

MAINE STATE LEGISLATURE

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LEGISLATIVE
CLERK
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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1079

H.P. 746

House of Representatives, March 17, 2009

**An Act To Prohibit a Parent without Parental Rights from
Inheriting from an Adult Child Who Dies without a Will**

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CLARK of Millinocket.

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

2 **Sec. 1. 18-A MRSA §2-103, sub-§(2),** as enacted by PL 1979, c. 540, §1, is
3 amended to read:

4 (2). If there is no surviving issue, to the decedent's parent or parents equally, except
5 that a parent whose parental rights have been terminated is barred from inheriting from
6 the child;

7 **Sec. 2. 18-A MRSA §2-109,** as amended by PL 1995, c. 694, Pt. C, §6 and
8 affected by Pt. E, §2, is further amended to read:

9 **§2-109. Meaning of child and related terms; intestate succession**

10 ~~If, for~~ For purposes of intestate succession, a relationship of parent and child must be
11 established to determine succession by, through, or from a person: according to this
12 section.

13 (1). An adopted person is the child of an adopting parent and not of the natural
14 parents except that an adopted child inherits from the natural parents and their respective
15 kin if the adoption decree so provides; and except that adoption of a child by the spouse
16 of a natural parent has no effect on the relationship between the child and either natural
17 parent. If a natural parent wishes an adopted child to inherit from the natural parents and
18 their respective kin, the adoption decree must provide for that status;

19 (2). In cases not covered by ~~paragraph~~ subsection (1), a person born out of wedlock
20 is a child of the mother; that person is also a child of the father if:

21 (i). The natural parents participated in a marriage ceremony before or after the birth
22 of the child, even though the attempted marriage is void; ~~or~~

23 (ii). The father adopts the child into his family; or

24 (iii). The father acknowledges in writing before a notary public that he is the father
25 of the child, or the paternity is established by an adjudication before the death of the
26 father or is established thereafter by clear and convincing proof, but the paternity
27 established under this ~~subparagraph~~ paragraph is ineffective to qualify the father or
28 his kindred to inherit from or through the child unless the father has openly treated
29 the child as his and has not refused to support the child.

30 (3). A divorce or judicial separation does not bar the issue of the marriage from
31 inheriting.

32 (4). A parent whose parental rights have been terminated is barred from inheriting
33 from the child.

34 **Sec. 3. 18-A MRSA §2-804, sub-§(b),** as amended by PL 2007, c. 280, §1, is
35 further amended to read:

36 (b). Every such action must be brought by and in the name of the personal
37 representative of the deceased person, and the amount recovered in every such action,

1 except as otherwise provided, is for the exclusive benefit of the surviving spouse if no
2 minor children, and of the children if no surviving spouse, and one-half for the exclusive
3 benefit of the surviving spouse and one-half for the exclusive benefit of the minor
4 children to be divided equally among them if there are both surviving spouse and minor
5 children, and to the deceased's heirs to be distributed as provided in section 2-106 if there
6 is neither surviving spouse nor minor children. A parent whose parental rights to the
7 deceased have been terminated is not an heir and may not benefit from an action under
8 this section. The jury may give such damages as it determines a fair and just
9 compensation with reference to the pecuniary injuries resulting from the death to the
10 persons for whose benefit the action is brought and in addition shall give such damages as
11 will compensate the estate of the deceased person for reasonable expenses of medical,
12 surgical and hospital care and treatment and for reasonable funeral expenses, and in
13 addition may give damages not exceeding \$500,000 for the loss of comfort, society and
14 companionship of the deceased, including any damages for emotional distress arising
15 from the same facts as those constituting the underlying claim, to the persons for whose
16 benefit the action is brought, and in addition may give punitive damages not exceeding
17 \$75,000, provided that the action is commenced within 2 years after the decedent's death.
18 If a claim under this section is settled without an action having been commenced, the
19 amount paid in settlement must be distributed as provided in this subsection. No
20 settlement on behalf of minor children is valid unless approved by the court, as provided
21 in Title 14, section 1605.

22 SUMMARY

23 This bill prohibits a parent whose parental rights have been terminated with regard to
24 a child from inheriting from that child if the child dies intestate.