

SENATE BILL 621

N2

4r0567
CF HB 570

By: **Senator Frosh**

Introduced and read first time: January 30, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of repealing certain provisions of law relating to a surviving spouse
4 making an election to take a certain share of the net estate of the decedent
5 instead of the property left to the surviving spouse under the will; providing
6 that a surviving spouse is entitled to take a certain elective share amount of a
7 certain augmented estate; providing for the determination of the value of an
8 augmented estate and the marital property portion of an augmented estate;
9 establishing the priority to be used in determining the sources from which a
10 certain elective share amount is payable; providing for the liability of certain
11 recipients of certain nonprobate transfers to contribute toward satisfaction of an
12 elective share; establishing certain time limits to elect to take an elective share;
13 providing for determination by the orphans' court of an elective share amount
14 and payment of the amount; providing for enforcement of an order or a
15 judgment of the orphans' court; clarifying that the right of a certain election
16 may be exercised only by or on behalf of a certain surviving spouse; providing
17 for the establishment of a certain trust for the benefit of a certain surviving
18 spouse; authorizing the waiver of a certain right of election; providing certain
19 immunity for certain payors and other third parties who make certain payments
20 or take certain other actions before receiving notice of a certain election;
21 providing for payment of a certain amount or deposit of a certain item to a
22 certain court; defining certain terms; providing for the application of this Act;
23 and generally relating to surviving spouses and elective shares in the estates of
24 decedents.

25 BY repealing and reenacting, without amendments,

26 Article – Estates and Trusts

27 Section 3–201 and 3–202 to be under the amended subtitle “Subtitle 2. Family
28 Allowance”

29 Annotated Code of Maryland

30 (2011 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing
2 Article – Estates and Trusts
3 Section 3–203 through 3–208
4 Annotated Code of Maryland
5 (2011 Replacement Volume and 2013 Supplement)

6 BY adding to
7 Article – Estates and Trusts
8 Section 3–401 through 3–413 to be under new subtitle “Subtitle 4. Elective
9 Share of Surviving Spouse”
10 Annotated Code of Maryland
11 (2011 Replacement Volume and 2013 Supplement)

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

14 **Article – Estates and Trusts**

15 Subtitle 2. Family Allowance [and Statutory Share of Surviving Spouse].

16 3–201.

17 (a) The surviving spouse is entitled to receive an allowance of \$10,000 for
18 personal use.

19 (b) An allowance of \$5,000 for the use of each unmarried child of the
20 decedent who has not attained the age of 18 years at the time of the death of the
21 decedent shall be paid by the personal representative as provided in § 13–501 of this
22 article.

23 3–202.

24 The estates of dower and curtesy are abolished.

25 [3–203.

26 (a) In this section, “net estate” means the property of the decedent passing
27 by testate succession, without a deduction for State or federal estate or inheritance
28 taxes, and reduced by:

29 (1) Funeral and administration expenses;

30 (2) Family allowances; and

31 (3) Enforceable claims and debts against the estate.

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

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

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

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

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

15 [3-204.

16 The right of election of the surviving spouse is personal to him. It is not
17 transferable and cannot be exercised subsequent to his death. If the surviving spouse
18 is under 18 years of age or under disability, the election may be exercised by order of
19 the court having jurisdiction of the person or property of the spouse or person under
20 disability.]

21 [3-205.

22 The right of election of a surviving spouse may be waived before or after
23 marriage by a written contract, agreement, or waiver signed by the party waiving the
24 right of election. Unless it provides to the contrary, a waiver of "all rights" in the
25 property or estate of a present or prospective spouse, or a complete property
26 settlement entered into after or in anticipation of separation or divorce, is a waiver of
27 any right to his family allowance as well as to his elective share by each spouse in the
28 property of the spouse, his right to letters under § 5-104 of this article, and is an
29 irrevocable renunciation of any benefit which would pass to him from the other by
30 intestate succession, by statutory share, or by virtue of the provisions of a will
31 executed before the waiver or property settlement.]

32 [3-206.

33 (a) (1) The election by a surviving spouse to take an elective share shall
34 be made within the later of:

35 (i) Nine months after the date of the decedent's death; or

1 (ii) Six months after the first appointment of a personal
2 representative under a will.

