

By: Representative Reynolds

To: Judiciary A

HOUSE BILL NO. 626

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

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

21 **SECTION 1.** The following shall be codified in Chapter 3,
 22 Title 87, Mississippi Code of 1972:

23 **ARTICLE 1**

24 Section 101. **Short title.** This act may be cited as the
 25 Uniform Power of Attorney Act.

26 Section 102. **Definitions.** In this act:



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

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

36 (3) "Electronic" means relating to technology having
37 electrical, digital, magnetic, wireless, optical, electromagnetic,
38 or similar capabilities.

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

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

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

45 (B) Is:

46 (i) Missing;

47 (ii) Detained, including incarcerated in a
48 penal system; or

49 (iii) Outside the United States and unable to
50 return.



51 (6) "Person" means an individual, corporation, business
52 trust, estate, trust, partnership, limited liability company,
53 association, joint venture, public corporation, government or
54 governmental subdivision, agency, or instrumentality, or any other
55 legal or commercial entity.

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

63 (8) "Presently exercisable general power of
64 appointment," with respect to property or a property interest
65 subject to a power of appointment, means power exercisable at the
66 time in question to vest absolute ownership in the principal
67 individually, the principal's estate, the principal's creditors,
68 or the creditors of the principal's estate. The term includes a
69 power of appointment not exercisable until the occurrence of a
70 specified event, the satisfaction of an ascertainable standard, or
71 the passage of a specified period only after the occurrence of the
72 specified event, the satisfaction of the ascertainable standard,
73 or the passage of the specified period. The term does not include
74 a power exercisable in a fiduciary capacity or only by will.



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

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

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

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

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

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

88 (13) "State" means a state of the United States, the
89 District of Columbia, Puerto Rico, the United States Virgin
90 Islands, or any territory or insular possession subject to the
91 jurisdiction of the United States.

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

97 Section 103. **Applicability.** This act applies to all powers
98 of attorney except:



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

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

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

106 (4) A power created on a form prescribed by a
107 government or governmental subdivision, agency, or instrumentality
108 for a governmental purpose;

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

111 (6) A power, delegation or grant of authority under a
112 court order to a conservator, guardian, executor, executrix,
113 administrator, administratrix or other court appointed fiduciary;
114 and

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

117 Section 104. **Power of attorney is durable.** A power of
118 attorney created under this act is durable unless it expressly
119 provides that it is terminated by the incapacity of the principal.

120 Section 105. **Execution of power of attorney.** A power of
121 attorney must be signed by the principal or in the principal's
122 conscious presence by another individual directed by the principal
123 to sign the principal's name on the power of attorney. A



124 signature on a power of attorney is presumed to be genuine if the
125 principal acknowledges the signature before a notary public or
126 other individual authorized by law to take acknowledgments.

127 Section 106. **Validity of power of attorney.**

128 (a) A power of attorney executed in this state on or after
129 July 1, 2016, is valid if its execution complies with Section 105.

130 (b) A power of attorney executed in this state before July
131 1, 2016, is valid if its execution complied with the law of this
132 state as it existed at the time of execution.

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

136 (1) The law of the jurisdiction that determines the
137 meaning and effect of the power of attorney pursuant to Section
138 107; or

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

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

144 Section 107. **Meaning and effect of power of attorney.**

145 The meaning and effect of a power of attorney is determined
146 by the law of the jurisdiction indicated in the power of attorney
147 and, in the absence of an indication of jurisdiction, by the law
148 of the jurisdiction in which the power of attorney was executed.



149 Section 108. **Nomination of conservator or guardian; relation**
150 **of agent to court-appointed fiduciary.**

151 (a) In a power of attorney, a principal may nominate a
152 conservator or guardian of the principal's estate or guardian of
153 the principal's person for consideration by the court if
154 protective proceedings for the principal's estate or person are
155 begun after the principal executes the power of attorney. Except
156 for good cause shown or disqualification, the court shall make its
157 appointment in accordance with the principal's most recent
158 nomination. If the power of attorney names a conservator or a
159 guardian but does not specify whether the nomination applies to
160 the principal's estate or to the principal's person, the
161 nomination applies to both the principal's estate and the
162 principal's person.

163 (b) If, after a principal executes a power of attorney, a
164 court appoints a conservator or guardian of the principal's estate
165 or other fiduciary charged with the management of some or all of
166 the principal's property, the agent is accountable to the
167 fiduciary as well as to the principal. The power of attorney is
168 not terminated and the agent's authority continues unless limited,
169 suspended, or terminated by the court. The limitation, suspension
170 or termination is not effective as to a third party until the
171 third party has actual knowledge of the appointment of a
172 conservator, guardian or other fiduciary and has a reasonable time
173 to act of such knowledge.



174 Section 109. **When power of attorney is effective.**

175 (a) A power of attorney is effective when executed unless
176 the principal provides in the power of attorney that it becomes
177 effective at a future date or upon the occurrence of a future
178 event or contingency.

179 (b) If a power of attorney becomes effective upon the
180 occurrence of a future event or contingency, the principal, in the
181 power of attorney, may authorize one or more persons including the
182 agent to determine in a writing or other record that the event or
183 contingency has occurred.

184 (c) If a power of attorney becomes effective upon the
185 principal's incapacity and the principal has not authorized a
186 person to determine whether the principal is incapacitated, or the
187 person authorized is unable or unwilling to make the
188 determination, the power of attorney becomes effective upon a
189 determination in a writing or other record by:

190 (1) A physician or licensed psychologist that the
191 principal is incapacitated within the meaning of Section
192 102(5) (A); or

193 (2) An attorney at law, a judge, or an appropriate
194 governmental official that the principal is incapacitated within
195 the meaning of Section 102(5) (B).

196 (d) A person authorized by the principal in the power of
197 attorney to determine that the principal is incapacitated may act
198 as the principal's personal representative pursuant to the Health



199 Insurance Portability and Accountability Act, Sections 1171
200 through 1179 of the Social Security Act, 42 USCS Section 1320d and
201 applicable regulations, to obtain access to the principal's
202 health-care information and communicate with the principal's
203 health-care provider.

204 Section 110. **Termination of power of attorney or agent's**
205 **authority.**

206 (a) A power of attorney terminates when:

207 (1) The principal dies;

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

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

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

212 (5) The purpose of the power of attorney is
213 accomplished; or

214 (6) The principal revokes the agent's authority or the
215 agent dies, becomes incapacitated, or resigns, and the power of
216 attorney does not provide for another agent to act under the power
217 of attorney.

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

219 (1) The principal revokes the authority;

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

221 (3) An action is filed for the dissolution or annulment
222 of the agent's marriage to the principal or their legal
223 separation, unless the power of attorney otherwise provides; or



224 (4) The power of attorney terminates.

225 (c) Unless the power of attorney otherwise provides, an
226 agent's authority is exercisable until the authority terminates
227 under subsection (b), notwithstanding a lapse of time since the
228 execution of the power of attorney.

