

HOUSE BILL 574

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HB 598/00 - JUD

2001 Regular Session
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By: **Delegates Doory, Taylor, Dobson, Kirk, McIntosh, Montague, and Wood**
Introduced and read first time: February 5, 2001
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Corporate Fiduciaries and Successor Corporate**
3 **Fiduciaries - Qualifications and Liabilities**

4 FOR the purpose of authorizing a corporate fiduciary to attribute to its capital and
5 surplus the capital and surplus of a certain corporation for certain purposes;
6 requiring a certain corporation to be jointly and severally liable with a successor
7 corporate fiduciary under certain circumstances; altering the required contents
8 of a notice of substitution of a successor fiduciary; requiring a court to appoint a
9 new fiduciary to replace a successor fiduciary under certain circumstances;
10 defining a certain term; making a technical correction; and generally relating to
11 corporate fiduciaries and successor corporate fiduciaries.

12 BY repealing and reenacting, with amendments,
13 Article - Estates and Trusts
14 Section 15-1A-01, 15-1A-03, and 15-1A-04
15 Annotated Code of Maryland
16 (1991 Replacement Volume and 2000 Supplement)

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

19 **Article - Estates and Trusts**

20 15-1A-01.

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

22 (b) "Bank" has the meaning stated in 12 U.S.C. § 1841(c).

23 (c) "Bank holding company" has the meaning stated in 12 U.S.C. § 1841(a).

24 (d) (1) "Beneficiary" means a person who receives or is entitled as a matter
25 of right to receive a current distribution of principal or income from a trust, estate, or
26 fund with respect to which a substitution of a corporate fiduciary is made under this
27 subtitle.

1 (2) "Beneficiary" includes:

2 (i) If the beneficiary is a minor, the beneficiary's natural or legal
3 guardian; or

4 (ii) If the beneficiary is a disabled person, as defined in § 13-101 of
5 this article, any person acting on behalf of the beneficiary under a guardianship,
6 conservatorship, or committee.

7 (E) "CAPITAL REQUIREMENT" MEANS A PROVISION IN ANY COURT ORDER,
8 STATUTE, REGULATION, OR WRITING, INCLUDING A WILL, TRUST, OR SIMILAR
9 DOCUMENT OR INSTRUMENT, THAT REQUIRES A FIDUCIARY TO HAVE A SPECIFIED
10 MINIMUM AMOUNT OF CAPITAL OR CAPITAL AND SURPLUS.

11 [(e)] (F) "Corporate fiduciary" means:

12 (1) A bank;

13 (2) A trust company; or

14 (3) Any other corporate entity that is authorized to act as a fiduciary
15 under the laws of this State.

16 [(f)] (G) "Fiduciary" includes:

17 (1) A trustee;

18 (2) An executor or executrix;

19 (3) A personal representative;

20 (4) A receiver;

21 (5) A special administrator;

22 (6) A guardian;

23 (7) A conservator;

24 (8) A committee;

25 (9) A custodian under the Maryland Uniform Transfers to Minors Act;

26 and

27 (10) Any other person who has a fiduciary relationship the
28 responsibilities of which are customarily performed by a corporate fiduciary.

29 [(g)] (H) "Successor fiduciary" means a corporate fiduciary that is substituted
30 for another corporate fiduciary under the provisions of § 15-1A-02 of this subtitle, by
31 reason of:

- 1 (1) A merger or consolidation of corporate fiduciaries;
- 2 (2) The acquisition of the stock or assets of a corporate fiduciary by
3 another corporate fiduciary;
- 4 (3) The transfer by a corporate fiduciary of its trust and fiduciary
5 business to another corporate fiduciary; or
- 6 (4) The acquisition or formation by a corporate fiduciary of a subsidiary,
7 which is itself a corporate fiduciary, in order to undertake the trust and fiduciary
8 business of the subsidiary's parent entity.

9 [(h)] (I) "Trust company" has the meaning stated in § 1-101 of this article.

10 15-1A-03.

