

Department of Legislative Services  
Maryland General Assembly  
2000 Session

FISCAL NOTE

House Bill 265 (Delegate Finifter. *et al.*)

Judiciary

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**Estates and Trusts - Spousal Elective Share**

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This bill repeals current law concerning a surviving spouse's right to an elective share of a decedent's estate and creates a right for a surviving spouse to claim a share of the decedent's "elective estate." Under current law, a surviving spouse may take one-third of a net estate, in lieu of property left by a will, if there is a direct decedent of the decedent. A surviving spouse is allowed to take one-half of a net estate if there is no surviving issue. This bill provides that the elective share is an amount equal to the greater of: (1) the lesser of \$50,000 or one-half of the elective estate; or (2) a percentage of the elective estate (up to 40%) determined by the length of marriage to the decedent.

The bill applies to all decedents who die on or after October 1, 2000.

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**Fiscal Summary**

**State Effect:** The bill's impact on revenue cannot be reliably estimated at this time and depends on the amount of additional estate distribution to spouses and the resulting impact on inheritance and estate taxes. Expenditures would not be affected.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Current Law:** The inheritance tax is assessed either at a direct rate of 0.9% or a collateral rate of up to 10%. The rate assessed depends upon the relationship of the decedent to the recipient(s). Estates larger than \$675,000 in size are also subject to an estate tax.

Current law allows a surviving spouse to take a one-third share of a net estate, instead of property left to the spouse by a will, if there is also a surviving issue. A surviving spouse is allowed to take a one-half share of a net estate if there is no surviving issue. Transfers of real property and the first \$100,000 of an estate to a surviving spouse are exempt from the inheritance tax.

Surviving issues are the living lineal or direct descendants of a decedent (such as sons and daughters), except for a lineal descendent of a living lineal descendent (e.g., grandchild). A surviving non-issue lineal beneficiary is a recipient that is not considered a surviving issue, but is subject to the 0.9% lineal inheritance tax rate (e.g., parent). Any other beneficiaries of an estate would be considered non-issue recipients and would pay the collateral inheritance tax.

**Background:** As a result of the recent growth in revocable trusts and other estate-planning instruments, it is possible that the majority of assets of a decedent's estate may be accounted for by these alternative instruments, and that the residual estate may be small in value, even if the decedent died with substantial assets.

**State Revenues:** This bill's impact on State revenues cannot be reliably determined at this time. Inheritance tax liability could increase or decrease depending on whether or not an additional or reduced estate distribution to a spouse exceeds or falls below the \$100,000 spousal exemption, or includes more or less real property.

Any reduction in the inheritance tax paid on an estate greater than \$675,000 in value could result in an increase in estate taxes paid. Estates subject to the higher collateral inheritance tax rate, however, often result in having no estate taxes due because the inheritance tax liabilities generally exceed the maximum allowable State estate tax credit for inheritance taxes paid.

Under this bill, a surviving spouse may elect to take the greater of: (1) the minimum elective share that is an amount equal to the lesser of \$50,000 or one-half of the elective estate; or (2) an amount equal to a percentage of the elective estate as determined by the length of marriage between the decedent and the spouse as illustrated in **Exhibit 1**.

## Distribution for Elective Estates

<u>Length of Marriage</u>	<u>Elective Estate Percentage</u>
Less than 5 years	10%
At least 5 years but less than 15 years	20%
At least 15 years but less than 25 years	30%
25 years or more	40%

Source: HB 265.

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For illustrative purposes, **Exhibit 2** provides an example comparing current law to HB 265 using an estate size of \$1 million and a marriage of 25 years between the decedent and the surviving spouse.

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### Exhibit 2 Inheritance Tax Example Comparing House Bill 265 to Current Law

	<u>Issue(s) (0.9% Rate)</u>	<u>Non- Issue(s) Lineal (0.9% Rate)</u>	<u>Non-Issue(s) Non Lineal (10% Rate)</u>	<u>Spousal Share</u>	<u>Remaining Share</u>	<u>Total Inheritance Tax</u>
Current Law	x			\$333,000	\$667,000	\$ 8,100
<b>House Bill 265</b>	x			<b>\$400,000</b>	<b>\$600,000</b>	\$ 8,100
Current Law		x		\$500,000	\$500,000	\$ 8,100
<b>House Bill 265</b>		x		<b>\$400,000</b>	<b>\$600,000</b>	\$ 8,100
Current Law			x	\$500,000	\$500,000	\$ 53,600
<b>House Bill 265</b>			x	<b>\$400,000</b>	<b>\$600,000</b>	\$ 62,700

Note: assumes (1) \$100,000 spousal exemption; (2) a 0.9% inheritance tax rate on direct beneficiaries (including spouses and children); and (3) all other estate assets taxed at the 10% collateral tax rate.

Source: Comptroller's Office, Department of Legislative Services

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In this example, inheritance tax collections from estate distributions to a spouse and non-issue non-lineal beneficiaries taxed at a 10% rate would increase by \$9,100, while inheritance taxes are unchanged for the other types of distributions. Increased estate taxes would offset some or all of this loss. The net impact of this bill, if any, would depend on estate values for a given year, the amount of property transferred that is real or personal, the years of marriage for the decedent and spouse, and whether the remaining beneficiaries are issues, non-issue lineals, or non-lineals.

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### **Additional Information**

**Prior Introductions:** Similar bills, HB 780 of 1999 and HB 665 of 1997, received unfavorable reports from the House Judiciary Committee.

**Cross File:** None.

**Information Source(s):** Comptroller's Office, Registers of Wills, Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2000  
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Analysis by: Matthew D. Riven

Direct Inquiries to:  
John Rixey, Coordinating Analyst  
(410) 946-5510  
(301) 970-5510