

# HOUSE BILL 1229

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CF SB 913

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By: ~~Delegate Dumais~~ Delegates Dumais, Hammen, Angel, Barron, Bromwell, Cullison, Hayes, Hill, Kelly, Kipke, Krebs, McDonough, McMillan, Miele, Morgan, Morhaim, Oaks, Pendergrass, Pena-Melnyk, Rose, Saab, Sample-Hughes, West, and K. Young

Introduced and read first time: February 12, 2016

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 15, 2016

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

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 instead  
5 of the property left to the surviving spouse under the will; establishing the purposes  
6 of this Act; providing that a surviving spouse may take a certain elective share  
7 amount of a certain augmented estate; recodifying certain provisions of law relating  
8 to the right of election of a surviving spouse and certain time limits to elect to take  
9 an elective share; establishing certain procedures and a certain form for an election  
10 to take an elective share; authorizing the waiver of a certain right of election;  
11 requiring certain fiduciaries to deliver certain information and provide certain notice  
12 relating to a certain elective share of a surviving spouse; requiring a certain trustee  
13 to provide certain notice relating to the trust within a certain period of time;  
14 establishing the priority to be used in determining the sources from which a certain  
15 elective share amount is payable; establishing the manner of payment of a certain  
16 elective share under certain circumstances; providing certain immunity for certain  
17 payors and other third parties who make certain payments or transfers before  
18 receiving notice of a certain election; establishing the effect of an election to take a  
19 certain elective share on the rights of the surviving spouse under a certain will and  
20 certain revocable trust; authorizing certain persons to petition the orphans' court to  
21 modify certain calculations or sources of payment of a certain elective share;  
22 establishing a certain rebuttable presumption relating to the exclusion of certain

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 property from a certain augmented estate; authorizing the orphans' court to consider  
 2 certain factors when determining whether to include certain property in the value of  
 3 a certain augmented estate or certain spousal benefits; requiring a surviving spouse  
 4 who has elected to take an elective share to be removed as personal representative  
 5 of the decedent's estate; providing that a personal representative is entitled to  
 6 certain reimbursement for certain commissions and attorney's fees in connection  
 7 with a certain action; defining certain terms; making stylistic changes; providing for  
 8 the application of this Act; and generally relating to the elective share of a surviving  
 9 spouse.

10 BY repealing and reenacting, with amendments,

11 Article – Estates and Trusts

12 The subtitle designation to be “Subtitle 2. Family Allowance; Dower and Curtesy”  
 13 immediately preceding Section 3–201; 6–306(a), and 7–603

14 Annotated Code of Maryland

15 (2011 Replacement Volume and 2015 Supplement)

16 BY repealing and reenacting, without amendments,

17 Article – Estates and Trusts

18 Section 3–201(a)

19 Annotated Code of Maryland

20 (2011 Replacement Volume and 2015 Supplement)

21 BY repealing

22 Article – Estates and Trusts

23 Section 3–203 through 3–208

24 Annotated Code of Maryland

25 (2011 Replacement Volume and 2015 Supplement)

26 BY adding to

27 Article – Estates and Trusts

28 Section 3–401 through 3–411 to be under the new subtitle “Subtitle 4. Elective Share  
 29 of Surviving Spouse”; and 14.5–604

30 Annotated Code of Maryland

31 (2011 Replacement Volume and 2015 Supplement)

32 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

33 That the Laws of Maryland read as follows:

34 **Article – Estates and Trusts**

35 Subtitle 2. Family Allowance [and Statutory Share of Surviving Spouse]; **DOWER AND**  
 36 **CURTESY.**

37 3–201.

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

3 [3-203.

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

7 (1) Funeral and administration expenses;

8 (2) Family allowances; and

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

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

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

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

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

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

24 [3-204.

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

29 [3-205.

30 The right of election of a surviving spouse may be waived before or after marriage by  
31 a written contract, agreement, or waiver signed by the party waiving the right of election.  
32 Unless it provides to the contrary, a waiver of “all rights” in the property or estate of a  
33 present or prospective spouse, or a complete property settlement entered into after or in

1 anticipation of separation or divorce, is a waiver of any right to his family allowance as well  
2 as to his elective share by each spouse in the property of the spouse, his right to letters  
3 under § 5–104 of this article, and is an irrevocable renunciation of any benefit which would  
4 pass to him from the other by intestate succession, by statutory share, or by virtue of the  
5 provisions of a will executed before the waiver or property settlement.]

6 [3–206.

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

9 (i) Nine months after the date of the decedent’s death; or

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

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

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

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

19 [3–207.

