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Judicial Proceedings Committee

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March 9, 2021

Senate Judicial Proceedings Committee
The Honorable William C. Smith
2 East Miller Senate Building
Annapolis, Maryland 21401-1991

RE: SB 820 – Wills, Powers of Attorney and Advance Directives – Electronic Executions

Dear Chairman Smith and Members of the Committee:

This is a very technical bill but a very important bill. Let me explain why.

Last winter, when the pandemic hit and the State essentially shut down, many elderly citizens and others as well realized that the time had come when they should execute their wills. The problem was that typically a will is executed in a small conference room in an attorney's office with the testator surrounded by the attorney, two witnesses, a Notary Public and frequently one or more other members of the family of the testator. With COVID running rampant, however, the prospect of a number of strangers gathering in a small room was unacceptable.

The leadership of the Estates and Trusts Section of the Maryland State Bar Association therefore met with the Governor's legal counsel, Mike Pedone, and they drafted an Executive Order under the authority of the Governor's Emergency Declaration, which the Governor promptly signed, that overrode certain provisions of existing law in order to enable wills and other key legal instruments to be signed remotely.

Pursuant to the Executive Order, many Maryland citizens have been signing their wills remotely throughout the pandemic. The time will come, however, when the pandemic ends and the Governor's Emergency Declaration is rescinded. At that moment, all Executive Orders issued by the Governor under the authority of the Emergency Declaration will literally evanesce. As soon as the Executive Order dealing with the remote executions of wills ceases to exist, since the Executive Order overrode certain provisions of existing law, all of the legal instruments executed remotely during the pandemic in accordance with the Executive Order will be subject to attack on grounds that they were invalidly executed.

That is why this bill is so important. It parallels the Governor's Executive Order authorizing wills to be executed remotely and thus extends the right to execute wills remotely into the future. But the bill explicitly is made retroactive to March 10, 2020 and thus will validate all wills executed during the pandemic pursuant to the terms of the Executive Order.

My witnesses will discuss the details of the bill, but let me just provide a brief overview. Under Senate Bill 820, wills, powers of attorney and advance directives may be executed electronically and witnessed remotely, unlike under current law. At the time that the instrument is signed, the testator and all witnesses must be in the physical presence or electronic presence (a defined term) of one another and a supervising attorney, who may be one of the witnesses. The testator must be a resident of, or physically located in, Maryland. Each witness must be a resident of, or physically located in, the United States. In addition, the supervising attorney must create a certified will or power of attorney, which includes a true, complete and accurate paper version of all pages of the instrument, including the original signatures or electronic signatures of the testator and all witnesses, and a lengthy signed original paper certification by the supervising attorney.

I should add that Senate Bill 820 was drafted in its original form and thoroughly vetted by the members of the Estates and Trusts Section, to whom I now turn for more detailed information about the bill.

I hope the Committee will issue a favorable report on this bill.