

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by inserting after the enacting clause the following:

PART A

Sec. .

Amend the bill by inserting after section 1 the following:

Sec. 2. 18-C MRSA §1-201, sub-§44, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

44. Property. "Property" means anything that may be the subject of ownership and includes both real and personal property or any interest therein, including a digital asset as defined in section 10-102, subsection 9.

Amend the bill by inserting after section 4 the following:

Sec. 5. 18-C MRSA §3-203, sub-§5, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

5. Appointment without priority. Appointment of a person who does not have priority, ~~including~~ except priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing a person without priority, the court must determine that those persons having priority, although given notice of the proceedings, have failed to request appointment or to nominate another person for appointment and that administration is necessary.'

Amend the bill by inserting after section 12 the following:

Sec. 13. 18-C MRSA §5-122, sub-§2, ¶A, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

A. The guardian's or conservator's proposed action would be inconsistent with this Act or any other law, rule or regulation; or

Sec. 14. 18-C MRSA §5-122, sub-§3, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

3. Report refusal to court. A person ~~that~~ who refuses to accept the authority of a guardian or conservator in accordance with subsection 1 or 2 shall report the refusal and the reason for refusal to the court. The court on receiving a report shall consider whether removal of the guardian or conservator or other action is appropriate.'

Amend the bill by inserting after section 13 the following:

‘Sec. 14. 18-C MRSA §5-204, sub-§4, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is repealed and the following enacted in its place:

4. Appointment of a guardian on an emergency basis. The court may appoint a guardian on an emergency basis for a minor pursuant to this subsection.

A. On motion by a person who has also filed a petition for appointment of a guardian pursuant to subsection 1, the court may appoint a guardian for the minor on an emergency basis if the court finds by a preponderance of the evidence that:

(1) The sworn affidavit or testimony demonstrates that appointment of a guardian on an emergency basis is needed to prevent substantial harm to the minor's physical health or safety;

(2) No other person appears to have authority and willingness to act in the circumstances;

(3) Following the procedures set forth in section 5-205, including those for appointment of a guardian on an interim basis, will likely result in substantial harm to the minor's health or safety before a guardian can be appointed;

(4) A petition has been filed under subsection 1 and there is a substantial likelihood that a basis for appointment of a guardian under subsection 2 exists; and

(5) The requirements of this subsection for providing notice have been satisfied.

B. The petitioner bears the burden of proof on the appropriateness of the appointment pursuant to this subsection.

C. The duration of the authority of a guardian appointed pursuant to this subsection may not exceed 90 days, and the guardian may exercise only the powers specified in the order.

D. Reasonable notice of the motion for appointment of an emergency guardian and the time and place of the hearing on the petition must be given by the petitioner to the minor, if the minor has attained 14 years of age, to each living parent of the minor and to a person having care or custody of the minor, if other than a parent. The court shall hold a hearing on the appointment of the guardian on an emergency basis within 14 days but not less than 7 days after the filing of the petition.

E. The court may dispense with the notice requirement in paragraph D and appoint a guardian pursuant to this subsection on a temporary ex parte basis if it finds from affidavit or testimony that the minor will be substantially harmed before notice can be completed to all those entitled to receive notice and a hearing can be held on the petition. If the guardian is appointed without notice and hearing, the court shall schedule a hearing on the appointment of the guardian on an emergency basis within 14 days but not less than 7 days after issuance of the order appointing the guardian,

except that a parent may request that the hearing take place sooner. Notice of the appointment and hearing must be given by the petitioner to the minor, if the minor has attained 14 years of age, to each living parent of the minor and to a person having care or custody of the minor, if other than a parent, within 48 hours after the appointment.

F. The notices required under this subsection regarding guardianship on an emergency basis may be provided orally or in writing using a means that the petitioner in good faith believes is the most effective way to ensure actual notice. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice and to whom the notice was provided or attempted. The court shall make a determination as to whether the methods of notices or attempted notices by petitioner were reasonably calculated to give notice of the pendency of the petition.

G. Appointment of a guardian on an emergency basis under this subsection is not a determination that the conditions required for appointment of a guardian under subsection 2 or the notice requirements set forth in section 5-205 have been satisfied. Before a guardian may be appointed pursuant to subsection 2, the petitioner must meet the notice requirements set forth in this Part and any applicable rules of procedure.'

