

MAINE STATE LEGISLATURE

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ROBS

L.D. 1377

Date: 3/20/12

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JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1016, L.D. 1377, Bill, "An Act To Adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act"

Amend the bill in section 1 in Part 5-A in subpart 1 in §5-512 in subsection (f) in the first line (page 8, line 8 in L.D.) by inserting after the following: "appointed" the following: 'or an adult who is an incapacitated person within the meaning of section 5-101, subsection (1)'

Amend the bill in section 1 in Part 5-A in subpart 1 in §5-512 in subsection (g) in the first line (page 8, line 9 in L.D.) by inserting after the following: "means" the following: 'an interested person within the meaning of section 1-201, subsection (20), including'

Amend the bill in section 1 in Part 5-A in subpart 1 in §5-512 in subsection (j) in the 2nd line (page 8, line 18 in L.D.) by inserting after the following: "management" the following: 'or disposition'

Amend the bill in section 1 in Part 5-A in subpart 1 in §5-512 in subsection (n) in the 2nd line (page 8, line 26 in L.D.) by striking out the following: "a federally recognized Indian tribe"

Amend the bill in section 1 in Part 5-A in subpart 1 by inserting before §5-513 the following:

'Maine Comment

The revisions to the Maine Revised Statutes, Title 18-A, section 5-512 correct inconsistencies between the definitions in the Act and related definitions in the Probate Code.'

Amend the bill in section 1 in Part 5-A in subpart 2 in §5-521 in subsection (a) in paragraph (1) in the last 2 lines (page 15, lines 30 and 31 in L.D.) by striking out the following: "because no other person has authority and is willing to act on the respondent's behalf"

Amend the bill in section 1 in Part 5-A in subpart 2 in §5-524 in subsection (a) in the first line (page 20, line 31 in L.D.) by striking out the following: "A" and inserting the

COMMITTEE AMENDMENT

1 following: 'If this State is not the respondent's home state and not a significant-connection
2 state, a'

3 Amend the bill in section 1 in Part 5-A in subpart 2 in §5-524 in subsection (a) in the
4 first and 2nd lines (page 20, lines 31 and 32 in L.D.) by striking out the following:
5 "lacking jurisdiction under section 5-523, subsections (a) to (c)"

6 Amend the bill in section 1 in Part 5-A in subpart 2 in §5-524 in subsection (a) in
7 paragraph (1) in the first line (page 20, line 33 in L.D.) by striking out the following: "90
8 days" and inserting the following: '6 months'

9 Amend the bill in section 1 in Part 5-A in subpart 2 in §5-526 by striking out all of
10 subsection (b) (page 23, lines 34 to 37 in L.D.) and inserting the following:

11 '(b). If a court of this State declines to exercise its jurisdiction under subsection (a), it
12 shall either:

13 (1). Dismiss or stay the proceeding; or

14 (2). Impose any condition the court considers just and proper, including the condition
15 that a petition for the appointment of a guardian or issuance of a protective order be
16 filed promptly in another state.'

17 Amend the bill in section 1 in Part 5-A in subpart 2 in §5-526 in subsection (c) in the
18 2nd line (page 23, line 39 in L.D.) by striking out the following: "including" and inserting
19 the following: 'which may include'

20 Amend the bill in section 1 in Part 5-A in subpart 3 in §5-531 in subsection (c) in the
21 last line (page 31, line 9 in L.D.) by inserting after the following: "hearing" the following:
22 'or provide an opportunity for a hearing to be held'

23 Amend the bill in section 1 in Part 5-A in subpart 3 in §5-531 in subsection (d) in
24 paragraph (2) in the 2nd line (page 31, line 17 in L.D.) by inserting after the following:
25 "established" the following: 'by a preponderance of the evidence'

26 Amend the bill in section 1 in Part 5-A in subpart 3 in §5-531 in subsection (d) in
27 paragraph (2) in the 2nd line (page 31, line 17 in L.D.) by inserting after the following:
28 "contrary to the" the following: 'best'

29 Amend the bill in section 1 in Part 5-A in subpart 3 in §5-531 in subsection (e) in
30 paragraph (2) in the 2nd line (page 31, line 29 in L.D.) by inserting after the following:
31 "established" the following: 'by a preponderance of the evidence'

32 Amend the bill in section 1 in Part 5-A in subpart 3 in §5-531 in subsection (e) in
33 paragraph (2) in the 2nd line (page 31, line 29 in L.D.) by inserting after the following:
34 "contrary to the" the following: 'best'

35 Amend the bill in section 1 in Part 5-A in subpart 3 in §5-531 in subsection (e) in
36 paragraph (3) in the first line (page 31, line 31 in L.D.) by inserting after the following:
37 "management" the following: 'or disposition'

38 Amend the bill in section 1 in Part 5-A in subpart 3 by inserting before §5-532 the
39 following:

40 **'Maine Comment**

1 Section 301 of the Act requires the court to hold a hearing if the court receives a
2 request to transfer a guardianship or conservatorship to another state. Maine's change to
3 the Maine Revised Statutes, Title 18-A, section 5-531, subsection (c) eliminates the
4 court's obligation to hold a hearing if a hearing would serve no useful purpose.

5 The changes to Title 18-A, section 5-531, subsection (d), paragraph (2) and
6 subsection (e), paragraph (2) identify the evidentiary standard to be applied in
7 proceedings involving the transfer of guardianship and protective proceedings.

8 The word "disposition" was added to Title 18-A, section 5-531, subsection (e),
9 paragraph (3) because the actions a conservator may need to take with respect to a
10 protected person's property may extend beyond management.'

