

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 934

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H.P. 662

House of Representatives, March 9, 2017

### **An Act To Establish an Expedited Temporary Guardianship Process**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative FREDETTE of Newport.

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

2 **Sec. 1. 18-A MRS §5-207, sub-§(e)** is enacted to read:

3 (e). If the court finds that compliance with the procedures of this section will likely  
4 result in substantial harm to the minor's health, safety or welfare and that no other person  
5 appears to have authority and willingness to act in the circumstances, the court, on  
6 petition by a person interested in the minor's welfare, may by order appoint a temporary  
7 guardian whose authority may not exceed 180 days and who may exercise only the  
8 powers specified in the order. Except as otherwise provided in paragraph (1), reasonable  
9 notice of the time and place of a hearing on the petition must be given to the minor, if the  
10 minor is at least 14 years of age, and any other persons as the court directs. The court  
11 may by order appoint the temporary guardian for up to an additional 180 days after notice  
12 to the minor, if the minor is at least 14 years of age, and any other persons as the court  
13 directs and hearing on the appointment.

14 (1). A temporary guardian may be appointed pursuant to this subsection without  
15 notice to the minor and the minor's parent or legal guardian only if the court finds  
16 from affidavit or testimony that the minor will be substantially harmed before a  
17 hearing on the appointment can be held. If the court appoints a temporary guardian  
18 without notice to the minor's parent or legal guardian, the parent or legal guardian  
19 must be given notice of the appointment within 48 hours after the appointment. The  
20 court shall hold a hearing on the appropriateness of the appointment within 5 days  
21 after the appointment.

22 (2). The court may remove a temporary guardian appointed pursuant to this  
23 subsection at any time. A temporary guardian shall make any report the court  
24 requires. In other respects, the provisions of this Article concerning guardians apply  
25 to a temporary guardian.

26 (3). Parents of a minor are presumed to be acting to protect the minor from  
27 substantial harm to the minor's health, safety and welfare. This presumption may be  
28 overcome only by clear and convincing evidence.

29 **SUMMARY**

30 This bill amends the Probate Code to add an expedited process for the court to  
31 appoint a temporary guardian for a minor.

32 The bill allows the Probate Court to appoint a temporary guardian when a petition is  
33 brought seeking the expedited appointment if the court finds that following the usual  
34 procedure for notice and hearing will likely result in substantial harm to the minor's  
35 health, safety or welfare and that no other person appears to have authority and  
36 willingness to act in the circumstances. The appointment lasts for no more than 180 days.  
37 The temporary guardian has only the powers the court includes in the appointment order.

38 Reasonable notice about the hearing must be given to the minor, if the minor is at  
39 least 14 years of age, and to any other persons as the court directs. A temporary guardian  
40 may be appointed without prior notice only when there is testimony that the minor would

1 be substantially harmed before the hearing on the appointment. In such case, notice must  
2 be given within 48 hours and a hearing held within 5 days.

3 The court may appoint the temporary guardian for up to an additional 180 days after  
4 notice and hearing.

5 The bill provides that a temporary guardian appointed through this expedited process  
6 remains subject to the other provisions of the Probate Code, Article 5, including the  
7 provisions relating to the duties of guardians.

8 The bill establishes a presumption that the parents of a minor are acting to protect the  
9 minor's health, safety and welfare. The presumption can be overcome only by clear and  
10 convincing evidence.