

# SENATE BILL 853

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CF 6lr2858

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By: **Senators Kelley, Benson, and Young**  
Introduced and read first time: February 5, 2016  
Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Guardians of Property and Custodians – Authority to Fund Certain Trusts and**  
3 **Accounts**

4 FOR the purpose of authorizing a guardian of the property of a certain minor or disabled  
5 person to pay or apply income or principal from a certain estate to establish or fund  
6 a certain special needs trust, a pooled asset special needs trust account, or an  
7 Achieving a Better Life Experience (ABLE) account for the benefit of the minor or  
8 disabled person, without court authorization or confirmation; authorizing a certain  
9 custodian to use all or part of certain custodial property to establish or fund a certain  
10 special needs trust, a pooled asset special needs trust account, or an ABLE account  
11 for the benefit of a certain minor, without court order; defining certain terms;  
12 altering a certain definition; making technical and stylistic changes; and generally  
13 relating to the powers of certain guardians of property and custodians.

14 BY repealing and reenacting, with amendments,  
15 Article – Estates and Trusts  
16 Section 13–101, 13–214, and 13–314  
17 Annotated Code of Maryland  
18 (2011 Replacement Volume and 2015 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
20 That the Laws of Maryland read as follows:

21 **Article – Estates and Trusts**

22 13–101.

23 (a) In this title the following words have the meanings indicated.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 (b) **“ABLE ACCOUNT” MEANS AN ACCOUNT DESCRIBED UNDER 26 U.S.C. §**  
 2 **529A(E).**

3 (c) **“Classification of abode” means one of the following types of abode licensed or**  
 4 **certified by a State agency:**

5 (1) Related institutions under § 19–114 of the Health – General Article;

6 (2) Private or public group homes under § 7–601 of the Health – General  
 7 Article;

8 (3) CARE homes under Title 6, Subtitle 5, Part II of the Human Services  
 9 Article;

10 (4) Adult foster care homes regulated by the Department of Human  
 11 Resources; or

12 (5) Senior assisted housing facilities under Title 10 of the Human Services  
 13 Article.

14 [(c)] (D) **“Court” means the court having jurisdiction under § 13–105 of this**  
 15 **subtitle.**

16 [(d)] (E) **“Director” means the director of the local department of social services**  
 17 **in the political subdivision where the adult requiring protective services lives.**

18 [(e)] (F) **“Disabled person” means, UNLESS THE CONTEXT REQUIRES**  
 19 **OTHERWISE, a person other than a minor who:**

20 (1) (i) **Has been judged by a court to be unable to manage [his] THE**  
 21 **PERSON’S** property for reasons listed in § 13–201(c)(1) of this title; and

22 (ii) **As a result of this inability requires a guardian of [his] THE**  
 23 **PERSON’S** property; or

24 (2) (i) **Has been judged by a court to be unable to provide for [his] THE**  
 25 **PERSON’S** daily needs sufficiently to protect [his] **THE PERSON’S** health or safety for  
 26 reasons listed in § 13–705(b) of this title; and

27 (ii) **As a result of this inability requires a guardian of the person.**

28 [(f)] (G) **“Emergency” means that a person is living in conditions which present**  
 29 **a substantial risk of death or immediate and serious physical harm to himself or others.**

30 [(g)] (H) **“Estate” is the property of a disabled person or minor which is subject**  
 31 **to a protective proceeding.**

1           **[(h)] (I)**       “Guardian” means a guardian of an estate appointed by a court under  
2 Subtitle 2 of this title to manage the property of a disabled person or minor or a guardian  
3 of a person appointed by a court under Subtitle 7 of this title, according to the context in  
4 which it is used.

5           **[(i)] (J)**       “Heirs” denotes those persons entitled under the laws of Maryland to  
6 the property of a protected person, as if **[he] THE PROTECTED PERSON** had died intestate  
7 at the applicable time.