11 Amend the bill in section 1 in Part 5-A in subpart 3 in §5-532 in subsection (d) in
12 paragraph (1) in the first line (page 32, line 15 in L.D.) by inserting after the following:
13 "establishes" the following: 'by a preponderance of the evidence'

14 Amend the bill in section 1 in Part 5-A in subpart 3 in §5-532 in subsection (d) in
15 paragraph (1) in the 2nd line (page 32, line 16 in L.D.) by inserting after the following:
16 "contrary to the" the following: 'best'

17 Amend the bill in section 1 in Part 5-A in subpart 3 in §5-532 by striking out all of
18 subsection (f).

19 Amend the bill in section 1 in Part 5-A in subpart 3 in §5-532 by relettering the
20 subsections to read consecutively.

21 Amend the bill in section 1 in Part 5-A by inserting before subpart 4 the following:

22 **'Maine Comment**

23 Section 302 of the Act addresses when a guardianship or conservatorship transferred
24 from another state can be accepted by this State. The Maine Revised Statutes, Title 18-A,
25 section 5-532, subsection (d) describes when the court shall deny a petition to accept a
26 guardianship or conservatorship transferred from another state. Maine's changes to
27 subsection (d), paragraph (1) identify the evidentiary standard to be applied to an
28 objection to the petition for acceptance.

29 Maine has not adopted section 302, subsection (f) of the Act because it is unrealistic
30 to require a Maine court to unilaterally evaluate a foreign order and identify
31 modifications without identifying a clear process to be undertaken to modify a foreign
32 order.'

33 Amend the bill in section 1 in Part 5-A in subpart 4 in §5-541 in the first paragraph in
34 the last line (page 33, line 31 in L.D.) by inserting after the following: "office" the
35 following: 'and the guardian's notification to the appointing court of an intent to register
36 in this State'

37 Amend the bill in section 1 in Part 5-A in subpart 4 by inserting before §5-542 the
38 following:

39 **'Maine Comment**

1 Section 401 of the Act was modified to provide a safeguard that will enable the
2 appointing court to intervene if foreign registration of a guardianship is for any reason
3 inappropriate.'

4 Amend the bill in section 1 in Part 5-A in subpart 4 in §5-542 in the first paragraph in
5 the last line (page 33, line 38 in L.D.) by inserting after the following: "office" the
6 following: 'of the conservator's notification to the appointing court of an intent to
7 register in this State'

8 Amend the bill in section 1 in Part 5-A in Part 5-A in subpart 4 by inserting before
9 §5-543 the following:

10 **Maine Comment**

11 Section 402 of the Act was modified to provide a safeguard that will enable the
12 appointing court to intervene if foreign registration of a protective order is for any reason
13 inappropriate.'

14 Amend the bill in section 1 in Part 5-A in subpart 5 in §5-553 in subsection (a) in the
15 last line (page 34, line 18 in L.D.) by striking out the following: "January 1, 2012" and
16 inserting the following: 'July 1, 2013'

17 Amend the bill in section 1 in Part 5-A in subpart 5 in §5-553 in subsection (b) in the
18 2nd line (page 34, line 20 in L.D.) by striking out the following: "January 1, 2012" and
19 inserting the following: 'July 1, 2013'

20 Amend the bill in section 1 in Part 5-A in subpart 5 in §5-554 in the first paragraph in
21 the first line (page 35, line 5 in L.D.) by striking out the following: "January 1, 2012" and
22 inserting the following: 'July 1, 2013'

23 **SUMMARY**

24 This amendment contains changes to the bill recommended by the Probate and Trust
25 Law Advisory Commission.

26 The revisions to the Maine Revised Statutes, Title 18-A, section 5-512 address
27 inconsistencies between the definitions in the Uniform Adult Guardianship and Protective
28 Proceedings Jurisdiction Act and related definitions in the Probate Code.

29 The revisions to Title 18-A, section 5-521, subsection (a), paragraph (1); section
30 5-524, subsection (a); and section 5-526, subsections (b) and (c) eliminate ambiguous
31 language and extend the emergency term of a guardian from 90 days to 6 months.

32 The change to Title 18-A, section 5-531, subsection (c) eliminates the court's
33 obligation to hold a hearing if a hearing would serve no useful purpose.

34 The changes to Title 18-A, section 5-531, subsection (d), paragraph (2); section
35 5-531, subsection (e), paragraph (2); and section 5-532, subsection (d), paragraph (1)
36 identify the evidentiary standard to be applied to proceedings involving the transfer of
37 guardianship and protective proceedings.

38 The word "disposition" is added to Title 18-A, section 5-531, subsection (e),
39 paragraph (3) because the term "management" may be too narrow to accurately describe
40 the actions a conservator might need to take.

1 Title 18-A, section 5-532, subsection (f) is deleted because it is unrealistic to require
2 a Maine court to unilaterally evaluate a foreign order and identify modifications, as it is
3 unclear from the Act exactly what process would be undertaken to modify a foreign
4 order.

5 Title 18-A, sections 5-541 and 5-542 are modified to provide a safeguard that will
6 enable the appointing court to intervene if foreign registration is for any reason
7 inappropriate.

8 This amendment changes the effective date and application dates to July 1, 2013.

FISCAL NOTE REQUIRED
(See attached)



Approved: 02/29/12 *MAC*

125th MAINE LEGISLATURE

LD 1377

LR 678(02)

An Act To Adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-800)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor savings - General Fund

Fiscal Detail and Notes

Any fiscal impact to the Department of Health and Human Services is expected to be minor and can be absorbed within existing budgeted resources.