

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND ELEVEN

S.P. 361 - L.D. 1186

**An Act To Amend the Probate Code Relating to the Authority of the Probate Court To Approve Transfers from a Protected Person's Estate**

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

**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).

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

(d). 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:~~

(1). 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

(2). 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 (1) and (2).

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

**(b-1).** 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 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:~~

(1). 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

(2). 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 (1) and (2).

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In House of Representatives, ..... 2011

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 2011

Read twice and passed to be enacted.

..... President

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Approved ..... 2011

..... Governor