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Senate Bill No. 607

(By Senators Jenkins, Tucker, Palumbo, Wells, Wills, Nohe and
Sypolt)

[Originating in the Committee on Interstate Cooperation; reported
February 22, 2011.]

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 creating the Uniform Power of
Attorney Act; repealing the Uniform Durable Power of Attorney
Act; providing a short title; providing definitions; setting
forth the applicability of the act; providing that the power

1 of attorney is durable; providing for execution and validity
2 of power of attorney; nominating conservator or guardian and
3 relation of agent to court-appointed fiduciary; providing when
4 power of attorney effective; terminating power of attorney or
5 agent's authority; providing for coagents and successor
6 agents; reimbursing and compensating agent; providing for
7 agent's acceptance and duties; and providing other specific
8 instances where the power of attorney may 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12 repealed; and that said code be amended by adding thereto a new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.**

1 This article may be cited as the Uniform Power of Attorney
2 Act.

3 **§39-4A-102. Definitions.**

4 In this article:

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

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

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

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

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

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

21 (B) Is:

22 (i) Missing;

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

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

25 (6) "Person" means an individual, corporation, business trust,

1 estate, trust, partnership, limited liability company, association,
2 joint venture, public corporation, government or governmental
3 subdivision, agency, or instrumentality or any other legal or
4 commercial entity.

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

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

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

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

25 (11) "Record" means information that is inscribed on a

1 tangible medium or that is stored in an electronic or other medium
2 and is retrievable in perceivable form.

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

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

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

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

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

17 **§39-4A-103. Applicability.**

18 This article applies to all powers of attorney except:

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

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

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

25 (4) A power created on a form prescribed by a government or

1 governmental subdivision, agency, or instrumentality for a
2 governmental purpose.

3 **39-4A-104. Power of attorney is durable.**

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

7 **39-4A-105. Execution of power of attorney.**

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

15 **39-4A-106. Validity of power of attorney.**

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

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

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

1 (1) The law of the jurisdiction that determines the meaning
2 and effect of the power of attorney pursuant to section one hundred
3 seven of this article; or

4 (2) The requirements for a military power of attorney pursuant
5 to 10 U.S.C. 39-4A-1044b, as amended.

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

9 **39-4A-107. Meaning and effect of power of attorney.**

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

14 **§39-4A-108. Nomination of conservator or guardian; relation of**
15 **agent to court-appointed fiduciary.**

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

24 (b) If, after a principal executes a power of attorney, a

1 court appoints a conservator of the principal's estate or other
2 fiduciary charged with the management of some or all of the
3 principal's property, the agent is accountable to the fiduciary as
4 well as to the principal. The power of attorney is not terminated
5 and the agent's authority continues unless limited, suspended, or
6 terminated by the court.

7 **39-4A-109. When power of attorney effective.**

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

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

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

23 (1) A physician or licensed psychologist that the principal is
24 incapacitated within the meaning of section one hundred two
25 (5) (A) five of this article; or

1 (2) An attorney at law, a judge, or an appropriate
2 governmental official that the principal is incapacitated within
3 the meaning of section one hundred two (5) (B) of this article.

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

12 **39-4A-110. Termination of power of attorney or agent's authority.**

13 (a) A power of attorney terminates when:

14 (1) The principal dies;

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

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

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

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

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

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

25 (1) The principal revokes the authority;

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

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

5 (4) The power of attorney terminates.

6 (c) Unless the power of attorney otherwise provides, an
7 agent's authority is exercisable until the authority terminates
8 pursuant to section 110 of this article, notwithstanding a lapse of
9 time since the execution of the power of attorney.

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

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

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

1 revoked.

2 **§39-4A-111. Co-agents and successor agents.**

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

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

12 (1) Has the same authority as that granted to the original
13 agent; and

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

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

22 (d) An agent that has actual knowledge of a breach or imminent
23 breach of fiduciary duty by another agent shall notify the
24 principal and, if the principal is incapacitated, take any action
25 reasonably appropriate in the circumstances to safeguard the

1 principal's best interest. An agent that fails to notify the
2 principal or take action as required by this article is liable for
3 the reasonably foreseeable damages that could have been avoided if
4 the agent had notified the principal or taken such action.

