

SENATE BILL 105

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SB 780/00 - JPR

2001 Regular Session  
11r0464

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By: **Senators Kelley, Colburn, Currie, Hughes, Lawlah, McFadden, Mitchell,  
Neall, Sfikas, Stone, and Teitelbaum**

Introduced and read first time: January 15, 2001

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Powers of Attorney**

3 FOR the purpose of establishing certain requirements for the execution of a durable  
4 power of attorney; requiring certain durable powers of attorney to include a  
5 certain notice and to specify certain duties of the agent or attorney in fact;  
6 providing that an attorney in fact or agent under a power of attorney who  
7 commits certain acts is guilty of embezzlement and subject to certain criminal  
8 penalties; providing protection for certain persons who act in reliance on the  
9 authority granted in a durable power of attorney under certain circumstances;  
10 authorizing a durable power of attorney to provide that an attorney in fact or  
11 agent is not liable for certain acts or decisions; defining a certain term;  
12 providing for the application of certain provisions of this Act; and generally  
13 relating to powers of attorney.

14 BY renumbering

15 Article - Estates and Trusts  
16 Section 13-602 and 13-603, respectively  
17 to be Section 13-606 and 13-607, respectively  
18 Annotated Code of Maryland  
19 (1991 Replacement Volume and 2000 Supplement)

20 BY repealing and reenacting, with amendments,

21 Article 27 - Crimes and Punishments  
22 Section 132  
23 Annotated Code of Maryland  
24 (1996 Replacement Volume and 2000 Supplement)

25 BY repealing and reenacting, with amendments,

26 Article - Estates and Trusts  
27 Section 13-601  
28 Annotated Code of Maryland  
29 (1991 Replacement Volume and 2000 Supplement)

1 BY adding to  
2 Article - Estates and Trusts  
3 Section 13-601, 13-603, 13-604, and 13-605  
4 Annotated Code of Maryland  
5 (1991 Replacement Volume and 2000 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
7 MARYLAND, That Section(s) 13-602 and 13-603, respectively, of Article - Estates  
8 and Trusts of the Annotated Code of Maryland be renumbered to be Section(s) 13-606  
9 and 13-607, respectively.

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

12 **Article 27 - Crimes and Punishments**

13 132.

14 If any executor, administrator, guardian, committee, trustee, receiver,  
15 ATTORNEY IN FACT OR AGENT UNDER A POWER OF ATTORNEY, or any fiduciary shall  
16 fraudulently and wilfully appropriate to any use and purpose not in the due and  
17 lawful execution of his trust, any money or any other thing of value which may come  
18 into his hands as such executor, administrator, guardian, committee, trustee, receiver,  
19 ATTORNEY IN FACT OR AGENT UNDER A POWER OF ATTORNEY, or in any other  
20 fiduciary capacity, or secrete it with a fraudulent intent to appropriate it to such use  
21 or purpose, he shall be deemed guilty of embezzlement, and shall be punished upon  
22 conviction by imprisonment in the penitentiary for not less than one year nor more  
23 than five years.

24 **Article - Estates and Trusts**

25 13-601.

26 IN THIS SUBTITLE, "DURABLE POWER OF ATTORNEY" MEANS A POWER OF  
27 ATTORNEY BY WHICH A PRINCIPAL DESIGNATES ANOTHER AS AN ATTORNEY IN FACT  
28 OR AGENT AND THE AUTHORITY IS EXERCISABLE NOTWITHSTANDING THE  
29 PRINCIPAL'S SUBSEQUENT DISABILITY OR INCAPACITY.

30 [13-601.] 13-602.

31 (a) [In this section, "durable power of attorney" means a power of attorney by  
32 which a principal designates another as an attorney in fact or agent and the authority  
33 is exercisable notwithstanding the principal's subsequent disability or incapacity.

34 (b)] Except as provided in subsection [(e)] (D) of this section, when a principal  
35 designates another as an attorney in fact or agent by a power of attorney in writing,  
36 it is a durable power of attorney unless otherwise provided by its terms.

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

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

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

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

15 13-603.

16 A DURABLE POWER OF ATTORNEY SHALL BE ACKNOWLEDGED BEFORE A  
17 NOTARY PUBLIC.

18 13-604.

19 (A) THIS SECTION DOES NOT APPLY TO A DURABLE POWER OF ATTORNEY  
20 PREPARED BY:

21 (1) A LAWYER;

22 (2) A FINANCIAL INSTITUTION; OR

23 (3) A BROKER-DEALER, AGENT, OR FEDERAL COVERED ADVISER, AS  
24 DEFINED IN § 11-101 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

25 (B) EACH PREPRINTED DURABLE POWER OF ATTORNEY FORM SOLD OR  
26 DISTRIBUTED IN THE STATE SHALL INCLUDE THE FOLLOWING NOTICE IN 10-POINT  
27 BOLDFACE TYPE:

28 "NOTICE

29 BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW SEVERAL IMPORTANT  
30 FACTS. THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON WHOM  
31 YOU DESIGNATE (YOUR AGENT, ALSO KNOWN AS YOUR ATTORNEY IN FACT) BROAD  
32 POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE BANK ACCOUNTS AND  
33 REAL OR PERSONAL PROPERTY, WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL  
34 BY YOU.

