

HB187_Macfarlane_FAV.pdf

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Position: FAV



BYRON E. MACFARLANE
REGISTER OF WILLS FOR HOWARD COUNTY
9250 JUDICIAL WAY, SUITE 1100
ELLCOTT CITY, MARYLAND 21043

March 28, 2022

Hon. William C. Smith, Jr., Chairman
Judicial Proceedings Committee
Miller Senate Office Building, 2 East
Annapolis, Maryland 21401

Re: HB187 – Estates and Trusts – Administration of Estates – Fees - FAVORABLE

Dear Chairman Smith and Members of the Judicial Proceedings Committee,

I write to express my strong support for passage of this important legislation. It is the product of substantial research and numerous meetings and conversations among stakeholders, including the Maryland Register of Wills Association, legislators, members of the Estates & Trusts Section Council of the Maryland State Bar Association, and members of the Life and Health Planning Committee of Attorney General Frosh's COVID-19 Access to Justice Task Force. It is also the product of conversations and work done during the interim to resolve concerns raised when this legislation was debated in subcommittee last session.

In Maryland each of the 24 Registers of Wills are required by law to charge various fees for the services we provide. House Bill 187 makes several significant changes to our fee schedule using access to justice, basic fairness, and efficiency as our guiding principles.

This bill eliminates fees in small estates, corrects our regressive probate fee schedule, and makes a series of needed clarifying and technical changes. Allow me to elaborate on each of these objectives:

First, we want to take the bold step of eliminating fees for all estates in Maryland valued under \$50,000. These estates comprise 64% – nearly two-thirds – of all probate estates in Maryland. The fees charged range from \$2 to \$150 depending on the estate's value. While this may not seem like a lot to some of us, some families struggle to pay these fees. Some are forced to pay with a credit card because they have no cash and sometimes, we have to set up payment plans for them. While these fees present a hardship for some of our grieving families, they also produce little benefit to the state. The fees for 64% of our estates account for 0.98% of our statewide revenue. This fee is truly nickel-and-diming families with the smallest estates and from

an access to justice perspective and from a public management perspective hard to justify retaining. By eliminating these fees, we'll be easing the financial strain on Maryland families and streamlining government at the same time.

Second, this bill takes our current regressive fee structure and replaces it with a level playing field. Under current law, smaller estates pay a disproportionately high fee compared to larger estates. For example, a \$20,000 estate pays a \$150 probate fee, which is 0.75% of its value. A \$5 million estate pays a \$25,000 fee, which is 0.05% of its value. An estate worth 250 times as much pays a fee that's only 17 times as high. Under our proposal, estates all estates under \$50,000 would pay no fee, most between \$50,000 and under \$500,000 would pay a lower fee, a small number would pay the same fee, and only estates \$500,000 or over would pay a higher fee. This comes out to 63.4% of estates paying no fee, 24% paying a lower fee, 2.2% paying the same fee, and 10.4% paying a higher fee. In sum, this proposal corrects a regressive fee structure that has been on the books for decades and implements one that is fundamentally fair for everyone.

Third, this bill contains several "housekeeping" matters. It provides statutory authority for the Registers to charge the actual cost for mailings and returned check fees. It provides a set dollar amount, \$25, for copies of hearings before the orphans' courts. It also clarifies that the filing fee for controversial matters and guardianships is \$20. Finally, it makes clarifying and grammatical revisions to update language in a statute that has not been changed in over 30 years.

As I stated previously, the guiding principles of this legislation are improving access to justice in probate proceedings, ensuring basic fairness with the fees charged by the Registers, and increasing efficiency in the probate process. Simply put, everyone involved wins with this bill.

I respectfully urge a favorable report to House Bill 187. Thank you for your time, attention, and service to our great state.

Sincerely,



Byron E. Macfarlane

MSBA E&T Section Testimony HB187 as amended.pdf

Uploaded by: Danielle Cruttenden

Position: FAV

To: Members of the Senate Judiciary Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: March 29, 2022

Subject: **HB 187** – Estates & Trusts – Administration of Estates – Fees

Position: **Support as Amended**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports as amended** House Bill 187 – Estates and Trusts – Administration of Estates – Fees.

Maryland’s Registers of Wills are charged with the responsibility of assisting the public with the process known as probate, whereby property in the name of a decedent is transferred to the beneficiaries named in a will or to the decedent’s heirs, when the decedent died without a will. The fees that a Register of Wills collects for the performance of their duties are governed by § 2-206 of the Estates and Trusts Article. Among the enumerated fees, §2-206 specifically provides for the collection of a probate fee, the calculation of which is based upon the value of the probate estate. As provided in § 2-206 (b)(1), this fee is “[f]or taking probate of wills and furnishing 2 certified copies of the will and codicils, granting letters of administration and furnishing 12 certificates of letters, issuing warrants to appraise, enter on estate docket, filing elections of surviving spouses to take intestate shares, filing renunciations and disclaimers, filing and recording wills, bonds, inventories, accounts of sale, releases, administration accounts, petitions and orders, and other papers filed in the administration of decedents’ estates” The probate fee is currently assessed on all estates in Maryland, including small estates which have a value of less than \$50,000 (or less than \$100,000 if the spouse is the sole legatee or beneficiary of the estate).

