

By: Representative Blackmon

To: Judiciary A

HOUSE BILL NO. 1110

1 AN ACT TO REVISE VARIOUS PROVISIONS OF THE UNIFORM DURABLE
 2 POWER OF ATTORNEY; TO PROVIDE THAT A NATURAL PERSON HAVING THE
 3 CAPACITY TO CONTRACT MAY EXECUTE A POWER OF ATTORNEY; TO PRESCRIBE
 4 THE COMPONENTS OF A LEGALLY SUFFICIENT POWER OF ATTORNEY; TO
 5 REQUIRE THAT THE EXECUTION OF POWER OF CONTRACT BE ATTESTED TO BY
 6 AT LEAST TWO CREDIBLE WITNESSES; TO AMEND SECTIONS 87-3-105,
 7 87-3-107, 87-3-109 AND 87-3-111, MISSISSIPPI CODE OF 1972, IN
 8 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
 9 PURPOSES.

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

11 **SECTION 1.** (1) A natural person having the capacity to
 12 contract may execute a power of attorney.

13 (2) A power of attorney is legally sufficient upon
 14 satisfactory proof of the following requirements:

15 (a) That the power of attorney contains the date of its
 16 execution;

17 (b) That the power of attorney is:

18 (i) Signed by the principal; or

19 (ii) Signed in the principal's name by another
 20 adult in the principal's presence and at the principal's
 21 direction; and

22 (c) That the power of attorney is:

23 (i) Acknowledged before a notary public; or

24 (ii) Signed by at least two (2) attesting credible
 25 witnesses who satisfy the requirements of subsection (3).

26 (3) If the power of attorney is signed by witnesses, as
 27 required in subsection (2)(c), there is a rebuttable presumption
 28 that the following requirements are satisfied:

29 (a) That the credible witnesses are adults at least
 30 eighteen (18) years of age.



31 (b) That the attorney in fact did not act as a witness.

32 (c) That each attesting witness signing the power of
33 attorney witnessed the other signing the instrument by the
34 principal or the principal's acknowledgment of the signature or
35 the power of attorney.

36 **SECTION 2.** Section 87-3-105, Mississippi Code of 1972, is
37 amended as follows:

38 87-3-105. A durable power of attorney is a power of attorney
39 by which a principal designates another his attorney in fact in
40 writing and the writing contains any of the following statements:

41 (a) "This power of attorney shall not be affected by
42 subsequent * * * incapacity of the principal."; or

43 (b) "This power of attorney shall become effective upon
44 the * * * incapacity of the principal."; or

45 (c) Any similar words showing the intent of the
46 principal that the authority conferred shall be exercisable
47 notwithstanding the principal's subsequent * * * incapacity * * *.

48 **SECTION 3.** Section 87-3-107, Mississippi Code of 1972, is
49 amended as follows:

50 87-3-107. All acts done by an attorney in fact pursuant to a
51 durable power of attorney during any period of * * * incapacity of
52 the principal have the same effect and inure to the benefit of and
53 bind the principal and his successors in interest as if the
54 principal had capacity to act on his behalf.

55 **SECTION 4.** Section 87-3-109, Mississippi Code of 1972, is
56 amended as follows:

57 87-3-109. * * *

58 * * * A principal may nominate, by a durable power of
59 attorney, the conservator, guardian of his estate, or guardian of
60 his person for consideration by the court if protective
61 proceedings for the principal's person or estate are thereafter
62 commenced. * * *



63 **SECTION 5.** Section 87-3-111, Mississippi Code of 1972, is
64 amended as follows:

65 87-3-111. (1) The death of a principal who has executed a
66 written power of attorney, durable or otherwise, does not revoke
67 or terminate the agency as to the attorney in fact or other
68 person, who, without actual knowledge of the death of the
69 principal, acts in good faith under the power. Any action so
70 taken, unless otherwise invalid or unenforceable, binds successors
71 in interest of the principal.

72 (2) The disability or incapacity of a principal who has
73 previously executed a written power of attorney that is not a
74 durable power does not revoke or terminate the agency as to the
75 attorney in fact or other person, who, without actual knowledge of
76 the disability or incapacity of the principal, acts in good faith
77 under the power. Any action so taken, unless otherwise invalid or
78 unenforceable, binds the principal and his successors in interest.

79 (3) Unless a power of attorney states a time of termination,
80 the authority of the attorney in fact is exercisable
81 notwithstanding any lapse of time since execution of the power of
82 attorney.

83 **SECTION 6.** This act shall take effect and be in force from
84 and after July 1, 2012.