5 **39-4A-112. Reimbursement and compensation of agent.**

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

10 **39-4A-113. Agent's acceptance.**

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

15 **39-4A-114. Agent's duties.**

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

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

21 (2) Act in good faith; and

22 (3) Act only within the scope of authority granted in the
23 power of attorney.

24 (b) Except as otherwise provided in the power of attorney, an

1 agent that has accepted appointment shall:

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

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

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

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

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

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

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

19 (B) The principal's foreseeable obligations and need for
20 maintenance;

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

23 (D) Eligibility for a benefit, a program or assistance under
24 a statute or regulation.

25 (c) An agent that acts in good faith is not liable to any

1 beneficiary of the principal's estate plan for failure to preserve
2 the plan.

3 (d) An agent that acts with care, competence, and diligence
4 for the best interest of the principal is not liable solely because
5 the agent also benefits from the act or has an individual or
6 conflicting interest in relation to the property or affairs of the
7 principal.

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

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

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

22 (h) Except as otherwise provided in the power of attorney, an
23 agent is not required to disclose receipts, disbursements or
24 transactions conducted on behalf of the principal unless ordered by
25 a court or requested by the principal, a guardian, a conservator,

1 another fiduciary acting for the principal, a governmental agency
2 having authority to protect the welfare of the principal, or, upon
3 the death of the principal, by the personal representative or
4 successor in interest of the principal's estate. If so requested,
5 within thirty days the agent shall comply with the request or
6 provide a writing or other record substantiating why additional
7 time is needed and shall comply with the request within an
8 additional thirty days.

9 **§39-4A-115. Exoneration of agent.**

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

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

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

20 **§39-4A-116. Judicial relief.**

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

24 (1) The principal or the agent;

25 (2) A guardian, conservator, or other fiduciary acting for the

1 principal;

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

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

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

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

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

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

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

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

20 **§39-4A-117. Agent's liability.**

21 An agent that violates this article is liable to the principal
22 or the principal's successors in interest for the amount required
23 to:

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

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

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

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

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

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

11 (A) The principal's caregiver;

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

14 (C) A governmental agency having authority to protect the
15 welfare of the principal.

16 **§39-4A-119. Acceptance of and reliance upon acknowledged power of**
17 **attorney.**

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

22 (b) A person who in good faith accepts an acknowledged power
23 of attorney without actual knowledge that the signature is not
24 genuine may rely upon the presumption under the provisions of

1 section one hundred five of this article that the signature is
2 genuine.

3 (c) A person who in good faith accepts an acknowledged power
4 of attorney without actual knowledge that the power of attorney is
5 void, invalid, or terminated, that the purported agent's authority
6 is void, invalid, or terminated, or that the agent is exceeding or
7 improperly exercising the agent's authority may rely upon the power
8 of attorney as if the power of attorney were genuine, valid and
9 still in effect, the agent's authority were genuine, valid and
10 still in effect, and the agent had not exceeded and had properly
11 exercised the authority except as to a conveyance of interests in
12 real property where the principal has previously filed a notice of
13 termination of the power of attorney in the office of the clerk of
14 the county commission in the county in which the property is
15 located.

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

18 (1) an agent's certification under penalty of perjury of any
19 factual matter concerning the principal, agent, or power of
20 attorney;

21 (2) An English translation of the power of attorney if the
22 power of attorney contains, in whole or in part, language other
23 than English; and

24 (3) An opinion of counsel as to any matter of law concerning
25 the power of attorney if the person making the request provides in

1 a writing or other record the reason for the request.

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

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

11 **§39-4A-120. Liability for refusal to accept acknowledged statutory**
12 **form power of attorney.**

13 (a) In this section, "statutory form power of attorney" means
14 a power of attorney substantially in the form provided in this
15 article or that meets the requirements for a military power of
16 attorney pursuant to 10 U.S.C. 1044b, as amended.

