

By: Senator(s) Fillingane

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2749

1 AN ACT TO AMEND SECTIONS 91-7-47, 91-7-63, 91-9-9, 91-9-107
2 AND 93-13-15, MISSISSIPPI CODE OF 1972, TO REMOVE THE REPEALERS ON
3 THE PROVISIONS OF LAW THAT PROVIDE FOR ADDITIONAL RIGHTS AND
4 DUTIES FOR EXECUTORS RELATING TO ENVIRONMENTAL LAWS; TO PROVIDE
5 FOR NOTICE AND REPRESENTATION RULES REGARDING ADMINISTRATIVE OR
6 JUDICIAL PROCEEDINGS INVOLVING ESTATES OF DECEDENTS OR TRUSTS; TO
7 CREATE THE UNIFORM POWER OF ATTORNEY ACT; TO DEFINE CERTAIN TERMS;
8 TO PROVIDE FOR THE APPLICABILITY OF THE ACT; TO PROVIDE FOR THE
9 CREATION, EFFECT, DURATION AND TERMINATION OF A POWER OF ATTORNEY;
10 TO ALLOW CO-AGENTS AND SUCCESSOR AGENTS; TO PROVIDE FOR THE DUTIES
11 OF AN AGENT; TO PROVIDE FOR JUDICIAL RELIEF; TO ADDRESS LIABILITY;
12 TO ADDRESS THE APPLICABILITY OF OTHER LAW; TO PROVIDE FOR THE
13 AUTHORITY AND DUTIES OF AN AGENT AND POWER OF ATTORNEY; TO PROVIDE
14 FOR THE CREATION OF A STATUTORY FORM POWER OF ATTORNEY; TO PROVIDE
15 A FORM FOR AN AGENT'S CERTIFICATION; TO PROVIDE FOR UNIFORMITY OF
16 APPLICATION AND CONSTRUCTION AND THE EFFECT ON EXISTING POWERS OF
17 ATTORNEY; TO REPEAL SECTION 87-3-15, MISSISSIPPI CODE OF 1972,
18 WHICH PROVIDES THAT DEATH IS NOT AN ABSOLUTE REVOCATION OF AN
19 AGENCY; TO REPEAL SECTIONS 87-3-101 THROUGH 87-3-113, MISSISSIPPI
20 CODE OF 1972, WHICH PROVIDE FOR THE UNIFORM DURABLE POWER OF
21 ATTORNEY ACT; TO AMEND SECTION 93-13-251, MISSISSIPPI CODE OF
22 1972, TO REVISE THE LIST OF PERSONS NEEDING A CONSERVATOR; TO
23 AMEND SECTION 93-13-253, MISSISSIPPI CODE OF 1972, TO REVISE
24 PROVISIONS REGARDING NOTICE OF TIME AND PLACE OF HEARING FOR
25 APPOINTMENT OF CONSERVATORS; TO AMEND SECTION 91-1-15, MISSISSIPPI
26 CODE OF 1972, TO REVISE CONDITIONS UNDER WHICH AN ILLEGITIMATE
27 CHILD MAY INHERIT FROM THE NATURAL FATHER; TO AMEND SECTION
28 27-10-5, MISSISSIPPI CODE OF 1972, TO EXCLUDE CERTAIN PROPERTY
29 FROM THE DEFINITION OF THE TERM "ESTATE" AND TO REVISE THE
30 DEFINITION OF THE TERM "PERSON INTERESTED IN THE ESTATE" FOR
31 PURPOSES OF THE STATE UNIFORM ESTATE TAX APPORTIONMENT ACT; TO
32 AMEND SECTION 27-10-7, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN
33 PROVISIONS REGARDING THE APPORTIONMENT OF TAX UNDER THE STATE
34 UNIFORM ESTATE TAX APPORTIONMENT ACT; TO AMEND SECTION 85-3-1,
35 MISSISSIPPI CODE OF 1972, TO EXEMPT CERTAIN PAYMENTS INTO AND OUT
36 OF COLLEGE TUITION SAVINGS PROGRAMS FROM SEIZURE UNDER EXECUTION
37 OR ATTACHMENT; TO PROVIDE THAT DIVORCE OR ANNULMENT SHALL CAUSE
38 PROPERTY IN THE WILL TO PASS AS THOUGH THE FORMER SPOUSE
39 PREDECEASED THE TESTATOR UNLESS THE WILL EXPRESSLY PROVIDES
40 OTHERWISE; TO AMEND SECTION 91-5-3, MISSISSIPPI CODE OF 1972, IN
41 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
42 PURPOSES.

43 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:



44 **SECTION 1.** Section 91-7-47, Mississippi Code of 1972, is
45 amended as follows:

46 91-7-47. (1) Every executor or administrator with the will
47 annexed, who has qualified, shall have the right to the possession
48 of all the personal estate of the deceased, unless otherwise
49 directed in the will; and he shall take all proper steps to
50 acquire possession of any part thereof that may be withheld from
51 him, and shall manage the same for the best interest of those
52 concerned, consistently with the will, and according to law. He
53 shall have the proper appraisements made, return true and complete
54 inventories except as otherwise provided by law, shall collect all
55 debts due the estate as speedily as may be, pay all debts that may
56 be due from it which are properly probated and registered, so far
57 as the means in his hands will allow, shall settle his accounts as
58 often as the law may require, pay all the legacies and bequests as
59 far as the estate may be sufficient, and shall well and truly
60 execute the will if the law permit. He shall also have a right to
61 the possession of the real estate so far as may be necessary to
62 execute the will, and may have proper remedy therefor.

63 (2) In addition to the rights and duties contained in this
64 section, he shall also have those rights, powers and remedies as
65 set forth in Section 91-9-9. * * *

66 **SECTION 2.** Section 91-7-63, Mississippi Code of 1972, is
67 amended as follows:

68 91-7-63. (1) Letters of administration shall be granted by
69 the chancery court of the county in which the intestate had, at
70 the time of his death, a fixed place of residence; but if the
71 intestate did not have a fixed place of residence, then by the
72 chancery court of the county where the intestate died, or that in
73 which his personal property or some part of it may be. The court
74 shall grant letters of administration to the relative who may
75 apply, preferring first the husband or wife and then such others
76 as may be next entitled to distribution if not disqualified,



77 selecting amongst those who may stand in equal right the person or
78 persons best calculated to manage the estate; or the court may
79 select a stranger, a trust company organized under the laws of
80 this state, or of a national bank doing business in this state, if
81 the kindred be incompetent. If such person does not apply for
82 administration within thirty (30) days from the death of an
83 intestate, the court may grant administration to a creditor or to
84 any other suitable person.

85 (2) In addition to the rights and duties of the
86 administrator contained in this chapter, he shall also have those
87 rights, powers and remedies as set forth in Section 91-9-9. * * *

88 **SECTION 3.** Section 91-9-9, Mississippi Code of 1972, is
89 amended as follows:

90 91-9-9. (1) In addition to powers, remedies and rights
91 which may be set forth in any will, trust agreement or other
92 document which is the source of authority, a trustee, executor,
93 administrator, guardian, or one acting in any other fiduciary
94 capacity, whether an individual, corporation or other entity
95 ("fiduciary") shall have the following powers, rights and remedies
96 whether or not set forth in the will, trust agreement or other
97 document which is the source of authority:

98 (a) To inspect, investigate or cause to be inspected
99 and investigated, property held by the fiduciary, including
100 interests in sole proprietorships, partnerships, or corporations
101 and any assets owned by any such business enterprise, for the
102 purpose of determining compliance with any environmental law
103 affecting such property and to respond to any actual or potential
104 violation of any environmental law affecting property held by the
105 fiduciary;

106 (b) To take on behalf of the estate or trust, any
107 action necessary to prevent, abate, or otherwise remedy any actual
108 or potential violation of any environmental law affecting property



109 held by the fiduciary, either before or after the initiation of an
110 enforcement action by any governmental body;

111 (c) To refuse to accept property in trust if the
112 fiduciary determines that any property to be donated or conveyed
113 to the trust either is contaminated by any hazardous substance, or
114 is being used or has been used for any activity directly or
115 indirectly involving any hazardous substance, which could result
116 in liability to the trust or otherwise impair the value of the
117 assets held therein;

118 (d) To settle or compromise at any time any and all
119 claims against the trust or estate which may be asserted by any
120 governmental body or private party involving the alleged violation
121 of any environmental law affecting property held in trust or in an
122 estate;

123 (e) To disclaim any power granted by any document,
124 statute, or rule of law which, in the sole discretion of the
125 fiduciary, may cause the fiduciary to incur personal liability
126 under any environmental law;

127 (f) To decline to serve as a fiduciary, if the
128 fiduciary reasonably believes that there is or may be a conflict
129 of interest between the fiduciary in its or his fiduciary capacity
130 and in its or his individual capacity, because of potential claims
131 or liabilities which may be asserted against the fiduciary on
132 behalf of the trust or estate due to the type or condition of
133 assets held therein.

134 (2) An administrator, executor, guardian or conservator is
135 not relieved under this chapter from obtaining court approval for
136 any actions which otherwise are required to be approved by a
137 court.

138 (3) The fiduciary shall be entitled to charge the cost of
139 any inspection, investigation, review, abatement, response,
140 cleanup, or remedial action authorized herein against the income
141 or principal of the trust or estate. A fiduciary shall not be



142 personally liable to any beneficiary or other party for any
143 decrease in value of assets in trust or in an estate by reason of
144 the fiduciary's compliance or efforts to comply with any
145 environmental law, specifically including any reporting
146 requirement under such law. Neither the acceptance by the
147 fiduciary of property or a failure by the fiduciary to inspect or
148 investigate property shall be deemed to create any inference as to
149 whether there is or may be any liability under any environmental
150 law with respect to such property.

151 (4) For purposes of this section, "environmental law" means
152 any federal, state, or local law, rule, regulation, or ordinance
153 relating to protection of the environment or human health. For
154 purposes of this section, "hazardous substances" means any
155 substance defined as hazardous or toxic or otherwise regulated by
156 any environmental law.

157 (5) A fiduciary in its or his individual capacity shall not
158 be considered an owner or operator of any property of the trust or
159 estate for the purposes of any environmental law.

160 (6) Notwithstanding any other provision of this chapter, the
161 fiduciary is subject at all times to the provisions of the Prudent
162 Investor Standard in all its dealings.

163 * * *

164 **SECTION 4.** Section 91-9-107, Mississippi Code of 1972, is
165 amended as follows:

166 91-9-107. (1) From time of creation of the trust until
167 final distribution of the assets of the trust, a trustee has the
168 power to perform, without court authorization, every act which a
169 prudent investor would perform for the purposes of the trust,
170 including, but not limited to:

171 (a) The powers specified in subsection (3) of this
172 section, and



173 (b) Those powers, rights and remedies set forth in
174 Section 91-9-9, related to compliance with environmental laws
175 affecting property held by fiduciaries. * * *

176 (2) In the exercise of his powers, including the powers
177 granted by this article, a trustee has a duty to act with due
178 regard to his obligation as a fiduciary.

179 (3) A trustee has the power, subject to subsections (1) and
180 (2):

181 (a) To collect, hold and retain trust assets received
182 from a trustor until, in the judgment of the trustee, disposition
183 of the assets should be made; and the assets may be retained even
184 though they include an asset in which the trustee is personally
185 interested;

186 (b) To receive additions to the assets of the trust;

187 (c) To continue or participate in the operation of any
188 business or other enterprise, and to effect incorporation,
189 dissolution or other change in the form of the organization of the
190 business or enterprise;

191 (d) To acquire an undivided interest in a trust asset
192 in which the trustee, in any trust capacity, holds an undivided
193 interest;

194 (e) To invest and reinvest trust assets in accordance
195 with the provisions of the trust or as provided by law;

196 (f) To deposit trust funds in a bank, including a bank
197 operated by the trustee;

198 (g) To acquire or dispose of an asset, for cash or on
199 credit, at public or private sale; and to manage, develop,
200 improve, exchange, partition, change the character of, or abandon
201 a trust asset or any interest therein; and to encumber, mortgage
202 or pledge a trust asset for a term within or extending beyond the
203 term of the trust, in connection with the exercise of any power
204 vested in the trustee;



205 (h) To make ordinary or extraordinary repairs or
206 alterations in buildings, improvements or other structures; to
207 demolish any improvements; to raze existing or erect new party
208 walls, buildings or improvements;

209 (i) To subdivide, develop or dedicate land to public
210 use; or to make or obtain the vacation of plats and adjust
211 boundaries; or to adjust differences in valuation on exchange or
212 partition by giving or receiving consideration; or to dedicate
213 easements to public use without consideration;

214 (j) To enter for any purpose into a lease as lessor or
215 lessee with or without option to purchase or renew for a term
216 within or extending beyond the term of the trust;

217 (k) To enter into a lease or arrangement for
218 exploration and removal of minerals or other natural resources, or
219 enter into a pooling or unitization agreement;

220 (l) To grant an option involving disposition of a trust
221 asset, or to take an option for the acquisition of any asset;

222 (m) To vote a security, in person or by general or
223 limited proxy;

224 (n) To pay calls, assessments and any other sums
225 chargeable or accruing against or on account of securities;

226 (o) To sell or exercise stock subscription or
227 conversion rights; to consent, directly or through a committee or
228 other agent, to the reorganization, consolidation, merger,
229 dissolution or liquidation of a corporation or other business
230 enterprise;

231 (p) To hold a security in the name of a nominee or in
232 other form without disclosure of the trust, so that title to the
233 security may pass by delivery, but the trustee is liable for any
234 act of the nominee in connection with the stock so held;

235 (q) To insure the assets of the trust against damage or
236 loss, and the trustee against liability with respect to third
237 persons;



238 (r) To borrow money to be repaid from trust assets or
239 otherwise; to advance money for the protection of the trust and
240 for all expenses, losses and liability sustained in the
241 administration of the trust or because of the holding or ownership
242 of any trust assets, for which advances with any interest the
243 trustee has a lien on the trust assets as against the beneficiary;

244 (s) To pay or contest any claim; to settle a claim by
245 or against the trust by compromise, arbitration or otherwise; and
246 to release, in whole or in part, any claim belonging to the trust
247 to the extent that the claim is uncollectible;

248 (t) To pay taxes, assessments, compensation of the
249 trustee, and other expenses incurred in the collection, care,
250 administration and protection of the trust;

251 (u) To allocate items of income or expense to either
252 trust income or principal, as provided by law, including creation
253 of reserves out of income for depreciation, obsolescence or
254 amortization, or for depletion in mineral or timber properties;

255 (v) To pay any sum distributable to a beneficiary under
256 legal disability, without liability to the trustee, by paying the
257 sum to the beneficiary or by using same for his benefit or by
258 paying the sum for the use of the beneficiary either to a legal
259 representative appointed by the court, or if none, to a relative
260 or to an adult person with whom beneficiary is residing, who is
261 believed to be reliable by trustee;

262 (w) To effect distribution of property and money in
263 divided or undivided interests and to adjust resulting differences
264 in valuation;

265 (x) To employ persons, including attorneys, auditors,
266 investment advisors or agents, even if they are associated with
267 the trustee, to advise or assist the trustee in the performance of
268 his administrative duties; to act without independent
269 investigation upon their recommendations; and instead of acting



270 personally, to employ one or more agents to perform any act of
271 administration, whether or not discretionary;

272 (y) To prosecute or defend actions, claims or
273 proceedings for the protection of trust assets and of the trustee
274 in the performance of his duties;

275 (z) To execute and deliver all instruments which will
276 accomplish or facilitate the exercise of the powers vested in the
277 trustee.