229 (d) Termination of an agent's authority or of a power of
230 attorney is not effective as to the agent or another person that,
231 without actual knowledge of the termination, acts under the power
232 of attorney. An act so performed, unless otherwise invalid or
233 unenforceable, binds the principal and the principal's successors
234 in interest. A third party may continue to act on a power of
235 attorney and/or at an agent's direction until that third party has
236 actual knowledge of the termination of the power of attorney or of
237 the agent's authority and has had a reasonable time to act on that
238 knowledge.

239 (e) Incapacity of the principal of a power of attorney that
240 is not durable does not revoke or terminate the power of attorney
241 as to an agent or other person that, without actual knowledge of
242 the incapacity, acts under the power of attorney. An act so
243 performed, unless otherwise invalid or unenforceable, binds the
244 principal and the principal's successors in interest.

245 (f) The execution of a power of attorney does not revoke a
246 power of attorney previously executed by the principal unless the
247 subsequent power of attorney provides that the previous power of
248 attorney is revoked or that all other powers of attorney are



249 revoked. If the subsequent power of attorney does not expressly
250 revoke the previous power of attorney, the previous power of
251 attorney remains in full force and effect.

252 Section 111. **Coagents and successor agents.**

253 (a) A principal may designate two or more persons to act as
254 coagents. Unless the power of attorney otherwise provides, each
255 coagent may exercise its authority independently. If a power of
256 attorney requires that two (2) or more persons act together as
257 coagents, notwithstanding the requirement that they act together,
258 one (1) or more of the agents may delegate to a coagent the
259 authority to conduct banking transactions as provided by law. In
260 the event of such delegation, a third party, without liability,
261 may rely upon such delegation to conduct banking transactions.

262 (b) A principal may designate one or more successor agents
263 to act if an agent resigns, dies, becomes incapacitated, is not
264 qualified to serve, or declines to serve. A principal may grant
265 authority to designate one or more successor agents to an agent or
266 other person designated by name, office, or function. Unless the
267 power of attorney otherwise provides, a successor agent:

268 (1) Has the same authority as that granted to the
269 original agent; and

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



273 (c) Except as otherwise provided in the power of attorney
274 and subsection (d), an agent that does not participate in or
275 conceal a breach of fiduciary duty committed by another agent,
276 including a predecessor agent, is not liable for the actions of
277 the other agent.

278 (d) An agent that has actual knowledge of a breach or
279 imminent breach of fiduciary duty by another agent shall notify
280 the principal and, if the principal is incapacitated, take any
281 action reasonably appropriate in the circumstances to safeguard
282 the principal's best interest. An agent that fails to notify the
283 principal or take action as required by this subsection is liable
284 for the reasonably foreseeable damages that could have been
285 avoided if the agent had notified the principal or taken such
286 action.

287 Section 112. **Reimbursement and compensation of agent.**

288 Unless the power of attorney otherwise provides, an agent is
289 entitled to reimbursement of expenses reasonably incurred on
290 behalf of the principal and to compensation that is reasonable
291 under the circumstances.

292 Section 113. **Agent's acceptance.** Except as otherwise
293 provided in the power of attorney, a person accepts appointment as
294 an agent under a power of attorney by exercising authority or
295 performing duties as an agent or by any other assertion or conduct
296 indicating acceptance.

297 Section 114. **Agent's duties.**



298 (a) Notwithstanding provisions in the power of attorney, an
299 agent that has accepted appointment shall:

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

303 (2) Act in good faith; and

304 (3) Act only within the scope of authority granted in
305 the power of attorney.

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

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

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

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

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

316 (5) Cooperate with a person that has authority to make
317 health-care decisions for the principal to carry out the
318 principal's reasonable expectations to the extent actually known
319 by the agent and, otherwise, act in the principal's best interest;
320 and

321 (6) Attempt to preserve the principal's estate plan, to
322 the extent actually known by the agent, if preserving the plan is



323 consistent with the principal's best interest based on all
324 relevant factors, including:

325 (A) The value and nature of the principal's
326 property;

327 (B) The principal's foreseeable obligations and
328 need for maintenance;

329 (C) Minimization of taxes, including income,
330 estate, inheritance, generation-skipping transfer, and gift taxes;
331 and

332 (D) Eligibility for a benefit, a program, or
333 assistance under a statute or regulation.

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

337 (d) An agent that acts with care, competence, and diligence
338 for the best interest of the principal is not liable solely
339 because the agent also benefits from the act or has an individual
340 or conflicting interest in relation to the property or affairs of
341 the principal.

342 (e) If an agent is selected by the principal because of
343 special skills or expertise possessed by the agent or in reliance
344 on the agent's representation that the agent has special skills or
345 expertise, the special skills or expertise must be considered in
346 determining whether the agent has acted with care, competence, and
347 diligence under the circumstances.



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

350 (g) An agent that exercises authority to delegate to another
351 person the authority granted by the principal or that engages
352 another person on behalf of the principal is not liable for an
353 act, error of judgment, or default of that person if the agent
354 exercises care, competence, and diligence in selecting and
355 monitoring the person.

356 (h) Except as otherwise provided in the power of attorney,
357 an agent is not required to disclose receipts, disbursements, or
358 transactions conducted on behalf of the principal unless ordered
359 by a court or requested by the principal, a guardian, a
360 conservator, another fiduciary acting for the principal, a
361 governmental agency having authority to protect the welfare of the
362 principal, or, upon the death of the principal, by the personal
363 representative or successor in interest of the principal's estate.
364 If so requested, within thirty (30) days the agent shall comply
365 with the request or provide a writing or other record
366 substantiating why additional time is needed and shall comply with
367 the request within an additional thirty (30) days.

368 Section 115. Exoneration of agent. A provision in a power
369 of attorney relieving an agent of liability for breach of duty is
370 binding on the principal and the principal's successors in
371 interest except to the extent the provision:



372 (1) Relieves the agent of liability for breach of duty
373 committed dishonestly or with reckless indifference to the
374 purposes of the power of attorney or the best interest of the
375 principal; or

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

378 Section 116. **Judicial relief.**

379 (a) The following persons may petition a court to construe a
380 power of attorney or review the agent's conduct, and grant
381 appropriate relief:

382 (1) The principal or the agent;

383 (2) A guardian, conservator, or other fiduciary acting
384 for the principal;

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

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

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

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

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



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

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

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

403 Section 117. **Agent's liability.** An agent that violates this
404 act is liable to the principal or the principal's successors in
405 interest for the amount required to:

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

408 (2) Reimburse the principal or the principal's
409 successors in interest for the attorney's fees and costs paid on
410 the agent's behalf.

411 Section 118. **Agent's resignation; notice.** Unless the power
412 of attorney provides a different method for an agent's
413 resignation, an agent may resign by giving notice to the principal
414 and, if the principal is incapacitated:

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

417 (2) If there is no person described in paragraph (1),
418 to:

419 (A) The principal's caregiver;



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

422 (C) A governmental agency having authority to
423 protect the welfare of the principal.