8           **[(j)] (K)**       “Interested person” means the guardian, the heirs of the minor or  
9 disabled person, any governmental agency paying benefits to the minor or disabled person,  
10 or any person or agency eligible to serve as guardian of the disabled person under § 13–707  
11 of this title. If an interested person is also a minor or a disabled person, interested person  
12 also includes a judicially appointed guardian, committee, conservator, or trustee for that  
13 person, or, if none, the parent or other person having assumed responsibility for **[him]**  
14 **THAT PERSON**.

15           **[(k)] (L)**       “Maryland Rules” has the meaning stated in § 1–101(o) of this article.

16           **[(l)] (M)**       “Mental facility” means any place providing a clinic, hospital, day  
17 residential or other programs, public or private, other than a veterans’ hospital, which  
18 purports to or does provide treatment for persons suffering from mental disorders as  
19 defined in § 10–101(i) of the Health – General Article or § 3–101(g) of the Criminal  
20 Procedure Article, intellectual disability as defined in § 7–101(k) of the Health – General  
21 Article, or drug addiction or for chronic alcoholics.

22           **[(m)] (N)**       A “minor” is a person who has not reached the age of 18.

23           **(O)**       “**POOLED ASSET SPECIAL NEEDS TRUST**” MEANS A TRUST DESCRIBED  
24 **UNDER 42 U.S.C. § 1396P(D)(4)(C).**

25           **[(n)] (P)**       “Property” includes both real and personal property.

26           **[(o)] (Q)**       “Protective proceeding” is a proceeding to protect an estate in  
27 accordance with Subtitle 2 of this title or a proceeding to appoint a guardian of the person  
28 brought pursuant to Subtitle 7 of this title.

29           **(R)**       “**SPECIAL NEEDS TRUST**” MEANS A TRUST DESCRIBED UNDER **42 U.S.C.**  
30 **§ 1396P(D)(4)(A).**

31           **[(p)] (S)**       “Trust company” has the meaning stated in § 1–101 of this article.

32 13–214.

1 (a) A guardian may distribute or disburse property without court authorization  
2 or confirmation in accordance with this section.

3 (b) (1) A guardian of a minor may pay or apply income and principal from the  
4 estate as needed for the clothing, support, care, protection, welfare, and education of the  
5 minor.

6 (2) (I) A guardian of a disabled person may pay or apply income and  
7 principal from the estate as needed for the clothing, support, care, protection, welfare, and  
8 rehabilitation of the disabled person.

9 (II) [He] **THE GUARDIAN** shall give consideration to the support and  
10 care of the disabled person during the probable period of the estate and the needs of persons  
11 dependent upon the disabled person.

12 (3) Income and principal also may be paid or applied for the benefit of  
13 persons legally dependent upon the minor or disabled person and, with the approval of the  
14 court, for the benefit of other persons maintained and supported in whole or in part by the  
15 disabled person prior to the appointment of a guardian.

16 (C) **IF A MINOR OR DISABLED PERSON IS “DISABLED” AS DEFINED UNDER 42**  
17 **U.S.C. § 1382C(A)(3), A GUARDIAN OF THE MINOR OR DISABLED PERSON MAY PAY**  
18 **OR APPLY INCOME OR PRINCIPAL FROM THE ESTATE TO ESTABLISH OR FUND, FOR**  
19 **THE BENEFIT OF THE MINOR OR DISABLED PERSON:**

20 (1) **A SPECIAL NEEDS TRUST, PROVIDED THAT THE TRUSTEE IS**  
21 **SUBJECT TO THE JURISDICTION OF A COURT, BONDED, AND REQUIRED TO FILE**  
22 **ANNUAL ACCOUNTINGS OF THE TRUST;**

23 (2) **A POOLED ASSET SPECIAL NEEDS TRUST ACCOUNT, PROVIDED**  
24 **THAT THE TRUST HAS BEEN APPROVED BY THE ATTORNEY GENERAL OF THE STATE**  
25 **WHERE THE MINOR OR DISABLED PERSON RESIDES; OR**

26 (3) **AN ABLE ACCOUNT.**

27 [(c)] (D) (1) (I) When a minor attains [his] **THE AGE OF** majority, [his]  
28 **THE** guardian **OF THE MINOR**, after meeting all prior claims and expenses of  
29 administration, shall distribute the estate to the former minor as soon as possible, unless  
30 the minor is then disabled.

