

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 792

(Senator West)

Judicial Proceedings

Judiciary

Estates and Trusts - Registered Domestic Partnerships

This bill allows for registered domestic partnerships to have the same effect as marriage under various provisions of the Estates and Trusts Article of the Maryland Code. Among other things, it establishes (1) the requirements that must be met for a domestic partnership to be registered with the register of wills and how the domestic partnership may be terminated and (2) the benefits for which the surviving partner of a registered domestic partnership qualifies. The bill also removes certain terms from the definition of “child” under the Estates and Trusts Article and alters provisions governing the distribution of an intestate estate (an estate not distributed by a will).

Fiscal Summary

State Effect: General fund revenues are expected to decrease annually, as discussed below. Expenditures are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Registered Domestic Partnerships

Definitions

The bill adds definitions of “domestic partnership,” “registered domestic partner,” “registered domestic partnership,” and “surviving registered domestic partner” to the

Estates and Trusts Article of the Maryland Code.

“Domestic partnership” is defined according to the definition of the term under the Health-General Article (relating to hospital visitation and medical emergencies). “Domestic partnership” is a relationship between two individuals who (1) are at least 18 years old; (2) are not related to each other by blood or marriage within four degrees of consanguinity under civil law rule; (3) are not married or in a civil union or domestic partnership with another individual; and (4) agree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship, even if both individuals are not required to contribute equally to the relationship.

“Registered domestic partner” is an individual in a registered domestic partnership, and a “registered domestic partnership” is a domestic partnership that is registered in accordance with provisions established by the bill allowing for registration of a domestic partnership with the register of wills. A “surviving registered domestic partner” is the registered domestic partner of a decedent at the time of the decedent’s death.

Parity with “Marriage” and “Spouse”

The bill alters various definitions and provisions in the Estates and Trusts Article so that, in many cases, a “registered domestic partnership,” and a “registered domestic partner” are treated the same as a marriage, and a spouse, respectively. In the following statutory provisions of the Estates and Trusts Article, the bill adds “registered domestic partnership” where the term marriage appears, and adds “registered domestic partners” where the term spouse appears:

- definition of a child;
- provisions related to intestate succession, including share of the surviving spouse, division among surviving issue, distribution when there is no surviving issue, and inheritance from a person born to or conceived by individuals who are not married;
- family allowance; and
- order of priority for letters of administration, appointing a successor personal representative, or appointing a special administrator, as specified.

Declaration of Domestic Partnership

Two individuals may register a domestic partnership by filing a declaration of domestic partnership with the register of wills in the county in which the domestic partners are domiciled. A declaration of domestic partnership filed with the register of wills must:

- include the full name, the home address, and the age of each domestic partner;
- be signed directly by each party, or by another individual, at the express direction of the party and in the party's presence;
- be signed in the physical presence of a notary public or before a notary public through communication technology in accordance with the Maryland Revised Uniform Law on Notarial Acts; and
- affirm under the penalty of perjury that each domestic partner is at least 18 years old, the sole domestic partner of the other, not married, and in a committed relationship with the other individual.

If the declaration of domestic partnership does not meet the requirements, as stated above, the register of wills may refuse to register a domestic partnership.

The register of wills may charge a fee of up to \$25 for the filing of a declaration of domestic partnership and must maintain adequate records of declarations of domestic partnership, amendments to declarations of domestic partnership, and termination statements. A declaration of domestic partnership filed with a register of wills is a public record, except that the register must deny inspection of the part of a declaration of domestic partnership that contains the home address of either domestic partner.

Termination of a Domestic Partnership

A domestic partnership may be terminated by filing a declaration of termination with the register that must be signed by both parties or, if the declaration of termination is not signed by both parties, include a statement that a copy of the declaration of termination has been served on the nonsigning party. A declaration of termination is effective six months after the date of filing.

If a domestic partnership has been abandoned by one of the domestic partners, the abandoned domestic partner may file a declaration of termination not earlier than six months after the abandonment. The declaration of termination must (1) include a statement that the filing party has not been in contact with the nonfiling party for at least six months preceding the date of filing and (2) if the location of the nonfiling party is known, include a statement that a copy of the declaration of termination has been served on the nonfiling party. A declaration of termination that meets these requirements is effective immediately.

A registered domestic partnership terminates immediately on (1) certification of marriage of either domestic partner or (2) the death of either domestic partner. However, this provision may not be interpreted to terminate any rights or benefits otherwise enjoyed by or owed to a surviving registered domestic partner.

