

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
129TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1118, L.D. 1535, Bill, "An Act To Correct Errors and Inconsistencies Related to the Maine Uniform Probate Code and To Make Other Substantive Changes"

Amend the bill by inserting after the enacting clause the following:

'PART A'

Amend the bill by inserting after section 1 the following:

'Sec. 2. 18-C MRSA §1-201, sub-§44, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

44. **Property.** "Property" means anything that may be the subject of ownership and includes both real and personal property or any interest therein, including a digital asset as defined in section 10-102, subsection 9.'

Amend the bill by inserting after section 4 the following:

'Sec. 5. 18-C MRSA §3-203, sub-§5, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

5. **Appointment without priority.** Appointment of a person who does not have priority, including except priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing a person without priority, the court must determine that those persons having priority, although given notice of the proceedings, have failed to request appointment or to nominate another person for appointment and that administration is necessary.'

Amend the bill by inserting after section 12 the following:

'Sec. 13. 18-C MRSA §5-122, sub-§2, ¶A, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

A. The guardian's or conservator's proposed action would be inconsistent with this Act or any other law, rule or regulation; or

COMMITTEE AMENDMENT

1           **Sec. 14. 18-C MRSA §5-122, sub-§3**, as enacted by PL 2017, c. 402, Pt. A, §2  
 2 and affected by Pt. F, §1, is amended to read:

3           **3. Report refusal to court.** A person ~~that~~ who refuses to accept the authority of a  
 4 guardian or conservator in accordance with subsection 1 or 2 shall report the refusal and  
 5 the reason for refusal to the court. The court on receiving a report shall consider whether  
 6 removal of the guardian or conservator or other action is appropriate.'

7           Amend the bill by inserting after section 13 the following:

8           '**Sec. 14. 18-C MRSA §5-204, sub-§4**, as enacted by PL 2017, c. 402, Pt. A, §2  
 9 and affected by Pt. F, §1, is repealed and the following enacted in its place:

10           **4. Appointment of a guardian on an emergency basis.** The court may appoint a  
 11 guardian on an emergency basis for a minor pursuant to this subsection.

12           A. On motion by a person who has also filed a petition for appointment of a guardian  
 13 pursuant to subsection 1, the court may appoint a guardian for the minor on an  
 14 emergency basis if the court finds by a preponderance of the evidence that:

15           (1) The sworn affidavit or testimony demonstrates that appointment of a  
 16 guardian on an emergency basis is needed to prevent substantial harm to the  
 17 minor's physical health or safety;

18           (2) No other person appears to have authority and willingness to act in the  
 19 circumstances;

20           (3) Following the procedures set forth in section 5-205, including those for  
 21 appointment of a guardian on an interim basis, will likely result in substantial  
 22 harm to the minor's health or safety before a guardian can be appointed;

23           (4) A petition has been filed under subsection 1 and there is a substantial  
 24 likelihood that a basis for appointment of a guardian under subsection 2 exists;  
 25 and

26           (5) The requirements of this subsection for providing notice have been satisfied.

27           B. The petitioner bears the burden of proof on the appropriateness of the  
 28 appointment pursuant to this subsection.

29           C. The duration of the authority of a guardian appointed pursuant to this subsection  
 30 may not exceed 90 days, and the guardian may exercise only the powers specified in  
 31 the order.

32           D. Reasonable notice of the motion for appointment of an emergency guardian and  
 33 the time and place of the hearing on the petition must be given by the petitioner to the  
 34 minor, if the minor has attained 14 years of age, to each living parent of the minor  
 35 and to a person having care or custody of the minor, if other than a parent. The court  
 36 shall hold a hearing on the appointment of the guardian on an emergency basis within  
 37 14 days but not less than 7 days after the filing of the petition.

38           E. The court may dispense with the notice requirement in paragraph D and appoint a  
 39 guardian pursuant to this subsection on a temporary ex parte basis if it finds from  
 40 affidavit or testimony that the minor will be substantially harmed before notice can be

COMMITTEE AMENDMENT "A" to H.P. 1118, L.D. 1535

1 completed to all those entitled to receive notice and a hearing can be held on the  
 2 petition. If the guardian is appointed without notice and hearing, the court shall  
 3 schedule a hearing on the appointment of the guardian on an emergency basis within  
 4 14 days but not less than 7 days after issuance of the order appointing the guardian,  
 5 except that a parent may request that the hearing take place sooner. Notice of the  
 6 appointment and hearing must be given by the petitioner to the minor, if the minor  
 7 has attained 14 years of age, to each living parent of the minor and to a person having  
 8 care or custody of the minor, if other than a parent, within 48 hours after the  
 9 appointment.