1 THESE POWERS CONTINUE TO EXIST EVEN IF YOU BECOME MENTALLY OR  
2 PHYSICALLY DISABLED OR INCAPACITATED, UNLESS YOU STRIKE THAT PROVISION  
3 IN THIS DOCUMENT.

4 SHOULD YOU WISH TO APPOINT THE SAME PERSON WHOM YOU DESIGNATE IN  
5 THIS DOCUMENT OR ANY OTHER PERSON AS YOUR AGENT TO MAKE FUTURE HEALTH  
6 CARE DECISIONS ON YOUR BEHALF, YOU SHOULD USE A SEPARATE DOCUMENT TO  
7 MAKE THAT APPOINTMENT.

8 IF THERE IS ANYTHING ABOUT THIS DOCUMENT THAT YOU DO NOT  
9 UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU."

10 (C) EACH PREPRINTED DURABLE POWER OF ATTORNEY FORM SOLD OR  
11 DISTRIBUTED IN THE STATE SHALL SPECIFY THE FOLLOWING DUTIES OF THE AGENT  
12 OR ATTORNEY IN FACT:

13 (1) THE DUTY TO USE THE PRINCIPAL'S INCOME AND ASSETS FOR THE  
14 PRINCIPAL'S BENEFIT ONLY, UNLESS THE POWER OF ATTORNEY EXPRESSLY  
15 PROVIDES OTHERWISE;

16 (2) THE DUTY TO KEEP COMPLETE RECORDS OF ALL TRANSACTIONS  
17 CONDUCTED ON BEHALF OF THE PRINCIPAL; AND

18 (3) THE DUTY TO FULLY DISCLOSE, UPON REQUEST, THE RECORDS  
19 REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION TO THE PRINCIPAL OR TO  
20 THE PRINCIPAL'S GUARDIAN IF ONE IS APPOINTED BY A COURT.

21 13-605.

22 (A) A THIRD PARTY MAY ACT IN RELIANCE ON THE AUTHORITY GRANTED IN A  
23 DURABLE POWER OF ATTORNEY UNTIL THE THIRD PARTY HAS RECEIVED WRITTEN  
24 NOTICE OF REVOCATION, SUSPENSION, OR TERMINATION OF THE POWER OF  
25 ATTORNEY.

26 (B) (1) A THIRD PARTY WHO ACTS IN RELIANCE ON THE AUTHORITY  
27 GRANTED TO THE ATTORNEY IN FACT OR AGENT UNDER A DURABLE POWER OF  
28 ATTORNEY AND IN ACCORDANCE WITH THE INSTRUCTIONS OF THE ATTORNEY IN  
29 FACT OR AGENT SHALL BE HELD HARMLESS BY THE PRINCIPAL FROM ANY LOSS  
30 SUFFERED OR LIABILITY INCURRED AS A RESULT OF ACTIONS TAKEN PRIOR TO  
31 RECEIPT OF WRITTEN NOTICE OF REVOCATION, SUSPENSION, OR TERMINATION OF  
32 THE POWER OF ATTORNEY.

33 (2) A PERSON WHO ACTS IN GOOD FAITH ON ANY REPRESENTATION,  
34 DIRECTION, DECISION, OR ACT OF THE ATTORNEY IN FACT OR AGENT IS NOT LIABLE  
35 TO THE PRINCIPAL OR THE PRINCIPAL'S ESTATE, BENEFICIARIES, OR JOINT OWNERS  
36 FOR THE ACTS.

37 (C) A DURABLE POWER OF ATTORNEY MAY PROVIDE THAT THE ATTORNEY IN  
38 FACT OR AGENT IS NOT LIABLE FOR ANY ACTS OR DECISIONS MADE BY THE

1 ATTORNEY IN FACT OR AGENT IN GOOD FAITH AND UNDER THE TERMS OF THE  
2 DURABLE POWER OF ATTORNEY.

3 SECTION 3. AND BE IT FURTHER ENACTED, That § 13-603 of the Estates  
4 and Trusts Article as enacted by this Act shall apply to any durable power of attorney  
5 executed in the State on or after October 1, 2001.

6 SECTION 4. AND BE IT FURTHER ENACTED, That § 13-604 of the Estates  
7 and Trusts Article as enacted by this Act shall apply to any preprinted durable power  
8 of attorney form sold or distributed in the State on or after October 1, 2001.

9 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2001.