

HOUSE BILL 1061

N2

9lr2191

By: **Delegate Guyton**

Introduced and read first time: February 8, 2019

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Testamentary Instruments – Fraud and Undue Influence**

3 FOR the purpose of establishing a presumption that provisions of a testamentary
4 instrument transferring property to certain individuals are the product of fraud and
5 undue influence under certain circumstances; establishing that a presumption of
6 fraud and undue influence over a testamentary instrument may be rebutted by clear
7 and convincing evidence except under certain circumstances; providing that a
8 beneficiary who challenges and fails to rebut the presumption established under this
9 Act shall bear certain costs; providing that a testamentary instrument is not a
10 product of fraud and undue influence if the testamentary document is reviewed by a
11 certain independent attorney who counseled and advised the transferor in a certain
12 manner and signed and delivered a certain certificate; providing that a certain
13 attorney retained to review a testamentary instrument and counsel a transferor does
14 not otherwise represent the transferor under certain circumstances; requiring an
15 independent attorney who prepares a certificate under this Act to provide a copy of
16 the certification to the attorney who drafted the testamentary instrument; providing
17 that an attorney who drafts a testamentary instrument may review and certify
18 certain testamentary transfers; providing for the operation of a testamentary
19 transfer under certain circumstances; defining certain terms; providing for the
20 application of this Act; and generally relating to fraud and undue influence over
21 testamentary instruments.

22 BY adding to

23 Article – Estates and Trusts

24 Section 1–501 through 1–505 to be under the new subtitle “Subtitle 5. Fraud and
25 Undue Influence”

26 Annotated Code of Maryland

27 (2017 Replacement Volume and 2018 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Estates and Trusts

2 SUBTITLE 5. FRAUD AND UNDUE INFLUENCE.

3 1-501.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

6 (B) (1) “CARE CUSTODIAN” MEANS AN INDIVIDUAL WHO PROVIDES
7 HEALTH OR SOCIAL SERVICES TO A DEPENDENT ADULT.

8 (2) “CARE CUSTODIAN” DOES NOT INCLUDE AN INDIVIDUAL WHO
9 PROVIDED SERVICES WITHOUT COMPENSATION IF THE PERSON HAD A PERSONAL
10 RELATIONSHIP WITH THE DEPENDENT ADULT:

11 (I) AT LEAST 90 DAYS BEFORE PROVIDING THOSE SERVICES;

12 (II) AT LEAST 6 MONTHS BEFORE THE DEPENDENT ADULT’S
13 DEATH; AND

14 (III) BEFORE THE DEPENDENT ADULT WAS ADMITTED TO
15 HOSPICE CARE, IF THE DEPENDENT ADULT WAS ADMITTED TO HOSPICE CARE.

16 (C) “DEPENDENT ADULT” MEANS AN INDIVIDUAL WHO AT THE TIME OF
17 EXECUTING THE INSTRUMENT AT ISSUE:

18 (1) WAS UNABLE TO PROVIDE PROPERLY FOR PERSONAL NEEDS,
19 PHYSICAL HEALTH, FOOD, CLOTHING, OR SHELTER; OR

20 (2) HAD DIFFICULTY MANAGING FINANCIAL RESOURCES OR
21 RESISTING FRAUD OR UNDUE INFLUENCE.

22 (D) “DOMESTIC PARTNER” HAS THE MEANING STATED IN § 6-101 OF THE
23 HEALTH – GENERAL ARTICLE.

24 (E) “HEALTH AND SOCIAL SERVICES” MEANS SERVICES PROVIDED TO A
25 DEPENDENT ADULT BECAUSE OF THE DEPENDENT ADULT’S CONDITION, INCLUDING:

26 (1) THE ADMINISTRATION OF MEDICATIONS;

27 (2) MEDICAL TESTING;

- 1 **(3) WOUND CARE;**
- 2 **(4) ASSISTANCE WITH PERSONAL HYGIENE;**
- 3 **(5) COMPANIONSHIP;**
- 4 **(6) HOUSEKEEPING;**
- 5 **(7) SHOPPING;**
- 6 **(8) COOKING; AND**
- 7 **(9) ASSISTANCE WITH FINANCES.**

