

MAINE STATE LEGISLATURE

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SEVENTY-EIGHTH LEGISLATURE

SENATE

NO. 262

In Senate, March 1, 1917.

Referred to Committee on Legal Affairs and five hundred copies ordered printed. Sent down for concurrence.

W. E. LAWRY, Secretary.

Presented by Mr. Lord of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND SEVENTEEN

An Act to amend Chapter 67, Section 26 of Chapter 70, Section 44 of Chapter 68, Sections 9 and 10 of Chapter 72, Section 95 of Chapter 86, and Sections 14, 15, 20 and 21 of Chapter 92; and to repeal Sections 42 and 43 of Chapter 68, and Sections 16 and 21 of Chapter 92, relating to notice of appointment of executors, administrators, guardians of adults, and conservators; and to limitation of actions against the estates of deceased persons.

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

Section 1. Chapter sixty-seven of the Revised Statutes is
2 hereby amended by adding the following section:

‘Within two months after the qualification of an executor, administrator, guardian of an adult, or conservator, the register of probate shall cause public notice of such appointment to be given, and shall enter upon the docket the name of the newspaper and the date of the first publication. Such notice may be given in a list showing the name of the estate, the name and residence of each person appointed and, in each case where an agent has been appointed, the name and residence of such agent. Such executor, administrator, guardian or conservator may be required to give such further notice of his appointment as the judge may order. At the time of his qualification, such executor, administrator, conservator or guardian of an adult shall pay to the register of probate the cost of such public notice, together with such reasonable fee for such additional duty as may be fixed by the judge, and he shall be allowed said sums in his account.’

Sect. 2. Sections forty-two and forty-three of Chapter sixty-eight of the Revised Statutes are hereby repealed.

Sect. 3. Section forty-four of Chapter sixty-eight is hereby amended so as to read as follows:

‘Sect. 44. No person residing out of the state shall be appointed an executor or administrator, unless he shall have appointed an agent or attorney in the state. Such appointment shall be made in writing and shall give the name and address of the agent or attorney. Said written appointment shall be filed and recorded in the Registry of Probate for the county in which the principal is appointed, and by such ap-

8 pointment the subscriber shall agree that the service of any
9 legal process against him as such executor or administrator,
10 or that the service of any such process against him in his
11 individual capacity in any action founded upon or arising
12 out of any of his acts or omissions as such executor or ad-
13 ministrator shall, if made on such agent, have like effect as
14 if made on himself personally within the state, and such ser-
15 vice shall have such effect. An executor or administrator
16 who after his appointment removes from and resides without
17 the state shall so appoint an agent within thirty days after
18 such removal, and give public notice thereof. If an agent
19 appointed under the provisions of this section dies or re-
20 moves from the state before the final settlement of the
21 accounts of his principal, another appointment shall be made,
22 filed and recorded as above provided, and public notice
23 thereof given; the powers of an agent appointed under the
24 provisions of this section shall not be revoked prior to the
25 final settlement of the estate unless another appointment
26 shall be made as herein provided. Neglect or refusal by an
27 executor or administrator to comply with any provision of
28 this section shall be cause for removal. An executor or
29 administrator residing out of the state shall not appoint his
30 co-executor or co-administrator, residing in the state, as his
31 agent.'

Sect. 4. Section nine of Chapter seventy-two of the
2 Revised Statutes is hereby amended by striking out the words
3 "give notice of their appointment and make return thereof

4 to the registry of probate in the manner provided by law
5 relating to notices of appointment by executors and adminis-
6 trators. 'They' in the first, second, third and fourth lines of
7 said section, so that said section, as amended, shall read as
8 follows:

'Sect. 9. AUTHORITY AND DUTIES. Such guardians
2 shall have the custody of the persons of their wards, if
3 resident in the state, except so far as the court of probate
4 may from time to time otherwise order; and every guardian
5 appointed over any person for gambling, idleness, drinking
6 or debauchery, shall inculcate upon him habits of sobriety
7 and industry, and when of sufficient health and strength,
8 with the approbation of the judge, may bind him out to labor,
9 not exceeding six months at any one time, or employ him in
10 his own service; giving credit for his earnings, or such sum
11 as he receives therefor.'

Sect. 5. Section ten of Chapter seventy-two is hereby
2 amended by striking out the words "to giving notice of
3 appointment and" in the next to the last line in said section,
4 so that said section as amended shall read as follows:

'Sect. 10. APPOINTMENT OF CONSERVATOR.
2 Whenever any person shall deem himself unfitted, by reason
3 of infirmities of age or physical disability, to manage his
4 estate with prudence and understanding, he may apply to
5 the judge of probate for the county in which he resides, for
6 the appointment of a conservator of his estate, and there-
7 upon the judge of probate may upon hearing, after such

8 notice as he may order, appoint some suitable person as
9 conservator of his estate, and such appointment shall not
10 disfranchise the person for whose estate such conservator is
11 appointed. The person so appointed shall give bond to the
12 judge of probate, in such sum and with such sureties, resi-
13 dent in the state, or with a surety company authorized to do
14 business in the state, as surety, as the judge accepts, con-
15 ditioned as provided in Section twelve, and all provisions of
16 law relating to the management of estates of adult persons
17 under guardianship shall apply to such conservator.'

