

# HOUSE BILL 109

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5lr1178  
CF 5lr2252

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By: **Delegates Dumais and Vallario**

Introduced and read first time: January 23, 2015

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2015

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Guardianship of the Person – Disabled Persons – Attorney’s Fees**

3 FOR the purpose of authorizing a court to order payment of certain attorney’s fees ~~in a~~  
4 ~~proceeding~~ incurred in bringing a petition for the appointment of a guardian of the  
5 person of a disabled person under certain circumstances; requiring the court to  
6 consider certain factors before ordering the payment; requiring the court to deny a  
7 certain petition for certain attorney’s fees under certain circumstances; prohibiting  
8 the court from awarding certain attorney’s fees under certain circumstances;  
9 authorizing a court to require the deposit of a certain sum of money in the court  
10 registry or a certain attorney’s escrow account under certain circumstances;  
11 prohibiting a court from requiring the deposit of a certain sum of money in the court  
12 registry or a certain attorney’s escrow account under certain circumstances; making  
13 stylistic changes; and generally relating to attorney’s fees and actions for  
14 guardianship of the person.

15 BY repealing and reenacting, with amendments,  
16 Article – Estates and Trusts  
17 Section 13–704 and 13–705(d)  
18 Annotated Code of Maryland  
19 (2011 Replacement Volume and 2014 Supplement)

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

22 **Article – Estates and Trusts**

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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.



1 13-704.

2 (A) The court may [superintend]:

3 (1) SUPERINTEND and direct the care of a disabled person[.];

4 (2) [appoint] APPOINT a guardian of the person[.]; and

5 (3) [pass] PASS orders and decrees respecting the person as seems proper,  
6 including an order\*

7 ~~(I) FOR PAYMENT OF NECESSARY AND REASONABLE~~  
8 ~~ATTORNEY'S FEES INCURRED IN SUCCESSFULLY PETITIONING FOR THE~~  
9 ~~APPOINTMENT OF A GUARDIAN OF THE PERSON OF A DISABLED PERSON; AND~~

10 ~~(H) [directing] DIRECTING~~ the disabled person to be sent to a  
11 hospital.

12 (B) Procedures in these cases shall be as prescribed by the Maryland Rules and  
13 in accordance with the provisions of this subtitle and Title 13.5 of this article.

14 (C) (1) ON THE FILING OF A PETITION FOR ATTORNEY'S FEES MADE IN  
15 REASONABLE DETAIL BY AN INTERESTED PERSON OR AN ATTORNEY EMPLOYED BY  
16 THE INTERESTED PERSON, THE COURT MAY ORDER REASONABLE AND NECESSARY  
17 ATTORNEY'S FEES INCURRED IN BRINGING A PETITION FOR APPOINTMENT OF A  
18 GUARDIAN OF THE PERSON OF A DISABLED PERSON TO BE PAID FROM THE ESTATE  
19 OF THE DISABLED PERSON.

20 (2) BEFORE ORDERING THE PAYMENT OF ATTORNEY'S FEES UNDER  
21 PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL CONSIDER:

22 (I) THE FINANCIAL RESOURCES AND NEEDS OF THE DISABLED  
23 PERSON; AND

24 (II) WHETHER THERE WAS SUBSTANTIAL JUSTIFICATION FOR  
25 THE FILING OF THE PETITION FOR GUARDIANSHIP.

26 (3) ON A FINDING BY THE COURT OF AN ABSENCE OF SUBSTANTIAL  
27 JUSTIFICATION FOR BRINGING THE PETITION FOR GUARDIANSHIP, THE COURT  
28 SHALL DENY A PETITION FOR ATTORNEY'S FEES FILED UNDER PARAGRAPH (1) OF  
29 THIS SUBSECTION.

1           **(4) THE COURT MAY NOT AWARD ATTORNEY'S FEES UNDER**  
 2 **PARAGRAPH (1) OF THIS SUBSECTION IF THE PETITION FOR GUARDIANSHIP IS**  
 3 **BROUGHT BY:**

4           **(I) A GOVERNMENT AGENCY PAYING BENEFITS TO THE**  
 5 **DISABLED PERSON;**

6           **(II) A LOCAL DEPARTMENT OF SOCIAL SERVICES; OR**

7           **(III) AN AGENCY ELIGIBLE TO SERVE AS THE GUARDIAN OF THE**  
 8 **DISABLED PERSON UNDER § 13-707 OF THIS SUBTITLE.**

9 13-705.

10           (d) (1) **(I)** Subject to paragraph (2) of this subsection, unless the alleged  
 11 disabled person has counsel of [his] **THE PERSON'S** own choice, the court shall appoint an  
 12 attorney to represent [him] **THE PERSON** in the proceeding **AND MAY REQUIRE THE**  
 13 **DEPOSIT OF AN APPROPRIATE SUM INTO THE COURT REGISTRY OR THE APPOINTED**  
 14 **ATTORNEY'S ESCROW ACCOUNT WITHIN ~~15~~ 30 DAYS AFTER THE ORDER OF**  
 15 **APPOINTMENT HAS BEEN ENTERED, SUBJECT TO FURTHER ORDER OF THE COURT.**

16           **(II)** If the person is indigent, the State shall pay a reasonable  
 17 attorney's fee.

18           **(III) THE COURT MAY NOT REQUIRE THE DEPOSIT OF AN**  
 19 **APPROPRIATE SUM INTO THE COURT REGISTRY OR THE APPOINTED ATTORNEY'S**  
 20 **ESCROW ACCOUNT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IF PAYMENT**  
 21 **FOR THE SERVICES OF THE COURT-APPOINTED ATTORNEY FOR THE ALLEGED**  
 22 **DISABLED PERSON IS THE RESPONSIBILITY OF:**

23           **1. A GOVERNMENT AGENCY PAYING BENEFITS TO THE**  
 24 **DISABLED PERSON;**

25           **2. A LOCAL DEPARTMENT OF SOCIAL SERVICES; OR**

26           **3. AN AGENCY ELIGIBLE TO SERVE AS THE GUARDIAN OF**  
 27 **THE DISABLED PERSON UNDER § 13-707 OF THIS SUBTITLE.**

28           (2) In any action in which payment for the services of a court-appointed  
 29 attorney for the alleged disabled person is the responsibility of the local department of  
 30 social services, unless the court finds that it would not be in the best interests of the alleged  
 31 disabled person, the court shall:

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1 (i) Appoint an attorney who has contracted with the Department of  
2 Human Resources to provide those services, in accordance with the terms of the contract;  
3 and

4 (ii) In an action in which an attorney has previously been appointed,  
5 strike the appearance of the attorney previously appointed and appoint the attorney who  
6 is currently under contract with the Department of Human Resources, in accordance with  
7 the terms of the contract.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2015.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.