

By: Senator(s) Tindell

To: Judiciary, Division A

SENATE BILL NO. 2574
(As Passed the Senate)

1 AN ACT TO CREATE THE MISSISSIPPI UNIFORM POWER OF ATTORNEY
2 ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR THE APPLICABILITY OF
3 THIS ACT; TO PROVIDE FOR THE EXECUTION, VALIDITY AND MEANING OF A
4 POWER OF ATTORNEY; TO PROVIDE FOR THE NOMINATION OF CONSERVATORS
5 OR GUARDIANS; TO PROVIDE WHEN A POWER OF ATTORNEY IS EFFECTIVE; TO
6 PROVIDE FOR THE TERMINATION OF A POWER OF ATTORNEY OR AN AGENT'S
7 AUTHORITY; TO PROVIDE THE DUTIES AND RESPONSIBILITIES OF AGENTS;
8 TO PROVIDE FOR THE EXONERATION OF AN AGENT; TO PROVIDE FOR
9 JUDICIAL RELIEF; TO PROVIDE FOR THE RESIGNATION OF AGENTS AND
10 NOTICE THEREOF; TO PROVIDE FOR ACCEPTANCE AND RELIANCE UPON AN
11 ACKNOWLEDGED POWER OF ATTORNEY; TO PROVIDE LIABILITY FOR REFUSAL
12 TO ACCEPT AN ACKNOWLEDGED POWER OF ATTORNEY; TO PROVIDE AUTHORITY
13 THAT REQUIRES SPECIFIC GRANT; TO PROVIDE FOR THE INCORPORATION AND
14 CONSTRUCTION OF AUTHORITY; TO PROVIDE FOR THE AUTHORITY OF AN
15 AGENT AND THE USES THEREFOR; TO PROVIDE FORMS FOR A POWER OF
16 ATTORNEY; TO PROVIDE FOR AN AGENT'S CERTIFICATION; TO AMEND
17 SECTION 75-3-307, MISSISSIPPI CODE OF 1972, TO CONFORM; TO REPEAL
18 SECTIONS 87-3-101, 87-3-103, 87-3-105, 87-3-107, 87-3-109,
19 87-3-111 AND 87-3-113, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE
20 THE UNIFORM DURABLE POWER OF ATTORNEY ACT; AND FOR RELATED
21 PURPOSES.

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

23 **SECTION 1.** The following shall be codified as Chapter 4 of
24 Title 87, Mississippi Code of 1972:

25 **ARTICLE 1**

26 **SECTION 2.** The following shall be codified as Section
27 87-4-101, Mississippi Code of 1972:



28 87-4-101. **Short title.** This act may be cited as the
29 Mississippi Uniform Power of Attorney Act.

30 **SECTION 3.** The following shall be codified as Section
31 87-4-102, Mississippi Code of 1972:

32 87-4-102. **Definitions.** In this act:

33 (1) "Agent" means a person granted authority to act for
34 a principal under a power of attorney, whether denominated an
35 agent, attorney-in-fact, or otherwise. The term includes an
36 original agent, coagent, successor agent, and a person to which an
37 agent's authority is delegated. The term does not include a
38 trustee and does not include an authorized signer on a deposit
39 account.

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

42 (3) "Electronic" means relating to technology having
43 electrical, digital, magnetic, wireless, optical, electromagnetic,
44 or similar capabilities.

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

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

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

51 (B) Is:

52 (i) Missing;



53 (ii) Detained, including incarcerated in a
54 penal system; or

55 (iii) Outside the United States and unable to
56 return.

57 (6) "Person" means an individual, corporation, business
58 trust, estate, trust, partnership, limited liability company,
59 association, joint venture, public corporation, government or
60 governmental subdivision, agency, or instrumentality, or any other
61 legal or commercial entity.

62 (7) "Power of attorney" means a writing or other record
63 that grants authority to an agent to act in the place of the
64 principal, whether or not the term power of attorney is used.
65 Specifically excluded from the definition of power of attorney is
66 a health care power of attorney, a trust, and a writing or record
67 granting the authority to be an authorized signer on a deposit
68 account or bank account.

69 (8) "Presently exercisable general power of
70 appointment," with respect to property or a property interest
71 subject to a power of appointment, means power exercisable at the
72 time in question to vest absolute ownership in the principal
73 individually, the principal's estate, the principal's creditors,
74 or the creditors of the principal's estate. The term includes a
75 power of appointment not exercisable until the occurrence of a
76 specified event, the satisfaction of an ascertainable standard, or
77 the passage of a specified period only after the occurrence of the



78 specified event, the satisfaction of the ascertainable standard,
79 or the passage of the specified period. The term does not include
80 a power exercisable in a fiduciary capacity or only by will.

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

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

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

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

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

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

94 (13) "State" means a state of the United States, the
95 District of Columbia, Puerto Rico, the United States Virgin
96 Islands, or any territory or insular possession subject to the
97 jurisdiction of the United States.

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



103 **SECTION 4.** The following shall be codified as Section
104 87-4-103, Mississippi Code of 1972:

105 87-4-103. **Applicability.** This act applies to all powers of
106 attorney except:

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

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

112 (3) A proxy or other delegation to exercise voting
113 rights or management rights with respect to an entity;

114 (4) A power created on a form prescribed by a
115 government or governmental subdivision, agency, or instrumentality
116 for a governmental purpose;

117 (5) A power, delegation or grant of authority under a
118 trust or will;

119 (6) A power, delegation or grant of authority under a
120 court order to a conservator, guardian, executor, executrix,
121 administrator, administratrix, or other court-appointed fiduciary;
122 and

123 (7) A power, delegation, or grant of authority under a
124 writing or record to an authorized signer on a deposit account.

125 **SECTION 5.** The following shall be codified as Section
126 87-4-104, Mississippi Code of 1972:



127 87-4-104. **Power of attorney is durable.** A power of attorney
128 created under this act is durable unless it expressly provides
129 that it is terminated by the incapacity of the principal.

130 **SECTION 6.** The following shall be codified as Section
131 87-4-105, Mississippi Code of 1972:

132 87-4-105. **Execution of power of attorney.** A power of
133 attorney must be signed by the principal or in the principal's
134 conscious presence by another individual directed by the principal
135 to sign the principal's name on the power of attorney. A
136 signature on a power of attorney is presumed to be genuine if the
137 principal acknowledges the signature before a notary public or
138 other individual authorized by law to take acknowledgments.

139 **SECTION 7.** The following shall be codified as Section
140 87-4-106, Mississippi Code of 1972:

141 87-4-106. **Validity of power of attorney.** (a) A power of
142 attorney executed in this state on or after July 1, 2016, is valid
143 if its execution complies with Section 87-4-105.

144 (b) A power of attorney executed in this state before July
145 1, 2016, is valid if its execution complied with the law of this
146 state as it existed at the time of execution.

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



150 (1) The law of the jurisdiction that determines the
151 meaning and effect of the power of attorney pursuant to Section
152 87-4-107; or

153 (2) The requirements for a military power of attorney
154 pursuant to 10 USCS Section 1044b.

155 (d) Except as otherwise provided by statute other than this
156 act, a photocopy or electronically transmitted copy of an original
157 power of attorney has the same effect as the original.

158 **SECTION 8.** The following shall be codified as Section
159 87-4-107, Mississippi Code of 1972:

160 87-4-107. **Meaning and effect of power of attorney.** The
161 meaning and effect of a power of attorney is determined by the law
162 of the jurisdiction indicated in the power of attorney and, in the
163 absence of an indication of jurisdiction, by the law of the
164 jurisdiction in which the power of attorney was executed.

165 **SECTION 9.** The following shall be codified as Section
166 87-4-108, Mississippi Code of 1972:

167 87-4-108. **Nomination of conservator or guardian; relation of**
168 **agent to court-appointed fiduciary.** (a) In a power of attorney,
169 a principal may nominate a conservator or guardian of the
170 principal's estate or guardian of the principal's person for
171 consideration by the court if protective proceedings for the
172 principal's estate or person are begun after the principal
173 executes the power of attorney. Except for good cause shown or
174 disqualification, the court shall make its appointment in



175 accordance with the principal's most recent nomination. If the
176 power of attorney names a conservator or a guardian but does not
177 specify whether the nomination applies to the principal's estate
178 or to the principal's person, the nomination applies to both the
179 principal's estate and the principal's person.

180 (b) If, after a principal executes a power of attorney, a
181 court appoints a conservator or guardian of the principal's estate
182 or other fiduciary charged with the management of some or all of
183 the principal's property, the agent is accountable to the
184 fiduciary as well as to the principal. The power of attorney is
185 not terminated and the agent's authority continues unless limited,
186 suspended, or terminated by the court, in which case the
187 limitation, suspension, or termination is not effective as to a
188 person that accepts an acknowledged power of attorney until the
189 person that accepts an acknowledged power of attorney has actual
190 knowledge of the appointment of a conservator, guardian, or other
191 fiduciary and has a reasonable time to act on the knowledge.