Amend the bill in section 16 in §5-301 in subsection 1 by inserting at the end a new blocked paragraph to read:

'In making a determination on a petition under this section, including whether supported decision making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent.'

Amend the bill by striking out all of section 18 and inserting the following:

'Sec. 18. 18-C MRSA §5-304, sub-§2, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

2. Interview with petitioner, proposed guardian and respondent. A visitor appointed under subsection 1 shall interview the petitioner and the proposed guardian and shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing and the general powers and duties of a guardian;

B. Determine the respondent's views about the appointment, including views about a proposed guardian, the guardian's proposed powers and duties and the scope and duration of the proposed guardianship, and general preferences and values;

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets.'

Amend the bill in section 19 in subsection 3 by striking out all of paragraph A (page 8, line 3 in L.D.) and inserting the following:

~~'A. Interview the petitioner and proposed guardian, if any;'~~

Amend the bill in section 22 by striking out all of subsection 2 (page 8, lines 24 to 30 in L.D.) and inserting the following:

'2. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1. If the respondent declines to participate in an evaluation ordered under subsection 1, the petitioner may request an examination under the Maine Rules of Civil Procedure, Rule 35.'

Amend the bill in section 24 by striking out all of subsection 6 (page 9, lines 3 to 6 in L.D.) and inserting the following:

'6. Attendance by proposed guardian required. Unless excused by the court for good cause, the proposed guardian shall attend a hearing under section 5-303 in person. Upon a showing of good cause, the court may allow the proposed guardian to participate using real-time audiovisual technology or by telephone if real-time audiovisual technology is not available.'

Amend the bill by inserting after section 32 the following:

'Sec. 33. 18-C MRSA §5-312, sub-§4-A is enacted to read:

4-A. Appointment without professional evaluation. A professional evaluation under section 5-306 is not required before the appointment of an emergency guardian if the court finds from the affidavit or testimony that the basis for an emergency has been met and the petitioner has good cause for not submitting a professional evaluation before the emergency order.'

Amend the bill in section 36 in subsection 7 in the 2nd line (page 11, line 36 in L.D.) by striking out the following: "July" and inserting the following: 'September'

Amend the bill in section 38 in subsection 4 in the 2nd line (page 12, line 16 in L.D.) by striking out the following: "July" and inserting the following: 'September'

Amend the bill in section 41 in subsection 6 in the 2nd line (page 12, line 36 in L.D.) by striking out the following: "July" and inserting the following: 'September'

Amend the bill in section 45 in subsection 8 in the 2nd line (page 13, line 13 in L.D.) by striking out the following: "July" and inserting the following: 'September'

Amend the bill by striking out all of section 46 and inserting the following:

'Sec. 46. 18-C MRSA §5-401, sub-§2, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

2. Conservator for adult; findings. On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of an adult if the court determines by clear and convincing evidence that:

A. The adult is unable to manage property or financial affairs because:

(1) Of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of appropriate supportive services, technological assistance and supported decision making that provide adequate protection for the respondent; or

(2) The adult is missing, detained or unable to return to the United States;

B. Appointment is necessary to:

(1) Avoid harm to the adult or significant dissipation of the property of the adult; or

(2) Obtain or provide money needed for the support, care, education, health or welfare of the adult, or of an individual entitled to the adult's support, and protection is necessary or desirable to obtain or provide money for the purpose; and

C. The respondent's identified needs cannot be met by less restrictive alternatives.

In making a determination on a petition under this section, including whether supported decision making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent.'

Amend the bill by striking out all of sections 49 and 50 and inserting the following:

'Sec. 49. 18-C MRSA §5-404, sub-§4 is enacted to read:

4. Order to preserve or apply property while proceeding pending. While a petition under section 5-402 is pending, after preliminary hearing and without notice to others, the court may issue an order to preserve and apply property of the respondent as required for the support of the respondent or an individual who is in fact dependent on the respondent.'