424 Section 119. **Acceptance of and reliance upon acknowledged**
425 **power of attorney.**

426 (a) For purposes of this section and Section 120,
427 "acknowledged" means purportedly verified before a notary public
428 or other individual authorized to take acknowledgements.

429 (b) A person that accepts an acknowledged power of attorney
430 without actual knowledge that the signature is not genuine may
431 rely upon the presumption under Section 105 that the signature is
432 genuine.

433 (c) A person that accepts an acknowledged power of attorney
434 without actual knowledge that the power of attorney is void,
435 invalid, or terminated, that the purported agent's authority is
436 void, invalid, or terminated, or that the agent is exceeding or
437 improperly exercising the agent's authority may rely upon the
438 power of attorney as if the power of attorney were genuine, valid
439 and still in effect, the agent's authority were genuine, valid and
440 still in effect, and the agent had not exceeded and had properly
441 exercised the authority. A person that accepts an acknowledged
442 power of attorney shall be full exonerated from all liability to
443 the principal and any other person for any and all actions taken
444 or omitted at the request, order of instruction of an agent under



445 the power of attorney without actual knowledge the (i) the power
446 of attorney is void, invalid or terminated, (ii) the purported
447 agent's authority is void, invalid or terminated, or (iii) the
448 agent is exceeding his or her authority.

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

452 (1) An agent's certification under penalty of perjury
453 of any factual matter concerning the principal, agent, or power of
454 attorney;

455 (2) An English translation of the power of attorney if
456 the power of attorney contains, in whole or in part, language
457 other than English; and

458 (3) An opinion of counsel, who is approved by such
459 person, as to any matter of law concerning the power of attorney
460 if the person making the request provides in a writing or other
461 record the reason for the request.

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

466 (f) For purposes of this section and Section 120, a person
467 that conducts activities through employees is without actual
468 knowledge of a fact relating to a power of attorney, a principal,



469 or an agent if the employee conducting the transaction involving
470 the power of attorney is without actual knowledge of the fact.

471 Section 120. **Liability for refusal to accept acknowledged**
472 **power of attorney.**

473 (a) Except as otherwise provided in subsection (b):

474 (1) A person shall either accept an acknowledged power
475 of attorney or request a certification, a translation, or an
476 opinion of counsel under Section 119(d) no later than seven (7)
477 business days after presentation of the power of attorney for
478 acceptance;

479 (2) If a person requests a certification, a
480 translation, or an opinion of counsel under Section 119(d), the
481 person shall accept the power of attorney no later than five (5)
482 business days after receipt of the certification, translation, or
483 opinion of counsel; and

484 (3) A person may not require an additional or different
485 form of power of attorney for authority granted in the power of
486 attorney presented.

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

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

491 (2) Engaging in a transaction with the agent or the
492 principal in the same circumstances would be inconsistent with
493 federal law;



494 (3) The person has actual knowledge of the termination
495 of the agent's authority or of the power of attorney before
496 exercise of the power;

497 (4) A request for a certification, a translation, or an
498 opinion of counsel under Section 119(d) is refused or the
499 certification, translation or opinion of counsel does not support
500 acceptance of the power of attorney for the transaction or purpose
501 for which it was presented;

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

507 (6) The person makes, or has actual knowledge that
508 another person has made, a report under the Mississippi Vulnerable
509 Persons Act or a report to the Department of Human Services or to
510 law enforcement stating a good faith belief that the principal may
511 be subject to physical or financial abuse, neglect, exploitation,
512 or abandonment by the agent or a person acting for or with the
513 agent.

514 (c) A person that refuses in violation of this section to
515 accept an acknowledged power of attorney is subject to a court
516 order mandating acceptance of the power of attorney. In any such
517 action or proceeding, the prevailing party shall be entitled to



518 recovery of reasonable attorney's fees and costs, and expenses
519 incurred.

520 (d) For purposes of this section and Section 119, each
521 transaction requested, conducted or attempted to be conducted by
522 the agent shall be deemed to be a separate presentation of the
523 power of attorney for acceptance.

524 Section 121. **Principles of law and equity.** Unless displaced
525 by a provision of this act, the principles of law and equity
526 supplement this act.

527 Section 122. **Laws applicable to financial institutions and**
528 **entities.** Except as expressly provided in this act, this act does
529 not supersede any other law applicable to financial institutions
530 or other entities, and the other law controls if inconsistent with
531 this act.

532 Section 123. **Remedies under other law.** Except as expressly
533 provided in this act, the remedies under this act are not
534 exclusive and do not abrogate any right or remedy under the law of
535 this state other than this act.

536 Section 124. The exoneration from liability provided to a
537 person under Section 119(c) expressly overrides Section 75-3-307.
538 To the extent of any conflict or inconsistency between this act
539 and Section 75-3-307, this act prevails; it being the intent of
540 this act to exonerate from liability any person for actions taken
541 or omitted at the request, instruction or order of an agent under
542 a power of attorney without actual knowledge that (i) the power of



543 attorney is void, invalid or terminated, (ii) the purported
544 agent's authority is void, invalid or terminated, or (iii) the
545 agent is exceeding his or her authority.

546 **ARTICLE 2**

547 **AUTHORITY**

548 Section 201. **Authority that requires specific grant; grant**
549 **of general authority.**

550 (a) An agent under a power of attorney may do the following
551 on behalf of the principal or with the principal's property only
552 if the power of attorney expressly grants the agent the authority
553 and exercise of the authority is not otherwise prohibited by
554 another agreement or instrument to which the authority or property
555 is subject:

556 (1) Create, amend, revoke, or terminate an inter vivos
557 trust;

558 (2) Make a gift;

559 (3) Create or change rights of survivorship;

560 (4) Create or change a beneficiary designation;

561 (5) Delegate authority granted under the power of
562 attorney;

563 (6) Waive the principal's right to be a beneficiary of
564 a joint and survivor annuity, including a survivor benefit under a
565 retirement plan;

566 (7) Exercise fiduciary powers that the principal has
567 authority to delegate;



568 (8) Disclaim property, including a power of
569 appointment; or

570 (9) Make the agent an owner or joint owner of a deposit
571 account.

572 (b) Notwithstanding a grant of authority to do an act
573 described in subsection (a), unless the power of attorney
574 otherwise provides, an agent that is not an ancestor, spouse, or
575 descendant of the principal, may not exercise authority under a
576 power of attorney to create in the agent, or in an individual to
577 whom the agent owes a legal obligation of support, an interest in
578 the principal's property, whether by gift, right of survivorship,
579 beneficiary designation, disclaimer, or otherwise.

580 (c) Subject to subsections (a), (b), (d), and (e), if a
581 power of attorney grants to an agent authority to do all acts that
582 a principal could do, the agent has the general authority
583 described in Sections 204 through 216.

584 (d) Unless the power of attorney otherwise provides, a grant
585 of authority to make a gift is subject to Section 217.