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

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

25 I, A. B., surviving spouse of C. D., late of the County (City) of ....., renounce  
26 all provisions in the will of C. D. and elect to take my elective share of the decedent’s  
27 estate.

28 .....  
29 (Signature)]

30 [3–208.

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

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

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

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

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

#### 17           **SUBTITLE 4. ELECTIVE SHARE OF SURVIVING SPOUSE.**

#### 18           **3-401.**

19           **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
20 **INDICATED.**

21           **(B) "AUGMENTED ESTATE" MEANS THE VALUE OF THE GROSS ESTATE OF A**  
22 **DECEDENT, REDUCED BY:**

23           **(1) FUNERAL AND ADMINISTRATION EXPENSES PAYABLE FROM THE**  
24 **GROSS ESTATE OF THE DECEDENT;**

25           **(2) FAMILY ALLOWANCES PAYABLE FROM THE GROSS ESTATE OF THE**  
26 **DECEDENT;**

27           **(3) ENFORCEABLE CLAIMS AND DEBTS AGAINST ANY PART OF THE**  
28 **GROSS ESTATE OF THE DECEDENT;**

29           **(4) THE VALUE OF ANY ASSETS INCLUDED IN THE GROSS ESTATE OF**  
30 **THE DECEDENT THAT WERE HELD IN A TRUST OF WHICH THE DECEDENT IS NOT A**  
31 **SETTLOR;**

32           **(5) THE VALUE OF ANY REAL PROPERTY INCLUDED IN THE GROSS**  
33 **ESTATE OF THE DECEDENT BY REASON OF THE DECEDENT'S RETENTION OF A LIFE**

1 ESTATE IN THE REAL PROPERTY IF, AT THE TIME OF THE DECEDENT'S DEATH, THE  
2 DECEDENT HELD NO POWER OF DISPOSITION OVER THE REAL PROPERTY; AND

3 (6) THE VALUE OF ANY REAL PROPERTY INCLUDED IN THE GROSS  
4 ESTATE OF THE DECEDENT THAT IS NOT SUBJECT TO THE JURISDICTION OF THE  
5 STATE.

6 (C) "GROSS ESTATE" MEANS THE FEDERAL GROSS ESTATE OF A DECEDENT,  
7 AS DETERMINED UNDER SUBTITLE B OF THE INTERNAL REVENUE CODE, PLUS THE  
8 VALUE OF ANY PROPERTY NOT INCLUDED IN THE FEDERAL GROSS ESTATE OF THE  
9 DECEDENT THAT IS INCLUDED UNDER § 7-309(B)(6) OF THE TAX - GENERAL  
10 ARTICLE.

11 (D) "PERSON RESPONSIBLE FOR FILING THE ESTATE TAX RETURN" MEANS  
12 THE PERSON RESPONSIBLE FOR FILING A FEDERAL ESTATE TAX RETURN FOR A  
13 DECEDENT UNDER § 6018 OF THE INTERNAL REVENUE CODE AND THE  
14 REGULATIONS IMPLEMENTING THAT SECTION, REGARDLESS OF WHETHER A  
15 FEDERAL OR STATE ESTATE TAX RETURN ACTUALLY IS REQUIRED TO BE FILED FOR  
16 THE DECEDENT.

17 (E) "REVOCABLE" HAS THE MEANING STATED IN § 14.5-103 OF THIS  
18 ARTICLE.

19 (F) "REVOCABLE TRUST OF THE DECEDENT" MEANS ANY TRUST OF WHICH  
20 A DECEDENT WAS THE SETTLOR THAT WAS REVOCABLE BY THE DECEDENT PRIOR TO  
21 THE DECEDENT'S DEATH OR INCAPACITY.

22 (G) "SETTLOR" HAS THE MEANING STATED IN § 14.5-103 OF THIS ARTICLE.

23 (H) "SPOUSAL BENEFITS" MEANS THE AGGREGATE VALUE OF PROPERTY  
24 PASSING TO OR IN TRUST FOR THE BENEFIT OF THE SURVIVING SPOUSE BY REASON  
25 OF A DECEDENT'S DEATH AND PROPERTY HELD FOR THE BENEFIT OF THE  
26 SURVIVING SPOUSE IN ANY TRUST CREATED DURING A DECEDENT'S LIFETIME OF  
27 WHICH THE DECEDENT WAS A SETTLOR, REDUCED BY:

28 (1) WITH RESPECT TO PROPERTY THAT THE DECEDENT OWNED  
29 JOINTLY WITH THE SURVIVING SPOUSE, THAT PORTION OF THE VALUE OF THE  
30 PROPERTY THAT IS NOT INCLUDED IN THE AUGMENTED ESTATE;