10 F. The notices required under this subsection regarding guardianship on an  
 11 emergency basis may be provided orally or in writing using a means that the  
 12 petitioner in good faith believes is the most effective way to ensure actual notice.  
 13 The petitioner shall state in an affidavit the date, time, location and method of  
 14 providing the required notice and to whom the notice was provided or attempted. The  
 15 court shall make a determination as to whether the methods of notices or attempted  
 16 notices by petitioner were reasonably calculated to give notice of the pendency of the  
 17 petition.

18 G. Appointment of a guardian on an emergency basis under this subsection is not a  
 19 determination that the conditions required for appointment of a guardian under  
 20 subsection 2 or the notice requirements set forth in section 5-205 have been satisfied.  
 21 Before a guardian may be appointed pursuant to subsection 2, the petitioner must  
 22 meet the notice requirements set forth in this Part and any applicable rules of  
 23 procedure.'

24 Amend the bill in section 16 in §5-301 in subsection 1 by inserting at the end a new  
 25 blocked paragraph to read:

26 'In making a determination on a petition under this section, including whether supported  
 27 decision making or other less restrictive alternatives are appropriate, the court may  
 28 consider the following factors: any proposed vetting of the person or persons chosen to  
 29 provide support in decision making; reports to the court by an interested party or parties  
 30 regarding the effectiveness of an existing supported decision-making arrangement; or any  
 31 other information the court determines necessary or appropriate to determine whether  
 32 supportive services, technological assistance, supported decision making, protective  
 33 arrangements or less restrictive arrangements will provide adequate protection for the  
 34 respondent.'

35 Amend the bill by striking out all of section 18 and inserting the following:

36 **'Sec. 18. 18-C MRSA §5-304, sub-§2,** as enacted by PL 2017, c. 402, Pt. A, §2  
 37 and affected by Pt. F, §1, is amended to read:

38 **2. Interview with petitioner, proposed guardian and respondent.** A visitor  
 39 appointed under subsection 1 shall interview the petitioner and the proposed guardian and  
 40 shall interview the respondent in person and, in a manner the respondent is best able to  
 41 understand:

42 A. Explain to the respondent the substance of the petition, the nature, purpose and  
 43 effect of the proceeding, the respondent's rights at the hearing and the general powers  
 44 and duties of a guardian;

- 1 B. Determine the respondent's views about the appointment, including views about a  
2 proposed guardian, the guardian's proposed powers and duties and the scope and  
3 duration of the proposed guardianship, and general preferences and values;
- 4 C. Inform the respondent of the respondent's right to employ and consult with an  
5 attorney at the respondent's expense and the right to request a court-appointed  
6 attorney; and
- 7 D. Inform the respondent that all costs and expenses of the proceeding, including the  
8 respondent's attorney's fees, may be paid from the respondent's assets.'
- 9 Amend the bill in section 19 in subsection 3 by striking out all of paragraph A (page  
10 8, line 3 in L.D.) and inserting the following:
- 11 ~~'A. Interview the petitioner and proposed guardian, if any;'~~
- 12 Amend the bill in section 22 by striking out all of subsection 2 (page 8, lines 24 to 30  
13 in L.D.) and inserting the following:
- 14 **'2. Right to decline.** The respondent has the right to decline to participate in an  
15 evaluation ordered under subsection 1. If the respondent declines to participate in an  
16 evaluation ordered under subsection 1, the petitioner may request an examination under  
17 the Maine Rules of Civil Procedure, Rule 35.'
- 18 Amend the bill in section 24 by striking out all of subsection 6 (page 9, lines 3 to 6 in  
19 L.D.) and inserting the following:
- 20 **'6. Attendance by proposed guardian required.** Unless excused by the court for  
21 good cause, the proposed guardian shall attend a hearing under section 5-303 in person.  
22 Upon a showing of good cause, the court may allow the proposed guardian to participate  
23 using real-time audiovisual technology or by telephone if real-time audiovisual  
24 technology is not available.'
- 25 Amend the bill by inserting after section 32 the following:
- 26 **'Sec. 33. 18-C MRSA §5-312, sub-§4-A is enacted to read:**
- 27 **4-A. Appointment without professional evaluation.** A professional evaluation  
28 under section 5-306 is not required before the appointment of an emergency guardian if  
29 the court finds from the affidavit or testimony that the basis for an emergency has been  
30 met and the petitioner has good cause for not submitting a professional evaluation before  
31 the emergency order.'
- 32 Amend the bill in section 36 in subsection 7 in the 2nd line (page 11, line 36 in L.D.)  
33 by striking out the following: "July" and inserting the following: "September"
- 34 Amend the bill in section 38 in subsection 4 in the 2nd line (page 12, line 16 in L.D.)  
35 by striking out the following: "July" and inserting the following: "September"
- 36 Amend the bill in section 41 in subsection 6 in the 2nd line (page 12, line 36 in L.D.)  
37 by striking out the following: "July" and inserting the following: "September"
- 38 Amend the bill in section 45 in subsection 8 in the 2nd line (page 13, line 13 in L.D.)  
39 by striking out the following: "July" and inserting the following: "September"
- 40 Amend the bill by striking out all of section 46 and inserting the following:

1           **'Sec. 46. 18-C MRSA §5-401, sub-§2,** as enacted by PL 2017, c. 402, Pt. A, §2  
2 and affected by Pt. F, §1, is amended to read:

3           **2. Conservator for adult; findings.** On petition and after notice and hearing, the  
4 court may appoint a conservator for the property or financial affairs of an adult if the  
5 court determines by clear and convincing evidence that:

6           A. The adult is unable to manage property or financial affairs because:

7                   (1) Of a limitation in the ability to receive and evaluate information or make or  
8 communicate decisions even with the use of appropriate supportive services,  
9 technological assistance and supported decision making that provide adequate  
10 protection for the respondent; or

11                   (2) The adult is missing, detained or unable to return to the United States;

12           B. Appointment is necessary to:

13                   (1) Avoid harm to the adult or significant dissipation of the property of the adult;  
14 or

15                   (2) Obtain or provide money needed for the support, care, education, health or  
16 welfare of the adult, or of an individual entitled to the adult's support, and  
17 protection is necessary or desirable to obtain or provide money for the purpose;  
18 and

19           C. The respondent's identified needs cannot be met by less restrictive alternatives.

20 In making a determination on a petition under this section, including whether supported  
21 decision making or other less restrictive alternatives are appropriate, the court may  
22 consider the following factors: any proposed vetting of the person or persons chosen to  
23 provide support in decision making; reports to the court by an interested party or parties  
24 regarding the effectiveness of an existing supported decision-making arrangement; or any  
25 other information the court determines necessary or appropriate to determine whether  
26 supportive services, technological assistance, supported decision making, protective  
27 arrangements or less restrictive arrangements will provide adequate protection for the  
28 respondent.'

29           Amend the bill by striking out all of sections 49 and 50 and inserting the following:

30           **'Sec. 49. 18-C MRSA §5-404, sub-§4** is enacted to read:

31           **4. Order to preserve or apply property while proceeding pending.** While a  
32 petition under section 5-402 is pending, after preliminary hearing and without notice to  
33 others, the court may issue an order to preserve and apply property of the respondent as  
34 required for the support of the respondent or an individual who is in fact dependent on the  
35 respondent.'

36           Amend the bill in section 51 in subsection 3 in the first line (page 14, line 23 in L.D.)  
37 by inserting after the following: "with" the following: **'petitioner, proposed**  
38 **conservator and'**

1 Amend the bill in section 51 in subsection 3 in the 2nd line (page 14, line 24 in L.D.)  
 2 by inserting after the following: "interview the" the following: 'petitioner and the  
 3 proposed conservator and shall interview the'

4 Amend the bill in section 51 in subsection 4 by striking out all of paragraph A (page  
 5 15, line 4 in L.D.) and inserting the following:

6 ~~'A. Interview the petitioner and proposed conservator, if any;'~~

7 Amend the bill in section 54 by striking out all of subsection 2 (page 15, lines 23 to  
 8 29 in L.D.) and inserting the following:

9 **'2. Right to decline.** The respondent has the right to decline to participate in an  
 10 evaluation ordered under subsection 1. If the respondent declines to participate in an  
 11 evaluation ordered under subsection 1, the petitioner may request an examination under  
 12 the Maine Rules of Civil Procedure, Rule 35.'