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

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



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

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

598 Section 202. **Incorporation of authority.**

599 (a) An agent has authority described in this act if the
600 power of attorney refers to general authority with respect to the
601 descriptive term for the subjects stated in Sections 204 through
602 217 or cites the section in which the authority is described.

603 (b) A reference in a power of attorney to general authority
604 with respect to the descriptive term for a subject in Sections 204
605 through 217 or a citation to a section of Sections 204 through 217
606 incorporates the entire section as if it were set out in full in
607 the power of attorney.

608 (c) A principal may modify authority incorporated by
609 reference.

610 Section 203. **Construction of authority generally.** Except as
611 otherwise provided in the power of attorney, by executing a power
612 of attorney that incorporates by reference a subject described in
613 Sections 204 through 217 or that grants to an agent authority to
614 do all acts that a principal could do pursuant to Section 201(c),
615 a principal authorizes the agent, with respect to that subject,
616 to:



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

622 (2) Contract in any manner with any person, on terms
623 agreeable to the agent, to accomplish a purpose of a transaction
624 and perform, rescind, cancel, terminate, reform, restate, release,
625 or modify the contract or another contract made by or on behalf of
626 the principal;

627 (3) Execute, acknowledge, seal, deliver, file, or
628 record any instrument or communication the agent considers
629 desirable to accomplish a purpose of a transaction, including
630 creating at any time a schedule listing some or all of the
631 principal's property and attaching it to the power of attorney;

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

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

639 (6) Engage, compensate, and discharge an attorney,
640 accountant, discretionary investment manager, expert witness, or
641 other advisor;



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

645 (8) Communicate with any representative or employee of
646 a government or governmental subdivision, agency, or
647 instrumentality, on behalf of the principal;

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

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

653 Section 204. Real property.

654 (a) Unless the power of attorney otherwise provides,
655 language in a power of attorney granting general authority with
656 respect to real property authorizes the agent to:

657 (1) Demand, buy, lease, receive, accept as a gift or as
658 security for an extension of credit, or otherwise acquire or
659 reject an interest in real property or a right incident to real
660 property;

661 (2) Sell; exchange; convey with or without covenants,
662 representations, or warranties; quitclaim; release; surrender;
663 retain title for security; encumber; partition; consent to
664 partitioning; subject to an easement or covenant; subdivide; apply
665 for zoning or other governmental permits; plat or consent to
666 platting; develop; grant an option concerning; lease; sublease;



667 contribute to an entity in exchange for an interest in that
668 entity; or otherwise grant or dispose of an interest in real
669 property or a right incident to real property;

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

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

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

681 (A) Insuring against liability or casualty or
682 other loss;

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

685 (C) Paying, assessing, compromising, or contesting
686 taxes or assessments or applying for and receiving refunds in
687 connection with them; and

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

690 (6) Use, develop, alter, replace, remove, erect, or
691 install structures or other improvements upon real property in or



692 incident to which the principal has, or claims to have, an
693 interest or right;

694 (7) Participate in a reorganization with respect to
695 real property or an entity that owns an interest in or right
696 incident to real property and receive, and hold, and act with
697 respect to stocks and bonds or other property received in a plan
698 of reorganization, including:

699 (A) Selling or otherwise disposing of them;

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

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

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

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

709 (b) A power of attorney used by an agent on behalf of a
710 principal concerning a conveyance, transaction or any matter
711 involving real property, including a contract relating thereto,
712 shall be recorded in the land records, or other permanent records
713 for the recordation of powers of attorney, of the chancery clerk
714 of the county in which the real property is located.

715 Section 205. **Tangible personal property.** Unless the power
716 of attorney otherwise provides, language in a power of attorney



717 granting general authority with respect to tangible personal
718 property authorizes the agent to:

719 (1) Demand, buy, receive, accept as a gift or as
720 security for an extension of credit, or otherwise acquire or
721 reject ownership or possession of tangible personal property or an
722 interest in tangible personal property;

723 (2) Sell; exchange; convey with or without covenants,
724 representations, or warranties; quitclaim; release; surrender;
725 create a security interest in; grant options concerning; lease;
726 sublease; or, otherwise dispose of tangible personal property or
727 an interest in tangible personal property;

728 (3) Grant a security interest in tangible personal
729 property or an interest in tangible personal property as security
730 to borrow money or pay, renew, or extend the time of payment of a
731 debt of the principal or a debt guaranteed by the principal;

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

736 (5) Manage or conserve tangible personal property or an
737 interest in tangible personal property on behalf of the principal,
738 including:

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



741 (B) Obtaining or regaining possession of or
742 protecting the property or interest, 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 taxes or assessments;

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

747 (E) Storing the property for hire or on a
748 gratuitous bailment; and

749 (F) Using and making repairs, alterations, or
750 improvements to the property; and

751 (6) Change the form of title of an interest in tangible
752 personal property.

753 Section 206. **Stocks and bonds.** Unless the power of attorney
754 otherwise provides, language in a power of attorney granting
755 general authority with respect to stocks and bonds authorizes the
756 agent to:

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

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

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

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



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

767 Section 207. **Commodities and options.** Unless the power of
768 attorney otherwise provides, language in a power of attorney
769 granting general authority with respect to commodities and options
770 authorizes the agent to:

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

774 (2) Establish, continue, modify, and terminate option
775 accounts.

776 Section 208. **Banks and other financial institutions.** Unless
777 the power of attorney otherwise provides, language in a power of
778 attorney granting general authority with respect to banks and
779 other financial institutions authorizes the agent to:

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

782 (2) Establish, modify, and terminate an account or
783 other banking arrangement with a bank, trust company, savings and
784 loan association, credit union, thrift company, brokerage firm, or
785 other financial institution selected by the agent;

786 (3) Contract for services available from a financial
787 institution, including renting a safe deposit box or space in a
788 vault;



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

792 (5) Receive statements of account, vouchers, notices,
793 and similar documents from a financial institution and act with
794 respect to them;

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

797 (7) Borrow money and pledge as security personal
798 property of the principal necessary to borrow money or pay, renew,
799 or extend the time of payment of a debt of the principal or a debt
800 guaranteed by the principal;

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

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

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



814 indemnity or other agreement in connection with letters of credit;
815 and

816 (11) Consent to an extension of the time of payment
817 with respect to commercial paper or a financial transaction with a
818 financial institution.

