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By: **Delegate Dembrow**

Introduced and read first time: January 17, 2001

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Guardian - Medical Procedures**

3 FOR the purpose of allowing the court to authorize a guardian to make decisions  
4 regarding medical procedures that involve a substantial risk to the life of a  
5 disabled person without further court authorization when the guardian is  
6 within one of certain classes of individuals and the court determines the  
7 guardian is familiar with the certain circumstances of the disabled person; and  
8 generally relating to allowing the court to authorize a guardian to make  
9 decisions regarding medical procedures that involve a substantial risk to life.

10 BY repealing and reenacting, with amendments,  
11 Article - Estates and Trusts  
12 Section 13-708  
13 Annotated Code of Maryland  
14 (1991 Replacement Volume and 2000 Supplement)

15 BY repealing and reenacting, without amendments,  
16 Article - Health - General  
17 Section 5-605(a)(2) and (3)  
18 Annotated Code of Maryland  
19 (2000 Replacement Volume)

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

22 **Article - Estates and Trusts**

23 13-708.

24 (a) (1) The court may grant to a guardian of a person only those powers  
25 necessary to provide for the demonstrated need of the disabled person.

26 (2) The court may appoint a guardian of the person of a disabled person  
27 for the limited purpose of making one or more decisions related to the health care of  
28 that person.

1 (b) Subject to subsection (a) of this section, the rights, duties, and powers  
2 which the court may order include, but are not limited to:

3 (1) The same rights, powers, and duties that a parent has with respect to  
4 an unemancipated minor child, except that the guardian is not liable solely by reason  
5 of the guardianship to third persons for any act of the disabled person;

6 (2) The right to custody of the disabled person and to establish his place  
7 of abode within and without the State, provided there is court authorization for any  
8 change in the classification of abode, except that no one may be committed to a  
9 mental facility without an involuntary commitment proceeding as provided by law;

10 (3) The duty to provide for care, comfort, and maintenance, including  
11 social, recreational, and friendship requirements, and, if appropriate, for training and  
12 education of the disabled person;

13 (4) The duty to take reasonable care of the clothing, furniture, vehicles,  
14 and other personal effects of the disabled person, and, if other property requires  
15 protection, the power to commence protective proceedings;

16 (5) If a guardian of the estate of the disabled person has not been  
17 appointed, the right to commence proceedings to compel performance by any person of  
18 his duty to support the disabled person, and to apply the estate to the support, care,  
19 and education of the disabled person, except that the guardian of the person may not  
20 obtain funds from the estate for room and board that the guardian, his spouse,  
21 parent, or child provide without a court order approving the charge, and the duty to  
22 exercise care to conserve any excess estate for the needs of the disabled person;

23 (6) If a guardian of the estate has been appointed, the duty to control the  
24 custody and care of the disabled person, to receive reasonable sums for room and  
25 board provided to the disabled person, and to account to the guardian of the estate for  
26 funds expended, and the right to ask the guardian of the estate to expend the estate  
27 in payment of third persons for care and maintenance of the disabled person;

28 (7) The duty to file an annual report with the court indicating the  
29 present place of residence and health status of the ward, the guardian's plan for  
30 preserving and maintaining the future well-being of the ward, and the need for  
31 continuance or cessation of the guardianship or for any alteration in the powers of the  
32 guardian. The court shall renew the appointment of the guardian if it is satisfied that  
33 the grounds for the original appointment stated in § 13-705(b) above continue to  
34 exist. If the court believes such grounds may not exist, it shall hold a hearing, similar  
35 to that provided for in § 13-705 above, at which the guardian shall be required to  
36 prove that such grounds exist. If the court does not make these findings, it shall order  
37 the discontinuance of the guardianship of the person. If the guardian declines to  
38 participate in the hearing, the court may appoint another guardian to replace him  
39 pursuant to the priorities in § 13-707(a); and

40 (8) The power to give necessary consent or approval for:

1 (i) Medical or other professional care, counsel, treatment, or  
2 service, including admission to a hospital or nursing home or transfer from one  
3 medical facility to another;

4 (ii) Withholding medical or other professional care, counsel,  
5 treatment, or service; and

6 (iii) Withdrawing medical or other professional care, counsel,  
7 treatment, or service.

8 (c) (1) Notwithstanding the powers conferred to a guardian under  
9 subsection (b)(8) of this section, and except as provided in paragraph (2) of this  
10 subsection, where a medical procedure involves, or would involve, a substantial risk  
11 to the life of a disabled person, the court must authorize a guardian's consent or  
12 approval for:

13 (i) The medical procedure;

14 (ii) Withholding the medical procedure; or

15 (iii) Withdrawing the medical procedure that involves, or would  
16 involve, a substantial risk to the life of the disabled person.

17 (2) The court may, upon such conditions as the court considers  
18 appropriate, authorize a guardian to make a decision regarding medical procedures  
19 that involve a substantial risk to life without further court authorization, if:

20 (i) The disabled person has executed an advance directive in  
21 accordance with Title 5, Subtitle 6 of the Health - General Article that authorizes the  
22 guardian to consent to the provision, withholding or withdrawal of a medical  
23 procedure that involves a substantial risk to life but does not appoint a health care  
24 agent; or

25 (ii) The guardian is: [also the disabled person's spouse, adult child,  
26 parent, adult brother or sister, or adult grandchild.]

27 1. WITHIN A CLASS OF INDIVIDUALS SPECIFIED IN §  
28 5-605(A)(2) OF THE HEALTH - GENERAL ARTICLE AS AUTHORIZED TO MAKE HEALTH  
29 CARE DECISIONS FOR THE DISABLED PERSON; AND

30 2. DETERMINED BY THE COURT TO BE FAMILIAR WITH THE  
31 PERSONAL BELIEFS, VALUES, AND MEDICAL SITUATION OF THE DISABLED PERSON.

32 (3) A petition seeking the authorization of a court that a life-sustaining  
33 procedure be withheld or withdrawn is subject to the provisions of §§ 13-711 through  
34 13-713 of this subtitle.

35 (d) (1) Notwithstanding subsection (a) of this section, and in addition to the  
36 rights, duties, and powers which the court may order under subsection (b) of this  
37 section, the court may order the relief provided under this subsection.



- 1 (i) Is a competent individual; and
- 2 (ii) Presents an affidavit to the attending physician stating:
- 3 1. That the person is a relative or close friend of the patient;
- 4 and
- 5 2. Specific facts and circumstances demonstrating that the
- 6 person has maintained regular contact with the patient sufficient to be familiar with
- 7 the patient's activities, health, and personal beliefs.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

9 October 1, 2001.