Surviving Partner of a Registered Domestic Partnership

The surviving partner of a registered domestic partnership qualifies for the following benefits, as statutorily specified: (1) the share of a surviving spouse or surviving domestic partner of an intestate decedent; (2) the family allowance for a surviving spouse or surviving registered domestic partner of an intestate decedent; (3) priority of appointment as the personal representative for a surviving spouse, surviving registered domestic partner, and children of an intestate decedent; and (4) the inheritance tax exemption established by the bill (discussed below). However, the surviving partner of a registered domestic partnership is not entitled to elect to take an elective share of the estate under §3-403 of the Estates and Trusts Article.

Recognition of Domestic Partnerships in Other Jurisdictions

If the laws of another jurisdiction establishing a relationship other than marriage are substantially similar to the requirements under the bill, the relationship established by the other jurisdiction must be recognized as a registered domestic partnership in the State. The register must establish, update, and maintain a certified list of jurisdictions with laws of domestic partnership that are substantially similar, as specified. If the register has not certified that the laws of another jurisdiction are substantially similar to the requirements, as specified, but the laws of that jurisdiction establish a relationship, regardless of the term or phrase used by the jurisdiction, that has the rights and responsibilities of marriage, the relationship must be recognized by the register as a registered domestic partnership in the State and the register must include that jurisdiction in the certified list. The register must broadly construe the term “substantially similar” to maximize the recognition of relationships from other jurisdictions as registered domestic partnerships in the State.

Inheritance Tax Exemption

The bill adds to an existing exemption from the inheritance tax for the receipt of an interest in a joint primary residence that (1) at the time of death was held in joint tenancy by the decedent and the domestic partner and (2) passes from decedent to or for the use of the domestic partner. The bill adds that for a *registered* domestic partnership, the inheritance tax does not apply to the receipt of property that passes from the decedent to or for the use of the domestic partner of the decedent.

Definition of “Child”

The bill modifies the definition of “child” in the Estates and Trusts Article to no longer use the terms “legitimate” and “illegitimate.” The bill also eliminates any effect of a marriage ceremony, if the marriage is invalid, in determining a parent-child relationship. The bill modifies the definition of a child so that the phrase “child born to parents” is replaced by

the phrase “child born to or conceived by individuals”; and the term “father” is replaced by “parent.” Also, the bill adds a manner in which a child can be considered to be the child of an individual who did not give birth to the child if the individual is not married to or in a registered domestic partnership with the child’s mother – if the child’s mother identifies the individual as the other biological parent of the child and the individual agrees.

Share of a Surviving Spouse or Registered Domestic Partner

The bill – in addition to altering provisions governing the share of a surviving spouse of an intestate estate so that a surviving registered domestic partner is entitled to the same share as a surviving spouse – also alters the provisions so that the share of a surviving spouse or registered domestic partner is the entire intestate estate under more circumstances, repealing provisions that require the share of the surviving spouse to be the first \$40,000 plus one-half of the residue of the estate in circumstances where:

- there is no surviving minor child but there is surviving issue who are the surviving issue of the surviving spouse; and
- there is no surviving issue but a surviving parent, and the surviving spouse and the decedent had been married for less than five years.

The bill also increases the share of the surviving spouse (also applicable to a registered domestic partner under the bill) if there is no surviving minor child, but there is surviving issue who are not the issue of the surviving spouse (or registered domestic partner), so that the share is \$100,000 (instead of \$40,000) plus one-half the residue. The bill does not alter the share of the surviving spouse (or registered domestic partner) if there is a surviving minor child, which is one-half.

Distribution of the Net Intestate Estate

The bill alters provisions governing the distribution of the net intestate estate when there is no surviving issue, surviving spouse, or registered domestic partner by removing great-grandparents’ entitlement to distribution of the net estate if there is no surviving parent or issue of a parent or surviving grandparent or issue of a grandparent; this leaves stepchildren next in line after surviving grandparents, or issue of a grandparent, to receive distribution of the net estate if there is no surviving blood relative entitled to inherit the net estate under the provisions.

Current Law:

Effect of Marriage under the Estates and Trusts Article

Marriage has importance in the distribution of an intestate estate under the Estates and SB 792/ Page 5

Trusts Article and the determination of who is considered a child of a decedent for purposes of distribution of an intestate estate. Any part of the net estate of a decedent not effectively disposed of by the decedent's will is distributed by the personal representative to the heirs of the decedent in accordance with statutory provisions. A surviving spouse of a decedent receives a defined share of the net intestate estate:

- if there is a surviving minor child, the share is one-half;
- if there is no surviving minor child, but there is surviving issue (living lineal descendants), the share is the first \$40,000 plus one-half of the residue;
- if there is no surviving issue but a surviving parent, and the surviving spouse and the decedent had been married for less than five years, the share is the first \$40,000 plus one-half of the residue;
- if there is no surviving issue but a surviving parent, and the surviving spouse and the decedent had been married for at least five years, the share is the whole estate; and
- if there is no surviving issue or parent, the share is the whole estate.