11 (a) For purposes of qualifying as a fiduciary WITH RESPECT TO A CAPITAL
12 REQUIREMENT, a corporate fiduciary may attribute to its capital and the capital and
13 surplus of any:

14 (1) [bank] BANK, trust company, or bank holding company of which it is
15 a direct or indirect subsidiary or affiliate; OR

16 (2) CORPORATION WITH ITS PRINCIPAL OFFICE IN THIS STATE IF THE
17 CORPORATE FIDUCIARY IS:

18 (I) A TRUST COMPANY AS DEFINED UNDER § 1-101 OF THIS
19 ARTICLE; AND

20 (II) A WHOLLY OWNED SUBSIDIARY OF THE CORPORATION.

21 (b) [Any bank, trust company, or bank holding company of which a successor
22 fiduciary is a direct or indirect subsidiary or affiliate] WHEN A SUCCESSOR
23 FIDUCIARY QUALIFIES UNDER THIS SECTION, THE FOLLOWING ENTITIES shall be
24 jointly and severally liable with the successor fiduciary for claims against the
25 successor fiduciary when acting in its fiduciary capacity:

26 (1) ANY BANK, TRUST COMPANY, OR BANK HOLDING COMPANY OF
27 WHICH A SUCCESSOR FIDUCIARY IS A DIRECT OR INDIRECT SUBSIDIARY OR
28 AFFILIATE; OR

29 (2) ANY CORPORATION DESCRIBED IN SUBSECTION (A) OF THIS SECTION
30 WITH RESPECT TO A CORPORATE FIDUCIARY ACTING AS A SUCCESSOR FIDUCIARY.

31 15-1A-04.

32 (a) When a successor fiduciary is substituted under this subtitle, the successor
33 fiduciary shall send notice to the following persons at the person's last known
34 address:

35 (1) Each cofiduciary of the successor fiduciary;

1 (2) Each surviving settlor of a trust;

2 (3) Each person who, alone or in conjunction with others, has the power
3 to remove any corporate fiduciary; and

4 (4) (i) Except as provided in subparagraph (ii) of this paragraph, each
5 beneficiary of a trust, estate, or fund with respect to which a substitution of corporate
6 fiduciary under this [title] SUBTITLE is made.

7 (ii) In the case of a trust described in 26 U.S.C. § 401(a), notice
8 shall be given to the employer or employee organization responsible for the
9 maintenance of the trust.

10 (b) The notice required under subsection (a) of this section shall be:

11 (1) Personally delivered or mailed by registered mail, postage prepaid,
12 return receipt requested, within 30 days before or after substitution of the successor
13 fiduciary; and

14 (2) Published once a week in 3 successive weeks in one or more
15 newspapers of general circulation published in the county in which the principal place
16 of business of the successor fiduciary is located.

17 (c) The notice required under subsection (a) of this section shall contain:

18 (1) The name of the predecessor corporate fiduciary;

19 (2) The name of the successor fiduciary;

20 (3) The effective date of substitution of the successor fiduciary; and

21 (4) A SUMMARY OF THE PROVISIONS OF THIS SUBTITLE, INCLUDING A
22 statement of the rights and procedures available under subsection (d) of this section.

23 (d) (1) In this subsection, "interested party" means a person who:

24 (i) Is entitled to notice under subsection (a) of this section; and

25 (ii) Has an interest in the trust, estate, or fund that is the subject of
26 a complaint filed under this subsection.

27 (2) A person entitled to notice under subsection (a) of this section who
28 objects to the appointment of the successor fiduciary may, within 60 days after
29 substitution of the successor fiduciary, file a complaint for removal of the successor
30 fiduciary in the circuit court for the county in which the principal place of business of
31 the successor fiduciary is located.

32 (3) After notice to all interested parties and a hearing, the court [may]:

33 (I) MAY appoint a new fiduciary to replace the successor fiduciary
34 if it finds that substitution of the successor fiduciary under § 15-1A-02 of this

1 subtitle will adversely affect administration of the trust, estate, or fund and that
2 appointment of a new fiduciary will be in the best interests of the plaintiff and all
3 other interested parties; AND

4 (II) SHALL APPOINT A NEW FIDUCIARY TO REPLACE THE
5 SUCCESSOR FIDUCIARY IF THE COMPLAINT FOR REMOVAL INCLUDES AN OBJECTION
6 TO THE QUALIFICATIONS OF THE SUCCESSOR FIDUCIARY AND THE SUCCESSOR
7 FIDUCIARY'S QUALIFICATION IS DEPENDENT ON THE PROVISIONS OF § 15-1A-03(A)
8 OF THIS SUBTITLE.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2001.