

HOUSE BILL 510

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By: **Delegates Pendergrass, DeBoy, Hammen, Love, and Morhaim**

Introduced and read first time: January 30, 2008

Assigned to: Health and Government Operations

Committee Report: Favorable

House action: Adopted

Read second time: February 27, 2008

CHAPTER _____

1 AN ACT concerning

2 **Health Care Decisions Act – Advance Directives – Electronic Documents**
3 **and Electronic Signatures**

4 FOR the purpose of establishing, for purposes of the Health Care Decisions Act, that
5 an electronic signature shall have the same effect as a manual signature, if the
6 electronic signature meets certain requirements; authorizing a competent
7 individual to make an electronic advance directive for certain purposes;
8 authorizing an advance directive to be revoked electronically; defining certain
9 terms; altering a certain definition; making certain conforming and stylistic
10 changes; and generally relating to electronic documents and electronic
11 signatures under the Health Care Decisions Act.

12 BY renumbering

13 Article – Health – General

14 Section 5–601(h) through (p) and (q), respectively

15 to be Section 5–601(i) through (q) and (s), respectively

16 Annotated Code of Maryland

17 (2005 Replacement Volume and 2007 Supplement)

18 BY repealing and reenacting, without amendments,

19 Article – Commercial Law

20 Section 21–101(i)

21 Annotated Code of Maryland

22 (2005 Replacement Volume and 2007 Supplement)

23 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Health – General
 2 Section 5–601(b), 5–602(a), (b)(2), (c), (d), and (f)(2), and 5–604
 3 Annotated Code of Maryland
 4 (2005 Replacement Volume and 2007 Supplement)

5 BY adding to
 6 Article – Health – General
 7 Section 5–601(h) and (r) and 5–601.1
 8 Annotated Code of Maryland
 9 (2005 Replacement Volume and 2007 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 11 MARYLAND, That Section(s) 5–601(h) through (p) and (q), respectively, of
 12 Article – Health – General of the Annotated Code of Maryland be renumbered to be
 13 Section(s) 5–601(i) through (q) and (s), respectively.

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

16 **Article – Commercial Law**

17 21–101.

18 (i) “Electronic signature” means an electronic sound, symbol, or process
 19 attached to or logically associated with a record and executed or adopted by a person
 20 with the intent to sign the record.

21 **Article – Health – General**

22 5–601.

23 (b) “Advance directive” means:

24 (1) A witnessed written **OR ELECTRONIC** document, voluntarily
 25 executed by the declarant in accordance with the requirements of this subtitle; or

26 (2) A witnessed oral statement, made by the declarant in accordance
 27 with the provisions of this subtitle.

28 **(H) “ELECTRONIC SIGNATURE” HAS THE MEANING STATED IN § 21–101**
 29 **OF THE COMMERCIAL LAW ARTICLE.**

30 **(R) “SIGNED” MEANS BEARING A MANUAL OR ELECTRONIC SIGNATURE.**

31 **5–601.1.**

1 **FOR PURPOSES OF THIS PART I OF THIS SUBTITLE, AN ELECTRONIC**
2 **SIGNATURE SHALL HAVE THE SAME EFFECT AS A MANUAL SIGNATURE IF THE**
3 **ELECTRONIC SIGNATURE:**

4 **(1) USES AN ALGORITHM APPROVED BY THE NATIONAL**
5 **INSTITUTE OF STANDARDS AND TECHNOLOGY;**

6 **(2) IS UNIQUE TO THE INDIVIDUAL USING IT;**

7 **(3) IS CAPABLE OF VERIFICATION;**

8 **(4) IS UNDER THE SOLE CONTROL OF THE INDIVIDUAL USING IT;**

9 **(5) IS LINKED TO DATA IN SUCH A MANNER THAT IF THE DATA**
10 **ARE CHANGED, THE ELECTRONIC SIGNATURE IS INVALIDATED;**

11 **(6) PERSISTS WITH THE DOCUMENT AND NOT BY ASSOCIATION IN**
12 **SEPARATE FILES; AND**

13 **(7) IS BOUND TO A DIGITAL CERTIFICATE.**

14 5-602.

15 (a) Any competent individual may, at any time, make a written **OR**
16 **ELECTRONIC** advance directive regarding the provision of health care to that
17 individual, or the withholding or withdrawal of health care from that individual.

18 (b) (2) Any competent individual may, at any time, make a written **OR**
19 **ELECTRONIC** advance directive appointing an agent to make health care decisions for
20 the individual under the circumstances stated in the advance directive.

21 (c) (1) A written **OR ELECTRONIC** advance directive shall be dated,
22 signed by or at the express direction of the declarant, and subscribed by two witnesses.

23 (2) (i) Except as provided in [items] **SUBPARAGRAPHS** (ii) and (iii)
24 of this paragraph, any competent individual may serve as a witness to an advance
25 directive, including an employee of a health care facility or physician caring for the
26 declarant if acting in good faith.

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

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

1 (d) (1) Any competent individual may make an oral advance directive to
2 authorize the providing, withholding, or withdrawing of any life-sustaining procedure
3 or to appoint an agent to make health care decisions for the individual.

4 (2) An oral advance directive shall have the same effect as a written
5 **OR ELECTRONIC** advance directive if made in the presence of the attending physician
6 and one witness and if the substance of the oral advance directive is documented as
7 part of the individual's medical record. The documentation shall be dated and signed
8 by the attending physician and the witness.

9 (f) (2) An attending physician who is notified of the existence of the
10 advance directive shall promptly:

11 (i) If the advance directive is written **OR ELECTRONIC**, make
12 the advance directive or a copy of the advance directive a part of the declarant's
13 medical records; or

14 (ii) If the advance directive is oral, make the substance of the
15 advance directive, including the date the advance directive was made and the name of
16 the attending physician, a part of the declarant's medical records.

17 5-604.

18 (a) An advance directive may be revoked at any time by a declarant by a
19 signed and dated [writing] **WRITTEN OR ELECTRONIC DOCUMENT**, by physical
20 cancellation or destruction, by an oral statement to a health care practitioner or by the
21 execution of a subsequent directive.

22 (b) If a declarant revokes an advance directive by an oral statement to a
23 health care practitioner, the practitioner and a witness to the oral revocation shall
24 document the substance of the oral revocation in the declarant's medical record.

25 (c) It shall be the responsibility of the declarant, to the extent reasonably
26 possible, to notify any person to whom the declarant has provided a copy of the
27 directive.

28 **SECTION 3. AND BE IT FURTHER ENACTED**, That this Act shall take effect
29 October 1, 2008.