

H. B. 3266

(By Delegates Doyle, Guthrie, Ferro, Frazier,
Reynolds and Walters)

[Introduced February 21, 2011; referred to the
Committee on the Judiciary.]



A BILL to repeal §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5,
§39-4-6 and §39-4-7 of the Code of West Virginia, 1931, as
amended; and to amend said code by adding thereto a new
article, designated §39-4A-101, §39-4A-102, §39-4A-103,
§39-4A-104, §39-4A-105, §39-4A-106, §39-4A-107, §39-4A-108,
§39-4A-109, §39-4A-110, §39-4A-111, §39-4A-112, §39-4A-113,
§39-4A-114, §39-4A-115, §39-4A-116, §39-4A-117, §39-4A-118,
§39-4A-119, §39-4A-120, §39-4A-121, §39-4A-122, §39-4A-123,
§39-4A-124, §39-4A-125, §39-4A-126, §39-4A-127, §39-4A-128,
§39-4A-129, §39-4A-130, §39-4A-131, §39-4A-132, §39-4A-133,
§39-4A-134, §39-4A-135, §39-4A-136, §39-4A-137, §39-4A-138,
§39-4A-139, §39-4A-140, §39-4A-141, §39-4A-142, §39-4A-143 and
§39-4A-144, all relating to repealing the Uniform Durable
Power of Attorney Act; creating the Uniform Power of Attorney
Act; providing a short title; providing definitions; stating
the applicability of the act; providing that the power of
attorney is durable; providing for the execution and validity

1 of power of attorney; nominating a conservator or guardian and
 2 relation of agent to court-appointed fiduciary; providing when
 3 power of attorney effective; terminating the power of attorney
 4 or agent's authority; providing for coagents and successor
 5 agents; providing for reimbursement and compensation of agent;
 6 providing for an agent's acceptance and duties; and providing
 7 other specific instances where the power of attorney may
 8 apply.

9 *Be it enacted by the Legislature of West Virginia:*

10 That §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5, §39-4-6 and
 11 §39-4-7 of the Code of West Virginia, 1931, as amended, be
 12 repealed; and that said code be amended by adding thereto a new
 13 article, designated §39-4A-101, §39-4A-102, §39-4A-103, §39-4A-104,
 14 §39-4A-105, §39-4A-106, §39-4A-107, §39-4A-108, §39-4A-109,
 15 §39-4A-110, §39-4A-111, §39-4A-112, §39-4A-113, §39-4A-114,
 16 §39-4A-115, §39-4A-116, §39-4A-117, §39-4A-118, §39-4A-119,
 17 §39-4A-120, §39-4A-121, §39-4A-122, §39-4A-123, §39-4A-124,
 18 §39-4A-125, §39-4A-126, §39-4A-127, §39-4A-128, §39-4A-129,
 19 §39-4A-130, §39-4A-131, §39-4A-132, §39-4A-133, §39-4A-134,
 20 §39-4A-135, §39-4A-136, §39-4A-137, §39-4A-138, §39-4A-139,
 21 §39-4A-140, §39-4A-141, §39-4A-142, §39-4A-143 and §39-4A-144, all
 22 to read as follows:

23 **ARTICLE 4A. UNIFORM POWER OF ATTORNEY ACT.**

24 **§39-4A-101. Short title.**

25 This article may be cited as the Uniform Power of Attorney

1 Act.

2 **§39-4A-102. Definitions.**

3 In this article:

4 (1) "Agent" means a person granted authority to act for a
5 principal under a power of attorney, whether denominated an agent,
6 attorney-in-fact or otherwise. The term includes an original
7 agent, coagent, successor agent and a person to whom an agent's
8 authority is delegated.

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

11 (3) "Electronic" means relating to technology having
12 electrical, digital, magnetic, wireless, optical, electromagnetic
13 or similar capabilities.

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

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

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

20 (B) Is:

21 (i) Missing;

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

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

24 (6) "Person" means an individual, corporation, business trust,
25 estate, trust, partnership, limited liability company, association,

1 joint venture, public corporation, government or governmental
2 subdivision, agency, or instrumentality or any other legal or
3 commercial entity.

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

7 (8) "Presently exercisable general power of appointment," with
8 respect to property or a property interest subject to a power of
9 appointment, means power exercisable at the time in question to
10 vest absolute ownership in the principal individually, the
11 principal's estate, the principal's creditors or the creditors of
12 the principal's estate. The term includes a power of appointment
13 not exercisable until the occurrence of a specified event, the
14 satisfaction of an ascertainable standard, or the passage of a
15 specified period only after the occurrence of the specified event,
16 the satisfaction of the ascertainable standard or the passage of
17 the specified period. The term does not include a power
18 exercisable in a fiduciary capacity or only by will.

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

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

24 (11) "Record" means information that is inscribed on a
25 tangible medium or that is stored in an electronic or other medium

1 and is retrievable in perceivable form.

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

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

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

7 (13) "State" means a state of the United States, the District
8 of Columbia, Puerto Rico, the United States Virgin Islands or any
9 territory or insular possession subject to the jurisdiction of the
10 United States.

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

16 **§39-4A-103. Applicability.**

17 This article applies to all powers of attorney except:

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

21 (2) A power to make health-care decisions;

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

24 (4) A power created on a form prescribed by a government or
25 governmental subdivision, agency, or instrumentality for a

1 governmental purpose.

2 **§39-4A-104. Power of attorney is durable.**

3 A power of attorney created under this article is durable
4 unless it expressly provides that it is terminated by the
5 incapacity of the principal.

6 **§39-4A-105. Execution of power of attorney.**

7 A power of attorney must be signed by the principal or in the
8 principal's conscious presence by another individual directed by
9 the principal to sign the principal's name on the power of
10 attorney. A signature on a power of attorney is presumed to be
11 genuine if the principal acknowledges the signature before a notary
12 public or other individual authorized by law to take
13 acknowledgments.

14 **§39-4A-106. Validity of power of attorney.**

15 (a) A power of attorney executed in this state on or after
16 July 1, 2011, is valid if its execution complies with section one
17 hundred five of this article.

18 (b) A power of attorney executed in this state before July 1,
19 2011 is valid if its execution complied with the law of this state
20 as it existed at the time of execution.

