

**JOINT COMMITTEE ON THE JUDICIARY
BILL SUMMARY**

BILL NO. H1944

TITLE: An Act relative to the elective share of surviving spouses.

SPONSOR: Rep. Adrienne P. Ramos

COSPONSORS: None

HEARING DATE: April 22, 2025

PRIOR HISTORY: None

SENATE BILL: None

CURRENT LAW: Chapter 190B of the General Laws sets out the terms of the Massachusetts Uniform Probate Code. Article 2 sets out the rules for when a surviving spouse and children are not provided for in a will or no will exists. Chapter 191B outlines the parameters for the shares of surviving spouses of will estates.

Section 15 of Chapter 191 permits the surviving husband or wife to file a waiver of their rights set out by the will of a deceased person within 6 months after the probate of the will. In this waiver the surviving spouse may take a prescribed share of the decedent's estate, with fractional portions depending on the presence or absence of issue and other kindred.

Section 16 of Chapter 191 permits the probate court to, upon the application of an interested person, appoint one or more trustees to hold personal property during the lifetime of the surviving spouse.

BILL SUMMARY: Section 1 – Adds Sections 2-201 to 2-299 to Chapter 190B of the General Laws which sets out rules for determining the elective share rights of surviving spouses. It states that a surviving spouse of a decedent who died domiciled in the Commonwealth may elect to take a 50 percent share of the value of the marital-property portion of the estate and may be entitled to supplemental amounts. The law of the domicile jurisdiction where the decedent died governs surviving spouse elective share property rights.

It further sets out the composition of the augmented estate and the value of the marital-property portion of this estate. The value of the augmented estate includes the decedent's net probate estate, portions of the decedent's non-probate transfers to others, the decedent's non-probate transfers to the surviving spouse excluding property passed under the federal Social Security system, the surviving spouse's property, and non-probate transfers to others. The legislation then outlines how to calculate the value of the elective-share amount and the marital-property portion of the estate. It requires the petition for the elective share occur within 9 months after the decedent's death or within 6 months after the probate of the decedent's will, whichever is later. The election may be exercised on the surviving spouse's behalf by their conservator, guardian or agent under the authority of a power of attorney and if the surviving spouse is an incapacitated person the elective-share must be placed in a custodial trust. The surviving spouse may waive these rights before or after marriage.

Section 2 – Amends Section 2-801 of Chapter 190B by inserting a reference to the new language created in Section 1 of the Act so that subsection (j) now explicitly states that the section will not abridge a person's rights under the new Section 2-201.

Section 3 – Repeals Sections 15 and 16 of Chapter 191.

Section 4 – Applies the legislation to pre-existing government instruments unless they became irrevocable prior to the effective date of the Act.