

HOUSE BILL 834

N2

11r2377

By: **Delegate Bates**

Introduced and read first time: February 11, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Orphans' Court – Changing References in Annotated Code to Estate Court**

3 FOR the purpose of changing all references to the orphans' court in the Annotated
4 Code to the estate court; making this Act contingent on the passage and
5 ratification of a certain constitutional amendment; and generally relating to the
6 orphans' courts.

7 BY repealing and reenacting, with amendments,
8 Article – Business Occupations and Professions
9 Section 10–101(f)(2)
10 Annotated Code of Maryland
11 (2010 Replacement Volume)

12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 1–101(c), 1–205(a)(2), 12–101(f), 12–201, 12–308, 12–501(a),
15 12–502(a)(1)(i) and (iii) and (b)(2), and 12–701(a)
16 Annotated Code of Maryland
17 (2006 Replacement Volume and 2010 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Election Law
20 Section 9–210(a)(7)(v)
21 Annotated Code of Maryland
22 (2010 Replacement Volume)

23 BY repealing and reenacting, with amendments,
24 Article – Estates and Trusts
25 Section 1–103(a)(2), 2–101, 2–106(b)(2)(i), (c), (d), (e), (f)(2), and (i), 2–107(b),
26 2–108(y)(1), (3), (4), (5), and (7), 2–109(b)(3) and (4), 5–206, 5–403(b),
27 5–708(a)(4), 13–105(a) and (c), 13–106, and 13–107

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2001 Replacement Volume and 2010 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Real Property
5 Section 2–122(c)
6 Annotated Code of Maryland
7 (2010 Replacement Volume and 2010 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – State Government
10 Section 7–216(c)(3), 12–101(a)(12), and 15–103(d)(2)(ii)
11 Annotated Code of Maryland
12 (2009 Replacement Volume and 2010 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – State Personnel and Pensions
15 Section 21–307(n)(1)(v)
16 Annotated Code of Maryland
17 (2009 Replacement Volume and 2010 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Tax – General
20 Section 7–101(b), 13–302(c), 13–510(a)(3), and 13–511
21 Annotated Code of Maryland
22 (2010 Replacement Volume)

23 BY repealing and reenacting, with amendments,
24 Article 24 – Political Subdivisions – Miscellaneous Provisions
25 Section 12–105(a)(5) and 12–205(a)(3)
26 Annotated Code of Maryland
27 (2005 Replacement Volume and 2010 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article 25 – County Commissioners
30 Section 196
31 Annotated Code of Maryland
32 (2005 Replacement Volume and 2010 Supplement)

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

35 **Article – Business Occupations and Professions**

36 10–101.

37 (f) (2) “Court” does not include:

1 (i) an [orphans'] ESTATE court; or

2 (ii) the Maryland Tax Court.

3 **Article – Courts and Judicial Proceedings**

4 1–101.

5 (c) “Court” means the Court of Appeals, Court of Special Appeals, circuit
6 court, and District Court of Maryland, or any of them, unless the context clearly
7 requires a contrary meaning. It does not include an [orphans'] ESTATE court, or the
8 Maryland Tax Court.

9 1–205.

10 (a) (2) “Court” means the Court of Appeals, the Court of Special Appeals,
11 a circuit court, the District Court of Maryland, and an [orphans'] ESTATE court.

12 12–101.

13 (f) “Final judgment” means a judgment, decree, sentence, order,
14 determination, decision, or other action by a court, including an [orphans'] ESTATE
15 court, from which an appeal, application for leave to appeal, or petition for certiorari
16 may be taken.

17 12–201.

18 Except as provided in § 12–202 of this subtitle, in any case or proceeding
19 pending in or decided by the Court of Special Appeals upon appeal from a circuit court
20 or an [orphans'] ESTATE court or the Maryland Tax Court, any party, including the
21 State, may file in the Court of Appeals a petition for certiorari to review the case or
22 proceeding. The petition may be filed either before or after the Court of Special
23 Appeals has rendered a decision, but not later than the time prescribed by the
24 Maryland Rules. In a case or proceeding described in this section, the Court of Appeals
25 also may issue the writ of certiorari on its own motion.

