

SENATE BILL 793

N2

7lr2865
CF HB 753

By: **Senator Smith**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Trust Act – Representatives of Beneficiaries**

3 FOR the purpose of authorizing a settlor of a trust to designate certain persons to serve as
4 a representative or successor representative of a certain beneficiary of the trust, to
5 designate certain persons who may in turn designate a representative or successor
6 representative of a beneficiary of the trust, and to specify the order of priority among
7 those persons; prohibiting a trustee from serving as a representative of a certain
8 beneficiary except under certain circumstances; providing that a certain
9 representative may be held liable to the beneficiary on whose behalf the
10 representative acts only under certain circumstances; altering a certain provision of
11 the Maryland Trust Act so as to prohibit the terms of a trust from prevailing over
12 the prohibition under this Act; and generally relating to trusts.

13 BY repealing and reenacting, with amendments,
14 Article – Estates and Trusts
15 Section 14.5–105
16 Annotated Code of Maryland
17 (2011 Replacement Volume and 2016 Supplement)

18 BY adding to
19 Article – Estates and Trusts
20 Section 14.5–306
21 Annotated Code of Maryland
22 (2011 Replacement Volume and 2016 Supplement)

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

25 **Article – Estates and Trusts**

26 14.5–105.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 The terms of a trust prevail over a provision of this title, except:

2 (1) The requirements for creating a trust;

3 (2) The duty of a trustee to act reasonably under the circumstances and in
4 accordance with the terms and purposes of the trust and the interests of the beneficiaries;

5 (3) The requirement that a trust and the terms of the trust be for the
6 benefit of the beneficiaries of the trust and that the trust have a purpose that is lawful, not
7 contrary to public policy, and possible to achieve;

8 (4) **THE PROHIBITION UNDER § 14.5–306 OF THIS TITLE AGAINST A**
9 **PERSON SERVING AS A REPRESENTATIVE OF A BENEFICIARY OF A TRUST WHEN THAT**
10 **PERSON IS SERVING AS A TRUSTEE OF THE SAME TRUST;**

11 (5) The power of the court to modify or terminate a trust under §§
12 14.5–410, 14.5–411, 14.5–413, and 14.5–414 of this title;

13 [(5)] (6) The rights of certain creditors and assignees to reach a trust as
14 provided in Subtitle 5 of this title;

15 [(6)] (7) The power of the court under § 14.5–702 of this title to require,
16 dispense with, modify or terminate a bond;

17 [(7)] (8) The subject matter jurisdiction and venue for commencing a
18 proceeding as provided by the laws of this State;

19 [(8)] (9) The power of the court under § 14.5–708(a) of this title to increase
20 or decrease the commissions of a trustee;

21 [(9)] (10) The duties to provide information, copies, and notices specified
22 under § 14.5–813(a) and (c) of this title;

23 [(10)] (11) The duty under § 14.5–813(a) and (b) of this title to:

24 (i) Notify qualified beneficiaries of an irrevocable trust who have
25 attained 25 years of age of the existence of the trust, the identity of the trustee, and their
26 right to request trustee's reports and a copy of the trust; and

27 (ii) Respond to the request of a qualified beneficiary of an irrevocable
28 trust for reports by the trustee and other information reasonably related to the
29 administration of the trust;

30 [(11)] (12) The effect of an exculpatory term under § 14.5–906 of this title;

1 ~~[(12)]~~ **(13)** The rights under §§ 14.5–908 through 14.5–910 of this title of a
2 person other than a trustee or beneficiary; and

3 ~~[(13)]~~ **(14)** The power of the court to take an action and exercise jurisdiction
4 as may be necessary in the interests of justice.

5 **14.5–306.**

6 **(A) A SETTLOR MAY:**

7 **(1) DESIGNATE ONE OR MORE PERSONS WHO MAY SERVE AS A**
8 **REPRESENTATIVE OR SUCCESSOR REPRESENTATIVE OF A BENEFICIARY OF THE**
9 **TRUST;**

10 **(2) DESIGNATE ONE OR MORE OTHER PERSONS WHO MAY DESIGNATE**
11 **A REPRESENTATIVE OR SUCCESSOR REPRESENTATIVE OF A BENEFICIARY OF THE**
12 **TRUST; AND**

13 **(3) SPECIFY THE ORDER OF PRIORITY AMONG TWO OR MORE**
14 **PERSONS WHO ARE AUTHORIZED UNDER THIS TITLE TO SERVE AS A**
15 **REPRESENTATIVE OR SUCCESSOR REPRESENTATIVE OF A BENEFICIARY OF THE**
16 **TRUST.**

17 **(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, EXCEPT AS**
18 **PROVIDED IN § 14.5–303 OF THIS SUBTITLE, A PERSON MAY NOT SERVE AS A**
19 **REPRESENTATIVE OF A BENEFICIARY OF A TRUST IF THE PERSON SERVES AS A**
20 **TRUSTEE OF THE SAME TRUST.**

21 **(C) (1) A REPRESENTATIVE DESIGNATED UNDER SUBSECTION (A) OF**
22 **THIS SECTION MAY BE HELD LIABLE TO THE BENEFICIARY ON WHOSE BEHALF THE**
23 **REPRESENTATIVE ACTS ONLY IF:**

24 **(I) THE REPRESENTATIVE HAS UNDERTAKEN OR AGREED TO**
25 **REPRESENT THE BENEFICIARY; AND**

26 **(II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**
27 **REPRESENTATIVE’S ACTION OR FAILURE TO ACT IS PROVEN BY CLEAR AND**
28 **CONVINCING EVIDENCE TO HAVE BEEN IN BAD FAITH WITH RESPECT TO THE**
29 **BENEFICIARY.**

30 **(2) FOR PURPOSES OF DETERMINING LIABILITY UNDER PARAGRAPH**
31 **(1)(I) OF THIS SUBSECTION, A REPRESENTATIVE ACTS, OR FAILS TO ACT, IN BAD**
32 **FAITH ONLY IF:**

1 **(I) THE ACTION OR INACTION WAS THE RESULT OF**
2 **INTENTIONAL WRONGDOING BY THE REPRESENTATIVE; OR**

3 **(II) THE REPRESENTATIVE ACTED, OR FAILED TO ACT, WITH**
4 **RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF**
5 **THE BENEFICIARY ON WHOSE BEHALF THE REPRESENTATIVE ACTED.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2017.