

# HOUSE BILL 1261

N2, J1

11r2218  
CF SB 820

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By: **Delegate W. Fisher**

Introduced and read first time: February 8, 2021

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Wills, Powers of Attorney, and Advance Directives – Electronic Execution**

3 FOR the purpose of altering certain provisions of law related to the execution of wills to  
4 authorize a person to electronically execute a will under certain circumstances;  
5 requiring a certain testator, witnesses, and supervising attorney to be in certain  
6 physical or electronic presence of one another at a certain time under certain  
7 circumstances; authorizing a supervising attorney to be a certain witness to the  
8 execution of certain instruments under certain circumstances; establishing certain  
9 residency, presence, and signature requirements for a certain testator and certain  
10 witnesses under certain circumstances; requiring a supervising attorney to create a  
11 certain certified will under certain circumstances; requiring a testator to create a  
12 certain certified will under certain circumstances; providing that a certain certified  
13 will shall be deemed the original will of the testator under certain circumstances;  
14 establishing a certain date of execution for a certain certified will; altering certain  
15 provisions of law related to the proper execution of a will outside of the State; altering  
16 certain provisions of law related to the execution of a power of attorney to authorize  
17 a person to electronically execute a power of attorney if certain requirements are  
18 satisfied; requiring a certain principal, witnesses, and supervising attorney to be in  
19 certain physical or electronic presence of one another at a certain time under certain  
20 circumstances; establishing certain residency, presence, and signature requirements  
21 for a certain principal and certain witnesses under certain circumstances; requiring  
22 a supervising attorney to create a certain certified power of attorney under certain  
23 circumstances; providing that a certain certified power of attorney shall be deemed  
24 the original power of attorney of a certain principal under certain circumstances;  
25 establishing a certain date of execution for a certain certified power of attorney;  
26 altering certain provisions of law related to the execution of advance directives to  
27 authorize certain witnesses to sign an advance directive in either certain physical or  
28 electronic presence of the declarant; providing that a will, a power of attorney, a  
29 notarization of a power of attorney, or an advance directive executed in conformance  
30 with the provisions of certain executive orders shall be deemed to satisfy certain  
31 requirements under this Act; altering certain definitions; defining certain terms;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 making certain clarifying changes; providing for the retroactive application of this  
2 Act; and generally relating to the execution of wills, powers of attorney, and advance  
3 directives.

4 BY repealing and reenacting, with amendments,  
5 Article – Estates and Trusts  
6 Section 1–101(w), 4–102, 4–104, 17–101, and 17–110  
7 Annotated Code of Maryland  
8 (2017 Replacement Volume and 2020 Supplement)

9 BY repealing  
10 Article – Estates and Trusts  
11 Section 4–101  
12 Annotated Code of Maryland  
13 (2017 Replacement Volume and 2020 Supplement)

14 BY adding to  
15 Article – Estates and Trusts  
16 Section 4–101  
17 Annotated Code of Maryland  
18 (2017 Replacement Volume and 2020 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – Health – General  
21 Section 5–601 and 5–602(c)  
22 Annotated Code of Maryland  
23 (2019 Replacement Volume and 2020 Supplement)

24 BY repealing and reenacting, without amendments,  
25 Article – Health – General  
26 Section 5–602(a)  
27 Annotated Code of Maryland  
28 (2019 Replacement Volume and 2020 Supplement)

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

31 **Article – Estates and Trusts**

32 1–101.

33 (w) [(1)] “Will” [means a written instrument which is executed in the form  
34 prescribed by §§ 4–102 through 4–104 of this article, and has not been revoked in a manner  
35 provided by § 4–105 of this article.

36 (2) “Will” includes a codicil] **HAS THE MEANING STATED IN § 4–101 OF**  
37 **THIS ARTICLE.**

1 [4-101.

2 Any person may make a will if the person is 18 years of age or older, and legally  
3 competent to make a will.]

4 **4-101.**

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

7 (B) "ELECTRONIC" MEANS TECHNOLOGY HAVING ELECTRICAL, DIGITAL,  
8 MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

9 (C) "ELECTRONIC PRESENCE" MEANS THE RELATIONSHIP OF TWO OR MORE  
10 INDIVIDUALS IN DIFFERENT LOCATIONS COMMUNICATING IN REAL TIME USING  
11 ELECTRONIC AUDIO-VISUAL OR OTHER ELECTRONIC MEANS TO THE SAME EXTENT  
12 AS IF THE INDIVIDUALS WERE PHYSICALLY PRESENT IN THE SAME LOCATION.

13 (D) "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SYMBOL, SOUND,  
14 OR PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH A RECORD AND  
15 EXECUTED OR ADOPTED BY AN INDIVIDUAL WITH THE INTENT TO SIGN THE RECORD.

