

SENATE BILL 585

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By: **Senators Hoffman, Mitchell, and Sfikas**
Introduced and read first time: February 2, 2001
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Committee Report: Favorable
Senate action: Adopted
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CHAPTER _____

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).

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

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

6 (2) "Beneficiary" includes:

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

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

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

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

17 (1) A bank;

18 (2) A trust company; or

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

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

22 (1) A trustee;

23 (2) An executor or executrix;

24 (3) A personal representative;

25 (4) A receiver;

26 (5) A special administrator;

27 (6) A guardian;

28 (7) A conservator;

29 (8) A committee;

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

31 and

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

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

6 (1) A merger or consolidation of corporate fiduciaries;

7 (2) The acquisition of the stock or assets of a corporate fiduciary by
8 another corporate fiduciary;

9 (3) The transfer by a corporate fiduciary of its trust and fiduciary
10 business to another corporate fiduciary; or

11 (4) The acquisition or formation by a corporate fiduciary of a subsidiary,
12 which is itself a corporate fiduciary, in order to undertake the trust and fiduciary
13 business of the subsidiary's parent entity.

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

15 15-1A-03.

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

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

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

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

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

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

31 (1) ANY BANK, TRUST COMPANY, OR BANK HOLDING COMPANY OF
32 WHICH A SUCCESSOR FIDUCIARY IS A DIRECT OR INDIRECT SUBSIDIARY OR
33 AFFILIATE; OR

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

1 15-1A-04.

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

5 (1) Each cofiduciary of the successor fiduciary;

6 (2) Each surviving settlor of a trust;

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

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

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

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

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

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

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

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

24 (2) The name of the successor fiduciary;

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

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

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

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

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

32 (2) A person entitled to notice under subsection (a) of this section who
33 objects to the appointment of the successor fiduciary may, within 60 days after

1 substitution of the successor fiduciary, file a complaint for removal of the successor
2 fiduciary in the circuit court for the county in which the principal place of business of
3 the successor fiduciary is located.

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

5 (I) MAY appoint a new fiduciary to replace the successor fiduciary
6 if it finds that substitution of the successor fiduciary under § 15-1A-02 of this
7 subtitle will adversely affect administration of the trust, estate, or fund and that
8 appointment of a new fiduciary will be in the best interests of the plaintiff and all
9 other interested parties; AND

10 (II) SHALL APPOINT A NEW FIDUCIARY TO REPLACE THE
11 SUCCESSOR FIDUCIARY IF THE COMPLAINT FOR REMOVAL INCLUDES AN OBJECTION
12 TO THE QUALIFICATIONS OF THE SUCCESSOR FIDUCIARY AND THE SUCCESSOR
13 FIDUCIARY'S QUALIFICATION IS DEPENDENT ON THE PROVISIONS OF § 15-1A-03(A)
14 OF THIS SUBTITLE.

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