

SENATE BILL 726

N2, O3

11r2037

By: **Senator Robey**

Introduced and read first time: February 4, 2011

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Hospitalized Adult Disabled Persons – Appointment of Temporary Limited**
3 **Guardian**

4 FOR the purpose of providing for the appointment of a temporary limited guardian to
5 consent to discharge of a disabled person from a hospital under certain
6 circumstances; establishing certain procedures for the appointment of a
7 temporary limited guardian; establishing certain powers and duties of a
8 temporary limited guardian; establishing certain requirements for petitions for
9 appointment of a temporary limited guardian; identifying certain individuals
10 who may serve as a temporary limited guardian; providing for a hearing on a
11 petition for the appointment of a temporary limited guardian; providing for
12 certain judicial review procedures; defining certain terms; granting immunity
13 from liability to certain individuals; making a certain technical correction; and
14 generally relating to the appointment of a temporary limited guardian.

15 BY repealing and reenacting, with amendments,
16 Article – Courts and Judicial Proceedings
17 Section 5–618(a)
18 Annotated Code of Maryland
19 (2006 Replacement Volume and 2010 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – Estates and Trusts
22 Section 13–101(a), (c), (d), (e)(2), and (j), 13–105(b), and 13–705(a) through (c)
23 Annotated Code of Maryland
24 (2001 Replacement Volume and 2010 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Estates and Trusts
27 Section 13–101(l), 13–704, 13–705(f), and 13–710(a)
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2001 Replacement Volume and 2010 Supplement)

2 BY adding to

3 Article – Estates and Trusts

4 Section 13–709.1

5 Annotated Code of Maryland

6 (2001 Replacement Volume and 2010 Supplement)

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

9 **Article – Courts and Judicial Proceedings**

10 5–618.

11 (a) Any person who files a petition, participates in the making of a good faith
12 report, or participates in an investigation or in a judicial proceeding resulting from the
13 filing of a petition or the making of a good faith report, under § 13–705 [or], § 13–709,
14 **OR § 13–709.1** of the Estates and Trusts Article or Title 14, Subtitle 3 of the Family
15 Law Article, shall in so doing be immune from any civil liability or criminal penalty
16 that might otherwise be incurred or imposed as a result thereof.

17 **Article – Estates and Trusts**

18 13–101.

19 (a) In this title the following words have the meanings indicated.

20 (c) “Court” means the court having jurisdiction under § 13–105 of this
21 subtitle.

22 (d) “Director” means the director of the local department of social services in
23 the political subdivision where the adult requiring protective services lives.

24 (e) “Disabled person” means a person other than a minor who:

25 (2) (i) Has been judged by a court to be unable to provide for his
26 daily needs sufficiently to protect his health or safety for reasons listed in § 13–705(b)
27 of this title; and

28 (ii) As a result of this inability requires a guardian of the
29 person.

30 (j) “Interested person” means the guardian, the heirs of the minor or
31 disabled person, any governmental agency paying benefits to the minor or disabled
32 person, or any person or agency eligible to serve as guardian of the disabled person
33 under § 13–707 of this title. If an interested person is also a minor or a disabled

1 person, interested person also includes a judicially appointed guardian, committee,
2 conservator, or trustee for that person, or, if none, the parent or other person having
3 assumed responsibility for him.

4 (l) "Mental facility" means any place providing a clinic, hospital, day
5 residential or other programs, public or private, other than a veterans' hospital, which
6 purports to or does provide treatment for persons suffering from mental disorders as
7 defined in § 10–101(f) or § 3–101(g) of the Criminal Procedure Article, intellectual
8 disability as defined in § ~~[7–101(l)]~~ **7–101(k)** of the Health – General Article, or drug
9 addiction or for chronic alcoholics.

10 13–105.

11 (b) Subject to Title 13.5 of this article, the circuit courts have exclusive
12 jurisdiction over protective proceedings for disabled persons.

13 13–704.

14 The court may superintend and direct the care of a disabled person, appoint a
15 guardian of the person **OR A TEMPORARY LIMITED GUARDIAN UNDER § 13–709.1**
16 **OF THIS SUBTITLE**, and pass orders and decrees respecting the person as seems
17 proper, including an order directing the disabled person to be sent to a hospital.
18 Procedures in these cases shall be as prescribed by the Maryland Rules and in
19 accordance with the provisions of this subtitle and Title 13.5 of this article.

20 13–705.

21 (a) On petition and after any notice or hearing prescribed by law or the
22 Maryland Rules, a court may appoint a guardian of the person of a disabled person.

23 (b) A guardian of the person shall be appointed if the court determines from
24 clear and convincing evidence that a person lacks sufficient understanding or capacity
25 to make or communicate responsible decisions concerning his person, including
26 provisions for health care, food, clothing, or shelter, because of any mental disability,
27 disease, habitual drunkenness, or addiction to drugs, and that no less restrictive form
28 of intervention is available which is consistent with the person's welfare and safety.

29 (c) (1) Procedures and venue in these cases shall be as described by Title
30 10, Chapters 100 and 200 of the Maryland Rules.

31 (2) Notwithstanding the provisions of paragraph (1) of this subsection,
32 a petition for guardianship of a disabled person shall include signed and verified
33 certificates of competency from the following health care professionals:

34 (i) Two licensed physicians who have examined the disabled
35 person; or

1 (ii) 1. One licensed physician who has examined the
2 disabled person; and

3 2. A. One licensed psychologist who has evaluated
4 the disabled person; or

5 B. One licensed certified social worker—clinical who has
6 evaluated the disabled person.

7 (3) An examination or evaluation by at least one of the health care
8 professionals under paragraph (2) of this subsection shall occur within 21 days before
9 filing a petition for guardianship of a disabled person.

10 (f) The court shall hear and rule **ON AN EXPEDITED BASIS** on a petition
11 seeking appointment of a guardian of the person of a disabled person [in connection
12 with medical treatment on an expedited basis] **FOR EMERGENCY PROTECTIVE**
13 **SERVICES UNDER § 13–709 OF THIS SUBTITLE OR FOR THE TEMPORARY AND**
14 **LIMITED PURPOSE OF AUTHORIZING CONSENT TO DISCHARGE FROM A**
15 **HOSPITAL UNDER § 13–709.1 OF THIS SUBTITLE.**

16 **13–709.1.**

17 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
18 **MEANINGS INDICATED.**

19 (2) (I) **“HOSPITAL” MEANS A HOSPITAL OR LIMITED SERVICE**
20 **HOSPITAL AS DEFINED IN § 19–301 OF THE HEALTH – GENERAL ARTICLE THAT**
21 **PROVIDES ACUTE MEDICAL CARE.**

22 (II) **“HOSPITAL” DOES NOT INCLUDE A PSYCHIATRIC**
23 **SPECIALTY HOSPITAL OPERATED BY THE DEPARTMENT OF HEALTH AND**
24 **MENTAL HYGIENE.**

25 (3) **“TEMPORARY LIMITED GUARDIAN” MEANS A GUARDIAN OF**
26 **THE PERSON AUTHORIZED FOR THE LIMITED PURPOSE OF CONSENTING TO**
27 **DISCHARGE OF A DISABLED PERSON RECEIVING ACUTE MEDICAL CARE IN A**
28 **HOSPITAL TO A LONG–TERM OR LESS RESTRICTIVE REHABILITATIVE CARE**
29 **FACILITY.**

30 (B) **ON PETITION BY AN INTERESTED PERSON, A COURT MAY APPOINT A**
31 **TEMPORARY LIMITED GUARDIAN OF A DISABLED PERSON AFTER FINDING ON**
32 **THE RECORD, BASED ON CLEAR AND CONVINCING EVIDENCE, THAT:**

33 (1) **THE PERSON LACKS SUFFICIENT UNDERSTANDING OR**
34 **CAPACITY UNDER § 13–705(B) OF THIS SUBTITLE;**

1 **(2) THE PERSON IS MEDICALLY STABLE AND READY FOR**
2 **DISCHARGE FROM A HOSPITAL TO A LONG-TERM OR LESS RESTRICTIVE**
3 **REHABILITATIVE CARE FACILITY; AND**

4 **(3) NO PERSON AUTHORIZED BY LAW OR COURT ORDER TO GIVE**
5 **CONSENT FOR THE PERSON IS AVAILABLE TO CONSENT TO AUTHORIZE**
6 **DISCHARGE.**

7 **(C) IN APPOINTING A TEMPORARY LIMITED GUARDIAN, THE COURT**
8 **SHALL ADHERE TO THE FOLLOWING LIMITATIONS:**

9 **(1) THE COURT MAY AUTHORIZE A TEMPORARY LIMITED**
10 **GUARDIAN TO MAKE DECISIONS ONLY RELATING TO MEDICAL TREATMENT**
11 **NECESSARY TO EFFECTUATE DISCHARGE FROM THE HOSPITAL TO A**
12 **LONG-TERM OR LESS RESTRICTIVE REHABILITATIVE CARE FACILITY**
13 **CONSISTENT WITH THE DISABLED PERSON'S WELFARE AND SAFETY;**

14 **(2) THE COURT SHALL APPOINT AN INTERESTED PERSON, THE**
15 **DIRECTOR, THE SECRETARY OF AGING, OR DIRECTOR OF A LOCAL AGENCY ON**
16 **AGING AS A TEMPORARY LIMITED GUARDIAN UNTIL THE EXPIRATION OF THE**
17 **ORDER APPOINTING A TEMPORARY LIMITED GUARDIAN;**

18 **(3) UNLESS THE COURT ORDERS OTHERWISE, THE TEMPORARY**
19 **LIMITED GUARDIANSHIP SHALL EXPIRE WITHIN 60 DAYS AFTER THE**
20 **APPOINTMENT OR WHENEVER A GUARDIAN IS APPOINTED UNDER § 13-705 OF**
21 **THIS SUBTITLE, WHICHEVER OCCURS FIRST; AND**

22 **(4) THE APPOINTMENT OF A TEMPORARY LIMITED GUARDIAN**
23 **MAY NOT DEPRIVE THE DISABLED PERSON OF ANY RIGHTS EXCEPT TO THE**
24 **EXTENT PROVIDED FOR IN THE ORDER OF APPOINTMENT.**

25 **(D) (1) A REQUEST FOR A HEARING TO APPOINT A TEMPORARY**
26 **LIMITED GUARDIAN SHALL BE ACCOMPANIED BY A PETITION FOR APPOINTMENT**
27 **OF A TEMPORARY LIMITED GUARDIAN IN ACCORDANCE WITH SUBSECTION (E)**
28 **OF THIS SECTION.**

29 **(2) THE COURT SHALL HEAR AND RULE ON A PETITION UNDER**
30 **THIS SUBSECTION WITHIN 14 DAYS AFTER THE FILING OF THE PETITION.**

31 **(E) A PETITION FOR APPOINTMENT OF A TEMPORARY LIMITED**
32 **GUARDIAN SHALL INCLUDE:**

33 **(1) THE NAME, ADDRESS, AND INTEREST OF THE PETITIONER;**

1 **(2) THE NAME, AGE, AND ADDRESS OF THE PERSON IN NEED OF**
2 **TEMPORARY LIMITED GUARDIANSHIP;**

3 **(3) SIGNED AND VERIFIED CERTIFICATES OF COMPETENCY AS**
4 **REQUIRED UNDER § 13-705(C) OF THIS SUBTITLE;**

5 **(4) THE NAME OF THE HOSPITAL WHERE THE PERSON IS**
6 **HOSPITALIZED, THE NATURE OF THE PERSON'S MEDICAL CONDITION, THE**
7 **PROPOSED DISCHARGE DATE, AND THE PROBABLE LOCATION OF THE FACILITY**
8 **TO WHICH THE PERSON WILL BE DISCHARGED; AND**

9 **(5) THE PETITIONER'S REASONABLE BELIEF, TOGETHER WITH**
10 **SUPPORTING FACTS, AS TO THE EXISTENCE OF THE FACTS STATED IN**
11 **SUBSECTION (B) OF THIS SECTION, AND FACTS SHOWING PETITIONER'S**
12 **ATTEMPTS TO OBTAIN THE PERSON'S CONSENT TO DISCHARGE AND THE**
13 **OUTCOMES OF THOSE ATTEMPTS.**

14 **(F) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,**
15 **NOTICE OF THE FILING OF A PETITION SHALL BE GIVEN AS REQUIRED UNDER**
16 **THE MARYLAND RULES.**

17 **(2) NOTICE SHALL BE GIVEN TO THE DIRECTOR.**

18 **(3) NOTICE SHALL BE GIVEN IN A LANGUAGE REASONABLY**
19 **UNDERSTANDABLE BY THE INTENDED RECIPIENTS AT LEAST 72 HOURS BEFORE**
20 **A HEARING ON THE PETITION.**

21 **(4) IF THE PETITIONER HAS NOT GIVEN NOTICE TO AN**
22 **INTERESTED PARTY AND CERTIFIES THAT REASONABLE ATTEMPTS HAVE BEEN**
23 **MADE TO GIVE NOTICE, THE COURT MAY ORDER OTHER MEANS OF NOTICE IT**
24 **CONSIDERS APPROPRIATE, INCLUDING NOTICE BY TELEPHONE, ELECTRONIC**
25 **MAIL, OR FACSIMILE.**

26 **(G) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
27 **SUBSECTION, A PETITION UNDER THIS SECTION SHALL BE SUBJECT TO THE**
28 **PROCEDURES FOR PROTECTIVE SERVICES PETITIONS UNDER § 13-709(F) OF**
29 **THIS SUBTITLE.**

30 **(2) THE HEARING ON A PETITION UNDER THIS SECTION MAY NOT**
31 **BE HELD EARLIER THAN 72 HOURS AFTER NOTICE HAS BEEN GIVEN UNDER**
32 **SUBSECTION (F) OF THIS SECTION.**

1 **(H) THE COURT SHALL ISSUE FOR THE RECORD A STATEMENT OF ITS**
2 **FINDINGS IN SUPPORT OF ANY ORDER FOR THE APPOINTMENT OF A**
3 **TEMPORARY LIMITED GUARDIAN.**

4 **(I) THE DISABLED PERSON, THE TEMPORARY LIMITED GUARDIAN, OR**
5 **ANY INTERESTED PERSON MAY PETITION THE COURT TO HAVE THE ORDER SET**
6 **ASIDE OR MODIFIED AT ANY TIME, NOTWITHSTANDING ANY PRIOR FINDINGS**
7 **THAT THE PERSON IS IN NEED OF A TEMPORARY LIMITED GUARDIAN.**

8 **(J) (1) THE DISABLED PERSON OR TEMPORARY LIMITED GUARDIAN**
9 **MAY APPEAL ANY FINDINGS OF A COURT UNDER SUBSECTION (B) OF THIS**
10 **SECTION.**

11 **(2) AN APPEAL SHALL BE HANDLED ON AN EXPEDITED BASIS BY**
12 **THE APPELLATE COURT.**

13 13-710.

14 (a) Any person filing a petition, participating in the making of a good-faith
15 report, or participating in an investigation or in a judicial proceeding resulting
16 therefrom, pursuant to § 13-705 [or], § 13-709, **OR § 13-709.1** of this article or Title
17 14, Subtitle 3 of the Family Law Article, shall have the immunity from civil liability or
18 criminal penalty described under § 5-618(a) of the Courts and Judicial Proceedings
19 Article.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2011.