

HB0083/748477/1

BY: Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL 83
(Third Reading File Bill)

AMENDMENT NO. 1

On page 3, after line 26, insert:

“Preamble

WHEREAS, Trusts serve many useful purposes and have a long history in the Anglo-American legal system; and

WHEREAS, Codification of Maryland’s trust laws will benefit both the public and practitioners; and

WHEREAS, The fact that a beneficiary cannot compel distribution from a discretionary trust has justified not counting the trust assets in determining the beneficiary’s eligibility for need-based programs such as Medicaid, and not subjecting them to the estate tax when the beneficiary dies; and

WHEREAS, These advantages, and the fact that Maryland trusts may have perpetual existence and no limits on size, make it reasonable to expect the popularity of discretionary trusts to increase substantially, as well as their impact on public revenues and expenses; and

WHEREAS, By contrast, a beneficiary who is not also a trustee of a discretionary trust has few rights and little recourse to address abuses of power by a trustee; and

WHEREAS, A trust with no enforceable rights for a beneficiary is a trust in name only; and

(Over)

WHEREAS, The Judiciary must be able to intervene aggressively to protect all trust beneficiaries; now, therefore,”.

AMENDMENT NO. 2

On page 22, in line 16, strike “**THAT**” and substitute “**;**”

(1) THAT;

and in line 17, after “**CONTINGENT**” insert “**;**OR”

(2) IN A CAPACITY OTHER THAN THAT OF A TRUSTEE, HOLDS A POWER OF APPOINTMENT OVER TRUST PROPERTY”.

AMENDMENT NO. 3

On page 28 in line 13, and on page 37 in line 9, in each instance, after “**LAWFUL**” insert “**, NOT CONTRARY TO PUBLIC POLICY,”**.

On page 39, in line 14, after “**UNLAWFUL**” insert “**, CONTRARY TO PUBLIC POLICY,”**.

AMENDMENT NO. 4

On page 28, after line 25, insert:

“(10) THE DUTY UNDER § 14.5-813(A) AND (B) OF THIS TITLE TO:

(I) NOTIFY QUALIFIED BENEFICIARIES OF AN IRREVOCABLE TRUST WHO HAVE ATTAINED 25 YEARS OF AGE OF THE EXISTENCE OF THE TRUST, THE IDENTITY OF THE TRUSTEE, AND THEIR RIGHT TO REQUEST TRUSTEE’S REPORTS AND A COPY OF THE TRUST; AND

(II) RESPOND TO THE REQUEST OF A QUALIFIED BENEFICIARY OF AN IRREVOCABLE TRUST FOR REPORTS BY THE TRUSTEE AND OTHER INFORMATION REASONABLY RELATED TO THE ADMINISTRATION OF THE TRUST;”;

and in lines 26 and 28, strike “(10)” and “(11)”, respectively, and substitute “(11)” and “(12)”, respectively.

On page 29, in line 3, strike “(12)” and substitute “(13)”.

AMENDMENT NO. 5

On page 29, in line 10, strike “RESERVED.”; and after line 10, insert:

“(A) WITHOUT PRECLUDING OTHER MEANS FOR ESTABLISHING A SUFFICIENT CONNECTION WITH THE DESIGNATED JURISDICTION, TERMS OF A TRUST DESIGNATING THE PRINCIPAL PLACE OF ADMINISTRATION ARE VALID AND CONTROLLING IF:

(1) THE PRINCIPAL PLACE OF BUSINESS OF A TRUSTEE IS LOCATED IN OR A TRUSTEE IS A RESIDENT OF THE DESIGNATED JURISDICTION;
OR

(2) ALL OR PART OF THE ADMINISTRATION OF THE TRUST OCCURS IN THE DESIGNATED JURISDICTION.

(B) A TRUSTEE IS UNDER A CONTINUING DUTY TO ADMINISTER THE TRUST AT A PLACE APPROPRIATE TO ITS PURPOSES, ITS ADMINISTRATION, AND THE INTERESTS OF THE BENEFICIARY.

(C) WITHOUT PRECLUDING THE RIGHT OF THE COURT TO ORDER, APPROVE, OR DISAPPROVE A TRANSFER, THE TRUSTEE, IN FURTHERANCE OF THE DUTY UNDER SUBSECTION (B) OF THIS SECTION, MAY TRANSFER THE PRINCIPAL PLACE OF ADMINISTRATION OF THE TRUST TO ANOTHER STATE OR A JURISDICTION OUTSIDE THE UNITED STATES.

(D) (1) THE TRUSTEE SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF A PROPOSED TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION NOT LESS THAN 60 DAYS BEFORE INITIATING THE TRANSFER.

(2) THE NOTICE OF PROPOSED TRANSFER UNDER PARAGRAPH (1) OF THIS SUBSECTION MUST INCLUDE:

(I) THE NAME OF THE JURISDICTION TO WHICH THE PRINCIPAL PLACE OF ADMINISTRATION IS TO BE TRANSFERRED;

(II) THE ADDRESS AND TELEPHONE NUMBER AT THE NEW LOCATION AT WHICH THE TRUSTEE CAN BE CONTACTED;

(III) AN EXPLANATION OF THE REASONS FOR THE PROPOSED TRANSFER;

(IV) THE DATE ON WHICH THE PROPOSED TRANSFER IS ANTICIPATED TO OCCUR; AND

(V) THE DATE, NOT LESS THAN 60 DAYS AFTER THE GIVING OF THE NOTICE, BY WHICH THE QUALIFIED BENEFICIARY MUST NOTIFY THE TRUSTEE OF AN OBJECTION TO THE PROPOSED TRANSFER.