31 (2) THE VALUE OF ASSETS PASSING BY REASON OF THE DECEDENT'S  
32 DEATH TO ANY TRUST OF WHICH THE SURVIVING SPOUSE IS NOT THE SOLE  
33 BENEFICIARY DURING THE SURVIVING SPOUSE'S LIFETIME;

1           **(3) THE VALUE OF ASSETS HELD IN ANY TRUST CREATED DURING THE**  
2 **DECEDENT'S LIFETIME OF WHICH:**

3           **(I) THE DECEDENT WAS A SETTLOR; AND**

4           **(II) THE SURVIVING SPOUSE IS NOT THE SOLE BENEFICIARY**  
5 **DURING THE SURVIVING SPOUSE'S LIFETIME;**

6           **(4) REGARDLESS OF WHETHER THE ELECTION REQUIRED UNDER**  
7 **THE INTERNAL REVENUE CODE ACTUALLY HAS BEEN MADE, ONE-QUARTER OF THE**  
8 **SUM OF:**

9           **(I) THE AGGREGATE VALUE OF ASSETS PASSING BY REASON OF**  
10 **THE DECEDENT'S DEATH TO ANY TRUST FOR THE BENEFIT OF THE SURVIVING**  
11 **SPOUSE THAT MEETS THE DEFINITION OF "QUALIFIED TERMINABLE INTEREST**  
12 **PROPERTY" UNDER § 2056(B) OF THE INTERNAL REVENUE CODE; AND**

13           **(II) THE AGGREGATE VALUE OF ASSETS HELD AT THE TIME OF**  
14 **THE DECEDENT'S DEATH IN ANY TRUST OF WHICH THE DECEDENT WAS THE SETTLOR**  
15 **THAT MEETS THE DEFINITION OF "QUALIFIED TERMINABLE INTEREST PROPERTY"**  
16 **UNDER § 2523(F) OF THE INTERNAL REVENUE CODE; AND**

17           ~~**(5) ONE-THIRD OF THE SUM OF THE FOLLOWING, FROM WHICH THE**~~  
18 ~~**TRUSTEES MAY MAKE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE SURVIVING**~~  
19 ~~**SPOUSE IN ACCORDANCE WITH A STANDARD NOT MORE RESTRICTIVE THAN THAT**~~  
20 ~~**UNDER § 14-402(B)(3) OF THIS ARTICLE;**~~

21           ~~**(I) THE AGGREGATE VALUE OF ASSETS PASSING BY REASON OF**~~  
22 ~~**THE DECEDENT'S DEATH TO ANY TRUST FOR THE EXCLUSIVE LIFETIME BENEFIT OF**~~  
23 ~~**THE SURVIVING SPOUSE; AND**~~

24           ~~**(II) THE AGGREGATE VALUE OF ASSETS HELD AT THE TIME OF**~~  
25 ~~**THE DECEDENT'S DEATH IN ANY TRUST, OTHER THAN A TRUST DESCRIBED UNDER**~~  
26 ~~**PARAGRAPH (4) OF THIS SUBSECTION, FOR THE EXCLUSIVE LIFETIME BENEFIT OF**~~  
27 ~~**THE SURVIVING SPOUSE AND OF WHICH THE DECEDENT WAS A SETTLOR.**~~

28           **(5) ONE-THIRD OF THE AGGREGATE VALUE OF ASSETS PASSING BY**  
29 **REASON OF THE DECEDENT'S DEATH TO, OR HELD AT THE TIME OF THE DECEDENT'S**  
30 **DEATH IN, ANY TRUST, WHETHER TESTAMENTARY OR CREATED DURING THE**  
31 **DECEDENT'S LIFETIME:**

32           **(I) OTHER THAN A TRUST DESCRIBED UNDER ITEM (4) OF THIS**  
33 **SUBSECTION;**

1                   **(II) OF WHICH THE DECEDENT WAS A SETTLOR, IF THE TRUST**  
2 **WAS CREATED DURING THE DECEDENT'S LIFETIME;**

3                   **(III) HELD FOR THE EXCLUSIVE LIFETIME BENEFIT OF THE**  
4 **SURVIVING SPOUSE; AND**

5                   **(IV) FROM WHICH THE TRUSTEES MAY MAKE DISTRIBUTIONS TO**  
6 **OR FOR THE BENEFIT OF THE SURVIVING SPOUSE IN ACCORDANCE WITH A**  
7 **STANDARD NOT MORE RESTRICTIVE THAN THAT UNDER § 14-402(B)(3) OF THIS**  
8 **ARTICLE.**

