

HOUSE BILL 1165

N2, D4

7lr3030

By: Delegates Saab, Angel, Barkley, Barron, Beidle, Beitzel, Bromwell, Brooks, Buckel, Carey, Chang, Clark, Cullison, Ebersole, Folden, Glass, Glenn, Hayes, Hornberger, S. Howard, Jacobs, Jameson, Kipke, Korman, Kramer, Krebs, Malone, McComas, McConkey, McCray, McDonough, McKay, Miele, Morgan, Morhaim, Oaks, Pena-Melnyk, Platt, Reilly, Rey, Robinson, Rose, Sample-Hughes, Shoemaker, Simonaire, Sophocleus, Szeliga, Tarlau, Waldstreicher, West, Wivell, and K. Young

Introduced and read first time: February 9, 2017

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2017

CHAPTER _____

1 AN ACT concerning

2 **Estates – Duties of Guardian of the Person – ~~Notice and Visitation by Family~~**
3 **Fostering and Preserving Family Relationships**

4 FOR the purpose of altering the duties of a guardian of the person of a disabled person to
5 include the duty to foster and preserve family relationships including assisting to
6 arrange certain visitation and communication; and generally relating to the duties
7 of the guardian of the person. ~~enforce the disabled person's right to receive visitors~~
8 and certain communications; requiring a certain guardian of the person of a disabled
9 person to inform known family members of the disabled person, if practicable, if the
10 disabled person dies or has been hospitalized for a certain period; requiring a certain
11 guardian of the person of a deceased disabled person to inform known family
12 members of the disabled person, if practicable, of any funeral arrangements and the
13 location of the disabled person's final resting place; authorizing a certain adult child,
14 grandchild, or sibling to file a petition to compel visitation with a certain individual
15 under certain circumstances; requiring the petition to be filed in a certain circuit
16 court and to include certain information; requiring the petitioner to personally serve
17 on and mail to certain individuals a copy of the petition; requiring the court to
18 determine whether the proposed visitee has retained or plans to retain an attorney;
19 authorizing the court to appoint an attorney for an unrepresented proposed visitee;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~requiring the court to appoint an independent investigator to conduct an investigation and report written findings to the court; establishing the duties of the independent investigator; establishing that the report of the independent investigator is confidential and shall be made available only to certain individuals; authorizing the court to order that an investigation is not necessary or that a more limited investigation may be performed under certain circumstances; requiring the court to schedule an expedited hearing on a petition under certain circumstances; requiring the court to mail notice of the hearing on the petition to certain individuals; requiring the court to determine whether the proposed visitee has sufficient capacity to make a knowing and intelligent visitation decision; requiring the court to determine whether the proposed visitee would want visitation under certain circumstances; requiring the court to grant or deny visitation under certain circumstances; establishing that a certain determination regarding capacity is not admissible as evidence in any other legal proceeding; requiring the court to order each petitioner to pay the reasonable fees and expenses of the independent investigator and any attorney appointed for the proposed visitee; authorizing the court to order another individual to pay the reasonable fees and expenses of the independent investigator and any attorney appointed for the proposed visitee under certain circumstances; establishing that the court has continuing jurisdiction to vacate or modify an order issued under this Act; authorizing the Court of Appeals to adopt rules to carry out this Act; defining certain terms; and generally relating to visitation and communications between certain family members.~~

BY repealing and reenacting, without amendments,

Article – Estates and Trusts

Section 13–708(a)

Annotated Code of Maryland

(2011 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,

Article – Estates and Trusts

Section 13–708(b)

Annotated Code of Maryland

(2011 Replacement Volume and 2016 Supplement)

~~BY adding to~~

~~Article – Estates and Trusts~~

~~Section 13–708.1~~

~~Annotated Code of Maryland~~

~~(2011 Replacement Volume and 2016 Supplement)~~

~~BY adding to~~

~~Article – Family Law~~

~~Section 15–101 through 15–104 to be under the new title “Title 15. Visitation”~~

~~Annotated Code of Maryland~~

~~(2012 Replacement Volume and 2016 Supplement)~~

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

Article – Estates and Trusts

13–708.

(a) (1) The court may grant to a guardian of a person only those powers necessary to provide for the demonstrated need of the disabled person.

(2) (i) The court may appoint a guardian of the person of a disabled person for the limited purpose of making one or more decisions related to the health care of that person.

(ii) The court may appoint a guardian of the person of a disabled person for a limited period of time if it appears probable that the disability will cease within 1 year of the appointment of the guardian.

