

HOUSE BILL 281

N2

5lr1714

By: **Delegate Dumais**

Introduced and read first time: February 4, 2015

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Elective Share**

3 FOR the purpose of altering the definition of “net estate”, for purposes of certain provisions
4 of law relating to a surviving spouse making an election to take a certain share of
5 the net estate of the decedent instead of the property left to the surviving spouse
6 under the will, to include property of a certain revocable trust; providing that, under
7 certain circumstances, a surviving spouse is entitled to take a certain elective share
8 amount of the net estate instead of certain property left to the surviving spouse by
9 will or in accordance with the trust instrument of a revocable trust of the decedent;
10 providing that, on the election, certain property or other benefits that would have
11 passed to the surviving spouse under the will or revocable trust of the decedent shall
12 be treated as if the surviving spouse had died before the execution of the will or trust
13 instrument; providing that the surviving spouse and a person claiming through the
14 surviving spouse may not receive property under the will or revocable trust of the
15 decedent; defining certain terms; making conforming changes; providing for the
16 application of this Act; and generally relating to surviving spouses and elective
17 shares in the estates of decedents.

18 BY repealing and reenacting, with amendments,
19 Article – Estates and Trusts
20 Section 3–203, 3–207, and 3–208
21 Annotated Code of Maryland
22 (2011 Replacement Volume and 2014 Supplement)

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

25 **Article – Estates and Trusts**

26 3–203.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) In this section[, “net] **THE FOLLOWING WORDS HAVE THE MEANINGS**
2 **INDICATED.**

3 (2) “**NET estate**” means **THE AGGREGATE VALUE OF** the property of the
4 decedent passing by testate succession **AND THE PROPERTY OF ANY REVOCABLE TRUST**
5 **OF THE DECEDENT**, without a deduction for State or federal estate or inheritance taxes,
6 and reduced by:

7 [(1)] (I) Funeral and administration expenses, **WHETHER PAYABLE**
8 **FROM THE DECEDENT’S ESTATE OR A REVOCABLE TRUST OF THE DECEDENT;**

9 [(2)] (II) Family allowances, **WHETHER PAYABLE FROM THE**
10 **DECEDENT’S ESTATE OR A REVOCABLE TRUST OF THE DECEDENT;** and

11 [(3)] (III) Enforceable claims and debts against the estate, **WHETHER**
12 **PAYABLE FROM THE DECEDENT’S ESTATE OR A REVOCABLE TRUST OF THE**
13 **DECEDENT.**

14 (3) “**REVOCABLE**” HAS THE MEANING STATED IN § 14.5–103 OF THIS
15 **ARTICLE.**

16 (4) “**REVOCABLE TRUST OF THE DECEDENT**” MEANS ANY TRUST OF
17 **WHICH THE DECEDENT WAS THE SETTLOR AND THAT WAS REVOCABLE**
18 **IMMEDIATELY PRIOR TO THE DECEDENT’S DEATH OR INCAPACITY.**

19 (5) “**SETTLOR**” HAS THE MEANING STATED IN § 14.5–103 OF THIS
20 **ARTICLE.**

21 (b) Instead of property left to the surviving spouse by will **OR IN ACCORDANCE**
22 **WITH THE TRUST INSTRUMENT GOVERNING A REVOCABLE TRUST OF THE**
23 **DECEDENT**, the surviving spouse may elect to take a one–third share of the net estate if
24 there is also a surviving issue, or a one–half share of the net estate if there is no surviving
25 issue.

26 (c) The surviving spouse who makes this election may not take more than a
27 one–half share of the net estate.

28 (d) For the purposes of this section, the net estate and the property allocable to a
29 share of a surviving spouse shall be valued as of the date or dates of distribution.

30 (e) (1) For the purposes of this section, a surviving spouse who has elected to
31 take against a will **AND REVOCABLE TRUST OF THE DECEDENT** shall be entitled to the
32 surviving spouse’s portion of the income earned on the net estate during the period of
33 administration based on a one–third or one–half share, whichever is applicable.

1 (2) If one or more distributions have been made to a surviving spouse or
2 another person that require an adjustment in the relative interests of the beneficiaries, the
3 applicable share shall be adjusted.

4 3-207.

5 (a) An election to take an elective share of an estate of a decedent shall be in
6 writing and signed by the surviving spouse or other person entitled to make the election
7 pursuant to § 3-204 of this subtitle, and shall be filed in the court in which the personal
8 representative of the decedent was appointed.

9 (b) The election may be in this form.

10 I, A. B., surviving spouse of C. D., late of the County (City) of, renounce
11 all provisions in the will of C. D. **AND IN ANY TRUST INSTRUMENT GOVERNING A**
12 **REVOCABLE TRUST OF C. D.** and elect to take my elective share of the decedent's
13 estate **AND ANY REVOCABLE TRUST OF THE DECEDENT.**

14
15 (Signature)

16 3-208.

17 (a) (1) Upon the election of the surviving spouse to take the elective share of
18 the property of the decedent, all property or other benefits which would have passed to the
19 surviving spouse under the will **OR IN ACCORDANCE WITH THE TRUST INSTRUMENT OF**
20 **A REVOCABLE TRUST OF THE DECEDENT, AS DEFINED IN § 3-203 OF THIS SUBTITLE,**
21 shall be treated as if the surviving spouse had died before the execution of the will **OR**
22 **TRUST INSTRUMENT.**

23 (2) The surviving spouse and a person claiming through the surviving
24 spouse may not receive property under the will **OR IN ACCORDANCE WITH THE TRUST**
25 **INSTRUMENT.**

26 (b) (1) If there is an election to take an elective share, contribution to the
27 payment of it shall be prorated among all legatees.

28 (2) Instead of contributing an interest in specific property to the elective
29 share, a legatee or legatees, but not the personal representative **OR TRUSTEE,** may pay the
30 surviving spouse in cash, or other property acceptable to the spouse, an amount equal to
31 the fair market value of the surviving spouse's interest in specific property on the date or
32 dates of distribution.

33 (3) Unless specifically provided in the will **OR TRUST INSTRUMENT,** a
34 legatee is not entitled to sequestration or compensation from another legatee, or from
35 another part of the estate of the decedent, except that an interest renounced by the
36 surviving spouse and not included in the share of the net estate received by the surviving

1 spouse under this section may be subject to sequestration for the benefit of individuals who
2 are the natural objects of the bounty of the decedent, in order to avoid a substantial
3 distortion of the intended dispositions of the testator **OR SETTLOR**.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
5 apply only prospectively and may not be applied or interpreted to have any effect on or
6 application to any estate opened before the effective date of this Act.

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2015.