

HOUSE BILL 769

N2

8lr3038

By: **Delegate Dumais**

Introduced and read first time: February 1, 2018

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Maryland Uniform Transfers to Minors Act – Award of**
3 **Reasonable and Necessary Expenses**

4 FOR the purpose of authorizing, at any point in a judicial proceeding under the Maryland
5 Uniform Transfers to Minors Act, the court to order either party to pay the other
6 party an amount for the reasonable and necessary expense of prosecuting or
7 defending the proceeding; requiring the court to consider certain issues before
8 ordering payment under this Act; authorizing the court to make a certain award
9 under certain circumstances; providing for a certain reimbursement; authorizing the
10 court to make a certain order and enter a certain judgment; defining a certain term;
11 and generally relating to the Maryland Uniform Transfers to Minors Act.

12 BY repealing and reenacting, without amendments,

13 Article – Estates and Trusts

14 Section 13–301(a) and (e), 13–314, 13–317, 13–318(f), 13–319, and 13–324

15 Annotated Code of Maryland

16 (2017 Replacement Volume)

17 BY adding to

18 Article – Estates and Trusts

19 Section 13–323.1

20 Annotated Code of Maryland

21 (2017 Replacement Volume)

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

24 **Article – Estates and Trusts**

25 13–301.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) In this subtitle the following words have the meanings indicated.

2 (e) "Court" means a circuit court, an orphans' court, or a court exercising the
3 jurisdiction of an orphans' court.

4 13-314.

5 (a) In this section, "disabled" has the meaning stated in 42 U.S.C. § 1382c(a)(3).

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

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

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

13 (c) (1) Subject to paragraphs (3) and (4) of this subsection, a custodian may
14 transfer all or part of the custodial property to a qualified minor's trust without a court
15 order.

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

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

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

26 (d) If the minor is disabled, a custodian may, without court order, use all or part
27 of the custodial property to establish or fund for the benefit of the minor:

28 (1) A special needs trust, provided that the trustee is subject to the
29 jurisdiction of a court, bonded, and required to file annual accountings of the trust;

30 (2) A pooled asset special needs trust account, provided that the trust has
31 been approved by the attorney general of the state where the minor resides; or

32 (3) An ABLE account.

1 (e) On petition of an interested person or the minor if the minor has attained the
2 age of 14 years, the court may order the custodian to deliver or pay to the minor or expend
3 for the minor's benefit so much of the custodial property as the court considers advisable
4 for the use and benefit of the minor.

5 (f) A delivery, payment, or expenditure under this section is in addition to, not in
6 substitution for, and does not affect any obligation of a person to support the minor.

7 13-317.

8 (a) A claim based on any of the following may be asserted against the custodial
9 property by proceeding against the custodian in the custodial capacity, whether or not the
10 custodian or the minor is personally liable:

11 (1) On a contract entered into by a custodian acting in a custodial capacity;

12 (2) For an obligation arising from the ownership or control of custodial
13 property; or

14 (3) On a tort committed during the custodianship.

15 (b) A custodian is not personally liable:

16 (1) On a contract properly entered into in the custodial capacity unless the
17 custodian fails to reveal that capacity and to identify the custodianship in the contract; or

18 (2) For an obligation arising from control of custodial property or for a tort
19 committed during the custodianship unless the custodian is personally at fault.

20 (c) A minor is not personally liable for an obligation arising from ownership of
21 custodial property or for a tort committed during the custodianship unless the minor is
22 personally at fault.

23 13-318.

24 (f) A transferor, the legal representative of a transferor, an adult member of the
25 minor's family, a guardian of the person of the minor, the conservator of the minor, or the
26 minor if the minor has attained the age of 14 years may petition the court to remove the
27 custodian for cause and to designate a successor custodian other than a transferor under §
28 13-304 of this subtitle or to require the custodian to give appropriate bond.

29 13-319.

30 (a) A minor who has attained the age of 14 years, the minor's guardian of the
31 person or legal representative, an adult member of the minor's family, a transferor, or a
32 transferor's legal representative may petition the court for:

1 (1) An accounting by the custodian or the custodian's legal representative;
2 or

3 (2) A determination of responsibility, as between the custodial property
4 and the custodian personally, for claims against the custodial property unless the
5 responsibility has been adjudicated in an action under § 13–317 of this subtitle to which
6 the minor or the minor's legal representative was a party.

7 (b) A successor custodian may petition the court for an accounting by the
8 predecessor custodian.

9 (c) The court, in a proceeding under this subtitle or in any other proceeding, may
10 require or permit the custodian or the custodian's legal representative to account.

11 (d) If a custodian is removed under § 13–318(f) of this subtitle, the court shall
12 require an accounting and order delivery of the custodial property and records to the
13 successor custodian and the execution of all instruments required for transfer of the
14 custodial property.

15 **13–323.1.**

16 (A) IN THIS SECTION, "REASONABLE AND NECESSARY EXPENSE" INCLUDES:

17 (1) SUIT MONEY;

18 (2) COUNSEL FEES; AND

19 (3) COSTS.

20 (B) AT ANY POINT IN A PROCEEDING UNDER THIS SUBTITLE, THE COURT
21 MAY ORDER EITHER PARTY TO PAY TO THE OTHER PARTY AN AMOUNT FOR THE
22 REASONABLE AND NECESSARY EXPENSE OF PROSECUTING OR DEFENDING THE
23 PROCEEDING.

24 (C) BEFORE ORDERING THE PAYMENT, THE COURT SHALL CONSIDER:

25 (1) THE FINANCIAL RESOURCES AND FINANCIAL NEEDS OF BOTH
26 PARTIES; AND

27 (2) WHETHER THERE WAS SUBSTANTIAL JUSTIFICATION FOR
28 PROSECUTING OR DEFENDING THE PROCEEDING.

29 (D) ON A FINDING BY THE COURT THAT THERE WAS AN ABSENCE OF
30 SUBSTANTIAL JUSTIFICATION OF A PARTY FOR PROSECUTING OR DEFENDING THE

1 PROCEEDING, THE COURT SHALL AWARD TO THE OTHER PARTY THE REASONABLE
2 AND NECESSARY EXPENSE OF PROSECUTING OR DEFENDING THE PROCEEDING.

3 (E) THE COURT MAY AWARD REIMBURSEMENT FOR ANY REASONABLE AND
4 NECESSARY EXPENSE THAT PREVIOUSLY HAS BEEN PAID.

5 (F) AS TO ANY AMOUNT AWARDED FOR COUNSEL FEES, THE COURT MAY:

6 (1) ORDER THAT THE AMOUNT AWARDED BE PAID DIRECTLY TO THE
7 LAWYER; AND

8 (2) ENTER JUDGMENT IN FAVOR OF THE LAWYER.

9 13-324.

10 This subtitle may be cited as the “Maryland Uniform Transfers to Minors Act”.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2018.