13 Amend the bill in section 56 by striking out all of subsection 6 (page 16, lines 3 to 6  
 14 in L.D.) and inserting the following:

15 **'6. Attendance by proposed conservator required.** Unless excused by the court  
 16 for good cause, the proposed conservator shall attend a hearing under section 5-403 in  
 17 person. Upon a showing of good cause, the court may allow the proposed conservator to  
 18 participate using real-time audiovisual technology or by telephone if real-time  
 19 audiovisual technology is not available.'

20 Amend the bill by inserting after section 62 the following:

21 **'Sec. 63. 18-C MRSA §5-413, sub-§3, ¶C,** as enacted by PL 2017, c. 402, Pt. A,  
 22 §2 and affected by Pt. F, §1, is amended to read:

23 C. The petitioner shall state in an affidavit the date, time, location and method of  
 24 providing the required notice under paragraph A and to whom the notice was  
 25 provided. The court shall make a determination as to the adequacy of the method of  
 26 providing notice and whether the petitioner complied with the notice requirements of  
 27 this subsection. The requirements of section ~~5-410~~ 5-403 do not apply to this section.

28 **Sec. 64. 18-C MRSA §5-413, sub-§4-A** is enacted to read:

29 **4-A. Appointment without professional evaluation.** A professional evaluation  
 30 under section 5-407 is not required before the appointment of an emergency conservator  
 31 if the court finds from the affidavit or testimony that the basis for an emergency has been  
 32 met and the petitioner has good cause for not submitting a professional evaluation before  
 33 the emergency order.'

34 Amend the bill in section 65 in subsection 5 in the 2nd line (page 17, line 27 in L.D.)  
 35 by striking out the following: "July" and inserting the following: "September"

36 Amend the bill in section 69 in subsection 6 in the 2nd line (page 18, line 25 in L.D.)  
 37 by striking out the following: "July" and inserting the following: "September"

38 Amend the bill by inserting after section 76 the following:

39 **'Sec. 77. 18-C MRSA §5-502, sub-§3,** as enacted by PL 2017, c. 402, Pt. A, §2  
 40 and affected by Pt. F, §1, is amended to read:

1           **3. Factors.** In deciding whether to enter an order under this section, the court shall  
 2 consider the factors under sections 5-313 and 5-314 that a guardian must consider when  
 3 making a decision on behalf of an adult subject to guardianship. In addition, in deciding  
 4 whether to enter an order under this section, including whether supported decision  
 5 making or other less restrictive alternatives are appropriate, the court may consider the  
 6 following factors: any proposed vetting of the person or persons chosen to provide  
 7 support in decision making; reports to the court by an interested party or parties regarding  
 8 the effectiveness of an existing supported decision-making arrangement; or any other  
 9 information the court determines necessary or appropriate to determine whether  
 10 supportive services, technological assistance, supported decision making, protective  
 11 arrangements or less restrictive arrangements will provide adequate protection for the  
 12 respondent.'

13           Amend the bill by inserting after section 79 the following:

14           '**Sec. 80. 18-C MRSA §5-503, sub-§5,** as enacted by PL 2017, c. 402, Pt. A, §2  
 15 and affected by Pt. F, §1, is amended to read:

16           **5. Factors.** In deciding whether to enter an order under subsection 3 or 4, the court  
 17 shall consider the factors under section 5-418 a conservator must consider when making a  
 18 decision on behalf of an individual subject to conservatorship. In addition, in deciding  
 19 whether to enter an order under this section, including whether supported decision  
 20 making or other less restrictive alternatives are appropriate, the court may consider the  
 21 following factors: any proposed vetting of the person or persons chosen to provide  
 22 support in decision making; reports to the court by an interested party or parties regarding  
 23 the effectiveness of an existing supported decision-making arrangement; or any other  
 24 information the court determines necessary or appropriate to determine whether  
 25 supportive services, technological assistance, supported decision making, protective  
 26 arrangements or less restrictive arrangements will provide adequate protection for the  
 27 respondent.'

28           Amend the bill in section 84 by striking out all of subsection 3 (page 22, lines 21 to  
 29 26 in L.D.) and inserting the following:

30           '**3. Right to decline.** The respondent has the right to decline to participate in an  
 31 evaluation ordered under subsection 1. If the respondent declines to participate in an  
 32 evaluation ordered under subsection 1, the petitioner may request an examination under  
 33 the Maine Rules of Civil Procedure, Rule 35.'

