

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
1995

capacity as a member of the Baxter State Park Authority. A state-owned vehicle issued environmental registration plates must display a marker or insignia designating the vehicle as state-owned and is exempt from registration fees and the contribution under section 455, subsection 4.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 9, 1995.

CHAPTER 203

H.P. 833 - L.D. 1164

An Act to Clarify Recent Amendments to the Laws on Guardianship and Conservatorship

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

Sec. 1. 18-A MRSA §5-303, sub-§§(b) and (c), as amended by PL 1993, c. 652, §1, are further amended to read:

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person is already represented by an attorney, the court shall appoint one or more of the following: ~~A~~ a visitor, a guardian ad litem or an attorney to represent the allegedly incapacitated person in the proceeding. If it comes to the court's attention that the allegedly incapacitated person wishes to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers, the court shall appoint an attorney to represent the allegedly incapacitated person. The cost of this appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied sufficient funds are available. The person alleged to be incapacitated must be examined by a physician or by a licensed psychologist acceptable to the court who shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

(c) If appointed, the visitor or guardian ad litem shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will reside if the requested appointment is made. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to

the allegedly incapacitated person and inquire if the person wishes to attend the hearing, to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of that person's own choice, the visitor or guardian ad litem shall so indicate in the written report to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see and hear all evidence bearing upon the person's condition. The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician ~~and~~ the visitor ~~and~~ the guardian ad litem. The issue may be determined at a closed hearing if the person alleged to be incapacitated or the person's counsel so requests.

Sec. 2. 18-A MRSA §5-310-A, sub-§(a-1) is enacted to read:

(a-1) If the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a), then the court, within 48 hours of taking the action, shall appoint a visitor or a guardian ad litem to visit the allegedly incapacitated person and make a report to the court within 10 days of the appointment. The visitor or guardian ad litem shall serve the allegedly incapacitated person with a copy of the order appointing the temporary guardian and shall explain the meaning and consequences of the appointment. The visitor or guardian ad litem shall inquire of the allegedly incapacitated person whether that person wishes to contest any aspect of the temporary guardianship or seek any limitation of the temporary guardian's powers. The visitor or guardian ad litem shall advise the allegedly incapacitated person of that person's right to contest the temporary guardianship by requesting a hearing under subsection (b) and shall advise the allegedly incapacitated person of that person's right to be represented in the proceeding by counsel of that person's own choice or by counsel appointed by the court. The visitor or guardian ad litem shall also interview the temporary guardian, except in cases where the court itself has taken action to exercise the powers of a temporary guardian. In the report to the court, the visitor or guardian ad litem shall inform the court that the allegedly incapacitated person has received a copy of the order appointing the temporary guardian. The visitor or guardian ad litem shall advise the court as to whether the allegedly incapacitated person wishes to contest any aspect of the temporary guardianship or seek a limitation of the temporary guardian's powers and whether the allegedly incapacitated person is already represented by counsel. The visitor or guardian ad litem shall also advise the court whether any issue exists with respect to whether the appoint-

ment of the temporary guardian is in the allegedly incapacitated person's best interest.

Sec. 3. 18-A MRSA §5-310-A, sub-§§(b) and (c), as enacted by PL 1993, c. 652, §3, are amended to read:

(b) ~~When the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a), an expedited hearing must be held within 30 days of the signing of the court order exercising the powers of a guardian or appointing a temporary guardian. If the court has exercised temporary guardianship powers or has issued an ex parte order under subsection (a), and if it comes to the court's attention, through the report of the visitor or guardian ad litem or otherwise, that the allegedly incapacitated person wishes to contest any aspect of the temporary guardianship or seek a limitation of the temporary guardian's powers, or that an issue exists with respect to whether the temporary guardianship is in the allegedly incapacitated person's best interest, the court shall hold an expedited hearing within 40 days of the entry of the ex parte order under subsection (a). The court may continue the expedited hearing if the petitioner and the attorney for the allegedly incapacitated person, or, if none, the visitor or the guardian ad litem, agree to such a continuance. The court may continue the hearing on its own motion due to circumstances beyond the control of the court and the parties, provided the hearing is held within 60 days of the signing of the ex parte order. If the appointment of a guardian is contested by the allegedly incapacitated person and the person is not already represented by an attorney, the court shall appoint counsel to represent the allegedly incapacitated person in the proceeding. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied that sufficient funds are available. At the hearing, the petitioner has the burden of showing, by a preponderance of the evidence, that temporary guardianship continues to be necessary to address the emergency provide the person with continuing care, protection or support pending a final hearing. Notice of the expedited hearing must be served as provided in section 5-309, except that the notice must be given at least 5 days before the expedited hearing, and notice need not be served on any person whose address or present whereabouts is unknown and can not be ascertained by due diligence. Unless the allegedly incapacitated person is already represented, the court shall appoint one or more of the following: a visitor, a guardian ad litem or an attorney to represent the allegedly incapacitated person in the proceeding. If it comes to the court's attention that the ward wishes to contest any aspect of the temporary guardianship or to seek any limitation of the court's or the temporary guardian's powers, the court shall appoint an attorney to represent the ward. The cost of~~