9           **(I) "VALUE" MEANS:**

10                   **(1) FOR AN ASSET INCLUDED IN THE GROSS ESTATE OF A DECEDENT,**  
11 **THE VALUE OF THE ASSET UNDER SUBTITLE B OF THE INTERNAL REVENUE CODE,**  
12 **IF A FEDERAL OR STATE ESTATE TAX RETURN IS REQUIRED TO BE FILED WITH**  
13 **RESPECT TO THE DECEDENT; AND**

14                   **(2) FOR ANY OTHER ASSET, THE VALUE OF THE ASSET UNDER § 7-202**  
15 **OF THIS ARTICLE.**

16 **3-402.**

17           **THE PURPOSES OF THIS SUBTITLE ARE:**

18                   **(1) TO ENSURE THAT A SURVIVING SPOUSE IS REASONABLY**  
19 **PROVIDED FOR DURING THE SURVIVING SPOUSE'S REMAINING LIFETIME; AND**

20                   **(2) SUBJECT TO ITEM (1) OF THIS SECTION, TO PROVIDE A DECEDENT**  
21 **FLEXIBILITY IN ORDERING THE DECEDENT'S AFFAIRS.**

22 **3-403.**

23           **THE SURVIVING SPOUSE MAY ELECT TO TAKE AN ELECTIVE SHARE OF AN**  
24 **AUGMENTED ESTATE AS FOLLOWS:**

25                   **(1) IF THERE IS SURVIVING ISSUE, THE ELECTIVE SHARE SHALL**  
26 **EQUAL ONE-THIRD OF THE VALUE OF THE AUGMENTED ESTATE, REDUCED BY THE**  
27 **VALUE OF ALL SPOUSAL BENEFITS; OR**

28                   **(2) IF THERE IS NO SURVIVING ISSUE, THE ELECTIVE SHARE SHALL**  
29 **EQUAL ONE-HALF OF THE VALUE OF THE AUGMENTED ESTATE, REDUCED BY THE**  
30 **VALUE OF ALL SPOUSAL BENEFITS.**



1 **3-404.**

2 (A) **THE RIGHT OF ELECTION OF A SURVIVING SPOUSE:**

3 (1) **IS PERSONAL TO THE SURVIVING SPOUSE;**

4 (2) **IS NOT TRANSFERABLE; AND**

5 (3) **CANNOT BE EXERCISED AFTER THE SURVIVING SPOUSE'S DEATH.**

6 (B) **IF THE SURVIVING SPOUSE IS A MINOR OR UNDER DISABILITY, THE**  
7 **ELECTION MAY BE EXERCISED BY ORDER OF THE COURT HAVING JURISDICTION OF**  
8 **THE PERSON OR PROPERTY OF THE MINOR OR PERSON UNDER DISABILITY.**

9 **3-405.**

10 (A) **THE RIGHT OF ELECTION OF A SURVIVING SPOUSE MAY BE WAIVED**  
11 **BEFORE OR AFTER MARRIAGE BY A WRITTEN CONTRACT, AGREEMENT, OR WAIVER**  
12 **SIGNED BY THE PARTY WAIVING THE RIGHT OF ELECTION.**

13 (B) **UNLESS THE WAIVER PROVIDES TO THE CONTRARY, A WAIVER OF "ALL**  
14 **RIGHTS", OR EQUIVALENT LANGUAGE, IN THE PROPERTY OR ESTATE OF A PRESENT**  
15 **OR PROSPECTIVE SPOUSE OR A COMPLETE PROPERTY SETTLEMENT ENTERED INTO**  
16 **AFTER OR IN ANTICIPATION OF SEPARATION OR DIVORCE IS A WAIVER OF ALL**  
17 **RIGHTS OF FAMILY ALLOWANCE AND ELECTIVE SHARE BY EACH SPOUSE IN THE**  
18 **PROPERTY OF THE OTHER AND THE RIGHT TO LETTERS UNDER § 5-104 OF THIS**  
19 **ARTICLE, AND IS AN IRREVOCABLE RENUNCIATION BY EACH SPOUSE OF ALL**  
20 **BENEFITS THAT WOULD OTHERWISE PASS TO THE SPOUSE FROM THE OTHER BY**  
21 **INTESTATE SUCCESSION, BY ELECTIVE SHARE, OR BY VIRTUE OF A WILL OR**  
22 **REVOCABLE TRUST OF THE PRESENT OR PROSPECTIVE SPOUSE EXECUTED BEFORE**  
23 **THE WAIVER OR PROPERTY SETTLEMENT.**

24 **3-406.**

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

27 (i) **9 MONTHS AFTER THE DATE OF THE DECEDENT'S DEATH; OR**

28 (ii) **6 MONTHS AFTER THE FIRST APPOINTMENT OF A PERSONAL**  
29 **REPRESENTATIVE UNDER A WILL.**



(SIGNATURE)".

