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STATE OF MAINE
SENATE
125TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to S.P. 361, L.D. 1186, Bill, "An Act To Amend the Probate Code Relating to the Authority of the Probate Court To Approve Transfers from a Protected Person's Estate"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 18-A MRSA §5-408, sub-§(6), as enacted by PL 2005, c. 12, Pt. DDD, §4 and affected by §17, is amended to read:

(6). The court may authorize a gift or other transfer for less than fair market value from the protected person's estate other than to the protected person's spouse or dependent, blind or disabled child if the court finds that the gift or other transfer will not, directly or indirectly, diminish the protected person's estate in order to qualify for federal or state aid or benefits, including the MaineCare program under Title 22, chapter 855, and if the court finds:

(a). That the remaining estate assets of the protected person are sufficient for the protected person's care and maintenance for the next 36 60 months, including due provision for the protected person's established standard of living and for the support of any persons the protected person is legally obligated to support and any dependents of the protected person; and

(b). That the gift or other transfer will not hasten the date of eligibility for MaineCare coverage of the protected person's long-term care expenses during the next 36 60 months.

This subsection does not prevent a transfer If the gift or other transfer is being made to the protected person's spouse or blind or disabled child or to a trust established pursuant to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed without a transfer penalty by law governing the federal Medicaid program under 42 United States Code, the court may authorize the gift or other transfer without making the findings under paragraphs (a) and (b).

COMMITTEE AMENDMENT

1           **Sec. 2. 18-A MRSA §5-409, sub-§(d)**, as enacted by PL 2005, c. 12, Pt. DDD,  
2 §6 and affected by §17, is amended to read:

3           **(d).** The court may authorize a gift or other transfer for less than fair market value  
4 from the protected person's estate ~~other than to the protected person's spouse or~~  
5 ~~dependent, blind or disabled child if the court finds that the gift or other transfer will not,~~  
6 ~~directly or indirectly, diminish the protected person's estate in order to qualify for federal~~  
7 ~~or state aid or benefits, including the MaineCare program under Title 22, chapter 855, and~~  
8 if the court finds:

9           (1). That the remaining estate assets of the protected person are sufficient for the  
10 protected person's care and maintenance for the next ~~36~~ 60 months, including due  
11 provision for the protected person's established standard of living and for the support  
12 of any persons the protected person is legally obligated to support and any  
13 dependents of the protected person; and

14           (2). That the gift or other transfer will not hasten the date of eligibility for  
15 MaineCare coverage of the protected person's long-term care expenses during the  
16 next ~~36~~ 60 months.

17 ~~This subsection does not prevent a transfer~~ If the gift or other transfer is being made to  
18 the protected person's spouse or blind or disabled child or to a trust established pursuant  
19 to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed  
20 without a transfer penalty by law governing the federal Medicaid program under 42  
21 United States Code, the court may authorize the gift or other transfer without making the  
22 findings under paragraphs (1) and (2).

23           **Sec. 3. 18-A MRSA §5-425, sub-§(b-1)**, as enacted by PL 2005, c. 12, Pt. DDD,  
24 §8 and affected by §17, is amended to read:

25           **(b-1).** The court may authorize a gift or other transfer for less than fair market value  
26 from the protected person's estate ~~other than to the spouse or dependent, blind or disabled~~  
27 ~~child if the court finds that the gift or other transfer will not, directly or indirectly,~~  
28 ~~diminish the protected person's estate in order to qualify for federal or state aid or~~  
29 ~~benefits, including the MaineCare program under Title 22, chapter 855, and~~ if the court  
30 finds:

31           (1). That the remaining estate assets of the protected person are sufficient for the  
32 protected person's care and maintenance for the next ~~36~~ 60 months, including due  
33 provision for the protected person's established standard of living and for the support  
34 of any persons the protected person is legally obligated to support and any  
35 dependents of the protected person; and

36           (2). That the gift or other transfer will not hasten the date of eligibility for  
37 MaineCare coverage of the protected person's long-term care expenses during the  
38 next ~~36~~ 60 months.

39 ~~This subsection does not prevent a transfer~~ If the gift or other transfer is being made to  
40 the protected person's spouse or blind or disabled child or to a trust established pursuant  
41 to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed  
42 without a transfer penalty by law governing the federal Medicaid program under 42

1 United States Code, the court may authorize the gift or other transfer without making the  
2 findings under paragraphs (1) and (2).'

3 **SUMMARY**

4 This amendment clarifies that any gift or transfer that can be made without a transfer  
5 penalty under applicable federal law may be approved by the Probate Court without the  
6 court's making findings about the adequacy of the estate or the potential eligibility for  
7 MaineCare coverage.