**South Carolina General Assembly**

122nd Session, 2017-2018

**S. 589**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Setzler

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Introduced in the Senate on March 29, 2017

Currently residing in the Senate Committee on **Judiciary**

Summary: Time limit to commence a probate

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/29/2017 Senate Introduced and read first time ([Senate Journal‑page 5](file:///h:\sj\20170329.docx))

3/29/2017 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 5](file:///h:\sj\20170329.docx))

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**VERSIONS OF THIS BILL**

[3/29/2017](file:///p:\pprever\2017-18\589_20170329.docx)

**A** **BILL**

TO AMEND SECTION 62‑3‑108, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ULTIMATE TIME LIMIT TO COMMENCE A PROBATE, TESTACY, OR APPOINTMENT PROCEEDING, SO AS TO PROVIDE FOR THE COMMENCEMENT OF CERTAIN PROCEEDINGS MORE THAN TEN YEARS AFTER A DECEDENT’S DEATH IF, IN THE DISCRETION OF THE COURT, EXTRAORDINARY CIRCUMSTANCES PREVENTED THE COMMENCEMENT OF PROCEEDINGS SOONER THAN TEN YEARS AFTER THE DECEDENT’S DEATH AND IT IS EQUITABLE TO DO SO.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 62‑3‑108 of the 1976 Code, as last amended by Act 100 of 2013, is further amended to read:

“Section 62‑3‑108. (A)(1) 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 been a prior appointment, may be commenced more than ten years after the decedent’s death.

(2) Notwithstanding ~~any other~~ another provision of this section:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent’s death, appropriate probate, appointment, or testacy proceedings may be maintained at any time upon a finding that the decedent’s death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding and if that previous proceeding was commenced within the time limits of this section;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; ~~and~~

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within eight months from informal probate or one year from the decedent’s death, whichever is later~~.~~; and

(d) an informal probate, appointment, formal testacy, or appointment proceeding may be commenced more than ten years after the decedent’s death if, in the discretion of the court:

(i) extraordinary circumstances prevented the commencement of proceedings sooner than ten years after the decedent’s death; and

(ii) it is equitable to do so.

(B) Except as provided in subsection (A)(2)(d), ~~If~~ if no informal probate and no formal testacy proceedings are commenced within ten years after the decedent’s death, and no proceedings ~~under~~ pursuant to subsection (A)(2)(b) are commenced within the applicable period of three years, it is incontestable that the decedent left no will and that the decedent’s estate passes by intestate succession. These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In proceedings commenced ~~under~~ pursuant to subsection (A)(2)(a) or (A)(2)(b), the date on which a testacy or appointment proceeding is properly commenced is deemed to be the date of the decedent’s death for purposes of other limitations provisions of this code which relate to the date of death.”

SECTION 2. This act takes effect upon approval by the Governor.

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