

MAINE STATE LEGISLATURE

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STATE OF MAINE
129TH LEGISLATURE
FIRST SPECIAL AND SECOND REGULAR SESSIONS



Summaries of bills, adopted amendments and laws enacted or finally passed

JOINT STANDING COMMITTEE ON JUDICIARY

November 2020

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STATE OF MAINE

129TH LEGISLATURE
FIRST REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contains summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 129th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. An appendix provides a summary of relevant session statistics.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER..... carried over to a subsequent session of the Legislature
CON RES XXX..... chapter # of constitutional resolution passed by both houses
CONF CMTE UNABLE TO AGREE..... Committee of Conference unable to agree; legislation died
DIED BETWEEN HOUSES..... House & Senate disagreed; legislation died
DIED IN CONCURRENCE..... defeated in each house, but on different motions; legislation died
DIED ON ADJOURNMENT..... action incomplete when session ended; legislation died
EMERGENCY..... enacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE..... emergency failed to receive required 2/3 vote
FAILED, ENACTMENT or FINAL PASSAGE..... failed to receive final majority vote
FAILED, MANDATE ENACTMENT..... legislation proposing local mandate failed required 2/3 vote
HELD BY GOVERNOR..... Governor has not signed; final disposition to be determined at subsequent session
LEAVE TO WITHDRAW..... sponsor's request to withdraw legislation granted
NOT PROPERLY BEFORE THE BODY..... ruled out of order by the presiding officer; legislation died
INDEF PP..... indefinitely postponed; legislation died
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... ought-not-to-pass report accepted; legislation died
P&S XXX..... chapter # of enacted private & special law
PUBLIC XXX..... chapter # of enacted public law
RESOLVE XXX..... chapter # of finally passed resolve
VETO SUSTAINED..... Legislature failed to override Governor's veto

The effective date for non-emergency legislation enacted in the First Regular Session of the 129th Legislature is Thursday, September 19, 2019. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

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a law school accredited by the American Bar Association when the practice is pursuant to a rule of the Supreme Judicial Court.

Enacted Law Summary

Public Law 2019, chapter 597 provides an exception to the unauthorized practice of law for practice by a law student enrolled in a law school accredited by the American Bar Association when the practice is pursuant to a rule of the Supreme Judicial Court.

LD 1862 Resolve, Authorizing the Probate and Trust Law Advisory Commission To Submit Trust Decanting Legislation

CARRIED OVER

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	ONTP OTP	

This resolve directs the Probate and Trust Law Advisory Commission to review the existing trust laws of this State and the Uniform Trust Decanting Act from the National Conference of Commissioners on Uniform State Laws and develop legislative recommendations based on the review. The Probate and Trust Law Advisory Commission may submit a bill to the Second Regular Session of the 129th Legislature.

This resolve, which had been reported out of committee but not yet taken up by the House or the Senate, was carried over to any special session of the 129th Legislature by joint order, S.P. 788.

LD 1863 An Act To Amend the Maine Uniform Probate Code

PUBLIC 598

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP	

This bill includes recommendations from the Probate and Trust Law Advisory Commission pursuant to the Maine Revised Statutes, Title 18-C, section 1-803.

The bill amends Title 18-C, section 3-306 to add language that previously existed in Title 18-A, section 3-306 in order to ensure that heirs, devisees and personal representatives are given notice of the filing of an application for informal probate.

The bill adds language to Title 18-C, section 3-310 that previously existed in Title 18-A, section 3-310 in order to ensure that heirs and devisees are given notice of the filing of an application for informal appointment of a personal representative. The changes to Title 18-C, section 3-310 parallel the amendment made to Title 18-C, section 3-306.

The bill amends Title 18-C, section 3-706, subsection 1 to clarify that the personal representative is required to send a copy of the inventory to all interested persons "who request" the inventory. Both the former counterpart provision under Title 18-A and the counterpart provision under the Uniform Probate Code require the personal representative to furnish the inventory only to persons "who request" the inventory; Title 18-C, section 3-706, subsection 2 states that "the personal representative shall furnish the inventory to interested persons who request it."

The bill amends Title 18-C, section 3-801, subsection 1 to require that notice of the appointment of a personal representative be published to creditors in the county where the decedent was domiciled at the time of death, rather than in the county in which the court that appointed the personal representative is located. When an application for

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appointment of a personal representative is transferred from the county where the decedent was domiciled to another county before the date of the appointment of the personal representative, notice to creditors by publication in the county to which the application was transferred will be unlikely to be seen by interested persons and creditors.

The bill amends Title 18-C, section 5-906, subsection 5, which was added to the Maine Uniform Power of Attorney Act with an effective date of September 1, 2019 and which governs the validity of executed powers of attorney, to add language clarifying that the subsection does not affect powers of attorney executed before September 1, 2019. The notices required in powers of attorney by Title 18-C, section 5-905, subsection 2 include references to Title 18-C. The notices required in powers of attorney under Title 18-A, section 5-905, subsection (b) were identical to the notices required by Title 18-C, section 5-905, subsection 2 with the exception of including references to Title 18-A rather than to Title 18-C. Subsection 5 was added to Title 18-C to protect against the likelihood that attorneys or others preparing powers of attorney might overlook the need to change the notices to reference Title 18-C.

