

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 773
Judiciary

(Delegate Waldstreicher)

Judicial Proceedings

Estates and Trusts - Allowance for Funeral Expenses

This bill specifies expenses that may be included as “funeral expenses” paid from the assets of an estate. The bill also raises a specified limit on funeral expenses that can be paid from a small estate from \$5,000 to \$10,000. The bill applies only prospectively.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies expenses that are included within the definition of “funeral expenses” under provisions of the Estates and Trusts Article governing the payment of funeral expenses of a decedent from the assets of the decedent’s estate. “Funeral expenses” includes the costs of a funeral, a burial, a cremation, a disposition of the decedent’s remains, a memorial, a memorial service, food and beverages related to bringing together the decedent’s family and friends for a wake or prefuneral or postfuneral gathering or meal, and any other reasonable expenses authorized by the decedent’s will.

The bill also raises a limit (which is subject to certain exceptions under current law) on the amount of funeral expenses that can be allowed for an estate administered as a small estate from \$5,000 to \$10,000.

Current Law: The personal representative must pay the funeral expenses of the decedent within six months of the first appointment of a personal representative, in accordance with an order of payment of claims against an estate that is specified in statute.

Funeral expenses are allowed to be paid from the assets of an estate in the discretion of the court according to the condition and circumstances of the decedent. The allowance for funeral expenses may not exceed \$10,000 for a regular estate and \$5,000 for a small estate (with a value of \$30,000 or less, or, if the surviving spouse is the sole legatee or heir, \$50,000 or less), unless the estate of the decedent is solvent and a special court order has been obtained.

If the estate is solvent and the will expressly empowers the personal representative to pay the expenses without an order of court, an allowance by the court is not required.

Background: The Estate and Trust Law Section of the Maryland State Bar Association indicates that the definition of “funeral expenses” is interpreted differently by registers of wills and orphans’ court judges in different jurisdictions and the interpretations can often exclude expenses traditionally considered a part of the funeral process. The section also indicates, with respect to the limit on funeral expenses for small estates, the cost of funerals in many jurisdictions in the State exceeds \$5,000. The limits established for funeral expenses were last changed by Chapter 107 of 2005, which established separate limits for regular estates and small estates, effectively raising the limit for regular estates from \$5,000 to \$10,000 and retaining the \$5,000 limit for small estates.

Additional Information

Prior Introductions: None.

Cross File: SB 397 (Senator Forehand) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland State Bar Association (Estate and Trust Law Section), Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2012
mc/kdm

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