

HOUSE BILL 203

N2, J1

(PRE-FILED)

11r0312
CF 11r1711

By: **Delegate C. Jackson**

Requested: July 28, 2020

Introduced and read first time: January 13, 2021

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Wills and Advance Medical Directives – Notaries Public**

3 FOR the purpose of providing that a will may be made self-proved in a certain manner;
4 establishing certain requirements for a self-proving will; requiring a certain
5 self-proving will to be acknowledged by the testator before a notary public; requiring
6 a certain self-proving affidavit to be attached or annexed to a self-proving will;
7 providing that a signature affixed to a certain self-proving affidavit is considered a
8 signature affixed to a certain will; providing that certain self-proving affidavits of
9 certain witnesses shall be accepted by the court; altering the requirements of an
10 advance medical directive; requiring a declarant to acknowledge a certain advance
11 medical directive before a notary public; authorizing a notary public to serve as a
12 certain witness for a certain advance medical directive; and generally relating to the
13 execution of wills and advance medical directives.

14 BY repealing and reenacting, without amendments,
15 Article – Estates and Trusts
16 Section 1-101(w)
17 Annotated Code of Maryland
18 (2017 Replacement Volume and 2020 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Estates and Trusts
21 Section 4-102
22 Annotated Code of Maryland
23 (2017 Replacement Volume and 2020 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article – Health – General
26 Section 5-602(a) and (b)
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2019 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
 Article – Health – General
 Section 5–602(c)
 Annotated Code of Maryland
 (2019 Replacement Volume and 2020 Supplement)

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

Article – Estates and Trusts

1–101.

(w) (1) “Will” means a written instrument which is executed in the form prescribed by §§ 4–102 through 4–104 of this article, and has not been revoked in a manner provided by § 4–105 of this article.

(2) “Will” includes a codicil.

4–102.

(a) Except as provided in §§ 4–103 and 4–104 of this subtitle, every will shall be:

(1) In writing;

(2) Signed by the testator, or by some other person for the testator, in the testator’s presence and by the testator’s express direction; and

(3) Attested and signed by two or more credible witnesses in the presence of the testator.

(b) For purposes of this section, a witness is not in the presence of the testator if the witness is in a different physical location than the testator regardless of whether the testator can observe the witness through electronic audio–video or other technological means.

(c) (1) A WILL, AT THE TIME OF EXECUTION OR AT ANY SUBSEQUENT TIME, MAY BE MADE SELF–PROVED BY THE ACKNOWLEDGMENT OF THE TESTATOR AND THE AFFIDAVITS OF THE ATTESTING WITNESSES BEFORE A NOTARY PUBLIC, EVIDENCED BY THE NOTARY PUBLIC’S CERTIFICATE, UNDER SEAL, ATTACHED OR ANNEXED TO THE WILL, IN SUBSTANTIALLY THE FOLLOWING FORM AND CONTENT:

THE STATE OF MARYLAND.

COUNTY OF _____.

1 **BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED**
 2 _____, _____, AND _____, KNOWN TO ME TO BE THE
 3 **TESTATOR AND THE WITNESSES, RESPECTIVELY, WHOSE NAMES ARE SIGNED TO THE**
 4 **ATTACHED OR FOREGOING INSTRUMENT AND, ALL OF THESE PERSONS BEING BY ME**
 5 **FIRST DULY SWORN, _____, THE TESTATOR, DECLARED TO ME AND TO THE**
 6 **WITNESSES IN MY PRESENCE THAT THE SAID INSTRUMENT IS THE TESTATOR’S WILL**
 7 **AND THAT THE TESTATOR HAD WILLINGLY SIGNED OR WILLINGLY DIRECTED**
 8 **ANOTHER TO SIGN THE WILL, AND EXECUTED IT IN THE PRESENCE OF THE**
 9 **WITNESSES AS A FREE AND VOLUNTARY ACT FOR THE PURPOSES THEREIN**
 10 **EXPRESSED, AND THAT THE WITNESSES, IN THE PRESENCE AND AT THE REQUEST OF**
 11 **THE TESTATOR, SIGNED THE WILL AS A WITNESS AND THAT TO THE BEST OF THE**
 12 **WITNESSES’ KNOWLEDGE THE TESTATOR WAS AT LEAST 18 YEARS OLD, OF SOUND**
 13 **MIND, AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE.**

14 _____
 15 **TESTATOR**

16 _____
 17 **WITNESS**

18 _____
 19 **WITNESS**

20 **SUBSCRIBED, SWORN AND ACKNOWLEDGED BEFORE ME BY _____, THE**
 21 **TESTATOR, AND SUBSCRIBED AND SWORN TO BEFORE ME BY _____ AND**
 22 **_____, WITNESSES, THIS _____ DAY OF _____, _____.**
 23 _____ **SEAL** _____ **NOTARY PUBLIC**

24 **(2) A SIGNATURE AFFIXED TO A SELF-PROVING AFFIDAVIT**
 25 **ATTACHED TO A WILL IS CONSIDERED A SIGNATURE AFFIXED TO THE WILL IF**
 26 **NECESSARY TO PROVE THE WILL’S DUE EXECUTION.**

27 **(3) THE SELF-PROVING AFFIDAVIT OF ANY WITNESS TAKEN UNDER**
 28 **THIS SUBSECTION SHALL BE ACCEPTED BY THE COURT AS IF IT HAD BEEN TAKEN**
 29 **BEFORE THE COURT.**

30 **Article – Health – General**

31 5-602.

