

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 800

(The President)(By Request - State Treasurer)

Budget and Taxation

Appropriations

Maryland Uniform Disposition of Abandoned Property Act – Maryland 529
Program – Exemption

This bill exempts certain accounts under the Maryland 529 Program from the provisions of the Maryland Uniform Disposition of Abandoned Property Act (MUDAPA) and clarifies that sums payable on a check drawn against such accounts are subject to the provisions of MUDAPA. Accounts exempted under the bill are those contained within the (1) Maryland Senator Edward J. Kasemeyer Prepaid College Trust (MPCT); (2) Maryland Senator Edward J. Kasemeyer College Investment Plan (MCIP); and (3) Maryland Achieving a Better Life Experience (ABLE) program. **The bill takes effect June 1, 2024.**

Fiscal Summary

State Effect: The bill codifies an existing interpretation of current law and is not anticipated to materially affect State operations or finances, as discussed below.

Local Effect: None. The bill does not directly affect local government finance or operations.

Small Business Effect: None.

Analysis

Current Law:

Maryland 529

In accordance with Chapter 113 of 2023, the Maryland 529 Program is administered by the State Treasurer. Maryland 529 currently offers two savings plans: one savings plan for

individuals with disabilities; and one savings plans for higher education expenses. The savings plan for individuals with disabilities is the Maryland ABLE Program, which allows certain individuals with disabilities to save for qualified disability expenses. The savings plan for higher education is MCIP, which works similarly to an investment account. Generally, funds in MCIP may only be used for qualified education expenses, which historically meant certain expenses related to higher education. However, under the federal Tax Cuts and Jobs Act of 2017, investment plans like MCIP may be used to pay for tuition expenses at K-12 public, private, and parochial schools.

The State Treasurer also oversees MPCT, another plan for higher education expenses. However, Chapter 113 required the gradual phase-out of MPCT by, as of June 1, 2023, prohibiting the creation of new MPCT accounts (either directly or via rollover).

Both higher education savings plans (MPCT and MCIP) are also known as 529 plans after the section in the Internal Revenue Code (IRC) that allows an individual to either prepay or contribute to an account established for paying a student's qualified education expenses at an eligible educational institution.

State income tax deductions are available independently for both qualified tuition plans (MPCT and MCIP) and ABLE accounts, generally for up to \$2,500 per year. MCIP accounts established after December 31, 2016, are also eligible for a State matching contribution under specified conditions. An investment account holder may not claim an income tax deduction in the same year that a State match is received.

Maryland Senator Edward J. Kasemeyer Prepaid College Trust

While no new accounts may be opened under the plan, MPCT allows those with accounts open prior to June 1, 2023, to prepay the cost of higher education tuition and mandatory fees on behalf of a child by purchasing a contract based on the weighted average of tuition and mandatory fees at Maryland public institutions of higher education (at the time of contract purchase), the selected payment plan, the number of years until the child enters college, and other factors.

Each account holder entered into a contract with the trust for prepayment of tuition and mandatory fees for a specified number of years of community college and/or semesters or years of university tuition. Payments may be made in single, monthly, or annual installments. For a child enrolled in a Maryland public institution of higher education, the trust will pay the full in-state tuition and mandatory fees. If a child attends an eligible private or out-of-state institution of higher education, the trust will pay up to the calculated weighted average tuition of the tuition plan selected or the calculated minimum benefit, whichever is greater. Calculated minimum benefits are generally the amount paid into the account, less any operating fees plus a certain rate of return.

Maryland Senator Edward J. Kasemeyer College Investment Program

MCIP allows contributions to an investment account established to provide for tuition, fees, books, supplies, equipment, and room and board for a designated beneficiary. Under the plan, participants accept a level of investment based on their selected investment option. Account values in the investment plan are based solely on contributions and investment performance and are not guaranteed by the State.

The plan began in December 2001 and is open to children or adults of any age. Enrollment is open year-round, and investors may choose how much and how often they wish to contribute. Contributions and investment earnings are available for eligible higher education expenses, including tuition, fees, room and board, and other expenses as defined by § 529 of the IRC. In 2017, the U.S. Congress passed a new tax reform measure that expanded eligible costs for 529 plans to distributions of up to \$10,000 per beneficiary per year for tuition at elementary or secondary public, private, or religious schools; trade/technical schools; or certified apprenticeship programs.

Maryland Achieving a Better Life Experience Program

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 established a new § 529A of the IRC that permits a state (or a state agency or instrumentality) to establish and maintain another 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. Chapter 39 of 2016 required the Maryland 529 Board, in consultation with the Maryland Department of Disabilities, to establish, administer, manage, and promote the Maryland ABLE Program. As previously mentioned, Chapter 113 abolished the Maryland 529 Board and transferred administration of the Maryland ABLE Program to the State Treasurer. State programs must adhere to minimum federal guidelines to be considered qualified ABLE programs under federal law. Individuals with disabilities for whom the onset of the disability occurred prior to age 26 are considered “eligible individuals” under Internal Revenue Service (IRS) regulations. Eligible individuals who establish an ABLE account and are the owner of such account are “designated beneficiaries” under IRS regulations.

