

# MAINE STATE LEGISLATURE

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L.D. 1

STATE OF MAINE  
SENATE  
109TH LEGISLATURE (Filing No. S-312)  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 1, L.D. 1, Bill, "AN ACT to Establish the Maine Probate Code."

Amend the Bill in section 1 by striking out all of the first 2 lines after the amending clause and inserting in their place the following:

'TITLE 18-A  
PROBATE CODE'

Further amend the Bill in section 1 in that part designated "§1-101." in the 2nd line (same in L.D.) by striking out the underlined word "Maine"

Further amend the Bill in section 1 in that part designated "§1-106." in the 11th line (9th line in L.D.) by striking out the underlined figure "5" and inserting in its place the underlined figure '6'

Further amend the Bill in section 1 in that part designated "§1-201." by inserting after paragraph (26) the following:

'(26-A.) "Oath" means an oath or affirmation.'

Further amend the Bill in section 1 in that part designated "§1-201." in paragraph (37) by adding at the end the following: 'It shall not include an account as defined in section 6-101, paragraph (1).'

Further amend the Bill in section 1 in that part designated "§1-201." in the Maine Comment by adding at the end the following: 'paragraph (26-A) was added to conform to constitutional requirements and paragraph (37) was clarified to expressly exclude "bank accounts" from the definition of "security."'

Further amend the Bill in section 1 in that part designated "§1-309." in the Uniform Probate Code Comment in the 2nd line (same in L.D.) by striking out the figure "8-101" and inserting in its place the figure '8-401'

Further amend the Bill in section 1 in that part designated "§1-309." in the Maine Comment by adding at the end the following: 'Because there is no change in those statutory provisions, incumbent judges will continue to serve in their offices.'

Further amend the Bill in section 1 in that part designated "§1-401." by inserting at the end a new sentence to read: 'Each notice shall include notification of any right to contest or appeal and shall be proved by the filing of an affidavit of notice.'

Further amend the Bill in section 1 in that part designated "§1-401." in the Maine Comment by inserting at the end the following: 'It was also changed to expressly require that notice include a statement of any right to contest or appeal and to require filing of an affidavit of notice.'

Further amend the Bill in section 1 in Part 5, Registers of Probate, Maine General Comment by inserting at the end the following: 'Because there is no change in the constitutional provisions, incumbent registers will continue to serve in their offices.'

Further amend the Bill in section 1 in that part designated "§1-601." in the 2nd line (same in L.D.) by striking out the underlined word "all"

Further amend the Bill in section 1 in that part designated "§1-601." by inserting at the end the following sentence: 'In those cases where a will is being contested on the grounds of

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undue influence or mental capacity, attorney's fees and costs shall not be allowed to the party contesting the will if he is unsuccessful.'

Further amend the Bill in section 1 in that part designated "§2-110." by inserting before the last sentence, the following: 'If a contemporaneous writing by the decedent establishes the value of the property advanced, that value shall apply.'

Further amend the Bill in section 1 in that part designated "§2-110." in the Maine Comment by inserting after the heading a new paragraph to read:

'Maine changes from Uniform Probate Code. The Uniform Probate Code version was changed to expressly recognize the right of the decedent to specify the value of the advancement.'

Further amend the Bill in section 1 in that part designated "§2-403." in the 7th and 8th lines (6th and 7th lines in L.D.) by striking out the underlined words "during the period of administration"

Further amend the Bill in section 1 in that part designated "§2-403" in the Maine Comment by inserting after the heading a new paragraph to read:

'Maine change from Uniform Probate Code. The Uniform Probate Code was changed to remove the limitation on the family allowance to the "period of administration.'

Further amend the Bill in section 1 in that part designated "§2-504." in subsection (a) by striking out all of the 2nd and 3rd paragraphs and inserting in their place the following:

'I,....., the testator, on this .....day of ....., 19....., being first duly sworn, do hereby declare to the undersigned authority that I sign and execute

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this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), as my free and voluntary act and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

.....  
Testator

Keamy

We,....., the witnesses, being first duly sworn, do hereby declare to the undersigned authority that the testator has signed and executed this instrument as his last will and that he signed it willingly (or willingly directed another to sign for him), and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

.....  
Witness

.....  
Witness

The State of.....  
County of.....

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Further amend the Bill in section 1 in that part designated "§2-504." in subsection (b) by striking out all of the 2nd paragraph and inserting in its place the following:

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'We,....., and ..... , the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly swor

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do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly (or willingly directed another to sign for him), as his free and voluntary act, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

.....  
Testator  
.....  
Witness  
.....  
Witness'

Further amend the Bill in section 1 in that part designated "§2-505." by striking out all of subsection (b) and inserting in its place the following:

'(b) A will is not invalid because the will is signed by an interested witness.