278 (4) If a trustee has determined that either (a) the market
279 value of a trust is less than One Hundred Fifty Thousand Dollars
280 (\$150,000.00) and that, in relation to the costs of administration
281 of the trust, the continuance of the trust pursuant to its
282 existing terms will defeat or substantially impair the
283 accomplishment of the purposes of the trust; or (b) the trust no
284 longer has a legitimate purpose or that its purpose is being
285 thwarted with respect to any trust in any amount; then the trustee
286 may seek court approval to terminate the trust and the court, in
287 its discretion, may approve such termination. In such a case, the
288 court may provide for the distribution of trust property,
289 including principal and undistributed income, to the beneficiaries
290 in a manner which conforms as nearly as possible to the intention
291 of the settlor and the court shall make appropriate provisions for
292 the appointment of a guardian in the case of a minor beneficiary.

293 (5) (a) Unless expressly provided to the contrary in the
294 trust instrument, a trustee may consolidate two (2) or more trusts
295 having substantially similar terms into a single trust; divide on
296 a fractional basis a single trust into two (2) or more separate
297 trusts for any reason; and may segregate by allocation to a
298 separate account or trust a specific amount from, a portion of, or
299 a specific asset included in the trust property of any trust to
300 reflect a disclaimer, to reflect or result in differences in
301 federal tax attributes, to satisfy any federal tax requirement, to
302 make federal tax elections, to reduce potential



303 generation-skipping transfer tax liability, or for any other tax
304 planning purposes or other reasons.

305 (b) A separate trust created by severance or
306 segregation must be treated as a separate trust for all purposes
307 from the effective date in which the severance or segregation is
308 effective. The effective date of the severance or segregation may
309 be retroactive. In managing, investing, administering and
310 distributing the trust property of any separate account or trust
311 and in making applicable tax elections, the trustee may consider
312 the differences in federal tax attributes and all other factors
313 the trustee believes pertinent and may make disproportionate
314 distributions from the separate trusts or accounts created.

315 (c) A trust or account created by consolidation,
316 severance or segregation under this subsection (5) must be held on
317 terms and conditions that are substantially equivalent to the
318 terms of the trust before consolidation, severance or segregation
319 so that the aggregate interests of each beneficiary are
320 substantially equivalent to the beneficiary's interests in the
321 trust or trusts before consolidation, severance or segregation.
322 In determining whether a beneficiary's aggregate interests are
323 substantially equivalent, the trustee shall consider the economic
324 value of those interests to the extent they can be valued,
325 considering actuarial factors as appropriate. If a beneficiary's
326 interest cannot be valued with any reasonable degree of certainty
327 because of the nature of the trust property, the terms of the
328 trust, or other reasons, the trustee shall base the determination
329 upon such other factors as are reasonable and appropriate under
330 the facts and circumstances applicable to that particular trust,
331 including the purposes of the trust. Provided, however, the terms
332 of any trust before consolidation, severance or segregation which
333 permit qualification of that trust for an applicable federal tax
334 deduction, exclusion, election, exemption, or other special
335 federal tax status must remain identical in the consolidated trust



336 or in each of the separate trusts or accounts created by severance
337 or segregation.

338 (d) A trustee who acts in good faith is not liable to
339 any person for taking into consideration differences in federal
340 tax attributes and other pertinent factors in administering trust
341 property of any separate account or trust, in making tax
342 elections, and making distributions pursuant to the terms of the
343 separate trust.

344 (e) Income earned on a consolidated or severed or
345 segregated amount, portion, or specific asset after the
346 consolidation or severance is effective passes with that amount,
347 portion or specific asset.

348 (f) This subsection (5) applies to all trusts whenever
349 created, whether before, on, or after July 1, 2001, and whether
350 such trusts are inter vivos or testamentary, are created by the
351 same or different instruments, by the same or different persons
352 and regardless of where created or administered.

353 (g) This subsection (5) does not limit the right of a
354 trustee acting in accordance with the applicable provisions of the
355 governing instrument to divide or consolidate trusts.

356 (h) Nothing contained in this subsection (5) shall be
357 construed as granting to any trustee a general power of
358 appointment over any trust not otherwise expressly granted in the
359 trust instrument.

360 **SECTION 5.** Section 93-13-15, Mississippi Code of 1972, is
361 amended as follows:

362 93-13-15. (1) (a) Every guardian of any ward heretofore or
363 who may be hereafter appointed by any chancery court or chancery
364 clerk whose act is approved by the chancery court, or by any
365 chancellor, is in fact a general guardian to the extent of his
366 appointment according to the terms of the order or decree of
367 appointment, such as: guardian of the estate of the ward is the
368 general guardian of the ward and his estate; the guardian of the



369 person and estate of a ward is the general guardian of the person
370 and estate of such ward; the guardian of the person only of a ward
371 is the general guardian of the ward named.

372 (b) In addition to the rights and duties of the
373 guardian contained in this chapter, he shall also have those
374 rights, powers and remedies as set forth in Section 91-9-9. * * *

375 (2) All orders and decrees now or hereafter made in which
376 the word "general" is not used in conjunction with the word
377 "guardian" shall be construed and applied as if the word "general"
378 had been used in conjunction with the word "guardian."

379 (3) After May 5, 1960, all orders or decrees appointing any
380 guardian or ward shall designate such guardian as "general"
381 guardian.

382 **SECTION 6.** In the administration of or in judicial
383 proceedings involving estates of decedents or trusts under Title
384 91 of the Mississippi Code of 1972, the following shall apply:

385 (a) Persons are bound by orders binding others in the
386 following cases:

387 (i) Orders binding the sole holder or all
388 coholders of a power of revocation or a general, special, or
389 limited power of appointment, including one (1) in the form of a
390 power of amendment or revocation to the extent that the power has
391 not become unexercisable in fact, bind all persons to the extent
392 that their interests, as persons who may take by virtue of the
393 exercise or nonexercise of the power, are subject to the power.

394 (ii) To the extent there is no conflict of
395 interest between them or among the persons represented:

396 1. Orders binding a guardian of the property
397 bind the ward.

398 2. Orders binding a trustee bind
399 beneficiaries of the trust in proceedings to probate a will, in
400 establishing or adding to a trust, in reviewing the acts or
401 accounts of a prior fiduciary and in proceedings involving



402 creditors or other third parties. However, for purposes of this
403 section, a conflict of interest shall be deemed to exist when each
404 trustee of a trust that is a beneficiary of the estate is also a
405 personal representative of the estate.

406 3. Orders binding a personal representative
407 bind persons interested in the undistributed assets of a
408 decedent's estate, in actions or proceedings by or against the
409 estate.

410 (iii) An unborn or unascertained person who is not
411 otherwise represented is bound by an order to the extent that
412 person's interest is represented by another party having the same
413 or greater quality of interest in the proceeding.

414 (b) Orders binding a guardian of the person shall not
415 bind the ward.

416 (c) In proceedings involving the administration of
417 estates or trusts, notice is required as follows:

418 (i) Notice as prescribed by law shall be given to
419 every interested person, or to one who can bind the interested
420 person as described in paragraph (a)(i) or paragraph (a)(ii).
421 Notice may be given both to the interested person and to another
422 who can bind him or her.

423 (ii) Notice is given to unborn or unascertained
424 persons who are not represented pursuant to paragraph (a)(i) or
425 paragraph (a)(ii) by giving notice to all known persons whose
426 interests in the proceedings are the same as, or of a greater
427 quality than, those of the unborn or unascertained persons.

428 (d) If the court determines that representation of the
429 interest would otherwise be inadequate, the court may, at any
430 time, appoint a guardian ad litem to represent the interests of an
431 incapacitated person, an unborn or unascertained person, a minor
432 or any other person otherwise under a legal disability, or a
433 person whose identity or address is unknown. If not precluded by



434 conflict of interest, a guardian ad litem may be appointed to
435 represent several persons or interests.

436 (e) When a sole holder or coholder of a general,
437 special, or limited power of appointment, including an exercisable
438 power of amendment or revocation over property in an estate or
439 trust, is bound by:

440 (i) Agreements, waivers, consents or approvals; or

441 (ii) Accounts, trust accountings, or other written
442 reports that adequately disclose matters set forth therein,
443 then all persons who may take by virtue of, and whose interests
444 are subject to, the exercise or nonexercise of the power are also
445 bound, but only to the extent of their interests which could
446 otherwise be affected by the exercise or nonexercise of the power.

447 **SECTION 7.** The following shall be codified as Section
448 87-3-101, Mississippi Code of 1972:

449 87-3-101. Sections 87-3-101 through 87-3-405 may be cited as
450 the "Uniform Power of Attorney Act."

451 **SECTION 8.** The following shall be codified as Section
452 87-3-102, Mississippi Code of 1972:

453 87-3-102. In Sections 87-3-101 through 87-3-405:

454 (1) "Agent" means a person granted authority to act for a
455 principal under a power of attorney, whether denominated an agent,
456 attorney-in-fact, or otherwise. The term includes an original
457 agent, co-agent, successor agent, and a person to which an agent's
458 authority is delegated.

459 (2) "Durable," with respect to a power of attorney, means
460 not terminated by the principal's incapacity.

461 (3) "Electronic" means relating to technology having
462 electrical, digital, magnetic, wireless, optical, electromagnetic,
463 or similar capabilities.

464 (4) "Good faith" means honesty in fact.

465 (5) "Incapacity" means inability of an individual to manage
466 property or business affairs because the individual:



467 (A) Has an impairment in the ability to receive and
468 evaluate information or make or communicate decisions even with
469 the use of technological assistance; or

470 (B) Is:

471 (i) Missing;

472 (ii) Detained, including incarcerated in a penal
473 system; or

474 (iii) Outside the United States and unable to
475 return.

476 (6) "Person" means an individual, corporation, business
477 trust, estate, trust, partnership, limited liability company,
478 association, joint venture, public corporation, government or
479 governmental subdivision, agency, or instrumentality, or any other
480 legal or commercial entity.

481 (7) "Power of attorney" means a writing or other record that
482 grants authority to an agent to act in the place of the principal,
483 whether or not the term power of attorney is used.

484 (8) "Presently exercisable general power of appointment,"
485 with respect to property or a property interest subject to a power
486 of appointment, means power exercisable at the time in question to
487 vest absolute ownership in the principal individually, the
488 principal's estate, the principal's creditors, or the creditors of
489 the principal's estate. The term includes a power of appointment
490 not exercisable until the occurrence of a specified event, the
491 satisfaction of an ascertainable standard, or the passage of a
492 specified period only after the occurrence of the specified event,
493 the satisfaction of the ascertainable standard, or the passage of
494 the specified period. The term does not include a power
495 exercisable in a fiduciary capacity or only by will.

496 (9) "Principal" means an individual who grants authority to
497 an agent in a power of attorney.



498 (10) "Property" means anything that may be the subject of
499 ownership, whether real or personal, or legal or equitable, or any
500 interest or right therein.

501 (11) "Record" means information that is inscribed on a
502 tangible medium or that is stored in an electronic or other medium
503 and is retrievable in perceivable form.

504 (12) "Sign" means, with present intent to authenticate or
505 adopt a record:

506 (A) To execute or adopt a tangible symbol; or

507 (B) To attach to or logically associate with the record
508 an electronic sound, symbol, or process.

509 (13) "State" means a state of the United States, the
510 District of Columbia, Puerto Rico, the United States Virgin
511 Islands, or any territory or insular possession subject to the
512 jurisdiction of the United States.

513 (14) "Stocks and bonds" means stocks, bonds, mutual funds,
514 and all other types of securities and financial instruments,
515 whether held directly, indirectly, or in any other manner. The
516 term does not include commodity futures contracts and call or put
517 options on stocks or stock indexes.

518 **SECTION 9.** The following shall be codified as Section
519 87-3-103, Mississippi Code of 1972:

520 87-3-103. Sections 87-3-101 through 87-3-405 apply to all
521 powers of attorney except:

522 (1) A power to the extent it is coupled with an interest in
523 the subject of the power, including a power given to or for the
524 benefit of a creditor in connection with a credit transaction;

525 (2) A power to make health care decisions;

526 (3) A proxy or other delegation to exercise voting rights or
527 management rights with respect to an entity; and

528 (4) A power created on a form prescribed by a government or
529 governmental subdivision, agency, or instrumentality for a
530 governmental purpose.



