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To: Maryland House of Delegates – Judiciary Committee

From: MSBA Estate & Trust Law Section

Date: February 27, 2025

Subject: HB0868 – Estates and Trusts – Interpretation of Wills – Evidence of Intent

Position: Oppose

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **opposes House Bill 868 – Estates and Trusts – Interpretation of Wills – Evidence of Intent**.

A thorough analysis of HB 868 raises a number of concerns, and shows that the bill would do more damage than good. Firstly, the scope of this bill is so narrow that it is not likely to reduce health disparities in Maryland (the intended purpose of the bill). There likely are other approaches to alleviating health disparities in Maryland that will have a much larger impact than any possible change to probate law.

Secondly, Maryland has a longstanding commitment to testamentary freedom with only minimal restrictions. For instance, under Maryland law a person creating a Will ("testator") can provide a restricted gift to a charity in their Will. A restricted gift to charity includes a statement that the gift to the charity must be used by the charity to support a specific program or goal that the testator supports. For example, "I give five thousand dollars ($5,000) to Health Charity, to be used to support cancer treatments."[1] If such a restricted bequest is made, the recipient charity is required to use the restricted gift for the stated purpose. Therefore, Maryland law already allows testators to direct their charitable donations toward a specific cause or program. HB 868 infringes on the testator's right of testamentary freedom by granting another person the ability to change the testator's stated intent in a Will, seemingly without protection for the charitable beneficiaries named in a Will.[2]

Thirdly, under Maryland law (and the law of many other jurisdictions), the admission of extrinsic (outside) evidence to interpret a Will or other contract is limited to situations where there is an ambiguity within the Will or contract. The courts follow the

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[1] In contrast, an unrestricted gift to charity would use language like "I give five thousand dollars ($5,000) to Health Charity" thereby allowing the charity to use the bequest for any reason.

[2] If passed, HB 868 would allow the personal representative to petition change a restricted bequest if the personal representative believed that the decedent's life reflected an active interest in health equity issues. Take, for instance, the example restricted bequest used above. The personal representative would be able to petition to redirect those funds from cancer treatments to health disparities, even though it was the testator's intent – perhaps expressed in an agreement with the charity – to support cancer treatments. Both are worthy causes. However, the testator's intent should prevail when interpreting a Will.

objective theory of contract interpretation, which means that the courts' primary focus is on the four corners of the document to determine the intent of the parties based on the plain, ordinary, and usual meaning of the language in the document. When determining whether to admit extrinsic evidence in the case of a Will, the court first determines whether the language of the Will applies equally to two or more subjects or objects (i.e., the testator leaves a bequest in her Will to "my cousin, Michael", but the testator has two cousins named Michael). If the language of the Will does not apply equally to two or more subjects, extrinsic evidence is not admissible. The court's primary goal is to ascertain and effectuate the testator's expressed intent as written in the Will, and extrinsic evidence is only used to clarify ambiguities, not to alter the express terms or speculate on what the testator might have intended to say.[3] HB 848 would open a Pandora's box of speculation about a testator's intent even in the face of otherwise clear language. This could produce extended litigation thereby delaying the settlement of decedents' estates. In addition, this bill would upend a longstanding, commonly understood legal theory that could have drastic ramifications across many areas of the law in Maryland, not just in the context of Wills and estates.

Fourthly, the Will provision included in the statute under (a)(III) has been interpreted in Maryland to grant the personal representative broad authority to manage and settle the estate, ensuring that the testator's intentions are fulfilled, and the estate is managed effectively, but not to change the intention of the testator. Directing the court to defer to the personal representative's actions when a Will contains this clause prevents the court from fulfilling its statutory duty to direct the conduct of the personal representative and places the personal representative's judgment before that of the testator.[4]

Lastly, there are legal inaccuracies contained within the language of HB 848. For instance, the authority given to an agent in a power of attorney document ends upon a principal's death. Therefore, a personal representative, who is appointed after a principal's death, cannot also have power of attorney because the rights granted to the agent have ceased. Second, there is no legal document that states who serves as a person's caregiver. The court would need to hold a hearing to determine whether the individual petitioning the court was the decedent's caregiver.

For the reasons outlined above, The Estate and Trust Law Section of the MSBA opposes HB 868 . We believe that HB 868 would impair Maryland's longstanding tradition of testamentary freedom, upend centuries of law regarding document interpretation, and would have little, if any, impact on improving health disparities in Maryland. Accordingly, we urge an **unfavorable** report.

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[3] See Vito v. Grueff, 453 Md. 88; Fersinger v. Martin, 183 Md. 135; Schapiro v. Howard, 113 Md. 360; Cassilly v. Devenny, 168 Md. 443

[4] Md. Estates and Trusts Code Ann. § 2-102.