Sect. 6. Section ninety-five of Chapter eighty-six of the
2 Revised Statutes is hereby amended by striking out the words
3 "affidavit has been filed in the probate office that notice of
4 his appointment has been given by him" and inserting in
5 their place the words 'he has qualified as such executor or
6 administrator' so that such section as amended may read as
7 follows:

'Sect. 95. PROVISIONS IN CASE OF DEATH OF
2 EITHER PARTY BEFORE SUIT IS COMMENCED.
3 If a person entitled to bring, or liable to any action before
4 mentioned, dies before or within thirty days after the expira-
5 tion of the time herein limited therefor, and the cause of
6 action survives, the action may be commenced by the
7 executor or administrator at any time within eighteen months
8 after his appointment, and not afterwards, if barred by the
9 other provisions hereof; actions on such claims may be com-
10 menced against the executor or administrator, after one

11 year, or within one year subject to continuance without
12 costs, and within eighteen months after he has qualified as
13 such executor or administrator, and not afterwards, if
14 barred by the other provisions hereof, except as provided in
15 Section eighteen of Chapter ninety-two.'

Sect. 7. Section fourteen of Chapter ninety-two of the
2 Revised Statutes is hereby amended by striking out the
3 words "affidavit has been filed in the registry of probate that
4 notice has been given by said executor or administrator of
5 his appointment" and inserting the words 'his qualification
6 as such executor or administrator,' so that said section as
7 amended shall read as follows:

'Sect. 14. All claims against estates of deceased persons,
2 except for legacies and distributive shares and for labor and
3 materials for which suit may be commenced under Section
4 thirty-four of Chapter ninety-six, shall be presented to the
5 executor or administrator in writing, or filed in the registry
6 of probate, supported by an affidavit of the claimant, or of
7 some other person cognizant thereof, either before or within
8 eighteen months after his qualification as such executor or
9 administrator; and no action shall be commenced against
10 such executor or administrator on any such claim until
11 thirty days after the presentation or filing of such claim as
12 above provided. Any claim not so presented or filed shall be
13 forever barred against the estate, except as provided in Sec-
14 tions seventeen, nineteen and twenty-two of this chapter.'

Sect. 8. Section fifteen of Chapter ninety-two of the Re-

2 vised Statutes is hereby amended so as to read as follows:

‘Sect. 15. Actions against executors or administrators, on
2 such claims, if brought within one year after their qualifica-
3 tion, shall be continued without costs to either party, until
4 said year expires and be barred by a tender of the debt
5 within the year, except actions on claims not affected by the
6 insolvency of the estate and actions on appeals from com-
7 missioners of insolvency or other commissioners appointed
8 by the judge of probate. No action shall be maintained
9 against an executor or administrator on a claim or demand
10 against the estate, except for legacies and distributive shares,
11 and except as provided in Section eighteen, unless com-
12 menced and served within twenty months after his qualifica-
13 tion as such executor or administrator. When an executor,
14 or administrator, guardian or testamentary trustee residing
15 out of the state, has no agent or attorney in the state, ser-
16 vice may be made on one of his sureties in the same manner
17 and with the same effect as if made on him.’

Sect. 9. Section sixteen of Chapter ninety-two of the
2 Revised Statutes is hereby repealed.

Sect. 10. Section twenty of Chapter ninety-two of the
2 Revised Statutes is hereby amended by striking out the whole
3 of said section and inserting in place thereof the following:

‘Sect. 20. When an executor or administrator after
2 qualification dies, resigns, or is removed, without having
3 fully administered the estate, and a new administrator is
4 appointed, such new administration shall be deemed to be a

5 continuation of the preceding administration, and all limita-
6 tions which could be claimed for or against the predecessor
7 may be claimed for or against such successor: *Provided,*
8 *however,* that the time when there is no representative of the
9 estate shall not be reckoned as part of the periods for the
10 filing or proof of claims or limitations for bringing suits;
11 and such periods, and generally the periods referred to where
12 no provision to the contrary is made, shall be reckoned
13 exclusive of such time.'

Sect. 11. Section twenty-one of Chapter ninety-two of the
2 Revised Statutes is hereby repealed.

Sect. 12. Section twenty-six of Chapter seventy is hereby
2 amended by striking out the words "unless he has failed to
3 give notice of his appointment as required by law and the
4 judge of probate," so that said section as amended shall read
5 as follows:

'Sect. 26. LEGACIES, WHEN PAYABLE. Legacies
2 shall be payable in one year after final allowance of the will;
3 but such payments shall not be affected by any claims pre-
4 sented to the executor, or administrator with the will
5 annexed, or filed in the probate office, after the expiration of
6 said one year and after such payment; nor shall the executor
7 or administrator with the will annexed be responsible for the
8 payments of said legacies on account of such claims.'

Sect. 13. Chapter eighty-six is hereby amended by adding
2 thereto the following section:

'Sect. 109. Where no administration is had upon the

2 estate of a deceased person within six years from the date of
3 death of said decedent, and no petition for administration is
4 pending, all actions upon any claim against said decedent
5 shall be barred.'

Sect. 14. For the purposes of this Act, an executor, ad-
2 ministrator, guardian of an adult, or conservator, shall be
3 deemed to be qualified when his bond has been filed and
4 approved by the Judge of Probate; provided however, that in
5 cases where no bond is required the date of appointment
6 shall be deemed to be the date of qualification.