3 (2) (i) Within the period for making an election, the surviving
4 spouse may file with the court a petition for an extension of time, with a copy given to
5 the personal representative.

6 (ii) For good cause shown, the court may extend the time for
7 election for a period not to exceed three months at a time.

8 (b) The surviving spouse may withdraw the election at any time before the
9 expiration of the time for making the election to take an elective share.]

10 [3-207.

11 (a) An election to take an elective share of an estate of a decedent shall be in
12 writing and signed by the surviving spouse or other person entitled to make the
13 election pursuant to § 3-204 of this subtitle, and shall be filed in the court in which
14 the personal representative of the decedent was appointed.

15 (b) The election may be in this form.

16 I, A. B., surviving spouse of C. D., late of the County (City) of, renounce
17 all provisions in the will of C. D. and elect to take my elective share of the decedent's
18 estate.

19
20 (Signature)]

21 [3-208.

22 (a) (1) Upon the election of the surviving spouse to take the elective share
23 of the property of the decedent, all property or other benefits which would have passed
24 to the surviving spouse under the will shall be treated as if the surviving spouse had
25 died before the execution of the will.

26 (2) The surviving spouse and a person claiming through the surviving
27 spouse may not receive property under the will.

28 (b) (1) If there is an election to take an elective share, contribution to the
29 payment of it shall be prorated among all legatees.

30 (2) Instead of contributing an interest in specific property to the
31 elective share, a legatee or legatees, but not the personal representative, may pay the
32 surviving spouse in cash, or other property acceptable to the spouse, an amount equal
33 to the fair market value of the surviving spouse's interest in specific property on the
34 date or dates of distribution.

1 (3) Unless specifically provided in the will, a legatee is not entitled to
2 sequestration or compensation from another legatee, or from another part of the estate
3 of the decedent, except that an interest renounced by the surviving spouse and not
4 included in the share of the net estate received by the surviving spouse under this
5 section may be subject to sequestration for the benefit of individuals who are the
6 natural objects of the bounty of the decedent, in order to avoid a substantial distortion
7 of the intended dispositions of the testator.]

8 **SUBTITLE 4. ELECTIVE SHARE OF SURVIVING SPOUSE.**

9 **3-401.**

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (B) "AUGMENTED ESTATE" MEANS THE PROBATE ESTATE OF THE
13 DECEDENT INCREASED IN ACCORDANCE WITH THE PROVISIONS OF THIS
14 SUBTITLE.

15 (C) "FRACTIONAL INTEREST IN PROPERTY HELD IN JOINT TENANCY
16 WITH THE RIGHT OF SURVIVORSHIP" MEANS THE FRACTION, THE NUMERATOR
17 OF WHICH IS ONE AND THE DENOMINATOR OF WHICH, IF THE DECEDENT WAS A
18 JOINT TENANT, IS ONE PLUS THE NUMBER OF JOINT TENANTS WHO SURVIVE
19 THE DECEDENT AND WHICH, IF THE DECEDENT WAS NOT A JOINT TENANT, IS
20 THE NUMBER OF JOINT TENANTS, WHETHER OR NOT THE FRACTIONAL
21 INTEREST IS UNILATERALLY SEVERABLE.

22 (D) "NET PROBATE ESTATE" MEANS THE PROPERTY OF THE DECEDENT
23 PASSING BY TESTATE SUCCESSION, WITHOUT A DEDUCTION FOR STATE OR
24 FEDERAL ESTATE OR INHERITANCE TAXES, AND REDUCED BY:

25 (1) FUNERAL AND ADMINISTRATION EXPENSES;

26 (2) FAMILY ALLOWANCES; AND

27 (3) ENFORCEABLE CLAIMS AND DEBTS AGAINST THE ESTATE.

