

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 396

(Senator Forehand)

Judicial Proceedings

Judiciary

Maryland Uniform Transfers to Minors Act - Orphans' Court

This bill expands the definition of “court” under the Maryland Uniform Transfers to Minors Act to include an orphans’ court, or a court exercising the jurisdiction of an orphans’ court.

Fiscal Summary

State Effect: None.

Local Effect: The bill is not expected to significantly affect local government finances.

Small Business Effect: None.

Analysis

Current Law: The Maryland Uniform Transfers to Minors Act allows property to be irrevocably transferred to a custodian for the benefit of a minor until the minor reaches the age of 18 or 21, depending on who the property was transferred from. Upon transfer to a custodian, the custodial property is vested in the minor, yet the minor’s or the minor’s legal representative’s rights, powers, duties, and authority are limited to those provided in the Act. The custodian, in turn, has rights, powers, duties, and authority with respect to the custodial property provided under the Act, including control and management of the property.

Whenever a personal representative of an estate is required to distribute property to a minor, the orphan’s court may approve a transfer by the personal representative to a custodian to hold or dispose of the property in accordance with the Maryland Uniform

Transfers to Minors Act. However, with respect to provisions under the Act that require court authorization to take certain action or that authorize certain persons to petition the court to compel an action to be taken, “court” is defined to mean the circuit courts.

Background: The National Conference of Commissioners on Uniform Laws, which drafted the Uniform Transfers to Minors Act (which the Maryland Uniform Transfers to Minors Act is modeled after and largely similar to), generally indicates that transfers to minors can be advantageous, particularly for the purposes of estate planning, and the custodianship created under the Act offers a relatively simple way to avoid problems associated with property being transferred directly to a minor.

The Estate and Trust Law Section of the Maryland State Bar Association indicates that in certain circumstances, bringing a matter under the Maryland Uniform Transfers to Minors Act before the orphans’ court may be more efficient and economical than bringing the matter before a circuit court. Examples include when (1) a successor custodian may need to be appointed by a court if a custodian dies or is no longer able to act; (2) court authorization is needed for a personal representative to transfer estate assets to a custodian where there is no will or a will does not contain an authorization; and (3) a court orders an accounting from a custodian under certain circumstances.

Additional Information

Prior Introductions: None.

Cross File: HB 822 (Delegate Waldstreicher) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), National Conference of Commissioners on Uniform State Laws, Maryland State Bar Association (Estate and Trust Law Section), Department of Legislative Services

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ncs/kdm

Analysis by: Scott D. Kennedy

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