

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
2005

Sec. 1. 23 MRSA §4210-A is enacted to read:

§4210-A. Payment for cost of relocating utility facilities underground in federally designated historic districts on federal aid highways

1. Reimbursement. The department, in the course of delivering the federal surface transportation program, 23 United States Code, Section 133 (2005) may reimburse a National Register Historic District or the community in which the National Register Historic District is located for the portion of the cost to move or relocate overhead utilities underground to the extent that such payments by the department are eligible for reimbursement under the federal surface transportation program pursuant to 23 United States Code, Section 133 (2005). To be eligible for this reimbursement, the project must be located in a National Register Historic District and on the National Highway System and may not increase the department's cost or liability in complying with the National Historic Preservation Act, 16 United States Code, Sections 470 to 470x-6 (2005) or with 49 United States Code, Section 303 (2005). For the purposes of this section, "National Register Historic District" means a district that is individually listed in the National Register of Historic Places pursuant to the National Historic Preservation Act, 16 United States Code, Sections 470 to 470x-6 (2005).

The amount paid in any biennium under this section may not exceed federal surface transportation program funds available under 23 United States Code, Section 133 (2005) to reimburse the State in that biennium.

2. Rules. The department may adopt rules necessary to implement this section. The rules must be consistent with any applicable federal regulations relating to the cost of relocation and with rules adopted pursuant to section 255. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

Effective June 2, 2005.

CHAPTER 283

S.P. 407 - L.D. 1179

An Act Concerning Persons Who Hold Durable Powers of Attorney or Act as Responsible Parties for Residents of Long-term Care Facilities

Emergency preamble. **Whereas,** acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the improper management of the property and financial affairs of principals by individuals with actual or apparent management authority jeopardizes the ability of principals to live in nursing homes and other supported-living settings when costs of care or rent remain unpaid; and

Whereas, this jeopardy may be removed and proper financial management secured if improper behavior by an agent is brought to the attention of the Probate Court; and

Whereas, financial exploitation may be discouraged, the welfare of elderly persons with physical or mental challenges and of disabled adults may be enhanced and their ability to remain in nursing homes and other supported-living settings may be improved; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 18-A MRSA §5-404, sub-§(c) is enacted to read:

(c) A petition for a protective order made under oath may be used to initiate court consideration, accounting and remediation of the actions of any individual responsible for the management of the property or affairs of another. In the case of an emergency, the petition must be given priority scheduling by the court.

(1) The petition must include the following information and may include other information required by rule:

(i) Name, address and telephone number of the petitioner;

(ii) Name, address and telephone number of the principal;

(iii) Name, address and telephone number of the person with actual or apparent authority to manage the property or affairs of the principal;

(iv) Facts concerning the extent and nature of the principal's inability to manage the principal's property or affairs effectively

and any facts supporting an allegation that an emergency exists;

(v) Facts concerning the extent and nature of the actual or apparent agent's lack of management of the principal's property or affairs. If applicable, facts describing how the petitioner has already been adversely affected by the lack of management of the principal's property or affairs; and

(vi) Names, addresses and relationships of all persons who are required to receive notice of the petition.

(2) This subsection does not limit any other purpose for the use of a petition for a protective order or any other remedy available to the court.

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

Effective June 2, 2005.

CHAPTER 284

H.P. 1104 - L.D. 1566

An Act Concerning Full Faith and Credit for Legal Documents Executed in Other Jurisdictions

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

Sec. 1. 18-A MRSA §5-508, sub-§(c), as repealed and replaced by PL 1997, c. 683, Pt. C, §6, is amended to read:

(c) A durable financial power of attorney executed in this State must be notarized by a notary public or an attorney-at-law.

Sec. 2. 18-A MRSA §5-508, sub-§(d), as amended by PL 2003, c. 618, Pt. B, §8 and affected by §20, is further amended to read:

(d) A durable financial power of attorney executed in this State must contain the following language:

"Notice to the Principal: As the "Principal," you are using this Durable Power of Attorney to grant power to another person (called the "Agent" or "Attorney-in-fact") to make decisions about your money, property or both and to use your money, property or both on your behalf. If this written Durable Power of Attorney does not limit the powers that you give your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property and spend

your money without advance notice to you or approval by you. Under this document, your Agent will continue to have these powers after you become incapacitated, and you may also choose to authorize your Agent to use these powers before you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Revised Statutes, Title 18-A, sections 5-501 to 5-508 and in Maine case law. You have the right to revoke or take back this Durable Power of Attorney at any time as long as you are of sound mind. If there is anything about this Durable Power of Attorney that you do not understand, you should ask a lawyer to explain it to you.

Notice to the Agent: As the "Agent" or "Attorney-in-fact," you are given power under this Durable Power of Attorney to make decisions about the money, property or both belonging to the Principal and to spend the Principal's money, property or both on that person's behalf in accordance with the terms of this Durable Power of Attorney. This Durable Power of Attorney is valid only if the Principal is of sound mind when the Principal signs it. As the Agent, you are under a duty (called a "fiduciary duty") to observe the standards observed by a prudent person dealing with the property of another. The duty is explained more fully in the Maine Revised Statutes, Title 18-A, sections 5-501 to 5-508 and Title 18-B, sections 802 to 807 and chapter 9 and in Maine case law. As the Agent, you are not entitled to use the money or property for your own benefit or to make gifts to yourself or others unless the Durable Power of Attorney specifically gives you the authority to do so. As the Agent, your authority under this Durable Power of Attorney will end when the Principal dies and you will not have the authority to administer the estate unless you are authorized to do so in accordance with the Probate Code. If you violate your fiduciary duty under this Durable Power of Attorney, you may be liable for damages and may be subject to criminal prosecution. If there is anything about this Durable Power of Attorney or your duties under it that you do not understand, you should ask a lawyer to explain it to you."

This language does not confer powers not otherwise contained in the durable financial power of attorney.

Sec. 3. 18-A MRSA §5-510 is enacted to read:

§5-510. Recognition of powers of attorney from other jurisdictions

Notwithstanding any contrary requirements of law, a durable or nondurable health care power of attorney or a durable or nondurable financial power of attorney that was duly executed in another jurisdiction within the United States in compliance with the laws