192 **SECTION 10.** The following shall be codified as Section
193 87-4-109, Mississippi Code of 1972:

194 87-4-109. **When power of attorney is effective.** (a) A power
195 of attorney is effective when executed unless the principal
196 provides in the power of attorney that it becomes effective at a
197 future date or upon the occurrence of a future event or
198 contingency.



199 (b) If a power of attorney becomes effective upon the
200 occurrence of a future event or contingency, the principal, in the
201 power of attorney, may authorize one or more persons, including
202 the agent, to determine in a writing or other record that the
203 event or contingency has occurred.

204 (c) If a power of attorney becomes effective upon the
205 principal's incapacity and the principal has not authorized a
206 person to determine whether the principal is incapacitated, or the
207 person authorized is unable or unwilling to make the
208 determination, the power of attorney becomes effective upon a
209 determination in a writing or other record by:

210 (1) A physician or licensed psychologist that the
211 principal is incapacitated within the meaning of Section
212 87-4-102(5) (A); or

213 (2) An attorney-at-law, a judge, or an appropriate
214 governmental official that the principal is incapacitated within
215 the meaning of Section 87-4-102(5) (B).

216 (d) A person authorized by the principal in the power of
217 attorney to determine that the principal is incapacitated may act
218 as the principal's personal representative pursuant to the Health
219 Insurance Portability and Accountability Act, Sections 1171
220 through 1179 of the Social Security Act, 42 USCS Section 1320d and
221 applicable regulations, to obtain access to the principal's
222 health-care information and communicate with the principal's
223 health-care provider.



224 **SECTION 11.** The following shall be codified as Section
225 87-4-110, Mississippi Code of 1972:

226 87-4-110. **Termination of power of attorney or agent's**
227 **authority.** (a) A power of attorney terminates when:

228 (1) The principal dies;

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

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

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

233 (5) The purpose of the power of attorney is
234 accomplished; or

235 (6) The principal revokes the agent's authority or the
236 agent dies, becomes incapacitated, or resigns, and the power of
237 attorney does not provide for another agent to act under the power
238 of attorney.

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

240 (1) The principal revokes the authority;

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

242 (3) An action is filed for the dissolution or annulment
243 of the agent's marriage to the principal or their legal

244 separation, unless the power of attorney otherwise provides; or

245 (4) The power of attorney terminates.

246 (c) Unless the power of attorney otherwise provides, an
247 agent's authority is exercisable until the authority terminates



248 under subsection (b), notwithstanding a lapse of time since the
249 execution of the power of attorney.

250 (d) Termination of an agent's authority or of a power of
251 attorney is not effective as to the agent or another person that,
252 without actual knowledge of the termination, acts under the power
253 of attorney. An act so performed, unless otherwise invalid or
254 unenforceable, binds the principal and the principal's successors
255 in interest. A person that accepts an acknowledged power of
256 attorney may continue to act on a power of attorney or at an
257 agent's direction until that person that accepts an acknowledged
258 power of attorney has actual knowledge of the termination of the
259 power of attorney or of the agent's authority and has had a
260 reasonable time to act on that knowledge.

261 (e) Incapacity of the principal of a power of attorney that
262 is not durable does not revoke or terminate the power of attorney
263 as to an agent or other person that, without actual knowledge of
264 the incapacity, acts under the power of attorney. An act so
265 performed, unless otherwise invalid or unenforceable, binds the
266 principal and the principal's successors in interest.

267 (f) The execution of a power of attorney does not revoke a
268 power of attorney previously executed by the principal unless the
269 subsequent power of attorney provides that the previous power of
270 attorney is revoked or that all other powers of attorney are
271 revoked. If the subsequent power of attorney does not expressly



272 revoke the previous power of attorney, the previous power of
273 attorney remains in full force and effect.

274 **SECTION 12.** The following shall be codified as Section
275 87-4-111, Mississippi Code of 1972:

276 87-4-111. Coagents and successor agents. (a) A principal
277 may designate two (2) or more persons to act as coagents. Unless
278 the power of attorney otherwise provides, each coagent may
279 exercise its authority independently. If a power of attorney
280 requires that two (2) or more people act together as coagents, one
281 or more of the agents may delegate to a coagent the authority to
282 conduct lawful banking transactions, and a person that accepts an
283 acknowledged power of attorney may rely upon the delegation to
284 conduct banking transactions and will not be liable.

285 (b) A principal may designate one or more successor agents
286 to act if an agent resigns, dies, becomes incapacitated, is not
287 qualified to serve, or declines to serve. A principal may grant
288 authority to designate one or more successor agents to an agent or
289 other person designated by name, office, or function. Unless the
290 power of attorney otherwise provides, a successor agent:

291 (1) Has the same authority as that granted to the
292 original agent; and

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



296 (c) Except as otherwise provided in the power of attorney
297 and subsection (d), an agent that does not participate in or
298 conceal a breach of fiduciary duty committed by another agent,
299 including a predecessor agent, is not liable for the actions of
300 the other agent.

301 (d) An agent that has actual knowledge of a breach or
302 imminent breach of fiduciary duty by another agent shall notify
303 the principal and, if the principal is incapacitated, take any
304 action reasonably appropriate in the circumstances to safeguard
305 the principal's best interest. An agent that fails to notify the
306 principal or take action as required by this subsection is liable
307 for the reasonably foreseeable damages that could have been
308 avoided if the agent had notified the principal or taken such
309 action.

310 **SECTION 13.** The following shall be codified as Section
311 87-4-112, Mississippi Code of 1972:

312 87-4-112. **Reimbursement and compensation of agent.** Unless
313 the power of attorney otherwise provides, an agent is entitled to
314 reimbursement of expenses reasonably incurred on behalf of the
315 principal and to compensation that is reasonable under the
316 circumstances.

317 **SECTION 14.** The following shall be codified as Section
318 87-4-113, Mississippi Code of 1972:

319 87-4-113. **Agent's acceptance.** Except as otherwise provided
320 in the power of attorney, a person accepts appointment as an agent



321 under a power of attorney by exercising authority or performing
322 duties as an agent or by any other assertion or conduct indicating
323 acceptance.

324 **SECTION 15.** The following shall be codified as Section
325 87-4-114, Mississippi Code of 1972:

326 87-4-114. **Agent's duties.** (a) Notwithstanding provisions
327 in the power of attorney, an agent that has accepted appointment
328 shall:

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

332 (2) Act in good faith; and

333 (3) Act only within the scope of authority granted in
334 the power of attorney.

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

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

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

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

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



345 (5) Cooperate with a person that has authority to make
346 health-care decisions for the principal to carry out the
347 principal's reasonable expectations to the extent actually known
348 by the agent and, otherwise, act in the principal's best interest;
349 and

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

354 (A) The value and nature of the principal's
355 property;

356 (B) The principal's foreseeable obligations and
357 need for maintenance;

358 (C) Minimization of taxes, including income,
359 estate, inheritance, generation-skipping transfer, and gift taxes;
360 and

361 (D) Eligibility for a benefit, a program, or
362 assistance under a statute or regulation.

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

366 (d) An agent that acts with care, competence, and diligence
367 for the best interest of the principal is not liable solely
368 because the agent also benefits from the act or has an individual



369 or conflicting interest in relation to the property or affairs of
370 the principal.

371 (e) If an agent is selected by the principal because of
372 special skills or expertise possessed by the agent or in reliance
373 on the agent's representation that the agent has special skills or
374 expertise, the special skills or expertise must be considered in
375 determining whether the agent has acted with care, competence, and
376 diligence under the circumstances.

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

379 (g) An agent that exercises authority to delegate to another
380 person the authority granted by the principal or that engages
381 another person on behalf of the principal is not liable for an
382 act, error of judgment, or default of that person if the agent
383 exercises care, competence, and diligence in selecting and
384 monitoring the person.

385 (h) Except as otherwise provided in the power of attorney,
386 an agent is not required to disclose receipts, disbursements, or
387 transactions conducted on behalf of the principal unless ordered
388 by a court or requested by the principal, a guardian, a
389 conservator, another fiduciary acting for the principal, a
390 governmental agency having authority to protect the welfare of the
391 principal, or, upon the death of the principal, by the personal
392 representative or successor in interest of the principal's estate.
393 If so requested, within thirty (30) days the agent shall comply



394 with the request or provide a writing or other record
395 substantiating why additional time is needed and shall comply with
396 the request within an additional thirty (30) days.

