

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 317

(Senator Reilly, *et al.*)

Judicial Proceedings

Health and Government Operations

Estates and Trusts – Share of Intestate Estate Inherited by Surviving Spouse

This bill modifies the calculation of the share of an intestate estate inherited by a surviving spouse in instances where there is a surviving parent of the deceased. The bill specifies that when calculating the share of a surviving spouse, if there is no surviving issue, but there is a surviving parent, (1) if the surviving spouse and the decedent had been married for *less than* five years, the share of the surviving spouse must be the first \$40,000 plus one-half of the residue, and (2) if the surviving spouse and the decedent had been married for *at least* five years, the share must be the whole estate. The bill applies prospectively and may not be applied to any estate of a decedent who died before the bill's October 1, 2019 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 resources.

Small Business Effect: None.

Analysis

Current Law: In the Estates and Trusts Article, "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.

Background: According to the Comptroller's Office, approximately 55% of American adults leave an intestate estate.

State Revenues: General fund revenues decrease, likely minimally, from the reduction in the size of estates subject to taxation. The spousal share is exempt from the Maryland inheritance and estate taxes, but the shares of surviving children and parents, while exempt from the Maryland *inheritance* tax, are subject to the Maryland *estate* tax. However, the Maryland estate tax exemption amount is \$5 million for tax year 2019, and the tax is limited to 16% of the amount by which the decedent's taxable estate exceeds the \$5 million exemption. Accordingly, the bill reduces the taxable estate to the extent that a surviving parent's share remains with the spouse and, thus, is exempt from the estate tax.

The Comptroller's Office could not provide an estimate of the number of estates closed in 2018 in time for inclusion in this analysis. However, the Comptroller reported that approximately 1,450 estates were closed in calendar 2017. Of these, about 695 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: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 12, 2019
sb/kdm Third Reader - March 20, 2019
Revised - Amendment(s) - March 20, 2019

Analysis by: Nathan W. McCurdy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510