531 **SECTION 10.** The following shall be codified as Section
532 87-3-104, Mississippi Code of 1972:

533 87-3-104. A power of attorney created under Sections
534 87-3-101 through 87-3-405 is durable unless it expressly provides
535 that it is terminated by the incapacity of the principal.

536 **SECTION 11.** The following shall be codified as Section
537 87-3-105, Mississippi Code of 1972:

538 87-3-105. A power of attorney must be signed by the
539 principal or in the principal's conscious presence by another
540 individual directed by the principal to sign the principal's name
541 on the power of attorney. A signature on a power of attorney is
542 presumed to be genuine if the principal acknowledges the signature
543 before a notary public or other individual authorized by law to
544 take acknowledgments.

545 **SECTION 12.** The following shall be codified as Section
546 87-3-106, Mississippi Code of 1972:

547 87-3-106. (a) A power of attorney executed in this state on
548 or after July 1, 2008, is valid if its execution complies with
549 Section 87-3-105.

550 (b) A power of attorney executed in this state before July
551 1, 2008, is valid if its execution complied with the law of this
552 state as it existed at the time of execution.

553 (c) A power of attorney executed other than in this state is
554 valid in this state if, when the power of attorney was executed,
555 the execution complied with:

556 (1) The law of the jurisdiction that determines the
557 meaning and effect of the power of attorney pursuant to Section
558 87-3-107; or

559 (2) The requirements for a military power of attorney
560 pursuant to 10 USCS Section 1044b, as amended.

561 (d) Except as otherwise provided by statute other than
562 Sections 87-3-101 through 87-3-405, a photocopy or electronically



563 transmitted copy of an original power of attorney has the same
564 effect as the original.

565 **SECTION 13.** The following shall be codified as Section
566 87-3-107, Mississippi Code of 1972:

567 87-3-107. The meaning and effect of a power of attorney is
568 determined by the law of the jurisdiction indicated in the power
569 of attorney and, in the absence of an indication of jurisdiction,
570 by the law of the jurisdiction in which the power of attorney was
571 executed.

572 **SECTION 14.** The following shall be codified as Section
573 87-3-108, Mississippi Code of 1972:

574 87-3-108. (a) In a power of attorney, a principal may
575 nominate a conservator or guardian of the principal's estate or
576 person for consideration by the court if protective proceedings
577 for the principal's estate or person are begun after the principal
578 executes the power of attorney. Except for good cause shown or
579 disqualification, the court shall make its appointment in
580 accordance with the principal's most recent nomination.

581 (b) If, after a principal executes a power of attorney, a
582 court appoints a conservator or guardian of the principal's estate
583 or other fiduciary charged with the management of some or all of
584 the principal's property, the agent is accountable to the
585 fiduciary as well as to the principal. The power of attorney is
586 not terminated and the agent's authority continues unless limited,
587 suspended, or terminated by the court, after notice to, and an
588 opportunity to be heard by, the agent and the principal.

589 **SECTION 15.** The following shall be codified as Section
590 87-3-109, Mississippi Code of 1972:

591 87-3-109. (a) A power of attorney is effective when
592 executed unless the principal provides in the power of attorney
593 that it becomes effective at a future date or upon the occurrence
594 of a future event or contingency.



595 (b) If a power of attorney becomes effective upon the
596 occurrence of a future event or contingency, the principal, in the
597 power of attorney, may authorize one or more persons to determine
598 in a writing or other record that the event or contingency has
599 occurred.

600 (c) If a power of attorney becomes effective upon the
601 principal's incapacity and the principal has not authorized a
602 person to determine whether the principal is incapacitated, or the
603 person authorized is unable or unwilling to make the
604 determination, the power of attorney becomes effective upon a
605 determination in a writing or other record by:

606 (1) A physician or licensed psychologist that the
607 principal is incapacitated within the meaning of Section
608 87-6-102(5) (A); or

609 (2) An attorney at law, a judge, or an appropriate
610 governmental official that the principal is incapacitated within
611 the meaning of Section 87-3-102(5) (B).

612 (d) A person authorized by the principal in the power of
613 attorney to determine that the principal is incapacitated may act
614 as the principal's personal representative pursuant to the Health
615 Insurance Portability and Accountability Act, Sections 1171
616 through 1179 of the Social Security Act, 42 USCS Section 1320d, as
617 amended, and applicable regulations, to obtain access to the
618 principal's health care information and communicate with the
619 principal's health care provider.

620 **SECTION 16.** The following shall be codified as Section
621 87-3-110, Mississippi Code of 1972:

622 87-3-110. (a) A power of attorney terminates when:

623 (1) The principal dies;

624 (2) The principal becomes incapacitated, if the power
625 of attorney is not durable;

626 (3) The principal revokes the power of attorney;

627 (4) The power of attorney provides that it terminates;



628 (5) The purpose of the power of attorney is
629 accomplished; or

630 (6) The principal revokes the agent's authority or the
631 agent dies, becomes incapacitated, or resigns, and the power of
632 attorney does not provide for another agent to act under the power
633 of attorney.

634 (b) An agent's authority terminates when:

635 (1) The principal revokes the authority;

636 (2) The agent dies, becomes incapacitated, or resigns;

637 (3) An action is filed for divorce or annulment of the
638 agent's marriage to the principal or their legal separation,
639 unless the power of attorney otherwise provides; or

640 (4) The power of attorney terminates.

641 (c) Unless the power of attorney otherwise provides, an
642 agent's authority is exercisable until the authority terminates
643 under subsection (b), notwithstanding a lapse of time since the
644 execution of the power of attorney.

645 (d) Termination of an agent's authority or of a power of
646 attorney is not effective as to the agent or another person that,
647 without actual knowledge of the termination, acts in good faith
648 under the power of attorney. An act so performed, unless
649 otherwise invalid or unenforceable, binds the principal and the
650 principal's successors in interest.

651 (e) Incapacity of the principal of a power of attorney that
652 is not durable does not revoke or terminate the power of attorney
653 as to an agent or other person that, without actual knowledge of
654 the incapacity, acts in good faith under the power of attorney.
655 An act so performed, unless otherwise invalid or unenforceable,
656 binds the principal and the principal's successors in interest.

657 (f) The execution of a power of attorney does not revoke a
658 power of attorney previously executed by the principal unless the
659 subsequent power of attorney provides that the previous power of



660 attorney is revoked or that all other powers of attorney are
661 revoked.

662 **SECTION 17.** The following shall be codified as Section
663 87-3-111, Mississippi Code of 1972:

664 87-3-111. (a) A principal may designate two (2) or more
665 persons to act as co-agents. Unless the power of attorney
666 otherwise provides, each co-agent may exercise its authority
667 independently.

668 (b) A principal may designate one or more successor agents
669 to act if an agent resigns, dies, becomes incapacitated, is not
670 qualified to serve, or declines to serve. A principal may grant
671 authority to designate one or more successor agents to an agent or
672 other person designated by name, office, or function. Unless the
673 power of attorney otherwise provides, a successor agent:

674 (1) Has the same authority as that granted to the
675 original agent; and

676 (2) May not act until all predecessor agents have
677 resigned, died, become incapacitated, are no longer qualified to
678 serve, or have declined to serve.

679 (c) Except as otherwise provided in the power of attorney
680 and subsection (d), an agent that does not participate in or
681 conceal a breach of fiduciary duty committed by another agent,
682 including a predecessor agent, is not liable for the actions of
683 the other agent.

684 (d) An agent that has actual knowledge of a breach or
685 imminent breach of fiduciary duty by another agent shall notify
686 the principal and, if the principal is incapacitated, take any
687 action reasonably appropriate in the circumstances to safeguard
688 the principal's best interest. An agent that fails to notify the
689 principal or take action as required by this subsection is liable
690 for the reasonably foreseeable damages that could have been
691 avoided if the agent had notified the principal or taken such
692 action.



693 **SECTION 18.** The following shall be codified as Section
694 87-3-112, Mississippi Code of 1972:

695 87-3-112. Unless the power of attorney otherwise provides,
696 an agent is entitled to reimbursement of expenses reasonably
697 incurred on behalf of the principal, but not to compensation.

698 **SECTION 19.** The following shall be codified as Section
699 87-3-113, Mississippi Code of 1972:

700 87-3-113. Except as otherwise provided in the power of
701 attorney, a person accepts appointment as an agent under a power
702 of attorney by exercising authority or performing duties as an
703 agent or by any other assertion or conduct indicating acceptance.

704 **SECTION 20.** The following shall be codified as Section
705 87-3-114, Mississippi Code of 1972:

706 87-3-114. (a) Notwithstanding provisions in the power of
707 attorney, an agent that has accepted appointment shall:

708 (1) Act in accordance with the principal's reasonable
709 expectations to the extent actually known by the agent and,
710 otherwise, in the principal's best interest;

711 (2) Act in good faith; and

712 (3) Act only within the scope of authority granted in
713 the power of attorney.

714 (b) Except as otherwise provided in the power of attorney,
715 an agent that has accepted appointment shall:

716 (1) Act loyally for the principal's benefit;

717 (2) Act so as not to create a conflict of interest that
718 impairs the agent's ability to act impartially in the principal's
719 best interest;

720 (3) Act with the care, competence, and diligence
721 ordinarily exercised by agents in similar circumstances;

722 (4) Keep a record of all receipts, disbursements, and
723 transactions made on behalf of the principal;

724 (5) Cooperate with a person that has authority to make
725 health care decisions for the principal to carry out the



726 principal's reasonable expectations to the extent actually known
727 by the agent and, otherwise, act in the principal's best interest;
728 and

729 (6) Attempt to preserve the principal's estate plan, to
730 the extent actually known by the agent, if preserving the plan is
731 consistent with the principal's best interest based on all
732 relevant factors, including:

733 (A) The value and nature of the principal's
734 property;

735 (B) The principal's foreseeable obligations and
736 need for maintenance;

737 (C) Minimization of taxes, including income,
738 estate, inheritance, generation-skipping transfer, and gift taxes;
739 and

740 (D) Eligibility for a benefit, a program, or
741 assistance under a statute or regulation.

742 (c) An agent that acts in good faith is not liable to any
743 beneficiary of the principal's estate plan for failure to preserve
744 the plan.

745 (d) An agent that acts with care, competence, and diligence
746 for the best interest of the principal is not liable solely
747 because the agent also benefits from the act or has an individual
748 or conflicting interest in relation to the property or affairs of
749 the principal.

750 (e) If an agent is selected by the principal because of
751 special skills or expertise possessed by the agent or in reliance
752 on the agent's representation that the agent has special skills or
753 expertise, the special skills or expertise must be considered in
754 determining whether the agent has acted with care, competence, and
755 diligence under the circumstances.

756 (f) Absent a breach of duty to the principal, an agent is
757 not liable if the value of the principal's property declines.



758 (g) An agent that exercises authority to delegate to another
759 person the authority granted by the principal or that engages
760 another person on behalf of the principal is not liable for an
761 act, error of judgment, or default of that person if the agent
762 exercises care, competence, and diligence in selecting and
763 monitoring the person.

764 (h) Except as otherwise provided in the power of attorney,
765 an agent is not required to disclose receipts, disbursements, or
766 transactions conducted on behalf of the principal unless ordered
767 by a court or requested by the principal, a guardian, a
768 conservator, another fiduciary acting for the principal, a
769 governmental agency having authority to protect the welfare of the
770 principal, or, upon the death of the principal, by the personal
771 representative or successor in interest of the principal's estate.
772 If so requested, within thirty (30) days the agent shall comply
773 with the request or provide a writing or other record
774 substantiating why additional time is needed and shall comply with
775 the request within an additional thirty (30) days.

776 **SECTION 21.** The following shall be codified as Section
777 87-3-115, Mississippi Code of 1972:

778 87-3-115. A provision in a power of attorney relieving an
779 agent of liability for breach of duty is binding on the principal
780 and the principal's successors in interest except to the extent
781 the provision:

782 (1) Relieves the agent of liability for breach of duty
783 committed dishonestly, with an improper motive, or with reckless
784 indifference to the purposes of the power of attorney or the best
785 interest of the principal; or

786 (2) Was inserted as a result of an abuse of a confidential
787 or fiduciary relationship with the principal.

788 **SECTION 22.** The following shall be codified as Section
789 87-3-116, Mississippi Code of 1972:



790 87-3-116. (a) The following persons may petition a court to
791 construe a power of attorney or review the agent's conduct, and
792 grant appropriate relief:

793 (1) The principal or the agent;

794 (2) A guardian, conservator, or other fiduciary acting
795 for the principal;

796 (3) A person authorized to make health care decisions
797 for the principal;

798 (4) The principal's spouse, parent, or descendant;

799 (5) An individual who would qualify as a presumptive
800 heir of the principal;

801 (6) A person named as a beneficiary to receive any
802 property, benefit, or contractual right on the principal's death
803 or as a beneficiary of a trust created by or for the principal
804 that has a financial interest in the principal's estate;

805 (7) A governmental agency having regulatory authority
806 to protect the welfare of the principal;

807 (8) The principal's caregiver or another person that
808 demonstrates sufficient interest in the principal's welfare; and

809 (9) A person asked to accept the power of attorney.

810 (b) Upon motion by the principal, the court shall dismiss a
811 petition filed under this section, unless the court finds that the
812 principal lacks capacity to revoke the agent's authority or the
813 power of attorney.

814 **SECTION 23.** The following shall be codified as Section
815 87-3-117, Mississippi Code of 1972:

816 87-3-117. An agent that violates Sections 87-3-101 through
817 87-3-405 is liable to the principal or the principal's successors
818 in interest for the amount required to:

819 (1) Restore the value of the principal's property to what it
820 would have been had the violation not occurred; and



821 (2) Reimburse the principal or the principal's successors in
822 interest for the attorney's fees and costs paid on the agent's
823 behalf.