397 **SECTION 16.** The following shall be codified as Section
398 87-4-115, Mississippi Code of 1972:

399 87-4-115. **Exoneration of agent.** A provision in a power of
400 attorney relieving an agent of liability for breach of duty is
401 binding on the principal and the principal's successors in
402 interest except to the extent the provision:

403 (1) Relieves the agent of liability for breach of duty
404 committed dishonestly or with reckless indifference to the
405 purposes of the power of attorney or the best interest of the
406 principal; or

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

409 **SECTION 17.** The following shall be codified as Section
410 87-4-116, Mississippi Code of 1972:

411 87-4-116. **Judicial relief.** (a) The following persons may
412 petition a court to construe a power of attorney or review the
413 agent's conduct, and grant appropriate relief:

414 (1) The principal or the agent;

415 (2) A guardian, conservator, or other fiduciary acting
416 for the principal;

417 (3) A person authorized to make health-care decisions
418 for the principal;



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

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

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

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

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

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

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

435 **SECTION 18.** The following shall be codified as Section
436 87-4-117, Mississippi Code of 1972:

437 87-4-117. **Agent's liability.** An agent that violates this
438 act is liable to the principal or the principal's successors in
439 interest for the amount required to:

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



442 (2) Reimburse the principal or the principal's
443 successors in interest for the attorney's fees and costs paid on
444 the agent's behalf.

445 **SECTION 19.** The following shall be codified as Section
446 87-4-118, Mississippi Code of 1972:

447 87-4-118. **Agent's resignation; notice.** Unless the power of
448 attorney provides a different method for an agent's resignation,
449 an agent may resign by giving notice to the principal and, if the
450 principal is incapacitated:

451 (1) To the conservator or guardian, if one has been
452 appointed for the principal, and a coagent or successor agent; or

453 (2) If there is no person described in paragraph (1),
454 to:

455 (A) The principal's caregiver;

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

458 (C) A governmental agency having authority to
459 protect the welfare of the principal.

460 **SECTION 20.** The following shall be codified as Section
461 87-4-119, Mississippi Code of 1972:

462 87-4-119. **Acceptance of and reliance upon acknowledged power**
463 **of attorney.** (a) For purposes of this section and Section
464 87-4-120, "acknowledged" means purportedly verified before a
465 notary public or other individual authorized to take
466 acknowledgements.



467 (b) A person that accepts an acknowledged power of attorney
468 without actual knowledge that the signature is not genuine may
469 rely upon the presumption under Section 87-4-105 that the
470 signature is genuine.

471 (c) A person that accepts an acknowledged power of attorney
472 without actual knowledge that the power of attorney is void,
473 invalid, or terminated, that the purported agent's authority is
474 void, invalid, or terminated, or that the agent is exceeding or
475 improperly exercising the agent's authority may rely upon the
476 power of attorney as if the power of attorney were genuine, valid
477 and still in effect, the agent's authority were genuine, valid and
478 still in effect, and the agent had not exceeded and had properly
479 exercised the authority. A person that accepts an acknowledged
480 power of attorney shall be fully exonerated from all liability to
481 the principal and any other person for any and all actions taken
482 or omitted at the request, order or instruction of an agent under
483 the power of attorney without actual knowledge that (1) the power
484 of attorney is void, invalid or terminated, (2) the purported
485 agents' authority is void, invalid or terminated, or (3) the agent
486 is exceeding the agents' authority.

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



490 (1) An agent's certification under penalty of perjury
491 of any factual matter concerning the principal, agent, or power of
492 attorney;

493 (2) An English translation of the power of attorney if
494 the power of attorney contains, in whole or in part, language
495 other than English; and

496 (3) An opinion of counsel, who is approved by the
497 person, as to any matter of law concerning the power of attorney,
498 if the person making the request provides in a writing or other
499 record the reason for the request.

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

504 (f) For purposes of this section and Section 87-4-120, a
505 person that conducts activities through employees is without
506 actual knowledge of a fact relating to a power of attorney, a
507 principal, or an agent if the employee conducting the transaction
508 involving the power of attorney is without actual knowledge of the
509 fact.

510 **SECTION 21.** The following shall be codified as Section
511 87-4-120, Mississippi Code of 1972:

512 87-4-120. **Liability for refusal to accept acknowledged power**
513 **of attorney.** (a) Except as otherwise provided in subsection (b):



514 (1) A person shall either accept an acknowledged power
515 of attorney or request a certification, a translation, or an
516 opinion of counsel under Section 87-4-119(d) no later than seven
517 (7) business days after presentation of the power of attorney for
518 acceptance;

519 (2) If a person requests a certification, a
520 translation, or an opinion of counsel under Section 87-4-119(d),
521 the person shall accept the power of attorney no later than five
522 (5) business days after receipt of the certification, translation,
523 or opinion of counsel; and

524 (3) A person may not require an additional or different
525 form of power of attorney for authority granted in the power of
526 attorney presented.

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

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

531 (2) Engaging in a transaction with the agent or the
532 principal in the same circumstances would be inconsistent with
533 federal law;

534 (3) The person has actual knowledge of the termination
535 of the agent's authority or of the power of attorney before
536 exercise of the power;

537 (4) A request for a certification, a translation, or an
538 opinion of counsel under Section 87-4-119(d) is refused or the



539 certification, translation, or opinion of counsel does not support
540 acceptance of the power of attorney for the transaction or purpose
541 for which it was presented;

542 (5) The person has a reasonable basis to believe that
543 the power is not valid or that the agent does not have the
544 authority to perform the act requested, whether or not a
545 certification, a translation, or an opinion of counsel under
546 Section 119(d) has been requested or provided;

547 (6) The person makes, or has actual knowledge that
548 another person has made, a report under the Mississippi Vulnerable
549 Persons Act or a report to the Department of Human Services or to
550 law enforcement stating a good-faith belief that the principal may
551 be subject to physical or financial abuse, neglect, exploitation,
552 or abandonment by the agent or a person acting for or with the
553 agent;

554 (7) The agent or agents refuse a request for
555 indemnification for the acts or omissions of the agent or agents;
556 or

557 (c) A person that refuses in violation of this section to
558 accept an acknowledged power of attorney is subject to a court
559 order mandating acceptance of the power of attorney. In any such
560 action or proceeding, the prevailing party shall be entitled to
561 recovery of reasonable attorney's fees and costs, and expenses
562 incurred.



563 (d) For purposes of this section and Section 87-4-119, each
564 transaction requested, conducted or attempted to be conducted by
565 the agent shall be deemed to be a separate presentation of the
566 power of attorney for acceptance.

567 **SECTION 22.** The following shall be codified as Section
568 87-4-121, Mississippi Code of 1972:

569 87-4-121. **Principles of law and equity.** Unless displaced by
570 a provision of this act, the principles of law and equity
571 supplement this act.

572 **SECTION 23.** The following shall be codified as Section
573 87-4-122, Mississippi Code of 1972:

574 87-4-122. **Laws applicable to financial institutions and**
575 **entities.** Except as expressly provided in this act, this act does
576 not supersede any other law applicable to financial institutions
577 or other entities, and the other law controls if inconsistent with
578 this act.

579 **SECTION 24.** The following shall be codified as Section
580 87-4-123, Mississippi Code of 1972:

581 87-4-123. **Remedies under other law.** Except as expressly
582 provided in this act, the remedies under this act are not
583 exclusive and do not abrogate any right or remedy under the law of
584 this state other than this act.

585 **SECTION 25.** The following shall be codified as Section
586 87-4-124, Mississippi Code of 1972:



587 87-4-124. The exoneration from liability provided to a
588 person under Section 87-4-119(c) expressly overrides Section
589 75-3-307. To the extent of any conflict between this act and
590 Section 75-3-307, this act prevails, it being the intent of this
591 act to exonerate from liability any person for actions taken or
592 omitted at the request, instruction or order of an agent under a
593 power of attorney without actual knowledge that: (a) the power of
594 attorney is void, invalid, or terminated; (b) the purported
595 agent's authority is void, invalid, or terminated; or (c) the
596 agent is exceeding the authority granted.

597 **ARTICLE 2**

598 **AUTHORITY**

599 **SECTION 26.** The following shall be codified as Section
600 87-4-201, Mississippi Code of 1972:

601 87-4-201. **Authority that requires specific grant; grant of**
602 **general authority.** (a) An agent under a power of attorney may do
603 the following on behalf of the principal or with the principal's
604 property only if the power of attorney expressly grants the agent
605 the authority and exercise of the authority is not otherwise
606 prohibited by another agreement or instrument to which the
607 authority or property is subject:

608 (1) Create, amend, revoke, or terminate an inter vivos
609 trust;

610 (2) Make a gift;

611 (3) Create or change rights of survivorship;



612 (4) Create or change a beneficiary designation;
613 (5) Delegate authority granted under the power of
614 attorney;
615 (6) Waive the principal's right to be a beneficiary of
616 a joint and survivor annuity, including a survivor benefit under a
617 retirement plan;
618 (7) Exercise fiduciary powers that the principal has
619 authority to delegate;
620 (8) Disclaim property, including a power of
621 appointment; or
622 (9) Make the agent an owner or joint owner of a deposit
623 account.