(c) All beneficial devises to a subscribing witness are void except that a witness may take that part of a devise that equals but does not exceed in value the share that he would have been entitled to as an heir if the decedent had died intestate.'

Further amend the Bill in section 1 in that part designated "§2-505." by striking out all of the Maine Comment and inserting in its place the following:

'MAINE COMMENT

← Maine change from Uniform Probate Code. The Uniform Probate Code ← version was changed to conform to Maine law that a

witness to the execution of a will could not take under that will except to the extent of the value of any share that he would be entitled to take by intestacy.'

Further amend the Bill in section 1 in that part designated "§2-607." in subsection (a) in the first line (same in L.D.) by striking out the underlined words "testator intended" and inserting in their place the underlined words 'will provides for'

Further amend the Bill in section 1 in that part designated "§2-803." in subsection (e) in the 4th line (3rd and 4th lines in L.D.) by striking out the underlined words "a preponderance of" and inserting in their place the underlined words 'clear and convincing'

Further amend the Bill in section 1 in that part designated "§2-803." by inserting after the Uniform Probate Code Comment the following:

'MAINE COMMENT

← Maine change from Uniform Probate Code. The Uniform version was Probate Code/changed by providing a clear and convincing standard of proof in subsection (e), instead of a preponderance of evidence.'

Further amend the Bill in section 1 in that part designated "§2-804." in subsection (b) by striking out all of the first underlined sentence and inserting in its place the following: 'Every such action shall be brought by and in the name of the personal representative of the deceased person, and the amount

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recovered in every such action, except as otherwise provided, shall be for the exclusive benefit of the surviving spouse, if no minor children, and of the children if no surviving spouse, and (1/2) for the exclusive benefit of the surviving spouse and (1/2) for the exclusive benefit of the minor children to be divided equally among them, if there are both surviving spouse and minor children, and to the deceased's heirs to be distributed as provided in section 2-106, if there is neither surviving spouse nor minor children.'

Further amend the Bill in section 1 in that part designated "§2-804." by inserting after subsection (c) the following:

'(d) Any action under this section brought against a governmental entity under Title 14, sections 8101 to 8118, shall be limited as provided in those sections.'

Further amend the Bill in section 1 in that part designated "§3-603." by striking out all of the first underlined sentence and inserting in its place the following:

'No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator; (2) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; (3) when bond is required under section 3-605; or (4) when there is no will and all of the heirs have not made a written waiver.'

Further amend the Bill in section 1 in that part designated "§3-603." by striking out all of the 3rd sentence and inserting in its place the following: 'Bond required by any will or under this section may be dispensed with in formal proceedings upon determination by the court that it is not necessary.'



Further amend the Bill in section 1 in that part designated "§3-603." by inserting after the Uniform Probate Code Comment the following:

'MAINE COMMENT

← Maine change from the Uniform Probate Code. The Uniform Probate Code version was changed by adding a requirement of bonding in intestate estates where the appointment is made in informal proceedings. This bonding requirement may be waived by all of the heirs or may be excused by the court on petition in formal proceedings.'

Further amend the Bill in section 1 in that part designated "§3-706." in the next to the last line (same in L.D.) by striking out the underlined word "may" and inserting in its place the underlined word 'shall'

Further amend the Bill in section 1 in that part designated "§3-706." in the Maine Comment by inserting at the end the following new sentence: 'The ~~uniform~~ Probate Code version was also changed to require court filing of the inventory.'

Further amend the Bill in section 1 in that part designated "§3-707." by striking out all of the first underlined sentence and inserting in its place the following:

'The personal representative shall employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets.'

Further amend the Bill in section 1 in that part designated "§3-707." by inserting at the end the following:

'MAINE COMMENT

← Maine change from Uniform Probate Code. The Uniform Probate

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Code version was changed to require the appointment of an independent appraiser.'

Further amend the Bill in section 1 in that part designated "§3-708." in the 2nd and 3rd lines from the end (same in L.D.) by striking out the underlined words/<sup>and punctuation</sup> "if the original inventory was filed,"

Further amend the Bill in section 1 in that part designated "§3-711." by striking out all of the last sentence and inserting in its place the following:

'This power may be exercised without notice, hearing, or order of court, except as limited by this section. The personal representative shall not sell or transfer any interest in real property of the estate without giving notice at least ten days prior to that sale or transfer to any person succeeding to an interest in that property, unless the personal representative is authorized under the will to sell or transfer real estate without this notice.'

