

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 365

S.P. 129

In Senate, February 5, 2009

**An Act To Amend the Laws Governing MaineCare Estate Recovery
Undertaken by the Department of Health and Human Services**

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 that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.
Cosponsored by Representative RICHARDSON of Warren and
Senator: HOBBS of York.

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

2 **Sec. 1. 18-A MRSA §2-401**, as amended by PL 2001, c. 57, §1, is further
3 amended to read:

4 **§2-401. Homestead allowance**

5 A surviving spouse of a decedent who was domiciled in this State is entitled to a
6 homestead allowance of \$10,000. If there is no surviving spouse, each minor child and
7 each dependent child of the decedent is entitled to a homestead allowance amounting to
8 \$10,000 divided by the number of minor and dependent children of the decedent. The
9 homestead allowance is exempt from and has priority over all claims against the estate.
10 Homestead allowance is in addition to any share passing to the surviving spouse or minor
11 or dependent child by the will of the decedent unless otherwise provided, by intestate
12 succession or by way of elective share. The homestead allowance established by this
13 section is the sole exemption available for a decedent's homestead.

14 **Sec. 2. 18-A MRSA §2-405**, as corrected by RR 2003, c. 1, §11, is amended to
15 read:

16 **§2-405. Estate property exempt**

17 Notwithstanding any provisions to the contrary, any ~~part of personal property~~
18 included in the decedent's estate which shall be that is exempt under Title 14, section
19 4422, on the date of the decedent's death, shall is not be liable for payment of debts of the
20 decedent or claims against his the decedent's estate; provided, except that nothing in this
21 section may be deemed to affect affects the provisions of sections 2-401 through 2-404.

22 **Sec. 3. 22 MRSA §14, sub-§2-I, ¶F**, as enacted by PL 1993, c. 707, Pt. I, §1, is
23 amended to read:

24 F. As used in this subsection, unless the context otherwise indicates, the term
25 "estate" means:

26 (1) All real and personal property and other assets included in the recipient's
27 estate, as defined in Title 18-A, section 1-201; and

28 (2) Any other real and personal property and other assets in which the recipient
29 had any legal interest at the time of death, to the extent of that interest, including
30 assets conveyed to a survivor, heir or assign of the deceased recipient ~~through~~
31 ~~tenancy in common, survivorship, life estate, living trust, joint tenancy in~~
32 ~~personal property or other arrangement by any legal mechanism, means or~~
33 arrangement, including, but not limited to:

34 (a) Tenancy in common;

35 (b) Survivorship;

36 (c) Living trust;

37 (d) Joint tenancy in personal property;

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(e) Joint tenancy in real property created on or after April 1, 2006; or

(f) Transfer of a remainder interest in real property, with reservation of a life estate interest, executed on or after April 1, 2006.

SUMMARY

This bill provides that the homestead allowance established in the Maine Revised Statutes, Title 18-A, section 2-401 is the sole exemption available for a decedent's homestead. It also provides that only personal property included in the decedent's estate that is exempt under Title 14, section 4422, which contains the list of property exempt from attachment and execution, is not liable for payment of debts of the decedent or claims against the decedent's estate. Current law provides that any part of the decedent's estate that is exempt under Title 14, section 4422 is not liable for payment of debts of the decedent or claims against the decedent's estate.

This bill also amends the definition of "estate" for the purposes of recovery by the Department of Health and Human Services for MaineCare expenditures. This bill establishes April 1, 2006 as the date on which certain transfers are made fully subject to the reach of estate recovery activities.