819 Section 209. **Operation of entity or business.** Subject to
820 the terms of a document or an agreement governing an entity or an
821 entity ownership interest, and unless the power of attorney
822 otherwise provides, language in a power of attorney granting
823 general authority with respect to operation of an entity or
824 business authorizes the agent to:

825 (1) Operate, buy, sell, enlarge, reduce, or terminate
826 an ownership interest;

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

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

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

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



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

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

844 (A) Continue, modify, renegotiate, extend, and
845 terminate a contract made by or on behalf of the principal with
846 respect to the entity or business before execution of the power of
847 attorney;

848 (B) Determine:

849 (i) The location of its operation;

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

851 (iii) The methods of manufacturing, selling,
852 merchandising, financing, accounting, and advertising employed in
853 its operation;

854 (iv) The amount and types of insurance
855 carried; and

856 (v) The mode of engaging, compensating, and
857 dealing with its employees and accountants, attorneys, or other
858 advisors;

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



863 (D) Demand and receive money due or claimed by the
864 principal or on the principal's behalf in the operation of the
865 entity or business and control and disburse the money in the
866 operation of the entity or business;

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

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

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

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

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

878 (13) Pay, compromise, or contest taxes, assessments,
879 fines, or penalties and perform any other act to protect the
880 principal from illegal or unnecessary taxation, assessments,
881 fines, or penalties, with respect to an entity or business,
882 including attempts to recover, in any manner permitted by law,
883 money paid before or after the execution of the power of attorney.

884 Section 210. **Insurance and annuities.** Unless the power of
885 attorney otherwise provides, language in a power of attorney
886 granting general authority with respect to insurance and annuities
887 authorizes the agent to:



888 (1) Continue, pay the premium or make a contribution
889 on, modify, exchange, rescind, release, or terminate a contract
890 procured by or on behalf of the principal which insures or
891 provides an annuity to either the principal or another person,
892 whether or not the principal is a beneficiary under the contract;

893 (2) Procure new, different, and additional contracts of
894 insurance and annuities for the principal and the principal's
895 spouse, children, and other dependents, and select the amount,
896 type of insurance or annuity, and mode of payment;

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

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

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

904 (6) Exercise an election;

905 (7) Exercise investment powers available under a
906 contract of insurance or annuity;

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

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



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

915 (11) Collect, sell, assign, hypothecate, borrow
916 against, or pledge the interest of the principal in a contract of
917 insurance or annuity;

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

920 (13) Pay, from proceeds or otherwise, compromise or
921 contest, and apply for refunds in connection with, a tax or
922 assessment levied by a taxing authority with respect to a contract
923 of insurance or annuity or its proceeds or liability accruing by
924 reason of the tax or assessment.

925 Section 211. **Estates, trusts, and other beneficial**
926 **interests.**

927 (a) In this section, "estate, trust, or other beneficial
928 interest" means a trust, probate estate, guardianship,
929 conservatorship, escrow, or custodianship or a fund from which the
930 principal is, may become, or claims to be, entitled to a share or
931 payment.

932 (b) Unless the power of attorney otherwise provides,
933 language in a power of attorney granting general authority with
934 respect to estates, trusts, and other beneficial interests
935 authorizes the agent to:



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

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

943 (3) Exercise for the benefit of the principal a
944 presently exercisable general power of appointment held by the
945 principal;

946 (4) Initiate, participate in, submit to alternative
947 dispute resolution, settle, oppose, or propose or accept a
948 compromise with respect to litigation to ascertain the meaning,
949 validity, or effect of a deed, will, declaration of trust, or
950 other instrument or transaction affecting the interest of the
951 principal;

952 (5) Initiate, participate in, submit to alternative
953 dispute resolution, settle, oppose, or propose or accept a
954 compromise with respect to litigation to remove, substitute, or
955 surcharge a fiduciary;

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

958 (7) Transfer an interest of the principal in real
959 property, stocks and bonds, accounts with financial institutions
960 or securities intermediaries, insurance, annuities, and other



961 property to the trustee of a revocable trust created by the
962 principal as settlor; and

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

966 Section 212. Claims and litigation. Unless the power of
967 attorney otherwise provides, language in a power of attorney
968 granting general authority with respect to claims and litigation
969 authorizes the agent to:

970 (1) Assert and maintain before a court or
971 administrative agency a claim, claim for relief, cause of action,
972 counterclaim, offset, recoupment, or defense, including an action
973 to recover property or other thing of value, recover damages
974 sustained by the principal, eliminate or modify tax liability, or
975 seek an injunction, specific performance, or other relief;

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

978 (3) Seek an attachment, garnishment, order of arrest,
979 or other preliminary, provisional, or intermediate relief and use
980 an available procedure to effect or satisfy a judgment, order, or
981 decree;

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



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

988 (6) Waive the issuance and service of process upon the
989 principal, accept service of process, appear for the principal,
990 designate persons upon which process directed to the principal may
991 be served, execute and file or deliver stipulations on the
992 principal's behalf, verify pleadings, seek appellate review,
993 procure and give surety and indemnity bonds, contract and pay for
994 the preparation and printing of records and briefs, receive,
995 execute, and file or deliver a consent, waiver, release,
996 confession of judgment, satisfaction of judgment, notice,
997 agreement, or other instrument in connection with the prosecution,
998 settlement, or defense of a claim or litigation;

999 (7) Act for the principal with respect to bankruptcy or
1000 insolvency, whether voluntary or involuntary, concerning the
1001 principal or some other person, or with respect to a
1002 reorganization, receivership, or application for the appointment
1003 of a receiver or trustee which affects an interest of the
1004 principal in property or other thing of value;

1005 (8) Pay a judgment, award, or order against the
1006 principal or a settlement made in connection with a claim or
1007 litigation; and

1008 (9) Receive money or other thing of value paid in
1009 settlement of or as proceeds of a claim or litigation.

1010 Section 213. **Personal and family maintenance.**



1011 (a) Unless the power of attorney otherwise provides,
1012 language in a power of attorney granting general authority with
1013 respect to personal and family maintenance authorizes the agent
1014 to:

1015 (1) Perform the acts necessary to maintain the
1016 customary standard of living of the principal, the principal's
1017 spouse, and the following individuals, whether living when the
1018 power of attorney is executed or later born:

1019 (A) The principal's children;

1020 (B) Other individuals legally entitled to be
1021 supported by the principal; and

1022 (C) The individuals whom the principal has
1023 customarily supported or indicated the intent to support;

1024 (2) Make periodic payments of child support and other
1025 family maintenance required by a court or governmental agency or
1026 an agreement to which the principal is a party;

1027 (3) Provide living quarters for the individuals
1028 described in paragraph (1) by:

1029 (A) Purchase, lease, or other contract; or

1030 (B) Paying the operating costs, including
1031 interest, amortization payments, repairs, improvements, and taxes,
1032 for premises owned by the principal or occupied by those
1033 individuals;

1034 (4) Provide normal domestic help, usual vacations and
1035 travel expenses, and funds for shelter, clothing, food,



1036 appropriate education, including postsecondary and vocational
1037 education, and other current living costs for the individuals
1038 described in paragraph (1);

1039 (5) Pay expenses for necessary health care and
1040 custodial care on behalf of the individuals described in paragraph
1041 (1);

1042 (6) Act as the principal's personal representative
1043 pursuant to the Health Insurance Portability and Accountability
1044 Act, Sections 1171 through 1179 of the Social Security Act, 42
1045 USCS Section 1320d, and applicable regulations, in making
1046 decisions related to the past, present, or future payment for the
1047 provision of health care consented to by the principal or anyone
1048 authorized under the law of this state to consent to health care
1049 on behalf of the principal;

1050 (7) Continue any provision made by the principal for
1051 automobiles or other means of transportation, including
1052 registering, licensing, insuring, and replacing them, for the
1053 individuals described in paragraph (1);

1054 (8) Maintain credit and debit accounts for the
1055 convenience of the individuals described in paragraph (1) and open
1056 new accounts; and

1057 (9) Continue payments incidental to the membership or
1058 affiliation of the principal in a religious institution, club,
1059 society, order, or other organization or to continue contributions
1060 to those organizations.