16 (E) "ELECTRONIC WILL" MEANS A WILL CONTAINING ONE OR MORE  
17 ELECTRONIC SIGNATURES AND EXECUTED, PREPARED, AND CERTIFIED IN  
18 COMPLIANCE WITH THIS SUBTITLE.

19 (F) "PHYSICAL PRESENCE" MEANS BEING IN THE SAME PHYSICAL  
20 LOCATION AS ANOTHER INDIVIDUAL AND CLOSE ENOUGH TO SEE, HEAR, AND SPEAK  
21 WITH THAT INDIVIDUAL.

22 (G) "RECORD" MEANS INFORMATION READABLE AS TEXT THAT IS  
23 INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC MEDIUM  
24 AND RETRIEVABLE IN PERCEIVABLE PAPER FORM.

25 (H) "REMOTELY WITNESSED WILL" MEANS A WILL THAT IS:

26 (1) SIGNED BY THE TESTATOR UNDER CIRCUMSTANCES WHERE A  
27 WITNESS IS IN THE ELECTRONIC PRESENCE, BUT NOT THE PHYSICAL PRESENCE, OF  
28 THE TESTATOR WHEN THE WITNESS ATTESTS TO AND SIGNS THE WILL; AND

29 (2) EXECUTED, PREPARED, AND CERTIFIED IN COMPLIANCE WITH §  
30 4-102 OF THIS SUBTITLE.

1           **(I) “SIGN” MEANS AFFIXING A VISIBLE ELECTRONIC OR PHYSICAL MARK**  
2 **ONTO A RECORD WITH THE INTENT TO EXECUTE THE RECORD.**

3           **(J) “SUPERVISING ATTORNEY” MEANS AN INDIVIDUAL WHO HAS BEEN**  
4 **ADMITTED TO PRACTICE LAW BEFORE THE COURTS OF THIS STATE AND IS IN GOOD**  
5 **STANDING.**

6           **(K) “WILL” MEANS A RECORD THAT THE TESTATOR INTENDS TO ADOPT AS**  
7 **THE TESTATOR’S CODICIL OR TESTAMENTARY INSTRUMENT AND THAT:**

8                   **(1) (I) APPOINTS A PERSONAL REPRESENTATIVE;**

9                           **(II) REVOKES OR REVISES ANOTHER WILL;**

10                           **(III) NOMINATES A GUARDIAN;**

11                           **(IV) DIRECTS THE DISPOSITION OF THE TESTATOR’S PROPERTY;**

12 **OR**

13                           **(V) EXPRESSLY EXCLUDES OR LIMITS THE RIGHT OF AN**  
14 **INDIVIDUAL OR CLASS TO SUCCEED TO PROPERTY OF A DECEDENT PASSING BY**  
15 **INTESTATE SUCCESSION;**

16                   **(2) IS EXECUTED IN THE FORM PRESCRIBED UNDER §§ 4-102**  
17 **THROUGH 4-104 OF THIS SUBTITLE; AND**

18                   **(3) HAS NOT BEEN REVOKED IN A MANNER PROVIDED BY § 4-105 OF**  
19 **THIS SUBTITLE.**

20 4-102.

21           **(A) ANY PERSON MAY MAKE A WILL IF THE PERSON IS 18 YEARS OF AGE OR**  
22 **OLDER, AND LEGALLY COMPETENT TO MAKE A WILL.**

23           **[(a)] (B) Except as provided in §§ 4-103 and 4-104 of this subtitle AND**  
24 **SUBSECTION (F) OF THIS SECTION, every will shall be:**

25                   (1) In writing;

26                   (2) Signed by the testator, or by some other person for the testator, in the  
27 testator’s presence and by the testator’s express direction; and

28                   (3) Attested and signed by two or more credible witnesses in [the]:

1           **(I) THE PHYSICAL presence of the testator; OR**

2           **(II) THE ELECTRONIC PRESENCE OF THE TESTATOR, PROVIDED**  
3 **THAT AN ELECTRONIC WILL OR REMOTELY WITNESSED WILL SATISFIES THE**  
4 **REQUIREMENTS UNDER SUBSECTION (C) OR (D) OF THIS SECTION.**

5           **[(b) For purposes of this section, a witness is not in the presence of the testator if**  
6 **the witness is in a different physical location than the testator regardless of whether the**  
7 **testator can observe the witness through electronic audio–video or other technological**  
8 **means.]**

9           **(C) AN ELECTRONIC WILL OR REMOTELY WITNESSED WILL EXECUTED**  
10 **UNDER THIS SUBSECTION SHALL SATISFY THE FOLLOWING REQUIREMENTS:**

11           **(1) AT THE TIME THE TESTATOR AND WITNESSES SIGN THE WILL, THE**  
12 **TESTATOR AND ALL WITNESSES SHALL BE IN THE PHYSICAL PRESENCE OR**  
13 **ELECTRONIC PRESENCE OF ONE ANOTHER AND A SUPERVISING ATTORNEY, WHO**  
14 **MAY BE ONE OF THE WITNESSES;**