32 (a) (1) Any competent individual may, at any time, make a written or
 33 electronic advance directive regarding the provision of health care to that individual, or the
 34 withholding or withdrawal of health care from that individual.

35 (2) Notwithstanding any other provision of law, in the absence of a validly
 36 executed or witnessed advance directive, any authentic expression made by an individual

1 while competent of the individual's wishes regarding health care for the individual shall be
2 considered.

3 (b) (1) (i) In this subsection the following words have the meanings
4 indicated.

5 (ii) "Disqualified person" means:

6 1. An owner, operator, or employee of a health care facility
7 from which the declarant is receiving health care; or

8 2. A spouse, parent, child, or sibling of an owner, operator, or
9 employee of a health care facility from which the declarant is receiving health care.

10 (iii) "Person eligible for relief" has the meaning stated in § 4-501 of
11 the Family Law Article.

12 (2) Any competent individual may, at any time, make a written or
13 electronic advance directive appointing an agent to make health care decisions for the
14 individual under the circumstances stated in the advance directive.

15 (3) (i) A disqualified person may not serve as a health care agent unless
16 the person:

17 1. Would qualify as a surrogate decision maker under §
18 5-605(a) of this subtitle; or

19 2. Was appointed by the declarant before the date on which
20 the declarant received, or contracted to receive, health care from the facility.

21 (ii) An individual may not serve as a health care agent if:

22 1. The individual is the subject of an interim, temporary, or
23 final protective order and the declarant is a person eligible for relief under the order; or

24 2. Except as provided in subparagraph (iii) of this paragraph,
25 the individual is the spouse of the declarant and:

26 A. The individual and declarant have executed a separation
27 agreement; or

28 B. The individual or declarant has filed an application for
29 divorce.

30 (iii) An individual may serve as a health care agent for a declarant
31 after the date of the execution of a separation agreement or the filing of an application for
32 divorce if the declarant:

1 1. Is able to make a decision about the individual's
2 appointment as the declarant's health care agent; or

3 2. Has otherwise indicated an intent to have the individual
4 serve as the declarant's health care agent.

5 (4) An agent appointed under this subtitle has decision making priority
6 over any individuals otherwise authorized under this subtitle to make health care decisions
7 for a declarant.

8 (5) A person who obtains new information that would prohibit an
9 individual from serving as a declarant's health care agent under paragraph (3)(ii) of this
10 subsection shall provide the information to any health care provider or health care facility
11 providing services to the declarant.

12 (c) (1) Except as provided in paragraph (3) of this subsection, a written or
13 electronic advance directive **MADE:**

14 **(I) ON OR BEFORE SEPTEMBER 30, 2021, shall be [dated,]:**

15 1. **DATED AND** signed by or at the express direction of the
16 declarant[, and subscribed]; **AND**

17 2. **SUBSCRIBED** by two witnesses; **AND**

18 **(II) ON OR AFTER OCTOBER 1, 2021, SHALL BE:**

19 1. **DATED AND SIGNED BY OR AT THE EXPRESS**
20 **DIRECTION OF THE DECLARANT;**

21 2. **ACKNOWLEDGED BY THE DECLARANT BEFORE A**
22 **NOTARY PUBLIC; AND**

23 3. **SUBSCRIBED BY TWO WITNESSES WHO SIGN IN THE**
24 **PRESENCE OF THE DECLARANT AND IN THE PRESENCE OF EACH OTHER BEFORE A**
25 **NOTARY PUBLIC.**

26 (2) (i) Except as provided in subparagraphs (ii) and (iii) of this
27 paragraph, any competent individual may serve as a witness to an advance directive,
28 including an employee of a health care facility, nurse practitioner, physician assistant, or
29 physician caring for the declarant if acting in good faith.

30 (ii) The health care agent of the declarant may not serve as a
31 witness.

1 (iii) At least one of the witnesses must be an individual who is not
2 knowingly entitled to any portion of the estate of the declarant or knowingly entitled to any
3 financial benefit by reason of the death of the declarant.

4 (IV) THE NOTARY PUBLIC BEFORE WHOM THE DECLARANT
5 ACKNOWLEDGES THE ADVANCE DIRECTIVE MAY ALSO SERVE AS ONE OF THE
6 WITNESSES.

7 (3) A witness is not required for an electronic advance directive if the
8 declarant's identity has been authenticated in accordance with the National Institute of
9 Standards and Technology Special Publication 800-63-2: Electronic Authentication
10 Guideline or, if replaced, the replacement guideline.

11 (4) The State-designated health information exchange may accept as valid
12 an unwitnessed electronic advance directive in the form of a video record or file to state the
13 declarant's wishes regarding health care for the declarant or to appoint an agent if the
14 video record or file:

15 (i) Is dated; and

16 (ii) Is stored in an electronic file by an electronic advance directives
17 service recognized by the Maryland Health Care Commission.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2021.