

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 327

(Delegate Carter, *et al.*)

Judiciary

Judicial Proceedings

**Estates - Disqualification - Conviction for Unlawfully Obtaining Property of
Vulnerable Adult or Elderly Individual**

This bill establishes that a person who is convicted of unlawfully obtaining property from a vulnerable adult or individual who is at least age 68 is disqualified, to the extent of the person's failure to restore the property or its value, from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the victim of the offense, whether by operation of law or pursuant to a legal document executed or entered into by the victim before the person was convicted. The person convicted of unlawfully obtaining property from a vulnerable adult or individual who is at least age 68 has the burden of proof to establish that the person has made complete restitution. A disqualified person is treated as if the person predeceased (died before) the victim, and if a distribution is erroneously made to the person, full restitution must be made to the heir, legatee, or beneficiary who should have received the distribution. A fiduciary or other person who distributes property in good faith and without actual knowledge of a conviction is not personally liable for the distribution. The bill applies only prospectively.

Fiscal Summary

State Effect: None. The bill's provisions do not materially affect State government finances.

Local Effect: The bill is not expected to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law: A person may not knowingly and willfully obtain by deception, intimidation, or undue influence the property of an individual that the person knows or reasonably should know is a vulnerable adult or is at least 68 years old with the intent to deprive the individual of his or her property. A violator is subject to specified criminal penalties.

A conviction disqualifies the defendant from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the victim of the offense, whether by operation of law or pursuant to a legal document executed or entered into by the victim before the defendant was convicted and made full restoration of the property taken or its value to the victim.

Unless a contrary intent is expressly indicated in a will, a legacy (property disposed of by a will) does not lapse or fail because of the death of the legatee (person who would receive a legacy under the terms of a will), after the execution of the will but prior to the death of the testator (person who made the will), if the legatee is (1) actually and specifically named as legatee; (2) described or in any manner referred to, designated, or identified as legatee in the will; or (3) a member of a class in whose favor a legacy is made. In such a case, the property is distributed to those persons who would have taken the property if the legatee had died owning the property whether the legatee died with or without a will.

State law specifies the manner in which any part of the net estate of a deceased person not effectively disposed of by a will is distributed among the person's heirs ("intestate succession"). The law generally provides for the distribution of the estate among a surviving spouse, surviving lineal descendants, and others, and accounts for circumstances where a spouse, lineal descendant, and others do not survive the deceased person.

Additional Information

Prior Introductions: HB 1458 of 2009, a similar bill, passed in the House as amended and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. SB 643 of 2009, also a similar bill, passed in the Senate and in the House as amended, but differences between the two versions were not reconciled by a conference committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Register of Wills, Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2010
mpc/kdm Revised - House Third Reader - March 29, 2010
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Analysis by: Scott D. Kennedy

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