

HOUSE BILL 281

N2

5lr1714

By: **Delegate Dumais**

Introduced and read first time: February 4, 2015

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2015

CHAPTER _____

1 AN ACT concerning

2 **Estates and Trusts – Elective Share**

3 FOR the purpose of altering the definition of “net estate”, for purposes of certain provisions
4 of law relating to a surviving spouse making an election to take a certain share of
5 the net estate of the decedent instead of the property left to the surviving spouse
6 under the will, to include property of a certain revocable trust; providing that, under
7 certain circumstances, a surviving spouse is entitled to take a certain elective share
8 amount of the net estate instead of certain property left to the surviving spouse by
9 will or in accordance with the trust instrument of a revocable trust of the decedent;
10 requiring that the share of a surviving spouse who makes the election be paid from
11 the decedent’s estate and each revocable trust of the decedent in a certain manner;
12 altering the time within which an election by a surviving spouse must be made under
13 certain circumstances; requiring that notice of an election be provided to the trustee
14 of each revocable trust of the decedent; providing that, on the election, certain
15 property or other benefits that would have passed to the surviving spouse under the
16 will or revocable trust of the decedent shall be treated as if the surviving spouse had
17 died before the execution of the will or trust instrument; providing that the surviving
18 spouse and a person claiming through the surviving spouse may not receive property
19 under the will or revocable trust of the decedent; specifying the manner in which the
20 portion of an elective share that is payable from a revocable trust of a decedent is to
21 be paid; requiring the removal of a surviving spouse serving as a trustee or an
22 advisor to the trustee of a certain trust under certain circumstances; prohibiting,
23 under certain circumstances, a surviving spouse from serving in certain capacities
24 or exercising certain powers with respect to a certain trust; defining certain terms;

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 making conforming changes; providing for the application of this Act; and generally
2 relating to surviving spouses and elective shares in the estates of decedents.

3 BY repealing and reenacting, with amendments,
4 Article – Estates and Trusts
5 Section 3–203, ~~3–205, 3–206~~, 3–207, and 3–208
6 Annotated Code of Maryland
7 (2011 Replacement Volume and 2014 Supplement)

8 BY adding to
9 Article – Estates and Trusts
10 Section 14.5–604
11 Annotated Code of Maryland
12 (2011 Replacement Volume and 2014 Supplement)

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

15 **Article – Estates and Trusts**

16 3–203.

17 (a) (1) In this section[, “net”] **THE FOLLOWING WORDS HAVE THE MEANINGS**
18 **INDICATED.**

19 (2) **“NET estate” means THE AGGREGATE VALUE OF the property of the**
20 **decedent passing by testate succession AND THE PROPERTY OF ANY REVOCABLE TRUST**
21 **OF THE DECEDENT**, without a deduction for State or federal estate or inheritance taxes,
22 and reduced by:

23 [(1)] (I) **Funeral and administration expenses, WHETHER PAYABLE**
24 **FROM THE DECEDENT’S ESTATE OR A REVOCABLE TRUST OF THE DECEDENT;**

25 [(2)] (II) **Family allowances, WHETHER PAYABLE FROM THE**
26 **DECEDENT’S ESTATE OR A REVOCABLE TRUST OF THE DECEDENT;** and

27 [(3)] (III) **Enforceable claims and debts against the estate, WHETHER**
28 **PAYABLE FROM THE DECEDENT’S ESTATE OR A REVOCABLE TRUST OF THE**
29 **DECEDENT.**

30 (3) **“REVOCABLE” HAS THE MEANING STATED IN § 14.5–103 OF THIS**
31 **ARTICLE.**

32 (4) **“REVOCABLE TRUST OF THE DECEDENT” MEANS ANY TRUST OF**
33 **WHICH THE DECEDENT WAS THE SETTLOR AND THAT WAS REVOCABLE BY THE**
34 **DECEDENT IMMEDIATELY PRIOR TO THE DECEDENT’S DEATH OR INCAPACITY.**

1 **(5) “SETTLOR” HAS THE MEANING STATED IN § 14.5–103 OF THIS**
 2 **ARTICLE.**

3 (b) Instead of property left to the surviving spouse by will **OR IN ACCORDANCE**
 4 **WITH THE TRUST INSTRUMENT GOVERNING A REVOCABLE TRUST OF THE**
 5 **DECEDENT**, the surviving spouse may elect to take a one-third share of the net estate if
 6 there is also a surviving issue, or a one-half share of the net estate if there is no surviving
 7 issue.