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

24 (1) The law of the jurisdiction that determines the meaning
25 and effect of the power of attorney pursuant to section one hundred

1 seven of this article; or

2 (2) The requirements for a military power of attorney pursuant
3 to 10 U.S.C. §1044b, as amended.

4 (d) Except as otherwise provided by statute other than this
5 article, a photocopy or electronically transmitted copy of an
6 original power of attorney has the same effect as the original.

7 **§39-4A-107. Meaning and effect of power of attorney.**

8 The meaning and effect of a power of attorney is determined by
9 the law of the jurisdiction indicated in the power of attorney and,
10 in the absence of an indication of jurisdiction, by the law of the
11 jurisdiction in which the power of attorney was executed.

12 **§39-4A-108. Nomination of conservator or guardian; relation of**
13 **agent to court-appointed fiduciary.**

14 (a) In a power of attorney, a principal may nominate a
15 conservator of the principal's estate or guardian of the
16 principal's person for consideration by the court if protective
17 proceedings for the principal's estate or person are begun after
18 the principal executes the power of attorney. Except for good
19 cause shown or disqualification, the court shall make its
20 appointment in accordance with the principal's most recent
21 nomination.

22 (b) If, after a principal executes a power of attorney, a
23 court appoints a conservator of the principal's estate or other
24 fiduciary charged with the management of some or all of the
25 principal's property, the agent is accountable to the fiduciary as

1 well as to the principal. The power of attorney is not terminated
2 and the agent's authority continues unless limited, suspended, or
3 terminated by the court.

4 **§39-4A-109. When power of attorney effective.**

5 (a) A power of attorney is effective when executed unless the
6 principal provides in the power of attorney that it becomes
7 effective at a future date or upon the occurrence of a future event
8 or contingency.

9 (b) If a power of attorney becomes effective upon the
10 occurrence of a future event or contingency, the principal, in the
11 power of attorney, may authorize one or more persons to determine
12 in a writing or other record that the event or contingency has
13 occurred.

14 (c) If a power of attorney becomes effective upon the
15 principal's incapacity and the principal has not authorized a
16 person to determine whether the principal is incapacitated, or the
17 person authorized is unable or unwilling to make the determination,
18 the power of attorney becomes effective upon a determination in a
19 writing or other record by:

20 (1) A physician or licensed psychologist that the principal is
21 incapacitated within the meaning of paragraph (A), subdivision (5),
22 section one hundred two of this article; or

23 (2) An attorney at law, a judge, or an appropriate
24 governmental official that the principal is incapacitated within
25 the meaning of paragraph (B), subdivision (5), section one hundred

1 two of this article.

2 (d) A person authorized by the principal in the power of
3 attorney to determine that the principal is incapacitated may act
4 as the principal's personal representative pursuant to the Health
5 Insurance Portability and Accountability Act, Sections 1171 through
6 1179 of the Social Security Act, 42 U.S.C. 1320d, as amended, and
7 applicable regulations, to obtain access to the principal's
8 health-care information and communicate with the principal's
9 health-care provider.

10 **§39-4A-110. Termination of power of attorney or agent's authority.**

11 (a) A power of attorney terminates when:

12 (1) The principal dies;

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

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

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

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

18 (6) The principal revokes the agent's authority or the agent
19 dies, becomes incapacitated, or resigns, and the power of attorney
20 does not provide for another agent to act under the power of
21 attorney.

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

23 (1) The principal revokes the authority;

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

25 (3) An action is filed for the dissolution or annulment of the

1 agent's marriage to the principal or their legal separation, unless
2 the power of attorney otherwise provides; or

3 (4) The power of attorney terminates.

4 (c) Unless the power of attorney otherwise provides, an
5 agent's authority is exercisable until the authority terminates
6 pursuant to subsection (b) of this section, notwithstanding a lapse
7 of time since the execution of the power of attorney.

8 (d) Termination of an agent's authority or of a power of
9 attorney is not effective as to the agent or another person that,
10 without actual knowledge of the termination, acts in good faith
11 under the power of attorney. An act so performed, unless otherwise
12 invalid or unenforceable, binds the principal and the principal's
13 successors in interest.

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

20 (f) The execution of a power of attorney does not revoke a
21 power of attorney previously executed by the principal unless the
22 subsequent power of attorney provides that the previous power of
23 attorney is revoked or that all other powers of attorney are
24 revoked.

25 **§39-4A-111. Co-agents and successor agents.**

1 (a) A principal may designate two or more persons to act as
2 coagents. Unless the power of attorney otherwise provides, each
3 coagent may exercise its authority independently.

4 (b) A principal may designate one or more successor agents to
5 act if an agent resigns, dies, becomes incapacitated, is not
6 qualified to serve, or declines to serve. A principal may grant
7 authority to designate one or more successor agents to an agent or
8 other person designated by name, office or function. Unless the
9 power of attorney otherwise provides, a successor agent:

10 (1) Has the same authority as that granted to the original
11 agent; and

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

15 (c) Except as otherwise provided in the power of attorney and
16 subsection (a) of this section, an agent that does not participate
17 in or conceal a breach of fiduciary duty committed by another
18 agent, including a predecessor agent, is not liable for the actions
19 of the other agent.

20 (d) An agent that has actual knowledge of a breach or imminent
21 breach of fiduciary duty by another agent shall notify the
22 principal and, if the principal is incapacitated, take any action
23 reasonably appropriate in the circumstances to safeguard the
24 principal's best interest. An agent that fails to notify the
25 principal or take action as required by this article is liable for

1 the reasonably foreseeable damages that could have been avoided if
2 the agent had notified the principal or taken such action.

3 **§39-4A-112. Reimbursement and compensation of agent.**

4 Unless the power of attorney otherwise provides, an agent is
5 entitled to reimbursement of expenses reasonably incurred on behalf
6 of the principal and to compensation that is reasonable under the
7 circumstances.

8 **§39-4A-113. Agent's acceptance.**

9 Except as otherwise provided in the power of attorney, a
10 person accepts appointment as an agent under a power of attorney by
11 exercising authority or performing duties as an agent or by any
12 other assertion or conduct indicating acceptance.

13 **§39-4A-114. Agent's duties.**

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

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

19 (2) Act in good faith; and

20 (3) Act only within the scope of authority granted in the
21 power of attorney.

