

SENATE BILL 820

N2, J1

11r2215
CF HB 1261

By: **Senator West**

Introduced and read first time: February 9, 2021

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 1, 2021

CHAPTER _____

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, subject to a certain exception; requiring a certain principal, witnesses, and
19 supervising attorney to be in certain physical or electronic presence of one another
20 at a certain time under certain circumstances; establishing certain residency,
21 presence, and signature requirements for a certain principal and certain witnesses
22 under certain circumstances; requiring a supervising attorney to create a certain
23 certified power of attorney under certain circumstances; providing that a certain
24 certified power of attorney shall be deemed the original power of attorney of a certain
25 principal under certain circumstances; establishing a certain date of execution for a

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 certain certified power of attorney; altering certain provisions of law related to the
2 execution of advance directives to authorize certain witnesses to sign an advance
3 directive in either certain physical or electronic presence of the declarant; providing
4 that a will, a power of attorney, a notarization of a power of attorney, or an advance
5 directive executed in conformance with the provisions of certain executive orders
6 shall be deemed to satisfy certain requirements under this Act; providing that a lack
7 of or defective witness attestation to a power of attorney does not have any effect on
8 the instrument unless a certain challenge is made within a certain period of time;
9 altering certain definitions; defining certain terms; making certain clarifying
10 changes; providing for the retroactive application of this Act in certain
11 circumstances; and generally relating to the execution of wills, powers of attorney,
12 and advance directives.

13 BY repealing and reenacting, with amendments,
14 Article – Estates and Trusts
15 Section 1–101(w), 4–102, 4–104, 17–101, and 17–110
16 Annotated Code of Maryland
17 (2017 Replacement Volume and 2020 Supplement)

18 BY repealing
19 Article – Estates and Trusts
20 Section 4–101
21 Annotated Code of Maryland
22 (2017 Replacement Volume and 2020 Supplement)

23 BY adding to
24 Article – Estates and Trusts
25 Section 4–101
26 Annotated Code of Maryland
27 (2017 Replacement Volume and 2020 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article – Health – General
30 Section 5–601 and 5–602(c)
31 Annotated Code of Maryland
32 (2019 Replacement Volume and 2020 Supplement)

33 BY repealing and reenacting, without amendments,
34 Article – Health – General
35 Section 5–602(a)
36 Annotated Code of Maryland
37 (2019 Replacement Volume and 2020 Supplement)

38 BY repealing and reenacting, with amendments,
39 Article – Real Property
40 Section 4–109
41 Annotated Code of Maryland

1 (2015 Replacement Volume and 2020 Supplement)

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

4 **Article – Estates and Trusts**

5 1–101.

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

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

11 [4–101.

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

14 **4–101.**

15 (A) **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
16 INDICATED.**

17 (B) **“ELECTRONIC” MEANS TECHNOLOGY HAVING ELECTRICAL, DIGITAL,
18 MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.**

19 (C) **“ELECTRONIC PRESENCE” MEANS ~~THE RELATIONSHIP OF TWO OR MORE~~
20 ~~INDIVIDUALS IN DIFFERENT LOCATIONS~~ COMMUNICATING IN REAL TIME USING
21 ~~ELECTRONIC AUDIO-VISUAL OR OTHER ELECTRONIC~~ MEANS TO THE SAME EXTENT
22 ~~AS IF THE INDIVIDUALS WERE PHYSICALLY PRESENT IN THE SAME LOCATION IN THE~~
23 PHYSICAL PRESENCE OF EACH OTHER.**

24 (D) **“ELECTRONIC SIGNATURE” MEANS AN ELECTRONIC SYMBOL, SOUND,
25 OR PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH A RECORD AND
26 EXECUTED OR ADOPTED BY AN INDIVIDUAL WITH THE INTENT TO SIGN THE RECORD.**

27 (E) **“ELECTRONIC WILL” MEANS A WILL CONTAINING ONE OR MORE
28 ELECTRONIC SIGNATURES AND ~~EXECUTED, PREPARED, AND CERTIFIED~~ EXECUTED
29 IN COMPLIANCE WITH THIS SUBTITLE.**

30 (F) **“PHYSICAL PRESENCE” MEANS BEING ~~IN THE SAME PHYSICAL~~
31 ~~LOCATION AS ANOTHER INDIVIDUAL AND~~ CLOSE ENOUGH TO SEE, HEAR, AND SPEAK**

1 ~~WITH THAT INDIVIDUAL~~ ANOTHER INDIVIDUAL WITHOUT USING ELECTRONIC
2 AUDIO-VISUAL MEANS.

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

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

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

10 (2) EXECUTED, PREPARED, AND CERTIFIED IN COMPLIANCE WITH §
11 4-102 OF THIS SUBTITLE.

12 (I) ~~"SIGN" MEANS AFFIXING A VISIBLE ELECTRONIC OR PHYSICAL MARK~~
13 ~~ONTO A RECORD WITH THE INTENT TO EXECUTE THE RECORD~~ HAS THE MEANING
14 STATED IN § 18-201 OF THE STATE GOVERNMENT ARTICLE.

15 (J) "SUPERVISING ATTORNEY" MEANS AN INDIVIDUAL WHO HAS BEEN
16 ADMITTED TO PRACTICE LAW BEFORE THE COURTS OF THIS STATE AND IS IN GOOD
17 STANDING.

18 (K) "WILL" MEANS A RECORD THAT THE TESTATOR INTENDS TO ADOPT AS
19 THE TESTATOR'S CODICIL OR TESTAMENTARY INSTRUMENT AND THAT:

20 (1) (I) APPOINTS A PERSONAL REPRESENTATIVE;

21 (II) REVOKES OR REVISES ANOTHER WILL;

22 (III) NOMINATES A GUARDIAN;

23 (IV) DIRECTS THE DISPOSITION OF THE TESTATOR'S PROPERTY;

24 OR

25 (V) EXPRESSLY EXCLUDES OR LIMITS THE RIGHT OF AN
26 INDIVIDUAL OR CLASS TO SUCCEED TO PROPERTY OF A DECEDENT PASSING BY
27 INTESTATE SUCCESSION;

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

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

3 4-102.

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

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

8 (1) In writing;

9 (2) Signed by the testator, or by some other person for the testator, in the
10 testator's presence and by the testator's express direction; and

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

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

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

16 **[(b)]** For purposes of this section, a witness is not in the presence of the testator if
17 the witness is in a different physical location than the testator regardless of whether the
18 testator can observe the witness through electronic audio-video or other technological
19 means.]

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

22 (1) **AT THE TIME THE TESTATOR AND WITNESSES SIGN THE WILL, THE**
23 **TESTATOR AND ALL WITNESSES SHALL BE IN THE PHYSICAL PRESENCE OR**
24 **ELECTRONIC PRESENCE OF ONE ANOTHER AND A SUPERVISING ATTORNEY, WHO**
25 **MAY BE ONE OF THE WITNESSES;**

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

28 (3) **EACH WITNESS WHO IS IN THE ELECTRONIC PRESENCE OF THE**
29 **TESTATOR WHEN THE WITNESS ATTESTS AND SIGNS THE WILL, OR PROVIDES AN**
30 **ELECTRONIC SIGNATURE ON THE WILL, SHALL BE A RESIDENT OF THE UNITED**
31 **STATES AND BE PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME THE**

1 WITNESS ATTESTS AND SIGNS THE WILL;

2 (4) THE TESTATOR AND WITNESSES SHALL SIGN THE SAME WILL OR
3 ANY COUNTERPART THEREOF; AND

4 (5) THE SUPERVISING ATTORNEY SHALL CREATE A CERTIFIED WILL
5 THAT SHALL INCLUDE:

6 (I) A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF
7 ALL PAGES OF THE WILL INCLUDING THE ORIGINAL SIGNATURES OR ELECTRONIC
8 SIGNATURES OF THE TESTATOR AND ALL WITNESSES; ~~AND~~

9 (II) A SIGNED ORIGINAL PAPER CERTIFICATION BY THE
10 SUPERVISING ATTORNEY STATING THE DATE THAT THE SUPERVISING ATTORNEY
11 OBSERVED THE TESTATOR AND WITNESSES SIGN THE WILL AND THAT THE
12 SUPERVISING ATTORNEY TOOK REASONABLE STEPS TO VERIFY:

13 1. THAT THE CERTIFIED WILL INCLUDES A TRUE,
14 COMPLETE, AND ACCURATE PAPER VERSION OF ALL PAGES OF THE WILL;

15 2. THAT THE SIGNATURES CONTAINED IN THE
16 CERTIFIED WILL ARE THE ORIGINAL SIGNATURES OF EACH PARTY SIGNING THE
17 SAME PAPER WILL, OR ANY COUNTERPART THEREOF, AND ELECTRONIC
18 SIGNATURES OF EACH PARTY SIGNING THE SAME ELECTRONIC WILL, OR ANY
19 COUNTERPART THEREOF;

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

22 4. THE IDENTITY OF EACH WITNESS AND THAT EACH
23 WITNESS WHO WAS NOT IN THE PHYSICAL PRESENCE OF THE TESTATOR WHEN THE
24 WITNESS ATTESTED AND SIGNED THE WILL, OR PROVIDED AN ELECTRONIC
25 SIGNATURE ON THE WILL, WAS A RESIDENT OF THE UNITED STATES AND
26 PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME THAT THE WITNESS
27 ATTESTED AND SIGNED THE WILL; AND

28 5. THE IDENTITY OF THE TESTATOR AND THAT THE
29 TESTATOR WAS A RESIDENT OF, OR WAS PHYSICALLY LOCATED IN, THE STATE AT
30 THE TIME THAT THE TESTATOR SIGNED THE WILL; ~~AND~~

31 (III) AN ACKNOWLEDGMENT OF THE TESTATOR AND THE
32 AFFIDAVITS OF THE ATTESTING WITNESSES BEFORE A NOTARY PUBLIC, UNDER

1 SEAL, ATTACHED OR ANNEXED TO THE WILL, IN SUBSTANTIALLY THE FOLLOWING
2 FORM AND CONTENT:

3 THE STATE OF MARYLAND.

4 COUNTY OF _____.

5 BEFORE ME, THE UNDERSIGNED AUTHORITY/ATTORNEY, ON THIS DAY PERSONALLY
6 APPEARED _____, AND _____, KNOWN TO ME TO BE THE TESTATOR
7 AND THE WITNESSES, RESPECTIVELY, WHOSE NAMES ARE SIGNED TO THE
8 ATTACHED OR FOREGOING INSTRUMENT AND, ALL OF THESE PERSONS BEING BY ME
9 DULY SWORN, _____, THE TESTATOR, DECLARED TO ME AND TO THE
10 WITNESSES IN MY PHYSICAL OR ELECTRONIC PRESENCE THAT THE SAID
11 INSTRUMENT IS THE TESTATOR’S WILL, THAT THE TESTATOR IS OF SOUND MIND,
12 AND THAT THE TESTATOR HAD WILLINGLY SIGNED OR WILLINGLY DIRECTED
13 ANOTHER TO SIGN THE WILL UNDER NO CONSTRAINT OR UNDUE INFLUENCE, AND
14 EXECUTED IT IN THE PHYSICAL OR REMOTE PRESENCE OF THE WITNESSES AS A
15 FREE AND VOLUNTARY ACT FOR THE PURPOSES THEREIN EXPRESSED, AND THAT
16 THE WITNESSES, IN THE PHYSICAL OR ELECTRONIC PRESENCE AND AT THE
17 REQUEST OF THE TESTATOR, SIGNED THE WILL AS WITNESSES, AND THAT TO THE
18 BEST OF THE WITNESSES’ KNOWLEDGE THE TESTATOR WAS AT LEAST 18 YEARS OLD,
19 OF SOUND MIND, AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE.

20 _____ TESTATOR

21 _____ WITNESS

22 _____ WITNESS

23 SUBSCRIBED, SWORN AND ACKNOWLEDGED BEFORE ME BY _____, THE
24 TESTATOR, AND SUBSCRIBED AND SWORN TO BEFORE ME BY _____ AND
25 _____, WITNESSES, THIS _____ DAY OF _____,
26 _____ SEAL _____ NOTARY PUBLIC

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

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

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

34 (3) THE TESTATOR SHALL CREATE A CERTIFIED WILL THAT SHALL

1 INCLUDE:

2 (I) A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF
3 ALL PAGES OF THE WILL INCLUDING THE ORIGINAL SIGNATURES OR ELECTRONIC
4 SIGNATURES OF THE TESTATOR AND ALL WITNESSES; AND

5 (II) AN ORIGINAL PAPER CERTIFICATION SIGNED AND
6 ACKNOWLEDGED BY THE TESTATOR ~~BEFORE~~ IN THE PHYSICAL OR ELECTRONIC
7 PRESENCE OF A NOTARY PUBLIC, WHO MAY NOT BE ONE OF THE WITNESSES,
8 STATING:

9 1. THE DATE THAT THE TESTATOR AND WITNESSES
10 SIGNED THE WILL; AND

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

14 (E) (1) ONCE THE SUPERVISING ATTORNEY OR TESTATOR CREATES A
15 CERTIFIED WILL AS PROVIDED IN SUBSECTION (C) OR (D) OF THIS SECTION, THE
16 CERTIFIED WILL SHALL BE DEEMED TO BE THE ORIGINAL WILL OF THE TESTATOR
17 FOR ALL PURPOSES UNDER THIS ARTICLE.

18 (2) THE DATE OF EXECUTION FOR A CERTIFIED WILL DESCRIBED
19 UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE THE DATE OF EXECUTION
20 STATED IN THE CERTIFIED WILL.

21 (F) A WILL EXECUTED IN CONFORMANCE WITH THE PROVISIONS OF
22 EXECUTIVE ORDER 20.04.10.01, AUTHORIZING REMOTE WITNESSING AND
23 ELECTRONIC SIGNING OF CERTAIN DOCUMENTS, SHALL BE DEEMED TO HAVE BEEN
24 SIGNED AND WITNESSED IN CONFORMITY WITH THIS SECTION IF THE WILL WAS
25 SIGNED AND WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN
26 EFFECT.

27 4-104.

28 [A will executed outside this State] IF A TESTATOR IS PHYSICALLY OUTSIDE THE
29 STATE AT THE TIME THE TESTATOR EXECUTES THE WILL, THE WILL is properly
30 executed if it is:

31 (1) In writing;

32 (2) Signed by the testator OR BY SOME OTHER PERSON ON THE
33 TESTATOR'S BEHALF, IN THE TESTATOR'S PHYSICAL PRESENCE, AND BY THE

1 TESTATOR'S EXPRESS DIRECTION; and

2 (3) Executed in conformity with:

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

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

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

7 17–101.

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

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

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

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

14 (D) “ELECTRONIC POWER OF ATTORNEY” MEANS A POWER OF ATTORNEY
15 CONTAINING ONE OR MORE ELECTRONIC SIGNATURES AND ~~EXECUTED, PREPARED,~~
16 ~~AND CERTIFIED~~ EXECUTED IN COMPLIANCE WITH THIS TITLE.

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

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

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

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

25 (2) Is:

26 (i) Missing;

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

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

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

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

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

8 **[(f)] (K)** “Property” includes both real and personal property and any right or
9 title in real or personal property, whether held individually or jointly and whether
10 indivisible, beneficial, contingent, or of any other nature.

11 **(L) “REAL ESTATE TRANSACTION” MEANS ANY ACTIVITY INVOLVING THE**
12 **TRANSFER OR CREATION OF AN ESTATE, AN INTEREST, A LIEN, OR AN**
13 **ENCUMBRANCE IN REAL PROPERTY, INCLUDING RIGHTS OR INTERESTS**
14 **APPURTENANT THERETO, AND THE DISPOSITION OF PROCEEDS DERIVED**
15 **THEREFROM.**

16 **~~(L)~~ (M)** “RECORD” HAS THE MEANING STATED IN § 4–101 OF THIS
17 ARTICLE.

18 **~~(M)~~ (N)** “REMOTELY WITNESSED POWER OF ATTORNEY” MEANS A POWER
19 OF ATTORNEY SIGNED BY THE PRINCIPAL UNDER CIRCUMSTANCES WHERE ANY
20 WITNESS IS IN THE ELECTRONIC PRESENCE, BUT NOT THE PHYSICAL PRESENCE, OF
21 THE PRINCIPAL WHEN THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY,
22 AND THE POWER OF ATTORNEY IS EXECUTED, PREPARED, AND CERTIFIED IN
23 COMPLIANCE WITH THIS TITLE.

24 **~~(N)~~ (O)** “SIGN” HAS THE MEANING STATED IN § 4–101 OF THIS ARTICLE.

25 **[(g)] ~~(O)~~ (P)** (1) “Statutory form power of attorney” means a power of attorney
26 that is substantially in the same form as one of the powers of attorney set forth in Subtitle
27 2 of this title.

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

32 **[(h)] ~~(P)~~ (Q)** (1) “Stocks and bonds” means evidence of ownership in or debt
33 issued by a corporation, partnership, limited liability company, firm, association, or similar
34 entity.

1 (2) "Stocks and bonds" includes stocks, bonds, debentures, notes,
 2 membership interests, mutual fund interests, money market account interests, voting trust
 3 certificates, equipment trust certificates, certificates of deposit, certificates of participation,
 4 certificates of beneficial interest, stock rights, stock warrants, and any other instruments
 5 evidencing rights of a similar character issued by or in connection with any corporation,
 6 partnership, limited liability company, firm, association, or similar entity.

7 ~~(E)~~ **(R)** "SUPERVISING ATTORNEY" HAS THE MEANING STATED IN § 4-101
 8 OF THIS ARTICLE.

9 17-110.

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

12 (1) In writing;

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

15 (3) Acknowledged by the principal ~~before~~ **IN THE PHYSICAL OR**
 16 **ELECTRONIC PRESENCE OF** a notary public; and

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

18 **(I) THE PHYSICAL** presence of the principal and **[in the presence**
 19 **of] each other; OR**

20 **(II) THE ELECTRONIC PRESENCE OF THE PRINCIPAL AND EACH**
 21 ~~**OTHER, PROVIDED THAT THE ELECTRONIC POWER OF ATTORNEY OR REMOTELY**~~
 22 ~~**WITNESSED POWER OF ATTORNEY SATISFIES THE REQUIREMENTS UNDER**~~
 23 ~~**SUBSECTION (C) OF THIS SECTION**~~ **OTHER OR ANY COMBINATION OF PHYSICAL AND**
 24 **ELECTRONIC PRESENCE.**

25 (b) The notary public before whom the principal acknowledges the power of
 26 attorney may also serve as one of the two or more adult witnesses **AND MAY USE**
 27 **COMMUNICATION TECHNOLOGY UNDER § 18-214 OF THE STATE GOVERNMENT**
 28 **ARTICLE FOR THAT PURPOSE** [unless the notary public is using communication
 29 technology under § 18-214 of the State Government Article to perform the notarial act for
 30 a remotely located principal].

31 **(C) ~~AN~~ EXCEPT FOR AN ELECTRONIC POWER OF ATTORNEY USED IN**
 32 **CONNECTION WITH A REAL ESTATE TRANSACTION, AN ELECTRONIC POWER OF**
 33 **ATTORNEY OR A REMOTELY WITNESSED POWER OF ATTORNEY EXECUTED UNDER**

1 THIS SUBSECTION SHALL SATISFY THE FOLLOWING ADDITIONAL REQUIREMENTS:

2 (1) AT THE TIME THE PRINCIPAL AND WITNESSES SIGN THE POWER
3 OF ATTORNEY, THE PRINCIPAL AND ALL WITNESSES SHALL BE IN THE PHYSICAL
4 PRESENCE OR ELECTRONIC PRESENCE OF ONE ANOTHER AND A SUPERVISING
5 ATTORNEY, WHO MAY BE ONE OF THE WITNESSES;

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

8 (3) EACH WITNESS WHO IS IN THE ELECTRONIC PRESENCE OF THE
9 PRINCIPAL WHEN THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY, OR
10 PROVIDES AN ELECTRONIC SIGNATURE ON THE POWER OF ATTORNEY, SHALL BE A
11 RESIDENT OF THE UNITED STATES AND PHYSICALLY LOCATED IN THE UNITED
12 STATES AT THE TIME THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY;

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

15 (5) THE SUPERVISING ATTORNEY SHALL CREATE A CERTIFIED
16 POWER OF ATTORNEY THAT SHALL INCLUDE:

17 (I) A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF
18 ALL PAGES OF THE POWER OF ATTORNEY, INCLUDING THE ORIGINAL SIGNATURES
19 AND ELECTRONIC SIGNATURES OF THE PRINCIPAL AND ALL WITNESSES; AND

20 (II) A SIGNED ORIGINAL PAPER CERTIFICATION BY THE
21 SUPERVISING ATTORNEY STATING THE DATE THAT THE SUPERVISING ATTORNEY
22 OBSERVED THE PRINCIPAL AND WITNESSES SIGN THE POWER OF ATTORNEY AND
23 THAT THE SUPERVISING ATTORNEY TOOK REASONABLE STEPS TO VERIFY:

24 1. THAT THE CERTIFIED POWER OF ATTORNEY
25 INCLUDES A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF ALL PAGES OF
26 THE POWER OF ATTORNEY;

27 2. THAT THE SIGNATURES CONTAINED IN THE
28 CERTIFIED POWER OF ATTORNEY ARE THE ORIGINAL SIGNATURES OF EACH PARTY
29 SIGNING THE SAME PAPER POWER OF ATTORNEY, OR ANY COUNTERPART THEREOF,
30 AND THE ELECTRONIC SIGNATURES OF EACH PARTY SIGNING THE SAME
31 ELECTRONIC POWER OF ATTORNEY, OR ANY COUNTERPART THEREOF;

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

1 4. THE IDENTITY OF THE PRINCIPAL, AND THAT THE
 2 PRINCIPAL WAS A RESIDENT OF, OR WAS PHYSICALLY LOCATED IN, THE STATE AT
 3 THE TIME THE PRINCIPAL SIGNED THE POWER OF ATTORNEY; AND

4 5. THE IDENTITY OF EACH WITNESS, AND THAT EACH
 5 WITNESS WHO WAS NOT IN THE PHYSICAL PRESENCE OF THE PRINCIPAL WHEN THE
 6 WITNESS ATTESTED AND SIGNED THE POWER OF ATTORNEY, OR PROVIDED AN
 7 ELECTRONIC SIGNATURE ON THE POWER OF ATTORNEY, WAS A RESIDENT OF THE
 8 UNITED STATES AND PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME
 9 THE WITNESS ATTESTED AND SIGNED THE POWER OF ATTORNEY.

10 (D) (1) ~~ONCE THE SUPERVISING ATTORNEY CREATES A CERTIFIED~~
 11 ~~POWER OF ATTORNEY AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE~~
 12 ~~CERTIFIED POWER OF ATTORNEY~~ A CERTIFIED POWER OF ATTORNEY THAT
 13 SATISFIES THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION SHALL BE
 14 DEEMED TO BE THE ORIGINAL POWER OF ATTORNEY OF THE PRINCIPAL FOR ALL
 15 PURPOSES UNDER THIS ARTICLE.

16 (2) THE DATE OF EXECUTION FOR THE POWER OF ATTORNEY
 17 DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE THE DATE OF
 18 EXECUTION AS STATED IN THE CERTIFIED POWER OF ATTORNEY.

19 (E) (1) A POWER OF ATTORNEY EXECUTED IN CONFORMANCE WITH THE
 20 PROVISIONS OF EXECUTIVE ORDER 20.04.10.01, AUTHORIZING REMOTE
 21 WITNESSING AND ELECTRONIC SIGNING OF CERTAIN DOCUMENTS, SHALL BE
 22 DEEMED TO HAVE BEEN SIGNED AND WITNESSED IN CONFORMITY WITH THIS
 23 SECTION IF THE POWER OF ATTORNEY WAS SIGNED AND WITNESSED DURING THE
 24 TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT.

25 (2) THE NOTARIZATION OF A POWER OF ATTORNEY IN CONFORMANCE
 26 WITH THE PROVISIONS OF EXECUTIVE ORDER 20.03.30.04, AUTHORIZING REMOTE
 27 NOTARIZATIONS, SHALL BE DEEMED TO HAVE BEEN SIGNED AND WITNESSED IN
 28 CONFORMITY WITH THIS SECTION IF THE POWER OF ATTORNEY WAS SIGNED AND
 29 WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT AND
 30 THE NOTARY PUBLIC ACTING UNDER THE ORDER MAY HAVE SERVED AS ONE OF THE
 31 WITNESSES.

32 Article – Health – General

33 5–601.

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

1 (b) “Advance directive” means:

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

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

6 (3) An electronic document, voluntarily executed by the declarant, in which
7 the declarant’s identity is authenticated in accordance with the guidelines described in §
8 5–602(c)(3) of this subtitle.

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

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

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

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

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

21 (3) The degree to which the individual’s medical condition, the treatment,
22 or the withholding or withdrawal of treatment result in a severe and continuing
23 impairment of the dignity of the individual by subjecting the individual to a condition of
24 extreme humiliation and dependency;

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

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

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

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

32 (f) “Competent individual” means a person who is at least 18 years of age or who
33 under § 20–102(a) of this article has the same capacity as an adult to consent to medical

1 treatment and who has not been determined to be incapable of making an informed
2 decision.

3 (g) “Declarant” means a competent individual who makes an advance directive
4 while capable of making and communicating an informed decision.

5 (H) “ELECTRONIC” HAS THE MEANING STATED IN § 4–101 OF THE ESTATES
6 AND TRUSTS ARTICLE.

7 (I) “ELECTRONIC PRESENCE” HAS THE MEANING STATED IN § 4–101 OF
8 THE ESTATES AND TRUSTS ARTICLE.

9 [(h)] (J) “Electronic signature” has the meaning stated in [§ 21–101 of the
10 Commercial Law Article] § 4–101 OF THE ESTATES AND TRUSTS ARTICLE.

11 [(i)] (K) “Emergency medical services ‘do not resuscitate order’” means a
12 physician’s, physician assistant’s, or nurse practitioner’s written order in a form
13 established by protocol issued by the Maryland Institute for Emergency Medical Services
14 in conjunction with the State Board of Physicians which, in the event of a cardiac or
15 respiratory arrest of a particular patient, authorizes certified or licensed emergency
16 medical services personnel to withhold or withdraw cardiopulmonary resuscitation
17 including cardiac compression, endotracheal intubation, other advanced airway
18 management techniques, artificial ventilation, defibrillation, and other related
19 life–sustaining procedures.

20 [(j)] (L) “End–stage condition” means an advanced, progressive, irreversible
21 condition caused by injury, disease, or illness:

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

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

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

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

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

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

33 (2) “Health care provider” includes agents or employees of a health care

1 practitioner or a facility that provides health care to individuals.

2 **[(m)] (O)** (1) “Incapable of making an informed decision” means the inability
3 of an adult patient to make an informed decision about the provision, withholding, or
4 withdrawal of a specific medical treatment or course of treatment because the patient is
5 unable to understand the nature, extent, or probable consequences of the proposed
6 treatment or course of treatment, is unable to make a rational evaluation of the burdens,
7 risks, and benefits of the treatment or course of treatment, or is unable to communicate a
8 decision.

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

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

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

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

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

21 **[(o)] (Q)** “Medically ineffective treatment” means that, to a reasonable degree of
22 medical certainty, a medical procedure will not:

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

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

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

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

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

33 (2) From which, after the passage of a medically appropriate period of time,
34 it can be determined, to a reasonable degree of medical certainty, that there can be no

1 recovery.

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

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

6 [(s)] (V) “Physician assistant” means an individual who is licensed under Title
7 15 of the Health Occupations Article to practice medicine with physician supervision.

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

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

13 5-602.

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

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

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

26 (II) A WRITTEN OR ELECTRONIC ADVANCE DIRECTIVE SIGNED
27 AND WITNESSED IN CONFORMANCE WITH THE PROVISIONS OF EXECUTIVE ORDER
28 20.04.10.01, AUTHORIZING REMOTE WITNESSING AND ELECTRONIC SIGNING OF
29 CERTAIN DOCUMENTS, SHALL BE DEEMED TO HAVE BEEN SIGNED AND WITNESSED
30 IN CONFORMITY WITH THIS SUBSECTION IF THE ADVANCE DIRECTIVE WAS SIGNED
31 AND WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT.

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

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

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

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

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

14 (i) Is dated; and

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

17 Article – Real Property

18 4-109.

19 (a) If an instrument was recorded before January 1, 1973, any failure of the
20 instrument to comply with the formal requisites listed in this section has no effect, unless
21 the defect was challenged in a judicial proceeding commenced by July 1, 1973.

22 (b) If an instrument is recorded on or after January 1, 1973, whether or not the
23 instrument is executed on or after that date, any failure to comply with the formal
24 requisites listed in this section has no effect unless it is challenged in a judicial proceeding
25 commenced within six months after it is recorded.

26 (c) For the purposes of this section, the failures in the formal requisites of an
27 instrument are:

28 (1) A defective acknowledgment;

29 (2) A failure to attach any clerk's certificate;

30 (3) An omission of a notary seal or other seal;

31 (4) A lack of or improper acknowledgment or affidavit of consideration,
32 agency, or disbursement;

1 (5) An omission of an attestation; [or]

2 (6) A failure to name any trustee in a deed of trust; OR

3 **(7) A LACK OF OR DEFECTIVE WITNESS ATTESTATION TO A POWER OF**
4 **ATTORNEY.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That, except as provided in Section
6 3 of this Act, this Act shall be construed to apply retroactively and shall be applied to and
7 interpreted to affect any ~~will, power of attorney, or advance directive executed on or after~~
8 ~~March 10, 2020~~ instrument on record or recorded on or after October 1, 2021.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be construed
10 to apply to any case pending in a court to enforce or construe an instrument as of October
11 1, 2021.

12 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2021.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.