

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 240

(Senator Stone)

Judicial Proceedings

Judiciary

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Maryland Trust Act

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This bill establishes the Maryland Trust Act. The Act partially codifies the existing law in Maryland governing trusts, which is based in both case law and statute, but also contains changes and additions to existing law.

The bill takes effect January 1, 2015.

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Fiscal Summary

**State Effect:** General fund revenues may decrease to the extent that the bill allows a trustee to transfer a trust's principal place of administration to another jurisdiction outside of the State. Special fund revenues may increase to the extent that the State attains reimbursement for public and medical assistance from specified beneficiaries.

**Local Effect:** The bill does not appear to have a material, direct impact on local government finances.

**Small Business Effect:** None.

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Analysis

**Bill Summary/Current Law:** The bill applies to express charitable or noncharitable trusts and trusts created in accordance with a statute (including the Maryland Discretionary Trust Act, unless otherwise provided by the statute), judgment, or decree that requires the trust to be administered in the manner of an express trust.

The terms of a trust prevail over a provision of the Act, with certain exceptions, including the requirements for creating a trust; the duty of a trustee to act reasonably under the

circumstances and in accordance with the terms and purposes of the trust and the interests of the beneficiaries; the requirement that a trust and the terms of the trust be for the benefit of the beneficiaries of the trust, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve; specified rights of certain creditors and assignees and other specified persons; specified powers of a court; subject matter jurisdiction and venue for commencing a proceeding as provided by State law; duties of a trustee to provide specified information, copies, and notices; and the effect of an exculpatory term in a trust relieving a trustee of liability for breach of trust. The common law of trusts and principles of equity supplement the Act, except to the extent modified by the Act or another statute of the State.

Issues addressed by the bill include:

- definition of terms under the Act;
- rules regarding notice and a person's knowledge of a fact;
- determination of the principal place of administration of a trust and transfer of the principal place of administration of a trust to another state or a jurisdiction outside of the United States;
- rights of certain persons and organizations as qualified beneficiaries (specified distributees or permissible distributees of trust income or principal) of specified trusts;
- court jurisdiction over a trust;
- rules regarding representation of others in relation to trusts;
- creation, validity, modification, and termination of a trust;
- claims of creditors against parties to a trust;
- rules relating to revocable trusts;
- rules applicable to the position of trustee (*e.g.*, acceptance of trusteeship, actions of cotrustees, vacancy in a trusteeship, resignation, removal, commissions, etc.);
- duties and powers of a trustee;
- duties and powers of an adviser to a trustee; and
- liability of a trustee and protection from liability of persons dealing with a trustee.

Except as otherwise provided in the bill:

- the bill applies to all trusts created before, on, or after January 1, 2015;
- the bill applies to all judicial proceedings concerning trusts commenced on or after January 1, 2015;
- the bill does not apply to judicial proceedings concerning trusts commenced before January 1, 2015;

- a rule of construction or presumption in the bill applies to trust instruments executed before January 1, 2015, unless there is a clear indication of a contrary intent in the terms of the trust; and
- an act done before January 1, 2015, is not affected by the bill.

If a right is acquired, extinguished, or barred on the expiration of a prescribed period that began under another statute before January 1, 2015, that statute continues to apply to the right even if the statute has been repealed or superseded.

The Maryland Code contains discrete statutory provisions applicable to trusts but does not contain a comprehensive statement of the law of trusts in the State. There is a significant amount of Maryland case law governing trusts, and courts may look to the Restatement of the Law of Trusts or case law in other jurisdictions where Maryland statutory or case law does not resolve an issue. The Maryland Rules also contain provisions addressing procedural issues in litigated trust cases.

The bill provides a more comprehensive codification of the law of trusts within the Maryland Code. It partially codifies the existing law in Maryland governing trusts, but also contains modifications and additions to existing law. Notable modifications or additions include the following:

- Various requirements with respect to notice, agreement, or other involvement of beneficiaries in trust matters apply to “qualified beneficiaries.” A “qualified beneficiary” is a beneficiary that (1) is a distributee or permissible distributee of trust income or principal; (2) would be a distributee or permissible distributee of trust income or principal if the interests of the present distributees and permissible distributees terminated without causing the trust to terminate; or (3) would be a distributee or permissible distributee if the trust terminated and no power of appointment was exercised.
- Individuals may be represented and bound by others with respect to trust matters in specified circumstances. A holder of a qualified power of appointment may represent and bind persons whose interests as permissible appointees or takers in default are subject to the power. Various other circumstances for representation are specified, to the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to the particular question or dispute (*e.g.*, a guardian of the property may represent and bind a minor or disabled person and an agent having specific authority to act with respect to trust matters may represent and bind the principal).