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

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

23 (2) If a person requests a certification, a translation, or an
24 opinion of counsel under section one hundred nineteen (d) of this
25 article, the person shall accept the statutory form power of

1 attorney no later than five business days after receipt of the
2 certification, translation, or opinion of counsel; and

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

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

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

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

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

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

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

23 (6) The person makes, or has actual knowledge that another
24 person has made, a report to the local adult protective services
25 office stating a good faith belief that the principal may be

1 subject to physical or financial abuse, neglect, exploitation, or
2 abandonment by the agent or a person acting for or with the agent.

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

6 (1) A court order mandating acceptance of the power of
7 attorney; and

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

12 **§39-4A-121. Principles of law and equity.**

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

15 **39-4A-122. Laws applicable to financial institutions and entities.**

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

19 **39-4A-123. Remedies under other law.**

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

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

1 (a) An agent under a power of attorney may do the following on
2 behalf of the principal or with the principal's property only if
3 the power of attorney expressly grants the agent the authority and
4 exercise of the authority is not otherwise prohibited by another
5 agreement or instrument to which the authority or property is
6 subject to:

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

8 (2) Make a gift;

9 (3) Create or change rights of survivorship;

10 (4) Create or change a beneficiary designation;

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

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

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

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

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

1 (c) Subject to subsections (a), (b), (d), and (e) of this
2 section, if a power of attorney grants to an agent authority to do
3 all acts that a principal could do, the agent has the general
4 authority described in 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 this article in which the authority is described.

25 (b) A reference in a power of attorney to general authority

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

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

7 **§39-4A-126. Construction of authority generally.**

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

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

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

23 (3) Execute, acknowledge, seal, deliver, file or record any
24 instrument or communication the agent considers desirable to
25 accomplish a purpose of a transaction, including creating at any

1 time a schedule listing some or all of the principal's property and
2 attaching it to the power of attorney;

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

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

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

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

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

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

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

23 **§39-4A-127. Real property.**

24 (a) Unless the power of attorney otherwise provides,
25 language in a power of attorney granting general authority with

1 respect to real property authorizes the agent to:

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

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

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

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

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

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

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

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

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

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

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

17 (A) Selling or otherwise disposing of them;

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

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

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

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

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

7
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 buy-
8 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 paragraph (1) of this section 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 paragraph (1) of this section;

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

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.
22 39-4A-1320d, as amended, and applicable regulations, in making
23 decisions related to the past, present or future payment for the
24 provision of health care consented to by the principal or anyone
25 authorized under the law of this state to consent to health care on

1 behalf of the 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 paragraph (1) of this section;

6 (8) Maintain credit and debit accounts for the convenience of
7 the individuals described in paragraph (1) of this section and open
8 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 article, and
6 for shipment of their household effects;

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

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

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

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

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

25 **§39-4A-138. Retirement plans.**

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

7 (1) An individual retirement account under Internal Revenue
8 Code 39-4A-408, 26 U.S.C. 39-4A-408, as amended;

9 (2) A Roth individual retirement account under Internal
10 Revenue Code 39-4A-408A, 26 U.S.C. 39-4A-408A, as amended;

11 (3) A deemed individual retirement account under Internal
12 Revenue Code 39-4A-408(q), 26 U.S.C. 39-4A-408(q), as amended;

13 (4) An annuity or mutual fund custodial account under Internal
14 Revenue Code 39-4A-403(b), 26 U.S.C. 39-4A-403(b), as amended;

15 (5) A pension, profit-sharing, stock bonus or other retirement
16 plan qualified under Internal Revenue Code 39-4A-401(a), 26 U.S.C.
17 39-4A-401(a), as amended;

18 (6) A plan under Internal Revenue Code 39-4A-457(b), 26 U.S.C.
19 39-4A-457(b), as amended; and

20 (7) A nonqualified deferred compensation plan under Internal
21 Revenue Code 39-4A-409A, 26 U.S.C. 39-4A-409A, as amended.

