

MAINE STATE LEGISLATURE

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(New Draft of H.P. 440, L.D. 533)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1466

H.P. 1122

House of Representatives, April 14, 1983

Reported by Representative Joyce from the Committee on Judiciary and printed under Joint Rule 2.

Original bill presented by Representative Hobbins of Saco.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT to Amend the Statute of
Limitations for the Probate of Estates
under the Maine Probate Code.

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

18-A MRSa §3-108, as enacted by PL 1979, c. 540, §1, is repealed and the following enacted in its place:

§3-108. Probate, testacy and appointment proceedings; ultimate time limit

(a) For decedent's dying on or after January 1, 1981, no informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has

1 been a prior appointment, may be commenced more than
2 3 years after the decedent's death, except:

3 (1) If a previous proceeding was dismissed
4 because of doubt about the fact of the decedent's
5 death, appropriate probate, appointment or tes-
6 tacy proceedings may be maintained at any time
7 thereafter upon a finding that the decedent's
8 death occurred prior to the initiation of the
9 previous proceeding and the applicant or peti-
10 tioner has not delayed unduly in initiating the
11 subsequent proceeding;

12 (2) Appropriate probate, appointment or testacy
13 proceedings may be maintained in relation to the
14 estate of an absent, disappeared or missing
15 person for whose estate a conservator has been
16 appointed, at any time within 3 years after the
17 conservator becomes able to establish the death
18 of the protected person; and

19 (3) A proceeding to contest an informally pro-
20 bated will and to secure appointment of the
21 person with legal priority for appointment in the
22 event the contest is successful, may be commenced
23 within the later of 12 months from the informal
24 probate or 3 years from the decedent's death.
25 These limitations do not apply to proceedings to
26 construe probated wills or determine heirs of an
27 intestate. In cases under paragraph (1) or (2),
28 the date on which a testacy or appointment pro-
29 ceeding is properly commenced shall be deemed to
30 be the date of the decedent's death for purposes
31 of other limitations provisions of this code
32 which relate to the date of death.

33 (b) For decedent's dying before January 1, 1981,
34 no informal probate or appointment proceeding or for-
35 mal testacy or appointment proceeding, other than a
36 proceeding to probate a will previously probated at
37 the testator's domicile and appointment proceedings
38 relating to an estate in which there has been a prior
39 appointment, may be commenced more than 20 years
40 after the decedent's death, except:

41 (1) If a previous proceeding was dismissed
42 because of doubt about the fact of the decedent's

1 death, appropriate probate, appointment or tes-
2 tacy proceedings may be maintained at any time
3 thereafter upon a finding that the decedent's
4 death occurred prior to the initiation of the
5 previous proceeding and the applicant or peti-
6 tioner has not delayed unduly in initiating the
7 subsequent proceeding;

8 (2) Appropriate probate, appointment or testacy
9 proceedings may be maintained in relation to the
10 estate of an absent, disappeared or missing
11 person for whose estate a conservator has been
12 appointed at any time within the applicable
13 limitation period, as set forth in this section,
14 which shall begin to run after the conservator
15 becomes able to establish the death of the pro-
16 ected person; and

17 (3) A proceeding to contest an informally pro-
18 bated will, and to secure appointment of the
19 person with legal priority for appointment in the
20 event the contest is successful, may be commenced
21 within the later of 12 months from the informal
22 probate or the running of the applicable limita-
23 tion period. These limitations do not apply to
24 proceedings to construe probated wills or deter-
25 mine heirs of an intestate. In cases under para-
26 graph (1) or (2), the date on which a testacy or
27 appointment proceeding is properly commenced
28 shall be deemed to be the date of the decedent's
29 death for purposes of the limitations provisions
30 of this Code which relate to the date of death.
31

32 STATEMENT OF FACT

33 This section of the Maine Probate Code estab-
34 lishes a limitation period of 3 years from the dece-
35 dent's death within which it may be determined
36 whether a decedent left a will. Prior to the effec-
37 tive date of the new Probate Code, January 1, 1981,

1 the law allowed a 20-year period. This new draft
2 allows a 20-year period for decedents dying before
3 January 1, 1981 and retains the 3-year period for
4 decedents dying on or after January 1, 1981.

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