28 (E) (1) "NONPROBATE TRANSFER" INCLUDES PROPERTY OWNED OR
29 OWNED IN SUBSTANCE BY THE DECEDENT IMMEDIATELY BEFORE DEATH THAT
30 PASSED OUTSIDE PROBATE AT THE DEATH OF THE DECEDENT, INCLUDING:

31 (I) THAT PORTION OF PROPERTY TRANSFERRED BY THE
32 DECEDENT, TO THE EXTENT THAT AT THE TIME OF THE DEATH OF THE

1 DECEDENT THE TRANSFER WAS REVOCABLE BY THE DECEDENT ALONE OR IN
2 CONJUNCTION WITH ANOTHER PERSON;

3 (II) ANY IRREVOCABLE TRANSFER BY THE DECEDENT,
4 MADE DURING THE DECEDENT'S MARRIAGE TO THE SURVIVING SPOUSE, IN
5 WHICH THE DECEDENT RETAINED THE RIGHT TO THE POSSESSION OR
6 ENJOYMENT OF OR THE INCOME FROM THE PROPERTY IF THE RIGHT
7 TERMINATED AT THE DEATH OF THE DECEDENT;

8 (III) WITHIN THE 2 YEARS PRECEDING THE DEATH OF THE
9 DECEDENT, ANY GRATUITOUS TRANSFER TO OR FOR THE BENEFIT OF A PERSON
10 OTHER THAN THE SURVIVING SPOUSE OF AN AMOUNT IN EXCESS OF THE
11 AMOUNT EXCLUDABLE FROM TAXABLE GIFTS UNDER 26 U.S.C. 2503(B);

12 (IV) THE FRACTIONAL INTEREST OF THE DECEDENT IN
13 PROPERTY HELD BY THE DECEDENT IN JOINT TENANCY WITH THE RIGHT OF
14 SURVIVORSHIP, TO THE EXTENT THE FRACTIONAL INTEREST PASSED BY RIGHT
15 OF SURVIVORSHIP AT THE DEATH OF THE DECEDENT TO A SURVIVING JOINT
16 TENANT;

17 (V) THE OWNERSHIP INTEREST OF THE DECEDENT IN
18 PROPERTY OR ACCOUNTS HELD IN MULTIPLE PARTY ACCOUNTS AS DEFINED IN
19 § 1-204 OF THE FINANCIAL INSTITUTIONS ARTICLE, TO THE EXTENT THE
20 OWNERSHIP INTEREST OF THE DECEDENT PASSED AT THE DEATH OF THE
21 DECEDENT;

22 (VI) PROCEEDS OF INSURANCE, INCLUDING ACCIDENTAL
23 DEATH BENEFITS, ON THE LIFE OF THE DECEDENT, IF THE DECEDENT OWNED
24 THE INSURANCE POLICY IMMEDIATELY BEFORE DEATH; AND

25 (VII) PROPERTY OVER WHICH THE DECEDENT ALONE
26 IMMEDIATELY BEFORE DEATH HELD A PRESENTLY EXERCISABLE POWER OF
27 APPOINTMENT, TO THE EXTENT THAT THE PROPERTY IS SUBJECT TO THE
28 POWER AND PASSED AT THE DEATH OF THE DECEDENT BY EXERCISE, RELEASE,
29 LAPSE, IN DEFAULT, OR OTHERWISE.

30 (2) "NONPROBATE TRANSFER" DOES NOT INCLUDE ANY
31 TRANSFER MADE IN ACCORDANCE WITH § 14-115 OF THIS ARTICLE FOR THE
32 BENEFIT OF THE DECEDENT'S CHILD.

33 (F) "PERSON WITH A DISABILITY" INCLUDES:

1 (1) A PERSON DEEMED DISABLED BY THE SOCIAL SECURITY
2 ADMINISTRATION IN ACCORDANCE WITH 42 U.S.C. § 1382C OR A PERSON WHO
3 SATISFIES THOSE CRITERIA WITHOUT A DETERMINATION BY THE SOCIAL
4 SECURITY ADMINISTRATION;

5 (2) A PERSON WHO MEETS THE CRITERIA FOR APPOINTMENT OF
6 A GUARDIAN UNDER § 13-201 OR § 13-705 OF THIS ARTICLE; OR

7 (3) A PERSON WHO IS CERTIFIED AS INCAPABLE OF MAKING AN
8 INFORMED DECISION REGARDING MEDICAL TREATMENT IN ACCORDANCE WITH
9 § 5-606 OF THE HEALTH – GENERAL ARTICLE.

