

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 491, L.D. 671, Bill, "An Act to Provide Written Notice to Creditors Under the Maine Probate Code"

Amend the bill by striking out all of the title and inserting in its place the following:

'An Act Concerning the Maine Probate Code'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 18-A MRSA §§3-801 and 3-802, as enacted by PL 1979, c. 540, §1, are repealed and the following enacted in their place:

§3-801. Notice to creditors

(a) Unless notice has already been given under this section, a personal representative upon appointment shall publish a notice to creditors once a week for 2 successive weeks in a newspaper of general circulation in the county announcing the appointment and the personal representative's address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred.

(b) A personal representative may give written notice by mail or other delivery to a creditor, notifying the creditor to present the creditor's claim within 4 months after the published notice, if given as provided in subsection (a), or within 60 days after the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (a) or a similar notice.

2 (c) The personal representative is not liable to a creditor
3 or to a successor of the decedent for giving or failing to give
4 notice under this section.

6 **UNIFORM PROBATE CODE COMMENT***

8 SECTION 3-801. Section 3-1203, relating to small estates,
9 contains an important qualification on the duty created by this
10 section.

12 In 1989, the Joint Editorial Board recommended replacement
13 of the word "shall" with "[may] [shall]" in (a) to signal its
14 approval of a choice between mandatory publication and optional
15 publication of notice to creditors to be made by the legislature
16 in an enacting state. Publication of notice to creditors is
17 quite expensive in some populous areas of the country and, if
18 *Tulsa Professional Collection Services v. Pope*, 108 S. Ct. 1340,
19 485 U.S. 478 (1988) applies to this Code, is useless except to
20 bar unknown creditors. Even if *Pope* does not apply, personal
21 representatives for estates involving successors willing to
22 assume the risk of unbarred claims should have (and have had
23 under the Code as a practical consequence of absence of court
24 supervision and mandatory closings) the option of failing to
publish.

26 Additional discussion of the impact of *Pope* on the Code
27 appears in the Comment to Section 3-803, *infra*.

28 If a state elects to make publication of notice to creditors
29 a duty for personal representatives, failure to advertise for
30 claims would involve a breach of duty on the part of the personal
31 representative. If, as a result of such breach, a claim is later
32 asserted against a distributee under Section 3-1004, the personal
33 representative may be liable to the distributee for costs related
34 to discharge of the claim and the recovery of contribution from
35 other distributees. The protection afforded personal
36 representatives under Section 3-1003 would not be available, for
37 that section applies only if the personal representative
38 truthfully recites that the time limit for presentation of claims
39 has expired.

42 Putting aside *Pope* case concerns regarding state action
43 under this code, it might be appropriate by legislation, to
44 channel publications through the personnel of the probate court.
45 See Section 1-401. If notices are controlled by a centralized
46 authority, some assurance could be gained against publication in
47 newspapers of small circulation. Also, the form of notices could
48 be made uniform and certain efficiencies could be achieved. For
49 example, it would be compatible with this section for the Court
50 to publish a single notice each day or each week listing the
51 names of personal representatives appointed since the last
52 publication, with addresses and dates of nonclaim.

2 §3-802. Statutes of limitations

4 (a) Unless an estate is insolvent, the personal
6 representative, with the consent of all successors whose
8 interests would be affected, may waive any defense of limitations
10 available to the estate. If the defense is not waived, no claim
12 which was barred by any statute of limitations at the time of the
14 decedent's death shall be allowed or paid.

16 (b) The running of any statute of limitations measured from
18 some other event than death or the giving of notice to creditors
20 is suspended for 4 months after the decedent's death, but resumes
22 thereafter as to claims not barred by other sections.

24 (c) For purposes of any statute of limitations, the
26 presentation of a claim pursuant to section 3-804 is equivalent
28 to commencement of a proceeding on the claim.

30 **UNIFORM PROBATE CODE COMMENT***

32 SECTION 3-802. This section means that four months is added
34 to the normal period of limitations by reason of a debtor's death
36 before a debt is barred. It implies also that after the
38 expiration of four months from death, the normal statute of
40 limitations may run and bar a claim even though the nonclaim
42 provisions of Section 3-803 have not been triggered. Hence, the
44 nonclaim and limitation provisions of Section 3-803 are not
46 mutually exclusive.