624 (b) Notwithstanding a grant of authority to do an act
625 described in subsection (a), unless the power of attorney
626 otherwise provides, an agent that is not an ancestor, spouse, or
627 descendant of the principal may not exercise authority under a
628 power of attorney to create in the agent, or in an individual to
629 whom the agent owes a legal obligation of support, an interest in
630 the principal's property, whether by gift, right of survivorship,
631 beneficiary designation, disclaimer, or otherwise.

632 (c) Subject to subsections (a), (b), (d), and (e), if a
633 power of attorney grants to an agent authority to do all acts that
634 a principal could do, the agent has the general authority
635 described in Sections 87-4-204 through 87-4-216.



636 (d) Unless the power of attorney otherwise provides, a grant
637 of authority to make a gift is subject to Section 87-4-217.

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

641 (f) Authority granted in a power of attorney is exercisable
642 with respect to property that the principal has when the power of
643 attorney is executed or acquires later, whether or not the
644 property is located in this state and whether or not the authority
645 is exercised or the power of attorney is executed in this state.

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

650 **SECTION 27.** The following shall be codified as Section
651 87-4-202, Mississippi Code of 1972:

652 87-4-202. **Incorporation of authority.** (a) An agent has
653 authority described in this act if the power of attorney refers to
654 general authority with respect to the descriptive term for the
655 subjects stated in Sections 87-4-204 through 87-4-217 or cites the
656 section in which the authority is described.

657 (b) A reference in a power of attorney to general authority
658 with respect to the descriptive term for a subject in Sections
659 87-4-204 through 87-4-217 or a citation to a section of Sections



660 87-4-204 through 87-4-217 incorporates the entire section as if it
661 were set out in full in the power of attorney.

662 (c) A principal may modify authority incorporated by
663 reference.

664 **SECTION 28.** The following shall be codified as Section
665 87-4-203, Mississippi Code of 1972:

666 87-4-203. **Construction of authority generally.** Except as
667 otherwise provided in the power of attorney, by executing a power
668 of attorney that incorporates by reference a subject described in
669 Sections 87-4-204 through 87-4-217 or that grants to an agent
670 authority to do all acts that a principal could do pursuant to
671 Section 87-4-201(c), a principal authorizes the agent, with
672 respect to that subject, to:

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

678 (2) Contract in any manner with any person, on terms
679 agreeable to the agent, to accomplish a purpose of a transaction
680 and perform, rescind, cancel, terminate, reform, restate, release,
681 or modify the contract or another contract made by or on behalf of
682 the principal;

683 (3) Execute, acknowledge, seal, deliver, file, or
684 record any instrument or communication the agent considers



685 desirable to accomplish a purpose of a transaction, including
686 creating at any time a schedule listing some or all of the
687 principal's property and attaching it to the power of attorney;

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

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

695 (6) Engage, compensate, and discharge an attorney,
696 accountant, discretionary investment manager, expert witness, or
697 other advisor;

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

701 (8) Communicate with any representative or employee of
702 a government or governmental subdivision, agency, or
703 instrumentality, on behalf of the principal;

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

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



709 **SECTION 29.** The following shall be codified as Section
710 87-4-204, Mississippi Code of 1972:

711 87-4-204. **Real property.** (a) Unless the power of attorney
712 otherwise provides, language in a power of attorney granting
713 general authority with respect to real property authorizes the
714 agent to:

715 (1) Demand, buy, lease, receive, accept as a gift or as
716 security for an extension of credit, or otherwise acquire or
717 reject an interest in real property or a right incident to real
718 property;

719 (2) Sell; exchange; convey with or without covenants,
720 representations, or warranties; quitclaim; release; surrender;
721 retain title for security; encumber; partition; consent to
722 partitioning; subject to an easement or covenant; subdivide; apply
723 for zoning or other governmental permits; plat or consent to
724 platting; develop; grant an option concerning; lease; sublease;
725 contribute to an entity in exchange for an interest in that
726 entity; or otherwise grant or dispose of an interest in real
727 property or a right incident to real property;

728 (3) Pledge or mortgage an interest in real property or
729 right incident to real property as security to borrow money or
730 pay, renew, or extend the time of payment of a debt of the
731 principal or a debt guaranteed by the principal;

732 (4) Release, assign, satisfy, or enforce by litigation
733 or otherwise a mortgage, deed of trust, conditional sale contract,



734 encumbrance, lien, or other claim to real property which exists or
735 is asserted;

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

739 (A) Insuring against liability or casualty or
740 other loss;

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

743 (C) Paying, assessing, compromising, or contesting
744 taxes or assessments or applying for and receiving refunds in
745 connection with them; and

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

748 (6) Use, develop, alter, replace, remove, erect, or
749 install structures or other improvements upon real property in or
750 incident to which the principal has, or claims to have, an
751 interest or right;

752 (7) Participate in a reorganization with respect to
753 real property or an entity that owns an interest in or right
754 incident to real property and receive, and hold, and act with
755 respect to stocks and bonds or other property received in a plan
756 of reorganization, including:

757 (A) Selling or otherwise disposing of them;



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

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

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

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

767 (b) A power of attorney used by an agent on behalf of a
768 principal concerning a conveyance, transaction, or any matter
769 involving real property, including a contract relating to real
770 property, shall be recorded in the land records, or other
771 permanent records for the recordation of powers of attorney, of
772 the chancery clerk of the county in which the real property is
773 located.

774 **SECTION 30.** The following shall be codified as Section
775 87-4-205, Mississippi Code of 1972:

776 87-4-205. **Tangible personal property.** Unless the power of
777 attorney otherwise provides, language in a power of attorney
778 granting general authority with respect to tangible personal
779 property authorizes the agent to:

780 (1) Demand, buy, receive, accept as a gift or as
781 security for an extension of credit, or otherwise acquire or



782 reject ownership or possession of tangible personal property or an
783 interest in tangible personal property;

784 (2) Sell; exchange; convey with or without covenants,
785 representations, or warranties; quitclaim; release; surrender;
786 create a security interest in; grant options concerning; lease;
787 sublease; or, otherwise dispose of tangible personal property or
788 an interest in tangible personal property;

789 (3) Grant a security interest in tangible personal
790 property or an interest in tangible personal property as security
791 to borrow money or pay, renew, or extend the time of payment of a
792 debt of the principal or a debt guaranteed by the principal;

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

797 (5) Manage or conserve tangible personal property or an
798 interest in tangible personal property on behalf of the principal,
799 including:

800 (A) Insuring against liability or casualty or
801 other loss;

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

804 (C) Paying, assessing, compromising, or contesting
805 taxes or assessments or applying for and receiving refunds in
806 connection with taxes or assessments;



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

808 (E) Storing the property for hire or on a
809 gratuitous bailment; and

810 (F) Using and making repairs, alterations, or
811 improvements to the property; and

812 (6) Change the form of title of an interest in tangible
813 personal property.

814 **SECTION 31.** The following shall be codified as Section
815 87-4-206, Mississippi Code of 1972:

816 87-4-206. **Stocks and bonds.** Unless the power of attorney
817 otherwise provides, language in a power of attorney granting
818 general authority with respect to stocks and bonds authorizes the
819 agent to:

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

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

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

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

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

830 **SECTION 32.** The following shall be codified as Section
831 87-4-207, Mississippi Code of 1972:



832 87-4-207. **Commodities and options.** Unless the power of
833 attorney otherwise provides, language in a power of attorney
834 granting general authority with respect to commodities and options
835 authorizes the agent to:

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

839 (2) Establish, continue, modify, and terminate option
840 accounts.

841 **SECTION 33.** The following shall be codified as Section
842 87-4-208, Mississippi Code of 1972:

843 87-4-208. **Banks and other financial institutions.** Unless
844 the power of attorney otherwise provides, language in a power of
845 attorney granting general authority with respect to banks and
846 other financial institutions authorizes the agent to:

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

849 (2) Establish, modify, and terminate an account or
850 other banking arrangement with a bank, trust company, savings and
851 loan association, credit union, thrift company, brokerage firm, or
852 other financial institution;

853 (3) Contract for services available from a financial
854 institution, including renting a safe deposit box or space in a
855 vault;



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

859 (5) Receive statements of account, vouchers, notices,
860 and similar documents from a financial institution and act with
861 respect to them;

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

864 (7) Borrow money and pledge as security personal
865 property of the principal necessary to borrow money or pay, renew,
866 or extend the time of payment of a debt of the principal or a debt
867 guaranteed by the principal;

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

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

878 (10) Apply for, receive, and use letters of credit,
879 credit and debit cards, electronic transaction authorizations, and
880 traveler's checks from a financial institution and give an



881 indemnity or other agreement in connection with letters of credit;
882 and

883 (11) Consent to an extension of the time of payment
884 with respect to commercial paper or a financial transaction with a
885 financial institution.