824 **SECTION 24.** The following shall be codified as Section
825 87-3-118, Mississippi Code of 1972:

826 87-3-118. Unless the power of attorney provides a different
827 method for an agent's resignation, an agent may resign by giving
828 notice to the principal and, if the principal is incapacitated:

829 (1) To the conservator or guardian, if one (1) has been
830 appointed for the principal, and a co-agent or successor agent; or

831 (2) If there is no person described in subsection (1), to:

832 (A) The principal's caregiver;

833 (B) Another person reasonably believed by the agent to
834 have sufficient interest in the principal's welfare; or

835 (C) A governmental agency having authority to protect
836 the welfare of the principal.

837 **SECTION 25.** The following shall be codified as Section
838 87-3-119, Mississippi Code of 1972:

839 87-3-119. (a) For purposes of this section and Section
840 87-3-120, "acknowledged" means purportedly verified before a
841 notary public or other individual authorized to take
842 acknowledgements.

843 (b) A person that in good faith accepts an acknowledged
844 power of attorney without actual knowledge that the signature is
845 not genuine may rely upon the presumption under Section 87-3-105
846 that the signature is genuine.

847 (c) A person that in good faith accepts an acknowledged
848 power of attorney without actual knowledge that the power of
849 attorney is void, invalid, or terminated, that the purported
850 agent's authority is void, invalid, or terminated, or that the
851 agent is exceeding or improperly exercising the agent's authority
852 may rely upon the power of attorney as if the power of attorney
853 were genuine, valid and still in effect, the agent's authority



854 were genuine, valid and still in effect, and the agent had not
855 exceeded and had properly exercised the authority.

856 (d) A person that is asked to accept an acknowledged power
857 of attorney may request, and rely upon, without further
858 investigation:

859 (1) An agent's certification under penalty of perjury
860 of any factual matter concerning the principal, agent, or power of
861 attorney;

862 (2) An English translation of the power of attorney if
863 the power of attorney contains, in whole or in part, language
864 other than English; and

865 (3) An opinion of counsel as to any matter of law
866 concerning the power of attorney if the person making the request
867 provides in a writing or other record the reason for the request.

868 (e) An English translation or an opinion of counsel
869 requested under this section must be provided at the principal's
870 expense unless the request is made more than seven (7) business
871 days after the power of attorney is presented for acceptance.

872 (f) For purposes of this section and Section 87-3-120, a
873 person that conducts activities through employees is without
874 actual knowledge of a fact relating to a power of attorney, a
875 principal, or an agent if the employee conducting the transaction
876 involving the power of attorney is without actual knowledge of
877 that fact.

878 **SECTION 26.** The following shall be codified as Section
879 87-3-120, Mississippi Code of 1972:

880 87-3-120. (a) Except as otherwise provided in subsection
881 (b):

882 (1) A person shall either accept an acknowledged power
883 of attorney or request a certification, a translation, or an
884 opinion of counsel under Section 87-3-119(d) no later than seven
885 (7) business days after presentation of the power of attorney for
886 acceptance;



887 (2) If a person requests a certification, a
888 translation, or an opinion of counsel under Section 87-3-119(d),
889 the person shall accept the power of attorney no later than five
890 (5) business days after receipt of the certification, translation,
891 or opinion of counsel; and

892 (3) A person may not require an additional or different
893 form of power of attorney for authority granted in the power of
894 attorney presented.

895 (b) A person is not required to accept an acknowledged power
896 of attorney if:

897 (1) The person is not otherwise required to engage in a
898 transaction with the principal in the same circumstances;

899 (2) Engaging in a transaction with the agent or the
900 principal in the same circumstances would be inconsistent with
901 federal law;

902 (3) The person has actual knowledge of the termination
903 of the agent's authority or of the power of attorney before
904 exercise of the power;

905 (4) A request for a certification, a translation, or an
906 opinion of counsel under Section 87-3-119(d) is refused;

907 (5) The person in good faith believes that the power is
908 not valid or that the agent does not have the authority to perform
909 the act requested, whether or not a certification, a translation,
910 or an opinion of counsel under Section 87-3-119(d) has been
911 requested or provided; or

912 (6) The person makes, or has actual knowledge that
913 another person has made, a report to the Mississippi Department of
914 Human Services or other local adult protective services office as
915 provided in Section 43-47-1 et seq. stating a good faith belief
916 that the principal may be subject to physical or financial abuse,
917 neglect, exploitation, or abandonment by the agent or a person
918 acting for or with the agent.



919 (c) A person that refuses in violation of this section to
920 accept an acknowledged power of attorney is subject to:

921 (1) A court order mandating acceptance of the power of
922 attorney; and

923 (2) Liability for reasonable attorney's fees and costs
924 incurred in any action or proceeding that confirms the validity of
925 the power of attorney or mandates acceptance of the power of
926 attorney.

927 **SECTION 27.** The following shall be codified as Section
928 87-3-121, Mississippi Code of 1972:

929 87-3-121. Unless displaced by a provision of Sections
930 87-3-101 through 87-3-405, the principles of law and equity
931 supplement Sections 87-3-101 through 87-3-405.

932 **SECTION 28.** The following shall be codified as Section
933 87-3-122, Mississippi Code of 1972:

934 87-3-122. Sections 87-3-101 through 87-3-405 do not
935 supersede any other law applicable to financial institutions or
936 other entities, and the other law controls if inconsistent with
937 Sections 87-3-101 through 87-3-405.

938 **SECTION 29.** The following shall be codified as Section
939 87-3-123, Mississippi Code of 1972:

940 87-3-123. The remedies under Sections 87-3-101 through
941 87-3-405 are not exclusive and do not abrogate any right or remedy
942 under the law of this state other than Sections 87-3-101 through
943 87-3-405.

944 **SECTION 30.** The following shall be codified as Section
945 87-3-201, Mississippi Code of 1972:

946 87-3-201. (a) An agent under a power of attorney may do the
947 following on behalf of the principal or with the principal's
948 property only if the power of attorney expressly grants the agent
949 the authority and exercise of the authority is not otherwise
950 prohibited by another agreement or instrument to which the
951 authority or property is subject:



952 (1) Create, amend, revoke, or terminate an intervivos
953 trust;

954 (2) Make a gift;

955 (3) Create or change rights of survivorship;

956 (4) Create or change a beneficiary designation;

957 (5) Delegate authority granted under the power of
958 attorney;

959 (6) Waive the principal's right to be a beneficiary of
960 a joint and survivor annuity, including a survivor benefit under a
961 retirement plan; or

962 (7) Exercise fiduciary powers that the principal has
963 authority to delegate.

964 (b) Notwithstanding a grant of authority to do an act
965 described in subsection (a), unless the power of attorney
966 otherwise provides, an agent that is not an ancestor, spouse, or
967 descendant of the principal, may not exercise authority under a
968 power of attorney to create in the agent, or in an individual to
969 whom the agent owes a legal obligation of support, an interest in
970 the principal's property, whether by gift, right of survivorship,
971 beneficiary designation, disclaimer, or otherwise.

972 (c) Subject to subsections (a), (b), (d), and (e), if a
973 power of attorney grants to an agent authority to do all acts that
974 a principal could do, the agent has the general authority
975 described in Sections 87-3-204 through 87-3-216.

976 (d) Unless the power of attorney otherwise provides, a grant
977 of authority to make a gift is subject to Section 87-36-217.

978 (e) Subject to subsections (a), (b), and (d), if the
979 subjects over which authority is granted in a power of attorney
980 are similar or overlap, the broadest authority controls.

981 (f) Authority granted in a power of attorney is exercisable
982 with respect to property that the principal has when the power of
983 attorney is executed or acquires later, whether or not the



984 property is located in this state and whether or not the authority
985 is exercised or the power of attorney is executed in this state.

986 (g) An act performed by an agent pursuant to a power of
987 attorney has the same effect and inures to the benefit of and
988 binds the principal and the principal's successors in interest as
989 if the principal had performed the act.

990 **SECTION 31.** The following shall be codified as Section
991 87-3-202, Mississippi Cod of 1972:

992 87-3-202. (a) An agent has authority described in Sections
993 87-3-204 through 87-3-217 if the power of attorney refers to
994 general authority with respect to the descriptive term for the
995 subjects stated in Sections 87-3-204 through 87-3-217 or cites the
996 section in which the authority is described.

997 (b) A reference in a power of attorney to general authority
998 with respect to the descriptive term for a subject in Sections
999 87-3-204 through 87-3-217 or a citation to a section of Sections
1000 87-3-204 through 87-3-217 incorporates the entire section as if it
1001 were set out in full in the power of attorney.

1002 (c) A principal may modify authority incorporated by
1003 reference.

1004 **SECTION 32.** The following shall be codified as Section
1005 87-3-203, Mississippi Code of 1972:

1006 87-3-203. Except as otherwise provided in the power of
1007 attorney, by executing a power of attorney that incorporates by
1008 reference a subject described in Sections 87-3-204 through
1009 87-3-217 or that grants to an agent authority to do all acts that
1010 a principal could do pursuant to Section 87-3-201(c), a principal
1011 authorizes the agent, with respect to that subject, to:

1012 (1) Demand, receive, and obtain by litigation or otherwise,
1013 money or another thing of value to which the principal is, may
1014 become, or claims to be entitled, and conserve, invest, disburse,
1015 or use anything so received or obtained for the purposes intended;



1016 (2) Contract in any manner with any person, on terms
1017 agreeable to the agent, to accomplish a purpose of a transaction
1018 and perform, rescind, cancel, terminate, reform, restate, release,
1019 or modify the contract or another contract made by or on behalf of
1020 the principal;

1021 (3) Execute, acknowledge, seal, deliver, file, or record any
1022 instrument or communication the agent considers desirable to
1023 accomplish a purpose of a transaction, including crating at any
1024 time a schedule listing some or all of the principal's property
1025 and attaching it to the power of attorney;

1026 (4) Initiate, participate in, submit to alternative dispute
1027 resolution, settle, oppose, or propose or accept a compromise with
1028 respect to a claim existing in favor of or against the principal
1029 or intervene in litigation relating to the claim;

1030 (5) Seek on the principal's behalf the assistance of a court
1031 or other governmental agency to carry out an act authorized in the
1032 power of attorney;

1033 (6) Engage, compensate, and discharge an attorney,
1034 accountant, discretionary investment manager, expert witness, or
1035 other advisor;

1036 (7) Prepare, execute, and file a record, report, or other
1037 document to safeguard or promote the principal's interest under a
1038 statute or regulation;

1039 (8) Communicate with any representative or employee of a
1040 government or governmental subdivision, agency, or
1041 instrumentality, on behalf of the principal;

1042 (9) Access communications intended for, and communicate on
1043 behalf of the principal, whether by mail, electronic transmission,
1044 telephone, or other means; and

1045 (10) Do any lawful act with respect to the subject and all
1046 property related to the subject.

1047 **SECTION 33.** The following shall be codified as Section
1048 87-3-204, Mississippi Code of 1972:



1049 87-3-204. Unless the power of attorney otherwise provides,
1050 language in a power of attorney granting general authority with
1051 respect to real property authorizes the agent to:

1052 (1) Demand, buy, lease, receive, accept as a gift or as
1053 security for an extension of credit, or otherwise acquire or
1054 reject an interest in real property or a right incident to real
1055 property;

1056 (2) Sell; exchange; convey with or without covenants,
1057 representations, or warranties; quitclaim; release; surrender;
1058 retain title for security; encumber; partition; consent to
1059 partitioning; subject to an easement or covenant; subdivide; apply
1060 for zoning or other governmental permits; plat or consent to
1061 platting; develop; grant an option concerning; lease; sublease;
1062 contribute to an entity in exchange for an interest in that
1063 entity; or otherwise grant or dispose of an interest in real
1064 property or a right incident to real property;

1065 (3) Pledge or mortgage an interest in real property or right
1066 incident to real property security to borrow money or pay, renew,
1067 or extend the time of payment of a debt of the principal or a debt
1068 guaranteed by the principal;

1069 (4) Release, assign, satisfy, or enforce by litigation or
1070 otherwise a mortgage, deed of trust, conditional sale contract,
1071 encumbrance, lien, or other claim to real property which exists or
1072 is asserted;

1073 (5) Manage or conserve an interest in real property or a
1074 right incident to real property owned or claimed to be owned by
1075 the principal, including:

1076 (A) Insuring against liability or casualty or other
1077 loss;

1078 (B) Obtaining or regaining possession of or protecting
1079 the interest or right by litigation or otherwise;



1080 (C) Paying, assessing, compromising, or contesting
1081 taxes or assessments or applying for and receiving refunds in
1082 connection with them; and

1083 (D) Purchasing supplies, hiring assistance or labor,
1084 and making repairs or alterations to the real property;

1085 (6) Use, develop, alter, replace, remove, erect, or install
1086 structures or other improvements upon real property in or incident
1087 to which the principal has, or claims to have, an interest or
1088 right;

1089 (7) Participate in a reorganization with respect to real
1090 property or an entity that owns an interest in or right incident
1091 to real property and receive, and hold, and act with respect to
1092 stocks and bonds or other property received in a plan of
1093 reorganization, including:

1094 (A) Selling or otherwise disposing of them;

1095 (B) Exercising or selling an option, right of
1096 conversion, or similar right with respect to them; and

1097 (C) Exercising any voting rights in person or by proxy;

1098 (8) Change the form of title of an interest in or right
1099 incident to real property; and

1100 (9) Dedicate to public use, with or without consideration,
1101 easements or other real property in which the principal has, or
1102 claims to have, an interest.

