

# SENATE BILL 403

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CF 4r2171

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By: **Senator Kelley**

Introduced and read first time: January 23, 2014

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **State and Local Retirement and Pension Systems – Assignment of Benefits to**  
3 **Trust for Disabled Individuals**

4 FOR the purpose of altering a certain reference to federal law used to classify an  
5 individual as disabled; authorizing the assignment of a retirement or pension  
6 allowance from the State Retirement and Pension System or a local retirement  
7 or pension system to a certain type of trust for the benefit of certain individuals  
8 who are disabled, as defined under a certain provision of federal law;  
9 establishing that payments of benefits under an assignment to a trust shall  
10 begin only after certain information is provided to the Board of Trustees for the  
11 State Retirement and Pension System or the board of trustees for a local  
12 retirement or pension system; providing that the Board of Trustees for the State  
13 Retirement and Pension System or the board of trustees for a local retirement  
14 or pension system is not liable for certain improper payments if certain  
15 information is not provided; requiring the Board of Trustees for the State  
16 Retirement and Pension System to adopt certain regulations; requiring the  
17 board of trustees for a local retirement or pension system to adopt certain rules  
18 or regulations; defining certain terms; and generally relating to the assignment  
19 of State and local retirement and pension benefits.

20 BY repealing and reenacting, with amendments,  
21 Article – State Personnel and Pensions  
22 Section 21–402  
23 Annotated Code of Maryland  
24 (2009 Replacement Volume and 2013 Supplement)

25 BY adding to  
26 Article – State Personnel and Pensions  
27 Section 21–502.1; and 37.5–101 and 37.5–201 to be under the new title “Title  
28 37.5. Assignment of Benefits From Local System”  
29 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2009 Replacement Volume and 2013 Supplement)

2 Preamble

3 WHEREAS, Income and assets placed in certain types of trusts established  
4 under 42 U.S.C. § 1396p(d)(4) for the benefit of individuals with disabilities are  
5 considered exempt resources for determining the disabled individual's eligibility for  
6 public benefits such as Supplemental Security Income and medical assistance; and

7 WHEREAS, These trusts can provide critical opportunities for individuals with  
8 disabilities to receive supplemental services they need that are not included as part of  
9 their public benefits; and

10 WHEREAS, On the death of a disabled Marylander who received medical  
11 assistance while a beneficiary of a (d)(4) trust, any funds remaining in the trust must  
12 be used to reimburse the State for medical assistance payments made on the  
13 beneficiary's behalf, or in the case of a (d)(4)(c) pooled trust, the beneficiary may  
14 choose to leave any funds remaining in the trust account for the use of other trust  
15 beneficiaries; and

16 WHEREAS, Maryland residents can irrevocably assign certain nonpublic  
17 pension benefits or annuities to (d)(4) trusts; and

18 WHEREAS, There is no mechanism under State law that permits the  
19 assignment of State Retirement and Pension System benefits to a (d)(4) trust, and  
20 local government retirement plans do not uniformly permit the assignment of survivor  
21 or retirement allowances to trusts for the benefit of disabled beneficiaries; and

22 WHEREAS, It is good public policy to eliminate the disparity between private  
23 and public retirement system members and their dependents with disabilities by  
24 allowing State and local pension benefits to be assigned to (d)(4) trusts; now, therefore,

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

27 **Article – State Personnel and Pensions**

28 21–402.

29 (a) Each optional form of allowance shall be the actuarial equivalent of the  
30 basic allowance under the State system of a member.

31 (b) (1) Subject to paragraph (2) of this subsection, for an optional form of  
32 allowance providing for payment to a designated beneficiary for life, the designated  
33 beneficiary must be an individual.

1 (2) If the designated beneficiary is a minor or an individual with a  
2 disability, the allowance may be paid into a trust for the benefit of the individual.

3 (3) A member who elects to receive a reduced optional allowance under  
4 § 21–403 of this subtitle may designate an individual other than the member’s child as  
5 the member’s designated beneficiary.

6 (c) (1) This subsection applies to a member who selects an optional form  
7 of allowance as provided in § 21–403(b) or (e) of this subtitle.

8 (2) If a member designates a beneficiary other than the member’s  
9 spouse or disabled child as defined under [§ 72(m)(7) of the Internal Revenue Code,]  
10 **42 U.S.C. § 1382C(A)(3)**, a member may not designate a beneficiary who is more  
11 than 10 years younger than the member.