The current schedule for determining the probate fee results in small estates paying a disproportionately higher fee than larger estates. For example, a probate estate of \$30,000 is assessed a probate fee at the rate of .005% or \$150, whereas a probate estate of \$530,000 is assessed a probate fee at the rate of .001% or \$750. The inequity is actually greater when considering the ability of wealthier individuals to afford the legal services of an estate planning attorney to prepare revocable living trusts and use other estate planning tools that avoid the cost of probate. Economically disadvantaged families, on the other hand, are dependent upon the probate process in order to gain access to their inheritance. For many of these lower income families, even the most modest probate fee is a financial hardship.

In 2020 and 2021, the Estate and Trust Law Section of the Maryland State Bar Association participated as a member of Life & Health Planning Committee to the Maryland Attorney General's COVID-19 Recovery Task Force. As stated in that Task Force's Report, the COVID-19 pandemic exacerbated the challenges faced by low-income families dealing with the death of their family members, including costs associated with probate and property transfers. It was the recommendation of the Life & Health Committee, as adopted by the Task Force, that the Maryland General Assembly eliminate probate fees on small estates to allow for greater access to justice.¹

HB 187 resolves the financial inequities of the current probate fee schedule by removing the probate fee on all small estates and adjusts the remaining fee structure to correct its current regressive nature. It is worthy to note that no increase in the probate fee schedule has occurred for more than 30 years. Accordingly, it is reasonable to adjust the probate fee schedule to not only correct the inequities described above, but to have the fees reflect the actual increase in costs to the Register of Wills that comes with the performance of their duties.

For the reasons stated above, the MSBA **supports HB 187 as amended and urges a favorable committee report.**

For Further Information, Please Contact:

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¹ See, *Confronting the Covid-19 Access to Justice Crisis*, report of the Maryland Attorney General Brian E. Frosh's COVID-19 Access to Justice Task Force, January 2021, page 33.

2022-03-28 HB 187 (Support).pdf

Uploaded by: Hannibal Kemerer

Position: FAV



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

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WRITER'S DIRECT DIAL NO.

410-576-6393

410-576-7293

March 28, 2022

To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: Mark H. Weisner, Esq.
Office of the Attorney General

Re: HB0187 – Estates and Trusts – Administration of Estates – Fees – **Letter of Support**

The Office of the Attorney General urges the Judiciary Committee to favorably report House Bill 187. Delegate Terrasa's legislation provides that a Register of Wills is not required to record or provide certain documents until the appropriate fee for the documents has been paid; requires a Register of Wills to collect and assess probate fees at a certain time; lowers or eliminates probate fees on estates that are valued at less than \$500,000; raises probate fees on estates that are valued at greater than \$500,000; and alters the fees to be charged for other services provided by a Register of Wills and the Orphans' Court. Like a number of other bills introduced this session, House Bill 187 accomplishes one recommendation of our COVID-19 Access to Justice Task Force.¹

This legislation specifically benefits financially disadvantaged Marylanders in the following ways:

1. Eliminates the probate fee in estates valued at less than \$50,000 (\$100,000 when the surviving spouse is the sole beneficiary);
2. Lowers the probate fee on other smaller estates valued at less than \$500,000; and
3. Maintains the fee exemption for estates where the real property of the decedent is transferred to an heir who resides on the property, the property is subject to a property tax lien and the heir is unable to pay the fee due to poverty.

Additionally, this legislation is intended to be revenue neutral for the State. The benefits afforded financially disadvantaged Marylanders will be recouped by raising the fees on the more

¹ MD. ATT'Y GEN. BRIAN E. FROSH'S COVID-19 ACCESS TO JUST. TASK FORCE, CONFRONTING THE COVID-19 ACCESS TO JUSTICE CRISIS 11 (Jan. 2021) ("Eliminate expenses on certain small estates, including probate fees."), available at https://www.marylandattorneygeneral.gov/A2JC%20Documents/AG_Covid_A2J_TF_Report.pdf.

affluent. Probate fees are increased on estates valued at greater than \$500,000. Fees will also be increased in estates with issues in controversy that require the assistance of the Orphans' Court.