26 12–308.

27 Except as provided in § 12–307 of this subtitle, the Court of Special Appeals has
28 exclusive initial appellate jurisdiction over any reviewable judgment, decree, order or
29 other action of a circuit court, and an [orphans'] ESTATE court.

30 12–501.

31 (a) A party may appeal to the Court of Special Appeals from a final judgment
32 of an [orphans'] ESTATE court.

1 12-502.

2 (a) (1) (i) Instead of a direct appeal to the Court of Special Appeals
3 pursuant to § 12-501 of this subtitle, a party may appeal to the circuit court for the
4 county from a final judgment of an [orphans'] ESTATE court.

5 (iii) The de novo appeal shall be treated as if it were a new
6 proceeding and as if there had never been a prior hearing or judgment by the
7 [orphans'] ESTATE court.

8 (b) (2) Within 30 days thereafter the register of wills shall transmit all
9 pleadings and orders of the proceedings to the court to which the appeal is taken,
10 unless the [orphans'] ESTATE court from which the appeal is taken extends the time
11 for transmitting these pleadings and orders.

12 12-701.

13 (a) (1) An appeal from an [orphans'] ESTATE court or a circuit court stays
14 all proceedings in the [orphans'] ESTATE court concerning the issue appealed.

15 (2) An appeal from an [orphans'] ESTATE court or a circuit court does
16 not stay any proceedings in the [orphans'] ESTATE court that do not concern the issue
17 appealed, if the [orphans'] ESTATE court can provide for conforming to the decision of
18 the appellate court.

19 (3) (i) An appeal from a final order of an [orphans'] ESTATE court
20 or a circuit court removing a personal representative does not stay an order appointing
21 a successor personal representative or special administrator.

22 (ii) If an appeal is filed from the final order of an [orphans']
23 ESTATE court or a circuit court removing a personal representative and the court
24 appointed a successor personal representative, the successor personal representative
25 shall have the powers of a special administrator.

26 **Article – Election Law**

27 9-210.

28 (a) The offices to be voted on shall be arranged on the ballot in the following
29 order, as applicable:

30 (7) public offices for which the voters of a county may vote, in the
31 following order:

32 (v) judge of the [orphans'] ESTATE court;

33 **Article – Estates and Trusts**

1 1–103.

2 (a) (2) At the expense of the estate, the [orphans'] **ESTATE** court may
3 require or the personal representative may elect to have the first notice given by
4 restricted delivery mail, postage prepaid, return receipt requested, addressed to the
5 addressee at the address last known to the sender, with delivery restricted to the
6 addressee.

7 2–101.

8 In the estates of decedents law, the word court means the [orphans'] **ESTATE**
9 court in a county, or the court exercising the jurisdiction of the [orphans'] **ESTATE**
10 court in a county.

11 2–106.

12 (b) (2) (i) In Baltimore City, a judge of the [Orphans'] **ESTATE** Court
13 who is also an attorney-at-law has full power to do any act which the Court is or may
14 be authorized by law to perform, including the power to hold court on a day not named
15 in an adjournment.

16 (c) In Montgomery County, a judge of the Circuit Court for Montgomery
17 County at the time sitting as the [Orphans'] **ESTATE** Court for the County shall have
18 full power to do an act which the [Orphans'] **ESTATE** Court of the County is or shall
19 be authorized to perform, including the power to hold court on a day not named in an
20 adjournment as provided.

21 (d) Each judge of the Court for Prince George's County shall spend at least
22 three days each week in the conduct of the business of the Court. In Prince George's
23 County, a judge of the [Orphans'] **ESTATE** Court who is also an attorney-at-law has
24 full power to do any act which the Court is or may be authorized to perform, including
25 the power to hold court on a day not named in an adjournment. However, upon request
26 of any interested party, two judges shall be required to act for the Court. If necessary
27 to transact business before the Court, court may be convened 5 days each week.