The bill amends Title 18-C, section 5-931 to clarify that the authority of an agent under a power of attorney to create or change a beneficiary designation, unless otherwise expressly limited in the power of attorney, includes the authority to create, change or revoke a transfer on death deed. As the Maine Uniform Power of Attorney Act currently reads, there is ambiguity as to whether an agent under a power of attorney has the authority to create, change or revoke a transfer on death deed created under the Uniform Real Property Transfer on Death Act, which became effective on September 1, 2019. Under Title 18-C, section 5-931 of the Maine Uniform Power of Attorney Act, there are several powers that an agent may exercise only if the authority to exercise the powers is expressly granted in the power of attorney. Among those powers is the power to create or change a beneficiary designation. Because a transfer on death deed is a type of beneficiary designation, this bill amends Title 18-C, section 5-931, subsection 1, paragraph D to make it clear that an agent who has the authority to create or change a beneficiary designation also has the authority to create, change or revoke a transfer on death deed.

The bill amends Title 18-C, section 8-301, subsection 2, paragraph A-1 to add a reference to the intestate succession provisions of Title 18-C to avoid any ambiguity as to the timing of the applicability of the intestate succession provisions of Title 18-C.

The bill amends Title 18-C, section 8-301, subsection 2, paragraphs A, B and C to add language clarifying that the provisions are effective "on or after" the effective date of Title 18-C.

The bill amends Title 18-C, section 8-301, subsection 2, paragraph F to restore the intestate succession involving adoptions completed before the original Probate Code took effect in 1981. Public Law 2019, chapter 417 erroneously changed the date to September 1, 2019. The bill makes the correction retroactive to September 1, 2019.

Enacted Law Summary

Public Law 2019, chapter 598 consists of recommendations from the Probate and Trust Law Advisory Commission pursuant to the Maine Revised Statutes, Title 18-C, section 1-803.

Chapter 598 amends Title 18-C, section 3-306 to add language that previously existed in Title 18-A, section 3-306 in order to ensure that heirs, devisees and personal representatives are given notice of the filing of an application for informal probate.

Chapter 598 adds language to Title 18-C, section 3-310 that previously existed in Title 18-A, section 3-310 in order to ensure that heirs and devisees are given notice of the filing of an application for informal appointment of a personal representative. The changes to Title 18-C, section 3-310 parallel the amendment made to Title 18-C, section 3-306.

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send a copy of the inventory to all interested persons "who request" the inventory. Both the former counterpart provision under Title 18-A and the counterpart provision under the Uniform Probate Code require the personal representative to furnish the inventory only to persons "who request" the inventory; Title 18-C, section 3-706, subsection 2 states that "the personal representative shall furnish the inventory to interested persons who request it."

Chapter 598 amends Title 18-C, section 3-801, subsection 1 to require that notice of the appointment of a personal representative be published to creditors in the county where the decedent was domiciled at the time of death, rather than in the county in which the court that appointed the personal representative is located. When an application for appointment of a personal representative is transferred from the county where the decedent was domiciled to another county before the date of the appointment of the personal representative, notice to creditors by publication in the county to which the application was transferred will be unlikely to be seen by interested persons and creditors.

Chapter 598 amends Title 18-C, section 5-906, subsection 5, which was added to the Maine Uniform Power of Attorney Act with an effective date of September 1, 2019 and which governs the validity of executed powers of attorney, to add language clarifying that the subsection does not affect powers of attorney executed before September 1, 2019. The notices required in powers of attorney by Title 18-C, section 5-905, subsection 2 include references to Title 18-C. The notices required in powers of attorney under Title 18-A, section 5-905, subsection (b) were identical to the notices required by Title 18-C, section 5-905, subsection 2 with the exception of including references to Title 18-A rather than to Title 18-C. Subsection 5 was added to Title 18-C to protect against the likelihood that attorneys or others preparing powers of attorney might overlook the need to change the notices to reference Title 18-C.

Chapter 598 amends Title 18-C, section 5-931 to clarify that the authority of an agent under a power of attorney to create or change a beneficiary designation, unless otherwise expressly limited in the power of attorney, includes the authority to create, change or revoke a transfer on death deed. As the Maine Uniform Power of Attorney Act currently reads, there is ambiguity as to whether an agent under a power of attorney has the authority to create, change or revoke a transfer on death deed created under the Uniform Real Property Transfer on Death Act, which became effective on September 1, 2019. Under Title 18-C, section 5-931 of the Maine Uniform Power of Attorney Act, there are several powers that an agent may exercise only if the authority to exercise the powers is expressly granted in the power of attorney. Among those powers is the power to create or change a beneficiary designation. Because a transfer on death deed is a type of beneficiary designation, chapter 598 amends Title 18-C, section 5-931, subsection 1, paragraph D to make it clear that an agent who has the authority to create or change a beneficiary designation also has the authority to create, change or revoke a transfer on death deed.

Chapter 598 amends Title 18-C, section 8-301, subsection 2, paragraph A-1 to add a reference to the intestate succession provisions of Title 18-C to avoid any ambiguity as to the timing of the applicability of the intestate succession provisions of Title 18-C.

Chapter 598 amends Title 18-C, section 8-301, subsection 2, paragraphs A, B and C to add language clarifying that the provisions are effective "on or after" the effective date of Title 18-C.

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