8 **(F) “INDEPENDENT ATTORNEY” MEANS AN ATTORNEY WHO:**

- 9 **(1) HAS NO LEGAL, BUSINESS, FINANCIAL, PROFESSIONAL, OR**
10 **PERSONAL RELATIONSHIP WITH THE BENEFICIARY OF A TESTAMENTARY TRANSFER**
11 **AT ISSUE UNDER THIS SUBTITLE; AND**
- 12 **(2) WOULD NOT BE APPOINTED AS A FIDUCIARY OR RECEIVE ANY**
13 **BENEFIT AS A RESULT OF THE OPERATION OF THE INSTRUMENT CONTAINING THE**
14 **TESTAMENTARY TRANSFER AT ISSUE UNDER THIS SUBTITLE.**

15 **1-502.**

16 **THIS SUBTITLE DOES NOT APPLY TO:**

- 17 **(1) A TESTAMENTARY TRANSFER TO AN INDIVIDUAL WHO IS**
18 **RELATED, WITHIN THE FOURTH DEGREE, TO THE TRANSFEROR OR IS THE**
19 **COHABITANT OF THE TRANSFEROR;**
- 20 **(2) A TESTAMENTARY TRANSFER TO A FEDERAL, STATE, OR LOCAL**
21 **PUBLIC ENTITY, AN ENTITY THAT QUALIFIES FOR AN EXEMPTION FROM TAXATION**
22 **UNDER § 501(C)(3) OR (19) OF THE INTERNAL REVENUE CODE, OR A TRUST**
23 **HOLDING THE TRANSFERRED PROPERTY FOR THE ENTITY;**
- 24 **(3) A TESTAMENTARY TRANSFER OF PROPERTY VALUED AT \$5,000**
25 **OR LESS, IF THE TOTAL VALUE OF THE TRANSFEROR’S ESTATE IS AT LEAST \$150,000;**
26 **OR**

1 **(4) A TESTAMENTARY INSTRUMENT EXECUTED OUTSIDE THE STATE**
2 **BY A TRANSFEROR WHO WAS NOT A RESIDENT OF THE STATE WHEN THE**
3 **INSTRUMENT WAS EXECUTED.**

4 **1-503.**

5 **(A) EXCEPT AS PROVIDED IN § 1-504 OF THIS SUBTITLE AND**
6 **NOTWITHSTANDING ANY PROVISION OF A TESTAMENTARY DOCUMENT TO THE**
7 **CONTRARY, ANY PROVISION OF A TESTAMENTARY INSTRUMENT THAT BECAME**
8 **IRREVOCABLE ON OR AFTER OCTOBER 1, 2019, MAKING A TRANSFER TO ANY OF THE**
9 **FOLLOWING INDIVIDUALS IS PRESUMED TO BE THE PRODUCT OF FRAUD OR UNDUE**
10 **INFLUENCE:**

11 **(1) AN INDIVIDUAL WHO DRAFTED THE TESTAMENTARY**
12 **INSTRUMENT;**

13 **(2) AN INDIVIDUAL WHO TRANSCRIBED THE TESTAMENTARY**
14 **INSTRUMENT OR CAUSED THE INSTRUMENT TO BE TRANSCRIBED AND WHO WAS IN**
15 **A FIDUCIARY RELATIONSHIP WITH THE TRANSFEROR WHEN THE INSTRUMENT WAS**
16 **TRANSCRIBED;**

17 **(3) A CARE CUSTODIAN OF A TRANSFEROR WHO IS A DEPENDENT**
18 **ADULT, IF THE INSTRUMENT WAS EXECUTED DURING THE PERIOD IN WHICH THE**
19 **CARE CUSTODIAN PROVIDED SERVICES TO THE TRANSFEROR, OR WITHIN 90 DAYS**
20 **BEFORE OR AFTER THAT PERIOD;**

21 **(4) AN INDIVIDUAL WHO IS RELATED, WITHIN THE THIRD DEGREE, TO**
22 **A PERSON DESCRIBED IN ITEMS (1) THROUGH (3) OF THIS SUBSECTION;**

23 **(5) A COHABITANT OR AN EMPLOYEE OF AN INDIVIDUAL DESCRIBED**
24 **UNDER ITEMS (1) THROUGH (3) OF THIS SUBSECTION; AND**

25 **(6) A PARTNER, A SHAREHOLDER, OR AN EMPLOYEE OF A LAW FIRM**
26 **IN WHICH AN INDIVIDUAL DESCRIBED UNDER ITEM (1) OR (2) OF THIS SUBSECTION**
27 **HAS AN OWNERSHIP INTEREST.**

