SB 198

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 198 (Senator Frosh)
Judicial Proceedings Judiciary

Estates and Trusts - Family Allowance

This bill increases the allowance a surviving spouse of a decedent is entitled to for personal use from $5,000 to $10,000 and increases the allowance for the use of each unmarried child of the decedent younger than age 18 from $2,500 to $5,000. The bill applies only prospectively.

Fiscal Summary

State Effect: General fund revenues may decrease minimally due to reduced estate and inheritance tax revenues. No effect on expenditures.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A surviving spouse of a decedent is entitled to receive an allowance of $5,000 for personal use. An allowance of $2,500 for the use of each unmarried child of the decedent younger than age 18 at the time of the death of the decedent must be paid by the personal representative, in accordance with specified provisions, for the use of the minor.

Background: These family allowances are available whether or not a decedent has left a will and are in addition to amounts that would otherwise be received under a will or through intestate succession. The allowances also are given priority over creditors' claims against an estate and legatees (those receiving property) under a will. *Shimp v. Huff*, 315 Md. 624 (1989).

The registers of wills indicate that the bill would alter the administration of some estates by allowing a slightly larger portion of estate funds to be shielded from creditors. Further, in some cases, where an estate is small enough, the expanded allowances may alleviate the need to advertise the opening of the estate for potential creditors or unknown heirs where the expanded allowances would cause there to be no remaining available property. Not having to advertise would allow for more expedient administration of these small estates.

The allowances were last increased by Chapter 645 of 1991 (HB 1227). The allowance for a surviving spouse increased from $2,000 to $5,000 and the minor children's allowance increased from $1,000 to $2,500.

State Revenues: General fund revenues may decrease minimally due to reduced estate and inheritance tax revenues. Property passing from a decedent to the surviving spouse and the decedent's children is exempt from inheritance tax and an estate passing property to the surviving spouse is entitled to claim an unlimited marital deduction against the estate tax.

Inheritance tax revenues decrease to the extent the increased family allowance shifts assets in an estate from entities or individuals subject to inheritance tax to the surviving spouse or minor children. The registers of wills indicate, however, that it is not common for property to pass to entities or individuals subject to inheritance tax (*e.g.*, an aunt or uncle, niece or nephew, or friend) in estates where there is a surviving spouse or child. Given the marital deduction under the estate tax, increasing the family allowance for spouses may also decrease estate tax revenues to the extent the increased allowance shifts assets that would have otherwise been part of the taxable estate to the spouse.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Register of Wills, Comptroller's Office, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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mlm/kdm

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