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

10 **(D) THE SHARE OF A SURVIVING SPOUSE WHO MAKES THIS ELECTION SHALL**
 11 **BE PAID FROM THE DECEDENT’S ESTATE AND EACH REVOCABLE TRUST OF THE**
 12 **DECEDENT IN THE SAME PROPORTION THAT THE VALUE OF THE ESTATE OR**
 13 **REVOCABLE TRUST BEARS TO THE VALUE OF THE NET ESTATE.**

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

17 ~~(F)~~ **(F)(1)** For the purposes of this section, a surviving spouse who has elected to
 18 take against a will **AND REVOCABLE TRUST OF THE DECEDENT** shall be entitled to the
 19 surviving spouse’s portion of the income earned on the net estate during the period of
 20 administration based on a one-third or one-half 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 3–205.

25 **(A) The right of election of a surviving spouse may be waived before or after**
 26 **marriage by a written contract, agreement, or waiver signed by the party waiving the right**
 27 **of election.**

28 **(B) Unless it provides to the contrary, a waiver of “all rights” in the property or**
 29 **estate of a present or prospective spouse, or a complete property settlement entered into**
 30 **after or in anticipation of separation or divorce, is [a]:**

31 **(1) A waiver of any right to [his] A family allowance as well as to [his] THE**
 32 **elective share by each spouse in the property of the spouse[, his] AND THE right to letters**
 33 **under § 5–104 of this article[, and is an]; AND**

1 **(2)** AN irrevocable renunciation of any benefit which would pass to [him]
 2 THE SPOUSE from the other by intestate succession, by statutory share, or by virtue of the
 3 provisions of a will OR REVOCABLE TRUST executed before the waiver or property
 4 settlement.

5 3–206.

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

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

9 (ii) Six months after THE EARLIER OF:

10 1. [the] THE first appointment of a personal representative
 11 under a will; OR

12 2. DELIVERY BY THE TRUSTEE OF EACH REVOCABLE
 13 TRUST OF THE DECEDENT TO THE SURVIVING SPOUSE OF:

14 A. A NOTICE DISCLOSING THE EXISTENCE OF THE
 15 TRUST;

16 B. A COPY OF THE TRUST INSTRUMENT; AND

17 C. A STATEMENT OF THE NATURE AND VALUE OF THE
 18 TRUST’S ASSETS.

19 (2) (i) Within the period for making an election, the surviving spouse
 20 may file with the court a petition for an extension of time, with a copy given to the personal
 21 representative AND THE TRUSTEE OF EACH REVOCABLE TRUST OF THE DECEDENT.

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

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

26 3–207.

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

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

I, A. B., surviving spouse of C. D., late of the County (City) of, renounce all provisions in the will of C. D. **AND IN ANY TRUST INSTRUMENT GOVERNING A REVOCABLE TRUST OF C. D.** and elect to take my elective share of the decedent's estate **AND ANY REVOCABLE TRUST OF THE DECEDENT.**

.....
(Signature)

(C) NOTICE OF AN ELECTION TO TAKE AN ELECTIVE SHARE OF AN ESTATE OF A DECEDENT SHALL BE DELIVERED TO THE TRUSTEE OF EACH REVOCABLE TRUST OF THE DECEDENT.

3-208.