10 (G) “POWER” OR “POWER OF APPOINTMENT” INCLUDES A POWER TO
11 DESIGNATE THE BENEFICIARY OF A BENEFICIARY DESIGNATION.

12 **3-402.**

13 INSTEAD OF PROPERTY LEFT TO THE SURVIVING SPOUSE OF A DECEDENT,
14 THE SURVIVING SPOUSE MAY ELECT TO TAKE AN AMOUNT EQUAL TO 50% OF
15 THE VALUE OF THE MARITAL PROPERTY PORTION OF THE AUGMENTED ESTATE
16 AS DETERMINED UNDER § 3-403 OF THIS SUBTITLE.

17 **3-403.**

18 (A) THE VALUE OF THE AUGMENTED ESTATE CONSISTS OF THE SUM OF
19 THE VALUES OF THE FOLLOWING COMPONENTS OF PROPERTY OF THE
20 DECEDENT AND THE SURVIVING SPOUSE, WHETHER REAL OR PERSONAL,
21 MOVABLE OR IMMOVABLE, TANGIBLE OR INTANGIBLE, WHEREVER SITUATED:

22 (1) THE NET PROBATE ESTATE OF THE DECEDENT UNDER § 3-404
23 OF THIS SUBTITLE;

24 (2) THE NONPROBATE TRANSFERS TO OTHERS UNDER § 3-405 OF
25 THIS SUBTITLE;

26 (3) THE NONPROBATE TRANSFERS TO THE SURVIVING SPOUSE
27 UNDER § 3-406 OF THIS SUBTITLE; AND

28 (4) THE PROBATE PROPERTY AND NONPROBATE TRANSFERS BY
29 THE SURVIVING SPOUSE UNDER § 3-407 OF THIS SUBTITLE.

30 (B) THE VALUE OF THE MARITAL PROPERTY PORTION OF THE
31 AUGMENTED ESTATE CONSISTS OF THE VALUE OF THE AUGMENTED ESTATE AS

1 DETERMINED UNDER SUBSECTION (A) OF THIS SECTION MULTIPLIED BY THE
2 FOLLOWING PERCENT:

3 IF THE DECEDENT AND THE SPOUSE THE PERCENT IS:
4 WERE MARRIED TO EACH OTHER:

5 LESS THAN 6 YEARS	30%
6 6 YEARS BUT LESS THAN 15 YEARS	60%
7 15 YEARS OR MORE	100%

8 **3-404.**

9 THE VALUE OF THE AUGMENTED ESTATE INCLUDES THE VALUE OF THE
10 NET PROBATE ESTATE.

11 **3-405.**

12 THE VALUE OF THE AUGMENTED ESTATE INCLUDES THE VALUE OF THE
13 NONPROBATE TRANSFERS TO A PERSON OTHER THAN THE SURVIVING SPOUSE,
14 NOT OTHERWISE INCLUDED UNDER THIS SUBTITLE.

15 **3-406.**

16 EXCLUDING PROPERTY PASSING TO THE SURVIVING SPOUSE OF THE
17 DECEDENT UNDER THE FEDERAL SOCIAL SECURITY SYSTEM, THE VALUE OF
18 THE AUGMENTED ESTATE INCLUDES THE VALUE OF THE NONPROBATE
19 TRANSFERS TO THE SURVIVING SPOUSE.

20 **3-407.**

21 (A) EXCEPT TO THE EXTENT INCLUDED IN THE AUGMENTED ESTATE
22 UNDER § 3-404 OR § 3-406 OF THIS SUBTITLE, THE VALUE OF THE AUGMENTED
23 ESTATE INCLUDES THE VALUE OF PROBATE PROPERTY AND NONPROBATE
24 TRANSFERS THAT WERE OWNED OR OWNED IN SUBSTANCE BY THE SURVIVING
25 SPOUSE AT THE DEATH OF THE DECEDENT.

26 (B) THE VALUE OF THE PROPERTY INCLUDED UNDER THIS SECTION IS
27 REDUCED BY ENFORCEABLE CLAIMS AGAINST THE SURVIVING SPOUSE.