48 It should be noted that under Sections 3-803 and 3-804 it is
50 possible for a claim to be barred by the process of claim,
52 disallowance and failure by the creditor to commence a proceeding
to enforce that claim prior to the end of the four-month
suspension period. Thus, the regular statute of limitations
applicable during the debtor's lifetime, the nonclaim provisions
of Sections 3-803 and 3-804, and the three-year limitation of
Section 3-803 all have potential application to a claim. The
first of the three to accomplish a bar controls.

54 In 1975, the Joint Editorial Board recommended a change that
56 makes it clear that only those successors who would be affected
58 thereby, must agree to a waiver of a defense of limitations
available to an estate. As the original text stood, the section
appeared to require the consent of "all successors," even though
this would include some who, under the rules of abatement, could
not possibly be affected by allowance and payment of the claim in
question.

60 In 1989, in connection with other amendments recommended in
62 sequel to *Tulsa Professional Collection Services v. Pope*, 108 S.
Ct. 1340, 485 U.S. 478 (1988), the Joint Editorial Board

2 recommended the splitting out, into subsections (b) and (c), of
the last two sentences of what formerly was a four sentence
4 section. The first two sentences now appear as subsection (a).
The rearrangement aids understanding that the section deals with
6 three separable ideas. No other change in language is involved,
and the timing of the changes to coincide with Pope case
8 amendments is purely coincidental.

10 **Sec. 2. 18-A MRSA §3-803, sub-§(a),** as enacted by PL 1979, c.
540, §1, is repealed and the following enacted in its place:

12 (a) All claims against a decedent's estate which arose
14 before the death of the decedent, including claims of the State
16 and any subdivision of the State, whether due or to become due,
18 absolute or contingent, liquidated or unliquidated, founded on
20 contract, tort, or other legal basis, if not barred earlier by
another statute of limitations or nonclaim statute, are barred
against the estate, the personal representative, and the heirs
and devisees of the decedent, unless presented within the earlier
of the following:

22 (1) The time provided by section 3-801, subsection (b) for
24 creditors who are given actual notice, and the time provided
in section 3-801, subsection (a) for all creditors barred by
publication; or

26 (2) Nine months of the decedent's death.
28

30 **Sec. 3. 18-A MRSA §3-803, sub-§(a-1)** is enacted to read:

32 (a-1) A claim described in subsection (a) which is barred
34 by the nonclaim statute of the decedent's domicile before the
giving of notice to creditors in this State is barred in this
State.

36 **Sec. 4. 18-A MRSA §3-803, sub-§§(b) and (c),** as enacted by PL
38 1979, c. 540, §1, are amended to read:

40 (b) All claims against a decedent's estate which arise at
or after the death of the decedent, including claims of the state
42 State and any subdivision thereof of the State, whether due or to
become due, absolute or contingent, liquidated or unliquidated,
44 founded on contract, tort, or other legal basis, are barred
against the estate, the personal representative, and the heirs
and devisees of the decedent, unless presented as follows:

46 (1) A claim based on a contract with the personal
48 representative, within four months after performance by the
personal representative is due; or
50

2 (2) Any other claim, within the later of 4 months after it
arises, or the time specified in subsection (a), paragraph
4 (2).

6 (c) Nothing in this section affects or prevents:

8 (1) Any proceeding to enforce any mortgage, pledge, or
other lien upon property of the estate; or

10 (2) To the limits of the insurance protection only, any
12 proceeding to establish liability of the decedent or the
14 personal representative for which he the decedent or the
personal representative is protected by liability insurance,
; or

16 (3) Collection of compensation for services rendered and
18 reimbursement for expenses advanced by the personal
representative or by the attorney or accountant for the
20 personal representative of the estate.

