

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 340

(Senators Frosh and Forehand)

Judicial Proceedings

Judiciary

Estates and Trusts - Maryland International Wills Act

This bill establishes the Maryland International Wills Act.

Fiscal Summary

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

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes requirements and procedures for a will to be made in the form of an international will, including:

- a requirement that the will be made in writing and by hand or any other means, although it may be in any language;
- requirements for the execution of an international will, including that at least two witnesses and a person authorized to act in connection with international wills attest the will by signing their names in the presence of the person making the will (testator);
- requirements for the placement of signatures on a will and numbering of multiple sheets in a will, although failure to comply with these provisions does not affect the validity of a will that complies with the requirements for execution;

- that a certificate be attached to the will (for which a statutory form is provided), signed by an authorized person, which, in the absence of evidence to the contrary, is conclusive of the formal validity of the will as an international will, although the absence or irregularity of a certificate does not affect the formal validity of a will.

An “authorized person” or “person authorized to act in connection with international wills” is a person, including a member of the diplomatic and consular service of the United States designated by Foreign Service Regulations, who is admitted, and currently licensed, to practice law before the courts in this State, or by the laws of the United States is empowered to supervise the execution of international wills.

The bill is substantially derived from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying the bill, regard must be given to its international origin and the need for uniformity in its interpretation.

A will made in the form of an international will that complies with the requirements of the bill is valid with regard to form, irrespective of the place where the will is made, the location of the assets, and the nationality, domicile, or residence of the testator. An international will is subject to the ordinary rules of revocation of wills and the invalidity of a will as an international will does not affect its formal validity as a will of another kind. The bill does not apply to any form of testamentary disposition made by two or more persons in one instrument.

Current Law: A person may make a will if he or she is age 18 or older and legally competent to make a will. In general, a will must be (1) in writing; (2) signed by the testator, or by some other person for the testator, in the testator’s presence and by his or her direction; and (3) attested and signed by two or more credible witnesses in the presence of the testator. (*See Estates and Trusts Article, § 4-102.*)

A will executed outside of the State is properly executed if it is (1) in writing; (2) signed by the testator; and (3) executed in conformity with the above requirements, the law of the domicile of the testator, or the law of the place where the will is executed. (*See Estates and Trusts Article, § 4-104.*)

Background: This bill is a slightly modified version of the Uniform International Wills Act (UIWA) drafted, and approved and recommended for enactment in all states, by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1977. According to NCCUSL, it has been adopted in a number of states, including Virginia, Delaware, and the District of Columbia.

UIWA originates from the Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will and is derived from the annexed uniform law. According to NCCUSL, the convention is in force in 12 countries, not including the United States. UIWA is designed to implement the convention in U.S. states and territories.

The Estate and Trust Law Section of the Maryland State Bar Association indicates that the bill will make it easier for the will of a Maryland decedent (deceased person) owning foreign real estate and personal effects to have his or her Maryland will admitted to probate in a foreign country and for the wills of foreign decedents owning Maryland real estate and personal effects to be admitted to probate in Maryland. According to the Estate and Trust Law Section, the bill provides Maryland residents with a useful tool that may eliminate the need to execute multiple wills for different countries or reduce the costs and problems associated with having a Maryland will accepted by foreign courts.

Additional Information

Prior Introductions: None.

Cross File: HB 448 (Delegates Carter and Vallario) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; National Conference of Commissioners on Uniform State Laws; Estate and Trust Law Section, Maryland State Bar Association; International Institute for the Unification of Private Law; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2010
ncs/kdm

Analysis by: Scott D. Kennedy

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