886 **SECTION 34.** The following shall be codified as Section
887 87-4-209, Mississippi Code of 1972:

888 87-4-209. **Operation of entity or business.** Subject to the
889 terms of a document or an agreement governing an entity or an
890 entity ownership interest, and unless the power of attorney
891 otherwise provides, language in a power of attorney granting
892 general authority with respect to operation of an entity or
893 business authorizes the agent to:

894 (1) Operate, buy, sell, enlarge, reduce, or terminate
895 an ownership interest;

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

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

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



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

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

911 (7) With respect to an entity or business owned solely
912 by the principal:

913 (A) Continue, modify, renegotiate, extend, and
914 terminate a contract made by or on behalf of the principal with
915 respect to the entity or business before execution of the power of
916 attorney;

917 (B) Determine:

918 (i) The location of its operation;

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

920 (iii) The methods of manufacturing, selling,
921 merchandising, financing, accounting, and advertising employed in
922 its operation;

923 (iv) The amount and types of insurance
924 carried; and

925 (v) The mode of engaging, compensating, and
926 dealing with its employees and accountants, attorneys, or other
927 advisors;



928 (C) Change the name or form of organization under
929 which the entity or business is operated and enter into an
930 ownership agreement with other persons to take over all or part of
931 the operation of the entity or business; and

932 (D) Demand and receive money due or claimed by the
933 principal or on the principal's behalf in the operation of the
934 entity or business and control and disburse the money in the
935 operation of the entity or business;

936 (8) Put additional capital into an entity or business
937 in which the principal has an interest;

938 (9) Join in a plan of reorganization, consolidation,
939 conversion, domestication, or merger of the entity or business;

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

942 (11) Establish the value of an entity or business under
943 a buy-out agreement to which the principal is a party;

944 (12) Prepare, sign, file, and deliver reports,
945 compilations of information, returns, or other papers with respect
946 to an entity or business and make related payments; and

947 (13) Pay, compromise, or contest taxes, assessments,
948 fines, or penalties and perform any other act to protect the
949 principal from illegal or unnecessary taxation, assessments,
950 fines, or penalties, with respect to an entity or business,
951 including attempts to recover, in any manner permitted by law,
952 money paid before or after the execution of the power of attorney.



953 **SECTION 35.** The following shall be codified as Section
954 87-4-210, Mississippi Code of 1972:

955 87-4-210. **Insurance and annuities.** Unless the power of
956 attorney otherwise provides, language in a power of attorney
957 granting general authority with respect to insurance and annuities
958 authorizes the agent to:

959 (1) Continue, pay the premium or make a contribution
960 on, modify, exchange, rescind, release, or terminate a contract
961 procured by or on behalf of the principal which insures or
962 provides an annuity to either the principal or another person,
963 whether or not the principal is a beneficiary under the contract;

964 (2) Procure new, different, and additional contracts of
965 insurance and annuities for the principal and the principal's
966 spouse, children, and other dependents, and select the amount,
967 type of insurance or annuity, and mode of payment;

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

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

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

975 (6) Exercise an election;

976 (7) Exercise investment powers available under a
977 contract of insurance or annuity;



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

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

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

986 (11) Collect, sell, assign, hypothecate, borrow
987 against, or pledge the interest of the principal in a contract of
988 insurance or annuity;

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

991 (13) Pay, from proceeds or otherwise, compromise or
992 contest, and apply for refunds in connection with, a tax or
993 assessment levied by a taxing authority with respect to a contract
994 of insurance or annuity or its proceeds or liability accruing by
995 reason of the tax or assessment.

996 **SECTION 36.** The following shall be codified as Section
997 87-4-211, Mississippi Code of 1972:

998 87-4-211. **Estates, trusts, and other beneficial interests.**

999 (a) In this section, "estate, trust, or other beneficial
1000 interest" means a trust, probate estate, guardianship,
1001 conservatorship, escrow, or custodianship or a fund from which the



1002 principal is, may become, or claims to be, entitled to a share or
1003 payment.

1004 (b) Unless the power of attorney otherwise provides,
1005 language in a power of attorney granting general authority with
1006 respect to estates, trusts, and other beneficial interests
1007 authorizes the agent to:

1008 (1) Accept, receive, receipt for, sell, assign, pledge,
1009 or exchange a share in or payment from an estate, trust, or other
1010 beneficial interest;

1011 (2) Demand or obtain money or another thing of value to
1012 which the principal is, may become, or claims to be, entitled by
1013 reason of an estate, trust, or other beneficial interest, by
1014 litigation or otherwise;

1015 (3) Exercise for the benefit of the principal a
1016 presently exercisable general power of appointment held by the
1017 principal;

1018 (4) Initiate, participate in, submit to alternative
1019 dispute resolution, settle, oppose, or propose or accept a
1020 compromise with respect to litigation to ascertain the meaning,
1021 validity, or effect of a deed, will, declaration of trust, or
1022 other instrument or transaction affecting the interest of the
1023 principal;

1024 (5) Initiate, participate in, submit to alternative
1025 dispute resolution, settle, oppose, or propose or accept a



1026 compromise with respect to litigation to remove, substitute, or
1027 surcharge a fiduciary;

1028 (6) Conserve, invest, disburse, or use anything
1029 received for an authorized purpose;

1030 (7) Transfer an interest of the principal in real
1031 property, stocks and bonds, accounts with financial institutions
1032 or securities intermediaries, insurance, annuities, and other
1033 property to the trustee of a revocable trust created by the
1034 principal as settlor; and

1035 (8) Reject, renounce, disclaim, release, or consent to
1036 a reduction in or modification of a share in or payment from an
1037 estate, trust, or other beneficial interest.

1038 **SECTION 37.** The following shall be codified as Section
1039 87-4-212, Mississippi Code of 1972:

1040 87-4-212. **Claims and litigation.** Unless the power of
1041 attorney otherwise provides, language in a power of attorney
1042 granting general authority with respect to claims and litigation
1043 authorizes the agent to:

1044 (1) Assert and maintain before a court or
1045 administrative agency a claim, claim for relief, cause of action,
1046 counterclaim, offset, recoupment, or defense, including an action
1047 to recover property or other thing of value, recover damages
1048 sustained by the principal, eliminate or modify tax liability, or
1049 seek an injunction, specific performance, or other relief;



1050 (2) Bring an action to determine adverse claims or
1051 intervene or otherwise participate in litigation;

1052 (3) Seek an attachment, garnishment, order of arrest,
1053 or other preliminary, provisional, or intermediate relief and use
1054 an available procedure to effect or satisfy a judgment, order, or
1055 decree;

1056 (4) Make or accept a tender, offer of judgment, or
1057 admission of facts, submit a controversy on an agreed statement of
1058 facts, consent to examination, and bind the principal in
1059 litigation;

1060 (5) Submit to alternative dispute resolution, settle,
1061 and propose or accept a compromise;

1062 (6) Waive the issuance and service of process upon the
1063 principal, accept service of process, appear for the principal,
1064 designate persons upon which process directed to the principal may
1065 be served, execute and file or deliver stipulations on the
1066 principal's behalf, verify pleadings, seek appellate review,
1067 procure and give surety and indemnity bonds, contract and pay for
1068 the preparation and printing of records and briefs, receive,
1069 execute, and file or deliver a consent, waiver, release,
1070 confession of judgment, satisfaction of judgment, notice,
1071 agreement, or other instrument in connection with the prosecution,
1072 settlement, or defense of a claim or litigation;

1073 (7) Act for the principal with respect to bankruptcy or
1074 insolvency, whether voluntary or involuntary, concerning the



1075 principal or some other person, or with respect to a
1076 reorganization, receivership, or application for the appointment
1077 of a receiver or trustee which affects an interest of the
1078 principal in property or other thing of value;

1079 (8) Pay a judgment, award, or order against the
1080 principal or a settlement made in connection with a claim or
1081 litigation; and

1082 (9) Receive money or other thing of value paid in
1083 settlement of or as proceeds of a claim or litigation.