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

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

25 (2) Act so as not to create a conflict of interest that

1 impairs the agent's ability to act impartially in the principal's
2 best interest;

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

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

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

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

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

16 (B) The principal's foreseeable obligations and need for
17 maintenance;

18 (C) Minimization of taxes, including income, estate,
19 inheritance, generation-skipping transfer and gift taxes; and

20 (D) Eligibility for a benefit, a program or assistance under
21 a statute or regulation.

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

25 (d) An agent that acts with care, competence, and diligence

1 for the best interest of the principal is not liable solely because
2 the agent also benefits from the act or has an individual or
3 conflicting interest in relation to the property or affairs of the
4 principal.

5 (e) If an agent is selected by the principal because of
6 special skills or expertise possessed by the agent or in reliance
7 on the agent's representation that the agent has special skills or
8 expertise, the special skills or expertise must be considered in
9 determining whether the agent has acted with care, competence and
10 diligence under the circumstances.

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

13 (g) An agent that exercises authority to delegate to another
14 person the authority granted by the principal or that engages
15 another person on behalf of the principal is not liable for an act,
16 error of judgment, or default of that person if the agent exercises
17 care, competence, and diligence in selecting and monitoring the
18 person.

19 (h) Except as otherwise provided in the power of attorney, an
20 agent is not required to disclose receipts, disbursements or
21 transactions conducted on behalf of the principal unless ordered by
22 a court or requested by the principal, a guardian, a conservator,
23 another fiduciary acting for the principal, a governmental agency
24 having authority to protect the welfare of the principal, or, upon
25 the death of the principal, by the personal representative or

1 successor in interest of the principal's estate. If so requested,
2 within thirty days the agent shall comply with the request or
3 provide a writing or other record substantiating why additional
4 time is needed and shall comply with the request within an
5 additional thirty days.

6 **§39-4A-115. Exoneration of agent.**

7 A provision in a power of attorney relieving an agent of
8 liability for breach of duty is binding on the principal and the
9 principal's successors in interest except to the extent the
10 provision:

11 (1) Relieves the agent of liability for breach of duty
12 committed dishonestly, with an improper motive, or with reckless
13 indifference to the purposes of the power of attorney or the best
14 interest of the principal; or

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

17 **§39-4A-116. Judicial relief.**

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

21 (1) The principal or the agent;

22 (2) A guardian, conservator, or other fiduciary acting for the
23 principal;

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

- 1 (4) The principal's spouse, parent, or descendant;
2 (5) An individual who would qualify as a presumptive heir of
3 the principal;
4 (6) A person named as a beneficiary to receive any property,
5 benefit, or contractual right on the principal's death or as a
6 beneficiary of a trust created by or for the principal that has a
7 financial interest in the principal's estate;
8 (7) A governmental agency having regulatory authority to
9 protect the welfare of the principal;
10 (8) The principal's caregiver or another person that
11 demonstrates sufficient interest in the principal's welfare; and
12 (9) A person asked to accept the power of attorney.
13 (b) Upon motion by the principal, the court shall dismiss a
14 petition filed under this section, unless the court finds that the
15 principal lacks capacity to revoke the agent's authority or the
16 power of attorney.

17 **§39-4A-117. Agent's liability.**

18 An agent that violates this article is liable to the principal
19 or the principal's successors in interest for the amount required
20 to:

- 21 (1) Restore the value of the principal's property to what it
22 would have been had the violation not occurred; and
23 (2) Reimburse the principal or the principal's successors in
24 interest for the attorney's fees and costs paid on the agent's
25 behalf.

1 **§39-4A-118. Agent's resignation; notice.**

2 Unless the power of attorney provides a different method for
3 an agent's resignation, an agent may resign by giving notice to the
4 principal and, if the principal is incapacitated:

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

7 (2) If there is no person described in subdivision (1) of this
8 section, to:

9 (A) The principal's caregiver;

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

12 (C) A governmental agency having authority to protect the
13 welfare of the principal.

14 **§39-4A-119. Acceptance of and reliance upon acknowledged power of**
15 **attorney.**

16 (a) For purposes of this section and section one hundred
17 twenty of this article, "acknowledged" means purportedly verified
18 before a notary public or other individual authorized to take
19 acknowledgments.

20 (b) A person who in good faith accepts an acknowledged power
21 of attorney without actual knowledge that the signature is not
22 genuine may rely upon the presumption under the provisions of
23 section one hundred five of this article that the signature is
24 genuine.

25 (c) A person who in good faith accepts an acknowledged power

1 of attorney without actual knowledge that the power of attorney is
2 void, invalid, or terminated, that the purported agent's authority
3 is void, invalid, or terminated or that the agent is exceeding or
4 improperly exercising the agent's authority may rely upon the power
5 of attorney as if the power of attorney were genuine, valid and
6 still in effect, the agent's authority were genuine, valid and
7 still in effect and the agent had not exceeded and had properly
8 exercised the authority, except as to the conveyance of interests
9 in real property where the principal has previously filed a notice
10 of termination of the power of attorney in the office of the county
11 clerk in the county where the property is located.

12 (d) A person who is asked to accept an acknowledged power of
13 attorney may request, and rely upon, without further investigation:

14 (1) an agent's certification under penalty of perjury of any
15 factual matter concerning the principal, agent, or power of
16 attorney;

17 (2) An English translation of the power of attorney if the
18 power of attorney contains, in whole or in part, language other
19 than English; and

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

23 (e) An English translation or an opinion of counsel requested
24 under this section must be provided at the principal's expense
25 unless the request is made more than seven business days after the

1 power of attorney is presented for acceptance.

2 (f) For purposes of this section and article, a person who
3 conducts activities through employees is without actual knowledge
4 of a fact relating to a power of attorney, a principal, or an agent
5 if the employee conducting the transaction involving the power of
6 attorney is without actual knowledge of the fact.

7 **§39-4A-120. Liability for refusal to accept acknowledged statutory**
8 **form power of attorney.**

9 (a) In this section, "statutory form power of attorney" means
10 a power of attorney substantially in the form provided in section
11 one hundred forty-one of this article or that meets the
12 requirements for a military power of attorney pursuant to 10 U.S.C.
13 §1044b, as amended.

