

# HOUSE BILL 645

N2

9lr2581

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By: **Delegate Feldman**

Introduced and read first time: February 9, 2009

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Elective Share of Surviving Spouse – Net Estate**

3 FOR the purpose of clarifying that a net estate for purposes of determining the  
4 statutory elective share of the surviving spouse in a probate proceeding includes  
5 the value of property held in a revocable trust of which the decedent is the  
6 grantor, with certain reductions, and does not include the value of property  
7 owned by the decedent that is designated to pass to a specified beneficiary on  
8 the decedent's death; establishing that the surviving spouse's elective share of  
9 the net estate shall be limited to an amount that prevents the surviving spouse  
10 from receiving more than a one-third or one-half share, whichever is  
11 applicable, of the decedent's taxable estate for State estate tax purposes;  
12 providing for the application of this Act; and generally relating to elective  
13 shares of a net estate by surviving spouses.

14 BY repealing and reenacting, with amendments,  
15 Article – Estates and Trusts  
16 Section 3–203  
17 Annotated Code of Maryland  
18 (2001 Replacement Volume and 2008 Supplement)

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

21 **Article – Estates and Trusts**

22 3–203.

23 (a) **(1)** In this section[, “net estate”] **THE FOLLOWING WORDS HAVE THE**  
24 **MEANINGS INDICATED.**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           **(2) “NET ESTATE”** means the property of the decedent passing by  
2     testate succession **IN THE STATE PROBATE PROCEEDING**, without a deduction for  
3     State or federal estate or inheritance taxes, **INCLUDING THE VALUE OF PROPERTY**  
4     **HELD IN A REVOCABLE TRUST OF WHICH THE DECEDENT IS THE GRANTOR**, and  
5     reduced by:

6           [(1)] **(I)**     Funeral and administration expenses;

7           [(2)] **(II)**    Family allowances; and

8           [(3)] **(III)**   Enforceable claims and debts against the estate.

9           **(3) “NET ESTATE” DOES NOT INCLUDE THE VALUE OF PROPERTY**  
10    **OWNED BY THE DECEDENT THAT IS DESIGNATED TO PASS TO A SPECIFIED**  
11    **BENEFICIARY ON THE DECEDENT’S DEATH.**

12           (b)     Instead of property left to the surviving spouse by will, the surviving  
13    spouse may elect to take a one-third share of the net estate if there is also a surviving  
14    issue, or a one-half share of the net estate if there is no surviving issue.

15           (c)     **(1)**     The surviving spouse who makes this election may not take more  
16    than a one-half share of the net estate.

17           **(2)     THE SURVIVING SPOUSE’S ELECTIVE SHARE OF THE NET**  
18    **ESTATE SHALL BE LIMITED TO AN AMOUNT THAT PREVENTS THE SURVIVING**  
19    **SPOUSE FROM RECEIVING MORE THAN A ONE-THIRD OR ONE-HALF SHARE,**  
20    **WHICHEVER IS APPLICABLE, OF THE DECEDENT’S TAXABLE ESTATE FOR STATE**  
21    **ESTATE TAX PURPOSES.**

22           (d)     For the purposes of this section, the net estate and the property allocable  
23    to a share of a surviving spouse shall be valued as of the date or dates of distribution.

24           (e)     **(1)**     For the purposes of this section, a surviving spouse who has elected  
25    to take against a will shall be entitled to the surviving spouse’s portion of the income  
26    earned on the net estate during the period of administration based on a one-third or  
27    one-half share, whichever is applicable.

28           **(2)**     If one or more distributions have been made to a surviving spouse  
29    or another person that require an adjustment in the relative interests of the  
30    beneficiaries, the applicable share shall be adjusted.

31           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
32    construed to apply only prospectively and may not be applied or interpreted to have  
33    any effect on or application to any estate of a decedent who died before the effective  
34    date of this Act.

1           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2    October 1, 2009.