For all of the foregoing reasons, the Office of the Attorney General urges the Committee to favorably report House Bill 187.

cc: Judicial Proceedings Committee Members

Sponsor Testimony, HB187, JPR.pdf

Uploaded by: Jen Terrasa

Position: FAV



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

March 29, 2022

To: The Honorable William C. Smith
Chair, Judicial Proceedings Committee

From: Delegate Jen Terrasa
District 13, Howard County

Re: Sponsor Testimony in Support of HB 187 Estates and Trusts –
Administration of Estates – Fees

Dear Chairman Smith, Vice Chair Waldstreicher and members of the Judicial Proceedings Committee,

Thank you for the opportunity to present HB 187, which would improve access to justice in the area of probate, promote basic fairness in the fees the public is charged, and enhance efficiency in the probate process by eliminating small estate fees, correcting a regressive probate fee schedule, and making a series of changes to modernize this section of the code.

As you know, probate fees come into play during probate - the legal process of transferring probate assets to either the decedent's heirs or those named to inherit in their Last Will & Testament. "Probate assets" are only those titled in the sole name of a decedent; they do NOT include assets that are jointly-held or have a designation of beneficiary. So, for example, if you have a house that you hold jointly with your spouse, that would not be a probate asset. Similarly, a joint bank account or life insurance policy with a designated beneficiary would not be part of the probate estate.

Additionally, probate fees are NOT estate taxes, they are fees collected by the Register of Wills to cover the cost of services performed by that office, similar to court filing fees. Unlike estate and other taxes, which are collected by the Comptroller's office, probate fees are collected by the Office of the Register of Wills.

HB 187 eliminates the fees for small probate estates valued up to \$50,000. Under current law, the fees for those estates range from \$2 to \$150. They generate very little revenue, representing less than 1% of the revenue brought in by the 24 Registers of Wills collectively statewide. However, these probate fees can amount to a lot of money

for the families living in poverty who have just lost a loved one. Current probate fees on small estates can be a barrier to probate for very small estates, preventing heirs with limited means from being able to inherit the family car or house in some cases.

HB 187 also remedies the current regressive fee schedule and adjusts the probate fees for inflation after decades without change to offset these adjustments. Current probate fees represent a higher percentage of those small probate assets than larger ones. For example, an estate worth \$5,000 pays a \$50 fee – which is 1% of the value of the estate. Whereas a \$5 million estate pays a \$2,500 fee – which is only 0.05% of the value of the estate. If the estate is over \$5 million, they pay \$2,500 plus .02% of anything over \$5 million. So in reality it is even less than .05%.

If HB 187 is enacted, the probate fee for any estate with probate assets valued under \$500,000 will either be eliminated or reduced. The chart below lays out the changes being proposed in this bill.

PROBATE FEES BEFORE AND AFTER HB187						
If the Value of the Probate Estate is At Least	But Less Than	Current Fee	Fee as % of Value of Estate at Beginning of Value Range	Proposed Fee	Fee as % of Value of Estate at Beginning of Value Range	% of Probate Estates
--	\$50,000	\$50-150	1%	\$0	N/A	58.4% will have fee eliminated
\$50,000	\$100,000	\$200	0.40%	\$100	0.20%	28.6% will have fee reduced to .2%
\$100,000	\$500,000	\$400	0.40%	\$200	0.20%	
\$500,000	\$1,000,000	\$750	0.15%	\$1,000	0.20%	13.0% will see a slight increase to .2% or lower
\$1,000,000	\$2,500,000	\$1,500	0.15%	\$2,000	0.20%	
\$2,500,000	\$5,000,000	\$2,500	0.10%	\$5,000	0.20%	
\$5,000,000	\$7,500,000	\$2,500 plus .02% of excess over \$5,000,000	0.05% + .02% of excess over \$5,000,000	\$7,500.00	0.15%	
\$7,500,000	\$10,000,000	\$2,500 plus .02% of excess over \$5,000,000	0.05% + .02% of excess over \$5,000,000	\$10,000.00	0.13%	
\$10,000,000	--	\$2,500 plus .02% of excess over \$5,000,000	0.05% + .02% of excess over \$5,000,000	\$10,000 plus .02% of excess over \$10,000,000	0.10%	

HB 187 stems from recommendations made in 2020 by the Attorney General's COVID-19 Access to Justice Task Force, which was charged with developing strategies and solutions addressing the significant civil, legal challenges facing Marylanders in the wake of COVID-19. While the task force specifically examined the pandemic's impact and made recommendations on how to deploy the legal system to ensure the State's most vulnerable remain housed, fed, safe, secure, employed, healthy, and connected to civil justice, many of the challenges identified, including this one, were systemic issues faced by people long before the pandemic began.

HB 187 improves access to justice in the area of probate, promotes basic fairness in the fees the public is charged, and enhances efficiency in the probate process.

I respectfully urge a favorable report.