

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 146

(Delegate V. Clagett, *et al.*)

Judiciary

Judicial Proceedings

Adoption - Written Instruments - Meaning of "Child"

This bill requires an adopted individual to be considered a “child,” “descendant,” “heir,” “issue,” or any equivalent term in a written instrument executed before June 1, 1947 if the individual’s adoption was finalized on or after January 1, 1945, unless the instrument states otherwise.

The bill only applies prospectively and may not be applied to affect vested property rights.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: According to an Attorney General of Maryland June 24, 2004 advisory letter, Chapter 287 of 1961 clarifies the “legal effect of the use of the terms ‘child,’ ‘heir,’ ‘issue,’ and ‘descendant’ or an equivalent” in a deed, grant, will, or other written instrument executed before June 1, 1947. These terms include any adopted person in any instrument executed on or after June 1, 1947, unless the instrument states otherwise. If the instrument was executed before June 1, 1947, an adopted person would only be

considered a “child,” “heir,” “issue,” “descendant,” or an equivalent if the person was adopted on or after June 1, 1947.

Background: Chapter 244 of 1892, Maryland’s first law on adoption, stated that the term “child” or its equivalent in a deed, grant, will, or other written instrument included any child adopted by the person executing the instrument, unless the instrument stated otherwise. This requirement applied to any instrument executed before or after the adoption.

Chapter 599 of 1947 expressly recognized the adoptive parents’ rights and the adopted child’s rights. It more clearly set out the rights of the child and extended the meaning of “child” to apply to all instruments, not just those executed by the adoptive parent. The law stated that “child” or its equivalent in a deed, grant, will, or other written instrument included any adopted person, unless the instrument stated otherwise, whether the instrument was executed before or after the entry of the interlocutory decree and before or after the entry of the final decree of adoption. However, this could not affect any adoption for which a final decree was entered before June 1, 1947, nor any adoption proceedings pending as of that date, except for those expressly stipulated.

A law review article, published shortly after the law was enacted, concluded that it was intended to ensure that adoptions decreed prior to the effective date or pending at the time would not be affected by changes in the procedural requirements. It was not meant to deny the various rights mentioned in this law to individuals adopted before June 1, 1947. In 1951, the Maryland Court of Appeals ruled that Chapter 599 of 1947 should not be applied retroactively to the estates of persons who died prior to the statute’s effective date.

Chapter 287 of 1961 was enacted to apply the presumption that the term “child” include an adopted person to all written instruments executed before June 1, 1947 provided the interlocutory decree of adoption or final decree was entered on or after June 1, 1947. Chapter 287 in effect, covers all adopted individuals regardless of the date of a written instrument, except persons adopted before June 1, 1947. The bill’s provisions would include this currently exempt category of individuals under the presumption.

Additional Information

Prior Introductions: None.

Cross File: SB 176 (Senator Astle) – Judicial Proceedings.

Information Source(s): Department of Human Resources, Register of Wills, Comptroller's Office, Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - January 25, 2005
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