16 the child protection petition was filed; or

17 E. When a permanency guardianship has been established pursuant to section 4038-
18 C.

19 **Sec. 7. 22 MRSA §4038-C, sub-§12** is enacted to read:

20 **12. Appointments terminate; later appointments.** Unless the District Court has
21 scheduled a judicial review or orders otherwise, the court's appointments of the guardian
22 ad litem and attorneys for parents and guardians terminate, and the attorneys and guardian
23 ad litem have no further responsibilities to their clients or the court upon appointment of a
24 permanency guardian pursuant to this section. If a party files a motion for judicial review
25 when no judicial review is required pursuant to section 4038, subsection 1-A, or if a party
26 files a petition pursuant to subsection 6 to terminate a permanency guardianship or
27 determine rights of contact, the court shall appoint a guardian ad litem and attorneys for
28 indigent parents and custodians, including permanency guardians, as required by section
29 4005.

30 **Sec. 8. 36 MRSA §5122, sub-§2, ¶Y** is enacted to read:

31 Y. To the extent included in federal adjusted gross income, any amount constituting
32 a permanency guardianship subsidy pursuant to Title 22, section 4038-D.

33 SUMMARY

34 This bill allows a person who served as a child's guardian, permanency guardian or
35 legal custodian at the time of the child's 18th birthday to serve as the child's guardian if
36 the child becomes an incapacitated adult, if the person is not otherwise disqualified from
37 serving in that capacity.

1 This bill establishes that income from a permanency guardianship subsidy may not be
2 considered income for the purposes of calculating a child support entitlement or child
3 support obligation nor for the computation of taxable income for resident individuals.

4 This bill provides that a child protection case in which a court has made a jeopardy
5 order does not need to be reviewed every 6 months if a permanency guardian has been
6 established, unless judicial review is petitioned for by a party or specifically ordered by
7 the court.

8 The bill also provides that the court's appointments of the guardian ad litem and
9 attorneys for the parties terminate upon appointment of a permanency guardian, unless
10 the court has scheduled a judicial review or orders otherwise.