28 **3-408.**

29 (A) IN A PROCEEDING FOR AN ELECTIVE SHARE, THE FOLLOWING
30 SHALL BE APPLIED FIRST TO SATISFY THE ELECTIVE SHARE AMOUNT:

1 (1) AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER §
2 3-404 OF THIS SUBTITLE THAT PASS OR HAVE PASSED TO THE SURVIVING
3 SPOUSE BY TESTATE OR INTESTATE SUCCESSION AND AMOUNTS INCLUDED IN
4 THE AUGMENTED ESTATE UNDER § 3-406 OF THIS SUBTITLE; AND

5 (2) THE MARITAL PROPERTY PORTION OF AMOUNTS INCLUDED IN
6 THE AUGMENTED ESTATE UNDER § 3-407 OF THIS SUBTITLE.

7 (B) THE MARITAL PROPERTY PORTION UNDER SUBSECTION (A)(2) OF
8 THIS SECTION SHALL BE COMPUTED BY MULTIPLYING THE VALUE OF THE
9 AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER § 3-407 OF THIS
10 SUBTITLE BY THE PERCENTAGE OF THE AUGMENTED ESTATE SET FORTH IN THE
11 SCHEDULE IN § 3-403(B) OF THIS SUBTITLE APPLICABLE TO THE LENGTH OF
12 TIME THE SPOUSE AND THE DECEDENT WERE MARRIED TO EACH OTHER.

13 (C) (1) IF AFTER THE APPLICATION OF SUBSECTION (A) OF THIS
14 SECTION THE ELECTIVE SHARE AMOUNT IS NOT FULLY SATISFIED, AMOUNTS
15 INCLUDED IN THE NET PROBATE ESTATE UNDER § 3-404 OF THIS SUBTITLE,
16 OTHER THAN ASSETS PASSING TO THE SURVIVING SPOUSE BY TESTATE OR
17 INTESTATE SUCCESSION, AND IN THE NONPROBATE TRANSFERS TO OTHERS
18 UNDER § 3-405 OF THIS SUBTITLE SHALL BE APPLIED FIRST TO SATISFY THE
19 UNSATISFIED BALANCE OF THE ELECTIVE SHARE AMOUNT.

20 (2) THE NET PROBATE ESTATE AND THE PORTION OF THE
21 NONPROBATE TRANSFERS TO OTHERS SHALL BE SO APPLIED THAT LIABILITY
22 FOR THE UNSATISFIED BALANCE OF THE ELECTIVE SHARE AMOUNT IS
23 APPORTIONED AMONG THE RECIPIENTS OF THE NET PROBATE ESTATE AND OF
24 THE PORTION OF THE NONPROBATE TRANSFERS TO OTHERS IN PROPORTION TO
25 ITS VALUE.

26 3-409.

27 (A) (1) ONLY ORIGINAL RECIPIENTS OF THE NONPROBATE
28 TRANSFERS TO OTHERS, AND THE DONEES OF THE RECIPIENTS OF THE
29 NONPROBATE TRANSFERS TO OTHERS, TO THE EXTENT THE DONEES HAVE THE
30 PROPERTY OR THE PROCEEDS FROM THE PROPERTY, SHALL BE LIABLE TO
31 MAKE A PROPORTIONAL CONTRIBUTION TOWARD SATISFACTION OF THE
32 ELECTIVE SHARE OF THE SURVIVING SPOUSE.

33 (2) A PERSON LIABLE TO MAKE A CONTRIBUTION MAY CHOOSE TO
34 GIVE UP THE PROPORTIONAL PART OF THE NONPROBATE TRANSFERS TO THAT

1 PERSON OR TO PAY THE VALUE OF THE AMOUNT FOR WHICH THAT PERSON IS
2 LIABLE.

3 (B) IF ANY PROVISION OF THIS SUBTITLE IS PREEMPTED BY FEDERAL
4 LAW WITH RESPECT TO A PAYMENT, AN ITEM OF PROPERTY, OR ANY OTHER
5 BENEFIT INCLUDED IN THE NONPROBATE TRANSFERS TO OTHERS, A PERSON
6 WHO, NOT FOR VALUE, RECEIVES THE PAYMENT, ITEM OF PROPERTY, OR OTHER
7 BENEFIT IS OBLIGATED TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR
8 BENEFIT, OR IS PERSONALLY LIABLE FOR THE AMOUNT OF THE PAYMENT OR
9 THE VALUE OF THAT ITEM OF PROPERTY OR BENEFIT, AS PROVIDED IN § 3-408
10 OF THIS SUBTITLE, TO THE PERSON WHO WOULD HAVE BEEN ENTITLED TO THE
11 BENEFIT IF THAT PROVISION OF THIS SUBTITLE WERE NOT PREEMPTED BY
12 FEDERAL LAW.