1084 **SECTION 38.** The following shall be codified as Section
1085 87-4-213, Mississippi Code of 1972:

1086 87-4-213. **Personal and family maintenance.** (a) Unless the
1087 power of attorney otherwise provides, language in a power of
1088 attorney granting general authority with respect to personal and
1089 family maintenance authorizes the agent to:

1090 (1) Perform the acts necessary to maintain the
1091 customary standard of living of the principal, the principal's
1092 spouse, and the following individuals, whether living when the
1093 power of attorney is executed or later born:

1094 (A) The principal's children;

1095 (B) Other individuals legally entitled to be
1096 supported by the principal; and

1097 (C) The individuals whom the principal has
1098 customarily supported or indicated the intent to support;



1099 (2) Make periodic payments of child support and other
1100 family maintenance required by a court or governmental agency or
1101 an agreement to which the principal is a party;

1102 (3) Provide living quarters for the individuals
1103 described in paragraph (1) by:

1104 (A) Purchase, lease, or other contract; or

1105 (B) Paying the operating costs, including
1106 interest, amortization payments, repairs, improvements, and taxes,
1107 for premises owned by the principal or occupied by those
1108 individuals;

1109 (4) Provide normal domestic help, usual vacations and
1110 travel expenses, and funds for shelter, clothing, food,
1111 appropriate education, including postsecondary and vocational
1112 education, and other current living costs for the individuals
1113 described in paragraph (1);

1114 (5) Pay expenses for necessary health care and
1115 custodial care on behalf of the individuals described in paragraph
1116 (1);

1117 (6) Act as the principal's personal representative
1118 pursuant to the Health Insurance Portability and Accountability
1119 Act, Sections 1171 through 1179 of the Social Security Act, 42
1120 USCS Section 1320d, and applicable regulations, in making
1121 decisions related to the past, present, or future payment for the
1122 provision of health care consented to by the principal or anyone



1123 authorized under the law of this state to consent to health care
1124 on behalf of the principal;

1125 (7) Continue any provision made by the principal for
1126 automobiles or other means of transportation, including
1127 registering, licensing, insuring, and replacing them, for the
1128 individuals described in paragraph (1);

1129 (8) Maintain credit and debit accounts for the
1130 convenience of the individuals described in paragraph (1) and open
1131 new accounts; and

1132 (9) Continue payments incidental to the membership or
1133 affiliation of the principal in a religious institution, club,
1134 society, order, or other organization or to continue contributions
1135 to those organizations.

1136 (b) Authority with respect to personal and family
1137 maintenance is neither dependent upon, nor limited by, authority
1138 that an agent may or may not have with respect to gifts under this
1139 act.

1140 **SECTION 39.** The following shall be codified as Section
1141 87-4-214, Mississippi Code of 1972:

1142 87-4-214. **Benefits from governmental programs or civil or**
1143 **military service.** (a) In this section, "benefits from
1144 governmental programs or civil or military service" means any
1145 benefit, program or assistance provided under a statute or
1146 regulation including social security, Medicare, and Medicaid.



1147 (b) Unless the power of attorney otherwise provides,
1148 language in a power of attorney granting general authority with
1149 respect to benefits from governmental programs or civil or
1150 military service authorizes the agent to:

1151 (1) Execute vouchers in the name of the principal for
1152 allowances and reimbursements payable by the United States or a
1153 foreign government or by a state or subdivision of a state to the
1154 principal, including allowances and reimbursements for
1155 transportation of the individuals described in Section
1156 87-4-213(a) (1), and for shipment of their household effects;

1157 (2) Take possession and order the removal and shipment
1158 of property of the principal from a post, warehouse, depot, dock,
1159 or other place of storage or safekeeping, either governmental or
1160 private, and execute and deliver a release, voucher, receipt, bill
1161 of lading, shipping ticket, certificate, or other instrument for
1162 that purpose;

1163 (3) Enroll in, apply for, select, reject, change,
1164 amend, or discontinue, on the principal's behalf, a benefit or
1165 program;

1166 (4) Prepare, file, and maintain a claim of the
1167 principal for a benefit or assistance, financial or otherwise, to
1168 which the principal may be entitled under a statute or regulation;

1169 (5) Initiate, participate in, submit to alternative
1170 dispute resolution, settle, oppose, or propose or accept a
1171 compromise with respect to litigation concerning any benefit or



1172 assistance the principal may be entitled to receive under a
1173 statute or regulation; and

1174 (6) Receive the financial proceeds of a claim described
1175 in paragraph (4) and conserve, invest, disburse, or use for a
1176 lawful purpose anything so received.

1177 **SECTION 40.** The following shall be codified as Section
1178 87-4-215, Mississippi Code of 1972:

1179 87-4-215. **Retirement plans.** (a) In this section,
1180 "retirement plan" means a plan or account created by an employer,
1181 the principal, or another individual to provide retirement
1182 benefits or deferred compensation of which the principal is a
1183 participant, beneficiary, or owner, including a plan or account
1184 under the following sections of the Internal Revenue Code:

1185 (1) An individual retirement account under Internal
1186 Revenue Code Section 408, 26 USCS Section 408;

1187 (2) A Roth individual retirement account under Internal
1188 Revenue Code Section 408A, 26 USCS Section 408A;

1189 (3) A deemed individual retirement account under
1190 Internal Revenue Code Section 408(q), 26 USCS Section 408(q);

1191 (4) An annuity or mutual fund custodial account under
1192 Internal Revenue Code Section 403(b), 26 USCS Section 403(b);

1193 (5) A pension, profit-sharing, stock bonus, or other
1194 retirement plan qualified under Internal Revenue Code Section
1195 401(a), 26 USCS Section 401(a);



1196 (6) A plan under Internal Revenue Code Section 457(b),
1197 26 USCS Section 457(b); and

1198 (7) A nonqualified deferred compensation plan under
1199 Internal Revenue Code Section 409A, 26 USCS Section 409A.

1200 (b) Unless the power of attorney otherwise provides,
1201 language in a power of attorney granting general authority with
1202 respect to retirement plans authorizes the agent to:

1203 (1) Select the form and timing of payments under a
1204 retirement plan and withdraw benefits from a plan;

1205 (2) Make a rollover, including a direct
1206 trustee-to-trustee rollover, of benefits from one retirement plan
1207 to another;

1208 (3) Establish a retirement plan in the principal's
1209 name;

1210 (4) Make contributions to a retirement plan;

1211 (5) Exercise investment powers available under a
1212 retirement plan; and

1213 (6) Borrow from, sell assets to, or purchase assets
1214 from a retirement plan.

1215 **SECTION 41.** The following shall be codified as Section
1216 87-4-216, Mississippi Code of 1972:

1217 87-4-216. **Taxes.** Unless the power of attorney otherwise
1218 provides, language in a power of attorney granting general
1219 authority with respect to taxes authorizes the agent to:



1220 (1) Prepare, sign, and file federal, state, local, and
1221 foreign income, gift, payroll, property, Federal Insurance
1222 Contributions Act, and other tax returns, claims for refunds,
1223 requests for extension of time, petitions regarding tax matters,
1224 and any other tax-related documents, including receipts, offers,
1225 waivers, consents, including consents and agreements under
1226 Internal Revenue Code Section 2032A, 26 USCS Section 2032A,
1227 closing agreements, and any power of attorney required by the
1228 Internal Revenue Service or other taxing authority with respect to
1229 a tax year upon which the statute of limitations has not run and
1230 the following twenty-five (25) tax years;

1231 (2) Pay taxes due, collect refunds, post bonds, receive
1232 confidential information, and contest deficiencies determined by
1233 the Internal Revenue Service or other taxing authority;

1234 (3) Exercise any election available to the principal
1235 under federal, state, local, or foreign tax law; and

1236 (4) Act for the principal in all tax matters for all
1237 periods before the Internal Revenue Service, or other taxing
1238 authority.

1239 **SECTION 42.** The following shall be codified as Section
1240 87-4-217, Mississippi Code of 1972:

1241 87-4-217. **Gifts.** (a) In this section, a gift "for the
1242 benefit of" a person includes a gift to a trust, an account under
1243 the Uniform Transfers to Minors Act, and a tuition savings account



1244 or prepaid tuition plan as defined under Internal Revenue Code
1245 Section 529, 26 USCS Section 529.

1246 (b) Unless the power of attorney otherwise provides,
1247 language in a power of attorney granting general authority with
1248 respect to gifts authorizes the agent only to:

1249 (1) Make outright to, or for the benefit of, a person,
1250 a gift of any of the principal's property, including by the
1251 exercise of a presently exercisable general power of appointment
1252 held by the principal, in an amount per donee not to exceed the
1253 annual dollar limits of the federal gift tax exclusion under
1254 Internal Revenue Code Section 2503(b), 26 USCS Section 2503(b),
1255 without regard to whether the federal gift tax exclusion applies
1256 to the gift, or if the principal's spouse agrees to consent to a
1257 split gift pursuant to Internal Revenue Code Section 2513, 26 USCS
1258 2513, in an amount per donee not to exceed twice the annual
1259 federal gift tax exclusion limit; and

1260 (2) Consent, pursuant to Internal Revenue Code Section
1261 2513, 26 USCS Section 2513, to the splitting of a gift made by the
1262 principal's spouse in an amount per donee not to exceed the
1263 aggregate annual gift tax exclusions for both spouses.