14 (b) Except as otherwise provided in this section:

15 (1) A person shall either accept an acknowledged statutory
16 form power of attorney or request a certification, a translation or
17 an opinion of counsel under subsection (d), section one hundred
18 nineteen of this article no later than seven business days after
19 presentation of the power of attorney for acceptance;

20 (2) If a person requests a certification, a translation, or an
21 opinion of counsel under subsection (d), section one hundred
22 nineteen of this article, the person shall accept the statutory
23 form power of attorney no later than five business days after
24 receipt of the certification, translation, or opinion of counsel;
25 and

1 (3) A person may not require an additional or different form
2 of power of attorney for authority granted in the statutory form
3 power of attorney presented.

4 (c) A person is not required to accept an acknowledged
5 statutory form power of attorney if:

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

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

10 (3) The person has actual knowledge of the termination of the
11 agent's authority or of the power of attorney before exercise of
12 the power;

13 (4) A request for a certification, a translation, or an
14 opinion of counsel under subsection (d), section one hundred
15 nineteen of this article is refused;

16 (5) The person in good faith believes that the power is not
17 valid or that the agent does not have the authority to perform the
18 act requested, whether or not a certification, a translation, or an
19 opinion of counsel under subsection (d), section one hundred
20 nineteen of this article has been requested or provided; or

21 (6) The person makes, or has actual knowledge that another
22 person has made, a report to the local adult protective services
23 office stating a good faith belief that the principal may be
24 subject to physical or financial abuse, neglect, exploitation, or
25 abandonment by the agent or a person acting for or with the agent.

1 (d) A person that refuses in violation of this section to
2 accept an acknowledged statutory form power of attorney is subject
3 to:

4 (1) A court order mandating acceptance of the power of
5 attorney; and

6 (2) Liability for reasonable attorney's fees and costs
7 incurred in any action or proceeding that confirms the validity of
8 the power of attorney or mandates acceptance of the power of
9 attorney.

10 **§39-4A-121. Principles of law and equity.**

11 Unless displaced by a provision of this article, the
12 principles of law and equity supplement this article.

13 **§39-4A-122. Laws applicable to financial institutions and**
14 **entities.**

15 This article does not supersede any other law applicable to
16 financial institutions or other entities, and the other law
17 controls if inconsistent with this article.

18 **§39-4A-123. Remedies under other law.**

19 The remedies under this article are not exclusive and do not
20 abrogate any right or remedy under the law of this State other than
21 this article.

22 **§39-4A-124. Authority that requires specific grant; grant of**
23 **general authority.**

24 (a) An agent under a power of attorney may do the following on

1 behalf of the principal or with the principal's property only if
2 the power of attorney expressly grants the agent the authority and
3 exercise of the authority is not otherwise prohibited by another
4 agreement or instrument to which the authority or property is
5 subject to:

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

7 (2) Make a gift;

8 (3) Create or change rights of survivorship;

9 (4) Create or change a beneficiary designation;

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

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

14 (7) Exercise fiduciary powers that the principal has authority
15 to delegate; or

16 (8) Disclaim property, including a power of appointment.

17 (b) Notwithstanding a grant of authority to do an act
18 described in subsection (a) of this section, unless the power of
19 attorney otherwise provides, an agent that is not an ancestor,
20 spouse, or descendant of the principal, may not exercise authority
21 under a power of attorney to create in the agent, or in an
22 individual to whom the agent owes a legal obligation of support, an
23 interest in the principal's property, whether by gift, right of
24 survivorship, beneficiary designation, disclaimer, or otherwise.

25 (c) Subject to subsections (a), (b), (d), and (e) of this

1 section, if a power of attorney grants to an agent authority to do
2 all acts that a principal could do, the agent has the general
3 authority described in sections one hundred twenty-seven through
4 one hundred thirty-nine of this article.

5 (d) Unless the power of attorney otherwise provides, a grant
6 of authority to make a gift is subject to the provisions of this
7 article.

8 (e) Subject to subsections (a), (b), and (d) of this section,
9 if the subjects over which authority is granted in a power of
10 attorney are similar or overlap, the broadest authority controls.

11 (f) Authority granted in a power of attorney is exercisable
12 with respect to property that the principal has when the power of
13 attorney is executed or acquires later, whether or not the property
14 is located in this state and whether or not the authority is
15 exercised or the power of attorney is executed in this state.

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

20 **§39-4A-125. Incorporation of authority.**

21 (a) An agent has authority described in this article if the
22 power of attorney refers to general authority with respect to the
23 descriptive term for the subjects stated in this article or cites
24 the section in sections one hundred twenty-seven through one
25 hundred forty of this article in which the authority is described.

1 (b) A reference in a power of attorney to general authority
2 with respect to the descriptive term for a subject in this article
3 or a citation to this section incorporates the entire provisions of
4 this article as if it were set out in full in the power of
5 attorney.

6 (c) A principal may modify authority incorporated by
7 reference.

8 **§39-4A-126. Construction of authority generally.**

9 Except as otherwise provided in the power of attorney, by
10 executing a power of attorney that incorporates by reference a
11 subject described in sections one hundred twenty-seven through one
12 hundred forty of this article or that grants to an agent authority
13 to do all acts that a principal could do pursuant to the provisions
14 of this article, a principal authorizes the agent, with respect to
15 that subject, to:

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

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

24 (3) Execute, acknowledge, seal, deliver, file or record any
25 instrument or communication the agent considers desirable to

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

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

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

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

13 (7) Prepare, execute and file a record, report, or other
14 document to safeguard or promote the principal's interest under a
15 statute or rule;

16 (8) Communicate with any representative or employee of a
17 government or governmental subdivision, agency or instrumentality,
18 on behalf of the principal;

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

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

24 **§39-4A-127. Real property.**

25 (a) Unless the power of attorney otherwise provides, language

1 in a power of attorney granting general authority with respect to
2 real property authorizes the agent to:

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

6 (2) Sell, exchange, convey with or without covenants,
7 representations, or warranties, quitclaim, release, surrender,
8 retain title for security, encumber, partition, consent to
9 partitioning, subject to an easement or covenant, subdivide, apply
10 for zoning or other governmental permits, plat or consent to
11 platting; develop, grant an option concerning, lease, sublease,
12 contribute to an entity in exchange for an interest in that entity
13 or otherwise grant or dispose of an interest in real property or a
14 right incident to real property;

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

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

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

1 (A) Insuring against liability or casualty or other loss;

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

4 (C) Paying, assessing, compromising or contesting taxes or
5 assessments or applying for and receiving refunds in connection
6 with them; and

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

9 (6) Use, develop, alter, replace, remove, erect or install
10 structures or other improvements upon real property in or incident
11 to which the principal has, or claims to have, an interest or
12 right;

13 (7) Participate in a reorganization with respect to real
14 property or an entity that owns an interest in or right incident to
15 real property and receive, hold and act with respect to stocks and
16 bonds or other property received in a plan of reorganization,
17 including:

18 (A) Selling or otherwise disposing of them;

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

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

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

24 (9) Dedicate to public use, with or without consideration,
25 easements or other real property in which the principal has, or

1 claims to have, an interest.