1103 **SECTION 34.** The following shall be codified as Section
1104 87-3-205, Mississippi Code of 1972:

1105 87-3-205. Unless the power of attorney otherwise provides,
1106 language in a power of attorney granting general authority with
1107 respect to tangible personal property authorizes the agent to:

1108 (1) Demand, buy, receive, accept as a gift or as security
1109 for an extension of credit, or otherwise acquire or reject
1110 ownership or possession of tangible personal property or an
1111 interest in tangible personal property;



1112 (2) Sell; exchange; convey with or without covenants,
1113 representations, or warranties; quitclaim; release; surrender;
1114 create a security interest in; grant options concerning; lease;
1115 sublease; or, otherwise dispose of tangible personal property or
1116 an interest in tangible personal property;

1117 (3) Grant a security interest in tangible personal property
1118 or an interest in tangible personal property as security to borrow
1119 money or pay, renew, or extend the time of payment of a debt of
1120 the principal or a debt guaranteed by the principal;

1121 (4) Release, assign, satisfy, or enforce by litigation or
1122 otherwise, a security interest, lien, or other claim on behalf of
1123 the principal, with respect to tangible personal property or an
1124 interest in tangible personal property;

1125 (5) Manage or conserve tangible personal property or an
1126 interest in tangible personal property on behalf of the principal,
1127 including:

1128 (A) Insuring against liability or casualty or other
1129 loss;

1130 (B) Obtaining or regaining possession of or protecting
1131 the property or interest, by litigation or otherwise;

1132 (C) Paying, assessing, compromising, or contesting
1133 taxes or assessments or applying for and receiving refunds in
1134 connection with taxes or assessments;

1135 (D) Moving the property from place to place;

1136 (E) Storing the property for hire or on a gratuitous
1137 bailment; and

1138 (F) Using and making repairs, alterations, or
1139 improvements to the property; and

1140 (6) Change the form of title of an interest in tangible
1141 personal property.

1142 **SECTION 35.** The following shall be codified as Section
1143 87-3-206, Mississippi Code of 1972:



1144 87-3-206. Unless the power of attorney otherwise provides,
1145 language in a power of attorney granting general authority with
1146 respect to stocks and bonds authorizes the agent to:

1147 (1) Buy, sell, and exchange stocks and bonds;

1148 (2) Establish, continue, modify, or terminate an account
1149 with respect to stocks and bonds;

1150 (3) Pledge stocks and bonds as security to borrow, pay,
1151 renew, or extend the time of payment of a debt of the principal;

1152 (4) Receive certificates and other evidences of ownership
1153 with respect to stocks and bonds; and

1154 (5) Exercise voting rights with respect to stocks and bonds
1155 in person or by proxy, enter into voting trusts, and consent to
1156 limitations on the right to vote.

1157 **SECTION 36.** The following shall be codified as Section
1158 87-3-207, Mississippi Code of 1972:

1159 87-3-207. Unless the power of attorney otherwise provides,
1160 language in a power of attorney granting general authority with
1161 respect to commodities and options authorizes the agent to:

1162 (1) Buy, sell, exchange, assign, settle, and exercise
1163 commodity futures contracts and call or put options on stocks or
1164 stock indexes traded on a regulated option exchange; and

1165 (2) Establish, continue, modify, and terminate option
1166 accounts.

1167 **SECTION 37.** The following shall be codified as Section
1168 87-3-208, Mississippi Code of 1972:

1169 87-3-208. Unless the power of attorney otherwise provides,
1170 language in a power of attorney granting general authority with
1171 respect to banks and other financial institutions authorizes the
1172 agent to:

1173 (1) Continue, modify, and terminate an account or other
1174 banking arrangement made by or on behalf of the principal;

1175 (2) Establish, modify, and terminate an account or other
1176 banking arrangement with a bank, trust company, savings and loan



1177 association, credit union, thrift company, brokerage firm, or
1178 other financial institution selected by the agent;

1179 (3) Contract for services available from a financial
1180 institution, including renting a safe deposit box or space in a
1181 vault;

1182 (4) Withdraw, by check, order, electronic funds transfer, or
1183 otherwise, money or property of the principal deposited with or
1184 left in the custody of a financial institution;

1185 (5) Receive statements of account, vouchers, notices, and
1186 similar documents from a financial institution and act with
1187 respect to them;

1188 (6) Enter a safe deposit box or vault and withdraw or add to
1189 the contents;

1190 (7) Borrow money and pledge as security personal property of
1191 the principal necessary to borrow money or pay, renew, or extend
1192 the time of payment of a debt of the principal or a debt
1193 guaranteed by the principal;

1194 (8) Make, assign, draw, endorse, discount, guarantee, and
1195 negotiate promissory notes, checks, drafts, and other negotiable
1196 or nonnegotiable paper of the principal or payable to the
1197 principal or the principal's order, transfer money, receive the
1198 cash or other proceeds of those transactions, and accept a draft
1199 drawn by a person upon the principal and pay it when due;

1200 (9) Receive for the principal and act upon a sight draft,
1201 warehouse receipt, or other document of title whether tangible or
1202 electronic, or other negotiable or nonnegotiable instrument;

1203 (10) Apply for, receive, and use letters of credit, credit
1204 and debit cards, electronic transaction authorizations, and
1205 traveler's checks from a financial institution and give an
1206 indemnity or other agreement in connection with letters of credit;
1207 and



1208 (11) Consent to an extension of the time of payment with
1209 respect to commercial paper or a financial transaction with a
1210 financial institution.

1211 **SECTION 38.** The following shall be codified as Section
1212 87-3-209, Mississippi Code of 1972:

1213 87-3-209. Subject to the terms of a document or an agreement
1214 governing an entity or an entity ownership interest, and unless
1215 the power of attorney otherwise provides, language in a power of
1216 attorney granting general authority with respect to operation of
1217 an entity or business authorizes the agent to:

1218 (1) Operate, buy, sell, enlarge, reduce, or terminate an
1219 ownership interest;

1220 (2) Perform a duty or discharge a liability and exercise in
1221 person or by proxy a right, power, privilege, or option that the
1222 principal has, may have, or claims to have;

1223 (3) Enforce the terms of an ownership agreement;

1224 (4) Initiate, participate in, submit to alternative dispute
1225 resolution, settle, oppose, or propose or accept a compromise with
1226 respect to litigation to which the principal is a party because of
1227 an ownership interest;

1228 (5) Exercise in person or by proxy, or enforce by litigation
1229 or otherwise, a right, power, privilege, or option the principal
1230 has or claims to have as the holder of stocks and bonds;

1231 (6) Initiate, participate in, submit to alternative dispute
1232 resolution, settle, oppose, or propose or accept a compromise with
1233 respect to litigation to which the principal is a party concerning
1234 stocks and bonds;

1235 (7) With respect to an entity or business owned solely by
1236 the principal;

1237 (A) Continue, modify, renegotiate, extend, and
1238 terminate a contract made by or on behalf of the principal with
1239 respect to the entity or business before execution of the power of
1240 attorney;



1241 (B) Determine:

1242 (i) The location of its operation;

1243 (ii) The nature and extent of its business;

1244 (iii) The methods of manufacturing, selling,

1245 merchandising, financing, accounting, and advertising employed in

1246 its operation;

1247 (iv) The amount and types of insurance carried;

1248 and

1249 (v) The mode of engaging, compensating, and

1250 dealing with its employees and accountants, attorneys, or other

1251 advisors;

1252 (C) Change the name or form of organization under which

1253 the entity or business is operated and enter into an ownership

1254 agreement with other persons to take over all or part of the

1255 operation of the entity or business; and

1256 (D) Demand and receive money due or claimed by the

1257 principal or on the principal's behalf in the operation of the

1258 entity or business and control and disburse the money in the

1259 operation of the entity or business;

1260 (8) Put additional capital into an entity or business in

1261 which the principal has an interest;

1262 (9) Join in a plan of reorganization, consolidation,

1263 conversion, domestication, or merger of the entity or business;

1264 (10) Sell or liquidate all or part of an entity or business;

1265 (11) Establish the value of an entity or business under a

1266 buy-out agreement to which the principal is a party;

1267 (12) Prepare, sign, file, and deliver reports, compilations

1268 of information, returns, or other papers with respect to an entity

1269 or business and make related payments; and

1270 (13) Pay, compromise, or contest taxes, assessments, fines,

1271 or penalties and perform any other act to protect the principal

1272 from illegal or unnecessary taxation, assessments, fines, or

1273 penalties, with respect to an entity or business, including



1274 attempts to recover, in any manner permitted by law, money paid
1275 before or after the execution of the power of attorney.

1276 **SECTION 39.** The following shall be codified as Section
1277 87-3-210, Mississippi Code of 1972:

1278 87-3-210. Unless the power of attorney otherwise provides,
1279 language in a power of attorney granting general authority with
1280 respect to insurance and annuities authorizes the agent to:

1281 (1) Continue, pay the premium or make a contribution on,
1282 modify, exchange, rescind, release, or terminate a contract
1283 procured by or on behalf of the principal which insures or
1284 provides an annuity to either the principal or another person,
1285 whether or not the principal is a beneficiary under the contract;

1286 (2) Procure new, different, and additional contracts of
1287 insurance and annuities for the principal and the principal's
1288 spouse, children, and other dependents, and select the amount,
1289 type of insurance or annuity, and mode of payment;

1290 (3) Pay the premium or make a contribution on, modify,
1291 exchange, rescind, release, or terminate a contract of insurance
1292 or annuity procured by the agent;

1293 (4) Apply for and receive a loan secured by a contract of
1294 insurance or annuity;

1295 (5) Surrender and receive the cash surrender value on a
1296 contract of insurance or annuity;

1297 (6) Exercise an election;

1298 (7) Exercise investment powers available under a contract of
1299 insurance or annuity;

1300 (8) Change the manner of paying premiums on a contract of
1301 insurance or annuity;

1302 (9) Change or convert the type of insurance or annuity with
1303 respect to which the principal has or claims to have authority
1304 described in this section;



1305 (10) Apply for and procure a benefit or assistance under a
1306 statute or regulation to guarantee or pay premiums of a contract
1307 of insurance on the life of the principal;

1308 (11) Collect, sell, assign, hypothecate, borrow against, or
1309 pledge the interest of the principal in a contract of insurance or
1310 annuity;

1311 (12) Select the form and timing of the payment of proceeds
1312 from a contract of insurance or annuity; and

1313 (13) Pay, from proceeds or otherwise, compromise or contest,
1314 and apply for refunds in connection with, a tax or assessment
1315 levied by a taxing authority with respect to a contract of
1316 insurance or annuity or its proceeds or liability accruing by
1317 reason of the tax or assessment.

1318 **SECTION 40.** The following shall be codified as Section
1319 87-3-211, Mississippi Code of 1972:

1320 87-3-211. (a) In this section, "estates, trusts, and other
1321 beneficial interests" means a trust, probate estate, guardianship,
1322 conservatorship, escrow, or custodianship or a fund from which the
1323 principal is, may become, or claims to be, entitled to a share or
1324 payment.

1325 (b) Unless the power of attorney otherwise provides,
1326 language in a power of attorney granting general authority with
1327 respect to estates, trusts, and other beneficial interests
1328 authorizes the agent to:

1329 (1) Accept, receive, receipt for, sell, assign, pledge,
1330 or exchange a share in or payment from the fund;

1331 (2) Demand or obtain money or another thing of value to
1332 which the principal is, may become, or claims to be, entitled by
1333 reason of the fund, by litigation or otherwise;

1334 (3) Exercise for the benefit of the principal a
1335 presently exercisable general power of appointment held by the
1336 principal;



1337 (4) Initiate, participate in, submit to alternative
1338 dispute resolution, settle, oppose, or propose or accept a
1339 compromise with respect to litigation to ascertain the meaning,
1340 validity, or effect of a deed, will, declaration of trust, or
1341 other instrument or transaction affecting the interest of the
1342 principal;

1343 (5) Initiate, participate in, submit to alternative
1344 dispute resolution, settle, oppose, or propose or accept a
1345 compromise with respect to litigation to remove, substitute, or
1346 surcharge a fiduciary;

1347 (6) Conserve, invest, disburse, or use anything
1348 received for an authorized purpose; and

1349 (7) Transfer an interest of the principal in real
1350 property, stocks and bonds, accounts with financial institutions
1351 or securities intermediaries, insurance, annuities, and other
1352 property to the trustee of a revocable trust created by the
1353 principal as settlor.

1354 **SECTION 41.** The following shall be codified as Section
1355 87-3-212, Mississippi Code of 1972:

1356 87-3-212. Unless the power of attorney otherwise provides,
1357 language in a power of attorney granting general authority with
1358 respect to claims and litigation authorizes the agent to:

1359 (1) Assert and maintain before a court or administrative
1360 agency a claim, claim for relief, cause of action, counterclaim,
1361 offset, recoupment, or defense, including an action to recover
1362 property or other thing of value, recover damages sustained by the
1363 principal, eliminate or modify tax liability, or seek an
1364 injunction, specific performance, or other relief;

1365 (2) Bring an action to determine adverse claims or intervene
1366 or otherwise participate in litigation;

1367 (3) Seek an attachment, garnishment, order of arrest, or
1368 other preliminary, provisional, or intermediate relief and use an



1369 available procedure to affect or satisfy a judgment, order, or
1370 decree;

1371 (4) Make or accept a tender, offer of judgment, or admission
1372 of facts, submit a controversy on an agreed statement of facts,
1373 consent to examination, and bind the principal in litigation;

1374 (5) Submit to alternative dispute resolution, settle, and
1375 propose or accept a compromise;

1376 (6) Waive the issuance and service of process upon the
1377 principal, accept service of process, appear for the principal,
1378 designate persons upon which process directed to the principal may
1379 be served, execute and file or deliver stipulations on the
1380 principal's behalf, verify pleadings, seek appellate review,
1381 procure and give surety and indemnity bonds, contract and pay for
1382 the preparation and printing of records and briefs, receive,
1383 execute, and file or deliver a consent, waiver, release,
1384 confession of judgment, satisfaction of judgment, notice,
1385 agreement, or other instrument in connection with the prosecution,
1386 settlement, or defense of a claim or litigation;

1387 (7) Act for the principal with respect to bankruptcy or
1388 insolvency, whether voluntary or involuntary, concerning the
1389 principal or some other person, or with respect to a
1390 reorganization, receivership, or application for the appointment
1391 of a receiver or trustee which affects an interest of the
1392 principal in property or other thing of value;

1393 (8) Pay a judgment, award, or order against the principal or
1394 a settlement made in connection with a claim or litigation; and

1395 (9) Receive money or other thing of value paid in settlement
1396 of or as proceeds of a claim or litigation.

