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## **An Act To Amend the Laws Governing MaineCare Estate Recovery Undertaken by the Department of Health and Human Services**

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

**Sec. 1. 18-A MRSA §2-401**, as amended by PL 2001, c. 57, §1, is further amended to read:

### **§ 2-401. Homestead allowance**

A surviving spouse of a decedent who was domiciled in this State is entitled to a homestead allowance of \$10,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$10,000 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share. The homestead allowance established by this section is the sole exemption available for a decedent's homestead.

**Sec. 2. 18-A MRSA §2-405**, as corrected by RR 2003, c. 1, §11, is amended to read:

### **§ 2-405. Estate property exempt**

Notwithstanding any provisions to the contrary, any ~~part of personal property included in the decedent's estate which shall be~~ that is exempt under Title 14, section 4422, on the date of the decedent's death, shall ~~is not be liable for payment of debts of the decedent or claims against his~~ the decedent's estate; ~~provided, except that nothing in this section may be deemed to affect~~ affects the provisions of sections 2-401 through 2-404.

**Sec. 3. 22 MRSA §14, sub-§2-I, ¶F**, as enacted by PL 1993, c. 707, Pt. I, §1, is amended to read:

F. As used in this subsection, unless the context otherwise indicates, the term "estate" means:

- (1) All real and personal property and other assets included in the recipient's estate, as defined in Title 18-A, section 1-201; and
- (2) Any other real and personal property and other assets in which the recipient had any legal interest at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir or assign of the deceased recipient ~~through tenancy in common, survivorship, life estate, living trust, joint tenancy in personal property or other arrangement by any legal mechanism,~~ means or arrangement, including, but not limited to:

(a) Tenancy in common;

(b) Survivorship;

(c) Living trust;

(d) Joint tenancy in personal property;

(e) Joint tenancy in real property created on or after April 1, 2006; or

(f) Transfer of a remainder interest in real property, with reservation of a life estate interest, executed on or after April 1, 2006.

## **SUMMARY**

This bill provides that the homestead allowance established in the Maine Revised Statutes, Title 18-A, section 2-401 is the sole exemption available for a decedent's homestead. It also provides that only personal property included in the decedent's estate that is exempt under Title 14, section 4422, which contains the list of property exempt from attachment and execution, is not liable for payment of debts of the decedent or claims against the decedent's estate. Current law provides that any part of the decedent's estate that is exempt under Title 14, section 4422 is not liable for payment of debts of the decedent or claims against the decedent's estate.

This bill also amends the definition of "estate" for the purposes of recovery by the Department of Health and Human Services for MaineCare expenditures. This bill establishes April 1, 2006 as the date on which certain transfers are made fully subject to the reach of estate recovery activities.