22 **UNIFORM PROBATE CODE COMMENT***

24 SECTION 3-803. There was some disagreement among the
Reporters over whether a short period of limitations, or of
26 nonclaim, should be provided for claims arising at or after
death. Subparagraph (b) was finally inserted because most felt
it was desirable to accelerate the time when unadjudicated
28 distributions would be final. The time limits stated would not,
of course, affect any personal liability in contract, tort, or by
30 statute, of the personal representative. Under Section 3-808 a
personal representative is not liable on transactions entered
32 into on behalf of the estate unless he agrees to be personally
liable or unless he breaches a duty by making the contract.
34 Creditors of the estate and not of the personal representative
thus face a special limitation that runs four months after
36 performance is due from the personal representative. Tort claims
normally will involve casualty insurance of the decedent or of
38 the personal representative, and so will fall within the
exception of subparagraph (d) [subparagraph (c)]. If a personal
40 representative is personally at fault in respect to a tort claim
arising after the decedent's death, his personal liability would
42 not be affected by the running of the special short period
provided here.

44 In 1989, the Joint Editorial Board recommended amendments to
46 subsection (a). The change in (1) shortens the ultimate
limitations period on claims against a decedent from 3 years
48 after death to 1 year after death. Corresponding amendments were
recommended for Sections 3-1003 (a) (1) and 3-1006. The new
50 one-year from death limitation (which applies without regard to
whether or when an estate is opened for administration) is
52 designed to prevent concerns stemming from the possible

2 applicability to this Code of Tulsa Professional Collection
Services v. Pope, 108 S. Ct. 1340, 485 U.S. 478 (1988) from
4 unduly prolonging estate settlements and closings.

6 Subsection (a) (2), by reference to 3-801(a) and 3-801(b),
adds an additional method of barring a prospective claimant of
8 whom the personal representative is aware. The new bar is
available when it is appropriate, under all of the circumstances,
10 to send a mailed warning to one or more known claimants who have
not presented claims that the recipient's claim will be barred if
12 not presented within 60 days from the notice. This optional,
mailed notice, described in accompanying new text in Section
14 3-801(b) is designed to enhance the ability of personal
representatives to protect distributees against pass-through
16 liability (under Section 3-1004) to possibly unbarred claimants.
Personal representatives acting in the best interest of
18 successors to the estate (see Section 3-703(a) and the definition
of "successors" in Section 1-201(42)) may determine that
20 successors are willing to assume risks (i) that Pope, supra, will
be held to apply to this Code in spite of absence of any
22 significant contract between an agency of the state and the acts
of a personal representative operating independently of court
24 supervision; and (ii) that a possibly unbarred claim is valid and
will be pursued by its owner against estate distributees in time
26 to avoid bar via the earliest to run of its own limitation period
(which, under Section 3-802(b), resumes running four months after
28 death), or the one-year from death limitation now provided by
3-803(a)(1). If publication of notice as provided in Section
3-801 has occurred and if Pope is either inapplicable to this
30 Code or is applicable but the late-arising claim in question is
judged to have been unknown to the personal representative and
32 unlikely to have been discovered by reasonable effort, an
earlier, four months from first publication bar will apply.

34
36 The Joint Editorial Board recognized that the new bar
running one year after death may be used by some sets of
38 successors to avoid payment of claims against their decedents of
which they are aware. Successors who are willing to delay
40 receipt and enjoyment of inheritances may consider waiting out
the nonclaim period running from death simply to avoid any public
42 record of an administration that might alert known and unknown
creditors to pursue their claims. The scenario was deemed to be
44 unlikely, however, for unpaid creditors of a decedent are
interested persons (section 1-201(20)) who are qualified to force
46 the opening of an estate for purposes of presenting and enforcing
claims. Further, successors who delay opening an administration
48 will suffer from lack of proof of title to estate assets and
attendant inability to enjoy their inheritances. Finally, the
50 odds that holders of important claims against the decedent will
need help in learning of the death and proper place of
52 administration is rather small. Any benefit to such claimants of
additional procedures designed to compel administrations and to

2 locate and warn claimants of an impending nonclaim bar, is quite
likely to be heavily outweighed by the costs such procedures
4 would impose on all estates, the vast majority of which are
routinely applied to quick payment of the decedents' bills and
distributed without any creditor controversy.