28 (e) In Harford County, the provisions of subsection (a) do not apply. A judge
29 of the Circuit Court for Harford County shall sit as the [Orphans'] **ESTATE** Court for
30 the County at the time or times established by the judges of the County Circuit Court
31 and shall have full power to do any act which the [Orphans'] **ESTATE** Court of the
32 County is or shall be authorized to perform, including the power to hold court on a day
33 not named in an adjournment.

34 (f) (2) A judge of the [Orphans'] **ESTATE** Court in Baltimore County who
35 is also an attorney-at-law has full power to do any act that the Court is authorized by
36 law to perform, including the power to hold court on a day not named in an
37 adjournment.

1 (i) If an [orphans'] ESTATE court judge of a county is unable to serve for any
2 reason, the Chief Judge of the Court of Appeals may assign, on a temporary basis, an
3 [orphans'] ESTATE court judge of another county to sit for the judge who is unable to
4 serve.

5 2-107.

6 (b) A reference in the estates of decedents law to the chief judge of the court
7 of a county means, with regard to Harford County or Montgomery County, the judge of
8 the circuit court then sitting as the [Orphans'] ESTATE Court. A reference to the
9 judges of the court in plural number means, with respect to Harford County or
10 Montgomery County, the judge of the circuit court then sitting as the [Orphans']
11 ESTATE Court, unless the section otherwise specifically provides.

12 2-108.

13 (y) (1) Except in Montgomery, Frederick, Carroll, Talbot, Cecil, Kent,
14 Queen Anne's, Baltimore, Garrett, and Harford counties and Baltimore City, and
15 except as provided in paragraphs (3) and (4) of this subsection, a county shall pay a
16 pension, in the same manner as salaries are paid during active service, to each judge
17 of the [Orphans'] ESTATE Court who:

18 (i) Has terminated active service;

19 (ii) Has reached 60 years of age; and

20 (iii) Has completed at least two terms of office.

21 (3) An [Orphans'] ESTATE Court judge in Somerset County and
22 Worcester County is eligible for a pension under this subsection only if he is in office
23 on or before July 1, 1979.

24 (4) In Wicomico County, an [Orphans'] ESTATE Court judge who has
25 completed at least 12 years in office is eligible for a pension under this subsection.

26 (5) In Prince George's County, the salary or pension to each
27 [Orphans'] ESTATE Court judge shall be the greater of:

28 (i) \$1,200 annually; or

29 (ii) An annual amount calculated at the rate of 4 percent of the
30 last annual amount of compensation multiplied by the number of years or partial
31 years of service, not exceeding 20 years.

1 (7) Notwithstanding any provision of this section an [Orphans']
2 ESTATE Court judge may not receive a pension under this section if he is receiving
3 any other State pension based on service as an [Orphans'] ESTATE Court judge.

4 2-109.

5 (b) This section does not apply:

6 (3) In Baltimore City, to a judge of the Court while practicing law
7 before any court of the State except an [orphans'] ESTATE court; or

8 (4) In Prince George's County, Baltimore County, Calvert County, and
9 Howard County, to a judge of the Court while practicing law in connection with a case
10 that is:

11 (i) Outside the jurisdiction of [orphans'] ESTATE court; and

12 (ii) Unrelated to the administration of an estate or
13 guardianship.

14 5-206.

15 In a proceeding for administrative or judicial probate the petition for probate
16 shall be in substantially the following form:

17 In the [Orphans'] ESTATE Court for
18 (or) _____, Maryland
19 Before the Register of Wills for
20 in the Estate of:
21 _____ Estate No. _____

22 For:

- 23 Regular Estate – Small Estate – Will of No Estate –
- 24 Petition for probate, Petition for Administration, Complete Items 2 and 5
- 25 estate value in excess of estate value of \$20,000 or
- 26 \$20,000. Complete and less. Complete and attach
- 27 attach Schedule – A. Schedule – B.