2 (b) In order to exercise the powers provided in subdivisions
3 (2), (3), (8) and (9), subsection (a) of this section, or to
4 release or assign an interest in real property as described in
5 subdivision (4), subsection (a) of this section, the power of
6 attorney must first be recorded in the office of the county clerk
7 in the county where the property is located.

8 **§39-4A-128. Tangible personal property.**

9 Unless the power of attorney otherwise provides, language in
10 a power of attorney granting general authority with respect to
11 tangible personal property authorizes the agent to:

12 (1) Demand, buy, receive or accept as a gift or as security
13 for an extension of credit, or otherwise acquire or reject
14 ownership or possession of tangible personal property or an
15 interest in tangible personal property;

16 (2) Sell, exchange, convey with or without covenants,
17 representations, or warranties; quitclaim, release, surrender,
18 create a security interest in, grant options concerning, lease,
19 sublease or, otherwise dispose of tangible personal property or an
20 interest in tangible personal property;

21 (3) Grant a security interest in tangible personal property or
22 an interest in tangible personal property as security to borrow
23 money or pay, renew or extend the time of payment of a debt of the
24 principal or a debt guaranteed by the principal;

25 (4) Release, assign, satisfy or enforce by litigation or

1 otherwise, a security interest, lien or other claim on behalf of
2 the principal, with respect to tangible personal property or an
3 interest in tangible personal property;

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

7 (A) Insuring against liability or casualty or other loss;

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

10 (C) Paying, assessing, compromising or contesting taxes or
11 assessments or applying for and receiving refunds in connection
12 with taxes or assessments;

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

14 (E) Storing the property for hire or on a gratuitous bailment;

15 and

16 (F) Using and making repairs, alterations or improvements to
17 the property; and

18 (6) Change the form of title of an interest in tangible
19 personal property.

20 **§39-4A-129. Stocks and bonds.**

21 Unless the power of attorney otherwise provides, language in
22 a power of attorney granting general authority with respect to
23 stocks and bonds authorizes the agent to:

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

25 (2) Establish, continue, modify or terminate an account with

1 respect to stocks and bonds;

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

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

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

9 **§39-4A-130. Commodities and options.**

10 Unless the power of attorney otherwise provides, language in
11 a power of attorney granting general authority with respect to
12 commodities and options authorizes the agent to:

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

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

17 **§39-4A-131. Banks and other financial institutions.**

18 Unless the power of attorney otherwise provides, language in
19 a power of attorney granting general authority with respect to
20 banks and other financial institutions authorizes the agent to:

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

23 (2) Establish, modify and terminate an account or other
24 banking arrangement with a bank, trust company, savings and loan
25 association, credit union, thrift company, brokerage firm or other

1 financial institution selected by the agent;

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

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

8 (5) Receive statements of account, vouchers, notices and
9 similar documents from a financial institution and act with respect
10 to them;

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

13 (7) Borrow money and pledge as security personal property of
14 the principal necessary to borrow money or pay, renew or extend the
15 time of payment of a debt of the principal or a debt guaranteed by
16 the principal;

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

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

1 (10) Apply for, receive and use letters of credit, credit and
2 debit cards, electronic transaction authorizations and traveler's
3 checks from a financial institution and give an indemnity or other
4 agreement in connection with letters of credit; and

5 (11) Consent to an extension of the time of payment with
6 respect to commercial paper or a financial transaction with a
7 financial institution.

8 **§39-4A-132. Operation of entity or business.**

9 Subject to the terms of a document or an agreement governing
10 an entity or an entity ownership interest, and unless the power of
11 attorney otherwise provides, language in a power of attorney
12 granting general authority with respect to operation of an entity
13 or business authorizes the agent to:

14 (1) Operate, buy, sell, enlarge, reduce or terminate an
15 ownership interest;

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

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

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

24 (5) Exercise in person or by proxy, or enforce by litigation
25 or otherwise, a right, power, privilege or option the principal has

1 or claims to have as the holder of stocks and bonds;

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

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

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

11 (B) Determine:

12 (i) The location of its operation;

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

14 (iii) The methods of manufacturing, selling, merchandising,
15 financing, accounting and advertising employed in its operation;

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

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

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

23 (D) Demand and receive money due or claimed by the principal
24 or on the principal's behalf in the operation of the entity or
25 business and control and disburse the money in the operation of the

1 entity or business;

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

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

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

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

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

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

18 **§39-4A-133. Insurance and annuities.**

19 Unless the power of attorney otherwise provides, language in
20 a power of attorney granting general authority with respect to
21 insurance and annuities authorizes the agent to:

22 (1) Continue, pay the premium or make a contribution on,
23 modify, exchange, rescind, release or terminate a contract procured
24 by or on behalf of the principal which insures or provides an
25 annuity to either the principal or another person, whether or not

1 the principal is a beneficiary under the contract;

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

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

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

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

13 (6) Exercise an election;

14 (7) Exercise investment powers available under a contract of
15 insurance or annuity;

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

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

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

24 (11) Collect, sell, assign, hypothecate, borrow against or
25 pledge the interest of the principal in a contract of insurance or

1 annuity;

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

4 (13) Pay, from proceeds or otherwise, compromise or contest and
5 apply for refunds in connection with, a tax or assessment levied by
6 a taxing authority with respect to a contract of insurance or
7 annuity or its proceeds or liability accruing by reason of the tax
8 or assessment.

9 **§39-4A-134. Estates, trusts, and other beneficial interests.**

10 (a) In this section, "estate, trust, or other beneficial
11 interest" means a trust, probate estate, guardianship,
12 conservatorship, escrow, or custodianship or a fund from which the
13 principal is, may become, or claims to be, entitled to a share or
14 payment.