Amend the bill in section 51 in subsection 3 in the first line (page 14, line 23 in L.D.) by inserting after the following: "**with**" the following: '**petitioner, proposed conservator and**'

Amend the bill in section 51 in subsection 3 in the 2nd line (page 14, line 24 in L.D.) by inserting after the following: "interview the" the following: 'petitioner and the proposed conservator and shall interview the'

Amend the bill in section 51 in subsection 4 by striking out all of paragraph A (page 15, line 4 in L.D.) and inserting the following:

~~'A. Interview the petitioner and proposed conservator, if any;'~~

Amend the bill in section 54 by striking out all of subsection 2 (page 15, lines 23 to 29 in L.D.) and inserting the following:

2. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1. If the respondent declines to participate in an evaluation ordered under subsection 1, the petitioner may request an examination under the Maine Rules of Civil Procedure, Rule 35.'

Amend the bill in section 56 by striking out all of subsection 6 (page 16, lines 3 to 6 in L.D.) and inserting the following:

6. Attendance by proposed conservator required. Unless excused by the court for good cause, the proposed conservator shall attend a hearing under section 5-403 in person. Upon a showing of good cause, the court may allow the proposed conservator to participate using real-time audiovisual technology or by telephone if real-time audiovisual technology is not available.'

Amend the bill by inserting after section 62 the following:

'Sec. 63. 18-C MRSA §5-413, sub-§3, ¶C, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A 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 ~~5-4105-403~~ do not apply to this section.

Sec. 64. 18-C MRSA §5-413, sub-§4-A is enacted to read:

4-A. Appointment without professional evaluation. A professional evaluation under section 5-407 is not required before the appointment of an emergency conservator if the court finds from the affidavit or testimony that the basis for an emergency has been met and the petitioner has good cause for not submitting a professional evaluation before the emergency order.'

Amend the bill in section 65 in subsection 5 in the 2nd line (page 17, line 27 in L.D.) by striking out the following: "July" and inserting the following: 'September'

Amend the bill in section 69 in subsection 6 in the 2nd line (page 18, line 25 in L.D.) by striking out the following: "July" and inserting the following: 'September'

Amend the bill by inserting after section 76 the following:

‘**Sec. 77. 18-C MRSA §5-502, sub-§3**, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

3. Factors. In deciding whether to enter an order under this section, the court shall consider the factors under sections 5-313 and 5-314 that a guardian must consider when making a decision on behalf of an adult subject to guardianship. In addition, in deciding whether to enter an order under this section, including whether supported decision making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent.’

Amend the bill by inserting after section 79 the following:

‘**Sec. 80. 18-C MRSA §5-503, sub-§5**, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

5. Factors. In deciding whether to enter an order under subsection 3 or 4, the court shall consider the factors under section 5-418 a conservator must consider when making a decision on behalf of an individual subject to conservatorship. In addition, in deciding whether to enter an order under this section, including whether supported decision making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent.’

Amend the bill in section 84 by striking out all of subsection 3 (page 22, lines 21 to 26 in L.D.) and inserting the following:

‘**3. Right to decline.** The respondent has the right to decline to participate in an evaluation ordered under subsection 1. If the respondent declines to participate in an evaluation ordered under subsection 1, the petitioner may request an examination under the Maine Rules of Civil Procedure, Rule 35.’

Amend the bill by inserting after section 86 the following:

‘**Sec. 87. 18-C MRSA §5-703**, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

§ 5-703.Exclusiveness of public guardian or conservator

~~When the court has appointed a public guardian or conservator under this Part, no coguardian or coconservator may be appointed for the same individual subject to guardianship or protected person during the continuation of the public guardianship or public conservatorship. When the court has appointed a public conservator under this Part, a coconservator may not be appointed for the same individual subject to conservatorship.~~

Sec. 88. 18-C MRSA §5-705, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

§ 5-705. Acceptance by public guardian or conservator; plan

~~Prior to the appointment of a public guardian or conservator, the appropriate agency nominated shall accept or reject the nomination in writing within 30 days of its receipt of notification that it has been nominated and if the nomination is accepted shall file a detailed plan that, as relevant, must include but is not limited to the type of proposed living arrangement for the individual subject to guardianship, how the individual's financial needs will be met, how the individual's medical and other remedial needs will be met, how the individual's social needs will be met and a plan for the individual's continuing contact with relatives and friends, as well as a plan for the management of the individual's or protected person's estate in the case of a public conservatorship under section 5-316 for a guardianship and section 5-419 for a conservatorship.~~

Sec. 89. 18-C MRSA §5-707, first ¶, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

A public guardian or conservator has the same powers, rights and duties respecting the individual subject to guardianship or the ~~protected person~~ individual subject to conservatorship as provided for guardians and conservators by the other Parts of this Article except as otherwise specifically provided in this Part, including the following particular provisions.

