

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 735

(Delegate Malone, *et al.*)

Health and Government Operations

Judicial Proceedings

Estates and Trusts - Share of Intestate Estate Inherited by Surviving Spouse

This bill increases the initial share of a decedent's intestate estate that is inherited by a surviving spouse from \$15,000 to \$40,000. The bill applies when (1) there is no surviving minor child but there is surviving issue or (2) there is no surviving issue but there is a surviving parent.

Fiscal Summary

State Effect: General fund revenues decrease, likely minimally, due to the reduction in the size of intestate estates subject to taxation under the bill. State expenditures are not affected; the bill's changes can be implemented with existing resources.

Local Effect: The bill's changes can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Current Law: In construing the terms of a will, "issue" means every living lineal descendant except a lineal descendant of a living lineal descendant.

Generally, any part of the net estate of a decedent not effectively disposed of by the will must be distributed to the heirs of the decedent in the order prescribed in State law. A surviving spouse receives one-half of the intestate estate when there is a surviving minor child. If there is no surviving minor child but there is surviving issue, or if there is no surviving issue but there is a surviving parent, the surviving spouse's share must be the first \$ 15,000 plus one-half of the remaining estate. If there is no surviving issue or parent,

the share must be the whole estate. The net estate must be calculated without a deduction for the Maryland Uniform Estate Tax.

Background: The spousal share amount for intestate succession was last altered by Chapter 264 of 1982, which increased the initial spousal share from \$4,000 to \$15,000. According to the U.S. Bureau of Labor Statistics' Consumer Price Index Inflation Calculator, \$15,000 in 1982 has the same buying power as \$37,866 in 2017.

State Revenues: General fund revenues decrease, likely minimally, from the reduction in the size of estates subject to taxation. The Maryland estate tax exemption amount is \$3 million in 2017 and the tax is limited to 16% of the amount by which the decedent's taxable estate exceeds the exemption. The spousal share is exempt from the Maryland estate and inheritance taxes, but the shares of surviving children and parents, while exempt from the Maryland inheritance tax, are subject to the Maryland estate tax.

According to the Comptroller's Office, approximately 2,675 estates were closed in calendar 2016. Of these, about 938 were subject to the estate tax. The bill affects intestate estates in which there is a both a spouse and surviving child or parent only. The Comptroller's Office advises that there is no way to determine how many of the estates subject to the tax meet these conditions; however, the number is likely to be small. Of the intestate estates that are affected, the bill's additional \$25,000 reduction in the residual taxable estate for each intestate estate decreases the taxable share of each applicable estate by a maximum of \$12,500. Thus, general fund revenues decrease by a maximum of \$2,000 for each estate affected by the bill. *For illustrative purposes only*, if 10% of 940 estates that are subject to the Maryland estate tax were administered intestate, and 25% of those estates had a spouse and surviving issue or a surviving parent, then 24 estates would be subject to the distribution required by the bill. Accordingly, in this illustrative example, general fund revenues would be reduced by \$36,000 in fiscal 2017 and \$48,000 annually thereafter.

Local Fiscal Effect: The Register of Wills advises that increasing the initial spousal share likely results in more estates being probated as small estates, which requires less administrative work. Small estates are defined as intestate estates with no more than \$50,000 in assets or, in the case of a will with a spouse as sole beneficiary, no more than \$100,000.

Additional Information

Prior Introductions: None.

Cross File: SB 73 (Senator Reilly) - Judicial Proceedings.

Information Source(s): Comptroller's Office; Judiciary (Administrative Office of the Courts; Register of Wills; U.S. Bureau of Labor Statistics; Department of Legislative Services

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