



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 419

S.P. 123

In Senate, February 10, 2011

### **An Act To Ensure the Payment of Survivor Benefits to Certain Children**

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Reference to the Committee on Judiciary suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator ROSEN of Hancock.

Cosponsored by Representative: CORNELL du HOUX of Brunswick.

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

2 **Sec. 1. 18-A MRSA §2-108**, as enacted by PL 1979, c. 540, §1, is repealed and  
3 the following enacted in its place:

4 **§2-108. Afterborn heirs**

5 (1). Relatives of the decedent conceived before the decedent's death but born  
6 thereafter inherit as if they had been born in the lifetime of the decedent.

7 (2). Children of the decedent conceived after the decedent's death inherit as if the  
8 children had been born in the lifetime of the decedent only if the decedent consented in a  
9 record to be a parent of children conceived after the decedent's death.

10 **Sec. 2. 18-A MRSA §2-109, sub-§(2)**, as amended by PL 1987, c. 736, §37, is  
11 further amended to read:

12 (2). In cases not covered by ~~paragraph~~ subsection (1), a person born out of wedlock  
13 is a child of the mother; that person is also a child of the father if:

14 (i). The natural parents participated in a marriage ceremony before or after the birth  
15 of the child, even though the attempted marriage is void; ~~or~~

16 (ii). The father adopts the child into his family; or

17 (iii). The father acknowledges in writing before a notary public that he is the father  
18 of the child, or the paternity is established by an adjudication before the death of the  
19 father or is established thereafter by clear and convincing proof, but the paternity  
20 established under this ~~subparagraph~~ paragraph is ineffective to qualify the father or  
21 his kindred to inherit from or through the child unless the father has openly treated  
22 the child as his and has not refused to support the child;

23 **Sec. 3. 18-A MRSA §2-109, sub-§(3)**, as enacted by PL 1995, c. 694, Pt. C, §6  
24 and affected by Pt. E, §2, is amended to read:

25 (3). A divorce or judicial separation does not bar the issue of the marriage from  
26 inheriting; and

27 **Sec. 4. 18-A MRSA §2-109, sub-§(4)** is enacted to read:

28 (4). A child conceived after the death of a person is a child of that person if the child  
29 is born to the person's surviving spouse using the gametes of the person and the person  
30 consented in a record that if the gametes were used after the person's death the person  
31 would be a parent of the child.

32 **SUMMARY**

33 This bill addresses the ability to inherit for purposes of intestate succession when a  
34 child is conceived using the gametes of a person after the person has died. This bill  
35 provides that the child has the same right to inherit from the decedent as if the child had

1        been born prior to the decedent's death. This bill also clarifies that a parent-child  
2        relationship is established for the purposes of intestate succession between a child and a  
3        person if the child is conceived after the death of the person and the child is born to the  
4        person's surviving spouse using the gametes of the person. In each situation, the person  
5        must have consented in a record to be a parent in the given circumstances.

6                The availability of Social Security survivor benefits is based on state intestate  
7        succession laws. This bill will facilitate the eligibility for survivor benefits to be paid to  
8        posthumously conceived children.