The surviving spouse is also entitled to receive an allowance from the estate of \$10,000 for personal use.

The net estate, exclusive of the share of the surviving spouse, or the entire net estate if there is no surviving spouse, is divided equally among any surviving issue (living lineal descendants). If there is no surviving issue, the estate is distributed to surviving parents or issue of parents if neither parent survives, and if none, then surviving grandparents, and so on.

A person who meets the definition of a child of a decedent according to specified provisions is considered a lineal descendant. Those provisions refer to legitimate children, adopted children, and illegitimate children, and whether a person is considered a child of another can depend on the marriage status of the parent at the time the child was born or conceived (or on whether the parent had participated in a marriage ceremony, even if the marriage was invalid).

A surviving spouse also has the option of electing to take an elective share of an estate (in place of property or other benefits that would have passed to the surviving spouse under a will) of (1) if there is surviving issue, one-third of the value of the estate subject to election, reduced by the value of specified spousal benefits or (2) if there is no surviving issue, one-half of the value of the estate subject to election, reduced by the value of specified spousal benefits. (The bill expressly does not provide this option of electing to take an elective share, to a surviving registered domestic partner).

“Domestic Partnership” under the Health-General Article

“Domestic partnership” is defined under the Health-General Article for purposes of hospital visitation and medical emergencies. A hospital, related institution, or residential treatment center must allow a patient’s or resident’s domestic partner, the children of the patient’s or resident’s domestic partner, and the domestic partner of the patient’s or resident’s parent or child to visit, except under specified circumstances. In case of a medical emergency, two adults must be treated as domestic partners if one of the adults, in good faith, tells the emergency medical provider or hospital personnel that the adults are in a mutually interdependent relationship, for the purposes of (1) allowing one adult to accompany the ill or injured adult being transported to a hospital in an emergency vehicle and (2) visitation with the ill or injured adult admitted to a hospital on an emergency basis on the same basis as a member of the ill or injured adult’s immediate family.

Inheritance Tax

The Maryland inheritance tax is applied to the receipt of property from a decedent’s estate and is 10% of the clear value of the property. There are various exemptions from the inheritance tax, including property that passes from a decedent to a grandparent, parent, spouse, child (or lineal descendent of a child), sibling, or spouse or surviving spouse of a child of a decedent (or a spouse or surviving spouse of a lineal descendant of a child of the decedent).

A limited inheritance tax exemption exists for a domestic partner, who is an individual with whom another individual has established a domestic partnership, as defined under the Health-General Article. If the domestic partner of a decedent provides an affidavit, as specified, or any two of the proofs of domestic partnership, as specified, the inheritance tax does not apply to the receipt of an interest in a joint primary residence that (1) at the time of death was held in joint tenancy by the decedent and the domestic partner and (2) passes from the decedent to or for the use of the domestic partner. The clear value of all other property, outside of this exemption, passing to a domestic partner is subject to the 10% inheritance tax.

Registers of Wills

In general, the registers of wills in each of the State’s 24 jurisdictions are responsible for the administration of estates by providing proper forms and direction, assisting, and advising any person who requests assistance in the preparation of any form for administrative probate, admitting wills to probate and issuing letters of administration, auditing accounts, and maintaining accurate records of all estate matters. The registers also serve as clerks of the orphans’ courts.

State Fiscal Effect: General fund revenues are expected to decrease due to the bill's inheritance tax exemption for property that passes from a decedent to or for the use of the domestic partner of the decedent. This decrease is partially offset by the \$25 fee charged by registers of wills under the bill to register a domestic partnership. Registers of wills' salaries and office expenses are paid from fees and inheritance tax revenues collected by the registers, with the remainder of the fees and inheritance tax revenues deposited into the State general fund. The extent of any decrease cannot be reliably estimated and depends on the number of domestic partnerships that are registered pursuant to the bill, the amount of property that qualifies for the exemption, and the timing of when inheritance tax would have otherwise been paid on that property in the absence of the bill.

For context, in its June 2022 inheritance and estate tax comparative revenue summary, the Comptroller reported receiving \$76.9 million in inheritance tax revenues in fiscal 2022.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 755 (Delegate Cardin) - Judiciary.

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

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