6
8 Note that the new bar described by Section 3-801(b) and
Section 3-803(a)(2) is the earlier of one year from death or the
period described by reference to Section 3-801(b) and Section
10 3-801(a) in Section 3-803(a)(2). If publication of notice is
made under Section 3-801(a), and the personal representative
12 thereafter gives actual notice to a known creditor, when is the
creditor barred? If the actual notice is given less than 60 days
14 prior to the expiration of the four months from first publication
period, the claim will not be barred four months after first
16 publication because the actual notice given by Section 3-801(b)
advises the creditor that it has no less than 60 days to present
18 the claim. It is as if the personal representative gave the
claimant a written waiver of any benefit the estate may have had
20 by reason of the four month bar following published notice.
(C.f., the ability of a personal representative, under Section
22 3-802 to change claims from allowed to disallowed, and vice
versa, and the 60 day period given by Section 3-806(a) within
24 which a claimant may contest a disallowance.) The period ending
with the running of 60 days from actual notice replaces the four
26 month from publication period as the "time for original
presentation" referred to in Section 3-806(a).

28
30 Note, too, that if there is no publication of notice as
provided in Section 3-801(a), the giving of actual notice to
known creditors establishes separate, 60 days from time of
32 notice, nonclaim periods for those so notified. The failure to
publish also means that no general nonclaim period, other than
34 the one year period running from death, will be working for the
estate. If an actual notice to a creditor is given before notice
36 by publication is given, a question arises as to whether the 60
day period from actual notice, or the longer, four-month from
38 publication applies. Subsections 3-801(a) and (b), which are
pulled into Section 3-803(a)(2) by reference, make no distinction
40 between actual notices given before publication and those given
after publication. Hence, it would seem that the later time bar
42 would control in either case. This reading also fits more
satisfactorily with Section 3-806(a) and other Code language
44 referring in various contexts to "the time limit prescribed in
Section 3-803."

46
48 The proviso, formerly appended to Section 3-803 (a)(1),
regarding the effect in this state of the prior running of a
nonclaim statute of the decedent's domicile, has been restated as
50 Section 3-803(b), and former subsections (b) and (c) have been
redesignated as (c) and (d) [subsections are not redesignated in

2 Maine law]. The relocation of the proviso was made to improve
the style of the section. No change of meaning is intended.

4 The second paragraph of the original comment has been
deleted because of inconsistency with amended Section 3-803(a).

6
8 The 1989 changes recommended by the Joint Editorial Board
relating to Section 3-803(b) now designated as Section 3-803(c)
10 [subsections are not redesignated in Maine law] are unrelated to
the Pope case problem. The original text failed to describe a
12 satisfactory nonclaim period for claims arising at or after the
decedent's death other than claims based on contract. The four
14 months "after [any other claim] arises" period worked unjustly as
to tort claims stemming from accidents causing the decedent's
16 death by snuffing out claims too quickly, sometimes before an
estate had been opened. The language added by the 1989 amendment
18 assures such claimants against any bar working prior to the later
of one year after death or four months from the time the claim
arises.

20
22 The other change affecting what is now Section 3-803(d)
[3-803(c)], is the addition of a third class of items which are
24 not barred by any time bar running from death, publication of
notice to creditors, or any actual notice given to an estate
26 creditor. The addition resembles a modification to the Code as
enacted in Arizona.

28 Sec. 5. 18-A MRSA §3-807, as enacted by PL 1979, c. 540, §1,
is amended to read:

30 **§3-807. Payment of claims**

32
34 (a) Upon the expiration of ~~4 months from the date of the~~
~~first publication of the notice to creditors~~ the earlier of the
36 time limitations provided in section 3-803 for the presentation
of claims, the personal representative shall proceed to pay the
38 claims allowed against the estate in the order of priority
prescribed, after making provision for homestead, family and
40 support allowances, for claims already presented which have not
yet been allowed or whose allowance has been appealed, and for
42 unbarred claims which may yet be presented, including costs and
expenses of administration. By petition to the court in a
44 proceeding for the purpose, or by appropriate motion if the
administration is supervised, a claimant whose claim has been
46 allowed but not paid as provided herein may secure an order
directing the personal representative to pay the claim to the
48 extent that funds of the estate are available ~~for the payment to~~
pay it.