Sec. 90. 18-C MRSA §5-707, sub-§§2 and 3, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, are repealed.

Sec. 91. 18-C MRSA §5-931, sub-§1, ¶¶G and H, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, are amended to read:

G. Exercise fiduciary powers that the principal has authority to delegate; ~~and~~

H. Disclaim property, including a power of appointment; ~~and~~

Sec. 92. 18-C MRSA §5-931, sub-§1, ¶I is enacted to read:

I. Exercise authority over the content of an electronic communication of the principal in accordance with the Maine Revised Uniform Fiduciary Access to Digital Assets Act.'

Amend the bill in section 87 in subsection 2 in the 2nd line (page 23, line 2 in L.D.) by striking out the following: "July" and inserting the following: 'JulySeptember'

Amend the bill by inserting after section 87 the following:

‘**Sec. 88. 18-C MRSA §8-301**, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

§ 8-301. Time of taking effect; provisions for transition

1. Effective date. This Code takes effect on ~~July~~September 1, 2019.

2. Applicability. Except as provided elsewhere in this Code, on the effective date of this Code:

A. The Code applies to any wills of decedents who die after the effective date;

A-1. The elective share provisions of Article 2, Part 2 and the exempt property and allowances provisions of Article 2, Part 4 apply to the estates of decedents who die on or after the effective date;

B. The Code applies to any proceedings in court pending on the effective date or commenced after the effective date regardless of the time of the death of the decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code;

C. Every personal representative appointed prior to ~~July~~September 1, 2019 continues to hold the appointment but has only the powers conferred by this Code and is subject to the duties imposed with respect to any act occurring or done after the effective date, and a guardian or conservator appointed prior to ~~July~~September 1, 2019 has the powers conferred by this Code on guardians and conservators, unless otherwise limited by the original order of appointment or subsequent court order under this Code;

D. An act done before ~~July~~September 1, 2019 in any proceeding and any accrued right is not impaired by this Code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before ~~July~~September 1, 2019, the provisions remain in force with respect to that right;

E. Any rule of construction or presumption provided in this Code applies to instruments executed and multiple party accounts opened before ~~July~~September 1, 2019 unless there is a clear indication of a contrary intent; and

F. For an adoption decree entered before ~~July~~September 1, 2019 and not amended after ~~July~~September 1, 2019, the child is the child of both the former and adopting parents for purposes of intestate succession, notwithstanding section 2-117, unless the decree provides otherwise.

Sec. 89. 18-C MRSA §9-202, sub-§6, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

6. Final and irrevocable; exceptions. Except as provided in subsection 7 and section 9-205, subsection 2, a surrender and release or a consent is final and irrevocable ~~when duly executed upon the court's approval of the surrender and release or consent pursuant to subsection 2.~~

Amend the bill by striking out all of section 91.

Amend the bill by inserting after section 95 the following:

PART B

Sec. B-1. 18-C MRSA §1-110, sub-§5, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

5. Application and effective date. This section applies to all trusts and estates in existence on and created after ~~July~~September 1, 2019.

Sec. B-2. 18-C MRSA §2-513, first ¶, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after ~~July~~September 1, 2019, can be established only by:

Sec. B-3. 18-C MRSA §2-916, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

§ 2-916. Application to existing relationships

Except as otherwise provided in section 2-913, an interest in or power over property existing on ~~July~~September 1, 2019 as to which the time for delivering or filing a disclaimer under law superseded by this Part has not expired may be disclaimed after ~~July~~September 1, 2019.

Sec. B-4. 18-C MRSA §3-916, sub-§12, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

12. Delayed application. The applicability of subsections 3 to 7 is governed by this subsection.

A. Subsections 3 to 7 do not apply to the estate of a decedent who dies on or within 3 years after ~~July~~September 1, 2019 nor to the estate of a decedent who dies more than 3 years after ~~July~~September 1, 2019 if the decedent continuously lacked testamentary capacity from the expiration of the 3-year period until the date of death.

B. For the estate of a decedent who dies on or after ~~July~~September 1, 2019 to which subsections 3 to 7 do not apply, estate taxes must be apportioned pursuant to the law in effect immediately before ~~July~~September 1, 2019.

