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HOUSE BILL NO. 2363

Offered January 21, 1999

A BILL to amend and reenact § 64.1-71 of the Code of Virginia, relating to pretermitted children.

Patron—McEachin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 64.1-71 of the Code of Virginia is amended and reenacted as follows:

§ 64.1-71. Provision for pretermitted children when child living when will made.

A. If a will be made when a testator has a child living, and that child is provided for in the will, and a child be born or adopted afterwards, such afterborn or after-adopted child, if not provided for by any settlement and neither provided for nor expressly excluded by the will, but only pretermitted, shall succeed to the lesser of ~~(a)~~ (i) such portion of the testator's estate as he would have been entitled to if the testator had died intestate or ~~(b)~~ (ii) the equivalent in amount to any bequests and devises to any child named in the will, and if there be bequests or devises to more than one child, then to the larger or largest of such total bequests and devises, towards raising which portion the devisees and legatees shall, out of what is devised and bequeathed to them, contribute either in kind or in money, as a court of equity may deem proper. But if such afterborn or after-adopted child die under the age of eighteen years, unmarried and without issue, his portion of the estate, or so much thereof as may remain unexpended shall revert to the person to whom it was given by the will.

B.1. Notwithstanding the provisions of subsection A, when any minor child of the testator is either (i) expressly excluded by the will or (ii) not provided such portion of the estate as he would take under this subsection, such minor child shall be entitled to the portion of the testator's estate to which he would have been entitled if the testator died intestate divided by eighteen and then multiplied by the difference between eighteen and such child's age at the date of the death of the testator.

2. The provisions of subdivision 1 shall not apply if the will leaves all or substantially all of the estate to the other parent of that minor child.

3. If such minor child dies under the age of eighteen years, his portion of the estate, or so much thereof as may remain unexpended, shall revert to the person to whom it was given by the will.

INTRODUCED

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