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WILLS, TRUSTS, AND ADMINISTRATION OF ESTATES

Estates: Intestacy Spouse's/Children's Amount

CODE SECTIONS:	O.C.G.A. §§ 53-4-2 (amended) and 53-4-3 (repealed)
BILL NUMBER:	HB 119
ACT NUMBER:	685
SUMMARY:	The Act amends prior law regarding the descent and distribution of an intestate's estate to remove gender distinctions and to provide that a surviving spouse receive at least a one-fourth share of the estate.

History

Prior law contained two statutory provisions concerning spousal inheritance in situations in which a spouse died intestate. If the wife died without leaving a will, the husband and children were to divide the estate equally, regardless of the number of children involved.[1] If the husband died without leaving a will, the wife and the children were to divide the property; the wife was to receive a one-fifth share if there were five or more children.[2] If there were less than five children, the estate would be divided equally. Therefore, the percentage of the estate inherited by the surviving spouse would depend on his or her sex.

HB 119

HB 119 amended the law so that the amount inherited by the surviving spouse is not determined by sex. The amendment combines the previously separated statutes and makes the new law apply to either the husband or wife. The surviving spouse is guaranteed one-fourth of the estate.

The reasoning behind the legislative action appears to be twofold. First, the Legislature wanted to treat both parties equally. This was accomplished by combining the two previous Code sections. Second, the Legislature was concerned with the minimum amount of the entitlement of the surviving spouse. The original version of HB 119 set the minimum share a surviving spouse would receive at one-third of the estate. However, this was reduced to one-fourth of the estate in the final version. The primary effect of the legislation is to distribute the estate without regard to the

1. O.C.G.A. § 53-4-3 (1982).
2. O.C.G.A. § 53-4-2(2) (1982).

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party's sex and to protect the surviving spouse with a large family when the other spouse dies intestate.

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