Sec. B-5. 18-C MRSA §5-643, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

§ 5-643. Transitional provisions

1. Proceedings on or after September 1, 2019. This Part applies to guardianship and protective proceedings begun on or after ~~July~~September 1, 2019.

2. Proceedings before September 1, 2019. Subparts 1 and 3 and sections 5-641 and 5-642 apply to proceedings begun before ~~July~~September 1, 2019, regardless of whether a guardianship or protective order has been issued.

Sec. B-6. 18-C MRSA §5-906, sub-§§1 and 2, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, are amended to read:

1. Executed on or after September 1, 2019. A power of attorney executed in this State on or after ~~July~~September 1, 2019 is valid if its execution complies with section 5-905.

2. Executed on or after July 1, 2010 but before September 1, 2019. A power of attorney executed on or after July 1, 2010 but before ~~July~~September 1, 2019 is valid if its execution complied with former Title 18-A, section 5-906.

Sec. B-7. 18-C MRSA §5-963, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

§ 5-963. Effect on existing powers of attorney

Except as otherwise provided in this Part:

1. Application to powers of attorney. This Part applies to a power of attorney created before, on or after ~~July~~September 1, 2019;

2. Application to judicial proceedings commenced on or after September 1, 2019. This Part applies to a judicial proceeding concerning a power of attorney commenced on or after ~~July~~September 1, 2019; and

3. Application to judicial proceedings commenced before September 1, 2019. This Part applies to a judicial proceeding concerning a power of attorney commenced before ~~July~~September 1, 2019, unless the court finds that application of a provision of this Part would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies.

An act done before ~~July~~September 1, 2019 is not affected by this Part.

Sec. B-8. 18-C MRSA §6-311, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

§ 6-311. Application of Part

This Part applies to registrations of securities in beneficiary form made before, on or after ~~July~~September 1, 2019 by decedents dying on or after ~~July~~September 1, 2019.

Sec. B-9. 18-C MRSA §6-403, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

§ 6-403. Applicability

This Part applies to a transfer on death deed made before, on or after ~~July~~September 1, 2019 by a transferor dying on or after ~~July~~September 1, 2019.

Sec. B-10. 18-C MRSA §6-421, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is repealed.

Sec. B-11. 18-C MRSA §7-203, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

§ 7-203. Application of Part

This Part applies to fiduciary relationships in existence on ~~July~~September 1, 2019 or established after that date.

Sec. B-12. 18-C MRSA §7-472, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

§ 7-472. Application of Part to all trusts and estates

This Part applies to every trust or decedent's estate, including those in existence on ~~July~~September 1, 2019, beginning with the first fiscal year of the trust or decedent's estate that begins on or after ~~July~~September 1, 2019, except as otherwise expressly provided in the will or terms of the trust or in this Part.

Sec. B-13. 18-C MRSA §9-108, first ¶, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:

The laws in effect on ~~June 30~~August 31, 2019 apply to proceedings for which any of the following occurred before ~~July~~September 1, 2019:

Sec. B-14. PL 2017, c. 402, Pt. F, §1 is amended to read:

Sec. F-1. Effective date. Parts A to E of this Act take effect ~~July~~September 1, 2019.

PART C

Sec. C-1. Maine Comments. Comments submitted by the Probate and Trust Law Advisory Commission, which incorporate comments prepared by the Family Law Advisory Commission in accordance with Public Law 2017, chapter 402, Part G, section 1, are acknowledged by the Legislature as Maine Comments, and the Revisor of Statutes shall submit the comments for inclusion in the publication of the Maine Revised Statutes Annotated.'

Amend the bill by striking out all of the emergency clause (page 36, lines 13 and 14 in L.D.) and inserting the following:

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

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment changes the effective date of the Maine Uniform Probate Code, the Maine Revised Statutes, Title 18-C, enacted by Public Law 2017, chapter 402, from July 1, 2019 to September 1, 2019.

This amendment also clarifies an ambiguity as to the applicable effective date of the elective share provisions of Article 2, Part 2 of Title 18-C and of the exempt property and allowances provisions under Article 2, Part 4 of Title 18-C. As written, the language of the Maine Uniform Probate Code, as adopted in section 8-301, subsection 2, leaves ambiguity as to whether, after the effective date of Title 18-C, the existing Title 18-A provisions regarding elective share rights of a surviving spouse and the existing Title 18-A provisions governing exempt property and allowances govern the administration of an estate of a decedent who died prior to the effective date of Title 18-C. To resolve the ambiguity and provide clarity on the applicability of the new provisions of Title 18-C, the Probate and Trust Law Advisory Commission recommended that a new paragraph A-1 be added to section 8-301, subsection 2.

