

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 853

(Senator Kelley, *et al.*)

Judicial Proceedings

Health and Government Operations

Guardians of Property and Custodians - Authority to Fund Certain Trusts and
Accounts

This bill authorizes specified guardians and custodians, without a court order, to establish or fund, for the benefit of a minor or disabled person, the following: (1) a special needs trust; (2) a pooled assets special needs trust account; or (3) an Achieving a Better Life Experience (ABLE) account as authorized under federal law.

Fiscal Summary

State Effect: None. The change is procedural in nature and does not directly affect governmental finances.

Local Effect: None. The change is procedural in nature and does not directly affect local government finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: If a minor or disabled person is “disabled,” as defined under specified federal law, a guardian of the individual may pay for or apply income or principal from the estate to establish or fund, for the benefit of the minor, one of the specified trusts or accounts. If the minor is disabled, a custodian may use all or part of the custodial property to establish or fund, for the benefit of the minor, one of the specified trusts or accounts. The guardian or custodian must meet all other existing requirements specified under current law.

“Special needs trust” is defined in federal law as a trust, containing the assets of a disabled person who is younger than age 65, that is established by a parent, grandparent, legal guardian, or court.

“Pooled asset special needs trust” is defined in federal law as a trust that is established and managed by a nonprofit organization containing the assets of a person who is disabled and that consists of separate accounts for each beneficiary that are pooled for purposes of investment and management.

“ABLE account” is defined in federal law as an account established under a program established and maintained by a state, or its agency or instrumentality, under which a person may make contributions for the benefit of a person who is disabled.

Current Law: Generally, a guardian may petition the appointing court for permission to act in any matter relating to the administration of the estate. Upon hearing, after notice, and upon good cause shown, the court may issue an appropriate order.

A guardian may distribute or disburse property without court authorization or confirmation to pay or apply income and principal from the estate as needed for the clothing, support, care, protection, welfare, and education of a minor, and to pay or apply income and principal from the estate as needed for the clothing, support, care, protection, welfare, and rehabilitation of a disabled individual. Income and principal also may be paid or applied for the benefit of persons legally dependent upon the minor or disabled individual and, with the approval of a court, for the benefit of other persons maintained and supported in whole or in part by a disabled individual prior to the appointment of a guardian.

A custodian may transfer all or part of the custodial property to a qualified minor’s trust without a court order. A transfer of custodial property to a qualified minor’s trust terminates the custodianship of that property to the extent of the transfer.

A custodian under the Maryland Uniform Transfers to Minors Act may deliver or pay to a minor or expend for the minor’s benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (1) the duty or ability of the custodian personally or of any other person to support the minor or (2) any other income or property of the minor which may be applicable or available for that purpose.

Background: Special (or supplemental) needs trusts are intended to hold funds for the benefit of a disabled individual for purposes other than those provided for by Medicaid or other public benefits, without affecting the individual’s eligibility for the public benefits. A pooled asset special needs trust is a trust that collectively invests and manages funds of multiple individuals who are disabled, reducing the costs of trust administration. The assets

of a disabled individual used to fund a special needs trust may come from a source such as a personal injury settlement or an inheritance of the individual.

Chapters 561 and 562 of 2011, as amended by Chapter 455 of 2013, established that it is the policy of the State to encourage the use of a special needs trust or supplemental needs trust, including trusts funded by a trust beneficiary or by a third party, by an individual of any age with disabilities to preserve funds to provide for the needs of the individual not met by public benefits and to enhance quality of life.

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 was enacted at the federal level in December 2014. The Act creates a new Section 529A of the Internal Revenue Code that permits a state (or a state agency or instrumentality) to establish and maintain a new type of tax-advantaged savings program, a qualified ABLE program, under which contributions may be made to an account that is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account.

Additional Information

Prior Introductions: None.

Cross File: HB 960 (Delegate Kelly, *et al.*) - Health and Government Operations.

Information Source(s): College Savings Plan of Maryland, Comptroller's Office, Judiciary (Administrative Office of the Courts), Maryland Department of Disabilities, U.S. Internal Revenue Code, Department of Legislative Services

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