(E) THE AUTHORITY OF A TRUSTEE UNDER THIS SECTION TO TRANSFER A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION TERMINATES IF A QUALIFIED BENEFICIARY NOTIFIES THE TRUSTEE OF AN OBJECTION TO THE PROPOSED TRANSFER ON OR BEFORE THE DATE SPECIFIED IN THE NOTICE.

AMENDMENT NO. 6

On page 31, in line 26, strike “**THE**” and substitute “**ON THE INVOCATION OF THE COURT'S JURISDICTION BY AN INTERESTED PERSON, ON THE COURT'S OWN MOTION, OR AS OTHERWISE PROVIDED BY LAW, THE**”; in the same line, after “**INTERVENE**” insert “**ACTIVELY**”; in the same line, after “**TRUST**” insert “**, FASHIONING AND IMPLEMENTING REMEDIES AS THE PUBLIC INTEREST AND THE INTERESTS OF THE BENEFICIARIES MAY REQUIRE.**”; and strike in their entirety lines 27 and 28.

AMENDMENT NO. 7

On page 32, in line 26, strike “**ONLY**”.

AMENDMENT NO. 8

On page 39, in lines 22 and 26, in each instance, after “**OF**” insert “**THE TRUSTEE AND**”.

AMENDMENT NO. 9

On page 49, in line 26, strike “**OR**”; and in line 28, after “**PROVIDES**” insert “**;**
OR

(4) A VICTIM OF AN INTENTIONAL TORT OF THE BENEFICIARY WHO HAS A JUDGMENT OR COURT ORDER AGAINST THE BENEFICIARY FOR DAMAGES”.

On page 50, in line 1, strike “ONLY”; in lines 2 and 3, strike “AS THEY BECOME DUE”; in lines 4 and 5, strike beginning with “THE” in line 4 down through “CONSIDERING” in line 5 and substitute “IN FASHIONING AN AWARD OF RELIEF AS IS APPROPRIATE UNDER THE CIRCUMSTANCES, THE COURT MAY CONSIDER,”; in line 9, strike “OR”; and strike in their entirety lines 10 through 13, inclusive, and substitute:

“(III) THE DAMAGES OF A VICTIM OF AN INTENTIONAL TORT OF A BENEFICIARY; OR

(IV) WITH RESPECT TO A BENEFICIARY WHO IS THE RECIPIENT OF PUBLIC BENEFITS, A PETITION FILED IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION.

(D) (1) (I) NOTWITHSTANDING ANY CONTRARY PROVISION OF THE TRUST INSTRUMENT, IF A STATUTE OR REGULATION OF THE STATE OR THE UNITED STATES REQUIRES A BENEFICIARY TO REIMBURSE THE STATE OR ANY AGENCY OR INSTRUMENTALITY OF THE STATE FOR PUBLIC ASSISTANCE, INCLUDING MEDICAL ASSISTANCE, FURNISHED OR TO BE FURNISHED TO THE BENEFICIARY, THE ATTORNEY GENERAL OR AN ATTORNEY ACTING ON BEHALF OF THE AGENCY RESPONSIBLE FOR THE PROGRAM MAY FILE A PETITION IN THE CIRCUIT COURT HAVING JURISDICTION OVER THE TRUST TO REQUEST REIMBURSEMENT.

(II) A PETITION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY BE FILED BEFORE OBTAINING A JUDGMENT.

(III) THE BENEFICIARY AND THE GUARDIAN OF THE BENEFICIARY’S PROPERTY SHALL BE A PARTY TO A PROCEEDING UNDER THIS PARAGRAPH.

(2) FOLLOWING ITS REVIEW OF A PETITION FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COURT MAY:

(I) ORDER THE TRUSTEE TO SATISFY ALL OR PART OF THE LIABILITY THROUGH ALL OR PART OF THE AMOUNTS TO WHICH THE BENEFICIARY IS ENTITLED, WHETHER PRESENTLY OR IN THE FUTURE, TO THE EXTENT THE BENEFICIARY HAS THE RIGHT UNDER THE TRUST TO COMPEL THE TRUSTEE TO PAY INCOME OR PRINCIPAL TO OR FOR THE BENEFIT OF THE BENEFICIARY; OR

(II) REGARDLESS OF WHETHER THE BENEFICIARY HAS THE RIGHT TO COMPEL THE TRUSTEE TO PAY INCOME OR PRINCIPAL TO OR FOR THE BENEFIT OF THE BENEFICIARY, ORDER THE TRUSTEE TO SATISFY ALL OR PART OF THE LIABILITY THROUGH ALL OR PART OF ANY FUTURE PAYMENT THAT THE TRUSTEE ELECTS TO MAKE TO OR FOR THE BENEFIT OF THE BENEFICIARY IN THE EXERCISE OF DISCRETION UNDER THE TRUST.”.

AMENDMENT NO. 10

On page 55, in line 4, strike “(1)”; and strike in their entirety lines 12 through 16, inclusive.

AMENDMENT NO. 11

On page 86, in line 26, strike “THE” and substitute “:

(1) THE”;

and in line 28, after “TRUST” insert “;OR

(2) THE RIGHT OF A TITLE INSURANCE PRODUCER OR TITLE INSURER TO OBTAIN A COPY OF THE TRUST INSTRUMENT FOR THE SOLE PURPOSE OF DETERMINING WHETHER THE SETTLOR'S INTEREST IN REAL PROPERTY MAY BE SUBJECT TO CREDITORS' CLAIMS, WHEN THE TRUSTEE IS SELLING, ENCUMBERING, OR DISPOSING OF THE REAL PROPERTY AND TITLE INSURANCE HAS BEEN REQUESTED FOR THE TRANSACTION."