

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 4
Judicial Proceedings

(Senator Giannetti)

Estates - Photographic Copy of Will - Administrative Probate

This bill allows a photographic copy of a will to be admitted to administrative probate upon the consent of all heirs at law and interested persons named in the will, and their acknowledgement that the original will cannot be located. The photographic copy of the will must appear to bear the signatures of the testator and attesting witnesses and to have been duly executed and contain a recital by attesting witnesses of facts constituting due execution.

Fiscal Summary

State Effect: The bill would not directly affect governmental operations or finances.

Local Effect: None. The bill affects a negligible number of wills that would qualify for administrative probate instead of judicial probate in local jurisdictions.

Small Business Effect: None.

Analysis

Current Law: A validly executed will in Maryland must be (1) in writing; (2) signed by the testator (person making the will) or an individual signing on the testator's behalf; and (3) attested and signed by two or more credible witnesses in the presence of the testator. The register of wills must assume due execution of a will: (1) if the will appears to have been duly executed and contains a recital by attesting witnesses of facts constituting due execution; or (2) if neither of these requirements are met, then upon the verified statement of a person with personal knowledge of the circumstances of execution whether

or not the person was in fact an attesting witness. There are no specific provisions that allow the admission of a photographic copy of a will into administrative probate. However, Title 5 of the Estates and Trusts Article requires judicial probate when a will has been significantly altered or damaged or it is alleged that a will has been lost or destroyed.

Additional Information

Prior Introductions: SB 539 of 2004, an identical bill, was withdrawn by the sponsor. SB 309 of 2003 received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Register of Wills, Department of Legislative Services

Fiscal Note History: First Reader - January 18, 2005
mam/jr

Analysis by: Michelle L. Harrison-Davis

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