
By: **Delegates Getty and Hecht**

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Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Right to Share of Intestate Net Estate, Right to Spousal**
3 **Elective Share, Revocation of a Will, and Priority Right of Surviving Spouse**
4 **- Pending Divorce**

5 FOR the purpose of limiting the right of a spouse to take a share of a certain intestate
6 net estate if at the time of death a divorce proceeding is pending that is based on
7 certain excessively vicious conduct or cruelty of treatment by the surviving
8 spouse; limiting the right of a spouse to an elective share of the net estate of a
9 certain testator if certain circumstances are present at the time of death;
10 permitting the revocation of certain provisions of a will if certain circumstances
11 are present at the time of death; limiting the priority right of a surviving spouse
12 to receive certain letters or to be appointed a certain representative if certain
13 circumstances are present at the time of death; making this Act an emergency
14 measure; and generally relating to the right of a surviving spouse to a share of
15 a certain net intestate estate, the right to a spousal elective share, the
16 revocation of a will, and the priority right of a surviving spouse when a certain
17 divorce proceeding is pending at the time of the testator's death.

18 BY repealing and reenacting, with amendments,
19 Article - Estates and Trusts
20 Section 3-102, 3-203, 4-105, and 5-104
21 Annotated Code of Maryland
22 (1991 Replacement Volume and 1998 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article - Estates and Trusts**

26 3-102.

27 (a) The share of a surviving spouse shall be as provided in this section.

28 (B) IF AT THE TIME OF DEATH A DIVORCE PROCEEDING, BASED ON PROOF OF
29 EXCESSIVELY VICIOUS CONDUCT OR CRUELTY OF TREATMENT BY THE SURVIVING

1 SPOUSE, AS EVIDENCED BY MEDICAL RECORDS OR COURT ORDERS, WAS PENDING,
2 THE SURVIVING SPOUSE IS NOT ENTITLED TO A SHARE.

3 [(b)] (C) If there is a surviving minor child, the share shall be one-half.

4 [(c)] (D) If there is no surviving minor child, but there is surviving issue, the
5 share shall be the first \$15,000 plus one-half of the residue.

6 [(d)] (E) If there is no surviving issue but a surviving parent, the share shall
7 be the first \$15,000 plus one-half of the residue.

8 [(e)] (F) If there is no surviving issue or parent, the share shall be the whole
9 estate.

10 [(f)] (G) For the purposes of this section, the net estate shall be calculated
11 without a deduction for the tax as defined in § 7-308 of the Tax - General Article.

12 3-203.

13 (a) [Instead] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,
14 INSTEAD of property left to [him] A SPOUSE by will, the surviving spouse may elect to
15 take a one-third share of the net estate if there is also a surviving issue, or a one-half
16 share of the net estate if there is no surviving issue.

17 (B) A SURVIVING SPOUSE MAY NOT MAKE AN ELECTION UNDER SUBSECTION
18 (A) OF THIS SECTION IF AT THE TIME OF THE TESTATOR'S DEATH A DIVORCE
19 PROCEEDING, BASED ON PROOF OF EXCESSIVELY VICIOUS CONDUCT OR CRUELTY
20 OF TREATMENT BY THE SURVIVING SPOUSE, AS EVIDENCED BY MEDICAL RECORDS
21 OR COURT ORDERS, WAS PENDING.

22 [(b)] (C) The surviving spouse who makes this election may not take more
23 than a one-half share of the net estate.

24 [(c)] (D) For the purposes of this section, the net estate shall be calculated
25 without a deduction for the tax as defined in § 7-308 of the Tax - General Article.

26 4-105.

27 A will, or any part of it, may not be revoked in a manner other than as provided
28 in this section.

29 (1) By provision in a subsequent, validly executed will which (i) revokes
30 any prior will or part of it either expressly or by necessary implication, or (ii)
31 expressly republishes an earlier will that had been revoked by an intermediate will
32 but is still in existence;

33 (2) By burning, cancelling, tearing, or obliterating the same, by the
34 testator [himself], or by some other person in [his] THE TESTATOR'S presence and by
35 [his] THE TESTATOR'S express direction and consent;

1 (3) By the subsequent marriage of the testator followed by the birth,
2 adoption, or legitimation of a child by [him] THE TESTATOR, provided such child or
3 [his] THE CHILD'S descendant survives the testator; and all wills executed prior to
4 such marriage shall be revoked;[or]

5 (4) By an absolute divorce of a testator and [his] THE TESTATOR'S
6 spouse or the annulment of the marriage, either of which occurs subsequent to the
7 execution of the testator's will; and all provisions in the will relating to the spouse,
8 and only those provisions, shall be revoked unless otherwise provided in the will or
9 decree; OR

10 (5) BY THE INITIATION OF A DIVORCE PROCEEDING BASED ON PROOF
11 OF EXCESSIVELY VICIOUS CONDUCT OR CRUELTY OF TREATMENT BY THE
12 SURVIVING SPOUSE, AS EVIDENCED BY MEDICAL RECORDS OR COURT ORDERS,
13 WHICH OCCURS SUBSEQUENT TO THE EXECUTION OF THE TESTATOR'S WILL; AND
14 ALL PROVISIONS IN THE WILL RELATING TO THE SPOUSE, AND ONLY THOSE
15 PROVISIONS, SHALL BE REVOKED UNLESS OTHERWISE PROVIDED IN THE WILL.

16 5-104.

17 (A) [In] EXCEPT AS PROVIDED IN SUBSECTION (B), IN granting letters in
18 administrative or judicial probate, or in appointing a successor personal
19 representative, or a special administrator as provided in Subtitle 4 of Title 6, the
20 court and register shall observe the following order of priority, with any person in any
21 one of the following paragraphs considered as a class:

22 (1) The personal representatives named in a will admitted to probate;

23 (2) The surviving spouse and children of an intestate decedent, or the
24 surviving spouse of a testate decedent;

25 (3) The residuary legatees;

26 (4) The children of a testate decedent who are entitled to share in the
27 estate;

28 (5) The grandchildren of the decedent who are entitled to share in the
29 estate;

30 (6) The parents of the decedent who are entitled to share in the estate;

31 (7) The brothers and sisters of the decedent who are entitled to share in
32 the estate;

33 (8) Other relations of the decedent who apply for administration;

34 (9) The largest creditor of the decedent who applies for administration;

35 (10) Any other person having a pecuniary interest in the proper
36 administration of the estate of decedent who applies for administration; or

1 (11) Any other person.

2 (B) A SURVIVING SPOUSE MAY NOT RECEIVE THE PRIORITY IN SUBSECTION
3 (A) OF THIS SECTION, IF AT THE TIME OF THE TESTATOR'S DEATH A DIVORCE
4 PROCEEDING, BASED ON PROOF OF EXCESSIVELY VICIOUS CONDUCT OR CRUELTY
5 OF TREATMENT BY THE SURVIVING SPOUSE, AS EVIDENCED BY MEDICAL RECORDS
6 OR COURT ORDERS, WAS PENDING.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
8 measure, is necessary for the immediate preservation of the public health and safety,
9 has been passed by a yea and nay vote supported by three-fifths of all the members
10 elected to each of the two Houses of the General Assembly, and shall take effect from
11 the date it is enacted.