15 (b) Unless the power of attorney otherwise provides, language
16 in a power of attorney granting general authority with respect to
17 estates, trusts and other beneficial interests authorizes the agent
18 to:

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

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

1 (3) Exercise for the benefit of the principal a presently
2 exercisable general power of appointment held by the principal;

3 (4) Initiate, participate in, submit to alternative dispute
4 resolution, settle, oppose or propose or accept a compromise with
5 respect to litigation to ascertain the meaning, validity or effect
6 of a deed, will, declaration of trust or other instrument or
7 transaction affecting the interest of the principal;

8 (5) Initiate, participate in, submit to alternative dispute
9 resolution, settle, oppose or propose or accept a compromise with
10 respect to litigation to remove, substitute or surcharge a
11 fiduciary;

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

14 (7) Transfer an interest of the principal in real property,
15 stocks and bonds, accounts with financial institutions or
16 securities intermediaries, insurance, annuities and other property
17 to the trustee of a revocable trust created by the principal as
18 settlor; and

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

22 **§39-4A-135. Claims and litigation.**

23 Unless the power of attorney otherwise provides, language in
24 a power of attorney granting general authority with respect to
25 claims and litigation authorizes the agent to:

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

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

9 (3) Seek an attachment, garnishment, order of arrest or other
10 preliminary, provisional or intermediate relief and use an
11 available procedure to effect or satisfy a judgment, order or
12 decree;

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

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

18 (6) Waive the issuance and service of process upon the
19 principal, accept service of process, appear for the principal,
20 designate persons upon which process directed to the principal may
21 be served, execute and file or deliver stipulations on the
22 principal's behalf, verify pleadings, seek appellate review,
23 procure and give surety and indemnity bonds, contract and pay for
24 the preparation and printing of records and briefs, receive,
25 execute and file or deliver a consent, waiver, release, confession

1 of judgment, satisfaction of judgment, notice, agreement or other
2 instrument in connection with the prosecution, settlement or
3 defense of a claim or litigation;

4 (7) Act for the principal with respect to bankruptcy or
5 insolvency, whether voluntary or involuntary, concerning the
6 principal or some other person, or with respect to a
7 reorganization, receivership or application for the appointment of
8 a receiver or trustee which affects an interest of the principal in
9 property or other thing of value;

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

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

14 **§39-4A-136. Personal and family maintenance.**

15 (a) Unless the power of attorney otherwise provides, language
16 in a power of attorney granting general authority with respect to
17 personal and family maintenance authorizes the agent to:

18 (1) Perform the acts necessary to maintain the customary
19 standard of living of the principal, the principal's spouse and the
20 following individuals, whether living when the power of attorney is
21 executed or later born:

22 (A) The principal's children;

23 (B) other individuals legally entitled to be supported by the
24 principal; and

25 (C) The individuals whom the principal has customarily

1 supported or indicated the intent to support;

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

5 (3) Provide living quarters for the individuals described in
6 subdivision (1) of this subsection by:

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

8 (B) Paying the operating costs, including interest,
9 amortization payments, repairs, improvements and taxes, for
10 premises owned by the principal or occupied by those individuals;

11 (4) Provide normal domestic help, usual vacations and travel
12 expenses, and funds for shelter, clothing, food, appropriate
13 education, including postsecondary and vocational education and
14 other current living costs for the individuals described in
15 subdivision (1) of this subsection;

16 (5) Pay expenses for necessary health care and custodial care
17 on behalf of the individuals described in subdivision (1) of this
18 subsection;

19 (6) Act as the principal's personal representative pursuant to
20 the Health Insurance Portability and Accountability Act, Sections
21 1171 through 1179 of the Social Security Act, 42 U.S.C. §1320d, as
22 amended, and applicable regulations, in making decisions related to
23 the past, present or future payment for the provision of health
24 care consented to by the principal or anyone authorized under the
25 law of this state to consent to health care on behalf of the

1 principal;

2 (7) Continue any provision made by the principal for
3 automobiles or other means of transportation, including
4 registering, licensing, insuring and replacing them, for the
5 individuals described in subdivision (1) of this subsection;

6 (8) Maintain credit and debit accounts for the convenience of
7 the individuals described in subdivision (1) of this subsection and
8 open new accounts; and

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

13 (b) Authority with respect to personal and family maintenance
14 is neither dependent upon, nor limited by, authority that an agent
15 may or may not have with respect to gifts under this article.

16 **§39-4A-137. Benefits from governmental programs or civil or**
17 **military service.**

18 (a) In this section, "benefits from governmental programs or
19 civil or military service" means any benefit, program or assistance
20 provided under a statute or regulation including Social Security,
21 Medicare, and Medicaid.

22 (b) Unless the power of attorney otherwise provides, language
23 in a power of attorney granting general authority with respect to
24 benefits from governmental programs or civil or military service
25 authorizes the agent to:

1 (1) Execute vouchers in the name of the principal for
2 allowances and reimbursements payable by the United States or a
3 foreign government or by a state or subdivision of a state to the
4 principal, including allowances and reimbursements for
5 transportation of the individuals described in this subdivision
6 (1), subsection (a), section one hundred thirty-six, and for
7 shipment of their household effects;

8 (2) Take possession and order the removal and shipment of
9 property of the principal from a post, warehouse, depot, dock or
10 other place of storage or safekeeping, either governmental or
11 private, and execute and deliver a release, voucher, receipt, bill
12 of lading, shipping ticket, certificate or other instrument for
13 that purpose;

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

16 (4) Prepare, file and maintain a claim of the principal for a
17 benefit or assistance, financial or otherwise, to which the
18 principal may be entitled under a statute or rule;

19 (5) Initiate, participate in, submit to alternative dispute
20 resolution, settle, oppose or propose or accept a compromise with
21 respect to litigation concerning any benefit or assistance the
22 principal may be entitled to receive under a statute or rule; and

23 (6) Receive the financial proceeds of a claim described in
24 subdivision (4) of this subsection and conserve, invest, disburse
25 or use for a lawful purpose anything so received.