28 **(B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A**
29 **BENEFICIARY MAY REBUT THE PRESUMPTION UNDER SUBSECTION (A) OF THIS**
30 **SECTION BY PROVING, BY CLEAR AND CONVINCING EVIDENCE, THAT THE**
31 **TESTAMENTARY TRANSFER WAS NOT THE PRODUCT OF FRAUD OR UNDUE**
32 **INFLUENCE.**

1 (C) WITH RESPECT TO A TRANSFER TO THE INDIVIDUAL WHO DRAFTED THE
2 TESTAMENTARY INSTRUMENT, OR TO AN INDIVIDUAL WHO IS RELATED TO, OR
3 ASSOCIATED WITH, THE DRAFTER AS DESCRIBED UNDER SUBSECTION (A)(4)
4 THROUGH (6) OF THIS SECTION, THE PRESUMPTION UNDER SUBSECTION (A) OF THIS
5 SECTION IS CONCLUSIVE.

6 (D) A BENEFICIARY WHO IS UNSUCCESSFUL IN AN ACTION TO REBUT THE
7 PRESUMPTION UNDER SUBSECTION (A) OF THIS SECTION SHALL BEAR ALL COSTS OF
8 THE PROCEEDING, INCLUDING REASONABLE ATTORNEY'S FEES.

9 1-504.

10 (A) A TESTAMENTARY TRANSFER TO A PERSON DESCRIBED UNDER §
11 1-503(A) OF THIS SUBTITLE IS NOT PRESUMED TO BE THE RESULT OF FRAUD OR
12 UNDUE INFLUENCE IF THE TESTAMENTARY INSTRUMENT WAS, BEFORE EXECUTION,
13 REVIEWED BY AN INDEPENDENT ATTORNEY WHO:

14 (1) COUNSELED THE TRANSFEROR, OUT OF THE PRESENCE OF ANY
15 HEIR OR PROPOSED BENEFICIARY, ABOUT THE NATURE AND CONSEQUENCES OF
16 THE INTENDED TRANSFER, INCLUDING THE EFFECT OF THE INTENDED TRANSFER
17 ON THE TRANSFEROR'S HEIRS AND ON ANY BENEFICIARY OF A PRIOR
18 TESTAMENTARY INSTRUMENT;

19 (2) ATTEMPTED TO DETERMINE IF THE INTENDED TRANSFER IS THE
20 RESULT OF FRAUD OR UNDUE INFLUENCE; AND

21 (3) SIGNED AND DELIVERED TO THE TRANSFEROR AN ORIGINAL
22 CERTIFICATE ATTESTING THAT THE ATTORNEY:

23 (I) REVIEWED THE TESTAMENTARY INSTRUMENT;

24 (II) COUNSELED THE TRANSFEROR; AND

25 (III) DOES NOT BELIEVE THE TRANSFER TO BE THE PRODUCT OF
26 FRAUD OR UNDUE INFLUENCE.

27 (B) (1) AN ATTORNEY WHOSE WRITTEN ENGAGEMENT, SIGNED BY THE
28 TRANSFEROR, IS EXPRESSLY LIMITED TO COMPLIANCE WITH THE REQUIREMENTS
29 OF SUBSECTION (A) OF THIS SECTION SHALL NOT OTHERWISE BE CONSIDERED TO
30 REPRESENT THE TRANSFEROR AS A CLIENT.

31 (2) AN INDEPENDENT ATTORNEY WHO PREPARES A CERTIFICATE
32 UNDER SUBSECTION (A)(3) OF THIS SECTION SHALL PROVIDE A COPY OF THE

1 SIGNED CERTIFICATION TO THE ATTORNEY WHO DRAFTED THE TESTAMENTARY
2 INSTRUMENT.

3 (C) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, AN ATTORNEY
4 WHO DRAFTS A TESTAMENTARY INSTRUMENT MAY REVIEW AND CERTIFY THAT
5 INSTRUMENT IN THE MANNER DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION
6 FOR A TESTAMENTARY TRANSFER TO A CARE CUSTODIAN.

7 1-505.

8 IF A TESTAMENTARY TRANSFER FAILS UNDER THIS SUBTITLE, THE
9 INSTRUMENT MAKING THE TESTAMENTARY TRANSFER SHALL OPERATE AS IF THE
10 BENEFICIARY HAD PREDECEASED THE TRANSFEROR WITHOUT A SPOUSE, A
11 DOMESTIC PARTNER, OR ISSUE.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2019.