

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 145

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H.P. 101

House of Representatives, January 21, 2021

### **An Act To Amend the Maine Uniform Probate Code**

(EMERGENCY)

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Reported by Representative HARNETT of Gardiner for the Probate and Trust Law Advisory Commission pursuant to the Maine Revised Statutes, Title 18-C, section 1-803, subsection 2.

Received by the Clerk of the House on January 19, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

1           **Emergency preamble.** Whereas, acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** the Maine Uniform Probate Code took effect September 1, 2019, but the  
4 new confidentiality of records provisions applicable to adult guardianships and  
5 conservatorships were delayed until January 1, 2021 to allow the development and adoption  
6 of rules governing those records by the Supreme Judicial Court; and

7           **Whereas,** the rules governing confidentiality of Probate Court records have not yet  
8 been adopted; and

9           **Whereas,** the effective date of the statutory provisions should be delayed until the rules  
10 are adopted and any appropriate statutory amendments can be made; and

11           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
12 the meaning of the Constitution of Maine and require the following legislation as  
13 immediately necessary for the preservation of the public peace, health and safety; now,  
14 therefore,

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

16           **Sec. 1. 18-C MRSA §3-108, sub-§1, ¶D,** as amended by PL 2019, c. 417, Pt. A,  
17 §4, is further amended to read:

18           D. ~~An~~ Regardless of whether the decedent dies before, on or after the effective date of  
19 this Code, an informal appointment or a formal testacy or appointment proceeding may  
20 be commenced more than 3 years after the decedent's death if no proceeding  
21 concerning the succession or estate administration has occurred within the 3-year  
22 period after the decedent's death, but the personal representative has no right to possess  
23 estate assets as provided in section 3-709 beyond that necessary to confirm title in the  
24 successors to the estate, and claims other than expenses of administration may not be  
25 presented against the estate;

26           **Sec. 2. 18-C MRSA §5-308, sub-§4,** as enacted by PL 2019, c. 417, Pt. A, §30, is  
27 amended to read:

28           **4. Effective date.** This section takes effect January 1, ~~2021~~ 2023.

29           **Sec. 3. 18-C MRSA §5-409, sub-§4,** as enacted by PL 2019, c. 417, Pt. A, §62, is  
30 amended to read:

31           **4. Effective date.** This section takes effect January 1, ~~2021~~ 2023.

32           **Sec. 4. 18-C MRSA §5-423, sub-§2, ¶E,** as amended by PL 2019, c. 417, Pt. A,  
33 §80, is further amended to read:

34           E. ~~An annual credit report of the individual subject to conservatorship and, to~~ To the  
35 extent feasible, a copy of the most recent reasonably available financial statements  
36 evidencing the status of bank accounts, investment accounts and mortgages or other  
37 debts of the individual subject to conservatorship, with all but the last 4 digits of the  
38 account numbers and the individual's social security number redacted, ~~and, if ordered~~  
39 by the court, a credit report of the individual subject to guardianship;

40           **Sec. 5. 18-C MRSA §5-431, sub-§8,** as enacted by PL 2017, c. 402, Pt. A, §2 and  
41 affected by PL 2019, c. 417, Pt. B, §14, is amended to read:



1 cured by making it clear that section 3-108, subsection 1, paragraph D applies regardless  
2 of the date of the decedent's death.