1

2 **3-408.**

3 (A) ON RECEIPT OF A WRITTEN REQUEST BY THE SURVIVING SPOUSE, ALL  
4 INFORMATION NECESSARY TO CALCULATE THE ELECTIVE SHARE UNDER THIS  
5 SUBTITLE SHALL BE DELIVERED TO THE SURVIVING SPOUSE BY, AS APPLICABLE:

6 (1) THE PERSONAL REPRESENTATIVE OF THE DECEDENT;

7 (2) THE TRUSTEE OF ANY REVOCABLE TRUST OF THE DECEDENT; OR

8 (3) THE PERSON RESPONSIBLE FOR FILING THE ESTATE TAX  
9 RETURN.

10 (B) (1) THE FILING OF AN ELECTION TO TAKE THE ELECTIVE SHARE  
11 UNDER § 3-407 OF THIS SUBTITLE IS DEEMED TO GIVE ADEQUATE NOTICE OF THE  
12 ELECTION TO, AS APPLICABLE:

13 (I) THE PERSONAL REPRESENTATIVE OF THE DECEDENT;

14 (II) THE TRUSTEE OF ANY REVOCABLE TRUST OF THE  
15 DECEDENT; OR

16 (III) THE PERSON RESPONSIBLE FOR FILING THE ESTATE TAX  
17 RETURN.

18 (2) THE PERSON RECEIVING NOTICE OF AN ELECTION TO TAKE THE  
19 ELECTIVE SHARE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL PROMPTLY  
20 DELIVER NOTICE OF THE ELECTION TO EACH PERSON FROM WHOM ANY PORTION OF  
21 THE ELECTIVE SHARE MAY BE PAYABLE.

22 (C) WITHIN 60 DAYS AFTER THE DATE A TRUSTEE OF A REVOCABLE TRUST  
23 OF THE DECEDENT ACQUIRES KNOWLEDGE OF THE DECEDENT'S DEATH, THE  
24 TRUSTEE SHALL NOTIFY THE SURVIVING SPOUSE OF THE EXISTENCE OF THE TRUST,  
25 OF THE IDENTITY OF THE TRUSTEES, AND OF THE SURVIVING SPOUSE'S RIGHT TO  
26 REQUEST A COPY OF THE TRUST INSTRUMENT.

27 **3-409.**

28 (A) THIS SUBSECTION DOES NOT APPLY IF PAYMENT OF THE ELECTIVE  
29 SHARE OF A SURVIVING SPOUSE IS OTHERWISE PROVIDED FOR:

30 (1) (I) IN THE DECEDENT'S WILL; OR

1                   **(II) IN THE INSTRUMENT GOVERNING ANY TRUST OF WHICH THE**  
2 **DECEDENT WAS THE SETTLOR; OR**

3                   **(2) IN A WRITTEN AGREEMENT BETWEEN THE PERSONS**  
4 **RESPONSIBLE FOR PAYING THE ELECTIVE SHARE THAT IS APPROVED BY THE**  
5 **COURT.**

6           **(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**  
7 **ELECTIVE SHARE OF A SURVIVING SPOUSE SHALL BE PAID:**

8                   **(I) FROM THE PORTION OF THE DECEDENT'S PROBATE ESTATE**  
9 **THAT IS INCLUDED IN THE AUGMENTED ESTATE AND DOES NOT CONSTITUTE ANY**  
10 **PART OF THE SPOUSAL BENEFITS;**

11                   **(II) TO THE EXTENT THE ELECTIVE SHARE IS NOT FULLY PAID**  
12 **AS PROVIDED IN ITEM (I) OF THIS PARAGRAPH:**

13                   **1. FROM THE PORTION OF ANY REVOCABLE TRUST OF**  
14 **THE DECEDENT THAT IS INCLUDED IN THE AUGMENTED ESTATE AND DOES NOT**  
15 **CONSTITUTE ANY PART OF THE SPOUSAL BENEFITS; AND**

16                   **2. IF THERE IS MORE THAN ONE REVOCABLE TRUST OF**  
17 **THE DECEDENT, THE PAYMENT SHALL BE APPORTIONED AMONG THE TRUSTS IN**  
18 **PROPORTION TO THE VALUE OF THE ASSETS OF EACH REVOCABLE TRUST THAT ARE**  
19 **AVAILABLE TO SATISFY THE ELECTIVE SHARE; AND**