50 (b) The personal representative at any time may pay any
just claim ~~which~~ that has not been barred, with or without formal
52 presentation, but he the personal representative is personally

2 liable to any other claimant whose claim is allowed and who is
injured by such its payment if

4 (1) ~~The-payment~~ Payment was made before the expiration of
6 the time limit stated in subsection (a) and the personal
representative failed to require the payee to give adequate
8 security for the refund of any of the payment necessary to
pay other claimants; or

10 (2) ~~The-payment~~ Payment was made, due to the negligence or
12 ~~willful~~ willful fault of the personal representative, in such
manner as to deprive the injured claimant of his priority.

14 UNIFORM PROBATE CODE COMMENT*

16 SECTION 3-807. As recommended for amendment in 1989 by the
18 Joint Editorial Board, the section directs the personal
representative to pay allowed claims at the earlier of one year
20 from death or the expiration of 4 months from first publication.
This interpretation reflects that distribution need not be
22 delayed further on account of creditors' claims once a time bar
running from death or publication has run, for known creditors
24 who have failed to present claims by such time may have received
an actual notice leading to a bar 60 days thereafter and in any
event can and should be the occasion for withholding or the
26 making of other provision by the personal representative to cover
the possibility of later presentation and allowance of such
28 claims. Distribution would also be appropriate whenever
competent and solvent distributees expressly agree to indemnify
30 the estate for any claims remaining unbarred and undischarged
after the distribution.

32
34 Sec. 6. 18-A MRS §3-1003, sub-§(a), as enacted by PL 1979, c.
540, §1, is amended to read:

36 (a) Unless prohibited by order of the court and except for
38 estates being administered in supervised administration
proceedings, a personal representative may close an estate by
40 filing with the court no earlier than 6 months after the date of
original appointment of a general personal representative for the
42 estate, a verified statement stating that he the personal
representative, or a prier previous personal representative whom
he-has-succeeded, has ~~or~~ have:

44
46 (1) ~~Published notice to creditors as provided by section~~
~~3-801 and that the first publication occurred more than 6~~
48 ~~months prior to the date of the statement. Determined that~~
the time limited for presentation of creditors' claims has
expired;

50
52 (2) Fully administered the estate of the decedent by making
payment, settlement, or other disposition of all claims

2 which that were presented, expenses of administration and
estate, inheritance and other death taxes, except as
4 specified in the statement, and that the assets of the
estate have been distributed to the persons entitled. If
6 any claims remain undischarged, the statement ~~shall~~ must
state whether the personal representative has distributed
8 the estate subject to possible liability with the agreement
of the distributees or it shall state in detail other
10 arrangements which have been made to accommodate outstanding
liabilities; and

12 (3) Sent a copy thereof of the statement to all
distributees, to all persons who would have a claim to
14 succession under the testacy status upon which the personal
representative is authorized to proceed, and to all
16 creditors or other claimants of whom he the personal
representative is aware whose claims are neither paid nor
18 barred and has furnished a full account in writing of his
the personal representative's administration to the
20 distributees whose interests are affected thereby.

22 **UNIFORM PROBATE CODE COMMENT***

24 SECTION 3-1003. In 1989 the Joint Editorial Board
recommended changing subparagraph (a)(1) to make the time
26 reference correspond to changes recommended for Section 3-803.

28 Sec. 7. 18-A MRSA §3-1006, as enacted by PL 1979, c. 540, §1,
is amended to read:

30 **§3-1006. Limitations on actions and proceedings against**
32 **distributees**

34 Unless previously adjudicated in a formal testacy proceeding
or in a proceeding settling the accounts of a personal
36 representative or otherwise barred, the claim of any claimant to
recover from a distributee who is liable to pay the claim, and
38 the right of any an heir or devisee, or of a successor personal
representative acting in their behalf, to recover property
40 improperly distributed or the its value ~~thereof~~ from any
distributee is forever barred at the later of ~~(1)--three~~ 3 years
42 after the decedent's death, or ~~(2)~~ one year after the time of its
distribution thereof, but all claims of creditors of the decedent
44 are barred one year after the decedent's death. This section does
not bar an action to recover property or value received as the
46 result of fraud.