28 The Petition of:

29 _____
30 Name _____ Address
31 _____

32 _____
33 Name _____ Address

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Name _____ Address _____

Each of us states:

1. I am (a) at least 18 years of age and either a citizen of the United States or a permanent resident alien spouse of the decedent or (b) a trust company or any other corporation authorized by law to act as a personal representative.

2. The decedent, _____, was domiciled in _____ County, State of _____ and died on the _____ day of _____ 20_____, at _____.

3. If the decedent was not domiciled in this county at the time of death, this is the proper office in which to file this petition because: _____.

4. I am entitled to priority of appointment as personal representative of the decedent's estate pursuant to § 5-104 of the Estates and Trusts Article, Annotated Code of Maryland because: _____ and I am not excluded by § 5-105(b) of the Estates and Trusts Article, Annotated Code of Maryland from serving as personal representative.

5. I have made a diligent search for the decedent's will and to the best of my knowledge:

- none exists; or
- the will dated _____ (including codicils, if any, dated _____) accompanying this petition is the last will and it came into my hands in the following manner:

and the names and last known addresses of the witnesses are:

6. Other proceedings, if any, regarding the decedent or the estate are as follows:

7. If any information required by paragraphs 2 through 6 has not been furnished, the reason is:

1 8. If appointed, I accept the duties of the office of personal representative and
2 consent to personal jurisdiction in any action brought in this State against me as
3 personal representative or arising out of the duties of the office of personal
4 representative.

5 WHEREFORE, I request appointment as personal representative of the
6 decedent's estate and the following relief as indicated:

- 7 that the will and codicils, if any, be admitted to administrative probate;
- 8 that the will and codicils, if any, be admitted to judicial probate;
- 9 that the will and codicils, if any, be filed only;
- 10 that the following additional relief be granted: _____
11 _____
12 _____

13 I solemnly affirm under the penalties of perjury that the contents of the
14 foregoing petition are true to the best of my knowledge, information, and belief.

15 _____	_____	_____
16 Attorney's Signature	Petitioner	Date
17 _____	_____	_____
18 Address	Petitioner	Date
19 _____	_____	_____
20 _____	Petitioner	Date
21 _____	_____	_____
22 Telephone Number	Telephone Number	

23 In the [Orphans'] ESTATE Court for
24 (or) _____, Maryland
25 Before the Register of Wills for
26 in the Estate of:
27 _____ Estate No. _____

28 Schedule - A

29 REGULAR ESTATE

30 Estimated Value of Estate and Unsecured Debts:

31 Personal property (approximate value) \$ _____

32 Real property (approximate value) \$ _____

33 Value of Property subject to:

34 (a) Direct Inheritance Tax of _____% \$ _____

35 (b) Collateral Inheritance Tax of _____% \$ _____

36 (c) Collateral Inheritance Tax of _____% \$ _____

37 Unsecured Debts (approximate amount) \$ _____

38

1 Safekeeping Wills _____ Custody of Wills _____
2 Bond Set \$ _____ Deputy _____

3 In the [Orphans'] ESTATE Court for
4 (or) _____, Maryland
5 Before the Register of Wills for
6 in the Estate of:
7 _____ Estate No. _____

8 Schedule – B

9 SMALL ESTATE

10 Assets and Debts of the Decedent:

11 1. I have made a diligent search to discover all property and debts of the decedent
12 and set forth below are:

13 (a) A listing of all real and personal property owned by the decedent,
14 individually or as tenant in common, and of any other property to which the
15 decedent or estate would be entitled, including descriptions, values, and how the
16 values were determined:

17 _____
18 _____
19 _____

20 (b) A listing of all creditors and claimants and the amounts claimed, including
21 secured*, contingent and disputed claims:

22 _____
23 _____
24 _____

25 2. Allowable funeral expenses are \$ _____; statutory family allowances are
26 \$ _____; and expenses of administration are \$ _____.

