

**SENATE**

**ANNE M. CARNEY**, DISTRICT 29, CHAIR  
**DONNA BAILEY**, DISTRICT 31  
**ERIC BRAKEY**, DISTRICT 20

**JANET STOCCO**, LEGISLATIVE ANALYST  
**ELIAS MUPHY**, LEGISLATIVE ANALYST  
**SUSAN PINETTE**, COMMITTEE CLERK

**HOUSE**

**MATTHEW W. MOONEN**, PORTLAND, CHAIR  
**STEPHEN W. MORIARTY**, CUMBERLAND  
**ERIN R. SHEEHAN**, BIDDEFORD  
**ADAM R. LEE**, AUBURN  
**AMY D. KUHN**, FALMOUTH  
**MATTHEW S. BECK**, SOUTH PORTLAND  
**JENNIFER L. POIRER**, SKOWHEGAN  
**JOHN ANDREWS**, PARIS  
**DAVID G. HAGGAN**, HAMPDEN  
**RACHEL HENDERSON**, RUMFORD  
**AARON M. DANA**, PASSAMAQUODDY TRIBE

**STATE OF MAINE**  
**ONE HUNDRED AND THIRTY-FIRST LEGISLATURE**  
**COMMITTEE ON JUDICIARY**

May 10, 2024

David J. Backer, Esq., Chair  
 Probate and Trust Law Advisory Commission  
 Drummond & Woodsum  
 Portland, Maine 04101-2480

*Re: Request for PATLAC Review of Issues Raised by Sponsor of LD 1763*

Dear Chair Backer and members of the Probate and Trust Law Advisory Commission (PATLAC),

Over the past two years, the Judiciary Committee has carefully considered the issues raised in LD 1763, *An Act Regarding Trustee Duties to Beneficiaries*, sponsored by Senator Mark Lawrence. The bill proposed several amendments to the Maine Uniform Trust Code designed to ensure a trustee responsibly manages the assets of a trust in a manner that does not harm beneficiaries, especially beneficiaries with physical or mental disabilities whose primary residence is an asset of the trust, and further, as a bulwark against a trustee who fails to act appropriately, authorizing beneficiaries to expend trust assets to prosecute a colorable claim against a trustee. We greatly appreciate your assistance last interim in gathering a group of stakeholders—including representatives of the Legal Services for the Elderly, the Elder Law Section of the Maine Bar Association and the Trust and Estates Section of the Maine Bar Association—to review the proposals in the bill.

We were reassured to learn from PATLAC that the Maine Uniform Trust Code has several provisions addressing several of the bill's concerns, including by: imposing a duty of good faith administration on a trustee, 18-B M.R.S. §801; imposing a duty of loyalty on a trustee and rendering voidable any transaction involving trust assets tainted by a conflict of interest, §802; requiring a trustee to manage a trust impartially giving due regard to the respective interests of each beneficiary, §803; imposing on trustees the duty to administer trust assets prudently, considering the trust's distributional requirements as well as the purposes and other circumstances of the trust, §804; requiring a trustee to provide an annual accounting of trust assets to distributees as well as to any qualified beneficiaries who request such an accounting, §813(2); and authorizing a court to award costs and expenses, including reasonable attorney's fees, in favor of a prevailing party in judicial proceedings involving the administration of a trust, §1004. We also understand from PATLAC's work with stakeholders that, especially in the context of special needs trusts, creating statutory rights to distribution of certain trust assets in favor of beneficiaries with disabilities may negatively impact the beneficiary's eligibility for Medicaid coverage.

Senator Lawrence nevertheless remains concerned that there are situations where these general statutory trustee duties are insufficient to protect a beneficiary with a disability, who may not have a legal guardian and who may not be in a position to affirmatively protect their own interests from a trustee whose decisions are neither in the beneficiary's best interests nor in accordance with the


wishes of the settler. Additional procedural protections may be necessary to prevent a trustee from administering the trust in a manner that harms the beneficiary in these circumstances. For this reason, at our final work session on LD 1763, Senator Lawrence asked the committee to consider striking and replacing the bill with a provision establishing a new section of the Uniform Trust Code that would:

1. **Duty of accommodation.** Require a trustee to make appropriate accommodations for any trust beneficiary with a physical or mental disability to ensure that the beneficiary's basic needs—including housing, food and health care—are met, unless doing so would be inconsistent with the terms of the document or a court order establishing the trust.
2. **Opportunity for court review.** Authorize a trustee, a beneficiary with a physical or mental disability or a settler to file a motion in the appropriate court requesting a judicial determination whether a trustee's action or proposed action in administering the trust—including, for example, a decision to sell trust property that serves as the residence of a beneficiary with a physical or mental disability—meet the best interest of the beneficiary with a physical or mental disability. In making this determination, the court must consider the trustee's legal obligations to other interested persons, including other beneficiaries, as well as the trustee's obligations under the terms of the document or court order establishing the trust.

In light of the complex, unresolved issues involved in Senator Lawrence's proposal, the committee unanimously chose to vote Ought Not to Pass on LD 1763 and to request that PATLAC once again examine the important issues raised by Senator Lawrence. Through this letter, we are requesting that you reconvene a group of stakeholders—including representatives of the Legal Services for the Elderly, the Elder Law Section of the Maine Bar Association and the Trust and Estates Section of the Maine Bar Association and others whose expertise may be beneficial—to review the proposals in the sponsor's proposed amendment to LD 1763. We are particularly interested in your insights regarding the best way to ensure that trustees protect the interests of beneficiaries with disabilities who may reside on trust property without jeopardizing either the interests of any other beneficiaries of the trust or the eligibility of the beneficiary with a disability for federal benefits.

Thank you in advance for examining these important issues. If possible, please let us know the outcome of the stakeholder group's deliberations and any recommended legislation by February 1, 2025. This will provide the Judiciary Committee of the 132nd Legislature sufficient time to report out a committee bill related to the group's recommendations in early 2025 for purposes of holding a public hearing and work sessions on the proposal. Please do not hesitate to reach out to us if you have any questions regarding this request.

Sincerely,



Sen. Anne M. Carney  
Senate Chair



Rep. Matthew W. Moonen  
House Chair

cc: Members, Joint Standing Committee on Judiciary  
Senator Mark Lawrence, sponsor of LD 1763

Strick everything in the bill and replace with the following:

Section \_\_\_\_ . **Trust considerations of persons with physical or mental disabilities.**

1. Trustee accommodation of person with physical or mental disability- So long as not inconsistent with the trustee's legal obligations through the legal document or court order creating the trust relationship, a trustee shall make appropriate accommodations to ensure that any basic needs of any person with a physical or mental disability, which are housing, food and medical needs, are being met by the trust for any disabled person who is a beneficiary to the trust,. For the purposes of this section "physical or mental disability" has the same meaning as in Title 5, section 4553-A.
2. Court review- The trustee, a beneficiary to the trust, a person with physical or mental disability whose rights are protected by this statute, or the individual who the trustee represents, may file a motion with the court in which any current action is pending involving the parties, or in Probate Court, to determine whether the trustee is making a decision in the best interest of the person who has a mental or physical disability, taking into consideration the trustee's legal obligations to other interested persons, including other beneficiaries, and taking into consideration any trustee's obligations set forth in the legal documents and court orders creating the trust relationship.