1061 (b) Authority with respect to personal and family
1062 maintenance is neither dependent upon, nor limited by, authority
1063 that an agent may or may not have with respect to gifts under this
1064 act.

1065 Section 214. **Benefits from governmental programs or civil or**
1066 **military service.**

1067 (a) In this section, "benefits from governmental programs or
1068 civil or military service" means any benefit, program or
1069 assistance provided under a statute or regulation including social
1070 security, Medicare, and Medicaid.

1071 (b) Unless the power of attorney otherwise provides,
1072 language in a power of attorney granting general authority with
1073 respect to benefits from governmental programs or civil or
1074 military service authorizes the agent to:

1075 (1) Execute vouchers in the name of the principal for
1076 allowances and reimbursements payable by the United States or a
1077 foreign government or by a state or subdivision of a state to the
1078 principal, including allowances and reimbursements for
1079 transportation of the individuals described in Section 213(a)(1),
1080 and for shipment of their household effects;

1081 (2) Take possession and order the removal and shipment
1082 of property of the principal from a post, warehouse, depot, dock,
1083 or other place of storage or safekeeping, either governmental or
1084 private, and execute and deliver a release, voucher, receipt, bill



1085 of lading, shipping ticket, certificate, or other instrument for
1086 that purpose;

1087 (3) Enroll in, apply for, select, reject, change,
1088 amend, or discontinue, on the principal's behalf, a benefit or
1089 program;

1090 (4) Prepare, file, and maintain a claim of the
1091 principal for a benefit or assistance, financial or otherwise, to
1092 which the principal may be entitled under a statute or regulation;

1093 (5) Initiate, participate in, submit to alternative
1094 dispute resolution, settle, oppose, or propose or accept a
1095 compromise with respect to litigation concerning any benefit or
1096 assistance the principal may be entitled to receive under a
1097 statute or regulation; and

1098 (6) Receive the financial proceeds of a claim described
1099 in paragraph (4) and conserve, invest, disburse, or use for a
1100 lawful purpose anything so received.

1101 Section 215. **Retirement plans.**

1102 (a) In this section, "retirement plan" means a plan or
1103 account created by an employer, the principal, or another
1104 individual to provide retirement benefits or deferred compensation
1105 of which the principal is a participant, beneficiary, or owner,
1106 including a plan or account under the following sections of the
1107 Internal Revenue Code:

1108 (1) An individual retirement account under Internal
1109 Revenue Code Section 408, 26 USCS Section 408;



1110 (2) A Roth individual retirement account under Internal
1111 Revenue Code Section 408A, 26 USCS Section 408A;

1112 (3) A deemed individual retirement account under
1113 Internal Revenue Code Section 408(q), 26 USCS Section 408(q);

1114 (4) An annuity or mutual fund custodial account under
1115 Internal Revenue Code Section 403(b), 26 USCS Section 403(b);

1116 (5) A pension, profit-sharing, stock bonus, or other
1117 retirement plan qualified under Internal Revenue Code Section
1118 401(a), 26 USCS Section 401(a);

1119 (6) A plan under Internal Revenue Code Section 457(b),
1120 26 USCS Section 457(b); and

1121 (7) A nonqualified deferred compensation plan under
1122 Internal Revenue Code Section 409A, 26 USCS Section 409A.

1123 (b) Unless the power of attorney otherwise provides,
1124 language in a power of attorney granting general authority with
1125 respect to retirement plans authorizes the agent to:

1126 (1) Select the form and timing of payments under a
1127 retirement plan and withdraw benefits from a plan;

1128 (2) Make a rollover, including a direct
1129 trustee-to-trustee rollover, of benefits from one retirement plan
1130 to another;

1131 (3) Establish a retirement plan in the principal's
1132 name;

1133 (4) Make contributions to a retirement plan;



1134 (5) Exercise investment powers available under a
1135 retirement plan; and

1136 (6) Borrow from, sell assets to, or purchase assets
1137 from a retirement plan.

1138 Section 216. **Taxes.** Unless the power of attorney otherwise
1139 provides, language in a power of attorney granting general
1140 authority with respect to taxes authorizes the agent to:

1141 (1) Prepare, sign, and file federal, state, local, and
1142 foreign income, gift, payroll, property, Federal Insurance
1143 Contributions Act, and other tax returns, claims for refunds,
1144 requests for extension of time, petitions regarding tax matters,
1145 and any other tax-related documents, including receipts, offers,
1146 waivers, consents, including consents and agreements under
1147 Internal Revenue Code Section 2032A, 26 USCS Section 2032A,
1148 closing agreements, and any power of attorney required by the
1149 Internal Revenue Service or other taxing authority with respect to
1150 a tax year upon which the statute of limitations has not run and
1151 the following twenty-five (25) tax years;

1152 (2) Pay taxes due, collect refunds, post bonds, receive
1153 confidential information, and contest deficiencies determined by
1154 the Internal Revenue Service or other taxing authority;

1155 (3) Exercise any election available to the principal
1156 under federal, state, local, or foreign tax law; and



1157 (4) Act for the principal in all tax matters for all
1158 periods before the Internal Revenue Service, or other taxing
1159 authority.

1160 Section 217. **Gifts.**

1161 (a) In this section, a gift "for the benefit of" a person
1162 includes a gift to a trust, an account under the Uniform Transfers
1163 to Minors Act, and a tuition savings account or prepaid tuition
1164 plan as defined under Internal Revenue Code Section 529, 26 USCS
1165 Section 529.

1166 (b) Unless the power of attorney otherwise provides,
1167 language in a power of attorney granting general authority with
1168 respect to gifts authorizes the agent only to:

1169 (1) Make outright to, or for the benefit of, a person,
1170 a gift of any of the principal's property, including by the
1171 exercise of a presently exercisable general power of appointment
1172 held by the principal, in an amount per donee not to exceed the
1173 annual dollar limits of the federal gift tax exclusion under
1174 Internal Revenue Code Section 2503(b), 26 USCS Section 2503(b),
1175 without regard to whether the federal gift tax exclusion applies
1176 to the gift, or if the principal's spouse agrees to consent to a
1177 split gift pursuant to Internal Revenue Code Section 2513, 26 USCS
1178 2513, in an amount per donee not to exceed twice the annual
1179 federal gift tax exclusion limit; and

1180 (2) Consent, pursuant to Internal Revenue Code Section
1181 2513, 26 USCS Section 2513, [as amended,] to the splitting of a



1182 gift made by the principal's spouse in an amount per donee not to
1183 exceed the aggregate annual gift tax exclusions for both spouses.

