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HB 1079/95 - JUD

1997 Regular Session  
7lr1933

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**By: Senator Colburn**

Introduced and read first time: January 31, 1997

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Power of Attorney - Durability**

3 FOR the purpose of establishing that if a principal makes certain designations by a power  
4 of attorney in writing, the power of attorney is a durable power of attorney unless  
5 otherwise provided by the terms of the writing; defining the term "durable power of  
6 attorney"; providing for the application of this Act; and generally relating to powers  
7 of attorney.

8 BY repealing and reenacting, with amendments,  
9 Article - Estates and Trusts  
10 Section 13-601  
11 Annotated Code of Maryland  
12 (1991 Replacement Volume and 1996 Supplement)

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

15 **Article - Estates and Trusts**

16 13-601.

17 (A) IN THIS SECTION, "DURABLE POWER OF ATTORNEY" MEANS A POWER OF  
18 ATTORNEY BY WHICH A PRINCIPAL DESIGNATES ANOTHER AS AN ATTORNEY IN  
19 FACT OR AGENT AND THE AUTHORITY IS EXERCISABLE NOTWITHSTANDING THE  
20 PRINCIPAL'S SUBSEQUENT DISABILITY OR INCAPACITY.

21 [(a)] (B) Except as provided in subsection [(d)](E) of this section, [if] WHEN a  
22 principal designates [his] ANOTHER AS AN attorney in fact or agent by a power of  
23 attorney in writing, IT IS A DURABLE POWER OF ATTORNEY UNLESS OTHERWISE  
24 PROVIDED BY ITS TERMS [and the writing contains the words:

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

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

29 (3) Similar words showing the intent of the principal that the authority  
30 conferred shall be exercisable notwithstanding his disability, the authority of the attorney

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1 in fact or agent is exercisable by him notwithstanding the later disability of the principal  
2 or uncertainty whether the principal is dead or alive].

3 [(b)] (C) Any act done by the attorney in fact or agent pursuant to the power  
4 during any period of disability or incompetence or uncertainty as to whether the principal  
5 is dead or alive has the same effect and inures to the benefit of and binds the principal as  
6 if the principal were alive, competent, and not disabled.

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

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

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

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed  
18 only prospectively and may not be applied or interpreted to have any effect on or  
19 application to any power of attorney in effect before the effective date of this Act.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 1997.