

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 109

(Senator Reilly)

Judicial Proceedings

**Estates and Trusts - Share of Intestate Estate Inherited by Surviving Parent -
Repeal**

This bill alters the intestate succession rules, in cases where there is a surviving spouse but no surviving issue of a decedent, to remove a surviving parent from receiving a one-half share in that part of the intestate estate remaining after the spouse's initial share. The bill has prospective application and, accordingly, does not apply to the estate of any decedent who died before the bill's October 1, 2018 effective date.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues from estate taxes due to the bill's modification of intestate succession rules. State expenditures are not affected; the bill's changes can be implemented with existing resources.

Local Effect: The bill's changes can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Current Law: In construing the provisions of the estates of decedents law, "issue" means every living lineal descendant except a lineal descendant of a living lineal descendant. Generally, any part of the net estate of a decedent not effectively disposed of by the will must be distributed to the heirs of the decedent in the order prescribed in State law. A surviving spouse receives one-half of the intestate estate when there is a surviving minor child. If there is no surviving minor child, but there is surviving issue, or if there is no surviving issue, but there is a surviving parent, the share of the surviving spouse must be

the first \$40,000 plus one-half of the remaining estate. If there is no surviving issue or parent, the share of the spouse must be the whole estate. The net estate must be calculated without a deduction for the Maryland Uniform Estate Tax.

State Revenues: General fund revenues decrease, likely minimally, from the reduction in the size of estates subject to taxation. The Maryland estate tax exemption amount is \$4 million in 2018, and the tax is limited to 16% of the amount by which the decedent's taxable estate exceeds the exemption. The spousal share is exempt from the Maryland estate and inheritance taxes, but the shares of surviving children and parents, while exempt from the Maryland inheritance tax, are subject to the Maryland estate tax. Accordingly, the bill reduces the taxable estate to the extent that a surviving parent's share remains with the spouse and, thus, exempt from the estate tax.

The Comptroller's Office could not provide an estimate of the number of estates closed in 2017 in time for inclusion in this analysis. However, in 2017, the Comptroller reported that approximately 2,675 estates were closed in calendar 2016. Of these, about 938 were subject to the estate tax. The bill only applies to intestate estates in which there are both a spouse and a surviving parent. The Comptroller's Office advises that the data is not available to determine how many intestate estates are taxable and subject to the bill. The distribution amounts that pass to a surviving parent from intestate estates are also unknown. However, the number of estates subject to the bill is likely to be small, and, as a result, the decrease in general fund revenues is likely to be minimal.

Additional Information

Prior Introductions: SB 1100 of 2017, as amended, passed the Senate and was referred to the House Rules and Executive Nominations Committee, but received no further action.

Cross File: None.

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

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nb/kdm

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