34           Amend the bill by inserting after section 86 the following:

35           '**Sec. 87. 18-C MRSA §5-703,** as enacted by PL 2017, c. 402, Pt. A, §2 and  
 36 affected by Pt. F, §1, is amended to read:

37           **§5-703. Exclusiveness of public guardian or conservator**

38           When the court has appointed a public guardian ~~or conservator~~ under this Part, no  
 39 coguardian ~~or coconservator~~ may be appointed for the same individual subject to  
 40 guardianship ~~or protected person during the continuation of the public guardianship or~~  
 41 ~~public conservatorship.~~ When the court has appointed a public conservator under this  
 42 Part, a coconservator may not be appointed for the same individual subject to  
 43 conservatorship.



1           **Sec. 88. 18-C MRSA §5-705**, as enacted by PL 2017, c. 402, Pt. A, §2 and  
2 affected by Pt. F, §1, is amended to read:

3           **§5-705. Acceptance by public guardian or conservator; plan**

4           Prior to the appointment of a public guardian or conservator, the appropriate agency  
5 nominated shall accept or reject the nomination in writing within 30 days of its receipt of  
6 notification that it has been nominated and if the nomination is accepted shall file a  
7 ~~detailed plan that, as relevant, must include but is not limited to the type of proposed~~  
8 ~~living arrangement for the individual subject to guardianship, how the individual's~~  
9 ~~financial needs will be met, how the individual's medical and other remedial needs will be~~  
10 ~~met, how the individual's social needs will be met and a plan for the individual's~~  
11 ~~continuing contact with relatives and friends, as well as a plan for the management of the~~  
12 ~~individual's or protected person's estate in the case of a public conservatorship under~~  
13 ~~section 5-316 for a guardianship and section 5-419 for a conservatorship.~~

14           **Sec. 89. 18-C MRSA §5-707, first ¶**, as enacted by PL 2017, c. 402, Pt. A, §2  
15 and affected by Pt. F, §1, is amended to read:

16           A public guardian or conservator has the same powers, rights and duties respecting  
17 the individual subject to guardianship or the ~~protected person~~ individual subject to  
18 conservatorship as provided for guardians and conservators by the other Parts of this  
19 Article except as otherwise specifically provided in this Part, including the following  
20 particular provisions.

21           **Sec. 90. 18-C MRSA §5-707, sub-§§2 and 3**, as enacted by PL 2017, c. 402, Pt.  
22 A, §2 and affected by Pt. F, §1, are repealed.

23           **Sec. 91. 18-C MRSA §5-931, sub-§1, ¶¶G and H**, as enacted by PL 2017, c.  
24 402, Pt. A, §2 and affected by Pt. F, §1, are amended to read:

25           G. Exercise fiduciary powers that the principal has authority to delegate; ~~and~~

26           H. Disclaim property, including a power of appointment; ~~and~~

27           **Sec. 92. 18-C MRSA §5-931, sub-§1, ¶I** is enacted to read:

28           I. Exercise authority over the content of an electronic communication of the principal  
29 in accordance with the Maine Revised Uniform Fiduciary Access to Digital Assets  
30 Act.'

31           Amend the bill in section 87 in subsection 2 in the 2nd line (page 23, line 2 in L.D.)  
32 by striking out the following: "July" and inserting the following: 'July September'

33           Amend the bill by inserting after section 87 the following:

34           '**Sec. 88. 18-C MRSA §8-301**, as enacted by PL 2017, c. 402, Pt. A, §2 and  
35 affected by Pt. F, §1, is amended to read:

36           **§8-301. Time of taking effect; provisions for transition**

37           1. **Effective date.** This Code takes effect on July September 1, 2019.

38           2. **Applicability.** Except as provided elsewhere in this Code, on the effective date of  
39 this Code:

- 1 A. The Code applies to any wills of decedents who die after the effective date;
- 2 A-1. The elective share provisions of Article 2, Part 2 and the exempt property and  
 3 allowances provisions of Article 2, Part 4 apply to the estates of decedents who die  
 4 on or after the effective date;
- 5 B. The Code applies to any proceedings in court pending on the effective date or  
 6 commenced after the effective date regardless of the time of the death of the decedent  
 7 except to the extent that in the opinion of the court the former procedure should be  
 8 made applicable in a particular case in the interest of justice or because of  
 9 infeasibility of application of the procedure of this Code;
- 10 C. Every personal representative appointed prior to July September 1, 2019  
 11 continues to hold the appointment but has only the powers conferred by this Code  
 12 and is subject to the duties imposed with respect to any act occurring or done after the  
 13 effective date, and a guardian or conservator appointed prior to July September 1,  
 14 2019 has the powers conferred by this Code on guardians and conservators, unless  
 15 otherwise limited by the original order of appointment or subsequent court order  
 16 under this Code;
- 17 D. An act done before July September 1, 2019 in any proceeding and any accrued  
 18 right is not impaired by this Code. If a right is acquired, extinguished or barred upon  
 19 the expiration of a prescribed period of time that has commenced to run by the  
 20 provisions of any statute before July September 1, 2019, the provisions remain in  
 21 force with respect to that right;
- 22 E. Any rule of construction or presumption provided in this Code applies to  
 23 instruments executed and multiple party accounts opened before July September 1,  
 24 2019 unless there is a clear indication of a contrary intent; and
- 25 F. For an adoption decree entered before July September 1, 2019 and not amended  
 26 after July September 1, 2019, the child is the child of both the former and adopting  
 27 parents for purposes of intestate succession, notwithstanding section 2-117, unless the  
 28 decree provides otherwise.

29 **Sec. 89. 18-C MRSA §9-202, sub-§6**, as enacted by PL 2017, c. 402, Pt. A, §2  
 30 and affected by Pt. F, §1, is amended to read:

31 **6. Final and irrevocable; exceptions.** Except as provided in subsection 7 and  
 32 section 9-205, subsection 2, a surrender and release or a consent is final and irrevocable  
 33 when duly executed upon the court's approval of the surrender and release or consent  
 34 pursuant to subsection 2.'

35 Amend the bill by striking out all of section 91.

36 Amend the bill by inserting after section 95 the following:

37 **'PART B**

38 **Sec. B-1. 18-C MRSA §1-110, sub-§5**, as enacted by PL 2017, c. 402, Pt. A, §2  
 39 and affected by Pt. F, §1, is amended to read:

1           **5. Application and effective date.** This section applies to all trusts and estates in  
 2 existence on and created after July September 1, 2019.

3           **Sec. B-2. 18-C MRSA §2-513, first ¶,** as enacted by PL 2017, c. 402, Pt. A, §2  
 4 and affected by Pt. F, §1, is amended to read:

5           A contract to make a will or devise, or not to revoke a will or devise, or to die  
 6 intestate, if executed after July September 1, 2019, can be established only by:

7           **Sec. B-3. 18-C MRSA §2-916,** as enacted by PL 2017, c. 402, Pt. A, §2 and  
 8 affected by Pt. F, §1, is amended to read:

9           **§2-916. Application to existing relationships**

10           Except as otherwise provided in section 2-913, an interest in or power over property  
 11 existing on July September 1, 2019 as to which the time for delivering or filing a  
 12 disclaimer under law superseded by this Part has not expired may be disclaimed after July  
 13 September 1, 2019.

14           **Sec. B-4. 18-C MRSA §3-916, sub-§12,** as enacted by PL 2017, c. 402, Pt. A,  
 15 §2 and affected by Pt. F, §1, is amended to read:

16           **12. Delayed application.** The applicability of subsections 3 to 7 is governed by this  
 17 subsection.

18           A. Subsections 3 to 7 do not apply to the estate of a decedent who dies on or within 3  
 19 years after July September 1, 2019 nor to the estate of a decedent who dies more than  
 20 3 years after July September 1, 2019 if the decedent continuously lacked testamentary  
 21 capacity from the expiration of the 3-year period until the date of death.

22           B. For the estate of a decedent who dies on or after July September 1, 2019 to which  
 23 subsections 3 to 7 do not apply, estate taxes must be apportioned pursuant to the law  
 24 in effect immediately before July September 1, 2019.

25           **Sec. B-5. 18-C MRSA §5-643,** as enacted by PL 2017, c. 402, Pt. A, §2 and  
 26 affected by Pt. F, §1, is amended to read:

27           **§5-643. Transitional provisions**

28           **1. Proceedings on or after September 1, 2019.** This Part applies to guardianship  
 29 and protective proceedings begun on or after July September 1, 2019.

30           **2. Proceedings before September 1, 2019.** Subparts 1 and 3 and sections 5-641 and  
 31 5-642 apply to proceedings begun before July September 1, 2019, regardless of whether a  
 32 guardianship or protective order has been issued.

