



Sub. S.B. 152*

123rd General Assembly

(As Reported by H. Civil & Commercial Law)

Sens. Cupp, Latta, Oelslager, Espy, Herington, Horn

Rep. Salerno

BILL SUMMARY

- Modifies the laws regarding intestate succession for surviving spouses by providing the following:
 - (1) When a person dies without a will and the person is survived by a spouse and one or more children of the decedent or the children's lineal descendants and all of those children also are the children of the surviving spouse, the surviving spouse takes the entire intestate estate.
 - (2) When a person dies without a will and the person is survived by a spouse and one child of the decedent or the child's lineal descendants and the surviving spouse is not the natural or adoptive parent of the child, the spouse takes the first \$20,000 plus one-half of the balance of the intestate estate, and the child or the child's lineal descendants take the remainder per stirpes.
 - (3) When a person dies without a will and the person is survived by a spouse and more than one child or their lineal descendants, and the spouse is the natural or adoptive parent of one, *but not all*, of the children, the spouse takes the first \$60,000, or, if the spouse is the natural or adoptive parent of

* *This analysis was prepared before the report of the House Civil and Commercial Law Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

none of the children, the first \$20,000, plus one-third of the balance of the intestate estate, and the children take the remainder equally, with the lineal descendants of any deceased child taking per stirpes.

CONTENT AND OPERATION

Intestate succession for surviving spouses

Existing law

Under existing law, when a person dies intestate having title or right to any personal property, or to any real estate or inheritance, in Ohio, and the person is survived by a spouse, the personal property must be distributed, and the real estate or inheritance shall descend and pass in parcenary (to own jointly), except as otherwise provided by law, in the following course¹ (R.C. 2105.06):

(1) If there is a spouse and one child or its lineal descendants surviving, the first \$60,000 if the spouse is the natural or adoptive parent of the child, or the first \$20,000 if the spouse is not the natural or adoptive parent of the child, plus one-half of the balance of the intestate estate to the spouse and the remainder to the child or the child's lineal descendants, per stirpes;²

(2) If there is a spouse and more than one child or their lineal descendants surviving, the first \$60,000 if the spouse is the natural or adoptive parent of one of the children, or the first \$20,000 if the spouse is the natural or adoptive parent of none of the children, plus one-third of the balance of the intestate estate to the spouse and the remainder to the children equally, or to the lineal descendants of any deceased child, per stirpes;

¹ "Intestate" means without making a will. A person is said to die intestate when the person dies without making a will or without having disposed by will of a part of the person's property. (Black's Law Dictionary, Fifth edition.)

² "Per stirpes" means by roots or stocks; by representation. This term denotes that method of dividing an intestate estate where a class or group of distributees take the share to which their deceased ancestor would have been entitled, taking thus by their right of representing that ancestor, and not as so many individuals. (Black's Law Dictionary, Fifth edition.)

(3) If there are no children or their lineal descendants, then the whole to the surviving spouse.

Operation of the bill

Under the bill, when a person dies intestate having title or right to any personal property, or to any real estate or inheritance, in Ohio, and the person is survived by a spouse and one or more children of the decedent or their lineal descendants surviving, and *all* of the decedent's children who survive or have lineal descendants surviving also are children of the surviving spouse, all of the personal property must be distributed, and all of the real estate or inheritance must descend, to the surviving spouse.

If there is a spouse and one child of the decedent or the child's lineal descendants surviving and the surviving spouse is *not* the natural or adoptive parent of the child, the first \$20,000 plus one-half of the balance of the intestate estate to the spouse and the remainder to the child or the child's lineal descendants, per stirpes.

If there is a spouse and more than one child or their lineal descendants surviving, the first \$60,000 if the spouse is the natural or adoptive parent of one, *but not all*, of the children, or the first \$20,000 if the spouse is the natural or adoptive parent of none of the children, plus one-third of the balance of the intestate estate to the spouse and the remainder to the children equally, or to the lineal descendants of any deceased child, per stirpes.

If there are no children or their lineal descendants, then all of the personal property must be distributed, and all of the real estate or inheritance must descend, to the surviving spouse. (R.C. 2105.06(B), (C), (D), and (E).)

The bill makes conforming and technical changes in R.C. 2105.061, 2106.11, and 2127.04.

Applicability

The bill states that R.C. 2105.06, 2105.061, 2106.11, and 2127.04 of the Revised Code, as amended by this act, apply to estates of decedents who die on or after the bill's effective date (Section 3).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-08-99	pp. 538-539
Reported, S. Judiciary	03-16-00	p. 1464
Passed Senate (32-0)	03-21-00	p. 1480
Reported, H. Civil & Commercial Law	---	---

S0152-RH.123/jc