3 2. This bill amends section 5-308, subsection 4 and section 5-409, subsection 4 to  
4 delay the effective date of the confidentiality of records provisions governing guardianships  
5 of adults and governing conservatorships. When Title 18-C was enacted, with a September  
6 1, 2019 effective date, the provisions of section 5-308 and section 5-409 had a delayed  
7 effective date of January 1, 2021. The purpose of the delayed effective date was to give  
8 the Supreme Judicial Court time to address confidentiality of court records in the state  
9 courts and perhaps in the Probate Courts, and then give the commission an opportunity to  
10 propose amendments to sections 5-308 and 5-409 to ensure consistency with confidentiality  
11 of records provisions adopted by the Supreme Judicial Court. With an effective date of  
12 August 21, 2020, the Supreme Judicial Court adopted the Maine Rules of Electronic Court  
13 Systems, which contains extensive provisions governing the confidentiality of records filed  
14 with the Supreme Judicial Court, the Superior Court and the District Court. The Supreme  
15 Judicial Court has not yet had an opportunity to consider rules governing confidentiality of  
16 records filed with the Probate Courts. This bill further delays the effective date of sections  
17 5-308 and 5-409 to January 1, 2023 to provide additional time for the Supreme Judicial  
18 Court, in conjunction with the commission and the Advisory Committee on Probate Rules,  
19 to complete its review and approval of rules governing confidentiality of records in the  
20 Probate Courts. Because this bill will not take effect before January 1, 2021, these changes  
21 are made retroactive to January 1, 2021.

22 3. This bill amends section 5-423, subsection 2, paragraph E to remove the mandatory  
23 credit report for the individual subject to conservatorship from the conservator's annual  
24 report and accounting and make the credit report a requirement only if ordered by the court.  
25 The reason for the amendment is because it is difficult, and sometimes impossible, for the  
26 conservator to obtain a credit report for the individual subject to conservatorship and the  
27 credit report requirement is interfering with the timely submission of conservators' annual  
28 reports and accountings. The statutory requirement of submission of copies of recent  
29 financial statements along with the detailed accounting schedules provide sufficient court  
30 monitoring of conservators for most situations and the Probate Court will have flexibility  
31 to order a credit report if the court deems the credit report an appropriate element of the  
32 conservator's report and accounting.

33 4. This bill amends section 5-431, subsection 8 to clarify that the subsection applies to  
34 both the termination and modification of a conservatorship. The headnote for section 5-431  
35 is "Termination or modification of conservatorship," but subsection 8 refers only to the  
36 termination of a conservatorship, with no reference to modification. Section 5-319,  
37 subsection 6, which is the counterpart provision that applies to adult guardianships,  
38 includes both terminations and modifications of adult guardianships. The uniform act, on  
39 which section 5-431, subsection 8 is based, mentions only termination and not  
40 modification; however, the uniform comment to the corresponding paragraph of the  
41 uniform act describes both terminating and modifying conservatorships. It appears that  
42 reference to modification of a conservatorship was inadvertently omitted from section  
43 5-431, subsection 8 and that the drafting error originated in the uniform act. To correct the  
44 apparent inadvertent omission, this bill amends subsection 8 to cover modifications of adult  
45 guardianships as well as terminations.

1           5. This bill amends section 8-301, subsection 2, paragraph A-1 to add a reference to  
2 the wrongful death provisions of section 2-807 of Title 18-C to avoid ambiguity as to  
3 whether the intestacy provisions of former Title 18-A or the intestacy provisions of Title  
4 18-C govern the distribution of a recovery of a wrongful death claim. The first 2 sentences  
5 of section 2-807, subsection 2 require the distribution of a recovery of a wrongful death  
6 claim to be paid to the decedent's heirs without becoming part of the decedent's probate  
7 estate.

8           The intestate succession provisions of Title 18-C are materially different, in a number  
9 of respects, from the intestate succession provisions of former Title 18-A. Although section  
10 8-301, subsection 2, paragraph A-1 already states that the intestate succession provisions  
11 of Article 2, Part 1, Subpart 1 apply to the estates of decedents who die on or after the  
12 effective date, there remains ambiguity as to whether actions for wrongful death brought  
13 after the effective date, for deaths occurring before the effective date, are governed by the  
14 provisions of former Title 18-A or by the provisions of Title 18-C. The amendment  
15 resolves any ambiguity by making it clear that the date of death of the decedent will control  
16 which provisions apply.