

SENATE BILL 853

N2

6lr2415
CF HB 960

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

Committee Report: Favorable
Senate action: Adopted
Read second time: March 17, 2016

CHAPTER _____

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**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 13–101.

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

3 (b) **“ABLE ACCOUNT” MEANS AN ACCOUNT DESCRIBED UNDER 26 U.S.C. §**
4 **529A(E).**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (R) **“SPECIAL NEEDS TRUST” MEANS A TRUST DESCRIBED UNDER 42 U.S.C.**
34 **§ 1396P(D)(4)(A).**

1 [(p)] (S) “Trust company” has the meaning stated in § 1–101 of this article.
2 13–214.

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

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

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

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

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

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

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

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

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

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

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

1 (2) **(I)** If the guardian is satisfied that the disability of the disabled
2 person has ceased or if the court has found in a proceeding under § 13–221 of this subtitle
3 that the disability has ceased, the guardian, after meeting all prior claims and expenses of
4 administration, shall distribute the estate to the former disabled person as soon as possible.

5 **(II)** The distribution normally shall be in kind.

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

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

17 13–314.

18 (a) **IN THIS SECTION, “DISABLED” HAS THE MEANING STATED IN 42 U.S.C.**
19 **§ 1382C(A)(3).**

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

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

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

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

30 (2) A transfer of custodial property to a qualified minor’s trust terminates
31 the custodianship of that property to the extent of the transfer.

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

1 (4) For an inter vivos transfer under this subsection to be valid, the
 2 instrument that created the custodial property shall contain in conspicuous type a
 3 statement that the transferor of the property elects to grant the custodian the authority to
 4 transfer all or part of the custodial property to a qualified minor's trust without a court
 5 order.

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

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

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

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.