

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1186

S.P. 361

In Senate, March 22, 2011

**An Act To Amend the Probate Code Relating to the Authority of the  
Probate Court To Approve Transfers from a Protected Person's  
Estate**

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Reference to the Committee on Judiciary suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator HOBBS of York.

Cosponsored by Senator: HASTINGS of Oxford, Representative: DRISCOLL of Westbrook.

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

2 **Sec. 1. 18-A MRSA §5-408, sub-§(6)**, as enacted by PL 2005, c. 12, Pt. DDD,  
3 §4 and affected by §17, is amended to read:

4 (6). The court may authorize a gift or other transfer for less than fair market value  
5 from the protected person's estate ~~other than to the protected person's spouse or~~  
6 ~~dependent, blind or disabled child~~ if the court finds that the gift or other transfer will not,  
7 directly or indirectly, diminish the protected person's estate in order to qualify for federal  
8 or state aid or benefits, including the MaineCare program under Title 22, chapter 855, and  
9 the court finds:

10 (a). That the remaining estate assets of the protected person are sufficient for the  
11 protected person's care and maintenance for the next ~~36~~ 60 months, including due  
12 provision for the protected person's established standard of living and for the support  
13 of any persons the protected person is legally obligated to support and any  
14 dependents of the protected person; and

15 (b). That the gift or other transfer will not hasten the date of eligibility for  
16 MaineCare coverage of the protected person's long-term care expenses during the  
17 next ~~36~~ 60 months.

18 If the gift is being made to the protected person's spouse or blind or disabled child, the  
19 court need not make such findings. This subsection does not prevent a transfer to a trust  
20 established pursuant to 42 United States Code, Section 1396p(d)(4) or otherwise  
21 specifically allowed by law governing the federal Medicaid program under 42 United  
22 States Code.

23 **Sec. 2. 18-A MRSA §5-409, sub-§(d)**, as enacted by PL 2005, c. 12, Pt. DDD,  
24 §6 and affected by §17, is amended to read:

25 (d). The court may authorize a gift or other transfer for less than fair market value  
26 from the protected person's estate ~~other than to the protected person's spouse or~~  
27 ~~dependent, blind or disabled child~~ if the court finds that the gift or other transfer will not,  
28 directly or indirectly, diminish the protected person's estate in order to qualify for federal  
29 or state aid or benefits, including the MaineCare program under Title 22, chapter 855, and  
30 the court finds:

31 (1). That the remaining estate assets of the protected person are sufficient for the  
32 protected person's care and maintenance for the next ~~36~~ 60 months, including due  
33 provision for the protected person's established standard of living and for the support  
34 of any persons the protected person is legally obligated to support and any  
35 dependents of the protected person; and

36 (2). That the gift or other transfer will not hasten the date of eligibility for  
37 MaineCare coverage of the protected person's long-term care expenses during the  
38 next ~~36~~ 60 months.

39 If the gift is being made to the protected person's spouse or blind or disabled child, the  
40 court need not make such findings. This subsection does not prevent a transfer to a trust  
41 established pursuant to 42 United States Code, Section 1396p(d)(4) or otherwise

1 specifically allowed by law governing the federal Medicaid program under 42 United  
2 States Code.

3 **Sec. 3. 18-A MRSA §5-425, sub-§(b-1)**, as enacted by PL 2005, c. 12, Pt. DDD,  
4 §8 and affected by §17, is amended to read:

5 **(b-1).** The court may authorize a gift or other transfer for less than fair market value  
6 from the protected person's estate ~~other than to the spouse or dependent, blind or disabled~~  
7 ~~child~~ if the court finds that the gift or other transfer will not, directly or indirectly,  
8 diminish the protected person's estate in order to qualify for federal or state aid or  
9 benefits, including the MaineCare program under Title 22, chapter 855, and the court  
10 finds:

11 (1). That the remaining estate assets of the protected person are sufficient for the  
12 protected person's care and maintenance for the next ~~36~~ 60 months, including due  
13 provision for the protected person's established standard of living and for the support  
14 of any persons the protected person is legally obligated to support and any  
15 dependents of the protected person; and

16 (2). That the gift or other transfer will not hasten the date of eligibility for  
17 MaineCare coverage of the protected person's long-term care expenses during the  
18 next ~~36~~ 60 months.

19 If the gift is being made to the protected person's spouse or blind or disabled child, the  
20 court need not make such findings. This subsection does not prevent a transfer to a trust  
21 established pursuant to 42 United States Code, Section 1396p(d)(4) or otherwise  
22 specifically allowed by law governing the federal Medicaid program under 42 United  
23 States Code.

## 24 SUMMARY

25 This bill amends the Probate Code to provide that the Probate Court does not need to  
26 make a finding about the adequacy of the protected person's estate when approving a gift  
27 or transfer for less than fair market value from the protected person's estate if the gift or  
28 transfer is to the protected person's spouse or blind or disabled child. The bill  
29 incorporates the federal change in the look-back period from 36 months to 60 months.