1 **§39-4A-138. Retirement plans.**

2 (a) In this section, "retirement plan" means a plan or account
3 created by an employer, the principal or another individual to
4 provide retirement benefits or deferred compensation of which the
5 principal is a participant, beneficiary or owner, including a plan
6 or account under the following sections of the Internal Revenue
7 Code:

8 (1) An individual retirement account under Section 408 of the
9 Internal Revenue Code, as amended;

10 (2) A Roth individual retirement account under Section 408A of
11 the Internal Revenue Code, as amended;

12 (3) A deemed individual retirement account under Section
13 408(q) of the Internal Revenue Code, as amended;

14 (4) An annuity or mutual fund custodial account under Section
15 401(a) of the Internal Revenue Code, as amended;

16 (5) A pension, profit-sharing, stock bonus or other retirement
17 plan qualified under Section 401(a) of the Internal Revenue Code,
18 as amended;

19 (6) A plan under Section 457(b) of the Internal Revenue Code,
20 as amended; and

21 (7) A nonqualified deferred compensation plan under Section
22 409A of the Internal Revenue Code, as amended.

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

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

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

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

6 (4) Make contributions to a retirement plan;

7 (5) Exercise investment powers available under a retirement
8 plan; and

9 (6) Borrow from, sell assets to, or purchase assets from a
10 retirement plan.

11 **§39-4A-139. Taxes.**

12 Unless the power of attorney otherwise provides, language in
13 a power of attorney granting general authority with respect to
14 taxes authorizes the agent to:

15 (1) Prepare, sign and file federal, state, local and foreign
16 income, gift, payroll, property, Federal Insurance Contributions
17 Act and other tax returns, claims for refunds, requests for
18 extension of time, petitions regarding tax matters and any other
19 tax-related documents, including receipts, offers, waivers,
20 consents, including consents and agreements under Section 2032A of
21 the Internal Revenue Code, as amended, closing agreements and any
22 power of attorney required by the Internal Revenue Service or other
23 taxing authority with respect to a tax year upon which the statute
24 of limitations has not run and the following twenty-five tax years;

25 (2) Pay taxes due, collect refunds, post bonds, receive

1 confidential information, and contest deficiencies determined by
2 the Internal Revenue Service or other taxing authority;

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

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

7 **§39-4A-140. Gifts.**

8 (a) In this section, a gift "for the benefit of" a person
9 includes a gift to a trust, an account under the Uniform Transfers
10 to Minors Act and a tuition savings account or prepaid tuition plan
11 as defined under Section 529 of the Internal Revenue Code, as
12 amended.

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

16 (1) Make outright to, or for the benefit of, a person, a gift
17 of any of the principal's property, including by the exercise of a
18 presently exercisable general power of appointment held by the
19 principal, in an amount per donee not to exceed the annual dollar
20 limits of the federal gift tax exclusion under Section 2503(b) of
21 the Internal Revenue Code, as amended, without regard to whether
22 the federal gift tax exclusion applies to the gift or if the
23 principal's spouse agrees to consent to a split gift pursuant to
24 Section 2513 of the Internal Revenue Code, as amended, in an amount
25 per donee not to exceed twice the annual federal gift tax exclusion

1 limit; and

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

6 (c) An agent may make a gift of the principal's property only
7 as the agent determines is consistent with the principal's
8 objectives if actually known by the agent and, if unknown, as the
9 agent determines is consistent with the principal's best interest
10 based on all relevant factors, including:

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

12 (2) The principal's foreseeable obligations and need for
13 maintenance;

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

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

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

20 **§39-4A-141. Statutory form power of attorney.**

21 A document substantially in the following form may be used to
22 create a statutory form power of attorney that has the meaning and
23 effect prescribed by this article.

24 **State of West Virginia**

25 **STATUTORY FORM POWER OF ATTORNEY**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, Article 4A, Chapter 39 of the West Virginia Code.

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

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

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

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

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

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

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

DESIGNATION OF AGENT

I _____ name the following person as my agent:
 (Name of Principal)

Name of Agent: _____

Agent's Address: _____

Agent's Telephone Number: _____

1
2 If my agent is unable or unwilling to act for me, I name as my
3 successor agent:

4
5 Name of Successor Agent:
6 _____

7 Successor Agent's Address:
8 _____

9 Successor Agent's Telephone Number:
10 _____

11
12 If my successor agent is unable or unwilling to act for me, I name
13 as my second successor agent:

14
15 Name of Second Successor Agent:
16 _____

17 Second Successor Agent's Address:
18 _____

19 Second Successor Agent's Telephone Number:
20 _____

21
22 **GRANT OF GENERAL AUTHORITY**

23
24 I grant my agent and any successor agent general authority to act
25 for me with respect to the following subjects as defined in the
26 Uniform Power of Attorney Act, Article 4A, Chapter 39 of the West
27 Virginia Code:

28
29 (INITIAL each subject you want to include in the agent's general
30 authority. If you wish to grant general authority over all of the
31 subjects you may initial "All Preceding Subjects" instead of
32 initialing each subject.)

- 33
- 34 () Real Property
- 35 () Tangible Personal Property
- 36 () Stocks and Bonds
- 37 () Commodities and Options
- 38 () Banks and Other Financial Institutions
- 39 () Operation of Entity or Business
- 40 () Insurance and Annuities
- 41 () Estates, Trusts, and Other Beneficial Interests
- 42 () Claims and Litigation
- 43 () Personal and Family Maintenance
- 44 () Benefits from Governmental Programs or Civil or Military
- 45 Service
- 46 () Retirement Plans
- 47 () Taxes
- 48 () All Preceding Subjects
- 49

1 **GRANT OF SPECIFIC AUTHORITY**

2
3 My agent MAY NOT do any of the following specific acts for me
4 UNLESS I have INITIALED the specific authority listed below:

5
6 (CAUTION: Granting any of the following will give your agent the
7 authority to take actions that could significantly reduce your
8 property or change how your property is distributed at your death.
9 INITIAL ONLY the specific authority you WANT to give your agent.)

- 10
- 11 () Create, amend, revoke, or terminate an inter vivos trust
- 12 () Make a gift, subject to the limitations of the Uniform Power
- 13 of Attorney Act, Article 4A, Chapter 39 of the West Virginia
- 14 Code and any special instructions in this power of attorney
- 15 () Create or change rights of survivorship
- 16 () Create or change a beneficiary designation
- 17 () Authorize another person to exercise the authority granted
- 18 under this power of attorney
- 19 () Waive the principal's right to be a beneficiary of a joint
- 20 and survivor annuity, including a survivor benefit under a
- 21 retirement plan
- 22 () Exercise fiduciary powers that the principal has authority to
- 23 delegate
- 24 () Disclaim or refuse an interest in property, including a
- 25 power of appointment

26
27 **LIMITATION ON AGENT'S AUTHORITY**

28
29 An agent that is not my ancestor, spouse, or descendant MAY NOT use
30 my property to benefit the agent or a person to whom the agent owes
31 an obligation of support unless I have included that authority in
32 the Special Instructions.

