



General Assembly

February Session, 2000

Raised Bill No. 5136

LCO No. 796

Referred to Committee on Judiciary

Introduced by:
(JUD)

An Act Concerning Beneficiary Interests In Estates And Trust Matters.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 (NEW) (a) The provisions of this act shall apply to all judicial
2 proceedings and all nonjudicial settlements, agreements or acts
3 pertaining to: (1) Any property or interest in property held as part of a
4 decedent's estate, in a trust or by any person in a fiduciary capacity; (2)
5 applications for probate of a will or intestate administration; (3) actions
6 by or against a decedent's estate, a trust or any other property held in a
7 fiduciary capacity or by or against the fiduciary of any such estate or
8 trust or holding any such other property, in his capacity as such
9 fiduciary; (4) proceedings for the interpretation of any will, trust or
10 other instrument pursuant to which property is held in a fiduciary
11 capacity; (5) accountings, whether intermediate or final, of any
12 fiduciary; and (6) any other matters concerning the administration of a
13 decedent's estate, a trust or any other property held in a fiduciary
14 capacity, all of which are generally referred to in this act as "fiduciary
15 matters". The provisions of this act shall be liberally construed and
16 applied to promote its underlying purpose and policy, which is to

17 permit certain persons interested in fiduciary matters to be
18 represented by other persons who have identical or substantially
19 similar interests and who may, therefore, be expected to advance and
20 defend such interests, thereby expediting the determination and
21 settlement of fiduciary matters by reducing the number of necessary
22 parties in such matters. Any reference to a trust shall include both
23 testamentary and nontestamentary trusts.

24 (b) To the extent that there is no conflict of interest between the
25 representative and the person or persons represented, and if two or
26 more persons are being represented, to the extent that there is no
27 conflict of interest between or among such persons, which might affect
28 the impartiality of the representative, representation in fiduciary
29 matters shall be permitted in the following instances:

30 (1) A court-appointed conservator or guardian of the estate shall
31 represent the ward; a trustee shall represent all persons interested in
32 the trust; and an executor or administrator of a decedent's estate shall
33 represent all persons interested in the estate.

34 (2) (A) Where any property or interest in property will pass to a
35 certain class of persons upon the occurrence of a future event, (i) the
36 then living members of such class shall represent all unborn or
37 unascertained members of such class and (ii) the then living members
38 of such class who are not under legal disability shall represent all then
39 living members of such class who are under legal disability; provided,
40 in the event that there shall be no then living member of such class, or
41 in the event that all of the then living members of such class shall be
42 under legal disability, a guardian ad litem shall be appointed to
43 represent the interests of such class. In either of such cases, the
44 members of the class so entitled to represent any other members or
45 potential members of such class shall be the persons who would take
46 such property or interest in property if the future event had occurred
47 immediately before the commencement of a judicial proceeding
48 relating to such property or interest in property, or as of the effective

49 date of any nonjudicial settlement, agreement or act relating to such
50 property or interest in property.

51 (B) Where any property or interest in property has passed to a
52 certain class of persons or where a certain class of persons has a
53 current interest in property, the then living members of such class who
54 are not under a legal disability shall represent all then living members
55 of such class who are under legal disability.

56 (3) Where any property or interest in property will pass to a person,
57 class of persons or both upon the occurrence of a future event and such
58 property or interest in property will pass to another person, class of
59 persons or both upon the occurrence of an additional future event, the
60 person, class of persons or both who would take upon the occurrence
61 of the first such event shall represent any person, class of persons or
62 both who would take upon the occurrence of such additional event,
63 provided that their interests are identical or substantially similar for
64 purposes of the particular fiduciary matter involved. The provisions of
65 this subdivision shall apply whether or not the person, class of persons
66 or both so represented are related to the person, class of persons or
67 both representing their interests; and, in the case of any class of
68 persons, the provisions of subdivision (2) of this subsection shall apply
69 to representation between or among the members of such class.

70 (4) The sole holder or all coholders of any power of appointment,
71 whether or not presently exercisable, shall represent the potential
72 appointees. The sole holder or all coholders of a power of revocation or
73 a presently exercisable general power of appointment, including one in
74 the form of a power of amendment, shall also represent the takers in
75 default of the exercise thereof.

76 (c) In any judicial proceeding involving a fiduciary matter, any
77 order or decree of the court which binds the representative or
78 representatives shall be binding and conclusive upon any person,
79 class of persons or both represented in accordance with subsection (b)
80 of this act. In any nonjudicial settlement, agreement or act involving a

81 fiduciary matter, the consent, approval, or other action of the
82 representative or representatives shall likewise be binding and
83 conclusive upon any person, class of persons or both represented in
84 accordance with subsection (b) of this act.

85 (d) Notwithstanding any provision of this act, or any contrary
86 provision of the governing instrument, if in any judicial proceeding in
87 a fiduciary matter, the court determines that the representation
88 provided for any person, class of persons or both in and by subsection
89 (b) of this act is or may be inadequate, the court may require that
90 notice be given to such person, class of persons or both and that a
91 guardian ad litem may be appointed to represent the interests of such
92 person, class of persons or both. In any such case, the court shall set
93 forth the basis for its determination as part of the record of the
94 proceeding.

JUD Committee Vote: Yea 39 Nay 0 JF