31 (II) The distribution normally shall be in kind.

32 (2) (I) If the guardian is satisfied that the disability of the disabled  
33 person has ceased or if the court has found in a proceeding under § 13–221 of this subtitle

1 that the disability has ceased, the guardian, after meeting all prior claims and expenses of  
2 administration, shall distribute the estate to the former disabled person as soon as possible.

3 (II) The distribution normally shall be in kind.

4 (3) When a minor or disabled person dies, the guardian shall deliver to the  
5 appropriate probate court for safekeeping any will of the deceased person in [his] **THE**  
6 **GUARDIAN'S** possession, pay from the estate all commissions, fees, and expenses shown on  
7 the court-approved final guardianship account, inform the personal representative or a  
8 beneficiary named in it that [he] **THE GUARDIAN** has done so, and retain the balance of  
9 the estate for delivery to an appointed personal representative of the decedent or other  
10 person entitled to it.

11 (4) If a guardianship is terminated for reasons other than the attainment  
12 of majority, cessation of disability, or death of the protected person, the guardian shall  
13 distribute the estate in accordance with the order of the court terminating the  
14 guardianship.

15 13-314.

16 (a) **IN THIS SECTION, "DISABLED" HAS THE MEANING STATED IN 42 U.S.C.**  
17 **§ 1382C(A)(3).**

18 (B) A custodian may deliver or pay to the minor or expend for the minor's benefit  
19 so much of the custodial property as the custodian considers advisable for the use and  
20 benefit of the minor, without court order and without regard to:

21 (1) The duty or ability of the custodian personally or of any other person to  
22 support the minor; or

23 (2) Any other income or property of the minor which may be applicable or  
24 available for that purpose.

25 **[(b)] (C)** (1) Subject to paragraphs (3) and (4) of this subsection, a custodian  
26 may transfer all or part of the custodial property to a qualified minor's trust without a court  
27 order.

28 (2) A transfer of custodial property to a qualified minor's trust terminates  
29 the custodianship of that property to the extent of the transfer.

30 (3) Custodial property created under a testamentary instrument may not  
31 be transferred under this subsection unless the transfer is expressly authorized by the  
32 instrument.

33 (4) For an inter vivos transfer under this subsection to be valid, the  
34 instrument that created the custodial property shall contain in conspicuous type a

1 statement that the transferor of the property elects to grant the custodian the authority to  
2 transfer all or part of the custodial property to a qualified minor's trust without a court  
3 order.

4 **(D) IF THE MINOR IS DISABLED, A CUSTODIAN MAY, WITHOUT COURT**  
5 **ORDER, USE ALL OR PART OF THE CUSTODIAL PROPERTY TO ESTABLISH OR FUND**  
6 **FOR THE BENEFIT OF THE MINOR:**

7 **(1) A SPECIAL NEEDS TRUST, PROVIDED THAT THE TRUSTEE IS**  
8 **SUBJECT TO THE JURISDICTION OF A COURT, BONDED, AND REQUIRED TO FILE**  
9 **ANNUAL ACCOUNTINGS OF THE TRUST;**

10 **(2) A POOLED ASSET SPECIAL NEEDS TRUST ACCOUNT, PROVIDED**  
11 **THAT THE TRUST HAS BEEN APPROVED BY THE ATTORNEY GENERAL OF THE STATE**  
12 **WHERE THE MINOR RESIDES; OR**

13 **(3) AN ABLE ACCOUNT.**

14 **[(c)] (E)** On petition of an interested person or the minor if the minor has  
15 attained the age of 14 years, the court may order the custodian to deliver or pay to the  
16 minor or expend for the minor's benefit so much of the custodial property as the court  
17 considers advisable for the use and benefit of the minor.

18 **[(d)] (F)** A delivery, payment, or expenditure under this section is in addition to,  
19 not in substitution for, and does not affect any obligation of a person to support the minor.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2016.