

By: Representative Reynolds

To: Judiciary A

HOUSE BILL NO. 277

1 AN ACT TO CREATE NEW SECTION 87-3-115, MISSISSIPPI CODE OF
 2 1972, TO INCLUDE POWERS OF ATTORNEY THAT ARE MADE EFFECTIVE UPON A
 3 FUTURE EVENT IN THE UNIFORM DURABLE POWER OF ATTORNEY ACT; TO
 4 PROVIDE THAT THE PRINCIPAL MAY AUTHORIZE A PERSON TO DETERMINE IF
 5 THE FUTURE EVENT HAS OCCURRED; TO AUTHORIZE CERTAIN PERSONS TO
 6 DETERMINE WHETHER THE PRINCIPAL IS INCAPACITATED; TO AUTHORIZE
 7 PERSONS THAT THE PRINCIPAL DESIGNATED TO DETERMINE THEIR
 8 INCAPACITY TO ACT AS THEIR PERSONAL REPRESENTATIVE FOR PURPOSES OF
 9 CERTAIN HEALTH CARE INFORMATION LAWS; TO AMEND SECTION 87-3-105,
 10 MISSISSIPPI CODE OF 1972, TO INCLUDE POWERS OF ATTORNEY THAT ARE
 11 MADE EFFECTIVE UPON A FUTURE EVENT IN THE DEFINITION OF DURABLE
 12 POWER OF ATTORNEY FOR THE PURPOSES OF THE UNIFORM DURABLE POWER OF
 13 ATTORNEY ACT; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** The following shall be codified as Section
 16 87-3-115, Mississippi Code of 1972:

17 87-3-115. (1) A durable power of attorney created under the
 18 Uniform Durable Power of Attorney Act may be made effective upon
 19 the occurrence of a future event or contingency.

20 (2) If a power of attorney becomes effective upon the
 21 occurrence of a future event or contingency, the principal, in the
 22 power of attorney, may authorize one or more persons to determine



23 in a writing or other record that the event or contingency has
24 occurred.

25 (3) If a power of attorney becomes effective upon the
26 principal's incapacity and the principal has not authorized a
27 person to determine whether the principal is incapacitated, or the
28 person authorized is unable or unwilling to make the
29 determination, the power of attorney becomes effective upon a
30 determination in a writing or other record by:

31 (a) A physician or licensed psychologist that the
32 principal is incapacitated; or

33 (b) An attorney at law, a judge or an appropriate
34 governmental official that the principal is incapacitated.

35 (4) A person authorized by the principal in the power of
36 attorney to determine that the principal is incapacitated may act
37 as the principal's personal representative pursuant to the Health
38 Insurance Portability and Accountability Act, Sections 1171
39 through 1179 of the Social Security Act, 42 USCS Section 1320d and
40 applicable regulations, to obtain access to the principal's
41 health care information and communicate with the principal's
42 health care provider.

43 (5) For the purpose of this section, "incapacitated" means
44 the inability of an individual to manage property or business
45 affairs because the individual has an impairment in the ability to
46 receive and evaluate information or make or communicate decisions
47 even with the use of technological assistance.



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

50 87-3-105. A durable power of attorney is a power of attorney
51 by which a principal designates another his attorney in fact in
52 writing and the writing contains the words "This power of attorney
53 shall not be affected by subsequent disability or incapacity of
54 the principal, or lapse of time," or "This power of attorney shall
55 become effective upon the disability or incapacity of the
56 principal," or similar words showing the intent of the principal
57 that the authority conferred shall be exercisable notwithstanding
58 the principal's subsequent disability or incapacity, and, unless
59 it states a time of termination, notwithstanding the lapse of time
60 since the execution of the instrument. Further, a durable power
61 of attorney may become effective upon the occurrence of a certain
62 future event or contingency as provided in Section 87-3-115 of
63 this act, if the power of attorney includes language to that
64 effect.

65 **SECTION 3.** This act shall take effect and be in force from
66 and after July 1, 2018.