13 3-410.

14 (A) (1) THE ELECTION BY A SURVIVING SPOUSE TO TAKE AN
15 ELECTIVE SHARE SHALL BE MADE WITHIN THE LATER OF:

16 (I) 9 MONTHS AFTER THE DATE OF THE DEATH OF THE
17 DECEDENT; OR

18 (II) 6 MONTHS AFTER THE FIRST APPOINTMENT OF A
19 PERSONAL REPRESENTATIVE.

20 (2) (I) WITHIN THE PERIOD FOR MAKING AN ELECTION, THE
21 SURVIVING SPOUSE MAY FILE WITH THE COURT A PETITION FOR AN EXTENSION
22 OF TIME, WITH A COPY GIVEN TO THE PERSONAL REPRESENTATIVE,
23 DISTRIBUTTEES, AND BENEFICIARIES OF NONPROBATE.

24 (II) FOR GOOD CAUSE SHOWN, THE COURT MAY EXTEND
25 THE TIME FOR ELECTION FOR A PERIOD NOT TO EXCEED 3 MONTHS AT A TIME.

26 (B) THE SURVIVING SPOUSE MAY WITHDRAW THE ELECTION AT ANY
27 TIME BEFORE THE EXPIRATION OF THE TIME FOR MAKING THE ELECTION TO
28 TAKE AN ELECTIVE SHARE.

29 (C) AFTER NOTICE AND HEARING, THE COURT SHALL DETERMINE THE
30 ELECTIVE SHARE AMOUNT AND SHALL ORDER THE PAYMENT OF THE AMOUNTS
31 FROM THE ASSETS OF THE AUGMENTED ESTATE OR BY CONTRIBUTION AS
32 APPROPRIATE UNDER §§ 3-408 AND 3-409 OF THIS SUBTITLE.

1 (D) AN ORDER OR A JUDGMENT OF THE COURT MAY BE ENFORCED AS
2 NECESSARY IN AN ACTION FOR CONTRIBUTION OR PAYMENT IN OTHER COURTS
3 OF THIS STATE OR OTHER JURISDICTIONS.

4 **3-411.**

5 (A) (1) THE RIGHT OF ELECTION MAY BE EXERCISED ONLY BY A
6 SURVIVING SPOUSE WHO IS LIVING WHEN THE PETITION FOR THE ELECTIVE
7 SHARE IS FILED.

8 (2) IF THE ELECTION IS NOT EXERCISED BY THE SURVIVING
9 SPOUSE PERSONALLY, THE ELECTION MAY BE EXERCISED ON BEHALF OF THE
10 SURVIVING SPOUSE BY THE GUARDIAN OF THE PROPERTY OR AGENT OF THE
11 SURVIVING SPOUSE UNDER THE AUTHORITY OF A POWER OF ATTORNEY.

12 (B) (1) IF THE ELECTION IS EXERCISED ON BEHALF OF A SURVIVING
13 SPOUSE WHO IS A MINOR OR UNDER A DISABILITY, THE COURT SHALL SET ASIDE
14 THAT PORTION OF THE ELECTIVE SHARE AMOUNT DUE FROM THE PROBATE
15 ESTATE OF THE DECEDENT AND RECIPIENTS OF THE NONPROBATE TRANSFERS
16 TO OTHERS AND SHALL APPOINT A TRUSTEE TO ADMINISTER THAT PROPERTY
17 FOR THE SUPPORT OF THE SURVIVING SPOUSE.