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

25 (1) Select the form and timing of payments under a retirement

1 plan and withdraw benefits from a plan;

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

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

5 (4) Make contributions to a retirement plan;

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

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

10 **§39-4A-139. Taxes.**

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

14 (1) Prepare, sign and file federal, state, local and foreign
15 income, gift, payroll, property, Federal Insurance Contributions
16 Act and other tax returns, claims for refunds, requests for
17 extension of time, petitions regarding tax matters and any other
18 tax-related documents, including receipts, offers, waivers,
19 consents, including consents and agreements under Internal Revenue
20 Code 39-4A-2032A, 26 U.S.C. 39-4A-2032A, as amended, closing
21 agreements and any power of attorney required by the Internal
22 Revenue Service or other taxing authority with respect to a tax
23 year upon which the statute of limitations has not run and the
24 following 25 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 Internal Revenue Code 39-4A-529, 26 U.S.C.
12 39-4A-529, as 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 Internal Revenue
21 Code 39-4A-2503(b), 26 U.S.C. 39-4A-2503(b), as amended, without
22 regard to whether the federal gift tax exclusion applies to the
23 gift or if the principal's spouse agrees to consent to a split gift
24 pursuant to Internal Revenue Code 39-4A-2513, 26 U.S.C. 2513, as
25 amended, in an amount per donee not to exceed twice the annual

1 federal gift tax exclusion limit; and

2 (2) Consent, pursuant to Internal Revenue Code 39-4A-2513, 26
3 U.S.C. 39-4A-2513, as amended, to the splitting of a gift made by
4 the 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**

1 **STATUTORY FORM POWER OF ATTORNEY**

2
3 **IMPORTANT INFORMATION**

4
5 This power of attorney authorizes another person (your agent) to
6 make decisions concerning your property for you (the principal).
7 Your agent will be able to make decisions and act with respect to
8 your property (including your money) whether or not you are able to
9 act for yourself. The meaning of authority over subjects listed on
10 this form is explained in the Uniform Power of Attorney Act [insert
11 citation].

12
13 This power of attorney does not authorize the agent to make health-
14 care decisions for you.

15
16 You should select someone you trust to serve as your agent. Unless
17 you specify otherwise, generally the agent's authority will
18 continue until you die or revoke the power of attorney or the agent
19 resigns or is unable to act for you.

20
21 Your agent is entitled to reasonable compensation unless you state
22 otherwise in the Special Instructions.

23
24 This form provides for designation of one agent. If you wish to
25 name more than one agent you may name a coagent in the Special
26 Instructions. Coagents are not required to act together unless you
27 include that requirement in the Special Instructions.

28
29 If your agent is unable or unwilling to act for you, your power of
30 attorney will end unless you have named a successor agent. You may
31 also name a second successor agent.

32
33 This power of attorney becomes effective immediately unless you
34 state otherwise in the Special Instructions.

35
36 **If you have questions about the power of attorney or the authority**
37 **you are granting to your agent, you should seek legal advice before**
38 **signing this form.**

39
40 **DESIGNATION OF AGENT**

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

43
44 Name of Agent:

45
46 Agent's Address: _____

47
48 Agent's Telephone Number: _____

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

5
6 Name of Successor Agent:

7 _____
8 Successor Agent's Address:

9 _____
10 Successor Agent's Telephone Number:
11 _____
12

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

15
16 Name of Second Successor Agent:

17 _____
18 Second Successor Agent's Address:

19 _____
20 Second Successor Agent's Telephone Number:
21 _____
22

23 **GRANT OF GENERAL AUTHORITY**

24
25 I grant my agent and any successor agent general authority to act
26 for me with respect to the following subjects as defined in the
27 Uniform Power of Attorney Act [insert citation]:
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 (OPTIONAL)**

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 [insert specific citation to act] and any
- 14 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 (OPTIONAL)**

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.