1264 (c) An agent may make a gift of the principal's property
1265 only as the agent determines is consistent with the principal's
1266 objectives if actually known by the agent and, if unknown, as the
1267 agent determines is consistent with the principal's best interest
1268 based on all relevant factors, including:



1269 (1) The value and nature of the principal's property;

1270 (2) The principal's foreseeable obligations and need
1271 for maintenance;

1272 (3) Minimization of taxes, including income, estate,
1273 inheritance, generation-skipping transfer, and gift taxes;

1274 (4) Eligibility for a benefit, a program, or assistance
1275 under a statute or regulation; and

1276 (5) The principal's personal history of making or
1277 joining in making gifts.

1278 **SECTION 43.** The following shall be codified as Section
1279 87-4-218, Mississippi Code of 1972:

1280 87-4-218. **Attorney identification.** An attorney-at-law who
1281 drafts a power of attorney for another person must list the
1282 attorney's name, address, phone number and bar number at the
1283 bottom of the power of attorney.

1284 **SECTION 44.** The following shall be codified as Section
1285 87-4-219, Mississippi Code of 1972:

1286 87-4-219. **Homestead.** A power of attorney used by an agent
1287 to convey, mortgage, deed, or otherwise pledge or encumber a
1288 homestead shall comply with Section 89-1-29 and shall designate an
1289 agent other than the spouse of the principal.

1290 **ARTICLE 3**

1291 **STATUTORY FORMS**

1292 **SECTION 45.** The following shall be codified as Section
1293 87-4-301, Mississippi Code of 1972:



1294 87-4-301. **Statutory form power of attorney.** A document
1295 substantially in the following form may be used to create a
1296 statutory form power of attorney that has the meaning and effect
1297 prescribed by this act.

1298 **MISSISSIPPI STATUTORY FORM POWER OF ATTORNEY**

1299 **IMPORTANT INFORMATION**

1300 This power of attorney authorizes another person (your agent)
1301 to make decisions concerning your property for you (the
1302 principal). Your agent will be able to make decisions and act
1303 with respect to your property (including your money) whether or
1304 not you are able to act for yourself. The meaning of authority
1305 over subjects listed on this form is explained in the Mississippi
1306 Uniform Power of Attorney Act (Section 87-4-101 et seq.,
1307 Mississippi Code of 1972).

1308 This power of attorney does not authorize the agent to make
1309 health-care decisions for you.

1310 You should select someone you trust to serve as your agent.
1311 Unless you specify otherwise, generally the agent's authority will
1312 continue until you die or revoke the power of attorney or the
1313 agent resigns or is unable to act for you.

1314 Your agent is entitled to reasonable compensation unless you
1315 state otherwise in the Special Instructions.

1316 This form provides for designation of one (1) agent. If you
1317 wish to name more than one (1) agent you may name a coagent in the



1318 Special Instructions. Coagents are not required to act together
1319 unless you include that requirement in the Special Instructions.

1320 If your agent is unable or unwilling to act for you, your
1321 power of attorney will end unless you have named a successor
1322 agent. You may also name a second successor agent.

1323 This power of attorney becomes effective immediately unless
1324 you state otherwise in the Special Instructions.

1325 **If you have questions about the power of attorney**
1326 **or the authority you are granting to your agent, you**
1327 **should seek legal advice before signing this form.**

1328 **DESIGNATION OF AGENT**

1329 I _____
1330 name the following _____

1331 (Name of Principal)

1332 person as my agent:

1333 Name of Agent:

1334 _____

1335 Agent's Address:

1336 _____

1337 Agent's Telephone Number: _____

1338 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

1339 If my agent is unable or unwilling to act for me, I name as
1340 my successor agent:

1341 Name of Successor Agent:

1342 _____



1343 Successor Agent's Address:

1344 _____

1345 Successor Agent's Telephone Number:

1346 _____

1347 If my successor agent is unable or unwilling to act for me, I
1348 name as my second successor agent:

1349 _____

1350 Name of Second Successor Agent:

1351 _____

1352 Second Successor Agent's Address:

1353 _____

1354 Second Successor Agent's Telephone Number:

1355 _____

1356 **GRANT OF GENERAL AUTHORITY**

1357 I grant my agent and any successor agent general authority to
1358 act for me with respect to the following subjects as defined in
1359 the Mississippi Uniform Power of Attorney Act (Section 87-4-101 et
1360 seq., Mississippi Code of 1972):

1361 (INITIAL each subject you want to include in the agent's
1362 general authority. If you wish to grant general authority over
1363 all of the subjects you may initial "All Preceding Subjects"
1364 instead of initialing each subject.)

1365 (___) Real Property

1366 (___) Tangible Personal Property

1367 (___) Stocks and Bonds



- 1368 (___) Commodities and Options
1369 (___) Banks and Other Financial Institutions
1370 (___) Operation of Entity or Business
1371 (___) Insurance and Annuities
1372 (___) Estates, Trusts, and Other Beneficial Interests
1373 (___) Claims and Litigation
1374 (___) Personal and Family Maintenance
1375 (___) Benefits from Governmental Programs or Civil or Military
1376 Service
1377 (___) Retirement Plans
1378 (___) Taxes
1379 (___) All Preceding Subjects

1380 **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

1381 My agent MAY NOT do any of the following specific acts for me
1382 UNLESS I have INITIALED the specific authority listed below:

1383 **(CAUTION: Granting any of the following will give**
1384 **your agent the authority to take actions that could**
1385 **significantly reduce your property or change how your**
1386 **property is distributed at your death. INITIAL ONLY**
1387 **the specific authority you WANT to give your agent.)**

- 1388 (___) Create, amend, revoke, or terminate an inter vivos trust
1389 (___) Make a gift, subject to the limitations of the Mississippi
1390 Uniform Power of Attorney Act (Section 87-4-217, Mississippi Code
1391 of 1972) and any special instructions in this power of attorney
1392 (___) Create or change rights of survivorship



- 1393 (___) Create or change a beneficiary designation
- 1394 (___) Authorize another person to exercise the authority granted
- 1395 under this power of attorney
- 1396 (___) Waive the principal's right to be a beneficiary of a joint
- 1397 and survivor annuity, including a survivor benefit under a
- 1398 retirement plan
- 1399 (___) Exercise fiduciary powers that the principal has authority
- 1400 to delegate
- 1401 (___) Disclaim or refuse an interest in property, including a
- 1402 power of appointment
- 1403 (___) Make the agent an owner or joint owner of a deposit
- 1404 account.

LIMITATION ON AGENT'S AUTHORITY

1406 An agent that is not my ancestor, spouse, or descendant MAY
 1407 NOT use my property to benefit the agent or a person to whom the
 1408 agent owes an obligation of support unless I have included that
 1409 authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

1411 You may give special instructions on the following lines:

1412 _____

1413 _____

1414 _____

1415 _____

1416 _____

1417 _____



1418 _____

1419 _____

1420 **EFFECTIVE DATE**

1421 This power of attorney is effective immediately unless I have
1422 stated otherwise in the Special Instructions.

1423 **NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)**

1424 If it becomes necessary for a court to appoint a conservator
1425 or guardian of my estate or conservator or of my person, I
1426 nominate the following person(s) for appointment:

1427 Name of Nominee for conservator or guardian of my estate:
1428 _____

1429 Nominee's Address: _____

1430 Nominee's Telephone Number: _____

1431 Name of Nominee for conservator or guardian of my person:
1432 _____

1433 Nominee's Address: _____

1434 Nominee's Telephone Number: _____

1435 **RELIANCE ON THIS POWER OF ATTORNEY**

1436 Any person, including my agent, may rely upon the validity of
1437 this power of attorney or a copy of it unless that person knows it
1438 has terminated or is invalid.

1439 **SIGNATURE AND ACKNOWLEDGMENT**

1440 _____

1441 Your Signature

1442 _____



1443 Date
1444 _____
1445 Your Name Printed
1446 _____
1447 _____
1448 Your Address
1449 _____
1450 Your Telephone Number

1451 State of _____

1452 County of _____

1453 This document was acknowledged before me on _____ (Date)

1454 by _____ .