20                   **(III) TO THE EXTENT THE ELECTIVE SHARE IS NOT FULLY PAID**  
21 **AS PROVIDED IN ITEMS (I) AND (II) OF THIS PARAGRAPH, BY THE RECIPIENTS OF ANY**  
22 **OTHER PORTIONS OF THE AUGMENTED ESTATE THAT DO NOT CONSTITUTE ANY**  
23 **PART OF THE SPOUSAL BENEFITS, PRORATED AMONG THE RECIPIENTS IN**  
24 **PROPORTION TO THE VALUE OF THE ASSETS RECEIVED BY EACH RECIPIENT.**

25                   **(2) IF ANY PAYMENT REQUIRED BY THIS SUBSECTION IS PREEMPTED**  
26 **BY FEDERAL LAW, THE PORTION OF THE ELECTIVE SHARE PAYABLE UNDER THIS**  
27 **SUBSECTION SHALL BE APPORTIONED AMONG THOSE RECIPIENTS WHOSE BENEFITS**  
28 **ARE NOT PREEMPTED UNDER FEDERAL LAW.**

29           **(C) UNLESS THE SURVIVING SPOUSE AND THE PAYOR AGREE OTHERWISE IN**  
30 **WRITING, EACH PERSON REQUIRED TO PAY A PORTION OF THE ELECTIVE SHARE**  
31 **UNDER THIS SECTION SHALL MAKE PAYMENT:**

32                   **(1) IN A MANNER THAT IS DEEMED TO BE IN ACCORDANCE WITH THE**  
33 **TERMS AND PURPOSES OF ANY INSTRUMENT GOVERNING THE DISPOSITION OF THE**

1 PORTION OF THE AUGMENTED ESTATE FROM WHICH THE PORTION OF THE  
2 ELECTIVE SHARE IS TO BE PAID; AND

3 (2) (I) IN CASH;

4 (II) WITH A PRORATED SHARE OF EACH ITEM OF PROPERTY  
5 FROM WHICH THAT PORTION OF THE ELECTIVE SHARE CAN BE PAID; OR

6 (III) WITH OTHER PROPERTY ACCEPTABLE TO THE SURVIVING  
7 SPOUSE, IN AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THAT PORTION OF  
8 THE ELECTIVE SHARE TO BE PAID BY THE PAYOR.

9 (D) A PAYOR OR ANY OTHER THIRD PARTY, OTHER THAN THE PERSONAL  
10 REPRESENTATIVE OF THE DECEDENT, THE TRUSTEE OF ANY REVOCABLE TRUST OF  
11 THE DECEDENT, OR THE PERSON RESPONSIBLE FOR THE FILING OF THE ESTATE TAX  
12 RETURN, IS NOT LIABLE FOR HAVING MADE A PAYMENT OR TRANSFERRED AN ITEM  
13 OF PROPERTY, OR ANY OTHER BENEFIT FROM WHICH THE ELECTIVE SHARE MIGHT  
14 BE PAID, TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT IF THE  
15 PAYMENT OR TRANSFER IS MADE:

16 (1) IN GOOD FAITH RELIANCE ON THE VALIDITY OF THE GOVERNING  
17 INSTRUMENT OR BENEFICIARY DESIGNATION ON REQUEST AND SATISFACTORY  
18 PROOF OF THE DEATH OF THE DECEDENT; AND

19 (2) BEFORE THE PAYOR OR OTHER THIRD PARTY RECEIVES WRITTEN  
20 NOTICE OF THE ELECTION BY THE SURVIVING SPOUSE TO RECEIVE THE ELECTIVE  
21 SHARE UNDER THIS SUBTITLE.

22 3-410.

23 (A) ON THE ELECTION OF THE SURVIVING SPOUSE TO TAKE AN ELECTIVE  
24 SHARE UNDER THIS SUBTITLE, ALL PROPERTY OR OTHER BENEFITS THAT WOULD  
25 HAVE PASSED TO THE SURVIVING SPOUSE UNDER THE WILL, OTHER THAN ANY  
26 PORTION OF THE SPOUSAL BENEFITS, SHALL BE TREATED AS IF THE SURVIVING  
27 SPOUSE HAD DIED BEFORE THE EXECUTION OF THE WILL.

28 (B) THE SURVIVING SPOUSE AND A PERSON CLAIMING THROUGH THE  
29 SURVIVING SPOUSE MAY NOT RECEIVE PROPERTY UNDER THE WILL, OTHER THAN  
30 PROPERTY FORMING ANY PORTION OF THE SPOUSAL BENEFITS.