48 **UNIFORM PROBATE CODE COMMENT***

50 SECTION 3-1006. In 1989, the Joint Editorial Board
recommending changing the section so as to separate proceedings
52 involving claims by claimants barred one year after decedent's

2 death by Section 3-803(a)(1), and other proceedings by unbarred
claimants or by omitted heirs or devisees.'

4

6

STATEMENT OF FACT

8

This amendment replaces the original bill but retains the original intent of the bill.

10

The amendment:

12

14 1. Incorporates changes in the Probate Code recommended by
the Uniform Law Commissioners in 1989. Those changes have been
16 modified to comply structurally with the Maine Probate Code, and
in one instance, to shorten the period of time in which claims
against an estate must be brought;

18

20 2. Repeals and replaces section 3-801 of the Maine Probate
Code. The current section 3-801 is reenacted as subsection (a);
subsections (b) and (c) are new:

22

24 A. Subsection (a) retains as mandatory the requirement that
personal representatives publish a notice once a week for 2
26 successive weeks announcing their appointment and that
creditors of the estate must present their claims within 4
months of the notice. The Uniform Law Commissioners
28 suggested that publication be optional;

30

32 B. Subsection (b) authorizes personal representatives to
give written notice to creditors. If a personal
representative gives written notice to a creditor more than
2 months after the notice is published under subsection (a),
34 that creditor has until 60 days after receiving the notice
to present claims, even though the 4-month limit from the
36 time of publication has run; and

38

40 C. Subsection (c) provides immunity to the personal
representative from any claims by a creditor or successor of
the decedent for failing to give notice, or for giving
notice, under this section;

42

44 3. Repeals and replaces section 3-802 of the Maine Probate
Code. Although there are slight language modifications, there is
no intent to change the meaning of the section. The amendment
46 breaks down the current provisions into 3 separate subsections
which reflect the 3 different subjects concerning statutes of
48 limitations covered by section 3-802;

50

52 4. Amends section 3-803 of the Maine Probate Code. It
incorporates changes to subsection (a) recommended by the Uniform
Law Commissioners in response to the United States Supreme Court

COMMITTEE AMENDMENT "A" to H.P. 491, L.D. 671

2 decision in Tulsa Professional Collection Services v. Pope, 108
S. Ct. 1340, 485 U.S. 478 (1988). This amendment differs from
4 the Uniform Probate Code adopted by the Uniform Law Commissioners
structurally and substantively. Structurally, in order to comply
6 with Maine drafting and legislative history rules, paragraph (1)
is not redesignated as paragraph (2), and vice versa, as
8 recommended by the Uniform Law Commissioners. In addition, the
Uniform Probate Code changes split part of current subsection
(a), paragraph (1), into a new subsection (b), and redesignated
10 current (b) and (c) as (c) and (d), respectively. This amendment
moves the sentence from paragraph (1) into a new subsection
12 (a-1); (b) and (c) are not redesignated.

14 The Uniform Law Commissioners recommended that the outside time
limit for filing all claims against the estate that arose before
16 the decedent's death be reduced from 3 years after the decedent's
death to one year after the decedent's death. This amendment
18 changes that limit to 9 months after the decedent's death to
facilitate faster closing of estates;

20
22 5. References the changes in the notice provisions of
section 3-803 of the Maine Probate Code; and

24 6. Separates proceedings involving creditors barred one
year after the decedent's death from proceedings involving
26 unbarred claimants or omitted heirs or devisees.

28 Additional statements of fact identified as "Uniform Probate
Code Comment*" are interspersed throughout the text as
30 explanations of individual sections.

Reported by the Committee on Judiciary
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House
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