

MAINE STATE LEGISLATURE

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SAK
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L.D. 196

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Date: 3-1-23

(Filing No. H- 5)

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JUDICIARY

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Reproduced and distributed under the direction of the Clerk of the House.

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STATE OF MAINE

6

HOUSE OF REPRESENTATIVES

7

131ST LEGISLATURE

8

FIRST REGULAR SESSION

9

COMMITTEE AMENDMENT "A" to H.P. 120, L.D. 196, "An Act to Implement the Recommendations of the Probate and Trust Law Advisory Commission for Amending the Maine Uniform Probate Code and Related Provisions of Law"

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Amend the bill by inserting after the title and before the enacting clause the following:

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

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Whereas, the Maine Uniform Probate Code took effect September 1, 2019, but the new confidentiality of records provisions applicable to adult guardianships, conservatorships and other protective arrangements were delayed until January 1, 2023 to allow the development and adoption of rules governing those records by the Supreme Judicial Court; and

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Whereas, the rules governing confidentiality of probate court records have not yet been adopted; and

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

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

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Amend the bill in section 5 in §2-403 in the indented paragraph in the 4th line from the end (page 3, line 8 in L.D.) by striking out the following: "and" and inserting the following: 'or'

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Amend the bill in section 12 in subsection 4 in the first line (page 4, line 20 in L.D.) by striking out the following: "January" and inserting the following: 'January April'

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Amend the bill in section 13 in subsection 4 in the first line (page 4, line 23 in L.D.) by striking out the following: "January" and inserting the following: 'January April'

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COMMITTEE AMENDMENT

8075

1 Amend the bill in section 14 in subsection 4 in the first line (page 4, line 26 in L.D.)
2 by striking out the following: "January" and inserting the following: 'January April'

3 Amend the bill in section 15 in §6-417 in the 5th indented paragraph in the 4th line
4 (page 6, line 14 in L.D.) by inserting after the following: "TOD" the following: 'deed'

5 Amend the bill by inserting after section 16 the following:

6 **'Sec. 17. Report.** The Supreme Judicial Court shall submit a report to the joint
7 standing committee of the Legislature having jurisdiction over judiciary matters no later
8 than January 1, 2025 summarizing the court's progress toward adopting rules governing the
9 confidentiality of records in probate court proceedings, specifically rules governing the
10 confidentiality of adult guardianship, conservatorship and other protective arrangement
11 proceedings, and identifying any potential conflicts between the adopted or proposed rules
12 and any provisions of the Maine Uniform Probate Code. The joint standing committee of
13 the Legislature having jurisdiction over judiciary matters may report out legislation to the
14 132nd Legislature in 2025 based on the report.'

15 Amend the bill by adding before the summary the following:

16 **'Emergency clause.** In view of the emergency cited in the preamble, this legislation
17 takes effect when approved.'

18 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
19 number to read consecutively.

20 **SUMMARY**

21 This amendment further delays, until April 1, 2025, the effective date of the statutes
22 governing the confidentiality of records in proceedings for guardianships of adults,
23 conservatorships and other protective arrangements. The amendment directs the Supreme
24 Judicial Court to submit a report to the joint standing committee of the Legislature having
25 jurisdiction over judiciary matters by January 1, 2025 summarizing the court's progress
26 toward adopting rules governing the confidentiality of records in probate court proceedings
27 and identifying any potential conflicts between the adopted or proposed rules and any
28 provisions of the Maine Uniform Probate Code.

29 The amendment also adds an emergency preamble and emergency clause and corrects
30 errors.

31 The Maine Comments to the sections of the Maine Uniform Probate Code amended by
32 this legislation that were submitted by the Probate and Trust Law Advisory Commission
33 follow.

34 **Maine Comment for Title 18-C, section 1-504**

35 To maintain the confidentiality of the financial information included in a petition for
36 the elective share, the register is required to certify to the registry of deeds an abstract of
37 the petition rather than the complete petition.

38 **Maine Comment for Title 18-C, section 2-402**

39 The homestead allowance has priority over all claims against the estate except costs
40 and expenses of administration and reasonable funeral expenses. See the priority of claims
41 in section 3-805(1). The spouse or minor or dependent children need not present a demand

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1 for payment of the homestead allowance. The personal representative has an affirmative
2 obligation to pay the homestead allowance as soon as reasonably possible after the personal
3 representative is satisfied that there are sufficient assets available to pay costs and expenses
4 of administration and reasonable funeral expenses.

5 **Maine Comment for Title 18-C, section 2-403**

6 The exempt property right has priority over all claims against the estate except costs
7 and expenses of administration, reasonable funeral expenses, the homestead allowance, and
8 the family allowance. See the priority of claims in section 3-805(1). The spouse or children
9 need not present a demand for satisfaction of the exempt property right. The personal
10 representative has an affirmative obligation to distribute assets to satisfy the exempt
11 property as soon as reasonably possible after the personal representative is satisfied that
12 there are sufficient assets available to pay costs and expenses of administration, reasonable
13 funeral expenses, the homestead allowance, and the family allowance. The decedent may,
14 by will, expressly exclude one or more adult children from the right to receive exempt
15 property.

16 **Maine Comment for Title 18-C, section 2-404**

17 The family allowance has priority over all claims against the estate except costs and
18 expenses of administration, reasonable funeral expenses, and the homestead allowance. See
19 the priority of claims in section 3-805(1). The spouse or children need not present a demand
20 for payment of the family allowance. The personal representative has an affirmative
21 obligation to pay the family allowance as soon as reasonably possible after the personal
22 representative is satisfied that there are sufficient assets available to pay costs and expenses
23 of administration, reasonable funeral expenses, and the homestead allowance.

24 **Maine Comment for Title 18-C, section 3-108, subsection 1, paragraphs D and E**

25 Maine deviates from the Uniform Probate Code by permitting the informal or formal
26 filing of an appointment proceeding or testacy proceeding more than 3 years after the
27 decedent's death for the purposes stated in paragraphs D and E.

28 **Maine Comment for Title 18-C, section 6-417**

29 The template transfer on death deed is not intended to be printed and used as a "fill in
30 the blank" document. Rather, it is provided for the purpose of being used as a starting
31 template for preparation of a deed that complies in all respects with deed signing and
32 recording requirements.

33 **Maine Comment for Title 18-C, section 6-418**

34 The template for revocation of a transfer on death deed is not intended to be printed
35 and used as a "fill in the blank" document. Rather, it is provided for the purpose of being
36 used as a starting template for preparation of a document that complies in all respects with
37 signing and recording requirements.

38 **FISCAL NOTE REQUIRED**
39 (See attached)



131st MAINE LEGISLATURE

LD 196

LR 448(02)

An Act to Implement the Recommendations of the Probate and Trust Law Advisory Commission for Amending the Maine Uniform Probate Code and Related Provisions of Law

Fiscal Note for Bill as Amended by Committee Amendment *A(H-5)*

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Additional costs to the Judicial Department to submit a report are expected to be minor and can be absorbed within existing budgeted resources.