31 3-411.

32 (A) IN THIS SECTION, "ELIGIBLE PETITIONER" MEANS:

- 1           **(1) THE SURVIVING SPOUSE;**
- 2           **(2) THE PERSONAL REPRESENTATIVE OF THE DECEDENT;**
- 3           **(3) THE TRUSTEE OF ANY REVOCABLE TRUST OF THE DECEDENT;**
- 4           **(4) THE PERSON RESPONSIBLE FOR FILING THE ESTATE TAX**  
5 **RETURN;**
- 6           **(5) ANY INTERESTED PERSON IN THE ESTATE OF THE DECEDENT;**
- 7           **(6) ANY QUALIFIED BENEFICIARY, AS DEFINED IN § 14.5–103 OF THIS**  
8 **ARTICLE, OF ANY REVOCABLE TRUST OF THE DECEDENT; OR**
- 9           **(7) ANY OTHER PERSON WHO MAY BE REQUIRED TO PAY ANY**  
10 **PORTION OF THE ELECTIVE SHARE UNDER § 3–408 OF THIS SUBTITLE.**

11           **(B) AN ELIGIBLE PETITIONER MAY PETITION THE COURT TO MODIFY:**

- 12           **(1) THE CALCULATION OF THE VALUE OF AN AUGMENTED ESTATE;**
- 13           **(2) THE CALCULATION OF THE VALUE OF SPOUSAL BENEFITS; OR**
- 14           **(3) THE SOURCES OF PAYMENT OF AN ELECTIVE SHARE.**

15           **(C) IF, ON A PETITION FILED UNDER SUBSECTION (B) OF THIS SECTION, THE**  
16 **COURT FINDS THAT THE CALCULATION OR PAYMENT OF AN ELECTIVE SHARE UNDER**  
17 **THIS SUBTITLE WOULD FRUSTRATE THE PURPOSES OF THIS SUBTITLE, THE COURT**  
18 **MAY MODIFY:**

- 19           **(1) THE VALUE OF THE AUGMENTED ESTATE;**
- 20           **(2) THE VALUE OF THE SPOUSAL BENEFITS; OR**
- 21           **(3) THE SOURCES OF PAYMENT OF THE ELECTIVE SHARE.**

22           **(D) IN THE COURT'S CONSIDERATION OF ANY PETITION UNDER THIS**  
23 **SECTION, THERE IS A REBUTTABLE PRESUMPTION THAT TRANSFERS OR**  
24 **ARRANGEMENTS THAT BECAME IRREVOCABLE BEFORE THE DECEDENT'S MARRIAGE**  
25 **TO THE SURVIVING SPOUSE ARE EXCLUDED FROM THE AUGMENTED ESTATE.**

26           **(E) IN DETERMINING WHETHER AN ASSET SHOULD BE INCLUDED IN THE**  
27 **VALUE OF THE AUGMENTED ESTATE OR THE SPOUSAL BENEFITS, THE COURT MAY**  
28 **CONSIDER THE CIRCUMSTANCES OF THE TRANSFER OR ARRANGEMENT, INCLUDING:**

- 1           **(1) THE EXTENT OF CONTROL RETAINED BY THE DECEDENT;**
- 2           **(2) THE MOTIVATION FOR THE TRANSFER OR ARRANGEMENT;**
- 3           **(3) THE FAMILIAL RELATIONSHIP BETWEEN THE DECEDENT AND THE**  
4 **BENEFICIARY OF THE TRANSFER OR ARRANGEMENT;**
- 5           **(4) THE DEGREE TO WHICH THE TRANSFER OR ARRANGEMENT**  
6 **DEPRIVES THE SURVIVING SPOUSE OF PROPERTY THAT OTHERWISE MIGHT FORM**  
7 **PART OF THE VALUE OF THE AUGMENTED ESTATE OR SPOUSAL BENEFITS;**
- 8           **(5) THE DEGREE TO WHICH THE TRANSFER OR ARRANGEMENT**  
9 **PROVIDES A BENEFIT TO THE SURVIVING SPOUSE BEYOND WHAT WOULD BE**  
10 **AVAILABLE TO THE SURVIVING SPOUSE AS PART OF THE ELECTIVE SHARE; AND**
- 11           **(6) THE SURVIVING SPOUSE’S ASSETS.**

12 6–306.