(b) Subject to subsection (a) of this section, the rights, duties, and powers which the court may order include, but are not limited to:

(1) The same rights, powers, and duties that a parent has with respect to an unemancipated minor child, except that the guardian is not liable solely by reason of the guardianship to third persons for any act of the disabled person;

(2) The right to custody of the disabled person and to establish his place of abode within and without the State, provided there is court authorization for any change in the classification of abode, except that no one may be committed to a mental facility without an involuntary commitment proceeding as provided by law;

(3) The duty to provide for care, comfort, and maintenance, including social, recreational, and friendship requirements, and, if appropriate, for training and education of the disabled person;

(4) ~~THE IF IT IS IN THE BEST INTEREST OF THE DISABLED PERSON, THE DUTY TO ENFORCE THE DISABLED PERSON'S RIGHT TO RECEIVE VISITORS, FOSTER AND PRESERVE FAMILY RELATIONSHIPS INCLUDING, AS APPROPRIATE, ASSISTING TO ARRANGE VISITATION AND COMMUNICATION BY TELEPHONE CALLS, PERSONAL MAIL, AND ELECTRONIC COMMUNICATIONS;~~

[(4)] (5) The duty to take reasonable care of the clothing, furniture, vehicles, and other personal effects of the disabled person, and, if other property requires protection, the power to commence protective proceedings;

[(5)] (6) If a guardian of the estate of the disabled person has not been appointed, the right to commence proceedings to compel performance by any person of his

duty to support the disabled person, and to apply the estate to the support, care, and education of the disabled person, except that the guardian of the person may not obtain funds from the estate for room and board that the guardian, his spouse, parent, or child provide without a court order approving the charge, and the duty to exercise care to conserve any excess estate for the needs of the disabled person;

[(6)] (7) If a guardian of the estate has been appointed, the duty to control the custody and care of the disabled person, to receive reasonable sums for room and board provided to the disabled person, and to account to the guardian of the estate for funds expended, and the right to ask the guardian of the estate to expend the estate in payment of third persons for care and maintenance of the disabled person;

[(7)] (8) The duty to file an annual or biannual report with the court indicating the present place of residence and health status of the ward, the guardian's plan for preserving and maintaining the future well-being of the ward, and the need for continuance or cessation of the guardianship or for any alteration in the powers of the guardian. The court shall renew the appointment of the guardian if it is satisfied that the grounds for the original appointment stated in § 13-705(b) of this subtitle continue to exist. If the court believes such grounds may not exist, it shall hold a hearing, similar to that provided for in § 13-705 of this subtitle, at which the guardian shall be required to prove that such grounds exist. If the court does not make these findings, it shall order the discontinuance of the guardianship of the person. If the guardian declines to participate in the hearing, the court may appoint another guardian to replace him pursuant to the priorities in § 13-707(a) of this subtitle; and

[(8)] (9) The power to give necessary consent or approval for:

(i) Medical or other professional care, counsel, treatment, or service, including admission to a hospital or nursing home or transfer from one medical facility to another;

(ii) Withholding medical or other professional care, counsel, treatment, or service; and

(iii) Withdrawing medical or other professional care, counsel, treatment, or service.

~~13-708.1.~~

~~(A) (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A GUARDIAN OF THE PERSON OF A DISABLED PERSON SHALL, AS SOON AS REASONABLY POSSIBLE, INFORM THE DISABLED PERSON'S KNOWN FAMILY MEMBERS IF THE DISABLED PERSON DIES OR HAS BEEN HOSPITALIZED IN A HOSPITAL, AS DEFINED IN § 19-301 OF THE HEALTH GENERAL ARTICLE, FOR A PERIOD OF AT LEAST 3 DAYS.~~

~~(2) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IN THE CASE OF THE DEATH OF THE DISABLED PERSON, THE GUARDIAN SHALL, AS SOON AS REASONABLY POSSIBLE, INFORM THE DISABLED PERSON'S KNOWN FAMILY MEMBERS OF ANY FUNERAL ARRANGEMENTS AND THE LOCATION OF THE DISABLED PERSON'S FINAL RESTING PLACE.~~

~~(B) IF THE GUARDIAN OF THE PERSON OF A DISABLED PERSON IS THE DIRECTOR OF THE LOCAL DEPARTMENT OF SOCIAL SERVICES, THE SECRETARY OF AGING, OR THE DIRECTOR OF THE LOCAL AREA AGENCY ON AGING, THE GUARDIAN SHALL, IF PRACTICABLE:~~

~~(1) INFORM THE DISABLED PERSON'S KNOWN FAMILY MEMBERS IF THE DISABLED PERSON DIES OR HAS BEEN HOSPITALIZED IN A HOSPITAL, AS DEFINED IN § 19-301 OF THE HEALTH GENERAL ARTICLE, FOR A PERIOD OF AT LEAST 3 DAYS; AND~~

~~(2) IN THE CASE OF THE DEATH OF THE DISABLED PERSON, INFORM THE DISABLED PERSON'S KNOWN FAMILY MEMBERS OF ANY FUNERAL ARRANGEMENTS AND THE LOCATION OF THE DISABLED PERSON'S FINAL RESTING PLACE.~~

~~Article Family Law~~

~~TITLE 15. VISITATION.~~

~~15-101.~~

~~(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(B) "ADULT CHILD" MEANS AN ADULT WHO IS THE BIOLOGICAL CHILD OF A PROPOSED VISITEE OR WHO IS THE CHILD OF A PROPOSED VISITEE THROUGH ADOPTION, THROUGH THE MARRIAGE OR FORMER MARRIAGE OF THE PROPOSED VISITEE TO THE ADULT CHILD'S BIOLOGICAL PARENT, OR BY A JUDGMENT OF PARENTAGE ENTERED BY A COURT OF COMPETENT JURISDICTION.~~

~~(C) "PROPOSED VISITEE" MEANS A PARENT OF AN ADULT CHILD, GRANDPARENT OF AN ADULT GRANDCHILD, OR SIBLING OF AN ADULT FOR WHOM A VISITATION DECISION IS SOUGHT.~~

~~(D) "VISITATION" MEANS ANY IN-PERSON MEETING, OR ANY TELEPHONIC, MAIL, OR ELECTRONIC COMMUNICATION, BETWEEN A PROPOSED VISITEE AND THE PROPOSED VISITEE'S ADULT CHILD, GRANDCHILD, OR SIBLING.~~

~~(E) "VISITATION DECISION" MEANS A DECISION REGARDING VISITATION BETWEEN A PROPOSED VISITEE AND AN ADULT CHILD, GRANDCHILD, OR SIBLING INCLUDING:~~

~~(1) APPROVAL OR DISAPPROVAL OF ANY VISITATION; AND~~

~~(2) IF APPROVED, THE SPECIFICS OF THE VISITATION, INCLUDING THE TIME, PLACE, AND MANNER OF THE VISITATION.~~

~~15-102.~~

~~(A) AN ADULT CHILD, GRANDCHILD, OR SIBLING MAY FILE A PETITION TO COMPEL VISITATION WITH A PROPOSED VISITEE IF VISITATION IS BEING DENIED BY AN INDIVIDUAL WITH CUSTODY OF AND CONTROL OVER THE PROPOSED VISITEE.~~

~~(B) THE PETITION SHALL BE FILED IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE PROPOSED VISITEE IS DOMICILED OR IS TEMPORARILY LIVING.~~

~~(C) THE PETITION SHALL STATE, TO THE EXTENT KNOWN TO THE PETITIONER:~~

~~(1) THE CONDITION OF THE PROPOSED VISITEE'S HEALTH;~~

~~(2) THE PROPOSED VISITATION THAT IS SOUGHT;~~

~~(3) THE EFFORTS MADE TO OBTAIN VISITATION WITH THE PROPOSED VISITEE;~~

~~(4) WHETHER THERE IS ANY DEFICIT IN THE PROPOSED VISITEE'S MENTAL FUNCTIONS THAT AFFECTS THE PROPOSED VISITEE'S ABILITY TO RESPOND KNOWINGLY AND INTELLIGENTLY TO QUESTIONS ABOUT THE PROPOSED VISITATION; AND~~

~~(5) THE NAMES AND ADDRESSES OF:~~

~~(I) THE PROPOSED VISITEE'S SPOUSE, ADULT CHILDREN, ADULT GRANDCHILDREN, PARENTS, AND SIBLINGS;~~

~~(II) THE INDIVIDUAL WITH CUSTODY AND CONTROL OVER THE PROPOSED VISITEE WHO IS ALLEGED TO BE DENYING VISITATION; AND~~

~~(III) IF A GUARDIAN OF THE PERSON HAS BEEN APPOINTED FOR THE PROPOSED VISITEE, THE GUARDIAN OF THE PERSON.~~

~~(D) THE PETITIONER SHALL:~~

~~(1) PERSONALLY SERVE A COPY OF THE PETITION ON THE PROPOSED VISITEE AND THE PROPOSED VISITEE'S ATTORNEY AND GUARDIAN OF THE PERSON, IF ANY; AND~~

~~(2) MAIL A COPY OF THE PETITION TO THE PROPOSED VISITEE'S SPOUSE AND RELATIVES LISTED IN THE PETITION AND THE INDIVIDUAL WITH CUSTODY OF AND CONTROL OVER THE PROPOSED VISITEE AT THE ADDRESSES STATED IN THE PETITION.~~

~~15-103.~~

~~(A) (1) ON THE FILING OF A PETITION UNDER THIS TITLE, THE COURT SHALL DETERMINE WHETHER THE PROPOSED VISITEE HAS RETAINED OR PLANS TO RETAIN AN ATTORNEY TO REPRESENT THE PROPOSED VISITEE.~~

~~(2) THE COURT MAY APPOINT AN ATTORNEY FOR AN UNREPRESENTED PROPOSED VISITEE.~~

~~(B) THE COURT SHALL APPOINT AN INDEPENDENT INVESTIGATOR TO CONDUCT AN INVESTIGATION AND REPORT WRITTEN FINDINGS TO THE COURT.~~

~~(C) THE INVESTIGATOR SHALL:~~

~~(1) INTERVIEW:~~

~~(I) THE PROPOSED VISITEE;~~

~~(II) THE PROPOSED VISITEE'S GUARDIAN OF THE PERSON, IF ANY;~~

~~(III) EACH PETITIONER;~~

~~(IV) THE PROPOSED VISITEE'S SPOUSE;~~

~~(V) THE PROPOSED VISITEE'S ADULT CHILDREN, GRANDCHILDREN, SIBLINGS, AND PARENTS; AND~~

~~(VI) TO THE EXTENT PRACTICABLE, THE PROPOSED VISITEE'S NEIGHBORS AND, IF KNOWN, CLOSE FRIENDS;~~

~~(2) INFORM THE PROPOSED VISITEE OF THE CONTENTS OF THE PETITION;~~

~~(3) DETERMINE WHETHER THE PROPOSED VISITEE HAS THE CAPACITY TO CONSENT TO THE REQUESTED VISITATION; AND~~

~~(4) DETERMINE WHETHER THE PROPOSED VISITEE DESIRES THE PROPOSED VISITATION.~~

~~(D) AT LEAST 5 DAYS BEFORE THE HEARING ON THE PETITION, THE INVESTIGATOR SHALL:~~

~~(1) FILE A WRITTEN REPORT OF THE INVESTIGATOR'S FINDINGS WITH THE COURT; AND~~

~~(2) MAIL A COPY OF THE REPORT TO:~~

~~(I) THE PETITIONER AND THE PETITIONER'S ATTORNEY, IF ANY;~~

~~(II) THE PROPOSED VISITEE, AND THE PROPOSED VISITEE'S ATTORNEY AND GUARDIAN OF THE PERSON, IF ANY;~~

~~(III) THE SPOUSE, ADULT CHILDREN, GRANDCHILDREN, SIBLINGS, AND PARENTS OF THE PROPOSED VISITEE, UNLESS THE COURT DETERMINES THAT THE MAILING WILL RESULT IN HARM TO THE PROPOSED VISITEE; AND~~

~~(IV) ANY OTHER INDIVIDUALS THAT THE COURT ORDERS.~~

~~(E) THE REPORT REQUIRED UNDER THIS SECTION IS CONFIDENTIAL AND SHALL BE MADE AVAILABLE ONLY TO THE PARTIES, THE INDIVIDUALS DESCRIBED IN SUBSECTION (D)(2) OF THIS SECTION, INDIVIDUALS GIVEN NOTICE OF THE PETITION WHO HAVE REQUESTED THE REPORT OR WHO HAVE APPEARED IN THE PROCEEDING, THEIR ATTORNEYS, AND THE COURT.~~

~~(F) IF AN INDEPENDENT INVESTIGATOR HAS PERFORMED AN INVESTIGATION WITHIN THE PRECEDING 12 MONTHS AND FURNISHED A REPORT OF THE INVESTIGATION TO THE COURT, THE COURT MAY ORDER, ON GOOD CAUSE SHOWN, THAT ANOTHER INVESTIGATION IS NOT NECESSARY OR THAT A MORE LIMITED INVESTIGATION MAY BE PERFORMED.~~

~~15-104.~~

~~(A) (1) IF THE PETITION ALLEGES THAT THE DEATH OF THE PROPOSED VISITEE IS IMMINENT, THE COURT SHALL SCHEDULE THE PETITION FOR AN EXPEDITED HEARING.~~

~~(2) THE COURT SHALL MAIL NOTICE OF THE HEARING ON A PETITION UNDER THIS TITLE TO EACH INDIVIDUAL LISTED IN § 15-103(D)(2) OF THIS TITLE.~~

~~(B) IN RULING ON THE PETITION, THE COURT SHALL DETERMINE WHETHER THE PROPOSED VISITEE HAS SUFFICIENT CAPACITY TO MAKE A KNOWING AND INTELLIGENT VISITATION DECISION.~~

~~(C) THE COURT SHALL GRANT REASONABLE VISITATION IF:~~

~~(1) THE COURT DETERMINES THAT THE PROPOSED VISITEE HAS SUFFICIENT CAPACITY TO MAKE A KNOWING AND INTELLIGENT VISITATION DECISION; AND~~

~~(2) THE PROPOSED VISITEE EXPRESSES A DESIRE FOR VISITATION.~~

~~(D) (1) IF THE COURT DETERMINES THAT THE PROPOSED VISITEE LACKS THE CAPACITY TO MAKE A KNOWING AND INTELLIGENT VISITATION DECISION, THE COURT SHALL DETERMINE WHETHER THE PROPOSED VISITEE WOULD WANT VISITATION WITH THE PETITIONER.~~

~~(2) IN DETERMINING WHETHER THE PROPOSED VISITEE WOULD WANT VISITATION, THE COURT SHALL CONSIDER:~~

~~(I) THE HISTORY OF THE RELATIONSHIP BETWEEN THE PROPOSED VISITEE AND THE PETITIONER;~~

~~(II) ANY STATEMENTS MADE BY THE PROPOSED VISITEE EXPRESSING A DESIRE TO HAVE VISITATION WITH THE PETITIONER;~~

~~(III) ANY POWER OF ATTORNEY OR OTHER DOCUMENT THAT EXPRESSES AN OPINION ON VISITATION WITH THE PETITIONER; AND~~

~~(IV) THE REPORT OF THE INDEPENDENT INVESTIGATOR UNDER § 15-103 OF THIS TITLE.~~

~~(3) IF THE COURT DETERMINES THAT THE PROPOSED VISITEE WOULD WANT VISITATION AND THAT THE VISITATION IS IN THE BEST INTERESTS OF THE PROPOSED VISITEE, THE COURT SHALL GRANT REASONABLE VISITATION.~~

~~(E) THE COURT MAY NOT GRANT VISITATION IF:~~

~~(1) THE COURT DETERMINES THAT THE PROPOSED VISITEE HAS SUFFICIENT CAPACITY TO MAKE A KNOWING AND INTELLIGENT VISITATION DECISION; AND~~

~~(2) THE PROPOSED VISITEE EXPRESSES THAT THE PROPOSED VISITEE DOES NOT DESIRE VISITATION.~~

~~(F) A DETERMINATION BY THE COURT REGARDING CAPACITY UNDER THIS TITLE IS NOT ADMISSIBLE AS EVIDENCE IN ANY OTHER LEGAL PROCEEDING.~~

~~(G) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE COURT SHALL ORDER EACH PETITIONER TO PAY THE REASONABLE FEES AND EXPENSES OF THE INDEPENDENT INVESTIGATOR AND ANY ATTORNEY APPOINTED UNDER § 15-103 OF THIS TITLE.~~

~~(2) ON REQUEST OF A PETITIONER, THE COURT MAY ORDER ANOTHER INDIVIDUAL TO PAY THE REASONABLE COSTS AND EXPENSES OF THE INDEPENDENT INVESTIGATOR AND ANY ATTORNEY APPOINTED UNDER § 15-103 OF THIS TITLE IF:~~

~~(I) THE COURT FINDS THAT:~~

~~1. THE INDIVIDUAL HAD CUSTODY OR CONTROL OF A PROPOSED VISITEE AND DENIED AN ADULT CHILD, GRANDCHILD, OR SIBLING ACCESS TO THE PROPOSED VISITEE FOR THE PURPOSE OF VISITATION; AND~~

~~2. THE DENIAL WAS IN BAD FAITH OR WITHOUT SUBSTANTIAL JUSTIFICATION; AND~~

~~(II) THE INDIVIDUAL IS GIVEN NOTICE OF AND A REASONABLE OPPORTUNITY TO RESPOND TO THE REQUEST.~~

~~(H) THE COURT HAS CONTINUING JURISDICTION TO VACATE OR MODIFY AN ORDER ISSUED UNDER THIS SECTION.~~

~~(I) THE COURT OF APPEALS MAY ADOPT RULES TO CARRY OUT THIS SECTION.~~

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