Further amend the Bill in section 1 in that part designated "§3-711." by inserting after the Uniform Probate Code Comment the following:

'MAINE COMMENT

← Maine change from Uniform Probate Code. The Uniform Probate Code version was changed by adding the provision for notice before sale of real estate.'

Further amend the Bill in section 1 in that part designated  
(2nd line in L.D.)  
"§3-904." in the 3rd/line by striking out the underlined figure  
"68" and inserting in its place the underlined figure '58'

Further amend the Bill in section 1 by striking out all  
of that part designated "§3-914." and inserting in its place  
the following:

'§3-914. Disposition of unclaimed assets

(a) If an heir, devisee or claimant cannot be found, the  
personal representative shall distribute the share of the  
missing person to his conservator, if any, otherwise it shall be  
disposed of according to Title 33, chapter 27.'

Further amend the Bill in section 1 in that part designated  
"§3-914." by striking out all of the Maine Comment and inserting  
in its place the following:

'MAINE COMMENT

←Maine change from Uniform Probate Code. The Uniform Probate  
Code version was changed to conform to the comprehensive  
legislation on the subject, the Abandoned Property Act.'

Further amend the Bill in section 1 in that part designated  
"§5-101." in paragraph (1) in the 3rd line (2nd and 3rd lines  
in L.D.) by striking out the underlined words and punctuation  
'advanced age,'

Further amend the Bill in section 1 in that part designated  
"§5-310." by inserting after the 3rd sentence the following:  
'A temporary guardian shall not seek the involuntary hospitalization  
of his ward in any institution outside this State.'

Further amend the Bill in section 1 in that part designated  
"§5-310." by inserting at the end after the Uniform Probate  
Code Comment the following:

'MAINE COMMENT

← Maine change from Uniform Probate Code. The Uniform Probate Code version was changed to limit the power of a temporary guardian by prohibiting the guardian from seeking institutionalization of his ward outside the State.'

Further amend the Bill in section 1 by striking out all of that part designated "§5-311." and inserting in its place the following:

↑ '§5-311. Who may be guardian; priorities

(a) Any competent person or a suitable institution may be appointed guardian of an incapacitated person, except as provided in subsection (c).

(b) Subject to a determination by the court of the best interests of the incapacitated person, persons who are not disqualified have priority for appointment as guardian in the following order:

- (1) The person or institution nominated in writing by the incapacitated person;
- (2) The spouse of the incapacitated person;
- (3) An adult child of the incapacitated person;
- (4) A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;
- (5) Any relative of the incapacitated person with whom he has resided for more than 6 months prior to the filing of the petition;
- (6) A person nominated by the person who is caring for him or paying benefits to him.

(c) A facility or institution which is licensed under

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Title 22, sections 1817 and 7801 may not act as guardian of an incapacitated person who is a resident.'

Further amend the Bill in section 1 in that part designated "§5-311." in the Maine Comment by inserting at the end the following: 'The Uniform Probate Code version was also changed by adding the priority for appointment of the ward's nominee and the prohibition contained in subsection (c).'

Further amend the Bill in section 1 in that part designated "§5-401." in paragraph (2) in the 5th and 6th lines (5th line in L.D.) by striking out the underlined words and punctuation "advanced age,"

Further amend the Bill in section 1 in that part designated "§6-107." by striking out all of the 3rd sentence and inserting in its place the following: 'No proceeding to assert this liability shall be commenced later than 2 years following the death of the decedent.'

Further amend the Bill in section 1 in that part designated "§6-107." by striking out all of the Maine Comment and inserting in its place the following:

'MAINE COMMENT

← Maine change from the Uniform Probate Code. The "written demand" requirement prior to asserting the liability of multiple-party accounts for claims and charges against the estate has been deleted.'

Further amend the Bill in section 1 in that part designated "§8-315." in the 3rd line (2nd line in L.D.) by striking out the underlined word "covered" and inserting in its place the underlined word 'recovered'

Further amend the Bill in section 1 in that part designated "§8-401." by striking out all of paragraphs (4) and (5) and inserting in their place the following:

'(4) An act done before the effective date in any proceeding and any accrued right is not impaired by this Code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;

(5) Any rule of construction or presumption provided in this Code applies to instruments executed and multiple party accounts opened before the effective date unless there is a clear indication of a contrary intent; and

(6) For an adoption decree entered before the effective date and not amended after the effective date, the child shall be the child of both the natural and adopting parents for purposes of intestate succession, notwithstanding section 2-109, subsection (1), unless the decree provides otherwise.'