~~the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied sufficient funds are available. The court may waive service of the expedited hearing on any person, other than the allegedly incapacitated person, upon a showing of good cause.~~

(c) At the expedited hearing, the court may render a judgment authorizing the temporary guardianship to continue beyond the original 30 day period, for a period not to exceed 6 months from the date of entry of the ex parte order. The temporary guardianship terminates on the date specified in the order or, if no date is specified in the order, at the end of the 6 month period 6 months following the expedited hearing, date of entry of the ex parte order or at any prior time if the court determines the circumstances leading to the order for temporary guardianship no longer exist or if a judgment following a hearing pursuant to section 5-303 has been held entered.

Sec. 4. 18-A MRSA §5-407, sub-§(b), as amended by PL 1993, c. 652, §4, is further amended to read:

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected is already represented by an attorney, the court shall appoint one or more of the following: ~~A~~ a visitor; a guardian ad litem or a lawyer to represent the person to be protected in the proceedings. If it comes to the court's attention that the ~~allegedly incapacitated~~ person to be protected wishes to contest any aspect of the proceeding or to seek any limitation of the proposed conservator's powers, the court shall appoint an attorney to represent the ~~allegedly incapacitated~~ person to be protected. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the person to be protected if the court is satisfied sufficient funds are available. If the alleged disability is physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician acceptable to the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or by a licensed psychologist acceptable to the court; preferably the physician or psychologist shall not be connected with any institution in which the person is a patient or is detained. The physician or psychologist shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

Sec. 5. 18-A MRSA §5-407, sub-§(b-1), as amended by PL 1993, c. 652, §5, is further amended to read:

(b-1) If appointed, the visitor or guardian ad litem shall interview the person to be protected and the person who is seeking appointment as conservator. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the person to be protected and inquire if the person wishes to attend the hearing, to contest any aspect of the proceedings or to seek any limitation of the proposed conservator's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person is not already represented by an attorney, the visitor or guardian ad litem shall so indicate in the written report to the court. The person to be protected is entitled to be present at the hearing in person and to see and hear all evidence bearing upon the person's condition. The person to be protected is entitled to be represented by counsel, to present evidence, to cross examine cross-examine witnesses, including the physician and the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person to be protected or the person's counsel so requests.

Sec. 6. 18-A MRSA §5-408-A, sub-§(a-1) is enacted to read:

(a-1) If the court takes action to exercise the powers of a conservator or to appoint a temporary conservator under subsection (a), then the court, within 48 hours of taking the action, shall appoint a visitor or a guardian ad litem to visit the protected person and make a report to the court within 10 days of the appointment of the temporary conservator. The visitor or guardian ad litem shall serve the protected person with a copy of the order appointing the temporary conservator and shall explain the meaning and consequences of the appointment. The visitor or guardian ad litem shall inquire of the protected person whether that person wishes to contest any aspect of the temporary conservatorship or seek any limitation of the temporary conservator's powers. The visitor or guardian ad litem shall advise the protected person of that person's right to contest the temporary conservatorship by requesting an expedited hearing under subsection (b) and shall advise the protected person of that person's right to be represented by counsel of that person's own choice or by counsel appointed by the court. The visitor or guardian ad litem shall also interview the temporary conservator, except in cases where the court itself has taken action to exercise the powers of a temporary conservator. In the report to the court, the visitor or guardian ad litem shall inform the court that the protected person has received a copy of the order appointing the temporary conservator and

shall advise the court as to whether the protected person wishes to contest any aspect of the temporary conservatorship or seek a limitation of the temporary conservator's powers and whether the protected person is already represented by counsel. The visitor or guardian ad litem shall also advise the court whether any issue exists with respect to whether the appointment of the temporary conservator is in the protected person's best interest.

