A BILL ENTITLED

AN ACT concerning Health Care Decisions by Surrogates – Donations of Nonvital Organs

FOR the purpose of authorizing a person that is authorized to make health care decisions for another under a certain provision of law to authorize the donation of a nonvital organ of a patient under certain circumstances; providing for the application of this Act; defining a certain term; and generally relating to health care decisions by surrogates.

BY repealing and reenacting, without amendments, Article – Health – General Section 5–605(a) Annotated Code of Maryland (2009 Replacement Volume and 2011 Supplement)

BY adding to Article – Health – General Section 5–605(e) Annotated Code of Maryland (2009 Replacement Volume and 2011 Supplement)

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

Article – Health – General

5–605.

(a) (1) In this subsection, “unavailable” means:

(i) After reasonable inquiry, a health care provider is unaware of the existence of a health care agent or surrogate decision maker;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law.
(ii) After reasonable inquiry, a health care provider cannot ascertain the whereabouts of a health care agent or surrogate decision maker;

(iii) A health care agent or surrogate decision maker has not responded in a timely manner, taking into account the health care needs of the individual, to a written or oral message from a health care provider;

(iv) A health care agent or surrogate decision maker is incapacitated; or

(v) A health care agent or surrogate decision maker is unwilling to make decisions concerning health care for the individual.

(2) The following individuals or groups, in the specified order of priority, may make decisions about health care for a person who has been certified to be incapable of making an informed decision and who has not appointed a health care agent in accordance with this subtitle or whose health care agent is unavailable. Individuals in a particular class may be consulted to make a decision only if all individuals in the next higher class are unavailable:

(i) A guardian for the patient, if one has been appointed;

(ii) The patient’s spouse or domestic partner;

(iii) An adult child of the patient;

(iv) A parent of the patient;

(v) An adult brother or sister of the patient; or

(vi) A friend or other relative of the patient who meets the requirements of paragraph (3) of this subsection.

(3) A friend or other relative may make decisions about health care for a patient under paragraph (2) of this subsection if the person:

(i) Is a competent individual; and

(ii) Presents an affidavit to the attending physician stating:

1. That the person is a relative or close friend of the patient; and

2. Specific facts and circumstances demonstrating that the person has maintained regular contact with the patient sufficient to be familiar with the patient’s activities, health, and personal beliefs.
The attending physician shall include the affidavit presented under paragraph (3) of this subsection in the patient’s medical record.

(E) (1) IN THIS SUBSECTION, “NONVITAL ORGAN” MEANS:

(i) IF A PATIENT HAS TWO FUNCTIONING KIDNEYS, ONE KIDNEY; OR

(ii) A LOBE OF A LIVER.

(2) THIS SUBSECTION APPLIES ONLY TO A PATIENT WHO HAS BEEN CERTIFIED UNDER § 5–606(B) OF THIS SUBTITLE TO BE IN A PERSISTENT VEGETATIVE STATE.

(3) A PERSON AUTHORIZED TO MAKE HEALTH CARE DECISIONS FOR ANOTHER UNDER THIS SECTION MAY AUTHORIZE THE DONATION OF A NONVITAL ORGAN IF THE DONATION IS BASED ON:

(i) THE WISHES OF THE PATIENT AS PREVIOUSLY EXPRESSED BY THE PATIENT; OR

(ii) A DETERMINATION BY THE SURROGATE THAT THE DONATION IS CONSISTENT WITH THE PATIENT’S RELEVANT RELIGIOUS AND MORAL BELIEFS AND PERSONAL VALUES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.