This amendment amends the adult guardianship, conservatorship and other protective arrangements provisions to clarify that the court retains its discretion when determining whether guardianship, conservatorship, protective arrangements or other less restrictive alternatives, including supported decision making, are appropriate in each case before the court.

The court may consider any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent when a petition has been filed for guardianship, conservatorship or other protective arrangements.

This amendment updates Title 18-C with amendments that were included in the Maine Revised Uniform Fiduciary Access to Digital Assets Act, enacted by Public Law 2017, chapter 359 as amendments to the Maine Revised Statutes, Title 18-A, in the definition of "property" to include digital assets and to authorize an agent under a power of attorney to exercise authority over the content of an electronic communication of the principal if specifically authorized to do so in a power of attorney.

This amendment permits the appointment, by renunciation or nomination, of a person who does not have priority for appointment as personal representative, in an informal probate proceeding, rather than requiring a formal probate proceeding for the appointment. As written, Title 18-C, section 3-203, subsection 5 changes current Maine law by permitting the appointment of a person who does not have priority, including priority resulting from renunciation or nomination determined pursuant to section 3-203, only in formal proceedings. Current Maine law permits an appointment resulting from renunciation or nomination in informal proceedings. Requiring a formal proceeding for such an appointment would be an unnecessary burden on the Probate Courts and on the parties seeking appointment of a personal representative.

This amendment clarifies that a person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if the guardian's

or conservator's proposed action would be inconsistent with not only the Maine Uniform Probate Code but any other law, rule or regulation. It also provides that a person who refuses to accept the authority of the guardian or conservator in any situation is required to report the refusal and the reason for the refusal to the court. This gives the court the opportunity to review the guardian or conservator and determine if removal or other action is appropriate.

This amendment replaces the provisions governing the appointment of a guardian for a minor on an emergency basis and is based on recommendations from the Family Law Advisory Commission. The amendment to the Title 18-C, section 5-204 permits the appointment of a guardian for a minor on an emergency basis for up to 90 days upon evidence that the appointment is needed to prevent substantial harm to the minor's physical health or safety. The new language provides guidance to the courts, attorneys and litigants by:

1. Clarifying that it is the petitioner's responsibility to provide actual notice of the petition for appointment of a guardian on an emergency basis and of any appointment made on an ex parte basis to the parent, the minor and any person having custody of the minor;
2. Setting forth the requirements for providing such notice and the procedure for informing the court of the notice provided; and
3. Clarifying that the standards and procedures that apply to appointing a guardian on an emergency basis do not alleviate or alter the notice requirements and standards for appointing a guardian on a non-emergency basis under Title 18-C, section 5-204, subsection 2.

This amendment requires that the visitor appointed by the court in an adult guardianship or conservatorship case is required to interview the petitioner and the proposed guardian or proposed conservator, as applicable.

This amendment provides that a professional evaluation is not required before the appointment of an emergency guardian or emergency conservator if the court finds from affidavit or testimony that the basis for an emergency has been met and the petitioner has good cause for not submitting a professional evaluation before the emergency order. The amendment also corrects a cross-reference.

This amendment provides that when the court has appointed a public guardian, no coguardian may be appointed, and no coconservator may be appointed when a public conservator has been appointed.

This amendment cross-references the requirements that apply to private guardians and conservators to ensure that the same requirements apply to public guardians and conservators.

This amendment resolves an inconsistency in the adoptions laws between Title 18-C, section 9-202, subsection 4, which allows a parent to have 5 days to revoke a written consent to an adoption or a surrender and release of their parental rights, and subsection 6, which states that a consent or surrender and release are final and irrevocable upon execution. This inconsistency has not created a problem in practice because of how the law has been applied by courts, which is to approve consents or surrender and releases only after the completion of the revocation period under subsection 4. This amendment eliminates this inconsistency by eliminating "when duly executed" and in its place providing that a surrender and release or a consent is final and irrevocable upon the court's approval pursuant to the other requirements of that section, as set forth in subsection 2.

FISCAL NOTE REQUIRED
(See attached)