1184 (c) An agent may make a gift of the principal's property
1185 only as the agent determines is consistent with the principal's
1186 objectives if actually known by the agent and, if unknown, as the
1187 agent determines is consistent with the principal's best interest
1188 based on all relevant factors, including:

1189 (1) The value and nature of the principal's property;

1190 (2) The principal's foreseeable obligations and need
1191 for maintenance;

1192 (3) Minimization of taxes, including income, estate,
1193 inheritance, generation-skipping transfer, and gift taxes;

1194 (4) Eligibility for a benefit, a program, or assistance
1195 under a statute or regulation; and

1196 (5) The principal's personal history of making or
1197 joining in making gifts.

1198 Section 218. **Attorney Identification.** An attorney at law
1199 who drafts a power of attorney for another person must put his
1200 or her name, address, phone number and bar number at the bottom
1201 of the power of attorney.

1202 Section 219. **Homestead.** A power of attorney used by an
1203 agent to convey, mortgage, deed or otherwise pledge or encumber
1204 a homestead shall comply with Section 89-1-29 and shall designate
1205 an agent other than the spouse of the principal.

1206 **ARTICLE 3**



1207 **STATUTORY FORMS**

1208 Section 301. **Statutory form power of attorney.** A document
1209 substantially in the following form may be used to create a
1210 statutory form power of attorney that has the meaning and effect
1211 prescribed by this act.

1212 **INSERT NAME OF JURISDICTION**

1213 **STATUTORY FORM POWER OF ATTORNEY**

1214 **IMPORTANT INFORMATION**

1215 This power of attorney authorizes another person (your agent)
1216 to make decisions concerning your property for you (the
1217 principal). Your agent will be able to make decisions and act
1218 with respect to your property (including your money) whether or
1219 not you are able to act for yourself. The meaning of authority
1220 over subjects listed on this form is explained in the Uniform
1221 Power of Attorney Act [insert citation].

1222 This power of attorney does not authorize the agent to make
1223 health-care decisions for you.

1224 You should select someone you trust to serve as your agent.
1225 Unless you specify otherwise, generally the agent's authority will
1226 continue until you die or revoke the power of attorney or the
1227 agent resigns or is unable to act for you.

1228 Your agent is entitled to reasonable compensation unless you
1229 state otherwise in the Special Instructions.

1230 This form provides for designation of one agent. If you wish
1231 to name more than one agent you may name a coagent in the Special



1232 Instructions. Coagents are not required to act together unless
1233 you include that requirement in the Special Instructions.

1234 If your agent is unable or unwilling to act for you, your
1235 power of attorney will end unless you have named a successor
1236 agent. You may also name a second successor agent.

1237 This power of attorney becomes effective immediately unless
1238 you state otherwise in the Special Instructions.

1239 **If you have questions about the power of attorney**
1240 **or the authority you are granting to your agent, you**
1241 **should seek legal advice before signing this form.**

1242 **DESIGNATION OF AGENT**

1243 I _____
1244 name the following
1245 (Name of Principal)
1246 person as my agent:

1247 Name of Agent:
1248 _____

1249 Agent's Address:
1250 _____

1251 Agent's Telephone Number: _____

1252 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

1253 If my agent is unable or unwilling to act for me, I name as
1254 my successor agent:

1255 Name of Successor Agent:
1256 _____



1257 Successor Agent's Address:

1258 _____

1259 Successor Agent's Telephone Number:

1260 _____

1261 If my successor agent is unable or unwilling to act for me, I
1262 name as my second successor agent:

1263 Name of Second Successor Agent:

1264 _____

1265 Second Successor Agent's Address:

1266 _____

1267 Second Successor Agent's Telephone Number:

1268 _____

1269 **GRANT OF GENERAL AUTHORITY**

1270 I grant my agent and any successor agent general authority to
1271 act for me with respect to the following subjects as defined in
1272 the Uniform Power of Attorney Act [insert citation]:

1273 (INITIAL each subject you want to include in the agent's
1274 general authority. If you wish to grant general authority over
1275 all of the subjects you may initial "All Preceding Subjects"
1276 instead of initialing each subject.)

1277 (___) Real Property

1278 (___) Tangible Personal Property

1279 (___) Stocks and Bonds

1280 (___) Commodities and Options

1281 (___) Banks and Other Financial Institutions



- 1282 (___) Operation of Entity or Business
- 1283 (___) Insurance and Annuities
- 1284 (___) Estates, Trusts, and Other Beneficial Interests
- 1285 (___) Claims and Litigation
- 1286 (___) Personal and Family Maintenance
- 1287 (___) Benefits from Governmental Programs or Civil or Military
- 1288 Service
- 1289 (___) Retirement Plans
- 1290 (___) Taxes
- 1291 (___) All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

1293 My agent MAY NOT do any of the following specific acts for me
 1294 UNLESS I have INITIALED the specific authority listed below:

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

- 1301 (___) Create, amend, revoke, or terminate an inter vivos trust
- 1302 (___) Make a gift, subject to the limitations of the Uniform
- 1303 Power of Attorney Act [insert citation to Section 217 of the act]
- 1304 and any special instructions in this power of attorney
- 1305 (___) Create or change rights of survivorship
- 1306 (___) Create or change a beneficiary designation



1307 (___) Authorize another person to exercise the authority granted
1308 under this power of attorney

1309 (___) Waive the principal's right to be a beneficiary of a joint
1310 and survivor annuity, including a survivor benefit under a
1311 retirement plan

1312 (___) Exercise fiduciary powers that the principal has authority
1313 to delegate

1314 (___) Disclaim or refuse an interest in property, including a
1315 power of appointment

1316 (___) Make the agent an owner or joint owner of a deposit
1317 account.

1318 **LIMITATION ON AGENT'S AUTHORITY**

1319 An agent that is not my ancestor, spouse, or descendant MAY
1320 NOT use my property to benefit the agent or a person to whom the
1321 agent owes an obligation of support unless I have included that
1322 authority in the Special Instructions.

1323 **SPECIAL INSTRUCTIONS (OPTIONAL)**

1324 You may give special instructions on the following lines:

1325 _____
1326 _____
1327 _____
1328 _____
1329 _____
1330 _____



1331

1332

1333

EFFECTIVE DATE

1334

This power of attorney is effective immediately unless I have
1335 stated otherwise in the Special Instructions.

1336

NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)

1337

If it becomes necessary for a court to appoint a [conservator
1338 or guardian] of my estate or [guardian] of my person, I nominate
1339 the following person(s) for appointment:

1340

Name of Nominee for [conservator or guardian] of my estate:

1341

1342

Nominee's Address: _____

1343

Nominee's Telephone Number: _____

1344

Name of Nominee for [guardian] of my person:

1345

1346

Nominee's Address: _____

1347

Nominee's Telephone Number: _____

1348

RELIANCE ON THIS POWER OF ATTORNEY

1349

Any person, including my agent, may rely upon the validity of
1350 this power of attorney or a copy of it unless that person knows it
1351 has terminated or is invalid.