15           **(2) AT THE TIME THE TESTATOR SIGNS THE WILL, THE TESTATOR**  
16 **SHALL BE A RESIDENT OF, OR PHYSICALLY LOCATED IN, THE STATE;**

17           **(3) EACH WITNESS WHO IS IN THE ELECTRONIC PRESENCE OF THE**  
18 **TESTATOR WHEN THE WITNESS ATTESTS AND SIGNS THE WILL, OR PROVIDES AN**  
19 **ELECTRONIC SIGNATURE ON THE WILL, SHALL BE A RESIDENT OF THE UNITED**  
20 **STATES AND BE PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME THE**  
21 **WITNESS ATTESTS AND SIGNS THE WILL;**

22           **(4) THE TESTATOR AND WITNESSES SHALL SIGN THE SAME WILL OR**  
23 **ANY COUNTERPART THEREOF; AND**

24           **(5) THE SUPERVISING ATTORNEY SHALL CREATE A CERTIFIED WILL**  
25 **THAT SHALL INCLUDE:**

26           **(I) A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF**  
27 **ALL PAGES OF THE WILL INCLUDING THE ORIGINAL SIGNATURES OR ELECTRONIC**  
28 **SIGNATURES OF THE TESTATOR AND ALL WITNESSES; AND**

29           **(II) A SIGNED ORIGINAL PAPER CERTIFICATION BY THE**  
30 **SUPERVISING ATTORNEY STATING THE DATE THAT THE SUPERVISING ATTORNEY**  
31 **OBSERVED THE TESTATOR AND WITNESSES SIGN THE WILL AND THAT THE**  
32 **SUPERVISING ATTORNEY TOOK REASONABLE STEPS TO VERIFY:**

33           **1. THAT THE CERTIFIED WILL INCLUDES A TRUE,**

1 COMPLETE, AND ACCURATE PAPER VERSION OF ALL PAGES OF THE WILL;

2                   2. THAT THE SIGNATURES CONTAINED IN THE  
3 CERTIFIED WILL ARE THE ORIGINAL SIGNATURES OF EACH PARTY SIGNING THE  
4 SAME PAPER WILL, OR ANY COUNTERPART THEREOF, AND ELECTRONIC  
5 SIGNATURES OF EACH PARTY SIGNING THE SAME ELECTRONIC WILL, OR ANY  
6 COUNTERPART THEREOF;

7                   3. THAT THE TESTATOR AND EACH OF THE WITNESSES  
8 SIGNED THE SAME WILL OR ANY COUNTERPART THEREOF;

9                   4. THE IDENTITY OF EACH WITNESS AND THAT EACH  
10 WITNESS WHO WAS NOT IN THE PHYSICAL PRESENCE OF THE TESTATOR WHEN THE  
11 WITNESS ATTESTED AND SIGNED THE WILL, OR PROVIDED AN ELECTRONIC  
12 SIGNATURE ON THE WILL, WAS A RESIDENT OF THE UNITED STATES AND  
13 PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME THAT THE WITNESS  
14 ATTESTED AND SIGNED THE WILL; AND

15                   5. THE IDENTITY OF THE TESTATOR AND THAT THE  
16 TESTATOR WAS A RESIDENT OF, OR WAS PHYSICALLY LOCATED IN, THE STATE AT  
17 THE TIME THAT THE TESTATOR SIGNED THE WILL.

18           (D) AN ELECTRONIC WILL OR REMOTELY WITNESSED WILL EXECUTED  
19 UNDER THIS SUBSECTION SHALL SATISFY THE FOLLOWING REQUIREMENTS:

20                   (1) AT THE TIME THE TESTATOR AND WITNESSES SIGN THE WILL, THE  
21 TESTATOR AND ALL WITNESSES SHALL BE IN THE PHYSICAL PRESENCE OR  
22 ELECTRONIC PRESENCE OF ONE ANOTHER;

23                   (2) THE REQUIREMENTS UNDER SUBSECTION (C)(2) THROUGH (4) OF  
24 THIS SECTION SHALL BE SATISFIED; AND

25                   (3) THE TESTATOR SHALL CREATE A CERTIFIED WILL THAT SHALL  
26 INCLUDE:

27                   (i) A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF  
28 ALL PAGES OF THE WILL INCLUDING THE ORIGINAL SIGNATURES OR ELECTRONIC  
29 SIGNATURES OF THE TESTATOR AND ALL WITNESSES; AND

30                   (ii) AN ORIGINAL PAPER CERTIFICATION SIGNED AND  
31 ACKNOWLEDGED BY THE TESTATOR BEFORE A NOTARY PUBLIC, WHO MAY NOT BE  
32 ONE OF THE WITNESSES, STATING:

1                   **1. THE DATE THAT THE TESTATOR AND WITNESSES**  
2 **SIGNED THE WILL; AND**

3                   **2. THAT THE TESTATOR TOOK REASONABLE STEPS TO**  
4 **VERIFY THE SAME FACTS AND INFORMATION REQUIRED UNDER SUBSECTION**  
5 **(C)(5)(II) OF THIS SECTION.**

6           **(E) (1) ONCE THE SUPERVISING ATTORNEY OR TESTATOR CREATES A**  
7 **CERTIFIED WILL AS PROVIDED IN SUBSECTION (C) OR (D) OF THIS SECTION, THE**  
8 **CERTIFIED WILL SHALL BE DEEMED TO BE THE ORIGINAL WILL OF THE TESTATOR**  
9 **FOR ALL PURPOSES UNDER THIS ARTICLE.**

10           **(2) THE DATE OF EXECUTION FOR A CERTIFIED WILL DESCRIBED**  
11 **UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE THE DATE OF EXECUTION**  
12 **STATED IN THE CERTIFIED WILL.**

13           **(F) A WILL EXECUTED IN CONFORMANCE WITH THE PROVISIONS OF**  
14 **EXECUTIVE ORDER 20.04.10.01, AUTHORIZING REMOTE WITNESSING AND**  
15 **ELECTRONIC SIGNING OF CERTAIN DOCUMENTS, SHALL BE DEEMED TO HAVE BEEN**  
16 **SIGNED AND WITNESSED IN CONFORMITY WITH THIS SECTION IF THE WILL WAS**  
17 **SIGNED AND WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN**  
18 **EFFECT.**

19 4–104.

20           **[A will executed outside this State] IF A TESTATOR IS PHYSICALLY OUTSIDE THE**  
21 **STATE AT THE TIME THE TESTATOR EXECUTES THE WILL, THE WILL is properly**  
22 **executed if it is:**

23           (1) In writing;

24           (2) Signed by the testator **OR BY SOME OTHER PERSON ON THE**  
25 **TESTATOR’S BEHALF, IN THE TESTATOR’S PHYSICAL PRESENCE, AND BY THE**  
26 **TESTATOR’S EXPRESS DIRECTION; and**

27           (3) Executed in conformity with:

28           (i) The provisions of § 4–102 of this subtitle;

29           (ii) The law of the domicile of the testator; or

30           (iii) The law of the place where the testator is physically located at  
31 the time the testator signs the will.

32 17–101.

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

2 (b) (1) “Agent” means a person granted authority to act for a principal under  
3 a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise.

4 (2) “Agent” includes an original agent, coagent, successor agent, and a  
5 person to which an agent’s authority is delegated.

6 (C) **“ELECTRONIC” HAS THE MEANING STATED IN § 4–101 OF THIS ARTICLE.**

7 (D) **“ELECTRONIC POWER OF ATTORNEY” MEANS A POWER OF ATTORNEY**  
8 **CONTAINING ONE OR MORE ELECTRONIC SIGNATURES AND EXECUTED, PREPARED,**  
9 **AND CERTIFIED IN COMPLIANCE WITH THIS TITLE.**

10 (E) **“ELECTRONIC PRESENCE” HAS THE MEANING STATED IN § 4–101 OF**  
11 **THIS ARTICLE.**

12 (F) **“ELECTRONIC SIGNATURE” HAS THE MEANING STATED IN § 4–101 OF**  
13 **THIS ARTICLE.**

14 [(c)] (G) “Incapacity” means the inability of an individual to manage property or  
15 business affairs because the individual:

16 (1) Meets the grounds required for the appointment of a guardian of the  
17 property of a disabled person described in § 13–201 of this article; or

18 (2) Is:

19 (i) Missing;

20 (ii) Detained, including incarcerated in a penal system; or

21 (iii) Outside the United States and unable to return.

22 (H) **“PHYSICAL PRESENCE” HAS THE MEANING STATED IN § 4–101 OF THIS**  
23 **ARTICLE.**

24 [(d)] (I) “Power of attorney” means a writing or other record that grants  
25 authority to an agent to act in the place of the principal, whether or not the term “power of  
26 attorney” is used.

27 [(e)] (J) “Principal” means an individual who grants authority to an agent in a  
28 power of attorney.

29 [(f)] (K) “Property” includes both real and personal property and any right or



1 title in real or personal property, whether held individually or jointly and whether  
2 indivisible, beneficial, contingent, or of any other nature.

3 (L) “RECORD” HAS THE MEANING STATED IN § 4-101 OF THIS ARTICLE.

