

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 771

(Senator Frosh)

Judicial Proceedings

Judiciary

Estates and Trusts - Personal Representatives and Fiduciaries - Powers

This bill allows a personal representative to become a limited partner in any partnership or a member in any limited liability company, including a single member limited liability company. In addition, the bill allows a fiduciary to continue as or become a member in any limited liability company, including a single member limited liability company.

Fiscal Summary

State Effect: None. The bill's changes would not directly affect State operations or finances.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: A personal representative may exercise all of the power or authority conferred on the personal representative by statute or in the will. State law sets out various powers and authority that a personal representative may exercise unless validly limited by the will or a court order, including the power to convert a sole proprietorship the decedent was engaged in at the time of his death to a limited liability company.

State law sets out various functions and duties a fiduciary may perform, including that a fiduciary may continue as or become a limited partner in any partnership and may convert a sole proprietorship the decedent was engaged in at the time of his death to a

limited liability company. The various functions and duties may be limited by the governing instrument or extended or limited by the appropriate court. A fiduciary is a trustee acting under a deed, will, declaration of trust, or other instrument in the nature of a trust, or appointed by a court, a committee, or a guardian of the property of a minor or a disabled person. A fiduciary does not include a personal representative, administrator, executor, receiver, or trustee of a trust for the benefit of creditors.

Small Business Effect: The bill would help a personal representative to keep a small business running for the estate of a decedent, which would help preserve its value, especially if the decedent was an owner or a major partner in the business. The personal representative would also be protected from personal liability in the business.

Additional Information

Prior Introductions: SB 435 of 2007, an identical bill, was passed in the Senate and received a hearing in the House Judiciary Committee but no further action was taken.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2008
ncs/jr

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510