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**By: Delegate Finifter**

Introduced and read first time: January 31, 1997

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Durable Power of Attorney - Registry**

3 FOR the purpose of requiring the register of wills in each county to establish and  
4 maintain a registry of the names of principals who exercise the durable power of  
5 attorney and the names of their attorneys in fact or agents; requiring a principal  
6 who seeks to exercise the durable power of attorney to meet certain requirements;  
7 providing that a third party is not civilly liable for acting in good faith and in  
8 reliance on the information contained in the registry; allowing the enabling  
9 document that establishes an individual as an attorney in fact or agent to provide for  
10 the revocation of the durable power of attorney and expungement of the name of  
11 the individual from the registry; authorizing a register of wills to charge each  
12 principal who seeks to be listed in the registry a reasonable registry fee; making this  
13 Act not applicable to an instrument or portion of an instrument that is an advance  
14 directive appointing a certain health care agent; defining a certain term; and  
15 generally relating to a registry of the names of principals who exercise the durable  
16 power of attorney and the names of their attorneys in fact or agents.

17 BY repealing and reenacting, without amendments,  
18 Article - Estates and Trusts  
19 Section 2-208(a)  
20 Annotated Code of Maryland  
21 (1991 Replacement Volume and 1996 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article - Estates and Trusts  
24 Section 13-601  
25 Annotated Code of Maryland  
26 (1991 Replacement Volume and 1996 Supplement)

27 BY adding to  
28 Article - Estates and Trusts  
29 Section 2-208(l) and 13-604  
30 Annotated Code of Maryland  
31 (1991 Replacement Volume and 1996 Supplement)

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

3 **Article - Estates and Trusts**

4 2-208.

5 (a) In addition to other powers and duties provided for in this title, each register  
6 has the additional powers and duties specified in this section.

7 (L) AS SET FORTH UNDER § 13-604 OF THIS ARTICLE, EACH REGISTER SHALL  
8 ESTABLISH AND MAINTAIN A REGISTRY OF THE NAMES OF PRINCIPALS WHO  
9 EXERCISE THE DURABLE POWER OF ATTORNEY AND THE NAMES OF THEIR  
10 ATTORNEYS IN FACT OR AGENTS.

11 13-601.

12 (a) Except as provided in subsection [(d)] (E) of this section, if a principal  
13 designates his attorney in fact or agent by a power of attorney in writing and the writing  
14 contains the words:

15 (1) "This power of attorney shall not be affected by disability of the  
16 principal";

17 (2) "This power of attorney becomes effective upon the disability of the  
18 principal"; or

19 (3) Similar words showing the intent of the principal that the authority  
20 conferred shall be exercisable notwithstanding his disability, the authority of the attorney  
21 in fact or agent is exercisable by him notwithstanding the later disability of the principal  
22 or uncertainty whether the principal is dead or alive.

23 (b) A PERSON WHO DESIGNATES AN ATTORNEY IN FACT OR AGENT UNDER  
24 THIS SECTION SHALL SUBMIT A COPY OF THE ENABLING DOCUMENT TO THE  
25 REGISTER OF WILLS FOR THE COUNTY IN WHICH THE PRINCIPAL OR ATTORNEY IN  
26 FACT OR AGENT RESIDES AS SET FORTH IN § 13-604 OF THIS SUBTITLE.

27 (C) Any act done by the attorney in fact or agent pursuant to the power during any  
28 period of disability or incompetence or uncertainty as to whether the principal is dead or  
29 alive has the same effect and inures to the benefit of and binds the principal as if the  
30 principal were alive, competent, and not disabled.

31 [(c)] (D) If a guardian is appointed for the principal, the attorney in fact or agent  
32 shall account to the guardian rather than the principal. The guardian has the same power  
33 the principal would have but for his disability or incompetence to revoke, suspend, or  
34 terminate all or any part of the power of attorney or agency.

35 [(d)] (E) (1) This section does not apply to an instrument or portion of an  
36 instrument that is an advance directive appointing a health care agent under Title 5,  
37 Subtitle 6 of the Health - General Article.

38 (2) An instrument or portion of an instrument that is an advance directive  
39 appointing a health care agent is subject to the provisions of Title 5, Subtitle 6 of the  
40 Health - General Article.

3

1 13-604.

2 (A) IN THIS SECTION, "DURABLE POWER OF ATTORNEY" MEANS A POWER OF  
3 ATTORNEY:

4 (1) THAT IS ESTABLISHED WHEN A PRINCIPAL DESIGNATES IN WRITING  
5 ANOTHER AN ATTORNEY IN FACT OR AGENT; AND

6 (2) THAT IS EXERCISABLE NOTWITHSTANDING THE PRINCIPAL'S  
7 SUBSEQUENT DISABILITY OR INCAPACITY.

8 (B) (1) THIS SECTION DOES NOT APPLY TO AN INSTRUMENT OR PORTION  
9 OF AN INSTRUMENT THAT IS AN ADVANCE DIRECTIVE APPOINTING A HEALTH CARE  
10 AGENT UNDER TITLE 5, SUBTITLE 6 OF THE HEALTH - GENERAL ARTICLE.

11 (2) AN INSTRUMENT OR PORTION OF AN INSTRUMENT THAT IS AN  
12 ADVANCE DIRECTIVE APPOINTING A HEALTH CARE AGENT IS SUBJECT TO THE  
13 PROVISIONS OF TITLE 5, SUBTITLE 6 OF THE HEALTH - GENERAL ARTICLE.

14 (C) THE REGISTER OF WILLS IN EACH COUNTY SHALL ESTABLISH AND  
15 MAINTAIN A REGISTRY OF THE NAMES OF PRINCIPALS WHO EXERCISE THE  
16 DURABLE POWER OF ATTORNEY AND THE NAMES OF THE ATTORNEYS IN FACT OR  
17 AGENTS OF THE PRINCIPALS.

18 (D) A PRINCIPAL WHO SEEKS TO EXERCISE THE DURABLE POWER OF  
19 ATTORNEY SHALL:

20 (1) EXECUTE AN ENABLING DOCUMENT IN ACCORDANCE WITH § 13-601  
21 OF THIS SUBTITLE; AND

22 (2) SUBMIT A COPY OF THE ENABLING DOCUMENT TO THE REGISTER  
23 OF WILLS OF THE COUNTY IN WHICH THE PRINCIPAL OR THE PRINCIPAL'S  
24 ATTORNEY IN FACT OR AGENT RESIDES.

25 (E) A THIRD PARTY IS NOT CIVILLY LIABLE FOR ACTING IN RELIANCE ON  
26 THE INFORMATION CONTAINED IN THE REGISTRY.

27 (F) THE ENABLING DOCUMENT THAT ESTABLISHES AN INDIVIDUAL AS AN  
28 ATTORNEY IN FACT OR AGENT MAY PROVIDE FOR THE REVOCATION OF THE  
29 DURABLE POWER OF ATTORNEY AND EXPUNGEMENT OF THE NAME OF THE  
30 INDIVIDUAL FROM THE REGISTRY.

31 (G) A REGISTER MAY CHARGE EACH PRINCIPAL WHO SEEKS TO BE LISTED IN  
32 THE REGISTRY A REASONABLE REGISTRY FEE.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
34 October 1, 1997.