1352

SIGNATURE AND ACKNOWLEDGMENT

1353

1354

Your Signature

1355



1356 Date

1357 _____

1358 Your Name Printed

1359 _____

1360 _____

1361 Your Address

1362 _____

1363 Your Telephone Number

1364 State of _____

1365 County of _____

1366 This document was acknowledged before me on _____, by _____

1367 (Date) (Name of Principal)

1368 _____ (Seal, if any)

1369 _____

1370 Signature of Notary

1371 My commission expires: _____

1372 This document prepared by: _____

1373 **IMPORTANT INFORMATION FOR AGENT**

1374 **Agent's Duties**

1375 When you accept the authority granted under this power of
1376 attorney, a special legal relationship is created between you and
1377 the principal. This relationship imposes upon you legal duties
1378 that continue until you resign or the power of attorney is
1379 terminated or revoked. You must:



1380 (1) Do what you know the principal reasonably expects you to
1381 do with the principal's property or, if you do not know the
1382 principal's expectations, act in the principal's best interest;

1383 (2) Act in good faith;

1384 (3) Do nothing beyond the authority granted in this power of
1385 attorney; and

1386 (4) Disclose your identity as an agent whenever you act for
1387 the principal by writing or printing the name of the principal and
1388 signing your own name as "agent" in the following manner:

1389

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

1391 Unless the special instructions in this power of attorney
1392 state otherwise, you must also:

1393 (1) Act loyally for the principal's benefit;

1394 (2) Avoid conflicts that would impair your ability to act in
1395 the principal's best interest;

1396 (3) Act with care, competence, and diligence;

1397 (4) Keep a record of all receipts, disbursements, and
1398 transactions made on behalf of the principal;

1399 (5) Cooperate with any person that has authority to make
1400 health care decisions for the principal to do what you know the
1401 principal reasonably expects or, if you do not know the
1402 principal's expectations, to act in the principal's best interest;
1403 and



1404 (6) Attempt to preserve the principal's estate plan if you
1405 know the plan and preserving the plan is consistent with the
1406 principal's best interest.

1407 **Termination of Agent's Authority**

1408 You must stop acting on behalf of the principal if you learn
1409 of any event that terminates this power of attorney or your
1410 authority under this power of attorney. Events that terminate a
1411 power of attorney or your authority to act under a power of
1412 attorney include:

1413 (1) Death of the principal;

1414 (2) The principal's revocation of the power of attorney or
1415 your authority;

1416 (3) The occurrence of a termination event stated in the
1417 power of attorney;

1418 (4) The purpose of the power of attorney is fully
1419 accomplished; or

1420 (5) If you are married to the principal, a legal action is
1421 filed with a court to end your marriage, or for your legal
1422 separation, unless the special instructions in this power of
1423 attorney state that such an action will not terminate your
1424 authority.

1425 **Liability of Agent**

1426 The meaning of the authority granted to you is defined in the
1427 Uniform Power of Attorney Act. If you violate the Uniform Power



1428 of Attorney Act or act outside the authority granted, you may be
1429 liable for any damages caused by your violation.

1430 **If there is anything about this document or your**
1431 **duties that you do not understand, you should seek**
1432 **legal advice.**

1433 Section 302. **Agent's certification.** The following optional
1434 form may be used by an agent to certify facts concerning a power
1435 of attorney.

1436 **AGENT'S CERTIFICATION AS TO THE VALIDITY**
1437 **OF POWER OF ATTORNEY AND AGENT'S AUTHORITY**

1438 State of _____

1439 County of _____

1440 I, _____ (Name of

1441 Agent), certify under penalty of perjury that _____

1442 _____ (Name of Principal)

1443 granted me authority as an agent or successor agent in a power of
1444 attorney dated _____.

1445 I further certify that to my knowledge:

1446 (1) The principal is alive and has not revoked the power of
1447 attorney or my authority to act under the power of attorney and
1448 the power of attorney and my authority to act under the power of
1449 attorney have not terminated;

1450 (2) If the power of attorney was drafted to become effective
1451 upon the happening of an event or contingency, the event or
1452 contingency has occurred;



1453 (3) If I was named as a successor agent, the prior agent is
1454 no longer able or willing to serve; and

1455 (4) I am an adult and not under any incapacity; and

1456 (5) The principal was an adult and competent when the power
1457 of attorney was executed.

1458 _____
1459 _____
1460 _____
1461 _____
1462 _____

1463 **SIGNATURE AND ACKNOWLEDGMENT**

1464 _____

1465 Agent's Signature Date

1466 _____

1467 Agent's Name Printed

1468 _____

1469 _____

1470 Agent's Address

1471 _____

1472 Agent's Telephone Number _____

1473 This document was acknowledged before me on _____, (Date)

1474 by _____.

1475 (Name of Agent)

1476 _____ (Seal, if any)

1477 Signature of Notary



1478 My commission expires: _____

1479 This document prepared by _____

1480 **ARTICLE 4**

1481 **MISCELLANEOUS PROVISIONS**

1482 Section 401. **Uniformity of application and construction.** In
1483 applying and construing this uniform act, consideration must be
1484 given to the need to promote uniformity of the law with respect to
1485 its subject matter among the states that enact it.

1486 Section 402. **Relation to Electronic Signatures in Global and**
1487 **National Commerce Act.** This act modifies, limits, and supersedes
1488 the federal Electronic Signatures in Global and National Commerce
1489 Act, 15 USCS Section 7001 et seq., but does not modify, limit, or
1490 supersede Section 101(c) of that act, 15 USCS Section 7001(c), or
1491 authorize electronic delivery of any of the notices described in
1492 Section 103(b) of that act, 15 USCS Section 7003(b).

1493 Section 403. **Effect of existing powers of attorney.** Except
1494 as otherwise provided in this act, on July 1, 2016:

1495 (1) This act applies to a power of attorney created
1496 before, on, or after July 1, 2016;

1497 (2) This act applies to a judicial proceeding
1498 concerning a power of attorney commenced on or after July 1, 2016;

1499 (3) This act applies to a judicial proceeding
1500 concerning a power of attorney commenced before July 1, 2016;
1501 unless the court finds that application of a provision of this act
1502 would substantially interfere with the effective conduct of the



1503 judicial proceeding or prejudice the rights of a party, in which
1504 case that provision does not apply and the superseded law applies;
1505 and

1506 (4) An act done before July 1, 2016, is not affected by
1507 this act.

1508 **SECTION 2.** Sections 87-3-101 through 87-3-113, which
1509 constitute the Uniform Durable Power of Attorney Act, are
1510 repealed.

1511 **SECTION 3.** This act shall take effect and be in force from
1512 and after July 1, 2016.