18 (2) THE TRUSTEE SHALL ADMINISTER THE TRUST IN
19 ACCORDANCE WITH THE FOLLOWING TERMS AND ANY ADDITIONAL TERMS THAT
20 THE COURT DETERMINES APPROPRIATE:

21 (I) EXPENDITURES OF INCOME AND PRINCIPAL MAY BE
22 MADE IN THE MANNER, WHEN, AND TO THE EXTENT THAT THE TRUSTEE
23 DETERMINES SUITABLE AND PROPER IN THE TRUSTEE'S SOLE AND ABSOLUTE
24 DISCRETION FOR THE BENEFIT OF THE SURVIVING SPOUSE, WITHOUT COURT
25 ORDER BUT WITH REGARD TO OTHER SUPPORT, INCOME, AND PROPERTY OF
26 THE SURVIVING SPOUSE EXCLUSIVE OF BENEFITS OF MEDICAL OR OTHER
27 FORMS OF ASSISTANCE FROM A STATE OR FEDERAL GOVERNMENT OR
28 GOVERNMENTAL AGENCY FOR WHICH THE SURVIVING SPOUSE MUST QUALIFY
29 ON THE BASIS OF NEED;

30 (II) DURING THE TIME THAT THE SURVIVING SPOUSE IS A
31 MINOR OR UNDER A DISABILITY, NEITHER THE SURVIVING SPOUSE NOR ANYONE
32 ACTING ON BEHALF OF THE SURVIVING SPOUSE HAS A POWER TO TERMINATE
33 THE TRUST; AND

34 (III) IF THE SURVIVING SPOUSE REACHES 18 YEARS OF AGE
35 OR IS NO LONGER UNDER A DISABILITY, THE SURVIVING SPOUSE THEN

1 ACQUIRES THE POWER TO TERMINATE THE TRUST AND ACQUIRE FULL
2 OWNERSHIP OF THE TRUST PROPERTY FREE OF TRUST, BY DELIVERING TO THE
3 TRUSTEE A WRITING SIGNED BY THE SURVIVING SPOUSE DECLARING THE
4 TERMINATION.

5 (3) ON THE DEATH OF THE SURVIVING SPOUSE, THE TRUSTEE
6 SHALL TRANSFER THE UNEXPENDED TRUST PROPERTY TO THE ESTATE OF THE
7 SURVIVING SPOUSE.

8 3-412.

9 (A) THE RIGHT OF ELECTION OF A SURVIVING SPOUSE MAY BE WAIVED,
10 WHOLLY OR PARTIALLY, BEFORE OR AFTER MARRIAGE, BY A WRITTEN
11 CONTRACT, AGREEMENT, OR WAIVER SIGNED BY THE SURVIVING SPOUSE.

12 (B) UNLESS THE WAIVER PROVIDES TO THE CONTRARY, A WAIVER OF
13 "ALL RIGHTS", OR EQUIVALENT LANGUAGE, IN THE PROPERTY OR ESTATE OF A
14 PRESENT OR PROSPECTIVE SPOUSE OR A COMPLETE PROPERTY SETTLEMENT
15 ENTERED INTO AFTER OR IN ANTICIPATION OF SEPARATION OR DIVORCE IS A
16 WAIVER OF ALL RIGHTS OF ELECTIVE SHARE, AND FAMILY ALLOWANCE BY EACH
17 SPOUSE IN THE PROPERTY OF THE OTHER AND A RENUNCIATION BY EACH OF
18 ALL BENEFITS THAT WOULD OTHERWISE PASS TO THE SPOUSE FROM THE
19 OTHER BY INTESTATE SUCCESSION OR BY VIRTUE OF A WILL EXECUTED BEFORE
20 THE WAIVER OR PROPERTY SETTLEMENT.

21 3-413.

22 (A) (1) A PAYOR OR OTHER THIRD PARTY IS NOT LIABLE FOR HAVING
23 MADE A PAYMENT OR TRANSFERRED AN ITEM OF PROPERTY OR ANY OTHER
24 BENEFIT TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT, OR
25 FOR HAVING TAKEN ANOTHER ACTION IN GOOD FAITH RELIANCE ON THE
26 VALIDITY OF A GOVERNING INSTRUMENT, ON REQUEST AND SATISFACTORY
27 PROOF OF THE DEATH OF THE DECEDENT, BEFORE THE PAYOR OR OTHER
28 THIRD PARTY RECEIVED WRITTEN NOTICE FROM THE SURVIVING SPOUSE OR
29 REPRESENTATIVE OF THE SPOUSE OF AN INTENTION TO FILE A PETITION FOR
30 THE ELECTIVE SHARE OR THAT A PETITION FOR THE ELECTIVE SHARE HAS
31 BEEN FILED.