Chapter 637 of 2023 allowed for an ABLE account to be established by the eligible individual or a person selected by the eligible individual. If the eligible individual is unable to establish an ABLE account, the eligible individual’s agent under power of attorney may establish an account. If the eligible individual does not have a power of attorney, in priority order, an ABLE account may be opened for the eligible individual by the individual’s (1) conservator or legal guardian; (2) spouse; (3) parent; (4) sibling; (5) grandparent; or (6) representative payee appointed by the Social Security Administration.

Abandoned Property

Title 17 of the Commercial Law Article (MUDAPA) generally governs abandoned property in the State; the Comptroller is the administrator of abandoned property. Generally, statutory provisions establish a process by which specified types of property are presumed abandoned under certain conditions. For example, certain accounts held by financial institutions are presumed abandoned three years after the later of the date (1) the holder is deemed to not have a valid address for the owner of the property or (2) the owner last took certain actions regarding the account, such as withdrawing or depositing funds or otherwise corresponding with the financial institution, as statutorily specified. The running of the three-year period of abandonment ceases immediately upon the occurrence of conditions specified in statute.

Statute includes additional notice and procedural requirements regarding abandoned property. For example, a holder of presumed abandoned property valued at \$100 or more is required to send written notice (by first-class mail) to the apparent owner of the presumed abandoned property, at the apparent owner's last known address, informing the owner that the holder is in possession of the property and that the property will be considered abandoned unless the owner responds to the holder within 30 days after the notification.

A person holding abandoned property must also file a report with the Comptroller including information on the nature of the property and the property's presumed owner. The abandoned property specified in the report must be transferred to the Comptroller. The Comptroller is required to take specified actions, including those related to publication and the mailing of notice to apparent owners.

In general, within one year of taking custody of abandoned personal property, the Comptroller must sell the property at auction (subject to limited exceptions, such as if the Comptroller has determined the property has no commercial value). A person who claims a legal interest in property delivered to the Comptroller must file a claim to the property or to the proceeds from its sale. For property sold at auction, if the Comptroller allows the claim, the Comptroller must pay the claimant an amount equal to the sales price.

Background: In 2019, the Department of Legislative Services, Office of Legislative Audits conducted an audit of Maryland 529 (as administered by the former Maryland 529 Board). Among other findings, the audit found that Maryland 529 likely had not complied with MUDAPA when it did not determine the disposition of uncashed checks totaling \$1.7 million (as previously discovered during a prior audit). As discussed above, abandoned property generally must be transferred to the Comptroller until claimed. However, Maryland 529 had concerns regarding the legal and tax implications associated with transferring funds given the unique nature of 529 accounts, which are held in trust for a designated beneficiary.

In May 2023, the Office of the Attorney General issued an [opinion](#) providing guidance on whether MUDAPA applies to Maryland 529 accounts and how Maryland 529 should comply with such laws. The opinion noted that MUDAPA likely does not apply to Maryland 529 accounts, finding that “[a]pplication of the Act’s mandates would tend to interrupt family savings plans prematurely, trigger tax consequences and penalties that defy common sense, and clash with language in Maryland 529’s enabling statutes that seeks to safeguard account funds from diversion to other State uses.” However, while accounts themselves are likely exempt, provisions of MUDAPA are likely applicable to checks issued by the Maryland 529 Program that draw against Maryland 529 accounts.

The State Treasurer’s Office (STO) advises that the bill clarifies ambiguities regarding the application of MUDAPA by explicitly exempting Maryland 529 Program accounts from its provisions and clarifying that uncashed checks from such accounts are subject to MUDAPA.

STO also advises that there are currently 415,584 funded accounts under MCIP with an associated \$9.1 billion in assets. Also, according to the Treasurer, Maryland ABLE has 6,009 total funded accounts with total assets under management of \$78.8 million.

State Fiscal Effect: As discussed above, the bill codifies the existing interpretation regarding the applicability of MUDAPA to Maryland 529 Program accounts and checks that draw against Maryland 529 accounts. Therefore, the State Treasurer advises that, with the statutory clarification provided by the bill, it can continue to develop its own internal procedures for handling inactive accounts and coordinate as necessary with the Comptroller once uncashed checks are sent to the Unclaimed Property Division.

This analysis assumes that, absent the bill, STO would have taken actions to transfer any sums payable on uncashed distribution checks that remain unclaimed to the Comptroller, consistent with the interpretation within the Attorney General’s opinion. Therefore, the bill’s codification of the existing interpretation of MUDAPA in regard to uncashed checks is not anticipated to impact State revenues.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1150 (The Speaker)(By Request - State Treasurer) - Appropriations.

Information Source(s): Comptroller's Office; Maryland State Treasurer's Office; Office of the Attorney General; Department of Legislative Services

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