1
2 **NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)**
3

4 If it becomes necessary for a court to appoint a [conservator or
5 guardian] of my estate or [guardian] of my person, I nominate the
6 following person(s) for appointment:
7

8 Name of Nominee for [conservator or guardian] of my estate:
9
10 _____
11

12 _____
12 Nominee's Address:
13

14 _____
14 Nominee's Telephone Number:
15

16
17 Name of Nominee for [guardian] of my person:
18

19 _____
19 Nominee's Address:
20

21 _____
21 Nominee's Telephone Number:
22
23

24 **RELIANCE ON THIS POWER OF ATTORNEY**
25

26 Any person, including my agent, may rely upon the validity of this
27 power of attorney or a copy of it unless that person knows it has
28 terminated or is invalid.
29

30 **SIGNATURE AND ACKNOWLEDGMENT**
31

32 _____
33 Your Signature _____ Date _____
34

35 _____
35 Your Name Printed
36

37 _____
38 Your Address
39

40 _____
40 Your Telephone Number
41

42 State of _____
43 [County] of _____
44

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

47 by _____.
48 (Name of Principal)

49 _____ (Seal, if any)

1 Signature of Notary

2
3 My commission expires: _____

4
5 [This document prepared by:

6 _____
7 _____]
8

9 **IMPORTANT INFORMATION FOR AGENT**

10 **Agent's Duties**

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

- 17
18 (1) do what you know the principal reasonably expects you to do
19 with the principal's property or, if you do not know the
20 principal's expectations, act in the principal's best interest;
21 (2) act in good faith;
22 (3) do nothing beyond the authority granted in this power of
23 attorney; and
24 (4) disclose your identity as an agent whenever you act for the
25 principal by writing or printing the name of the principal and
26 signing your own name as "agent" in the following manner:

27
28 (Principal's Name) by (Your Signature) as Agent
29

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

- 32
33 (1) act loyally for the principal's benefit;
34 (2) avoid conflicts that would impair your ability to act in the
35 principal's best interest;
36 (3) act with care, competence, and diligence;
37 (4) keep a record of all receipts, disbursements, and transactions
38 made on behalf of the principal;
39 (5) cooperate with any person that has authority to make health-
40 care decisions for the principal to do what you know the principal
41 reasonably expects or, if you do not know the principal's
42 expectations, to act in the principal's best interest; and
43 (6) attempt to preserve the principal's estate plan if you know
44 the plan and preserving the plan is consistent with the principal's
45 best interest.

46
47 **Termination of Agent's Authority**

48
49 You must stop acting on behalf of the principal if you learn of any

1 event that terminates this power of attorney or your authority
2 under this power of attorney. Events that terminate a power of
3 attorney or your authority to act under a power of attorney
4 include:

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

16
17 **Liability of Agent**

18
19 The meaning of the authority granted to you is defined in the
20 Uniform Power of Attorney Act [insert citation]. If you violate
21 the Uniform Power of Attorney Act [insert citation] or act outside
22 the authority granted, you may be liable for any damages caused by
23 your violation.
24

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

27
28
29 **§39-4A-142. Agent's certification.**

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

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

35
36 State of _____
37 [County] of _____]

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

43
44 I further [certify] that to my knowledge:

- 45 (1) the Principal is alive and has not revoked the Power of

1 Attorney or my authority to act under the Power of Attorney and the
2 Power of Attorney and my authority to act under the Power of
3 Attorney have not terminated;
4

5 (2) if the Power of Attorney was drafted to become effective
6 upon the happening of an event or contingency, the event or
7 contingency has occurred;
8

9 (3) if I was named as a successor agent, the prior agent is no
10 longer able or willing to serve; and
11
12
13
14

15 _____
16 (Insert other relevant statements)
17

18 **SIGNATURE AND ACKNOWLEDGMENT**

19 _____
20 Agent's Signature Date
21

22 _____
23 Agent's Name Printed
24

25 _____
26 Agent's Address
27

28 _____
29 Agent's Telephone Number

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

32 by _____.
33 (Name of Agent)
34

35 _____ (Seal, if any)
36

37 Signature of Notary

38 My commission expires: _____
39

40 [This document prepared by: _____]
41

42 **§39-4A-143. Uniformity of application and construction.**

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

1 enact it.

2 **§39-4A-144. Effect on existing powers of attorney.**

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

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

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

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

15 (b) An act done before the effective date of this article is
16 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, strike-throughs and
underscoring have been omitted.