

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1266
Judiciary

(Delegate W. Fisher)

Judicial Proceedings

Estates and Trusts - Wills - Custodianship

This bill alters provisions governing the custodianship and deposit of wills by (1) establishing duties and requirements applicable to a custodian of a will; (2) allowing a person having custody of a will, other than the testator (person who made the will) or the testator's agent, to deposit the will for safekeeping with a Register of Wills; and (3) authorizing an attorney to dispose of a will in a specified manner under certain conditions.

Fiscal Summary

State Effect: The bill does not materially affect State government operations or finances.

Local Effect: The bill does not affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill establishes that except as otherwise provided under the bill's provisions and other existing provisions governing the custodianship and deposit of wills, a person having custody of a will who is not the testator of the will has a duty to maintain custody of the will and unless authorized by the testator may not (1) destroy or dispose of the will; (2) disclose the contents of the will to any other person; or (3) deliver the will to any person other than the testator.

Adding to an existing provision applicable to the deposit of a will by the testator or the testator's agent, the bill allows for a will to also be deposited for safekeeping by any other

person having custody of the will, with the register of the county in which the testator resides or in which the testator resided when the will was executed.

The bill requires the custodian of a testator's will to deliver the will, on demand, to (1) the testator; (2) a court-appointed guardian of the testator's property; or (3) an attorney in fact acting under a durable power of attorney signed by the testator expressly authorizing the attorney in fact to demand custody of the will.

The bill authorizes an attorney that has custody of a will to dispose of the will if the following conditions are satisfied:

- the attorney is licensed to practice law in the State;
- at least 25 years have elapsed since the date of the execution of the will;
- the attorney has no knowledge of and, after diligent inquiry cannot ascertain, the address of the testator; and
- to the best of the attorney's knowledge, the will is not subject to a contract to make or not to revoke a will or devise.

An attorney authorized to dispose of a will must file the will (subject to a specified fee) with the Register of Wills of the county where the testator resided when the will was executed along with an affidavit certifying that the conditions above have been met. Once the will and affidavit are filed, the register may destroy the will but is required to keep an electronic copy of both the will and affidavit.

An attorney authorized to dispose of a will under the above conditions may destroy the will without filing the will and without notice to any person or court if the will has not been offered for probate within 10 years following the death of the testator.

The disposal or destruction of a will in accordance with these provisions may not be construed as a revocation of the will, and the contents of a will disposed of or destroyed may be proven by other types of evidence.

A violator of the bill's provisions or other existing provisions governing the custodianship and deposit of wills is liable to a person aggrieved for the damages sustained as a result of the violation. However, an attorney or Register of Wills who disposes of a will in accordance with the bill's provisions is not liable to the testator or any other person for damages sustained by the testator or other person as a result of the disposal.

The bill adds to the "Maryland Statutory Form Limited Power of Attorney" under the Maryland General and Limited Power of Attorney Act by including, under the optional specific grants of authority, an option to authorize an agent to demand the delivery of the

principal's will from the custodian of the will and, on delivery of the principal's will, take custody of the will subject to statutory requirements.

Current Law: A testator or a testator's agent may deposit a will, for safekeeping, with the Register of Wills of the county in which the testator resides. The register must give a receipt for the will, on the payment of the required fee. After being informed of the death of the testator, the register must take specified actions, including opening the will and notifying the personal representative named in the will, and any other person the register considers appropriate, that the will is on deposit with the register.

Following a testator's death, a custodian of a testator's will must deliver it to the register for the county in which administration should be had (pursuant to statutory provisions governing the determination of venue for administrative or judicial probate). The custodian may inform an interested person of the contents of the will. A custodian who willfully fails or refuses to deliver a will to the register after being informed of the death of the testator is liable to a person aggrieved for the damages sustained by reason of the failure or refusal.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 700 (Senator West) - Judicial Proceedings.

Information Source(s): Comptroller's Office; Judiciary (Administrative Office of the Courts); Register of Wills; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2021
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