- The existence of a spendthrift provision or similar protective language in the terms of a noncharitable irrevocable trust does not prevent the trust from being terminated on consent of the trustee and all beneficiaries if a court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.
- A court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the administration of the trust.
- Any trustee (as opposed to only a corporate fiduciary acting as a trustee) may terminate a trust without a court order if the fair market value of the trust is \$100,000 or less, subject to specified conditions and procedures (*e.g.*, a written objection by a co-trustee or qualified beneficiary). The bill also limits those beneficiaries that must be given notice and an opportunity to object to qualified beneficiaries.
- To achieve the tax objectives of a settlor (creator of, or contributor to, a trust), a court may modify the terms of a trust in a manner that is not contrary to the probable intention of the settlor. The court may also provide that the modification has retroactive effect.
- Only with respect to trusts created on or after January 1, 2015, unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust.
- In the case of a vacancy in the office of a trustee, qualified beneficiaries acting unanimously may appoint a trustee without a court proceeding.
- The settlor of an irrevocable trust may request that the court remove a trustee.
- A court, on unanimous request by the qualified beneficiaries, may remove a trustee.
- A trustee may delegate duties and powers to an agent, even if the agent is associated with the trustee, and certain standards and other provisions relating to delegation of duties and powers (other than delegation of investment duties and powers addressed under existing law governing fiduciaries) to an agent are established.

- Generally, a trustee is not liable to the beneficiary for a breach of trust committed by a former trustee. However, a trustee is liable to a beneficiary for a breach of trust if the trustee (1) knows or should know of a breach of trust by a former trustee and improperly permits it to continue; (2) neglects to take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee; or (3) neglects to take reasonable steps to redress a breach of trust committed by a former trustee.
- A trustee is required to provide specified information and reports to qualified beneficiaries upon request, regardless of the contrary terms of a trust, and to provide specified notice to qualified beneficiaries after accepting a trusteeship or acquiring knowledge of an irrevocable trust.
- Notwithstanding any contrary provision of a trust instrument, if a statute or regulation of the State or the United States requires a beneficiary to reimburse the State or any agency or instrumentality of the State for public assistance, including medical assistance, furnished or to be furnished to the beneficiary, the Attorney General or an attorney acting on behalf of the agency responsible for the program may file a petition in the circuit court having jurisdiction over the trust to request reimbursement.

**Background:** The bill is a modified version of the Uniform Trust Code (UTC) drafted by the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission (ULC)). Twenty-six states and the District of Columbia have enacted a version of the UTC, including Virginia and Pennsylvania. Provisions of the UTC that are not in this bill include those that address governing law, nonjudicial settlement agreements, virtual representation by another with a substantially identical interest, creditor's claims, statutory grant of specific powers to trustees, damages for profit in absence of a breach of trust by a trustee, limitation of action and statute of repose against a trustee, and an event affecting administration or distribution.

Trusts can be a beneficial method of asset management for various reasons and have been increasing in popularity. ULC describes the formation of a trust as the transfer of property from one person to another "in trust" for beneficiaries or a legally acknowledged beneficial purpose. The person who receives the property is the "trustee," who is a fiduciary with enforceable obligations to the person who transferred the property, the beneficiaries, or beneficial purpose. ULC indicates that trusts are commonly used as part of an individual's estate plan, to avoid probate and obtain favorable tax consequences.

**Additional Comments:** While trusts are commonly associated with personal estate planning and individual, donative transfers of wealth, it is worth noting that the bill also applies to commercial trusts. Commercial trusts are used to implement a bargained-for

exchange in the context of a business or financial transaction and lack a donative purpose. Some experts have estimated that approximately 90% of the trust wealth in the United States is held in commercial trusts. Examples of commercial trusts include pension trusts, real estate investment trusts, and trusts used for asset securitization.

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### **Additional Information**

**Prior Introductions:** HB 437 of 2013, a similar bill, passed the House, as amended, but received no further action from the Senate Judicial Proceedings Committee. Its cross file, SB 753, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. SB 722 of 2012, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 682, received a hearing in the House Judiciary Committee but was subsequently withdrawn. SB 745 of 2011, also a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 750, received a hearing in the House Judiciary Committee but was subsequently withdrawn.

**Cross File:** HB 83 (Delegate Simmons) - Judiciary.

**Information Source(s):** Department of Health and Mental Hygiene, Comptroller's Office, Judiciary (Administrative Office of the Courts), Office of the Attorney General (Securities Division), Register of Wills, Maryland State Bar Association (Estate and Trust Law Section), *The Business Lawyer*, *Yale Law Journal*, Department of Legislative Services

**Fiscal Note History:** First Reader - January 20, 2014  
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