33           **Sec. B-6. 18-C MRSA §5-906, sub-§§1 and 2,** as enacted by PL 2017, c. 402,  
 34 Pt. A, §2 and affected by Pt. F, §1, are amended to read:

35           **1. Executed on or after September 1, 2019.** A power of attorney executed in this  
 36 State on or after July September 1, 2019 is valid if its execution complies with section  
 37 5-905.

1           **2. Executed on or after July 1, 2010 but before September 1, 2019.** A power of  
2 attorney executed on or after July 1, 2010 but before July September 1, 2019 is valid if its  
3 execution complied with former Title 18-A, section 5-906.

4           **Sec. B-7. 18-C MRSA §5-963**, as enacted by PL 2017, c. 402, Pt. A, §2 and  
5 affected by Pt. F, §1, is amended to read:

6           **§5-963. Effect on existing powers of attorney**

7           Except as otherwise provided in this Part:

8           **1. Application to powers of attorney.** This Part applies to a power of attorney  
9 created before, on or after July September 1, 2019;

10           **2. Application to judicial proceedings commenced on or after September 1,**  
11 **2019.** This Part applies to a judicial proceeding concerning a power of attorney  
12 commenced on or after July September 1, 2019; and

13           **3. Application to judicial proceedings commenced before September 1, 2019.**  
14 This Part applies to a judicial proceeding concerning a power of attorney commenced  
15 before July September 1, 2019, unless the court finds that application of a provision of  
16 this Part would substantially interfere with the effective conduct of the judicial  
17 proceeding or prejudice the rights of a party, in which case that provision does not apply  
18 and the superseded law applies.

19           An act done before July September 1, 2019 is not affected by this Part.

20           **Sec. B-8. 18-C MRSA §6-311**, as enacted by PL 2017, c. 402, Pt. A, §2 and  
21 affected by Pt. F, §1, is amended to read:

22           **§6-311. Application of Part**

23           This Part applies to registrations of securities in beneficiary form made before, on or  
24 after July September 1, 2019 by decedents dying on or after July September 1, 2019.

25           **Sec. B-9. 18-C MRSA §6-403**, as enacted by PL 2017, c. 402, Pt. A, §2 and  
26 affected by Pt. F, §1, is amended to read:

27           **§6-403. Applicability**

28           This Part applies to a transfer on death deed made before, on or after July September  
29 1, 2019 by a transferor dying on or after July September 1, 2019.

30           **Sec. B-10. 18-C MRSA §6-421**, as enacted by PL 2017, c. 402, Pt. A, §2 and  
31 affected by Pt. F, §1, is repealed.

32           **Sec. B-11. 18-C MRSA §7-203**, as enacted by PL 2017, c. 402, Pt. A, §2 and  
33 affected by Pt. F, §1, is amended to read:

34           **§7-203. Application of Part**

35           This Part applies to fiduciary relationships in existence on July September 1, 2019 or  
36 established after that date.



1 an estate of a decedent who died prior to the effective date of Title 18-C. To resolve the  
2 ambiguity and provide clarity on the applicability of the new provisions of Title 18-C, the  
3 Probate and Trust Law Advisory Commission recommended that a new paragraph A-1 be  
4 added to section 8-301, subsection 2.

5 This amendment amends the adult guardianship, conservatorship and other protective  
6 arrangements provisions to clarify that the court retains its discretion when determining  
7 whether guardianship, conservatorship, protective arrangements or other less restrictive  
8 alternatives, including supported decision making, are appropriate in each case before the  
9 court.

10 The court may consider any proposed vetting of the person or persons chosen to  
11 provide support in decision making; reports to the court by an interested party or parties  
12 regarding the effectiveness of an existing supported decision-making arrangement; or any  
13 other information the court determines necessary or appropriate to determine whether  
14 supportive services, technological assistance, supported decision making, protective  
15 arrangements or less restrictive arrangements will provide adequate protection for the  
16 respondent when a petition has been filed for guardianship, conservatorship or other  
17 protective arrangements.

18 This amendment updates Title 18-C with amendments that were included in the  
19 Maine Revised Uniform Fiduciary Access to Digital Assets Act, enacted by Public Law  
20 2017, chapter 359 as amendments to the Maine Revised Statutes, Title 18-A, in the  
21 definition of "property" to include digital assets and to authorize an agent under a power  
22 of attorney to exercise authority over the content of an electronic communication of the  
23 principal if specifically authorized to do so in a power of attorney.