4 (M) “REMOTELY WITNESSED POWER OF ATTORNEY” MEANS A POWER OF  
5 ATTORNEY SIGNED BY THE PRINCIPAL UNDER CIRCUMSTANCES WHERE ANY  
6 WITNESS IS IN THE ELECTRONIC PRESENCE, BUT NOT THE PHYSICAL PRESENCE, OF  
7 THE PRINCIPAL WHEN THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY,  
8 AND THE POWER OF ATTORNEY IS EXECUTED, PREPARED, AND CERTIFIED IN  
9 COMPLIANCE WITH THIS TITLE.

10 (N) “SIGN” HAS THE MEANING STATED IN § 4-101 OF THIS ARTICLE.

11 [(g)] (O) (1) “Statutory form power of attorney” means a power of attorney  
12 that is substantially in the same form as one of the powers of attorney set forth in Subtitle  
13 2 of this title.

14 (2) “Statutory form power of attorney” does not include a power of attorney  
15 set forth in Subtitle 2 of this title in which a principal incorporates by reference one or more  
16 provisions of another writing into the section of the power of attorney entitled “Special  
17 Instructions (Optional)”.

18 [(h)] (P) (1) “Stocks and bonds” means evidence of ownership in or debt  
19 issued by a corporation, partnership, limited liability company, firm, association, or similar  
20 entity.

21 (2) “Stocks and bonds” includes stocks, bonds, debentures, notes,  
22 membership interests, mutual fund interests, money market account interests, voting trust  
23 certificates, equipment trust certificates, certificates of deposit, certificates of participation,  
24 certificates of beneficial interest, stock rights, stock warrants, and any other instruments  
25 evidencing rights of a similar character issued by or in connection with any corporation,  
26 partnership, limited liability company, firm, association, or similar entity.

27 (Q) “SUPERVISING ATTORNEY” HAS THE MEANING STATED IN § 4-101 OF  
28 THIS ARTICLE.

29 17-110.

30 (a) [A] EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A power  
31 of attorney executed on or after October 1, 2010, shall be:

32 (1) In writing;

33 (2) Signed by the principal or by some other person for the principal, in the  
34 presence of the principal, and at the express direction of the principal;

1 (3) Acknowledged by the principal before a notary public; and

2 (4) Attested and signed by two or more adult witnesses who sign in [the]:

3 (I) THE PHYSICAL presence of the principal and [in the presence  
4 of] each other; OR

5 (II) THE ELECTRONIC PRESENCE OF THE PRINCIPAL AND EACH  
6 OTHER, PROVIDED THAT THE ELECTRONIC POWER OF ATTORNEY OR REMOTELY  
7 WITNESSED POWER OF ATTORNEY SATISFIES THE REQUIREMENTS UNDER  
8 SUBSECTION (C) OF THIS SECTION.

9 (b) The notary public before whom the principal acknowledges the power of  
10 attorney may also serve as one of the two or more adult witnesses [unless the notary public  
11 is using communication technology under § 18–214 of the State Government Article to  
12 perform the notarial act for a remotely located principal].

13 (C) AN ELECTRONIC POWER OF ATTORNEY OR A REMOTELY WITNESSED  
14 POWER OF ATTORNEY EXECUTED UNDER THIS SUBSECTION SHALL SATISFY THE  
15 FOLLOWING REQUIREMENTS:

16 (1) AT THE TIME THE PRINCIPAL AND WITNESSES SIGN THE POWER  
17 OF ATTORNEY, THE PRINCIPAL AND ALL WITNESSES SHALL BE IN THE PHYSICAL  
18 PRESENCE OR ELECTRONIC PRESENCE OF ONE ANOTHER AND A SUPERVISING  
19 ATTORNEY, WHO MAY BE ONE OF THE WITNESSES;

20 (2) AT THE TIME THE PRINCIPAL SIGNS THE POWER OF ATTORNEY,  
21 THE PRINCIPAL SHALL BE A RESIDENT OF, OR PHYSICALLY LOCATED IN, THE STATE;

22 (3) EACH WITNESS WHO IS IN THE ELECTRONIC PRESENCE OF THE  
23 PRINCIPAL WHEN THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY, OR  
24 PROVIDES AN ELECTRONIC SIGNATURE ON THE POWER OF ATTORNEY, SHALL BE A  
25 RESIDENT OF THE UNITED STATES AND PHYSICALLY LOCATED IN THE UNITED  
26 STATES AT THE TIME THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY;

27 (4) THE PRINCIPAL AND WITNESSES SHALL SIGN THE SAME POWER  
28 OF ATTORNEY OR ANY COUNTERPART THEREOF; AND

29 (5) THE SUPERVISING ATTORNEY SHALL CREATE A CERTIFIED  
30 POWER OF ATTORNEY THAT SHALL INCLUDE:

31 (I) A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF  
32 ALL PAGES OF THE POWER OF ATTORNEY, INCLUDING THE ORIGINAL SIGNATURES

1 AND ELECTRONIC SIGNATURES OF THE PRINCIPAL AND ALL WITNESSES; AND

2 (II) A SIGNED ORIGINAL PAPER CERTIFICATION BY THE  
3 SUPERVISING ATTORNEY STATING THE DATE THAT THE SUPERVISING ATTORNEY  
4 OBSERVED THE PRINCIPAL AND WITNESSES SIGN THE POWER OF ATTORNEY AND  
5 THAT THE SUPERVISING ATTORNEY TOOK REASONABLE STEPS TO VERIFY:

6 1. THAT THE CERTIFIED POWER OF ATTORNEY  
7 INCLUDES A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF ALL PAGES OF  
8 THE POWER OF ATTORNEY;

9 2. THAT THE SIGNATURES CONTAINED IN THE  
10 CERTIFIED POWER OF ATTORNEY ARE THE ORIGINAL SIGNATURES OF EACH PARTY  
11 SIGNING THE SAME PAPER POWER OF ATTORNEY, OR ANY COUNTERPART THEREOF,  
12 AND THE ELECTRONIC SIGNATURES OF EACH PARTY SIGNING THE SAME  
13 ELECTRONIC POWER OF ATTORNEY, OR ANY COUNTERPART THEREOF;

14 3. THAT THE PRINCIPAL AND EACH OF THE WITNESSES  
15 SIGNED THE SAME POWER OF ATTORNEY OR ANY COUNTERPARTS THEREOF;

16 4. THE IDENTITY OF THE PRINCIPAL, AND THAT THE  
17 PRINCIPAL WAS A RESIDENT OF, OR WAS PHYSICALLY LOCATED IN, THE STATE AT  
18 THE TIME THE PRINCIPAL SIGNED THE POWER OF ATTORNEY; AND

19 5. THE IDENTITY OF EACH WITNESS, AND THAT EACH  
20 WITNESS WHO WAS NOT IN THE PHYSICAL PRESENCE OF THE PRINCIPAL WHEN THE  
21 WITNESS ATTESTED AND SIGNED THE POWER OF ATTORNEY, OR PROVIDED AN  
22 ELECTRONIC SIGNATURE ON THE POWER OF ATTORNEY, WAS A RESIDENT OF THE  
23 UNITED STATES AND PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME  
24 THE WITNESS ATTESTED AND SIGNED THE POWER OF ATTORNEY.

25 (D) (1) ONCE THE SUPERVISING ATTORNEY CREATES A CERTIFIED  
26 POWER OF ATTORNEY AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE  
27 CERTIFIED POWER OF ATTORNEY SHALL BE DEEMED TO BE THE ORIGINAL POWER  
28 OF ATTORNEY OF THE PRINCIPAL FOR ALL PURPOSES UNDER THIS ARTICLE.

29 (2) THE DATE OF EXECUTION FOR THE POWER OF ATTORNEY  
30 DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE THE DATE OF  
31 EXECUTION AS STATED IN THE CERTIFIED POWER OF ATTORNEY.

32 (E) (1) A POWER OF ATTORNEY EXECUTED IN CONFORMANCE WITH THE  
33 PROVISIONS OF EXECUTIVE ORDER 20.04.10.01, AUTHORIZING REMOTE  
34 WITNESSING AND ELECTRONIC SIGNING OF CERTAIN DOCUMENTS, SHALL BE

1 DEEMED TO HAVE BEEN SIGNED AND WITNESSED IN CONFORMITY WITH THIS  
2 SECTION IF THE POWER OF ATTORNEY WAS SIGNED AND WITNESSED DURING THE  
3 TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT.

4 (2) THE NOTARIZATION OF A POWER OF ATTORNEY IN CONFORMANCE  
5 WITH THE PROVISIONS OF EXECUTIVE ORDER 20.03.30.04, AUTHORIZING REMOTE  
6 NOTARIZATIONS, SHALL BE DEEMED TO HAVE BEEN SIGNED AND WITNESSED IN  
7 CONFORMITY WITH THIS SECTION IF THE POWER OF ATTORNEY WAS SIGNED AND  
8 WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT AND  
9 THE NOTARY PUBLIC ACTING UNDER THE ORDER MAY HAVE SERVED AS ONE OF THE  
10 WITNESSES.

### 11 Article – Health – General

12 5–601.

13 (a) In this subtitle the following words have the meanings indicated.

14 (b) “Advance directive” means:

15 (1) A witnessed written or electronic document, voluntarily executed by the  
16 declarant in accordance with the requirements of this subtitle;

17 (2) A witnessed oral statement, made by the declarant in accordance with  
18 the provisions of this subtitle; or

19 (3) An electronic document, voluntarily executed by the declarant, in which  
20 the declarant’s identity is authenticated in accordance with the guidelines described in §  
21 5–602(c)(3) of this subtitle.

22 (c) “Agent” means an adult appointed by the declarant under an advance  
23 directive made in accordance with the provisions of this subtitle to make health care  
24 decisions for the declarant.

25 (d) “Attending physician” means the physician who has primary responsibility for  
26 the treatment and care of the patient.

27 (e) “Best interest” means that the benefits to the individual resulting from a  
28 treatment outweigh the burdens to the individual resulting from that treatment, taking  
29 into account:

30 (1) The effect of the treatment on the physical, emotional, and cognitive  
31 functions of the individual;

32 (2) The degree of physical pain or discomfort caused to the individual by  
33 the treatment, or the withholding or withdrawal of the treatment;

1           (3) The degree to which the individual's medical condition, the treatment,  
2 or the withholding or withdrawal of treatment result in a severe and continuing  
3 impairment of the dignity of the individual by subjecting the individual to a condition of  
4 extreme humiliation and dependency;

5           (4) The effect of the treatment on the life expectancy of the individual;

6           (5) The prognosis of the individual for recovery, with and without the  
7 treatment;

8           (6) The risks, side effects, and benefits of the treatment or the withholding  
9 or withdrawal of the treatment; and

10          (7) The religious beliefs and basic values of the individual receiving  
11 treatment, to the extent these may assist the decision maker in determining best interest.

12          (f) "Competent individual" means a person who is at least 18 years of age or who  
13 under § 20–102(a) of this article has the same capacity as an adult to consent to medical  
14 treatment and who has not been determined to be incapable of making an informed  
15 decision.

16          (g) "Declarant" means a competent individual who makes an advance directive  
17 while capable of making and communicating an informed decision.

18          **(H) "ELECTRONIC" HAS THE MEANING STATED IN § 4–101 OF THE ESTATES**  
19 **AND TRUSTS ARTICLE.**

20          **(I) "ELECTRONIC PRESENCE" HAS THE MEANING STATED IN § 4–101 OF**  
21 **THE ESTATES AND TRUSTS ARTICLE.**

22          **[(h)] (J) "Electronic signature" has the meaning stated in [§ 21–101 of the**  
23 **Commercial Law Article] § 4–101 OF THE ESTATES AND TRUSTS ARTICLE.**

24          **[(i)] (K) "Emergency medical services 'do not resuscitate order'" means a**  
25 **physician's, physician assistant's, or nurse practitioner's written order in a form**  
26 **established by protocol issued by the Maryland Institute for Emergency Medical Services**  
27 **in conjunction with the State Board of Physicians which, in the event of a cardiac or**  
28 **respiratory arrest of a particular patient, authorizes certified or licensed emergency**  
29 **medical services personnel to withhold or withdraw cardiopulmonary resuscitation**  
30 **including cardiac compression, endotracheal intubation, other advanced airway**  
31 **management techniques, artificial ventilation, defibrillation, and other related**  
32 **life-sustaining procedures.**

33          **[(j)] (L) "End-stage condition" means an advanced, progressive, irreversible**  
34 **condition caused by injury, disease, or illness:**

1 (1) That has caused severe and permanent deterioration indicated by  
2 incompetency and complete physical dependency; and

3 (2) For which, to a reasonable degree of medical certainty, treatment of the  
4 irreversible condition would be medically ineffective.

5 **[(k)] (M)** “Health care practitioner” means:

6 (1) An individual licensed or certified under the Health Occupations Article  
7 or § 13–516 of the Education Article to provide health care; or

8 (2) The administrator of a hospital or a person designated by the  
9 administrator in accordance with hospital policy.

10 **[(l)] (N)** (1) “Health care provider” means a health care practitioner or a  
11 facility that provides health care to individuals.

12 (2) “Health care provider” includes agents or employees of a health care  
13 practitioner or a facility that provides health care to individuals.

14 **[(m)] (O)** (1) “Incapable of making an informed decision” means the inability  
15 of an adult patient to make an informed decision about the provision, withholding, or  
16 withdrawal of a specific medical treatment or course of treatment because the patient is  
17 unable to understand the nature, extent, or probable consequences of the proposed  
18 treatment or course of treatment, is unable to make a rational evaluation of the burdens,  
19 risks, and benefits of the treatment or course of treatment, or is unable to communicate a  
20 decision.

21 (2) For the purposes of this subtitle, a competent individual who is able to  
22 communicate by means other than speech may not be considered incapable of making an  
23 informed decision.

24 **[(n)] (P)** (1) “Life–sustaining procedure” means any medical procedure,  
25 treatment, or intervention that:

26 (i) Utilizes mechanical or other artificial means to sustain, restore,  
27 or supplant a spontaneous vital function; and

28 (ii) Is of such a nature as to afford a patient no reasonable  
29 expectation of recovery from a terminal condition, persistent vegetative state, or end–stage  
30 condition.

31 (2) “Life–sustaining procedure” includes artificially administered  
32 hydration and nutrition, and cardiopulmonary resuscitation.

33 **[(o)] (Q)** “Medically ineffective treatment” means that, to a reasonable degree of

1 medical certainty, a medical procedure will not:

2 (1) Prevent or reduce the deterioration of the health of an individual; or

3 (2) Prevent the impending death of an individual.

4 **[(p)] (R)** “Nurse practitioner” means an individual licensed to practice registered  
5 nursing in the State and who is certified as a nurse practitioner by the State Board of  
6 Nursing under Title 8 of the Health Occupations Article.

7 **[(q)] (S)** “Persistent vegetative state” means a condition caused by injury,  
8 disease, or illness:

9 (1) In which a patient has suffered a loss of consciousness, exhibiting no  
10 behavioral evidence of self-awareness or awareness of surroundings in a learned manner  
11 other than reflex activity of muscles and nerves for low level conditioned response; and

12 (2) From which, after the passage of a medically appropriate period of time,  
13 it can be determined, to a reasonable degree of medical certainty, that there can be no  
14 recovery.

15 **(T) “PHYSICAL PRESENCE” HAS THE MEANING STATED IN § 4-101 OF THE**  
16 **ESTATES AND TRUSTS ARTICLE.**

17 **[(r)] (U)** “Physician” means a person licensed to practice medicine in the State  
18 or in the jurisdiction where the treatment is to be rendered or withheld.

19 **[(s)] (V)** “Physician assistant” means an individual who is licensed under Title  
20 15 of the Health Occupations Article to practice medicine with physician supervision.

21 **[(t)] (W)** “Signed” means bearing a manual or electronic signature.

22 **[(u)] (X)** “Terminal condition” means an incurable condition caused by injury,  
23 disease, or illness which, to a reasonable degree of medical certainty, makes death  
24 imminent and from which, despite the application of life-sustaining procedures, there can  
25 be no recovery.

26 5-602.

27 (a) (1) Any competent individual may, at any time, make a written or  
28 electronic advance directive regarding the provision of health care to that individual, or the  
29 withholding or withdrawal of health care from that individual.

30 (2) Notwithstanding any other provision of law, in the absence of a validly  
31 executed or witnessed advance directive, any authentic expression made by an individual  
32 while competent of the individual’s wishes regarding health care for the individual shall be

1 considered.

2 (c) (1) **(I)** Except as provided in **SUBPARAGRAPH (II) OF THIS**  
3 **PARAGRAPH OR** paragraph (3) of this subsection, a written or electronic advance directive  
4 shall be dated, signed by or at the express direction of the declarant, and subscribed by two  
5 witnesses **IN THE PHYSICAL PRESENCE OR ELECTRONIC PRESENCE OF THE**  
6 **DECLARANT.**

7 **(II) A WRITTEN OR ELECTRONIC ADVANCE DIRECTIVE SIGNED**  
8 **AND WITNESSED IN CONFORMANCE WITH THE PROVISIONS OF EXECUTIVE ORDER**  
9 **20.04.10.01, AUTHORIZING REMOTE WITNESSING AND ELECTRONIC SIGNING OF**  
10 **CERTAIN DOCUMENTS, SHALL BE DEEMED TO HAVE BEEN SIGNED AND WITNESSED**  
11 **IN CONFORMITY WITH THIS SUBSECTION IF THE ADVANCE DIRECTIVE WAS SIGNED**  
12 **AND WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT.**

13 (2) (i) Except as provided in subparagraphs (ii) and (iii) of this  
14 paragraph, any competent individual may serve as a witness to an advance directive,  
15 including an employee of a health care facility, nurse practitioner, physician assistant, or  
16 physician caring for the declarant if acting in good faith.

17 (ii) The health care agent of the declarant may not serve as a  
18 witness.

19 (iii) At least one of the witnesses must be an individual who is not  
20 knowingly entitled to any portion of the estate of the declarant or knowingly entitled to any  
21 financial benefit by reason of the death of the declarant.

22 (3) A witness is not required for an electronic advance directive if the  
23 declarant's identity has been authenticated in accordance with the National Institute of  
24 Standards and Technology Special Publication 800-63-2: Electronic Authentication  
25 Guideline or, if replaced, the replacement guideline.

26 (4) The State-designated health information exchange may accept as valid  
27 an unwitnessed electronic advance directive in the form of a video record or file to state the  
28 declarant's wishes regarding health care for the declarant or to appoint an agent if the  
29 video record or file:

30 (i) Is dated; and

31 (ii) Is stored in an electronic file by an electronic advance directives  
32 service recognized by the Maryland Health Care Commission.

33 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall be construed to  
34 apply retroactively and shall be applied to and interpreted to affect any will, power of  
35 attorney, or advance directive executed on or after March 10, 2020.



1           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2021.