

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 958
Judiciary

(Delegate Carter)

Estates and Trusts - Minor Child or Incapacitated Child - Forced Shares

This bill establishes that specified children (“forced heirs”) of a decedent may not be deprived of a specified “forced share” of the decedent’s estate. The bill also specifies that unless a decedent has just cause to disinherit a forced heir, a decedent may not make donations during the decedent’s lifetime or effective on death, to persons who are not forced heirs, that exceed specified percentages of the decedent’s property. If a forced share, as determined by specified criteria under the bill, is greater than the amount the forced heir would receive by law if the decedent died without a valid will (by intestacy), the forced share is the amount that would be received by intestacy. If a forced heir predeceases a decedent, the heirs of the forced heir assume the rights of the forced heir under the bill. The bill specifies that no charges, conditions, or burdens may be imposed on the forced share except those expressly authorized by law.

The bill applies only prospectively.

Fiscal Summary

State Effect: None. General fund revenues are not anticipated to be materially impacted by the bill’s provisions.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Forced heir” means a child of a decedent who at the time of the decedent’s death (1) is age 17 or younger; or (2) because of mental incapacity or physical infirmity, is permanently incapable of taking care of the person or property of the child. “Forced share” means the share of a decedent’s estate to which a forced heir is entitled.

Except as otherwise provided, donations may not be made during the decedent’s lifetime or effective on the decedent’s death, to persons who are not forced heirs that exceed (1) 75% of the property of the donor if the donor leaves one forced heir; or (2) 50% of the property of the donor if the donor leaves two or more forced heirs.

The forced share of a forced heir is 25% of the decedent’s property; however, the forced share of each of two or more forced heirs is determined on a pro rata basis and must total 50% of the decedent’s property.

Current Law: A person who is age 18 or older and legally competent to do so may make a will. A properly executed and unrevoked will is presumed to pass all property that the person who makes the will owns at the time of his or her death. (*See* Estates and Trusts Article §§ 4-101, 4-402.) State law, however, also specifies the manner in which an estate is distributed if any part of the net estate of a decedent is not effectively disposed of by a will (“intestate succession”). The surviving spouse, for example, receives at least one-half of the estate and, if there is a surviving minor child the remaining one-half is distributed to the child or among more than one child and lineal descendants of any children that predeceased the decedent. (*See* Estates and Trusts Article §§ 3-101, 3-102, 3-103.)

A surviving spouse has the option to elect to take, instead of property left to the spouse by will, a one-third share of the net estate if there is also a surviving lineal descendant, or a one-half share if there is no surviving lineal descendant. (*See* Estates and Trusts Article § 3-203.)

Background: Louisiana has a law similar to the bill’s provisions, with forced heirs defined as “descendants of the first degree who, at the time of the death of the decedent, are 23 years of age or younger or descendants of the first degree of any age, who, because of mental incapacity or physical infirmity, are permanently incapable of taking care of their persons or administering their estates at the time of the death of the decedent.” (*See* Louisiana Civil Code, Article 1493, *et seq.*)

Additional Information

Prior Introductions: None.

Cross File: None.

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

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ncs/kdm

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