Sec. 7. 18-A MRSA §5-408-A, sub-§§(b) and (c), as enacted by PL 1993, c. 652, §7, are amended to read:

(b) ~~When the court takes action to exercise the powers of a conservator or to appoint a temporary conservator under subsection (a), an expedited hearing must be held within 30 days of the signing of the court order exercising the powers of a conservator or appointing a temporary conservator. If the court has exercised temporary guardianship powers or has issued an ex parte order under subsection (a), and if it comes to the court's attention, through the report of the visitor or guardian ad litem or otherwise, that the protected person wishes to contest any aspect of the temporary conservatorship or to seek a limitation of the temporary conservator's powers, or if it appears that there is an issue with respect to whether the temporary conservatorship is in the protected person's best interest, the court shall hold an expedited hearing within 40 days of the signing of the ex parte order under subsection (a). The court may continue the expedited hearing if the petitioner and the attorney for the protected person, or, if none, the visitor or guardian ad litem, agree to such a continuance. The court may continue the hearing on its own motion due to circumstances beyond the control of the court and the parties, provided the hearing is held within 60 days of the signing of the ex parte order. If the appointment of a conservator is contested by the protected person and the person is not already represented by an attorney, the court shall appoint counsel to represent the person in the proceeding. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the protected person if the court is satisfied that sufficient funds are available. At that hearing, the petitioner has the burden of showing, by a preponderance of the evidence, that temporary conservatorship continues to be necessary to address the emergency protect and preserve the person's estate pending final hearing. Notice of the expedited hearing must be served as provided in section 5-405, except that the notice must be given at least 5 days before the expedited hearing, and notice need not be served on any person whose address or present whereabouts is unknown and can not be ascertained by due diligence. Unless the protected person is already represented, the court shall appoint one or more of the following: a visitor, a guardian ad litem or an attorney to represent the protected person~~

~~in the proceeding. If it comes to the court's attention that the protected person wishes to contest any aspect of the temporary conservatorship or to seek any limitation of the court's or the temporary conservator's powers, the court shall appoint an attorney to represent the protected person. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the person to be protected if the court is satisfied sufficient funds are available. The court may waive service of the expedited hearing on any person, other than the person to be protected, upon a showing of good cause.~~

(c) At the expedited hearing, the court may render a judgment authorizing the temporary conservatorship to continue ~~beyond the original 30 day period,~~ for a period not to exceed 6 months from the date of entry of the ex parte order. The temporary conservatorship terminates on the date specified in the order or, if no date is specified in the order, ~~at the end of the 6 month period~~ 6 months following the ~~expedited hearing date of entry of the ex parte order,~~ or at any prior time if the court determines the circumstances leading to the order for temporary conservatorship no longer exist or if a judgment following a hearing pursuant to section 5-407 has been held entered.

Sec. 8. 18-A MRSA §5-408-A, sub-§(g) is enacted to read:

(g) A petition for temporary conservatorship may be brought before any judge if the judge of the county in which venue properly lies is unavailable. If a judge other than the judge of the county in which venue properly lies acts on a petition for temporary conservatorship, that judge shall issue a written order and endorse upon it the date and time of the order. The judge shall then immediately transmit or cause to be transmitted that order to the register of the county in which venue properly lies. An order issued by a judge of a county other than the county in which venue properly lies is deemed to have been entered in the docket on the date and at the time endorsed upon it.

See title page for effective date.

CHAPTER 204

H.P. 688 - L.D. 939

An Act to Exclude Services Provided by Home Stitchers from the Definition of Employment for Purposes of Unemployment Compensation

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

Sec. 1. 26 MRSA §1043, sub-§11, ¶F, as amended by PL 1991, c. 706, is further amended by amending subparagraphs (35) and (36) to read:

(35) Services performed by a homemaker in the knitted outerwear industry as those terms are defined, on the effective date of this subparagraph, in the 29 Code of Federal Regulations, Part 530, Section 530.1; ~~and~~

(36) Service performed by a full-time student, as defined in subsection 30, in the employ of an organized camp if the full-time student performed services in the employ of the camp for less than 13 calendar weeks in the calendar year and the camp:

(a) Did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year; or

(b) Had average gross receipts for any 6 months in the preceding calendar year ~~which that~~ were not more than 33 1/3% of its average gross receipts for the other 6 months in the preceding calendar year; and

Sec. 2. 26 MRSA §1043, sub-§11, ¶F, as amended by PL 1991, c. 706, is further amended by enacting subparagraph (37) to read:

(37) Services performed by an individual as a home stitcher as long as that employment is not subject to federal unemployment tax.

See title page for effective date.

CHAPTER 205

H.P. 714 - L.D. 971

An Act to Require Special Care Program Disclosure by Entities Providing Alzheimer Care

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

Sec. 1. 22 MRSA c. 1678 is enacted to read: