

CHAPTER 79

(House Bill 510)

AN ACT concerning

Health Care Decisions Act – Advance Directives – Electronic Documents and Electronic Signatures

FOR the purpose of establishing, for purposes of the Health Care Decisions Act, that an electronic signature shall have the same effect as a manual signature, if the electronic signature meets certain requirements; authorizing a competent individual to make an electronic advance directive for certain purposes; authorizing an advance directive to be revoked electronically; defining certain terms; altering a certain definition; making certain conforming and stylistic changes; and generally relating to electronic documents and electronic signatures under the Health Care Decisions Act.

BY renumbering

Article – Health – General

Section 5–601(h) through (p) and (q), respectively
to be Section 5–601(i) through (q) and (s), respectively
Annotated Code of Maryland
(2005 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, without amendments,

Article – Commercial Law

Section 21–101(i)
Annotated Code of Maryland
(2005 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,

Article – Health – General

Section 5–601(b), 5–602(a), (b)(2), (c), (d), and (f)(2), and 5–604
Annotated Code of Maryland
(2005 Replacement Volume and 2007 Supplement)

BY adding to

Article – Health – General

Section 5–601(h) and (r) and 5–601.1
Annotated Code of Maryland
(2005 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 5–601(h) through (p) and (q), respectively, of

Article – Health – General of the Annotated Code of Maryland be renumbered to be Section(s) 5–601(i) through (q) and (s), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Commercial Law

21–101.

(i) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Article – Health – General

5–601.

(b) “Advance directive” means:

(1) A witnessed written **OR ELECTRONIC** document, voluntarily executed by the declarant in accordance with the requirements of this subtitle; or

(2) A witnessed oral statement, made by the declarant in accordance with the provisions of this subtitle.

(H) “ELECTRONIC SIGNATURE” HAS THE MEANING STATED IN § 21–101 OF THE COMMERCIAL LAW ARTICLE.

(R) “SIGNED” MEANS BEARING A MANUAL OR ELECTRONIC SIGNATURE.

5–601.1.

FOR PURPOSES OF THIS PART I OF THIS SUBTITLE, AN ELECTRONIC SIGNATURE SHALL HAVE THE SAME EFFECT AS A MANUAL SIGNATURE IF THE ELECTRONIC SIGNATURE:

(1) USES AN ALGORITHM APPROVED BY THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY;

(2) IS UNIQUE TO THE INDIVIDUAL USING IT;

(3) IS CAPABLE OF VERIFICATION;

(4) IS UNDER THE SOLE CONTROL OF THE INDIVIDUAL USING IT;

(5) IS LINKED TO DATA IN SUCH A MANNER THAT IF THE DATA ARE CHANGED, THE ELECTRONIC SIGNATURE IS INVALIDATED;

(6) PERSISTS WITH THE DOCUMENT AND NOT BY ASSOCIATION IN SEPARATE FILES; AND

(7) IS BOUND TO A DIGITAL CERTIFICATE.

5-602.

(a) Any competent individual may, at any time, make a written **OR ELECTRONIC** advance directive regarding the provision of health care to that individual, or the withholding or withdrawal of health care from that individual.

(b) (2) Any competent individual may, at any time, make a written **OR ELECTRONIC** advance directive appointing an agent to make health care decisions for the individual under the circumstances stated in the advance directive.

(c) (1) A written **OR ELECTRONIC** advance directive shall be dated, signed by or at the express direction of the declarant, and subscribed by two witnesses.

(2) (i) Except as provided in [items] **SUBPARAGRAPHS** (ii) and (iii) of this paragraph, any competent individual may serve as a witness to an advance directive, including an employee of a health care facility or physician caring for the declarant if acting in good faith.

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

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

(d) (1) Any competent individual may make an oral advance directive to authorize the providing, withholding, or withdrawing of any life-sustaining procedure or to appoint an agent to make health care decisions for the individual.

(2) An oral advance directive shall have the same effect as a written **OR ELECTRONIC** advance directive if made in the presence of the attending physician and one witness and if the substance of the oral advance directive is documented as part of the individual's medical record. The documentation shall be dated and signed by the attending physician and the witness.

(f) (2) An attending physician who is notified of the existence of the advance directive shall promptly:

(i) If the advance directive is written **OR ELECTRONIC**, make the advance directive or a copy of the advance directive a part of the declarant's medical records; or

(ii) If the advance directive is oral, make the substance of the advance directive, including the date the advance directive was made and the name of the attending physician, a part of the declarant's medical records.

5-604.

(a) An advance directive may be revoked at any time by a declarant by a signed and dated [writing] **WRITTEN OR ELECTRONIC DOCUMENT**, by physical cancellation or destruction, by an oral statement to a health care practitioner or by the execution of a subsequent directive.

(b) If a declarant revokes an advance directive by an oral statement to a health care practitioner, the practitioner and a witness to the oral revocation shall document the substance of the oral revocation in the declarant's medical record.

(c) It shall be the responsibility of the declarant, to the extent reasonably possible, to notify any person to whom the declarant has provided a copy of the directive.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, April 8, 2008.