

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION
July 29, 2005

SECOND REGULAR SESSION
January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 28, 2005

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 23, 2006

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

Penmor Lithographers
Lewiston, Maine
2006

Act enacting the Maine Revised Statutes, Title 36, section 1611 and make recommendations for retaining, amending or repealing those limitations to the joint standing committee of the Legislature having jurisdiction over taxation matters as part of its reporting responsibilities under Resolve 2005, chapter 125. The commission also shall develop a new budget funding mechanism for the office of the fiscal administrator of the unorganized territory within the Department of Audit that promotes budget transparency and provides better fiscal accountability for inclusion in the municipal cost component for fiscal years beginning on or after July 1, 2007. The joint standing committee of the Legislature having jurisdiction over taxation matters may submit legislation related to the recommendations of the commission to the First Regular Session of the 123rd Legislature.

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

Effective May 4, 2006.

CHAPTER 625

H.P. 1475 - L.D. 2087

An Act To Implement Recommendations Concerning Temporary Guardian and Conservator Laws

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

Sec. 1. 18-A MRSA §5-310-A, sub-§(a), as enacted by PL 1993, c. 652, §3, is further amended to read:

(a) When a person alleged to be incapacitated has no guardian and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may exercise the power of a guardian or may enter an ~~ex parte~~ order, ~~ex parte or otherwise~~, appointing a temporary guardian ~~to address the emergency in order to prevent serious, immediate and irreparable harm to the health or financial interests of the person alleged to be incapacitated.~~ A petition for temporary guardianship must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed guardian. In the order and in the letters of temporary guardianship, the court shall specify the powers and duties of the temporary guardian, limiting the powers and duties to those necessary to address the emergency.

(1) Except as otherwise provided in this section, prior to filing a petition under this subsection the

petitioner shall provide notice orally or in writing to the following:

(i) The allegedly incapacitated person and the person's spouse, parents, adult children and any domestic partner known to the court;

(ii) Any person who is serving as guardian or conservator or who has care and custody of the allegedly incapacitated person; and

(iii) In case no other person is notified under subparagraph (i), at least one of the closest adult relatives of the allegedly incapacitated person or, if none, an adult friend, if any can be found.

(2) Notice under paragraph (1) must include the following information:

(i) The temporary authority that the petitioner is requesting;

(ii) The location and telephone number of the court in which the petition is being filed; and

(iii) The name of the petitioner and the intended date of filing.

(3) The petitioner shall state in the affidavit required under this subsection the date, time, location and method of providing the required notice under paragraph (1) and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-309 do not apply to this section.

(4) Notice is not required under this subsection in the following circumstances:

(i) Giving notice will place the allegedly incapacitated person at substantial risk of abuse, neglect or exploitation;

(ii) Notice, if provided, would not be effective; or

(iii) Other good cause as determined by the court.

(5) If, prior to filing the petition, the petitioner did not provide notice as required under this subsection, the petitioner must state in the affidavit the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason

for not providing notice before issuing a temporary order.

Sec. 2. 18-A MRSA §5-310-A, sub-§(a-1), as amended by PL 1997, c. 35, §1, is further amended 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 2 days, excluding Saturdays, Sundays and legal holidays, 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 of the visitor or guardian ad litem. 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~~ if circumstances indicate 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 appointment of the temporary guardian is in the allegedly incapacitated person's best interest.

Sec. 3. 18-A MRSA §5-408-A, sub-§(a), as enacted by PL 1993, c. 652, §7, is amended to read:

(a) When a person is alleged to be in need of protection and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may exercise the power of a conservator or may enter an ~~ex parte~~ ex parte order, ex parte or otherwise, appointing a temporary conservator in order to prevent serious, immediate and irreparable harm to the health or

financial interests of the person alleged to be in need of protection and to preserve and apply the property of the person to be protected as may be required for that person's benefit or the benefit of that person's dependents. The petition must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed conservator. In the order and in the letters of temporary conservatorship, the court shall specify the powers and duties of the temporary conservator, limiting the powers and duties to those necessary to address the emergency.

(1) Except as otherwise provided in this section, prior to filing a petition under this subsection the petitioner shall provide notice orally or in writing to the following:

(i) The person alleged to be in need of protection and the person's spouse, parents, adult children and any domestic partner known to the court;

(ii) Any person who is serving as guardian or conservator or who has care and custody of the person alleged to be in need of protection; and

(iii) In case no other person is notified under subparagraph (i), at least one of the closest adult relatives of the person alleged to be in need of protection or, if none, an adult friend, if any can be found.

(2) Notice under paragraph (1) must include the following information:

(i) The temporary authority that the petitioner is requesting;

(ii) The location and telephone number of the court in which the petition is being filed; and

(iii) The name of the petitioner and the intended date of filing.

(3) The petitioner shall state in the affidavit required under this subsection the date, time, location and method of providing the required notice under paragraph (1) and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-405 do not apply to this section.

(4) Notice is not required under this subsection in the following circumstances:

(i) Giving notice will place the person alleged to be in need of protection at substantial risk of abuse, neglect or exploitation;

(ii) Notice, if provided, would not be effective; or

(iii) Other good cause as determined by the court.

(5) If, prior to filing the petition, the petitioner did not provide notice as required under this subsection, the petitioner must state in the affidavit the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.

Sec. 4. 18-A MRSA §5-408-A, sub-§(a-1), as amended by PL 1997, c. 35, §2, is further amended 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 2 days, excluding Saturdays, Sundays and legal holidays, 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 visitor or guardian ad litem. 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~~ if circumstances indicate that 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.

See title page for effective date.

CHAPTER 626

H.P. 1453 - L.D. 2057

An Act To Implement the Recommendations of the ATV Trail Advisory Council

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

Sec. 1. 12 MRSA §10902, sub-§9, as amended by PL 2005, c. 477, §3, is further amended to read:

9. Discretionary suspension for certain ATV violations; training. The commissioner ~~shall~~ may suspend all licenses ~~and~~ permits and registrations issued by the department pursuant to this Part ~~and may suspend any registration issued pursuant to subpart 6 of this Part~~ to any person convicted or adjudicated of:

A. Operating an ATV on a temporarily closed trail as prohibited under section 13157-A, subsection 24; or

~~B. Abuse of another person's property as prohibited under section 13157-A, subsection 22;~~

~~C. Operating an ATV under the influence as prohibited under section 10701, subsection 1-A, paragraph D;~~

~~D. Operating an ATV to endanger, as prohibited under section 13157-A, subsection 11;~~

~~E. Reckless operation of an ATV, as prohibited under section 13157-A, subsection 10;~~

F. Operating an ATV on the land of another without permission, as prohibited under section 13157-A, subsection 1; ~~or~~

~~G. Failure or refusal to stop an ATV or attempting to elude an officer, as prohibited under section 10651, subsection 1, paragraphs D and E.~~

If the commissioner suspends a license, permit or registration pursuant to this subsection, the suspension must be for at least 90 days. The commissioner shall reinstate licenses, permits and registrations that have been suspended pursuant to this subsection ~~only if~~ after the period of suspension has elapsed and after the person satisfactorily completes, in accordance with procedures established by the commissioner by rule, a training program approved by the department relating