27 3. Attached is a List of Interested Persons.

28 *Note: § 5–601(d) of the Estates and Trusts Article, Annotated Code of Maryland “For
29 the purpose of this subtitle – Value is determined by fair market value of property less
30 debts of record secured by the property as of the date of death, to the extent that
31 insurance benefits are not payable to the lien holder or secured party for the secured
32 debt.”

33 I solemnly affirm under the penalties of perjury that the contents of the
34 foregoing schedule are true to the best of my knowledge, information, and belief.

35 _____
36 Attorney’s Signature Petitioner Date
37 _____

1	Address	Petitioner	Date
2	<hr/>		
3	Telephone Number	Telephone Number	

4 5-403.

5 (b) The notice required by this section shall be in the following form:

6 IN THE [ORPHANS'] ESTATE COURT FOR

7 In re:

8 ESTATE OF

9

10 Deceased

11 TO ALL PERSONS INTERESTED IN THE ESTATE OF

12

13 YOU ARE HEREBY NOTIFIED THAT A Petition has been filed in the court by

14 for judicial probate, including the appointment of a personal

15 representative for the estate; and that the Petition will be heard at on the

16 day of, 20., or at a subsequent time or other place to which the hearing may be

17 adjourned or transferred.

18

19 Register of Wills

20 5-708.

21 (a) A modified administration shall be revoked by the:

22 (4) [Orphans'] ESTATE Court, on its own initiative, or for good cause
23 shown by an interested person or by the register of wills;

24 13-105.

25 (a) (1) The [orphans'] ESTATE courts and the circuit courts have
26 concurrent jurisdiction over guardians of the person of a minor and over protective
27 proceedings for minors.

28 (2) Upon petition of an interested person, a matter initiated in the
29 [orphans'] ESTATE court may be transferred to the circuit court.

30 (c) (1) An [orphans'] ESTATE court may exercise jurisdiction over
31 guardianship of the person of a minor if the presiding judge of the [orphans'] ESTATE
32 court is a member of the bar, regardless of whether the minor who is the subject of the
33 petition for guardianship of the person has property, may inherit property, or is
34 destitute.

35 (2) An [orphans'] ESTATE court that exercises jurisdiction or is
36 requested to exercise jurisdiction under this subsection may:

1 (i) Transfer the matter to the circuit court on a finding that the
2 best interests of the child require utilization of the equitable powers of the circuit
3 court; and

4 (ii) Waive the costs, if any, of a transfer under this paragraph.

5 13–106.

6 (a) An [orphans'] ESTATE court has full power to secure the rights of a
7 minor whose estate is being administered by a guardian under its jurisdiction.

8 (b) The [orphans'] ESTATE court, under the pretext of incidental power or
9 constructive authority, may not exercise jurisdiction not expressly conferred by law.
10 The [orphans'] ESTATE court is governed by the provisions of §§ 2–102 through 2–105
11 of this article.

12 13–107.

13 If appropriate to proceedings under this title, the powers and duties of the
14 register of wills in proceedings in the [orphans'] ESTATE court are the same as the
15 powers and duties of the registers under Title 2, Subtitle 2 of this article.

16 Article – Real Property

17 2–122.

18 (c) (1) A grant of property by deed to a grantee designated in the deed as
19 an estate of a decedent, including the estate of a nonresident decedent, has the same
20 effect as if the grantor had granted the property to:

21 (i) The personal representative or personal representatives
22 appointed by a register of wills or [orphans'] ESTATE court in the State for the estate
23 and acting as the personal representative on the effective date of the deed; or

24 (ii) A foreign personal representative exercising the powers of
25 the office for the estate of a nonresident decedent on the effective date of the deed.

