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L.D. 145

Date: (Filing No. H-)

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST REGULAR SESSION

FOR REVIEW 3.2.21

COMMITTEE AMENDMENT " " to H.P. 101, L.D. 145, "An Act To Amend the Maine Uniform Probate Code"

Amend the bill in the 2nd paragraph after the title in the 2nd line (page 1, line 4 in L.D.) by striking out the following: "and" and inserting the following: ';

1

Amend the bill in the 2nd paragraph after the title in the 3rd line (page 1, line 5 in L.D.) by inserting after the following: "conservatorships" the following: 'and other protective arrangements'

2

Amend the bill by inserting after section 5 the following:

'Sec. 6. 18-C MRSA §5-511, sub-§4, as enacted by PL 2019, c. 417, Pt. A, §95, is amended to read:

3

4. Effective date. This section takes effect January 1, ~~2021~~ 2023.'

Amend the bill in section 7 in the 2nd line (page 2, line 12 in L.D.) by striking out the following: "and" and inserting the following: ';

4

Amend the bill in section 7 in the 2nd line (page 2, line 12 in L.D.) by inserting after the following: "4" the following: 'and section 5-511, subsection 4'

5

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

SUMMARY

This amendment amends the bill to provide the same delay in effective date of the provisions concerning the confidentiality of records pertaining to protective arrangements as the bill provides for records concerning adult guardianships and conservatorships.

It also amends the retroactivity language to make the change apply retroactively to January 1, 2021.

No fiscal note required

COMMITTEE AMENDMENT

LD 145

How Committee Amendment will change the bill.

and other protective proceedings [2]

[1]

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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

Whereas, the Maine Uniform Probate Code took effect September 1, 2019, but the new confidentiality of records provisions applicable to adult guardianships, and conservatorships were delayed until January 1, 2021 to allow the development and adoption of rules governing those records by the Supreme Judicial Court; and

Whereas, the rules governing confidentiality of Probate Court records have not yet been adopted; and

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

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,

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

Sec. 1. 18-C MRSA §3-108, sub-§1, ¶D, as amended by PL 2019, c. 417, Pt. A, §4, is further amended to read:

D. ~~An~~ Regardless of whether the decedent dies before, on or after the effective date of this Code, an informal appointment or a formal testacy or appointment proceeding may be commenced more than 3 years after the decedent's death if no proceeding concerning the succession or estate administration has occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets as provided in section 3-709 beyond that necessary to confirm title in the successors to the estate, and claims other than expenses of administration may not be presented against the estate;

Sec. 2. 18-C MRSA §5-308, sub-§4, as enacted by PL 2019, c. 417, Pt. A, §30, is amended to read:

4. Effective date. This section takes effect January 1, ~~2021~~ 2023.

Sec. 3. 18-C MRSA §5-409, sub-§4, as enacted by PL 2019, c. 417, Pt. A, §62, is amended to read:

4. Effective date. This section takes effect January 1, ~~2021~~ 2023.

Sec. 4. 18-C MRSA §5-423, sub-§2, ¶E, as amended by PL 2019, c. 417, Pt. A, §80, is further amended to read:

E. ~~An annual credit report of the individual subject to conservatorship and, to~~ ~~To~~ the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts and mortgages or other debts of the individual subject to conservatorship, with all but the last 4 digits of the account numbers and the individual's social security number redacted, and, if ordered by the court, a credit report of the individual subject to guardianship;

Sec. 5. 18-C MRSA §5-431, sub-§8, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

1 **8. Safeguard rights of individual.** Unless the court otherwise orders for good cause,
2 before terminating or modifying a conservatorship, the court shall follow the same
3 procedures to safeguard the rights of the individual subject to conservatorship that apply to
4 a petition for conservatorship.

5 **Sec. 6. 18-C MRSA §8-301, sub-§2, ¶A-1,** as amended by PL 2019, c. 598, §8,
6 is further amended to read:

7 A-1. The intestate succession provisions of Article 2, Part 1, Subpart 1, the elective
8 share provisions of Article 2, Part 2 and the exempt property and allowances
9 provisions of Article 2, Part 4 and the wrongful death provisions of section 2-807 apply
10 to the estates of decedents who die on or after the effective date;

11 **Sec. 7. Retroactivity.** Those sections of this Act that amend the Maine Revised
12 Statutes, Title 18-C, section 5-308, subsection 4, and section 5-409, subsection 4, apply
13 retroactively to January 1, 2021.

14 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
15 takes effect when approved.

SUMMARY

17 This bill contains recommendations of the Probate and Trust Law Advisory
18 Commission pursuant to the Maine Revised Statutes, Title 18-C, section 1-803, subsection
19 2.

20 1. This bill amends Title 18-C, section 3-108 to resolve an ambiguity as to whether the
21 provision applies to decedents who died prior to the effective date of Title 18-C.

22 Section 3-108, subsection 1, paragraph D allows the probate of a will of a decedent
23 more than 3 years after death in a formal proceeding, but as a result of the limitations
24 imposed by section 8-301, subsection 2, paragraph A, the probate is permitted only for a
25 decedent who died after the September 1, 2019 effective date of Title 18-C. Section 3-108,
26 subsection 1, paragraph D appears to allow an appointment of a personal representative, in
27 an informal or formal proceeding, more than 3 years after death regardless of whether the
28 date of death was before, on, or after the September 1, 2019 effective date of Title 18-C.

29 As a result, if a decedent died more than 3 years prior to the September 1, 2019 effective
30 date, with a purported will, it would not be possible to probate the will under current law
31 because of the limitation imposed by section 8-301, subsection 2, paragraph A. However,
32 it appears that the decedent's heirs could, under section 3-108, subsection 1, paragraph D,
33 still obtain an informal or formal appointment of a personal representative because the
34 appointment is permitted regardless of the date of death. The heirs would submit an
35 informal application or a formal petition for appointment of a personal representative,
36 indicate that they are aware of an unrevoked testamentary instrument and explain that it is
37 not being probated because it cannot be probated due to section 8-301, subsection 2,
38 paragraph A. There is ambiguity, however, as to whether the limitations of section 8-301,
39 subsection 2, paragraph A prevent the appointment of a personal representative more than
40 3 years after the date of death.

41 The interplay between section 3-108, subsection 1, paragraph D and section 8-301,
42 subsection 2, paragraph A appears to create unintended inconsistencies in outcomes
43 regarding the appointment of a personal representative and the probate of a will that can be

[3] →
18-C §§ 5-511
sub-54

[4] →

and
section
5-511,
subsection
4
[5]

Summary not amended