

SENATE BILL 312

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2003 Regular Session
3r1258
CF 3r0992

By: **Senator Giannetti**

Introduced and read first time: January 31, 2003

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Estates - Elective Share**

3 FOR the purpose of providing that the net estate and property allocable to an elective
4 share of a surviving spouse shall be valued in a certain manner; providing that
5 an elective share includes certain income earned on the net estate during the
6 period of administration; providing for an adjustment of an elective share based
7 on a prior distribution to a surviving spouse; altering the period during which a
8 surviving spouse may make an election for an elective share under certain
9 circumstances; altering the persons who may make a payment to a surviving
10 spouse and the method of valuation of certain property if an interest in specific
11 property is not contributed to the surviving spouse's elective share; defining a
12 certain term; providing for the application of this Act; and generally relating to
13 altering certain procedures, valuations, and payments concerning an elective
14 share of a surviving spouse.

15 BY repealing and reenacting, with amendments,
16 Article - Estates and Trusts
17 Section 3-203, 3-206(a), and 3-208(b)(2)
18 Annotated Code of Maryland
19 (2001 Replacement Volume and 2002 Supplement)

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

22 **Article - Estates and Trusts**

23 3-203.

24 (A) IN THIS SECTION, "NET ESTATE" MEANS THE PROPERTY OF THE
25 DECEDENT PASSING BY TESTATE SUCCESSION, WITHOUT A DEDUCTION FOR STATE
26 OR FEDERAL ESTATE OR INHERITANCE TAXES, AND REDUCED BY:

27 (1) FUNERAL AND ADMINISTRATION EXPENSES;

28 (2) FAMILY ALLOWANCES; AND

1 (3) ENFORCEABLE CLAIMS AND DEBTS AGAINST THE ESTATE.

2 [(a)] (B) Instead of property left to [him] THE SURVIVING SPOUSE by will, the
3 surviving spouse may elect to take a one-third share of the net estate if there is also
4 a surviving issue, or a one-half share of the net estate if there is no surviving issue.

5 [(b)] (C) The surviving spouse who makes this election may not take more
6 than a one-half share of the net estate.

7 [(c)] For the purposes of this section, the net estate shall be calculated without
8 a deduction for the tax as defined in § 7-308 of the Tax - General Article.]

9 (D) FOR THE PURPOSES OF THIS SECTION, THE NET ESTATE AND THE
10 PROPERTY ALLOCABLE TO A SHARE OF A SURVIVING SPOUSE SHALL BE VALUED AS
11 OF THE DATE OR DATES OF DISTRIBUTION.

12 (E) (1) FOR THE PURPOSES OF THIS SECTION, A SURVIVING SPOUSE WHO
13 HAS ELECTED TO TAKE AGAINST A WILL SHALL BE ENTITLED TO THE SURVIVING
14 SPOUSE'S PORTION OF THE INCOME EARNED ON THE NET ESTATE DURING THE
15 PERIOD OF ADMINISTRATION BASED ON A ONE-THIRD OR ONE-HALF SHARE,
16 WHICHEVER IS APPLICABLE.

17 (2) IF ONE OR MORE DISTRIBUTIONS HAVE BEEN MADE TO A SURVIVING
18 SPOUSE OR ANOTHER PERSON THAT REQUIRE AN ADJUSTMENT IN THE RELATIVE
19 INTERESTS OF THE BENEFICIARIES, THE APPLICABLE SHARE SHALL BE ADJUSTED.

20 3-206.

21 (a) (1) The election by a surviving spouse to take an elective share shall be
22 made [not later than seven months after the date of the first appointment of a
23 personal representative under a will] WITHIN THE LATER OF:

24 (I) NINE MONTHS AFTER THE DATE OF THE DECEDENT'S DEATH;
25 OR

26 (II) SIX MONTHS AFTER THE FIRST APPOINTMENT OF A PERSONAL
27 REPRESENTATIVE UNDER A WILL.

28 (2) The court may extend the time for election, before its expiration, for a
29 period not to exceed three months at a time, upon notice given to the personal
30 representative and for good cause shown.

31 3-208.

32 (b) (2) Instead of contributing an interest in specific property to the elective
33 share, a legatee OR LEGATEES, BUT NOT THE PERSONAL REPRESENTATIVE, may pay
34 the surviving spouse in cash, or other property acceptable to the spouse, an amount
35 equal to the fair market value of the SURVIVING SPOUSE'S interest in specific
36 property on the [date the election to take an elective share was made by the spouse]
37 DATE OR DATES OF DISTRIBUTION.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
2 construed to apply only prospectively and may not be applied or interpreted to have
3 any effect on or application to an estate of a decedent who dies before the effective
4 date of this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2003.