26 (2) If executed by the person or persons indicated in item (i) or (ii) of
27 this paragraph as applicable, a grant of property by deed from a grantor designated in
28 the deed as an estate of a decedent, including the estate of a nonresident decedent, has
29 the same effect as if the grantee had received the property from:

30 (i) The personal representative or personal representatives
31 appointed by a register of wills or [orphans'] ESTATE court in the State for the estate
32 and acting as the personal representative on the effective date of the deed; or

1 (ii) A foreign personal representative exercising the powers of
2 the office for the estate of a nonresident decedent on the effective date of the deed.

3 Article – State Government

4 7–216.

5 (c) The Administrator shall provide, without charge:

6 (3) to a judge of a State court except the [orphans'] ESTATE court, 1
7 copy of:

8 (i) the current Code of Maryland Regulations; and

9 (ii) each issue of the Register that the judge requests.

10 12–101.

11 (a) In this subtitle, unless the context clearly requires otherwise, “State
12 personnel” means:

13 (12) a judge of an [orphans'] ESTATE court of a county or Baltimore
14 City, or an employee of an [orphans'] ESTATE court;

15 15–103.

16 (d) (2) For the purposes of paragraph (1) of this subsection, “individual in
17 the Judicial Branch” includes an individual who is:

18 (ii) paid by a county to perform services in an [orphans']
19 ESTATE court or circuit court;

20 Article – State Personnel and Pensions

21 21–307.

22 (n) (1) In this section, “elected or appointed official” means an individual
23 who is employed as:

24 (v) an [orphans'] ESTATE court judge;

25 Article – Tax – General

26 7–101.

27 (b) “Court” means:

1 (1) the [Orphans'] ESTATE Court of a county; or

2 (2) a court of the State that exercises the jurisdiction of an [Orphans']
3 ESTATE Court.

4 13-302.

5 (c) If a person fails to comply with a subpoena or fails to testify on any
6 matter on which the person lawfully may be interrogated, on petition of a tax collector,
7 a circuit court or, if the subpoena is issued under authority of an [orphans'] ESTATE
8 court, the [orphans'] ESTATE court may pass an order directing compliance with the
9 subpoena or compelling testimony.

10 13-510.

11 (a) Except as provided in subsection (b) of this section and subject to §
12 13-514 of this subtitle, within 30 days after the date on which a notice is mailed, a
13 person or governmental unit that is aggrieved by the action in the notice may appeal
14 to the Tax Court from:

15 (3) an inheritance tax determination by a register or by an [orphans']
16 ESTATE court other than a circuit court sitting as an [orphans'] ESTATE court;

17 13-511.

18 A register, on behalf of the State, or a person in interest may appeal to the
19 Court of Special Appeals from an order or determination of an [orphans'] ESTATE
20 court or a court exercising the jurisdiction of the [orphans'] ESTATE court that relates
21 to the inheritance tax.

22 Article 24 – Political Subdivisions – Miscellaneous Provisions

23 12-105.

24 (a) The Commission shall study the salaries of:

25 (5) The Judges of the [Orphans'] ESTATE Court in Allegany County;
26 and

27 12-205.

28 (a) The Commission shall study the salaries of the Washington County:

29 (3) [Orphans'] ESTATE Court judges;

30 Article 25 – County Commissioners

1 196.

2 In case of the property or interest of any minor person under eighteen years of
3 age not having a guardian being affected by any works of improvement as hereinbefore
4 provided, the [orphans'] ESTATE court of the county shall appoint a guardian to
5 protect the interests of such a minor.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is contingent on
7 the passage of Chapter ____ (S.B.____/H.B.____)(1lr1531) of the Acts of the General
8 Assembly of 2011, a constitutional amendment, and its ratification by the voters of the
9 State.

10 SECTION 3. AND BE IT FURTHER ENACTED, That, subject to the provisions
11 of Section 2 of this Act, this Act shall take effect on the proclamation of the Governor
12 that the constitutional amendment, having received a majority of the votes cast at the
13 general election, has been adopted by the people of Maryland.