1455 (Name of Principal)

1456 _____ (Seal, if any)

1457 _____

1458 Signature of Notary

1459 My commission expires: _____

1460 This document prepared by: _____

1461 **IMPORTANT INFORMATION FOR AGENT**

1462 **Agent's Duties**

1463 When you accept the authority granted under this power of
1464 attorney, a special legal relationship is created between you and
1465 the principal. This relationship imposes upon you legal duties
1466 that continue until you resign or the power of attorney is
1467 terminated or revoked. You must:



1468 (1) Do what you know the principal reasonably expects you to
1469 do with the principal's property or, if you do not know the
1470 principal's expectations, act in the principal's best interest;

1471 (2) Act in good faith;

1472 (3) Do nothing beyond the authority granted in this power of
1473 attorney; and

1474 (4) Disclose your identity as an agent whenever you act for
1475 the principal by writing or printing the name of the principal and
1476 signing your own name as "agent" in the following manner:

1477

1478 (Principal's Name) by (Your Signature) as Agent

1479 Unless the special instructions in this power of attorney
1480 state otherwise, you must also:

1481 (1) Act loyally for the principal's benefit;

1482 (2) Avoid conflicts that would impair your ability to act in
1483 the principal's best interest;

1484 (3) Act with care, competence, and diligence;

1485 (4) Keep a record of all receipts, disbursements, and
1486 transactions made on behalf of the principal;

1487 (5) Cooperate with any person that has authority to make
1488 health-care decisions for the principal to do what you know the
1489 principal reasonably expects or, if you do not know the
1490 principal's expectations, to act in the principal's best interest;
1491 and



1492 (6) Attempt to preserve the principal's estate plan if you
1493 know the plan and preserving the plan is consistent with the
1494 principal's best interest.

1495 **Termination of Agent's Authority**

1496 You must stop acting on behalf of the principal if you learn
1497 of any event that terminates this power of attorney or your
1498 authority under this power of attorney. Events that terminate a
1499 power of attorney or your authority to act under a power of
1500 attorney include:

1501 (1) Death of the principal;

1502 (2) The principal's revocation of the power of attorney or
1503 your authority;

1504 (3) The occurrence of a termination event stated in the
1505 power of attorney;

1506 (4) The purpose of the power of attorney is fully
1507 accomplished; or

1508 (5) If you are married to the principal, a legal action is
1509 filed with a court to end your marriage, or for your legal
1510 separation, unless the special instructions in this power of
1511 attorney state that such an action will not terminate your
1512 authority.

1513 **Liability of Agent**

1514 The meaning of the authority granted to you is defined in the
1515 Mississippi Uniform Power of Attorney Act. If you violate the
1516 Mississippi Uniform Power of Attorney Act or act outside the



1517 authority granted, you may be liable for any damages caused by
1518 your violation.

1519 **If there is anything about this document or your**
1520 **duties that you do not understand, you should seek**
1521 **legal advice.**

1522 **SECTION 46.** The following shall be codified as Section
1523 87-4-302, Mississippi Code of 1972:

1524 87-4-302. **Agent's certification.** The following optional
1525 form may be used by an agent to certify facts concerning a power
1526 of attorney.

1527 **AGENT'S CERTIFICATION AS TO THE VALIDITY**
1528 **OF POWER OF ATTORNEY AND AGENT'S AUTHORITY**

1529 State of _____

1530 County of _____

1531 I, _____ (Name of

1532 Agent), certify under penalty of perjury that _____

1533 _____ (Name of Principal)

1534 granted me authority as an agent or successor agent in a power of

1535 attorney dated _____.

1536 I further certify that to my knowledge:

1537 (1) The principal is alive and has not revoked the power of

1538 attorney or my authority to act under the power of attorney and

1539 the power of attorney and my authority to act under the power of

1540 attorney have not terminated;



1541 (2) If the power of attorney was drafted to become effective
1542 upon the happening of an event or contingency, the event or
1543 contingency has occurred;

1544 (3) If I was named as a successor agent, the prior agent is
1545 no longer able or willing to serve; and

1546 (4) I am an adult and not under any incapacity;

1547 (5) The principal was an adult and competent when the power
1548 of attorney was executed; and

1549 **SIGNATURE AND ACKNOWLEDGMENT**

1550 _____

1551 Agent's Signature Date

1552 _____

1553 Agent's Name Printed

1554 _____

1555 _____

1556 Agent's Address

1557 _____

1558 Agent's Telephone Number _____

1559 This document was acknowledged before me on _____ (Date)

1560 by _____.

1561 (Name of Agent)

1562 _____ (Seal, if any)

1563 Signature of Notary

1564 My commission expires: _____

1565 This document prepared by _____



1566 **ARTICLE 4**

1567 **MISCELLANEOUS PROVISIONS**

1568 **SECTION 47.** The following shall be codified as Section
1569 87-4-401, Mississippi Code of 1972:

1570 87-4-401. **Uniformity of application and construction.** In
1571 applying and construing this uniform act, consideration must be
1572 given to the need to promote uniformity of the law with respect to
1573 its subject matter among the states that enact it.

1574 **SECTION 48.** The following shall be codified as Section
1575 87-4-402, Mississippi Code of 1972:

1576 87-4-402. **Relation to Electronic Signatures in Global and**
1577 **National Commerce Act.** This act modifies, limits, and supersedes
1578 the federal Electronic Signatures in Global and National Commerce
1579 Act, 15 USCS Section 7001 et seq., but does not modify, limit, or
1580 supersede Section 101(c) of that act, 15 USCS Section 7001(c), or
1581 authorize electronic delivery of any of the notices described in
1582 Section 103(b) of that act, 15 USCS Section 7003(b).

1583 **SECTION 49.** The following shall be codified as Section
1584 87-4-403, Mississippi Code of 1972:

1585 87-4-403. **Effect of existing powers of attorney.** Except as
1586 otherwise provided in this act:

1587 (1) This act applies to a power of attorney created
1588 before, on, or after July 1, 2016;

1589 (2) This act applies to a judicial proceeding
1590 concerning a power of attorney commenced on or after July 1, 2016;



1591 (3) This act applies to a judicial proceeding
1592 concerning a power of attorney commenced before July 1, 2016,
1593 unless the court finds that application of a provision of this act
1594 would substantially interfere with the effective conduct of the
1595 judicial proceeding or prejudice the rights of a party, in which
1596 case that provision does not apply and the superseded law applies;
1597 and

1598 (4) An act done before July 1, 2016, is not affected by
1599 this act.

1600 **SECTION 50.** Section 75-3-307, Mississippi Code of 1972, is
1601 amended as follows:

1602 75-3-307. (a) In this section:

1603 (1) "Fiduciary" means an agent, trustee, partner,
1604 corporate officer or director, or other representative owing a
1605 fiduciary duty with respect to an instrument.

1606 (2) "Represented person" means the principal,
1607 beneficiary, partnership, corporation, or other person to whom the
1608 duty stated in paragraph (1) is owed.

1609 (b) If (i) an instrument is taken from a fiduciary for
1610 payment or collection or for value, (ii) the taker has knowledge
1611 of the fiduciary status of the fiduciary, and (iii) the
1612 represented person makes a claim to the instrument or its proceeds
1613 on the basis that the transaction of the fiduciary is a breach of
1614 fiduciary duty, the following rules apply:



1615 (1) Notice of breach of fiduciary duty by the fiduciary
1616 is notice of the claim of the represented person.

1617 (2) In the case of an instrument payable to the
1618 represented person or the fiduciary as such, the taker has notice
1619 of the breach of fiduciary duty if the instrument is (i) taken in
1620 payment of or as security for a debt known by the taker to be the
1621 personal debt of the fiduciary, (ii) taken in a transaction known
1622 by the taker to be for the personal benefit of the fiduciary, or
1623 (iii) deposited to an account other than an account of the
1624 fiduciary, as such, or an account of the represented person.

1625 (3) If an instrument is issued by the represented
1626 person or the fiduciary as such, and made payable to the fiduciary
1627 personally, the taker does not have notice of the breach of
1628 fiduciary duty unless the taker knows of the breach of fiduciary
1629 duty.

1630 (4) If an instrument is issued by the represented
1631 person or the fiduciary as such, to the taker as payee, the taker
1632 has notice of the breach of fiduciary duty if the instrument is
1633 (i) taken in payment of or as security for a debt known by the
1634 taker to be the personal debt of the fiduciary, (ii) taken in a
1635 transaction known by the taker to be for the personal benefit of
1636 the fiduciary, or (iii) deposited to an account other than an
1637 account of the fiduciary, as such, or an account of the
1638 represented person.



1639 (5) To the extent that this section conflicts with
1640 Section 87-4-119(c), Section 87-4-119(c) controls.

1641 **SECTION 51.** Sections 87-3-101, 87-3-103, 87-3-105, 87-3-107,
1642 87-3-109, 87-3-111 and 87-3-113, Mississippi Code of 1972, which
1643 constitute the Uniform Durable Power of Attorney Act, are
1644 repealed.

1645 **SECTION 52.** This act shall take effect and be in force from
1646 and after July 1, 2016, and shall stand repealed on June 30, 2016.