1397 **SECTION 42.** The following shall be codified as Section
1398 87-3-213, Mississippi Code of 1972:

1399 87-3-213. (a) Unless the power of attorney otherwise
1400 provides, language in a power of attorney granting general



1401 authority with respect to personal and family maintenance

1402 authorizes the agent to:

1403 (1) Perform the acts necessary to maintain the
1404 customary standard of living of the principal, the principal's
1405 spouse, and the following individuals, whether living when the
1406 power of attorney is executed or later born:

1407 (A) The principal's children;

1408 (B) Other individuals legally entitled to be
1409 supported by the principal; and

1410 (C) The individuals whom the principal has
1411 customarily supported or indicated the intent to support;

1412 (2) Make periodic payments of child support and other
1413 family maintenance required by a court or governmental agency or
1414 an agreement to which the principal is a party;

1415 (3) Provide living quarters for the individuals
1416 described in paragraph (1) by:

1417 (A) Purchase, lease, or other contract; or

1418 (B) Paying the operating costs, including
1419 interest, amortization payments, repairs, improvements, and taxes,
1420 for premises owned by the principal or occupied by those
1421 individuals;

1422 (4) Provide normal domestic help, usual vacations and
1423 travel expenses, and funds for shelter, clothing, food,
1424 appropriate education, including postsecondary and vocational
1425 education, and other current living costs for the individuals
1426 described in paragraph (1);

1427 (5) Pay expenses for necessary health care and
1428 custodial care on behalf of the individuals described in paragraph
1429 (1);

1430 (6) Act as the principal's personal representative
1431 pursuant to the Health Insurance Portability and Accountability
1432 Act, Sections 1171 through 1179 of the Social Security Act, 42 USC
1433 Section 1320d, as amended, and applicable regulations, in making



1434 decisions related to the past, present, or future payment for the
1435 provision of health care consented to by the principal or anyone
1436 authorized under the law of this state to consent to health care
1437 on behalf of the principal;

1438 (7) Continue any provision made by the principal for
1439 automobiles or other means of transportation, including
1440 registering, licensing, insuring, and replacing them, for the
1441 individuals described in paragraph (1);

1442 (8) Maintain credit and debit accounts for the
1443 convenience of the individuals described in paragraph (1) and open
1444 new accounts; and

1445 (9) Continue payments incidental to the membership or
1446 affiliation of the principal in a religious institution, club,
1447 society, order, or other organization or to continue contributions
1448 to those organizations.

1449 (b) Authority with respect to personal and family
1450 maintenance is neither dependent upon, nor limited by, authority
1451 that an agent may or may not have with respect to gifts under
1452 Sections 87-3-101 through 87-3-405.

1453 **SECTION 43.** The following shall be codified as Section
1454 87-3-214, Mississippi Code of 1972:

1455 87-3-214. (a) In this section, "benefits from governmental
1456 programs or civil or military service" means any benefit, program
1457 or assistance provided under a statute or regulation including
1458 Social Security, Medicare, and Medicaid.

1459 (b) Unless the power of attorney otherwise provides,
1460 language in a power of attorney granting general authority with
1461 respect to benefits from governmental programs or civil or
1462 military service authorizes the agent to:

1463 (1) Execute vouchers in the name of the principal for
1464 allowances and reimbursements payable by the United States or a
1465 foreign government or by a state or subdivision of a state to the
1466 principal, including allowances and reimbursements for



1467 transportation of the individuals described in Section
1468 87-3-213(a) (1), and for shipment of their household effects;

1469 (2) Take possession and order the removal and shipment
1470 of property of the principal from a post, warehouse, depot, dock,
1471 or other place of storage or safekeeping, either governmental or
1472 private, and execute and deliver a release, voucher, receipt, bill
1473 of lading, shipping ticket, certificate, or other instrument for
1474 that purpose;

1475 (3) Enroll in, apply for, select, reject, change,
1476 amend, or discontinue, on the principal's behalf, a benefit or
1477 program;

1478 (4) Prepare, file, and maintain a claim of the
1479 principal for a benefit or assistance, financial or otherwise, to
1480 which the principal may be entitled under a statute or regulation;

1481 (5) Initiate, participate in, submit to alternative
1482 dispute resolution, settle, oppose, or propose or accept a
1483 compromise with respect to litigation concerning any benefit or
1484 assistance the principal may be entitled to receive under a
1485 statute or regulation; and

1486 (6) Receive the financial proceeds of a claim described
1487 in paragraph (4) and conserve, invest, disburse, or use for a
1488 lawful purpose anything so received.

1489 **SECTION 44.** The following shall be codified as Section
1490 87-3-215, Mississippi Code of 1972:

1491 87-3-215. (a) In this section, "retirement plan" means a
1492 plan or account created by an employer, the principal, or another
1493 individual to provide retirement benefits or deferred compensation
1494 of which the principal is a participant, beneficiary, or owner,
1495 including a plan or account under the following sections of the
1496 Internal Revenue Code:

1497 (1) An individual retirement account under Internal
1498 Revenue Code Section 408, 26 USC Section 408, as amended;



1499 (2) A Roth individual retirement account under Internal
1500 Revenue Code Section 408A, 26 USC Section 408A, as amended;

1501 (3) A deemed individual retirement account under
1502 Internal Revenue Code Section 408(q), 26 USC Section 408(q), as
1503 amended;

1504 (4) An annuity or mutual fund custodial account under
1505 Internal Revenue Code Section 403(b), 26 USC Section 403(b), as
1506 amended;

1507 (5) A pension, profit-sharing, stock bonus, or other
1508 retirement plan qualified under Internal Revenue Code Section
1509 401(a), 26 USC Section 401(a), as amended;

1510 (6) A plan under Internal Revenue Code Section 457(b),
1511 26 USC Section 457(b), as amended; and

1512 (7) A nonqualified deferred compensation plan under
1513 Internal Revenue Code Section 409A, 26 USC Section 409A, as
1514 amended.

1515 (b) Unless the power of attorney otherwise provides,
1516 language in a power of attorney granting general authority with
1517 respect to retirement plans authorizes the agent to:

1518 (1) Select the form and timing of payments under a
1519 retirement plan and withdraw benefits from a plan;

1520 (2) Make a rollover, including a direct
1521 trustee-to-trustee rollover, of benefits from one (1) retirement
1522 plan to another;

1523 (3) Establish a retirement plan in the principal's
1524 name;

1525 (4) Make contributions to a retirement plan;

1526 (5) Exercise investment powers available under a
1527 retirement plan; and

1528 (6) Borrow from, sell assets to, or purchase assets
1529 from a retirement plan.

1530 **SECTION 45.** The following shall be codified as Section
1531 87-3-216, Mississippi Code of 1972:



1532 87-3-216. Unless the power of attorney otherwise provides,
1533 language in a power of attorney granting general authority with
1534 respect to taxes authorizes the agent to:

1535 (1) Prepare, sign, and file federal, state, local, and
1536 foreign income, gift, payroll, property, Federal Insurance
1537 Contributions Act, and other tax returns, claims for refunds,
1538 requests for extension of time, petitions regarding tax matters,
1539 and any other tax-related documents, including receipts, offers,
1540 waivers, consents, including consents and agreements under
1541 Internal Revenue Code Section 2032A, 26 USC Section 2032A, as
1542 amended, closing agreements, and any power of attorney required by
1543 the Internal Revenue Service or other taxing authority with
1544 respect to a tax year upon which the statute of limitations has
1545 not run and the following twenty-five (25) tax years;

1546 (2) Pay taxes due, collect refunds, post bonds, receive
1547 confidential information, and contest deficiencies determined by
1548 the Internal Revenue Service or other taxing authority;

1549 (3) Exercise any election available to the principal under
1550 federal, state, local, or foreign tax law; and

1551 (4) Act for the principal in all tax matters for all periods
1552 before the Internal Revenue Service, or other taxing authority.

1553 **SECTION 46.** The following shall be codified as Section
1554 87-3-217, Mississippi Code of 1972:

1555 87-3-217. (a) In this section, a gift "for the benefit of"
1556 a person includes a gift to a trust, an account under the Uniform
1557 Transfers to Minors Act, and a tuition savings account or prepaid
1558 tuition plan as defined under Internal Revenue Code Section 529,
1559 26 USC Section 529, as amended.

1560 (b) Unless the power of attorney otherwise provides,
1561 language in a power of attorney granting general authority with
1562 respect to gifts authorizes the agent only to:

1563 (1) Make outright to, or for the benefit of, a person,
1564 a gift of any of the principal's property, including by the



1565 exercise of a presently exercisable general power of appointment
1566 held by the principal, in an amount per donee not to exceed the
1567 annual dollar limits of the federal gift tax exclusion under
1568 Internal Revenue Code Section 2503(b), 26 USC Section 2503(b), as
1569 amended, without regard to whether the federal gift tax exclusion
1570 applies to the gift, or if the principal's spouse agrees to
1571 consent to a split gift pursuant to Internal Revenue Code Section
1572 2513, 26 USC 2513, as amended in an amount per donee not to exceed
1573 twice the annual federal gift tax exclusion limit; and

1574 (2) Consent, pursuant to Internal Revenue Code Section
1575 2513, 26 USC Section 2513, as amended, to the splitting of a gift
1576 made by the principal's spouse in an amount per donee not to
1577 exceed the aggregate annual gift tax exclusions for both spouses.

1578 (c) An agent may make a gift of the principal's property
1579 only as the agent determines is consistent with the principal's
1580 objectives if actually known by the agent and, if unknown, as the
1581 agent determines is consistent with the principal's best interest
1582 based on all relevant factors, including:

1583 (1) The value and nature of the principal's property;

1584 (2) The principal's foreseeable obligations and need
1585 for maintenance;

1586 (3) Minimization of taxes, including income, estate,
1587 inheritance, generation-skipping transfer, and gift taxes;

1588 (4) Eligibility for a benefit, a program, or assistance
1589 under a statute or regulation; and

1590 (5) The principal's personal history of making or
1591 joining in making gifts.

1592 **SECTION 47.** The following shall be codified as Section
1593 87-3-301, Mississippi Code of 1972:

1594 87-3-301. A document substantially in the following form may
1595 be used to create a statutory form power of attorney that has the
1596 meaning and effect prescribed by Sections 87-3-101 through
1597 87-3-405.



1598 **MISSISSIPPI**

1599 **STATUTORY FORM POWER OF ATTORNEY**

1600 **IMPORTANT INFORMATION**

1601 This power of attorney authorizes another person (your agent)
1602 to make decisions concerning your property for you (the
1603 principal). Your agent will be able to make decisions and act
1604 with respect to your property (including your money) whether or
1605 not you are able to act for yourself. The meaning of authority
1606 over subjects listed on this form is explained in the Uniform
1607 Power of Attorney Act, Sections 87-3-101 through 87-3-405.

1608 This power of attorney does not authority the agent to make
1609 health care decisions for you.

1610 You should select someone you trust to serve as your agent.
1611 Unless you specify otherwise, generally the agent's authority will
1612 continue until you die or revoke the power of attorney or the
1613 agent resigns or is unable to act for you.

1614 Your agent is entitled to reasonable compensation unless you
1615 state otherwise in the Special Instructions.

1616 This form provides for designation of one (1) agent. If you
1617 wish to name more than one (1) agent you may name a co-agent in
1618 the Special Instructions. Co-agents are not required to act
1619 together unless you include that requirement in the Special
1620 Instructions.

1621 If your agent is unable or unwilling to act for you, your
1622 power of attorney will end unless you have named a successor
1623 agent. You may also name a second successor agent.

1624 This power of attorney becomes effective immediately unless
1625 you state otherwise in the Special Instructions.

1626 **If you have questions about the power of attorney or the**
1627 **authority you are granting to your agent, you should seek legal**
1628 **advice before signing this form.**

1629 **DESIGNATION OF AGENT**

1630 I, _____, name the following person as my



1631 (Name of Principal)

1632 agent:

1633 Name of Agent: _____

1634 Agent's Address: _____

1635 Agent's Telephone Number: _____

1636 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

1637 If my agent is unable or unwilling to act for me, I name as
1638 my successor agent:

1639 Name of Successor Agent: _____

1640 Successor Agent's Address: _____

1641 Successor Agent's Telephone Number: _____

1642 If my successor agent is unable or unwilling to act for me, I
1643 name as my second successor agent:

1644 Name of Second Successor Agent: _____

1645 Second Successor Agent's Address: _____

1646 Second Successor Agent's Telephone Number: _____

1647 **GRANT OF GENERAL AUTHORITY**

1648 I grant my agent and any successor agent general authority to
1649 act for me with respect to the following subjects as defined in
1650 the Uniform Power of Attorney Act, Sections 87-3-101 through
1651 87-3-405:

1652 (INITIAL each subject you want to include in the agent's
1653 general authority. If you wish to grant general authority over
1654 all of the subjects you may initial "All Preceding Subjects"
1655 instead of initialing each subject.)

1656 () Real Property

1657 () Tangible Personal Property

1658 () Stocks and Bonds

1659 () Commodities and Options

1660 () Banks and Other Financial Institutions

1661 () Operation of Entity or Business

1662 () Insurance and Annuities

1663 () Estates, Trusts, and Other Beneficial Interests



- 1664 Claims and Litigation
1665 Personal and Family Maintenance
1666 Benefits from Governmental Programs or Civil or
1667 Military Service
1668 Retirement Plans
1669 Taxes
1670 All Preceding Subjects

1671 **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

1672 My agent MAY NOT do any of the following specific acts for me
1673 UNLESS I have INITIALED the specific authority listed below:

1674 **(CAUTION: Granting any of the following will give your agent
1675 the authority to take actions that could significantly reduce your
1676 property or change how your property is distributed at your death.
1677 INITIAL ONLY the specific authority you WANT to give your agent.)**

1678 Create, amend, revoke, or terminate an inter vivos
1679 trust

1680 Make a gift, subject to the limitations of Section
1681 87-3-217 of the Uniform Power of Attorney Act, and any special
1682 instructions in this power of attorney

1683 Create or change rights of survivorship

1684 Create or change a beneficiary designation

1685 Authorize another person to exercise the authority
1686 granted under this power of attorney

1687 Waive the principal's right to be a beneficiary of a
1688 joint and survivor annuity, including a survivor benefit under a
1689 retirement plan

1690 Exercise fiduciary powers that the principal has
1691 authority to delegate

1692 **LIMITATION ON AGENT'S AUTHORITY**

1693 An agent that is not my ancestor, spouse, or descendant MAY
1694 NOT use my property to benefit the agent or a person to whom the
1695 agent owes an obligation of support unless I have included that
1696 authority in the Special Instructions.