13           (a) A personal representative shall be removed from office upon a finding by the  
14 court that [he] **THE PERSONAL REPRESENTATIVE:**

15           (1) Misrepresented material facts in the proceedings leading to [his] **THE**  
16 **PERSONAL REPRESENTATIVE’S** appointment;

17           (2) Willfully disregarded an order of the court;

18           (3) Is unable or incapable, with or without [his own] fault, to discharge  
19 [his] **THE** duties and powers **OF THE PERSONAL REPRESENTATIVE** effectively;

20           (4) Has mismanaged property;

21           (5) Has failed to maintain on file with the register a currently effective  
22 designation of an appropriate local agent for service of process as described in § 5–105(c)(6)  
23 of this article; [or]

24           (6) Has failed, without reasonable excuse, to perform a material duty  
25 pertaining to the office; **OR**

26           **(7) IS THE SURVIVING SPOUSE OF THE DECEDENT WHO HAS ELECTED**  
27 **TO TAKE AN ELECTIVE SHARE UNDER § 3–403 OF THIS ARTICLE.**

28 7–603.

1 (A) [When a] A personal representative or person nominated as personal  
2 representative WHO defends or prosecutes a proceeding in good faith and with just cause[,  
3 he] shall be entitled to receive [his] necessary expenses and disbursements from the estate  
4 regardless of the outcome of the proceeding.

5 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN ADDITION  
6 TO THE COMPENSATION PROVIDED FOR IN THIS SUBTITLE, A PERSONAL  
7 REPRESENTATIVE IS ENTITLED TO REASONABLE COMMISSIONS OR ATTORNEY'S  
8 FEES, AS DETERMINED BY THE COURT, IN CONNECTION WITH ANY ACTION BROUGHT  
9 UNDER § 3-411 OF THIS ARTICLE.

10 (2) THE AMOUNT OF COMPENSATION OR ATTORNEY'S FEES  
11 CONSENTED TO BY ALL INTERESTED PERSONS IS PRESUMED TO BE REASONABLE.

12 14.5-604.

13 (A) IN THIS SECTION, "SPOUSAL BENEFITS" HAS THE MEANING STATED IN §  
14 3-401 OF THIS ARTICLE.

15 (B) UNLESS THE TERMS OF A TRUST INSTRUMENT, COURT ORDER, OR  
16 WRITTEN AGREEMENT BETWEEN THE SETTLOR AND THE SETTLOR'S SURVIVING  
17 SPOUSE EXPRESSLY PROVIDE OTHERWISE, ON THE FILING OF AN ELECTION BY A  
18 SURVIVING SPOUSE TO TAKE AN ELECTIVE SHARE UNDER § 3-403 OF THIS ARTICLE  
19 THAT INVOLVES A FORMERLY REVOCABLE TRUST OF A SETTLOR, A SURVIVING  
20 SPOUSE SERVING AS THE TRUSTEE OF THE TRUST OR AN ADVISOR TO THE TRUSTEE  
21 SHALL BE REMOVED AS A TRUSTEE OR AN ADVISOR ON THE DATE OF THE FILING OF  
22 THE ELECTION WITHOUT FURTHER COURT ACTION.

23 (C) AFTER THE FILING OF AN ELECTION TO TAKE AN ELECTIVE SHARE  
24 UNDER SUBSECTION (B) OF THIS SECTION BECOMES FINAL:

25 (1) THE SURVIVING SPOUSE MAY NOT:

26 (I) SERVE AS A TRUSTEE OR AN ADVISOR TO THE TRUSTEE OF  
27 THE TRUST; OR

28 (II) EXERCISE ANY TRUST OR FIDUCIARY POWERS PROVIDED  
29 FOR IN THE TERMS OF THE TRUST;

30 (2) ALL PROPERTY OR OTHER BENEFITS THAT WOULD HAVE PASSED  
31 TO THE SURVIVING SPOUSE UNDER THE TRUST INSTRUMENT, OTHER THAN ANY  
32 PORTION OF THE SPOUSAL BENEFITS, SHALL BE TREATED AS IF THE SURVIVING  
33 SPOUSE HAD DIED ON THE DAY BEFORE THE SETTLOR; AND



1           **(3) THE SURVIVING SPOUSE OR A PERSON CLAIMING THROUGH THE**  
2 **SURVIVING SPOUSE MAY NOT RECEIVE PROPERTY, OTHER THAN PROPERTY**  
3 **FORMING ANY PORTION OF THE SPOUSAL BENEFITS, UNDER THE TRUST**  
4 **INSTRUMENT.**

5           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
6 apply only prospectively and may not be applied or interpreted to have any effect on or  
7 application to any estate opened before the effective date of this Act or any revocable trust  
8 of a decedent that became irrevocable by reason of the death or incapacity of the settlor  
9 before the effective date of this Act.

10           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 2016.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.