Further amend the Bill by inserting after section 13 the following:

'Sec. 13-A. 9-B MRSA §427, sub-§13 is enacted to read:

13. Notice on opening certain accounts. A signature card or other document establishing a multiple-party account, as defined in Title 18-A, section 6-101, shall contain a clear and conspicuous printed notice to the depositor that on his death the balance in the account will belong to the surviving party.'

Further amend the Bill in section 27-A by striking out all of that part designated "§220." and inserting in its place the following:

'220. Rights of children born out of wedlock

A child born out of wedlock is the child of his natural parents and is entitled to the same legal rights as a child born in lawful wedlock, except as otherwise expressly provided by statute.'

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Further amend the Bill in section 30 in that part designated "§581." by striking out in the 5th line (4th line in L.D.) the underlined words "one month next" and inserting in their place the underlined figure and words '60 days immediately' and in the 6th line (5th line in L.D.) by striking out the underlined words "hereinafter referred to"

Further amend the Bill by striking out all of section 52 and inserting in its place the following:

'Sec. 52. 37 MRS §§201-215, are repealed.

Sec. 52-A. 37 MRS §§217-221 are repealed.'

Statement of Fact

This amendment makes the following changes in the Probate Code:

1. Changes the statute of limitations from 5 years to 6 years;
2. Adds a definition of "oath" to expressly state that it means "oath or affirmation;"
3. Amends the definition of "security" to expressly exclude "bank accounts;"
4. Expressly states in the Maine Comments that incumbent judges and registers of probate will continue to serve in their offices;
5. Adds a requirement that all notices will include a statement of any right to contest or appeal; and also adds a requirement that an affidavit of notice be filed;
6. Amends the provision on costs in contested cases to restore the present statutory prohibition on awarding costs to the challenger if he loses a case based on undue influence;



7. Adds an express statement that a decedent's contemporaneous writing establishing the value of an advancement will be used to determine the value;

8. Removes the limitation "during the period of administration on the payment of family allowances, thus leaving only the one-year limitation if the estate is inadequate to meet the claims on it;

9. Amends the provision on witnesses to wills to restore the present statutory limit on a witness named in the will being prohibited from taking more than his intestate share;

10. Amends the provision on the disinheritance of killers to require "clear and convincing evidence" that the killing was felonious and intentional, rather than only a "preponderance of evidence;"

11. Amends the provision on bonding of personal representatives to require a bond in informal intestate administration, unless there is a waiver by all the heirs or the court orders otherwise;

12. Amends the provision on appraising and inventorying of the estate to require the appointment of an independent appraiser and the filing of the inventory;

13. Amends the provision on the powers of personal representatives to require notice prior to selling or transferring any interest in real estate;

14. Changes the interest rate on general pecuniary devises from 6% to 5%;

15. Amends the provision on unclaimed assets to conform to the Abandoned Property Act;

16. Deletes from the grounds for appointing a guardian or

conservator the ground of "advanced age;"

17. Amends the provision on the powers of a temporary guardian to prohibit him from seeking the involuntary hospitalization of his ward outside the State;

18. Amends the provision on the priority of persons who may be appointed a guardian to give first priority to a person or institution nominated by the incapacitated person;

19. Amends the provision on who may be appointed a guardian to prohibit an institution in which the incapacitated person resides from becoming his guardian;

20. Amends the provision on the power to assert liability against multiple-party accounts by deleting the requirement for a specific demand from a creditor prior to commencing the proceeding;

21. Amends the transition provisions to change the effect of the Code's change in present law on inheritance rights from natural parents under an adoption decree to prospective application;

22. Adds a new provision to require that a depositor be given written notice of survivorship rights in multiple-party accounts prior to opening such an account;

23. Amends the provision relating to illegitimate children to remove changes made in those rights that affect legal rights outside the Code;

24. Amends the provision on the amount of time required to show that a spouse has deserted, by increasing it from 30 to 60 days;

25. Amends the repeal of the Uniform Veterans' Guardianship Act to retain the requirement for free copies of documents be

made available to the Veterans Administration;

26. Amends the bill to correct the language in several areas and to conform the bill to changes in probate law that have been enacted this year; and

27. Amends the "Maine Comments" to the Code to reflect the changes incorporated in this amendment.

Reported by the Committee on Judiciary.

Reproduced and distributed pursuant to Senate Rule 11-A.

June 5, 1979

(Filing No. S-312)