33
34 **SPECIAL INSTRUCTIONS**

35
36 You may give special instructions on the following lines:
37 _____
38 _____
39 _____
40 _____
41 _____
42 _____
43 _____
44 _____

45 **EFFECTIVE DATE**

46
47 This power of attorney is effective immediately unless I have
48 stated otherwise in the Special Instructions.

49

1 **NOMINATION OF CONSERVATOR OR GUARDIAN**

2
3 If it becomes necessary for a court to appoint a conservator or
4 guardian of my estate or guardian of my person, I nominate the
5 following person(s) for appointment:

6
7 Name of Nominee for conservator or guardian of my estate:
8
9 _____

10
11 Nominee's Address:
12 _____

13 Nominee's Telephone Number:
14 _____

15
16 Name of Nominee for [guardian] of my person:
17 _____

18 Nominee's Address:
19 _____

20 Nominee's Telephone Number:
21 _____

22
23 **RELIANCE ON THIS POWER OF ATTORNEY**

24
25 Any person, including my agent, may rely upon the validity of this
26 power of attorney or a copy of it unless that person knows it has
27 terminated or is invalid.

28
29 **SIGNATURE AND ACKNOWLEDGMENT**

30 _____
31
32 Your Signature _____ Date _____

33
34 Your Name Printed _____
35 _____

36
37 Your Address _____
38 _____

39 Your Telephone Number _____
40 _____

41 State of _____
42 [County] of _____

43
44 This document was acknowledged before me on _____ ,
45 _____ (Date)

46 by _____ .
47 (Name of Principal)

48 _____ (Seal, if any)
49 Signature of Notary

1 My commission expires: _____

2

3 [This document prepared by:

4

5 _____]

6

7 **IMPORTANT INFORMATION FOR AGENT**

8 **Agent's Duties**

9

10 When you accept the authority granted under this power of attorney,
11 a special legal relationship is created between you and the
12 principal. This relationship imposes upon you legal duties that
13 continue until you resign or the power of attorney is terminated or
14 revoked. You must:

15

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

19 (2) Act in good faith;

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

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

25

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

27

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

30

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

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

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

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

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

41 (6) Attempt to preserve the principal's estate plan if you know
42 the plan and preserving the plan is consistent with the principal's
43 best interest.

44

45 **Termination of Agent's Authority**

46

47 You must stop acting on behalf of the principal if you learn of any
48 event that terminates this power of attorney or your authority
49 under this power of attorney. Events that terminate a power of

1 attorney or your authority to act under a power of attorney
2 include:

- 3
- 4 (1) Death of the principal;
- 5 (2) The principal's revocation of the power of attorney or your
6 authority;
- 7 (3) The occurrence of a termination event stated in the power of
8 attorney;
- 9 (4) The purpose of the power of attorney is fully accomplished; or
- 10 (5) If you are married to the principal, a legal action is filed
11 with a court to end your marriage, or for your legal separation,
12 unless the Special Instructions in this power of attorney state
13 that such an action will not terminate your authority.

14

15 **Liability of Agent**

16

17 The meaning of the authority granted to you is defined in the
18 Uniform Power of Attorney Act [insert citation]. If you violate
19 the Uniform Power of Attorney Act [insert citation] or act outside
20 the authority granted, you may be liable for any damages caused by
21 your violation.

22

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

25

26

27 **§39-4A-142. Agent's certification.**

28 The following optional form may be used by an agent to certify
29 facts concerning a power of attorney:

30

31 **AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND**
32 **AGENT'S AUTHORITY**

33

34 State of _____
35 County of _____]

36

37 I, _____ (Name of Agent),
38 [certify] under penalty of perjury that _____
39 _____ (Name of Principal) granted me authority as an agent or
40 successor agent in a power of attorney dated _____.

41

42 I further certify that to my knowledge:

- 43 (1) the Principal is alive and has not revoked the Power of
44 Attorney or my authority to act under the Power of Attorney and the
45 Power of Attorney and my authority to act under the Power of

1 Attorney have not terminated;

2

3 (2) if the Power of Attorney was drafted to become effective
4 upon the happening of an event or contingency, the event or
5 contingency has occurred;

6

7 (3) if I was named as a successor agent, the prior agent is no
8 longer able or willing to serve; and

9

10

11

12

13 (Insert other relevant statements)

14

15 **SIGNATURE AND ACKNOWLEDGMENT**

16

17

18 Agent's Signature Date

19

20

21 Agent's Name Printed

22

23

24 Agent's Address

25

26 Agent's Telephone Number

27

28 This document was acknowledged before me on _____,

29

30 by _____ (Date)

31

32 (Name of Agent)

33

34 (Seal, if any)

35

36 Signature of Notary
37 My commission expires: _____

38

39 This document prepared by: _____

40

40 **§39-4A-143. Uniformity of application and construction.**

41 In applying and construing the provisions of this article,
42 consideration must be given to the need to promote uniformity of
43 the law with respect to its subject matter among the states that
44 enact it.

1 **§39-4A-144. Effect on existing powers of attorney.**

2 (a) Except as otherwise provided in this article, on the
3 effective date of this article its provisions apply to:

4 (1) A power of attorney created before, on, or after the
5 effective date of this article;

6 (2) A judicial proceeding concerning a power of attorney
7 commenced on or after the effective date of this article; and

8 (3) A judicial proceeding concerning a power of attorney
9 commenced before the effective date of this article unless the
10 court finds that application of a provision of this article would
11 substantially interfere with the effective conduct of the judicial
12 proceeding or prejudice the rights of a party, in which case that
13 provision does not apply and the superseded law applies.

14 (b) An act done before the effective date of this article is
15 not affected by this article.

NOTE: The purpose of this bill is to create the Uniform Power of Attorney Act and to repeal the Uniform Durable Power of Attorney Act.

This article is new; therefore, it has been completely underscored.

This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislature by the Commission on Interstate Cooperation.