

HOUSE BILL 474

N2

8lr2016

By: **Delegates West and Kramer**

Introduced and read first time: January 25, 2018

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Breach of Trust Action – Limitation Period**

3 FOR the purpose of establishing that the terms of a trust do not prevail over certain periods
4 of limitation for bringing a judicial action; prohibiting a beneficiary from bringing a
5 judicial action against a trustee for breach of trust more than a certain period of time
6 after the date the beneficiary or the representative of the beneficiary is sent a certain
7 report; providing that a certain report adequately discloses the existence of a
8 potential claim for breach of trust for certain purposes; providing that this Act does
9 not limit the time for bringing an action against a trustee for a breach of trust
10 committed in bad faith or with reckless indifference to the purposes of the trust or
11 the interests of the beneficiaries; providing for the application of this Act; and
12 generally relating to time limits for bringing certain actions.

13 BY repealing and reenacting, with amendments,

14 Article – Estates and Trusts

15 Section 14.5–105

16 Annotated Code of Maryland

17 (2017 Replacement Volume)

18 BY adding to

19 Article – Estates and Trusts

20 Section 14.5–904

21 Annotated Code of Maryland

22 (2017 Replacement Volume)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

24 That the Laws of Maryland read as follows:

25 **Article – Estates and Trusts**

26 14.5–105.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 The terms of a trust prevail over a provision of this title, except:

2 (1) The requirements for creating a trust;

3 (2) The duty of a trustee to act reasonably under the circumstances and in
4 accordance with the terms and purposes of the trust and the interests of the beneficiaries;

5 (3) The requirement that a trust and the terms of the trust be for the
6 benefit of the beneficiaries of the trust and that the trust have a purpose that is lawful, not
7 contrary to public policy, and possible to achieve;

8 (4) The prohibition under § 14.5–306 of this title against a person serving
9 as a representative of a beneficiary of a trust when that person is serving as a trustee of
10 the same trust;

11 (5) The power of the court to modify or terminate a trust under §§
12 14.5–410, 14.5–411, 14.5–413, and 14.5–414 of this title;

13 (6) The rights of certain creditors and assignees to reach a trust as provided
14 in Subtitle 5 of this title;

15 (7) The power of the court under § 14.5–702 of this title to require, dispense
16 with, modify or terminate a bond;

17 (8) The subject matter jurisdiction and venue for commencing a proceeding
18 as provided by the laws of this State;

19 (9) The power of the court under § 14.5–708(a) of this title to increase or
20 decrease the commissions of a trustee;

21 (10) The duties to provide information, copies, and notices specified under §
22 14.5–813(a) and (c) of this title;

23 (11) The duty under § 14.5–813(a) and (b) of this title to:

24 (i) Notify qualified beneficiaries of an irrevocable trust who have
25 attained 25 years of age of the existence of the trust, the identity of the trustee, and their
26 right to request trustee's reports and a copy of the trust; and

27 (ii) Respond to the request of a qualified beneficiary of an irrevocable
28 trust for reports by the trustee and other information reasonably related to the
29 administration of the trust;

30 (12) The effect of an exculpatory term under § 14.5–906 of this title;

1 (13) The rights under §§ 14.5–908 through 14.5–910 of this title of a person
2 other than a trustee or beneficiary; [and]

3 (14) The power of the court to take an action and exercise jurisdiction as
4 may be necessary in the interests of justice; AND

5 **(15) PERIODS OF LIMITATION FOR BRINGING A JUDICIAL ACTION.**

6 **14.5–904.**

7 **(A) A BENEFICIARY MAY NOT BRING A JUDICIAL ACTION AGAINST A**
8 **TRUSTEE FOR BREACH OF TRUST MORE THAN 1 YEAR AFTER THE DATE THAT THE**
9 **BENEFICIARY OR THE REPRESENTATIVE OF THE BENEFICIARY IS SENT A REPORT**
10 **THAT ADEQUATELY DISCLOSES THE EXISTENCE OF A POTENTIAL CLAIM FOR**
11 **BREACH OF TRUST AND INFORMS THE BENEFICIARY OR THE REPRESENTATIVE OF**
12 **THE BENEFICIARY OF THE TIME ALLOWED FOR BRINGING A JUDICIAL ACTION.**

13 **(B) A REPORT ADEQUATELY DISCLOSES THE EXISTENCE OF A POTENTIAL**
14 **CLAIM FOR BREACH OF TRUST IF THE REPORT PROVIDES SUFFICIENT INFORMATION**
15 **SO THAT THE BENEFICIARY OR REPRESENTATIVE KNOWS OF THE POTENTIAL CLAIM**
16 **OR SHOULD HAVE INQUIRED INTO THE EXISTENCE OF THE CLAIM.**

17 **(C) THIS SECTION DOES NOT LIMIT THE TIME FOR BRINGING AN ACTION**
18 **AGAINST A TRUSTEE FOR BREACH OF TRUST COMMITTED IN BAD FAITH OR WITH**
19 **RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF**
20 **THE BENEFICIARIES.**

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
22 apply only prospectively and may not be applied or interpreted to have any effect on or
23 application to any action arising before the effective date of this Act.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2018.