12 **21–502.1.**

13 (A) **THIS SECTION APPLIES TO A RETIREE OR BENEFICIARY WHO IS**  
14 **DISABLED, AS DEFINED UNDER 42 U.S.C. § 1382C(A)(3).**

15 (B) **AN ALLOWANCE MAY BE ASSIGNED TO A TRUST ESTABLISHED IN**  
16 **ACCORDANCE WITH 42 U.S.C. § 1396P(D)(4) FOR THE BENEFIT OF A DISABLED**  
17 **RETIREE OR BENEFICIARY.**

18 (C) **AN ASSIGNMENT UNDER THIS SECTION SHALL APPLY ONLY TO**  
19 **BENEFITS PAID AFTER THE BOARD OF TRUSTEES RECEIVES:**

20 (1) **WRITTEN NOTICE THAT THE RETIREE OR BENEFICIARY HAS**  
21 **INCURRED A DISABILITY;**

22 (2) **DOCUMENTATION OF THE CREATION OF A VALID TRUST FOR**  
23 **THE DISABLED RETIREE OR BENEFICIARY ESTABLISHED UNDER 42 U.S.C. §**  
24 **1396P(D)(4); AND**

25 (3) **ANY ADDITIONAL INFORMATION THAT THE BOARD OF**  
26 **TRUSTEES REQUIRES.**

27 (D) **THE BOARD OF TRUSTEES IS NOT LIABLE FOR AN IMPROPER**  
28 **PAYMENT TO A PERSON BECAUSE THE BOARD OF TRUSTEES DID NOT RECEIVE**  
29 **THE INFORMATION REQUIRED UNDER SUBSECTION (C) OF THIS SECTION.**

30 (E) **THE BOARD OF TRUSTEES SHALL ADOPT REGULATIONS TO**  
31 **IMPLEMENT THIS SECTION.**

1           **TITLE 37.5. ASSIGNMENT OF BENEFITS FROM LOCAL SYSTEM.**

2                           **SUBTITLE 1. DEFINITIONS.**

3   **37.5-101.**

4           **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
5 **INDICATED.**

6           **(B) “ALLOWANCE” HAS THE MEANING MOST CLOSELY ANALOGOUS TO**  
7 **THE MEANING STATED IN § 20-101 OF THIS ARTICLE WITHIN THE CONTEXT OF**  
8 **THE LOCAL RETIREMENT OR PENSION SYSTEM.**

9           **(C) “LOCAL RETIREMENT OR PENSION SYSTEM” MEANS ANY**  
10 **RETIREMENT OR PENSION SYSTEM OPERATED UNDER THE LAWS OF ANY**  
11 **POLITICAL SUBDIVISION OF THE STATE.**

12                           **SUBTITLE 2. ASSIGNMENT OF BENEFITS.**

13   **37.5-201.**

14           **(A) THIS SECTION APPLIES TO A RETIREE OR BENEFICIARY OF A LOCAL**  
15 **RETIREMENT OR PENSION SYSTEM WHO IS DISABLED, AS DEFINED UNDER 42**  
16 **U.S.C. § 1382C(A)(3).**

17           **(B) AN ALLOWANCE PAID BY A LOCAL RETIREMENT OR PENSION**  
18 **SYSTEM MAY BE ASSIGNED TO A TRUST ESTABLISHED IN ACCORDANCE WITH 42**  
19 **U.S.C. § 1396P(D)(4) FOR THE BENEFIT OF A DISABLED RETIREE OR**  
20 **BENEFICIARY.**

21           **(C) AN ASSIGNMENT UNDER THIS SECTION SHALL APPLY ONLY TO**  
22 **BENEFITS PAID AFTER THE BOARD OF TRUSTEES FOR THE LOCAL RETIREMENT**  
23 **OR PENSION SYSTEM RECEIVES:**

24                   **(1) WRITTEN NOTICE THAT THE RETIREE OR BENEFICIARY HAS**  
25 **INCURRED A DISABILITY;**

26                   **(2) DOCUMENTATION OF THE CREATION OF A VALID TRUST FOR**  
27 **THE DISABLED RETIREE OR BENEFICIARY ESTABLISHED UNDER 42 U.S.C. §**  
28 **1396P(D)(4); AND**

29                   **(3) ANY ADDITIONAL INFORMATION THAT THE BOARD OF**  
30 **TRUSTEES REQUIRES.**

1           **(D) THE BOARD OF TRUSTEES FOR A LOCAL RETIREMENT OR PENSION**  
2 **SYSTEM IS NOT LIABLE FOR AN IMPROPER PAYMENT TO A PERSON BECAUSE**  
3 **THE BOARD OF TRUSTEES DID NOT RECEIVE THE INFORMATION REQUIRED**  
4 **UNDER SUBSECTION (C) OF THIS SECTION.**

5           **(E) THE BOARD OF TRUSTEES FOR A LOCAL RETIREMENT OR PENSION**  
6 **SYSTEM SHALL ADOPT RULES OR REGULATIONS TO IMPLEMENT THIS SECTION.**

7           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 July 1, 2014.