1697 **SPECIAL INSTRUCTIONS (OPTIONAL)**

1698 You may give special instructions on the following lines:

1699 _____
1700 _____
1701 _____
1702 _____
1703 _____
1704 _____
1705 _____
1706 _____

1707 **EFFECTIVE DATE**

1708 This power of attorney is effective immediately unless I have
1709 stated otherwise in the Special Instructions.

1710 **NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)**

1711 If it becomes necessary for a court to appoint a conservator
1712 or guardian of my estate or my person, I nominate the following
1713 person(s) for appointment:

1714 Name of Nominee for conservator or guardian of my estate:

1715 _____

1716 Nominee's Address: _____

1717 Nominee's Telephone Number: _____

1718 Name of Nominee for guardian of my person:

1719 _____

1720 Nominee's Address: _____

1721 Nominee's Telephone Number: _____

1722 **RELIANCE ON THIS POWER OF ATTORNEY**

1723 Any person, including my agent, may rely upon the validity of
1724 this power of attorney or a copy of it unless that person knows it
1725 has terminated or is invalid.

1726 **SIGNATURE AND ACKNOWLEDGMENT**

1727 _____

1728 Your Signature

Date

1729 _____



1730 Your Name Printed

1731 _____

1732 _____

1733 Your Address

1734 _____

1735 Your Telephone Number

1736 State of Mississippi

1737 County of _____

1738 Personally appeared before me, the undersigned authority in
1739 and for the said county and state, on this _____ day of
1740 _____, _____, within my jurisdiction, the within named
1741 _____, who acknowledged that (he) (she) (they) executed
1742 the above and foregoing instrument.

1743 _____

1744 NOTARY PUBLIC

1745 My Commission Expires:

1746 _____

1747 This document prepared by:

1748 _____

1749 _____

1750 **IMPORTANT INFORMATION FOR AGENT**

1751 **Agent's Duties**

1752 When you accept the authority granted under this power of
1753 attorney, a special legal relationship is created between you and
1754 the principal. This relationship imposes upon you legal duties
1755 that continue until you resign or the power of attorney is
1756 terminated or revoked. You must:

1757 (1) Do what you know the principal reasonably expects you to
1758 do with the principal's property or, if you do not know the
1759 principal's expectations, act in the principal's best interest;

1760 (2) Act in good faith;

1761 (3) Do nothing beyond the authority granted in this power of
1762 attorney; and



1763 (4) Disclose your identity as an agent whenever you act for
1764 the principal by writing or printing the name of the principal and
1765 signing your own name as "agent" in the following manner:

1766 (Principal's Name) by (Your Signature) as Agent

1767 Unless the Special Instructions in this power of attorney
1768 state otherwise, you must also:

1769 (1) Act loyally for the principal's benefit;

1770 (2) Avoid conflicts that would impair your ability to act in
1771 the principal's best interest;

1772 (3) Act with care, competence, and diligence;

1773 (4) Keep a record of all receipts, disbursements, and
1774 transactions made on behalf of the principal;

1775 (5) Cooperate with any person that has authority to make
1776 health care decisions for the principal to do what you know the
1777 principal reasonably expects or, if you do not know the
1778 principal's expectations, to act in the principal's best interest;
1779 and

1780 (6) Attempt to preserve the principal's estate plan if you
1781 know the plan and preserving the plan is consistent with the
1782 principal's best interest.

1783 **Termination of Agent's Authority**

1784 You must stop acting on behalf of the principal if you learn
1785 of any event that terminates this power of attorney or your
1786 authority under this power of attorney. Events that terminate a
1787 power of attorney or your authority to act under a power of
1788 attorney include:

1789 (1) Death of the principal;

1790 (2) The principal's revocation of the power of attorney or
1791 your authority;

1792 (3) The occurrence of a termination event stated in the
1793 power of attorney;

1794 (4) The purpose of the power of attorney is fully
1795 accomplished; or



1796 (5) If you are married to the principal, a legal action is
1797 filed with a court to end your marriage, or for your legal
1798 separation, unless the Special Instructions in this power of
1799 attorney state that such an action will not terminate your
1800 authority.

1801 **Liability of Agent**

1802 The meaning of the authority granted to you is defined in the
1803 Uniform Power of Attorney Act, Sections 87-3-101 through 87-3-405.
1804 If you violate the Uniform Power of Attorney Act, Sections
1805 87-3-101 through 87-3-405 or act outside the authority granted,
1806 you may be liable for any damages caused by your violation.

1807 **If there is anything about this document or your duties that**
1808 **you do not understand, you should seek legal advice.**

1809 **SECTION 48.** The following shall be codified as Section
1810 87-3-302, Mississippi Code of 1972:

1811 87-3-302. The following optional form may be used by an
1812 agent to certify facts concerning a power of attorney.

1813 **AGENT'S CERTIFICATION AS TO THE VALIDITY OF**
1814 **POWER OF ATTORNEY AND AGENT'S AUTHORITY**

1815 State of Mississippi

1816 County of _____

1817 I, _____ (Name of Agent), certify under
1818 penalty of perjury that _____ (Name of
1819 Principal) granted me authority as an agent or successor agent in
1820 a power of attorney dated _____.

1821 I further certify that to my knowledge:

1822 (1) The Principal is alive and has not revoked the Power of
1823 Attorney or my authority to act under the Power of Attorney and
1824 the Power of Attorney and my authority to act under the Power of
1825 Attorney have not terminated;

1826 (2) If the Power of Attorney was drafted to become effective
1827 upon the happening of an event or contingency, the event or
1828 contingency has occurred;



1829 (3) If I was named as a successor agent, the prior agent is
1830 no longer able or willing to serve; and

1831 (4) _____
1832 _____
1833 _____
1834 _____

1835 (Insert other relevant statements)

1836 **SIGNATURE AND ACKNOWLEDGMENT**

1837 _____

1838 Agent's Signature Date

1839 _____

1840 Agent's Name Printed

1841 _____

1842 _____

1843 Agent's Address

1844 _____

1845 Agent's Telephone Number

1846 Sworn to and subscribed before me on _____.

1847 (Date)

1848 By _____

1849 (Name of Agent)

1850 _____ (Seal, if any)

1851 Signature of Notary

1852 My commission expires: _____

1853 This document prepared by:

1854 _____

1855 _____

1856 **SECTION 49.** The following shall be codified as Section

1857 87-3-401, Mississippi Code of 1972:

1858 87-3-401. In applying and construing this uniform act,

1859 consideration must be given to the need to promote uniformity of

1860 the law with respect to its subject matter among the states that

1861 enact it.



1862 **SECTION 50.** The following shall be codified as Section
1863 87-3-402, Mississippi Code of 1972:

1864 87-3-402. Section 87-3-101 through 87-3-405 modify, limit,
1865 and supersede the federal Electronic Signature in Global and
1866 National Commerce Act, 15 USC Section 7001 et seq., but does not
1867 modify, limit, or supersede Section 101(c) of that act, 15 USC
1868 Section 7001(c), or authorize electronic delivery of any of the
1869 notices described in Section 103(b) of that act, 15 USC Section
1870 7003(b).

1871 **SECTION 51.** The following shall be codified as Section
1872 87-3-403, Mississippi Code of 1972:

1873 87-3-403. Except as otherwise provided in Sections 87-3-101
1874 through 87-3-405, on July 1, 2008:

1875 (1) Sections 87-3-101 through 87-3-405 apply to a power of
1876 attorney created before, on, or after July 1, 2008;

1877 (2) Sections 87-3-101 through 87-3-405 apply to a judicial
1878 proceeding concerning a power of attorney commenced on or after
1879 July 1, 2008;

1880 (3) Sections 87-3-101 through 87-3-405 apply to a judicial
1881 proceeding concerning a power of attorney commenced before July 1,
1882 2008, unless the court finds that application of a provision of
1883 Sections 87-3-101 through 87-3-405 would substantially interfere
1884 with the effective conduct of the judicial proceeding or prejudice
1885 the rights of a party, in which case that provision does not apply
1886 and the superseded law applies; and

1887 (4) An act done before July 1, 2008, is not affected by
1888 Sections 87-3-101 through 87-3-405.

1889 **SECTION 52.** Section 87-3-15, Mississippi Code of 1973, which
1890 provides that death is not an absolute revocation of an agency
1891 created by a principal, is repealed.

1892 **SECTION 53.** Sections 87-3-101, 87-3-103, 87-3-105, 87-3-107,
1893 87-3-109, 87-3-111 and 87-3-113, Mississippi Code of 1972, which



1894 provide for the Uniform Durable Power of Attorney Act, are
1895 repealed.

1896 **SECTION 54.** Section 93-13-251, Mississippi Code of 1972, is
1897 amended as follows:

1898 93-13-251. If a person by reason of advanced age, physical
1899 incapacity or mental weakness, or because the person is missing or
1900 outside of the United States and unable to return, is incapable of
1901 managing his own estate, the chancery court of the county wherein
1902 such person resides, or in the case of a missing or detained
1903 person, where such person most recently resided may, upon the
1904 petition of such person or of one or more of his friends or
1905 relatives, appoint a conservator to have charge and management of
1906 the property of such person, and if the court deems it advisable,
1907 also to have charge and custody of the person subject to the
1908 direction of the appointing court.

1909 **SECTION 55.** Section 93-13-253, Mississippi Code of 1972, is
1910 amended as follows:

1911 93-13-253. Upon the filing of such petition, the clerk of
1912 the court shall set a time and place for hearing and shall cause
1913 not less than five (5) days' notice thereof to be given to the
1914 person for whom the conservator is to be appointed, except that
1915 the court may, for good cause shown, direct that a shorter notice
1916 be given. Unless the court finds that the person for whom the
1917 conservator is to be appointed is competent and joins in the
1918 petition, such notice shall also be given to one (1) relative of
1919 the person for whom the conservator is to be appointed residing in
1920 Mississippi (other than the petitioner); provided such relative be
1921 within the third degree of kinship, preferring first the spouse,
1922 unless legally separated, then an ascendant or descendant, then a
1923 brother or sister, then an adult niece, nephew, aunt or uncle, it
1924 being the intention of the Legislature to require personal service
1925 on the person for whom the conservator is to be appointed and one
1926 (1) relative (other than the petitioner) residing in Mississippi.



1927 If no relative within the third degree of kinship to the person
1928 for whom the conservator is to be appointed is found residing in
1929 the State of Mississippi, the court may dispense with such notice
1930 or designate some other appropriate person to receive such notice,
1931 or may appoint a guardian ad litem to receive notice. If the
1932 person for whom the conservator is to be appointed is entitled to
1933 any benefit, estate or income paid or payable by or through the
1934 Veterans' Administration of the United States government, such
1935 administration shall also be given such notice.

1936 Notice may be by personal service by the sheriff as in
1937 service of other process but nothing herein shall be construed to
1938 prevent competent persons from accepting notice in person from the
1939 clerk or his deputy.

1940 **SECTION 56.** Section 91-1-15, Mississippi Code of 1972, is
1941 amended as follows:

1942 91-1-15. (1) The following terms shall have the meaning
1943 ascribed to them herein:

1944 (a) "Remedy" means the right of an illegitimate to
1945 commence and maintain a judicial proceeding to enforce a claim to
1946 inherit property from the estate of the natural mother or father
1947 of such illegitimate, said claim having been heretofore prohibited
1948 by law, or prohibited by statutes requiring marriage between the
1949 natural parents, or restrained, or enjoined by the order or
1950 process of any court in this state.

1951 (b) "Claim" means the right to assert a demand on
1952 behalf of an illegitimate to inherit property, either personal or
1953 real, from the estate of the natural mother or father of such
1954 illegitimate.

1955 (c) "Illegitimate" means a person who at the time of
1956 his birth was born to natural parents not married to each other
1957 and said person was not legitimized by subsequent marriage of said
1958 parents or legitimized through a proper judicial proceeding.



1959 (d) "Natural parents" means the biological mother or
1960 father of the illegitimate.

1961 (2) An illegitimate shall inherit from and through the
1962 illegitimate's mother and her kindred, and the mother of an
1963 illegitimate and her kindred shall inherit from and through the
1964 illegitimate according to the statutes of descent and
1965 distribution. However, if an illegitimate shall die unmarried and
1966 without issue, and shall also predecease the natural father, the
1967 natural mother or her kindred shall not inherit any part of the
1968 natural father's estate from or through the illegitimate. In the
1969 event of the death of an illegitimate, unmarried and without
1970 issue, any part of the illegitimate's estate inherited from the
1971 natural father shall be inherited according to the statutes of
1972 descent and distribution.

1973 (3) An illegitimate shall inherit from and through the
1974 illegitimate's natural father and his kindred, and the natural
1975 father of an illegitimate and his kindred shall inherit from and
1976 through the illegitimate according to the statutes of descent and
1977 distribution if:

1978 (a) The natural parents participated in a marriage
1979 ceremony before the birth of the child, even though the marriage
1980 was subsequently declared null and void or dissolved by a court;
1981 or

1982 (b) There has been an adjudication of paternity or
1983 legitimacy before the death of the intestate; or

1984 (c) There has been an adjudication of paternity after
1985 the death of the intestate, based upon clear and convincing
1986 evidence, in an heirship proceeding under Sections 91-1-27 and
1987 91-1-29. However, no such claim of inheritance shall be
1988 recognized unless the action seeking an adjudication of paternity
1989 is filed within one (1) year after the death of the intestate or
1990 within ninety (90) days after the first publication of notice to
1991 creditors to present their claims, whichever is less; and such



1992 time period shall run notwithstanding the minority of a child.
1993 This one-year limitation shall be self-executing and may not be
1994 tolled for any reason, including lack of notice. If an
1995 administrator is appointed for the estate of the intestate and
1996 notice to creditors is given, then the limitation period shall be
1997 reduced to ninety (90) days after the first publication of notice,
1998 if less than one (1) year from the date of the intestate's death;
1999 provided actual, written notice is given to all potential
2000 illegitimate heirs who could be located with reasonable diligence.