32 (2) A PAYOR OR OTHER THIRD PARTY IS LIABLE FOR PAYMENTS
33 MADE OR OTHER ACTIONS TAKEN AFTER THE PAYOR OR OTHER THIRD PARTY
34 RECEIVED WRITTEN NOTICE OF AN INTENTION TO FILE A PETITION FOR THE
35 ELECTIVE SHARE OR THAT A PETITION FOR THE ELECTIVE SHARE HAS BEEN
36 FILED.

1 **(B) (1) A WRITTEN NOTICE OF INTENTION TO FILE A PETITION FOR**
2 **THE ELECTIVE SHARE OR THAT A PETITION FOR THE ELECTIVE SHARE HAS**
3 **BEEN FILED SHALL BE MAILED TO THE MAIN OFFICE OR HOME OF THE PAYOR**
4 **OR OTHER THIRD PARTY BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR**
5 **SERVED ON THE PAYOR OR OTHER THIRD PARTY IN THE SAME MANNER AS A**
6 **SUMMONS IN A CIVIL ACTION.**

7 **(2) (I) ON RECEIPT OF WRITTEN NOTICE OF INTENTION TO**
8 **FILE A PETITION FOR THE ELECTIVE SHARE OR THAT A PETITION FOR THE**
9 **ELECTIVE SHARE HAS BEEN FILED, A PAYOR OR OTHER THIRD PARTY MAY PAY**
10 **AN AMOUNT OWED OR TRANSFER OR DEPOSIT AN ITEM OF PROPERTY HELD BY**
11 **THE PAYOR OR OTHER THIRD PARTY TO:**

12 **1. THE COURT HAVING JURISDICTION OF THE**
13 **PROBATE PROCEEDINGS RELATING TO THE ESTATE OF THE DECEDENT; OR**

14 **2. IF NO PROCEEDINGS HAVE BEEN COMMENCED,**
15 **THE COURT HAVING JURISDICTION OF PROBATE PROCEEDINGS RELATING TO**
16 **ESTATES OF THE DECEDENT LOCATED IN THE COUNTY OF THE RESIDENCE OF**
17 **THE DECEDENT.**

18 **(II) THE COURT SHALL HOLD THE FUNDS OR ITEM OF**
19 **PROPERTY AND, ON THE DETERMINATION OF THE COURT MADE UNDER § 3-410**
20 **OF THIS SUBTITLE, ORDER DISBURSEMENT IN ACCORDANCE WITH THE**
21 **DETERMINATION.**

22 **(III) IF A PETITION IS NOT FILED IN THE COURT WITHIN THE**
23 **SPECIFIED TIME UNDER § 3-410(A) OF THIS SUBTITLE OR, IF FILED, THE**
24 **DEMAND FOR AN ELECTIVE SHARE IS WITHDRAWN UNDER § 3-410(B) OF THIS**
25 **SUBTITLE, THE COURT SHALL ORDER DISBURSEMENT TO THE DESIGNATED**
26 **BENEFICIARY.**

27 **(IV) PAYMENTS OR TRANSFERS TO THE COURT OR DEPOSITS**
28 **MADE INTO COURT DISCHARGE THE PAYOR OR OTHER THIRD PARTY FROM ALL**
29 **CLAIMS FOR AMOUNTS SO PAID OR THE VALUE OF PROPERTY SO TRANSFERRED**
30 **OR DEPOSITED.**

31 **(C) ON PETITION TO THE PROBATE COURT BY THE BENEFICIARY**
32 **DESIGNATED IN A GOVERNING INSTRUMENT, THE COURT MAY ORDER THAT ALL**
33 **OR PART OF THE PROPERTY BE PAID TO THE BENEFICIARY IN AN AMOUNT AND**
34 **SUBJECT TO CONDITIONS CONSISTENT WITH THIS SUBTITLE.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
2 construed to apply only prospectively and may not be applied or interpreted to have
3 any effect on or application to any estate opened before the effective date of this Act.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2014.