(a) (1) Upon the election of the surviving spouse to take the elective share of the property of the decedent, all property or other benefits which would have passed to the surviving spouse under the will **OR IN ACCORDANCE WITH THE TRUST INSTRUMENT OF A REVOCABLE TRUST OF THE DECEDENT, AS DEFINED IN § 3-203 OF THIS SUBTITLE,** shall be treated as if the surviving spouse had died before the execution of the will **OR TRUST INSTRUMENT.**

(2) The surviving spouse and a person claiming through the surviving spouse may not receive property under the will **OR IN ACCORDANCE WITH THE TRUST INSTRUMENT.**

(b) ~~(1)~~ If there is an election to take an elective share, ~~contribution~~ **THE PORTION OF THE ELECTIVE SHARE THAT IS PAYABLE FROM THE DECEDENT'S PROBATE ESTATE SHALL BE PAID AS FOLLOWS:**

(1) CONTRIBUTION to the payment ~~of it~~ shall be prorated among all legatees;

(2) Instead of contributing an interest in specific property to the elective share, a legatee or legatees, but not the personal representative ~~OR TRUSTEE~~, may pay the surviving spouse in cash, or other property acceptable to the spouse, an amount equal to the fair market value of the surviving spouse's interest in specific property on the date or dates of distribution; **AND**

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

1 **(C) IF THERE IS AN ELECTION TO TAKE AN ELECTIVE SHARE, THE PORTION**
2 **OF THE ELECTIVE SHARE THAT IS PAYABLE FROM A REVOCABLE TRUST OF THE**
3 **DECEDENT SHALL BE:**

4 **(1) PAID IN A MANNER THAT THE TRUSTEE OF THE REVOCABLE**
5 **TRUST OF THE DECEDENT CONSIDERS TO BE IN ACCORDANCE WITH THE TERMS AND**
6 **PURPOSES OF THE TRUST AND INTERESTS OF THE BENEFICIARIES, PROVIDED THAT**
7 **THE PAYMENT MAY NOT BE UNREASONABLY DELAYED; AND**

8 **(2) MADE IN CASH OR OTHER PROPERTY ACCEPTABLE TO THE**
9 **SURVIVING SPOUSE IN AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THE**
10 **SURVIVING SPOUSE'S INTEREST IN THE REVOCABLE TRUST OF THE DECEDENT.**

11 **14.5-604.**

12 **(A) THIS SECTION APPLIES UNLESS OTHERWISE EXPRESSLY PROVIDED:**

13 **(1) IN THE TRUST INSTRUMENT;**

14 **(2) BY COURT ORDER; OR**

15 **(3) BY A WRITTEN AGREEMENT BETWEEN THE SETTLOR AND THE**
16 **SURVIVING SPOUSE OF THE SETTLOR.**

17 **(B) ON THE FILING OF AN ELECTION BY A SURVIVING SPOUSE TO TAKE AN**
18 **ELECTIVE SHARE UNDER § 3-207 OF THIS ARTICLE THAT APPLIES TO A REVOCABLE**
19 **TRUST OF A SETTLOR THAT BECAME IRREVOCABLE BY REASON OF THE DEATH OR**
20 **INCAPACITY OF THE SETTLOR:**

21 **(1) IF THE SURVIVING SPOUSE IS SERVING AS A TRUSTEE OR AN**
22 **ADVISOR TO THE TRUSTEE OF THE TRUST, THE SURVIVING SPOUSE SHALL BE**
23 **REMOVED AS A TRUSTEE OR AN ADVISOR ON THE DATE OF THE FILING OF THE**
24 **ELECTION WITHOUT FURTHER COURT ACTION; AND**

25 **(2) AFTER THE ELECTION BECOMES FINAL, THE SURVIVING SPOUSE**
26 **MAY NOT:**

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

29 **(II) EXERCISE A TRUST OR FIDUCIARY POWERS PROVIDED IN**
30 **THE TERMS OF THE TRUST, INCLUDING A POWER OF APPOINTMENT.**

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

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2015.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.