24 This amendment permits the appointment, by renunciation or nomination, of a person  
25 who does not have priority for appointment as personal representative, in an informal  
26 probate proceeding, rather than requiring a formal probate proceeding for the  
27 appointment. As written, Title 18-C, section 3-203, subsection 5 changes current Maine  
28 law by permitting the appointment of a person who does not have priority, including  
29 priority resulting from renunciation or nomination determined pursuant to section 3-203,  
30 only in formal proceedings. Current Maine law permits an appointment resulting from  
31 renunciation or nomination in informal proceedings. Requiring a formal proceeding for  
32 such an appointment would be an unnecessary burden on the Probate Courts and on the  
33 parties seeking appointment of a personal representative.

34 This amendment clarifies that a person may refuse to recognize the authority of a  
35 guardian or conservator to act on behalf of an individual subject to guardianship or  
36 conservatorship if the guardian's or conservator's proposed action would be inconsistent  
37 with not only the Maine Uniform Probate Code but any other law, rule or regulation. It  
38 also provides that a person who refuses to accept the authority of the guardian or  
39 conservator in any situation is required to report the refusal and the reason for the refusal  
40 to the court. This gives the court the opportunity to review the guardian or conservator  
41 and determine if removal or other action is appropriate.

42 This amendment replaces the provisions governing the appointment of a guardian for  
43 a minor on an emergency basis and is based on recommendations from the Family Law  
44 Advisory Commission. The amendment to the Title 18-C, section 5-204 permits the  
45 appointment of a guardian for a minor on an emergency basis for up to 90 days upon

1 evidence that the appointment is needed to prevent substantial harm to the minor's  
 2 physical health or safety. The new language provides guidance to the courts, attorneys  
 3 and litigants by:

4 1. Clarifying that it is the petitioner's responsibility to provide actual notice of the  
 5 petition for appointment of a guardian on an emergency basis and of any appointment  
 6 made on an ex parte basis to the parent, the minor and any person having custody of the  
 7 minor;

8 2. Setting forth the requirements for providing such notice and the procedure for  
 9 informing the court of the notice provided; and

10 3. Clarifying that the standards and procedures that apply to appointing a guardian on  
 11 an emergency basis do not alleviate or alter the notice requirements and standards for  
 12 appointing a guardian on a non-emergency basis under Title 18-C, section 5-204,  
 13 subsection 2.

14 This amendment requires that the visitor appointed by the court in an adult  
 15 guardianship or conservatorship case is required to interview the petitioner and the  
 16 proposed guardian or proposed conservator, as applicable.

17 This amendment provides that a professional evaluation is not required before the  
 18 appointment of an emergency guardian or emergency conservator if the court finds from  
 19 affidavit or testimony that the basis for an emergency has been met and the petitioner has  
 20 good cause for not submitting a professional evaluation before the emergency order. The  
 21 amendment also corrects a cross-reference.

22 This amendment provides that when the court has appointed a public guardian, no  
 23 coguardian may be appointed, and no coconservator may be appointed when a public  
 24 conservator has been appointed.

25 This amendment cross-references the requirements that apply to private guardians  
 26 and conservators to ensure that the same requirements apply to public guardians and  
 27 conservators.

28 This amendment resolves an inconsistency in the adoptions laws between Title 18-C,  
 29 section 9-202, subsection 4, which allows a parent to have 5 days to revoke a written  
 30 consent to an adoption or a surrender and release of their parental rights, and subsection  
 31 6, which states that a consent or surrender and release are final and irrevocable upon  
 32 execution. This inconsistency has not created a problem in practice because of how the  
 33 law has been applied by courts, which is to approve consents or surrender and releases  
 34 only after the completion of the revocation period under subsection 4. This amendment  
 35 eliminates this inconsistency by eliminating "when duly executed" and in its place  
 36 providing that a surrender and release or a consent is final and irrevocable upon the  
 37 court's approval pursuant to the other requirements of that section, as set forth in  
 38 subsection 2.

39 **FISCAL NOTE REQUIRED**

40 (See attached)



# 129th MAINE LEGISLATURE

LD 1535

LR 219(02)

**An Act To Correct Errors and Inconsistencies Related to the Maine Uniform Probate Code and To Make Other Substantive Changes**

**Fiscal Note for Bill as Amended by Committee Amendment *A(H-632)***

**Committee: Judiciary**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund

### Fiscal Detail and Notes

Any additional costs to various departments and agencies from the provisions in this bill are expected to be minor and can be absorbed within existing budgeted resources.