2001 No claim of inheritance based on an adjudication of paternity,
2002 after death of the intestate, by a court outside the State of
2003 Mississippi shall be recognized unless:

2004 (i) Such court was in the state of residence of
2005 the intestate at the time of the intestate's death;

2006 (ii) The action adjudicating paternity was filed
2007 within ninety (90) days after the death of the intestate;

2008 (iii) All known heirs were made parties to the
2009 action; and

2010 (iv) Paternity or legitimacy was established by
2011 clear and convincing evidence.

2012 (d) The natural father of an illegitimate and his
2013 kindred shall not inherit:

2014 (i) From or through the child unless the father
2015 has openly treated the child as his, and has not refused or
2016 neglected to support the child.

2017 (ii) Any part of the natural mother's estate from
2018 or through the illegitimate if the illegitimate dies unmarried and
2019 without issue, and also predeceases the natural mother. In the
2020 event of the death of an illegitimate, unmarried and without
2021 issue, any part of the illegitimate's estate inherited from the
2022 mother shall be inherited according to the statutes of descent and
2023 distribution.



2024 A remedy is hereby created in favor of all illegitimates
2025 having any claim existing prior to July 1, 1981, concerning the
2026 estate of an intestate whose death occurred prior to such date by
2027 or on behalf of an illegitimate or an alleged illegitimate child
2028 to inherit from or through its natural father and any claim by a
2029 natural father to inherit from or through an illegitimate child
2030 shall be brought within three (3) years from and after July 1,
2031 1981, and such time period shall run notwithstanding the minority
2032 of a child.

2033 The remedy created herein is separate, complete and distinct,
2034 but cumulative with the remedies afforded illegitimates as
2035 provided by the Mississippi Uniform Law on Paternity; provided,
2036 however, the failure of an illegitimate to seek or obtain relief
2037 under the Mississippi Uniform Law on Paternity shall not diminish
2038 or abate the remedy created herein.

2039 (4) The children of illegitimates and their descendants
2040 shall inherit from and through their mother and father according
2041 to the statutes of descent and distribution.

2042 **SECTION 57.** Section 27-10-5, Mississippi Code of 1972, is
2043 amended as follows:

2044 27-10-5. Definitions.

2045 In this chapter:

2046 (a) "Estate" means the gross estate of a decedent as
2047 determined for the purpose of federal estate tax and the estate
2048 tax payable to this state. The term "estate" does not include any
2049 property or interest in property that is not included in a
2050 decedent's taxable estate determined under 26 USC Section
2051 2001(b)(1)(A) and 26 USC Section 2051, and does not include any
2052 adjustable taxable gifts of the decedent as defined in 26 USC
2053 Section 2001(b) notwithstanding the holding of any court to the
2054 contrary;

2055 (b) "Fiduciary" means executor, administrator of any
2056 description, and trustee;



2057 (c) "Person" means any individual, partnership,
2058 association, joint-stock company, corporation, government,
2059 political subdivision, governmental agency or local governmental
2060 agency;

2061 (d) "Person interested in the estate" means any person
2062 including an executor, administrator, guardian, conservator or
2063 trustee, entitled to receive, or who has received, from a decedent
2064 while alive or by reason of the death of a decedent any property
2065 or interest therein included in the decedent's taxable estate as
2066 determined under 26 USC Section 2001(b)(1)(A) and 26 USC Section
2067 2051;

2068 (e) "State" means any state, territory, or possession
2069 of the United States, the District of Columbia, or the
2070 Commonwealth of Puerto Rico; and

2071 (f) "Tax" means the federal estate tax and the
2072 additional estate tax imposed by the State of Mississippi and
2073 interest and penalties imposed in addition to the tax.

2074 **SECTION 58.** Section 27-10-7, Mississippi Code of 1972, is
2075 amended as follows:

2076 27-10-7. Except as provided in Section 27-10-17 and, unless
2077 the will otherwise provides, the tax shall be apportioned among
2078 all persons interested in the estate. The apportionment shall be
2079 made in the proportion that the value of the interest of each
2080 person interested in the estate bears to the total value of the
2081 interests of all persons interested in the estate. The values
2082 used in determining the tax shall be used for that purpose. If
2083 the decedent's will directs a method of apportionment of tax
2084 different from the method described in this chapter, the method
2085 described in the will controls; however, tax may not be
2086 apportioned against an interest which is not an interest in the
2087 estate, including, specifically, any adjustable taxable gift of
2088 the decedent as defined in Section 26 USC Section 2001(b),



2089 notwithstanding any provision of the decedent's will to the
2090 contrary.

2091 **SECTION 59.** Section 85-3-1, Mississippi Code of 1972, is
2092 amended as follows:

2093 85-3-1. There shall be exempt from seizure under execution
2094 or attachment:

2095 (a) Tangible personal property of the following kinds
2096 selected by the debtor, not exceeding Ten Thousand Dollars
2097 (\$10,000.00) in cumulative value:

2098 (i) Household goods, wearing apparel, books,
2099 animals or crops;

2100 (ii) Motor vehicles;

2101 (iii) Implements, professional books or tools of
2102 the trade;

2103 (iv) Cash on hand;

2104 (v) Professionally prescribed health aids;

2105 (vi) Any items of tangible personal property worth
2106 less than Two Hundred Dollars (\$200.00) each.

2107 Household goods, as used in this paragraph (a), means
2108 clothing, furniture, appliances, one (1) radio and one (1)
2109 television, one (1) firearm, one (1) lawnmower, linens, china,
2110 crockery, kitchenware, and personal effects (including wedding
2111 rings) of the debtor and his dependents; however, works of art,
2112 electronic entertainment equipment (except one (1) television and
2113 one (1) radio), jewelry (other than wedding rings), and items
2114 acquired as antiques are not included within the scope of the term
2115 "household goods." This paragraph (a) shall not apply to distress
2116 warrants issued for collection of taxes due the state or to wages
2117 described in Section 85-3-4.

2118 (b) (i) The proceeds of insurance on property, real
2119 and personal, exempt from execution or attachment, and the
2120 proceeds of the sale of such property.

2121 (ii) Income from disability insurance.



2122 (c) All property in this state, real, personal and
2123 mixed, for the satisfaction of a judgment or claim in favor of
2124 another state or political subdivision of another state for
2125 failure to pay that state's or that political subdivision's income
2126 tax on benefits received from a pension or other retirement plan.
2127 As used in this paragraph (c), "pension or other retirement plan"
2128 includes:

2129 (i) An annuity, pension, or profit-sharing or
2130 stock bonus or similar plan established to provide retirement
2131 benefits for an officer or employee of a public or private
2132 employer or for a self-employed individual;

2133 (ii) An annuity, pension, or military retirement
2134 pay plan or other retirement plan administered by the United
2135 States; and

2136 (iii) An individual retirement account.

2137 (d) One (1) mobile home, trailer, manufactured housing,
2138 or similar type dwelling owned and occupied as the primary
2139 residence by the debtor, not exceeding a value of Thirty Thousand
2140 Dollars (\$30,000.00); in determining this value, existing
2141 encumbrances on the dwelling, including taxes and all other liens,
2142 shall first be deducted from the actual value of the dwelling. A
2143 debtor is not entitled to the exemption of a mobile home as
2144 personal property who claims a homestead exemption under Section
2145 85-3-21, and the exemption shall not apply to collection of
2146 delinquent taxes under Sections 27-41-101 through 27-41-109.

2147 (e) Assets held in, or monies payable to the
2148 participant or beneficiary from, whether vested or not, (i) a
2149 pension, profit-sharing, stock bonus or similar plan or contract
2150 established to provide retirement benefits for the participant or
2151 beneficiary and qualified under Section 401(a), 403(a), or 403(b)
2152 of the Internal Revenue Code (or corresponding provisions of any
2153 successor law), including a retirement plan for self-employed
2154 individuals qualified under one of such enumerated sections, (ii)



2155 an eligible deferred compensation plan described in Section 457(b)
2156 of the Internal Revenue Code (or corresponding provisions of any
2157 successor law), or (iii) an individual retirement account or an
2158 individual retirement annuity within the meaning of Section 408 of
2159 the Internal Revenue Code (or corresponding provisions of any
2160 successor law), including a simplified employee pension plan.

2161 (f) Monies paid into or, to the extent payments out are
2162 applied to tuition or other qualified higher education expenses at
2163 eligible educational institutions (as defined in Section 529 of
2164 the Internal Revenue Code (or corresponding provisions of any
2165 successor law)), monies paid out of the assets of and the income
2166 from any validly existing qualified tuition program authorized
2167 under Section 529 of the Internal Revenue Code (or corresponding
2168 provisions of any successor law), including, but not limited to,
2169 the Mississippi Prepaid Affordable College Tuition (MPACT) Program
2170 established under Sections 37-155-1 through 37-155-27 and the
2171 Mississippi Affordable College Savings (MACS) Program established
2172 under Sections 37-155-101 through 37-155-125.

2173 (g) The assets of a health savings account, including
2174 any interest accrued thereon, established pursuant to a health
2175 savings account program as provided in the Health Savings Accounts
2176 Act (Sections 83-62-1 through 83-62-9).

2177 (h) In addition to all other exemptions listed in this
2178 section, there shall be an additional exemption of property having
2179 a value of Fifty Thousand Dollars (\$50,000.00) of whatever type,
2180 whether real, personal or mixed, tangible or intangible, including
2181 deposits of money, available to any Mississippi resident who is
2182 seventy (70) years of age or older.

2183 (i) An amount not to exceed Five Thousand Dollars
2184 (\$5,000.00) of earned income tax credit proceeds.

2185 (j) An amount not to exceed Five Thousand Dollars
2186 (\$5,000.00) of federal tax refund proceeds.



2187 (k) An amount not to exceed Five Thousand Dollars
2188 (\$5,000.00) of state tax refund proceeds.

2189 (l) Nothing in this section shall in any way affect the
2190 rights or remedies of the holder or owner of a statutory lien or
2191 voluntary security interest.

2192 **SECTION 60.** If after executing a will the testator is
2193 divorced, the divorce shall cause all property in the will to pass
2194 as though the former spouse predeceased the testator, unless the
2195 will expressly provides otherwise. The divorce shall also nullify
2196 any provision conferring a general or special power of appointment
2197 on the former spouse and any nomination of the former spouse as
2198 executor, trustee, conservator or guardian, unless the will
2199 expressly provides otherwise. Property prevented from passing to
2200 the former spouse because of this section shall be passed as if
2201 the spouse predeceased the testator. Other provisions of the will
2202 conferring a power or office on the former spouse shall be
2203 interpreted as if the spouse predeceased the testator. Remarriage
2204 to the former spouse revives any provisions of the will that were
2205 nullified under this section, unless another will has been
2206 executed. For the purpose of this section, divorce means any
2207 divorce that would exclude the spouse as a surviving spouse within
2208 the meaning of Sections 93-5-1 and 93-5-2.

2209 **SECTION 61.** If after executing a will the testator's
2210 marriage is annulled, the annulment shall cause all property in
2211 the will to pass as though the former spouse predeceased the
2212 testator, unless the will expressly provides otherwise. The
2213 annulment shall also nullify any provision conferring a general or
2214 special power of appointment on the former spouse and any
2215 nomination of the former spouse as executor, trustee, conservator
2216 or guardian, unless the will expressly provides otherwise.
2217 Property prevented from passing to the former spouse because of
2218 this section shall be passed as if the spouse predeceased the
2219 testator. Other provisions of the will conferring a power or



2220 office on the former spouse shall be interpreted as if the spouse
2221 predeceased the testator. Remarriage to the former spouse revives
2222 any provisions of the will that were nullified under this section.
2223 For the purpose of this section, annulment means any annulment
2224 that would exclude the spouse as a surviving spouse within the
2225 meaning of Section 93-7-1.

2226 **SECTION 62.** Section 91-5-3, Mississippi Code of 1972, is
2227 amended as follows:

2228 91-5-3. A devise so made, or any clause thereof, shall not
2229 be revocable but by the testator or testatrix destroying,
2230 canceling, or obliterating the same, or causing it to be done in
2231 his or her presence, or by subsequent will, codicil, or
2232 declaration, in writing, made and executed, or as provided in
2233 Section 1 or 2 of this act. Every last will and testament made
2234 when the testator or testatrix had no child living, wherein any
2235 child he or she might have is not provided for or not mentioned,
2236 if at the time of his or her death he or she have a child, or if
2237 the testator leave his wife enceinte of a child who shall be born,
2238 shall have no effect during the life of any such after-born child
2239 and shall be void unless the child die without having been
2240 married, or without leaving issue capable of inheriting, and
2241 before he or she shall have attained twenty-one (21) years. The
2242 estate, both real and personal, so devised shall descend to such
2243 child in the same manner as if the testator or testatrix had died
2244 intestate, subject, nevertheless, to the bequests made in the last
2245 will and testament in case of the death of such child before
2246 marriage, or without issue capable of inheriting, and under the
2247 age of twenty-one (21) years. When a testator shall leave
2248 children born and his wife enceinte, the posthumous child or
2249 children, if unprovided for by settlement and neither provided for
2250 nor disinherited, but only pretermitted, by the last will and
2251 testament, shall succeed to the same portion of the father's
2252 estate as such child or children would have been entitled to if



2253 the father had died intestate, towards raising which portion the
2254 devisees and legatees shall contribute proportionably out of the
2255 parts devised and bequeathed to them by the same will and
2256 testament.

2257 **SECTION 63.** This act shall take effect and be in force from
2258 and after its passage.

